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(o) 240.760.2902
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July 13, 2026

VIA ELECTRONIC SUBMISSION

Ryan Lambert
Associate Administrator
Office of Government Contracting and Business Development
U.S. Small Business Administration
409 Third Street SW
Washington, DC 20002

RE: Comments in Response to Proposed Rule RIN 3245-AI75: Reforms To Remove SBA's 8(a) Program's Rebuttable Presumption of Social Disadvantage for Individually Owned Firms Only; Reforms Do Not Impact Entity-Owned Firms [Docket No. SBA-2026-0133]

Dear Associate Administrator Ryan Lambert,

Gov Contract Pros (hereinafter "GCP") respectfully submits this response to the above referenced Proposed Rule, pertaining to the eligibility of small businesses owned and controlled by individuals for the Section 8(a) Business Development Program ("8(a) BD Program") administered by the Small Business Administration ("SBA").

I. SUMMARY

On June 11, 2026, the SBA issued a Notice of Proposed Rulemaking entitled, *Reforms To Remove SBA's 8(a) Program's Rebuttable Presumption of Social Disadvantage for Individually Owned Firms Only; Reforms Do Not Impact Entity-Owned Firms* (hereinafter the "Proposed Rule"). The Proposed Rule attempts to create an altogether new admission process for the 8(a) BD Program under the "socially disadvantage" prong.

GCP respectfully comments on the following concerns in order to ensure the unintended consequences of this rule do not impact small businesses. GCP's chief concerns are the following: Resume reviewing applications that have been paused; resume reviewing all entity-owned applications that have been paused; clarify ambiguities in the Proposed Rule for gender based social disadvantage applicants, an overcorrection of Constitutional concerns, and definition of cultural group; retain Personal Narratives as a means to review applications; comply with statute to have the Associate Administrator for Minority Small Business and Capital Ownership Development to manage and approve 8(a) BD Program; SBA has created red tape and regulatory bottlenecks; ensure the Proposed Rule complies with Supreme Court rulings; SBA has performed an inadequate Regulatory Flexibility Analysis and Regulatory Impact Analysis; and every 8(a) Participant has a reliance interest for SBA to retain the Personal Narratives in order to remain regulatory compliant during their annual reviews.

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II. BACKGROUND ON 8(A) BD PROGRAM

The 8(a) BD Program is aimed at improving "socially and economically disadvantaged" business owners' ability to compete for federal contract opportunities. Applicants must demonstrate two-prongs to be admitted to the 8(a) BD Program: economic and social disadvantage. Historically, applicants have had two methods to demonstrate their social disadvantage in their application to the 8(a) BD Program. They could either submit a Personal Narrative which describes instances of bias and discrimination, or they could cite to the Rebuttable Presumption which qualified "Black Americans, Hispanic Americans, Native Americans . . . , Asian Pacific Americans . . . , Subcontinent Asian Americans," to establish their social disadvantage.[1] In 2023, a federal district court in the *Ultima* case held that the Rebuttable Presumption ran counter to the Equal Protections Clause of Fifth Amendment of the U.S. Constitution.[2] The *Ultima* case bound SBA to remove the Rebuttable Presumption from the 8(a) BD Program application. Following this decision, the SBA began relying solely on the Personal Narrative for all applications; in fact, abandoning the then current SBA regulations which authorized admission in part on the Rebuttable Presumption.[3] This administrative action by the SBA allowed the agency to continue reviewing and approving applications in a manner which avoided the constitutional concerns identified by the district court with respect to the Rebuttable Presumption. Utilization by applicants of the Personal Narrative functioned from on or around July of 2023 until August of 2025 when the SBA inexplicably ceased approving any 8(a) applications by either individual persons or applications by Alaska Native Corporations ("ANC"), Community Development Corporations ("CDC"), Native Hawaiian Organizations ("NHO"), and Indian Tribes ("Tribe") (collectively "Entity" or plural "Entities"). SBA's action runs contrary to both statute and SBA's very own regulations directing SBA to advise each applicant within fifteen days of the applications' completeness and suitability for evaluation, and then ninety days for processing the application.[4] Enacting an entirely new application process and standard presents a likelihood of further extended delays in application processing, when existing regulations and pre-August of 2025 SBA practices offer a viable alternative.

The SBA's Proposed Rule is a three-step attempt to change the "socially disadvantaged" definition for the 8(a) BD Program. First, the Proposed Rule removes the Rebuttable Presumption section of the 8(a) BD Program regulations, which has functionally not been used since 2023.[5] Second, the Proposed Rule removes the ability for individuals to write Personal Narratives to gain entry to the 8(a) BD Program, which has been utilized by the program since the 8(a) BD Program was created.[6] Third, the Proposed Rule provides a new self-certified social disadvantage test for

[1] *See* 13 CFR § 124.103(c).

[2] *See Ultima Servs. Corp. v. United States Dep't of Agric.,* 683 F. Supp. 3d 745 (E.D. Tenn. 2023).

[3] *See* 13 CFR § 124.103(c); 13 CFR § 124.103(b).

