

## Practitioner Perspectives

August 2023 – Vol. 12; Issue 8

### Prepare Your Social Disadvantage Narrative to Help Weather the 8(a) Storm

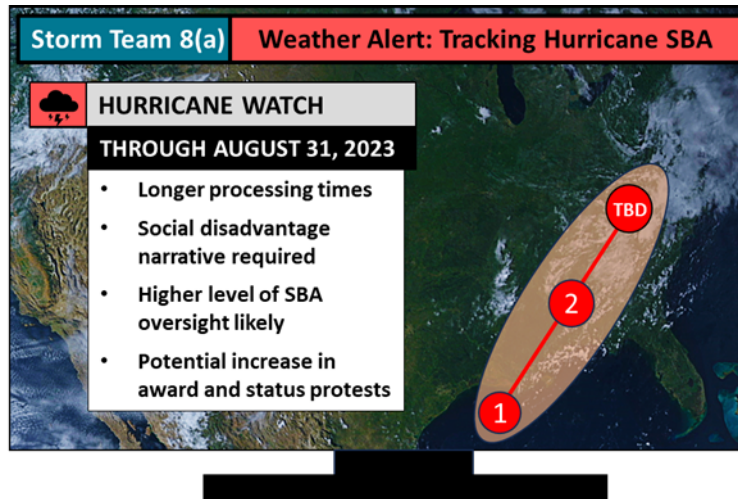
- SBA's forecasted changes to the individual 8(a) program pose additional requirements and challenges for prospective and current members
- The longstanding "rebuttable presumption" has been washed away after being found in violation of the 5<sup>th</sup> Amendment's due process clause – SBA can no longer use this as a basis for certification
- As a result, all 8(a) certifications and all 8(a)-based awards were halted – bad timing for this storm, particularly at the end of the fiscal year
- As an immediate temporary measure, SBA is contacting all affected 8(a) applicants and current 8(a) participants to notify them if a narrative is required – if so, use [this](#) as your weather guide
- Our radar indicates that SBA has issued all notifications on/about Aug 22<sup>nd</sup> and government has been cleared to start making awards!
- We're still in the middle of the storm – start preparing now, you might not get another chance

### SBA's Response to Court Ruling on 8(a) Program

A storm is brewing on the horizon following the *Ultima Services Corporation v. U.S. Department of Agriculture* case where the Eastern District of Tennessee ruled that the use of the "rebuttable presumption" in the 8(a) program violated the 5<sup>th</sup> Amendment's due process clause and, thereby, enjoined the SBA from future use. The SBA has since placed a "temporary pause" on accepting new entrants pending program and application process revisions. However, the SBA has released an interim program update requiring all future applicants and current members (excluding Native organizations) whose status was determined using the "rebuttable presumption" to provide a social disadvantage narrative with substantiating evidence that must be approved by the SBA to receive 8(a) certification. While there is still uncertainty regarding the path and severity of this storm, firms should continue monitoring program updates.

### Tracking Potential Storm Damage

As we track this storm, there are many possible scenarios for how it could unfold. One scenario is an increased likelihood that awards can be protested, and one's 8(a) status could be challenged. Using § 124.103 (b)(3), competitors can challenge the status of current members presumed to be socially disadvantaged by providing sufficient contradictory evidence, which may result in defending 8(a) members having to evacuate from the program or vacate awards. Now is the time to create and submit your social disadvantage narrative that will solidify your status and ability to bid on, win, and retain awards as an 8(a). As with all historic storms, the full extent of the ruling's implications may not be felt for years, but with the removal of the "rebuttable presumption" and consequent program changes, the future landscape of the 8(a) program and GovCon industry will be permanently altered.



Hurricane SBA made landfall as a Category 2 stating a “temporary pause” on new 8(a) entrants and instituting new requirements. A hearing is set for 8/31/23, that will give more information on updates to program requirements.

### Who’s in the Storm’s Path?

If you relied on the “rebuttable presumption” to secure 8(a) status, you cannot outrun this storm – you will be impacted and need to prepare. Prior to the court ruling, a company could claim social disadvantage using self-evident or self-certified criteria and it was assumed to be true, leading to unquestioned admission into the 8(a) program. Now, those who depended on the “rebuttable presumption” must prove their social disadvantage through written narratives in accordance with [this guide](#) / section § 124.103(c), which requires providing specific evidence that their social disadvantage was personally experienced and directly impacted the firm’s ability to progress in the GovCon industry. A recent update from the SBA clarified that individual 8(a)s who have already provided evidence proving their status will not be hit by this storm. Further, recent SBA communication to all current 8(a)s informed them whether they have met the requirements and can continue, or if they now need to prove their social disadvantage. As we near the end of FY23, it is important for everyone in the storm’s path to start gathering evidence to prove their social disadvantages.

### Weather Preparedness: Writing a Successful Narrative

A strong social disadvantage narrative will be critical to surviving this storm and gaining or sustaining membership as an 8(a) company. Narratives must include *personal relevance* and avoid any generalizations and/or group experiences. These experiences must also show *longevity* and continued struggle – single strikes of lightning or isolated events of hardship may be discredited. Evidence should validate your claims and demonstrate a *direct effect* on opportunity, revenue, contracts, and other losses that have proven to limit your ability to grow and excel in the industry. Further, the supporting *evidence* should be detailed and specific, and not drawn from widely available data sources. By the end of FY23, the SBA will likely be flooded with applications, which will make their process of granting 8(a) entrance much longer. While we may not know how this storm will unfold, following these recommendations and using [this guide](#) / section §124.103(c) will better prepare your 8(a) status defense in the midst of this unpredictable environment.

## 10 Best Practices for Writing Your Social Disadvantage Narrative

1. All individual 8(a)s who were admitted using the “rebuttable presumption” are in the storm’s path and required to submit a social disadvantage narrative
2. Avoid procrastination – start preparing your narrative and strategic response to impending program updates now
3. Follow [this guide](#), based on § 124.103(c), to make sure your narrative can weather the storm and meet the current SBA 8(a) program criteria
4. Gather qualitative, specific evidence of your personal social disadvantage experiences – if you didn’t personally experience it, don’t write it down
5. Stockpile evidence such as quantitative loss of opportunities (revenue, opportunities, or contracts) in Education, Employment, and Business and ensure affidavits / sworn statements are notarized
6. SBA will use a “preponderance standard” when reviewing the evidence provided – make sure your evidence meets the standard
7. Be well versed in the social disadvantages that were part of the initial application to include in your narrative (current 8(a)s and those who have already applied)
8. Be aware of reasons why SBA may decline applications or contract awards based on your social disadvantage narrative
9. Stay vigilant of the storm’s path and any new guidelines, program updates, and processing times from the SBA or DOJ
10. Seek out trusted weather experts to help you navigate through this changing environment and aid you in writing your social disadvantage narrative

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