

Trump Administration's Anti-DEI Effort Comes for Section 8(a) Program—Small Businesses and Alaska Native Corporations May be the Next Targets of Significant Federal Change and Scrutiny

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Recent SBA directives and statements by senior leaders suggest a fundamental shift in the viability and risk associated with the Small Business Administration's Section 8(a) contracting program. Federal contractors who are participants of the Section 8(a) Program, as well as those who utilize 8(a) vendors as subcontractors, should reassess risk, compliance strategies, and program viability.

On January 22, 2026, SBA announced: (1) new guidance to agency program officials seeking to dramatically reshape admission qualifications for the 8(a) Business Development Program; and (2) the suspension of over 1,000 current 8(a) Program participants—nearly one-fourth of the total program participants. Further, senior officials, including Secretary of War Pete Hegseth, have publicly expressed hostility toward the 8(a) Program, which has been a cornerstone of Federal contracting for decades. These steps are the clearest signals yet that 8(a) participants and ANCs may have significant change to navigate in the near and long term. In this client alert, Dorsey identifies several announced—and likely forthcoming—steps that the Administration may undertake over the coming months.

Changes to SBA Admission Qualifications

Consistent with "President Trump's broader effort to eliminate DEI across the federal government,"¹ SBA's new guidance provides that "[n]o applicant to the 8(a) Program shall be denied, nor given any presumptive preference, based solely on his or her race," and all applicants shall be treated "fairly and equally in compliance with" President Trump's anti-DEI executive orders: EO 14151 and EO 14173. In addition, "SBA will not approve admissions to the program based on the Biden-era 'social disadvantage narratives,' nor will SBA utilize in any way or refer applicants to the related 'Guide for Demonstrating Social Disadvantage.'" Instead, when considering whether 8(a) Program applicants are socially disadvantaged, SBA "shall consider, for example, such factors as whether such individual has been the victim of illegal or radical DEI policies or illegal

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affirmative action policies or has otherwise been the victim of discriminatory practices such as race-based quotas, set asides, or hiring targets, in each case, whether by governmental or non-governmental actors.”

This guidance appears to revise key qualifications for program admission in a way that may expand dramatically the pool of entities that could be eligible for participation in the 8(a) program.² At the same time, traditionally socially disadvantaged individuals and groups may find it difficult to gain access to the program and its suite of benefits.

Suspensions of Current Contractors

As Dorsey discussed in a December client alert, SBA directed all entities in SBA’s 8(a) Business Development Program to “provide financial documents for the last three fiscal years, including bank statements, financial statements, general ledgers, payroll registers, contracting and subcontracting agreements, and employment records” by January 5. Following that deadline, SBA announced that over 1,000 8(a) Program participants have already been suspended from the program, the effects of which SBA has not publicly clarified, but appears to mean they are ineligible to receive forthcoming 8(a) awards. SBA explained the suspension was because “they failed to submit the documents SBA requested in December.”³ SBA has reportedly said the suspended firms have 45 days to appeal the suspension and it will release further information in coming days.

What’s Next for the 8(a) Program

The 8(a) Program is both statutory, see 15 U.S.C. § 637(a) (authorizing subcontracts to “disadvantaged small business concerns”), and regulatory, see 13 C.F.R. § 124.101 (describing the 8(a) Program). And while some may take comfort in those legal bases for the program, as we have seen for other efforts by the Trump Administration, the existence of statutory appropriations or other provisions has not stopped the Administration from termination of thousands of grants and contracts across a wide spectrum of Federal programs and agencies.

If the Administration follows that playbook, then 8(a) Participants and ANCs should prepare for terminations for convenience. As Dorsey has written elsewhere, although most Federal contracts include express rights for government termination, the exercise of those rights can be challenged in court. Further, to the extent that a contractor accepts the termination for convenience, the contractor is typically entitled to its incurred costs and reasonable profit at the time of the termination, plus reasonable settlement expenses (including attorney fees and consultant costs). A good system to track costs, familiarity with the termination settlement proposal, and good termination project management will be important for contractors to maximize recovery.

Program participants should also prepare for fraud investigations, including by SBA Office of Inspector General and by the Department of Justice. Given recent Administration rhetoric about “widespread fraud and abuse” in the 8(a) Program, we anticipate significant investigations and audit activity.⁴ Contractors should be aware of the False Claims Act, its treble damages provision, and the *qui tam* mechanism, which

awards to a whistleblower a sizable percentage of any government recovery in a False Claims Act case. Should the Administration maintain its position that the 8(a) Program is subject to fraud and abuse, participants must be prepared to defend FCA claims and should review their compliance programs.

Given the likelihood of further actions by the Administration targeting the 8(a) Program, Program participants such as ANCs should develop a comprehensive legislative, political, and legal strategy to preserve the program. In addition, participants might consider diversification strategies to avoid drawing the ire of the administration.

Dorsey has significant experience advising government contractors, including 8(a) Program participants and ANCs, in analyzing compliance programs, responding to contract terminations, handling FCA-based investigations and complaints, and diversification strategies.

¹ SBA ISSUES CLARIFYING GUIDANCE THAT RACE-BASED DISCRIMINATION IS NOT TOLERATED IN THE 8(A) PROGRAM, SBA News Release 26-23, available at <https://www.sba.gov/article/2026/01/22/sba-issues-clarifying-guidance-race-based-discrimination-not-tolerated-8a-program> (last visited January 25, 2026).

² Applicants still must satisfy the remaining 8(a) Program admission standards.

³ See SBA News Release 26-23, *supra*.

⁴ *Id.*