[4] *See* 15 USC § 636(j)(11)(F)(ii); 13 CFR § 124.204(a)(2).

[5] *See* 13 CFR § 124.103(b); *see also* Proposed Rule at 35434.

[6] *See* 13 CFR § 124.103(c); *see also* Proposed Rule at 35434.

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applicants ("New Test").[7] This New Test requires the individual applicant to "establish social disadvantage by showing that within his or her lifetime, the federal or a state or local government or a university or corporation, through any action, policy, rule, regulation, or other practice of any of its agencies, subsidiaries, or authorized agents, discriminated or was biased against a clearly definable racial, ethnic, or cultural group of which the citizen is a member, or favored in any way a racial, ethnic, or cultural group of which the citizen is not a member, and that the discrimination, bias, or harm materially harmed the citizen."[8]

III. GCP'S CHIEF STATUTORY AND ADMINISTRABILITY CONCERNS

GCP respectfully submits the following ten concerns with the Proposed Rule and requests SBA to meaningfully respond to the concerns raised below.

A. GCP Requests SBA to Continue Reviewing and Approving *all* Currently Paused Applications to the 8(a) BD Program.

Since August 2025, SBA has not approved or denied a single 8(a) application without explanation.[9] While the public is not currently aware of SBA's reason for altogether stopping 8(a) applications, this pause and now Proposed Rule introduces uncertainty for all applicants. GCP is specifically concerned that promulgating the regulations, policies, procedures, and information technology infrastructure needed to support application processing will further delay SBA's statutory and regulatory mandates directing SBA to advise each applicant within fifteen days of the application's completeness and suitability for evaluation, and then ninety days for processing the application. Furthermore, GCP is concerned that the New Test and its corresponding policies, procedures, and information technology infrastructure will require significant investments by the SBA to train its staff to administer this New Test, which could further delay current and new applications review and approvals by the agency. GCP requests clarity on whether those who have applied under the existing process will be timely reviewed and appropriately approved for the 8(a) BD Program in accordance with applicable SBA statutory and regulatory authorities.

B. GCP Requests SBA to Continue Reviewing and Approving all Entity-Owned Applications to the 8(a) BD Program.

Since August of 2025, SBA has not approved or denied a single Entity-Owned business for admission to the 8(a) BD Program. Indeed, the SBA cites to the holding of *Ultima* as a basis for its Proposed Rule, and yet the district court's decision and subsequent actions until August of 2025 never included any substantive challenge to the SBA's current application process for ANCs, CDCs, NHOs, and Tribes. What is more, the SBA's pretext for ceasing review and approval of ANC, CDC, NHO, and Tribe applications, that a potential "$100B fraud" was occurring, has not been substantiated. Most recently before the SBA's Office of Hearings and Appeals, in *Matter of*

[7] *See* Proposed Rule at 35434.

[8] *See id.*

[9] *See* https://www.8afacts.org/index.html.

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ATI Government Solutions, LLC, the administrative law judge found the SBA's basis and record for suspension of a Tribe from the 8(a) BD Program "met none of the requirements for submission of an Administrative Record," called the mid-appeal pivot to a FAR 9.407 theory "post hoc rationalization," despite the public statements by the SBA alleging billions in fraudulent activity by the Tribe.[10]

SBA unambiguously states in the title of the Proposed Rule that "Reforms Do Not Impact Entity-Owned Firms." GCP respectfully requests clarity for when SBA intends to resume the processing of Entity-Owned applications. GCP urges SBA to immediately resume processing and approving Entity-Owned applications, which has effectively been frozen since at least August of 2025. While this cessation of review and approval of Entity-Owned applications has been stylized as a necessary "pause" to correct the Biden Administration's mismanagement of the 8(a) BD Program, again the cited justification for this freeze of fraud has failed to be born out, and there has been no Federal Register notice, no rulemaking, no public order to effectuate this administrative action. This administrative action runs against both the fifteen-day completeness ***statute***[11] directing SBA to advise each applicant within fifteen days whether the application is complete and suitable for evaluation, and the ninety-day processing ***regulation***[12]. Meanwhile, the 8(a) BD Program's natural turnover continues: existing Participants reach the nine-year statutory term and age out, and others meet the early-graduation thresholds and graduate out. With the entry door closed and the exit door open, the BD Program contracts every month by operation, not by statute.

