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## GENERAL MEMORANDUM 26-032

### The Small Business Administration Proposes New Regulatory Test for Social Disadvantage

On June 11, 2026, the Small Business Administration (SBA) issued a [proposed rule](#) to amend the regulations of the 8(a) Business Development Program pertaining to small businesses owned and controlled by individuals. Importantly, the new regulations do not affect “the eligibility of entity-owned small businesses (*i.e.*, those owned by tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations).” SBA has previously [clarified](#) that its programs serving American Indians and Alaska Natives are not diversity, equity, and inclusion activities as “Tribes are separate sovereigns.”

The 8(a) Business Development program was established by the Small Business Act to provide business development and federal contracting opportunities in part to socially disadvantaged small businesses, defined as being at least 51% owned by “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.”<sup>1</sup> Current regulations include Native Americans, among other groups, as socially disadvantaged individuals.

The proposed rule would establish a new regulatory test for determining whether an individual qualifies as socially disadvantaged:

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.

This new test applies only to small businesses owned and controlled by individuals, not entities like Tribes, Alaska Native Corporations, and Native Hawaiian Organizations. While Native Americans may still qualify as socially disadvantaged under this new definition, other groups may also become eligible. These include those who can show discrimination based on diversity, equity, and inclusion activities or preferences designed to benefit historically oppressed minority groups.

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<sup>1</sup> [15 U.S.C. 637\(a\)\(5\)](#)

Comments on the proposed rule are due on **July 13, 2026**. Please let us know if you would like assistance drafting and submitting comments.

Inquiries may be directed to:

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