Additionally, in Section I of the Proposed Rule, SBA states: "This proposed rule applies *only* to the 8(a) BD eligibility of small businesses owned and controlled by individuals. It does not in any way amend or affect the eligibility of entity-owned small businesses (*i.e.*, those owned by tribes, ANCs, NHOs, or CDCs)."[13] Based on this statement, SBA should augment its opinion that ANCs, NHOs, Tribes, and CDCs are not impacted by the Executive Order "Ending Radical and Wasteful Government DEI Programs and Preferencing"[14], by expanding on the May 20, 2025 opinion authored by SBA General Counsel Wendell Davis, entitled "Application of DEI Executive Order to American Indians and Alaska Natives", which only recognized this distinction for Alaska Natives and Tribes, and was silent as to the applicability to NHOs. Furthermore, recognizing that SBA's 8(a) regulations regarding social and economic disadvantage of Entity-Owned concerns as well as 8(a) annual reviews are not subject to litigation cited in this Proposed Rule, SBA should expressly confirm in any final rule resulting from this Proposed Rule, that no further action will be taken with regard to amending its regulations as applied to Entities. Put differently, the now current SBA regulations for Entity-Owned concerns already provide SBA with sufficient regulatory authority to "ensure that only eligible firms participate in SBA's various programs and

[10] *See* SBA No. BDPT-728 (Holleman, A.L.J., May 18, 2026).

[11] 15 USC § 636(j)(11)(F)(ii).

[12] 13 CFR § 124.204(a)(4).

[13] Proposed Rule at 35433.

[14] Executive Order 14151, Jan. 20, 2025.

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that the programs' intended purposes are not subverted."[15] Such confirmation will materially benefit the federal marketplace by ensuring that the 8(a) BD Program has the necessary stability to allow Entity-Owned 8(a) Participants to deliver on and perform their federal contracts successfully on behalf of federal agencies and respects statutory authorities for utilization of these entities and afford agencies the ability to rely upon trusted capabilities procured through the most expedient of acquisition processes.

For these reasons, GCP respectfully submits that Entity-Owned 8(a) application processing and approval should resume immediately.

C. GCP Believes that the Proposed Rule Impermissibly Excludes Certain Individual's Social Disadvantage Under the New Test.

To formulate the New Test, SBA relies on statutory authorities at Section 637(a)(5) which defines "socially disadvantaged individuals" as "those who have been subjected to racial or ethnic prejudice or cultural bias because of their identify as a member of a group without regard to their individual qualities" and Section 631(f)(1)(B), which provides one purpose of the Small Business Act is to promote the business development of socially and economically disadvantaged persons through programs such as those authorized by Section 637(a).[16] Based on these authorities, the Proposed Rule description offers the following: "SBA proposes a test by which any individual American citizen can establish social disadvantage by showing that within his or her lifetime, the federal or a state or local government or a university or corporation, through any action, policy, rule, regulation, or other practice of any of its agencies, subsidiaries, or authorized agents, discriminated or was biased against a clearly definable racial, ethnic, or cultural group of which the citizen is a member, or favored in any way a racial, ethnic, or cultural group of which the citizen is not a member, and that the discrimination, bias, or harm materially harmed the citizen."[17] In summary, the proposed New Test for social disadvantage includes a tremendous variety of actors performing an almost infinite number of acts, which an applicant might cite to establish social disadvantage for purposes of eligibility in the 8(a) BD Program. GCP believes that the SBA's formulation of "clearly definable racial, ethnic, or cultural group" is fraught with potential challenges to future administration of the 8(a) BD Program as is the New Test's administrability and evidential requirements.

i. Exclusion of Gender Based Social Disadvantage.

First, among the omitted classes or groups of American citizens from the Proposed Rule's formulation of "clearly definable racial, ethnic, or cultural group" and corresponding harm is gender-based discrimination. While the SBA purports to remedy what it believes to be unconstitutional race-based discrimination in establishing eligibility, it simultaneously omits

[15] *See, e.g.*, 13 CFR. §§ 124.108 – 124.111.

[16] *See* 15 USC § 637(a)(5); 15 USC § 631(f)(1)(B).

[17] Proposed Rule at 35434.

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gender-based discrimination, which was previously available to applicants under the Personal Narrative[18] option for admission to the 8(a) BD Program. The rationale for this omission goes unstated in the Proposed Rule, which is why GCP believes this possible oversight by the SBA could potentially subject the 8(a) BD Program, as well as the woman owned small business program ("WOSB") to new litigation. Whether it be *Craig v. Boren*,[19] which established the intermediate scrutiny standard for gender classifications, or *United States v. Virginia*,[20] which required an "exceedingly persuasive justification" for gender-based discrimination, the exclusion, or in this case removal, of gender, the SBA must show an important governmental interest and a substantial relationship. Under the Proposed Rule, it is difficult to ascertain a genuine, evidence-based, free from stereotype basis in removing gender as applied under the current regulations, and removing it from the proposed social disadvantage classes, even where gender discrimination is not necessarily limited to any one sex. For these reasons, GCP believes based on the precedents cited immediately above, that gender must be included in the "clearly definable" groups enumerated in this Proposed Rule. Elimination of this "group" is arbitrary and capricious where SBA already recognizes systemic discrimination in the WOSB program, and through this Proposed Rule proposes to exclude gender without explanation. GCP also recommends that "ethnic origin" and individuals with an "identifiable disability", "long term residence in an environment isolated from the mainstream of American society", and "similar causes not common to individuals who are not socially disadvantaged" will be considered in light of the Proposed Rule's articulation of "clearly definable racial, ethnic, or cultural group" when individuals with these disadvantages under the current regulations presumably have a reliance interest in maintaining the current regulatory framework[21] and SBA previously admitted such individuals under the Personal Narrative without negatively impacting constitutional and statutory defects presented as at issue in the Proposed Rule.

ii. SBA Overcorrects Stated Race Based Constitutional Concerns.

Furthermore, the Proposed Rule expressly identifies "white Americans" as "almost totally unable to participate in the [8(a) BD] [P]rogram."[22] GCP is concerned that in attempting to remedy supposed constitutional and statutory defects of the Rebuttable Presumption, that the SBA is risking additional litigation by favoring one group of American, *i.e.*, "white Americans" over those groups previously eligible for reliance on the Rebuttable Presumption. GCP believes that the SBA's conclusion that an increasing number of voices have begun to question whether the 8(a) BD Program statute is itself a race-based classification for socially and economically disadvantaged individuals which should be subject to strict scrutiny is predicated on the omission

[18] *See* 13 CFR § 124.103(c)(2).

[19] 429 U.S. 190 (1976).

[20] 518 U.S. 515 (1996).

[21] *See* 13 CFR § 124.103(c)(2).

[22] Proposed Rule at 35434.

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of any recognition of the majority opinion of *Rothe*.[23] While litigants and some judges have argued that aspects of the 8(a) BD Program function as race-based classifications, the SBA's conclusion regarding *Rothe* is overstated. The majority opinion in *Rothe* explicitly rejected the idea that the 8(a) statute itself creates a race-based classification; rather, the D.C. Circuit held that the statute is *facially* race neutral because eligibility is based on *individual* social disadvantage and not just racial categories. As a result, the D.C. Circuit applied rational basis review, not strict scrutiny. The SBA's conclusion offered in the Proposed Rule blurs a crucial doctrinal and statutory line[24] which defines "social disadvantage" in race neutral terms. Accordingly, it is crucial that any resulting regulation from this Proposed Rule recognizes the statutory requirement of "social disadvantage" and does not seek to benefit exclusively one group through elimination of what was merely a Rebuttable Presumption of social disadvantage in regulations to the detriment of others.

iii. Needed Definition of Cultural Group

Although GCP supports inclusionary regulations which facilitate benefit from the 8(a) BD Program, the inclusion of "cultural groups" within the formulation of the SBA's New Test produces significant concerns with respect to preventing future litigation against the 8(a) BD Program. GCP is not aware of any regulations by the SBA which define this "cultural group". Indeed, in *Ames v. Ohio Dep't of Youth Servs.*,[25] the Court said discrimination law applies equally regardless of whether someone belongs to a majority or minority group and analyzed whether the law at issue focused on discrimination against individuals because of protected traits, not membership in a broad "cultural" grouping. For these reasons, any final rule resulting from this Proposed Rule should include a defined term for "cultural groups" based on Title VII of the Civil Rights Act of 1964, which recognizes specific enumerated protected characteristics including race, color, religion, sex (including both orientation and gender identity), and national origin. Reliance on this well-established body of law will alleviate additional potential risks of litigation against both the Proposed Rule and 8(a) BD Program owing to a lack of definition of "cultural groups". GCP also supports inclusion of "ethnic origin" and individuals with an "identifiable disability", "long term residence in an environment isolated from the mainstream of American society" recognizing SBA's historic ability to assess these disadvantages, in the definition of "cultural groups". GCP believes that inclusion of "similar causes not common to individuals who are not socially disadvantaged" further promotes the SBA's goal of eliminating constitutional and statutory concerns with the 8(a) BD Program because it affords SBA with appropriate discretion to ensure that individuals are not impermissibly excluded from application to and acceptance in the 8(a) BD Program.

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[23] *See* Proposed Rule at 35434; *see, e.g.*, *Rothe Dev., Inc.* v. *United States Dep't of Def.,* 836 F.3d 57 (D.C. Cir. 2016) (Henderson, J., concurring in part and dissenting in part).

[24] 15 USC § 637(a).

[25] 605 U.S. 303 (2025).

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D. GCP Requests clarity on Certification Requirements and Nexus of Harm Under the New Test.

Beyond GCP's analysis which yields that the New Test impermissibly excludes certain individual's social disadvantage under the New Test, as described above in Section II.C., GCP believes that the New Test lacks the necessary clarity for the "Self-certify" requirement.[26] Second, GCP believes the SBA's articulation of "suffered material harm ***because*** of the action, policy, rule, or other practices"[27] lacks the necessary particularity to ensure efficient administration of 8(a) applications.

First, the Proposed Rule states, "the citizen may self-certify that he or she was a member of the relevant group at the time of the government's or private entity's action or during the effective period of the relevant action, policy, rule, regulation, or other practice, and that such action, policy, rule, regulation, or other practice materially harmed the citizen."[28] The Proposed Rule omits any discussion or declaration of the standard to which the certification by the individual must be made; whether it be penalty of perjury, a sworn affidavit (notarized oath) or a general certification of truth with no explicit perjury standard, *i.e.*, "true and correct", or "best of knowledge".

Recognizing the generalized identification of "material harm" potentially allowable under the Proposed Rule and SBA's discretion to evaluate and approve any 8(a) application based in part on this certification, GCP believes that any Civil False Claims Act liability is inappropriate in this context. Nevertheless, GCP recommends that in any final rule resulting from the Proposed Rule, that the SBA articulate any new certification requirements for 8(a) applications regarding social disadvantage, and explain its selection of the appropriate legal framework for the certification.

Second, the Proposed Rule states that applicant must "self-certify" that the applicant "suffered harm" to establish social disadvantage for 8(a) BD Program eligibility purposes.[29] While the Proposed Rule offers examples of "sufficient evidence" of the government's or private entity's action, policy, or rule,[30] the Proposed Rule is silent on how the evidence is presented in an application and how the SBA will evaluate such evidence goes unstated in the Proposed Rule. Further, the Proposed Rule does not require any evidence of the applicant's "material harm because of the action, policy, rule, regulation, or other practice[.]"[31]It thus remains unclear in the Proposed

[26] *See* Proposed Rule at 35436, 13 CFR § 124.103(b)(3)(i)).

[27] *See* Proposed Rule at 35436, 13 CFR § 124.103(b)(3)(i)(B) (emphasis added).

[28] Proposed Rule at 35436, 13 CFR § 124.103(b)(3)(i).

[29] *See* Proposed Rule at 35436, 13 CFR § 124.103(b)(3)(i)(B).

[30] *See* Proposed Rule at 35437, 13 CFR § 124.103(b)(4).

[31] Proposed Rule at 35436, 13 CFR § 124.103(b)(3)(i)(B).

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Rule what is meant by "suffered harm" and the nexus between such harm and the "government's or private entity's action, policy, rule, regulation or other practice".[32]

Consider the following:

> **Example 1** – Individual A is an American citizen who is Black. Individual A writes narrative that his direct supervisor, an "agent of corporation" in which he is employed, made a racist joke about Black people.

In GCP's estimation, this Example 1 provides a set of facts under which the Proposed Rule does not offer a definitive result with regard to "show evidence" and "material harm". It is not clear under the Proposed Rule whether the narrative statement would be sufficient evidence for purposes of completing the social disadvantage portion of an 8(a) application. It is not even clear if such a narrative would be permitted to be submitted and accepted as "evidence" possible as "action" of an "agent" of a "private entity". It is also not clear whether the occurrence of such a fact pattern would be sufficient to demonstrate the requisite "material harm" required under the Proposed Rule.

Consider another example:

> **Example 2** – Individual B is an American citizen who is Hispanic. Individual B is applying to universities. Individual B chooses not to apply to University 2 where publicly available admissions statistics for University 2 yield Hispanics make up only 5% of University's student population.

In this Example 2, under the Proposed Rule, it is not clear if individual's decision not to apply to University 2 based on these publicly available admissions statistics is a sufficient "material harm" to Individual B. Moreover, it is not clear if this result would change if Individual B applied to and was denied admission to University 2 would be an acceptable fact pattern for purposes of social disadvantage under the Proposed Rule. Put differently, the Proposed Rule does not articulate whether Individual B is required to take an affirmative action towards admission to University 2 which results in a denied application is sufficient, or if the mere action of not applying to University 2 based in whole or in part on admissions statics included as "evidence" for purposes of an 8(a) application would be required. Then, there is the further issue of articulating a "material harm" stemming from the non-matriculation to University 2. The Proposed Rule lacks clarity in regard to whether or not it even necessary to articulate the "material harm" or whether the SBA is permitted to infer such a material harm from Individual B's evidence of admissions statistics and certification of material harm.

[32] Proposed Rule at 35436-7, 13 CFR § 124.103(b)(3)(ii).

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Finally, consider:

> **Example 3** – Individual C is an American Citizen who is a woman. Individual C is searching for employment. Individual C discovers an EEOC administrative decision that "reasonable cause exists to believe discrimination occurred" by Corporation 3 against women. Individual C never applied for job with Corporation 3.

From Example 3, it is unclear whether the EEOC administrative action is "sufficient evidence" of the "action, policy, rule, regulation, or other practice" that resulted in Individual C's "material harm" and how Individual C may or may not be required to describe the "material harm" which occurred from her non-action of applying for a job; and if the result would change if she applied for a job with Corporation 3 and was subsequently denied the opportunity. Furthermore, it is unclear whether Individual C's gender would be a permissible "clearly definable racial, ethnic, or cultural group" under the Proposed Rule owing to the omission of gender from the text.

As written, it appears the New Test in the Proposed Rule violates the case law SBA claims supports this rulemaking. In *Students for Fair Admissions*,[33] the Supreme Court reiterated that there are "only two compelling interests that permit resort to race-based government action. One is remediating specific, identified instances of past discrimination that violated the Constitution or a statute…"[34] In the *Rothe* concurrence SBA cites, Judge Henderson describes in great detail the analysis and research Congress undertook when drafting the Small Business Act, which included identifying specific "groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control."[35]

Simply put, the Proposed Rule does neither. "Eliminating racial discrimination means eliminating all of it. And the Equal Protection Clause…applies without regard to any differences of race, of color, or of nationality—it is universal in its application. For the guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color."[36]

E. GCP Urges SBA to Continue Utilizing Personal Narratives Even if the New Test is Finalized.

Based on Sections II.C. and II.D. above, GCP believes that SBA should continue to utilize the Personal Narrative since it has been a longstanding option under the 8(a) BD Program, the SBA already possess experience in evaluating Narratives, and they permit race neutral admissions which were at issue in the *Ultima* case. Since the SBA has stated this rulemaking is intended to

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[33] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

[34] *Students for Fair Admissions*, 600 U.S. at 207 (citations omitted).

[35] *Rothe Dev., Inc. v. United States Dep't of Def.*, 836 F.3d 57, 76 (D.C. Cir. 2016) (Henderson, J. concurring in part, dissenting in part).

[36] *Students for Fair Admissions, Inc.*, 600 U.S. at 206 (quotations and citations omitted).

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update the regulations so that they align with constitutional and statutory concerns noted in the *Ultima* decision and meet the congressional intention for the 8(a) BD Program, it thus follows that Personal Narratives should continue to be accepted for applications to the 8(a) BD Program.

At the outset, GCP recognizes that civil servants at SBA have long been able to process Personal Narrative applications successfully, at least as recently as August of 2025 when SBA stopped processing all 8(a) BD Program applications. In abandoning the Personal Narrative through this Proposed Rule, SBA has not provided a stated rational for removing this application process even though it does not create the same concerns as the Rebuttable Presumption. Personal Narratives are necessarily an individualized story of the applicant and describe specific instances of bias or discrimination, which the individual experienced based on group membership rather than personal characteristics.

Continuing to accept Personal Narratives would remove any administrative burden placed on SBA by enacting the Proposed Rule. Since SBA is expecting more applicants through the New Test and agency personnel have been evaluating Personal Narratives for decades, continuing to process Personal Narratives is a routine task for SBA. GCP requests that SBA continue to review Personal Narratives for those that do not meet the New Test being proposed.

F. GCP Requests SBA Comply with Statutory Requirements for the Associate Administrator for Minority Small Business and Capital Ownership Development to Manage the 8(a) BD Program.

SBA is statutorily required to have an Associate Administrator for Minority Small Business and Capital Ownership Development who is responsible for overseeing and coordinating policies related to the 8(a) BD Program. This Associate Administrator is responsible for coordinating and formulating policies relating to federal assistance for small business concerns eligible for assistance under SBA minority business development programs, and small business concerns eligible to receive contracts under the 8(a) BD Program.[37] The Associate Administrator, through the Office of Business Development, oversees eligibility, certification, graduation, termination, and continued participation requirements for firms in the 8(a) BD Program. These requirements are implemented through SBA regulations for the 8(a) BD Program.

GCP believes that this statutory position is currently vacant within the SBA. We urge the SBA to fill this position in order to ensure that the statutory goals articulated in the Proposed Rule are effectuated as efficiently as practicable and to ensure that the 8(a) BD Program has full-time devoted leadership to ensure future successful administration of the program. Where sufficient resources are deemed not to exist at the SBA to fill this statutory position, GCP believes that the SBA must seek those resources from Congress through the budgeting process.

[37] *See* 15 USC § 636(j)(11).

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G. GCP Requests SBA Avoid the Creation of Regulatory Red Tape and Administrative Bottlenecks.

SBA claims the self-certification aspect of the New Test is necessary due to "SBA's limited resources."[38] The SBA Administrator has announced on multiple occasions the decision to reduce the force of SBA and reorganize the agency. The agency is now going through a further reduction in force, with deferred resignation packages being offered into FY27. The SBA should not use its own self-created reduction in force in order to justify this arbitrary and capricious rulemaking.

The agency has not presented an adequate or reasoned explanation to claim the Personal Narratives may not remain a reasonable alternative to the New Test. Under the New Test, the agency will still need personnel to review the submissions of supporting discriminatory evidence.[39] Further, the agency will still be prone to abuse and unconstitutional discrimination.

This Administration has been systematically putting forward impactful and costly procedures on 8(a) Participants. In December 2025, the SBA put out a request to all 8(a) Participants to submit financial records to the SBA with only a few weeks to respond.[40] This financial records request put tremendous pressure on 8(a) Participants to review their records and ensure they timely upload the required materials in the proper formatting, which differed from both annual review and application formatting. Under SBA's estimated impact of this records collection, it costed each 8(a) Participants between nearly $3,000 to over $7,000.[41] GCP notes this Proposed Rule builds on the Administration's costly and regulatory uncertain actions in the 8(a) BD Program.

On February 20, 2026, the SBA issued Policy Notice No. 6000-876995 which made all annual reviews for 8(a) BD Program authorized only if approved by the Associate Administrator of the Office of Government Contracting and Business Development. This has created a bottleneck for the agency, by its own making, and moves the agency's power into Washington. Personnel in SBA's field offices allow the agency to exist outside of Washington and connect directly with business owners.

GCP recommends SBA permit field offices to continue reviewing the annual reviews for their local communities rather than a sole Associate Administrator in Washington deciding whether applicants maintain eligibility for the 8(a) BD Program under the New Test or Personal Narratives.

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[38] Proposed Rule at 35435.

[39] *See, e.g.*, Proposed Rule at 35435.

[40] SBA Orders All 8(a) Participants to Provide Financial Records (Dec. 5, 2025), available at https://www.sba.gov/article/2025/12/05/sba-orders-all-8a-participants-provide-financial-records.

[41] *See* OMB Control No: 3245-0430, available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202511-3245-001.

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As SBA continues to alter the qualifications for the 8(a) BD Program, including, for instance, determinations of eligibility for the 8(a) BD Program, which are now directed to the Associate Administrator, rather than District Offices, the 8(a) BD Program and executive agencies suffer the consequences. More specifically, current SBA regulations regarding Business Activity Targets, or ("BATs"), state that a participant that does not meet the applicable BATs may still preserve eligibility for award of an 8(a) contract, it if can demonstrate a "good faith effort" to achieve the applicable BATs.[42] While previously such determination of "good faith effort" was made by the 8(a) Participant's servicing District Office, that determination is now made or not made at SBA's headquarters, with the result that contracting offices are pulling their 8(a) offer letters. This is but one example of many, where the SBA's attempts to centralize decision making at SBA's headquarters have harmed the 8(a) BD Program through excessive and non-localized red tape. While not within the purview of this Proposed Rule, GCP notes the constant changes at SBA that do not go through the public comment process. As such, GCP encourages SBA to ensure other vital milestones in the 8(a) BD Program are not arbitrarily changed through dubious exceptions to the Administrative Procedure Act.

H. GCP Requests Clarity from SBA on How This New Test Complies with the Supreme Court's *Loper-Bright* Standard.

This rulemaking represents an improper interpretation of the agency's guiding statutes under a *Loper-Bright* standard. The Supreme Court has clearly articulated that agencies must interpret statutes under a narrow scope and avoid creating regulations that interpret broad powers through vague statutory powers.[43] The removal of the Rebuttable Presumption may be a legitimate agency action due to *Ultima* binding the agency. Though the agency fails to mention it has not used the Rebuttable Presumption since *Ultima.* Every applicant for the last three years has been through the submission of a personal narrative since *Ultima*, but applicants have always been able to submit Personal Narratives. This rulemaking could have been a rulemaking that merely updates the regulations to reflect the process that has been ongoing for years now. Instead, this Proposed Rule goes beyond that and implements a New Test using self-certification. SBA has improperly interpreted its own enabling statutes and presented a formulation that does not focus on an individual's harm but creates new group-centric race-based standards for entry into the 8(a) BD Program. The agency's decision to go beyond the interpretive confines set by the Supreme Court is troubling and presenting new constitutional challenges to the 8(a) BD Program.

SBA claims the statutory basis for its departure from the Personal Narrative Test to this New Test is to narrowly align the 8(a) BD Program with the Constitution. The removal of the Rebuttable Presumption Test is unimpactful since every participant in the program has utilized the Personal Narrative. The SBA instead reaches beyond the statutory scope of the 8(a) BD Program and interprets a new Group Harm Test seemingly out of thin air. This test has no analytical basis, few illustrative examples to ensure that this is a reasonable standard, and goes far beyond a

[42] *See* 13 CFR § 125.509(a).

[43] *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

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reasonable interpretation to determine "those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities."[44] GCP requests that the SBA clearly articulate the statutory basis for this rulemaking and explain how the agency views the removal of the Personal Narratives and inclusion of the New Test to comply with the Supreme Court's *Loper Bright* standard.

I. GCP Urges SBA to Republish an Initial Regulatory Flexibility Analysis and Properly Estimate the Impact this Proposed Rule Will Have on Small Entities.

The agency has chosen to certify this Proposed Rule's IRFA. This demands that the agency clearly explain how rules will have no impact on small businesses. This rule exclusively impacts small businesses and their ability to compete in the federal marketplace. This rule's IRFA certification is insufficient, and the agency has shown it has not properly assessed the impact of this rulemaking and its unintended consequences.

Within the minimal impact analysis in the Proposed Rule, the SBA has misunderstood its own data and inaccurately claimed 4,190 applications were received in FY25. Further, the analysis then states how small businesses in the 8(a) BD Program represent only a small portion of the 21,000 applications SBA received in FY25 for various programs. This miscategorized what a small entity impact is for the purposes of an IRFA. It is not merely that, assuming that SBA's data is factually correct, 8(a) applicants represent nearly 20% of small business program applications at the SBA, it is that individual businesses in this field now must expend more resources to decipher the New Test that SBA is proposing here and ensuring that the documented instances of discrimination are Constitutionally sufficient nexus of harm.

Now that SBA has certified this IRFA, the agency must either publish a Final Regulatory Flexibility Analysis (FRFA) that is also certified or the agency seeks comments on an updated IRFA that adequately analyzes the impact this rulemaking will have on small businesses, particularly those attempting to apply for the 8(a) BD Program. GCP respectfully urges the agency to correct this insufficient certification through publication of an IRFA. Without understanding the impact a rulemaking has on small entities and the economy as a whole, the agency has failed in its duty of reasonable analysis and explaining it understands the impacts its rulemaking may have. If the agency is not sure of the impact, SBA should engage in an advanced notice of proposed rulemaking (ANPRM) with specific questions to solicit this insight rather than make broad changes through regulatory red tape.

GCP respectfully requests the SBA to provide clear data and show it understands the impact this rulemaking will have on small entities. GCP reiterates that SBA has produced an inadequate IRFA, which is compounded by the fact that SBA should be the best at understanding the small business community and how rulemakings impact them.

[44] 15 USC § 637(a)(5).

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J. GCP Notes Reliance Interests for All Program Participants at Annual Reviews.

SBA's statement in the Proposed Rule that the agency "does not *currently* intend to apply the new test to current Participants at their next annual review"[45] is concerning. Following this statement, the Proposed Rule states, "SBA requests comment on any reliance interests that would be implicated by these proposed changes."[46] GCP notes to SBA that the agency's own regulations make every 8(a) Participant an individual with a reliance interest that are impacted by the New Test. When submitting an annual review, 8(a) Participants must certify that the firm "meets the 8(a) BD program eligibility requirements as set forth in § 124.101 through § 124.108 and paragraph (a) of this section."[47] If SBA enacts the Proposed Rule as currently drafted, no 8(a) Participant could certify that they meet the amended requirements in Proposed 13 CFR § 124.103, despite all current 8(a) Participants owned by an individual have, either during their initial application or in 2023, complied with 13 CFR § 124.103(c) by submitting a written statement establishing their unique social disadvantage. SBA's removal of the Personal Narrative and introduction of a new and vague self-certified test introduces uncertainty for 8(a) Participants at their annual reviews until they graduate from the program. Every 8(a) Participant may currently state they are in compliance with the Personal Narratives requirement, but if Personal Narratives are removed, then everyone will need to certify under the New Test. Due to this reliance interest, GCP asks that SBA specifically retain the Personal Narrative to avoid the unintended consequence that all 8(a) BD Program Participants must assert at their annual review that they comply with the vague standards put forth in the New Test.

IV. CONCLUSION

GCP respectfully submits the above chief concerns with the SBA's Proposed Rule. GCP believes addressing these notable concerns will result in changes to the 8(a) BD Program that resolves the Constitutional and statutory concerns SBA is attempting to correct.

First, GCP urges SBA to resume the processing of all applications that have been paused for nearly a year. Second, SBA must resume reviewing all Entity-Owned applications since they are explicitly outside the scope of this rulemaking. Third, the New Test contains numerous unintended consequences such as the exclusion of gender based social disadvantage from qualifying for the 8(a) BD Program, an overcorrection of the Constitutional concerns cited, and need for clear definition on cultural group. Fourth, the SBA has failed to properly clarify the necessary requirements for certification and what level of harm is required to be shown under the New Test. Fifth, GCP urges the SBA to continue utilizing the Personal Narratives even if the New

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[45] Proposed Rule at 35435 (emphasis added).

[46] *Id.*

[47] 13 CFR § 124.112(b)(1). *See also* 13 CFR § 124.112(a) ("***Standards***. In order for a concern (except those owned by Indian tribes, ANCs, Native Hawaiian Organizations or CDCs) to remain eligible for 8(a) BD program participation, it must continue to meet all eligibility criteria contained in § 124.101 through § 124.108. … Any concern that fails to meet the eligibility requirements after being admitted to the program will be subject to termination or early graduation under §§ 124.302 through 124.304, as appropriate.").

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Test is finalized. Sixth, SBA has failed to comply with statutory requirements for the Associate Administrator for Minority Small Business and Capital Ownership Development to manage and approve 8(a) BD Program applicants. Seventh, SBA's Proposed Rule has created more regulatory red tape and administrative bottlenecks rather than simplifying the 8(a) BD Program. Eighth, SBA must show how the New Test complies with the Supreme Court's limitation on agency's interpretation of Congressional statutes. Ninth, SBA has improperly certified the Proposed Rule as having no impact on small businesses and should provide proper analysis of the rule's impact. Lastly, GCP requests SBA to avoid one of the unintended consequences of the New Test by retaining the Personal Narratives so that current 8(a) Participants can pass their annual reviews.

GCP remains available to discuss the unintended consequences of this Proposed Rule with the SBA to ensure any finalized rule avoids Constitutional, statutory, or administrability concerns. Resolving the noted concerns will ensure that SBA maintains and expands the 8(a) BD Program.

Sincerely,

Gov Contract Pros

/s/ Trevor Skelly

Trevor Skelly, CEO

/s/ John Shoraka

John Shoraka, Chairman