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Report to Rep. Joseph P. Addabbo, Chairman, House Committee on Small Business; Minority Enterprise and General Oversight Subcommittee; by Elmer B. Staats, Comptroller General.

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The Administrator of the Small Business Administration (SBA) is authorized under Section 8(a) of the Small Business Act to help small businesses owned and controlled by socially or economically disadvantaged persons to achieve a competitive position in the marketplace. Under section 8(a), the SBA enters into procurement contracts with other Federal agencies and departments and subcontracts the work to disadvantaged small businesses. Findings/Conclusions: Criteria for admission to the 8(a) program are subjective and are not applied in a uniform and consistent manner. An applicant's social or economic disadvantage must be established for admission, but this standard has never been defined effectively. Points of view differ; some officials emphasize social background while others emphasize economic aspects. As a result, different offices can reach different decisions on eligibility. In at least one case, a given applicant was recommended for acceptance by one office while rejected by another. Contrary to the required procedures, there is often no indication of how approved applicants have met the eligibility criteria. A review of the records of SBA 8(a) applicants considered eligible for entry into the program at the San Francisco regional office and at the San Francisco, Los Angeles, San Diego, and Phoenix district offices showed that Region IX is not complying with program procedures because its files do not identify the specific criteria used to approve eligibility, nor does it document the connection between an applicant's social or economic disadvantage and its inability to successfully compete in the economic mainstream. (Author/SC)

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REPORT BY THE

Comptroller General

OF THE UNITED STATES

An Analysis Of How Eligibility Criteria Are Applied For Participation In The 8(a) Program

This report to the Chairman, House Subcommittee on Minority Enterprise and General Oversight, Committee on Small Business, shows that criteria for admission to the 8(a) program—small businesses that are owned and controlled by socially or economically disadvantaged persons—are subjective and not applied in a uniform and consistent manner.

An applicant's social or economic disadvantage must be established for admission, but this standard has never been defined effectively. Points of view differ; some officials emphasize social background while others emphasize economic aspects. Contrary to the required procedures, there is often no indication of how approved applicants have met the eligibility criteria.

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CED-78-92

MARCH 31, 1978



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-114835

The Honorable Joseph P. Addabbo
Chairman, Subcommittee on Minority
Enterprise and General Oversight
Committee on Small Business
House of Representatives

Dear Mr. Chairman:

By letter dated October 26, 1977, you raised three questions about the Small Business Administration implementation of section 8(a) of the Small Business Act. By letter dated January 5, 1978, we advised you of our position on two of the questions. This is our report on the remaining question, dealing with whether Small Business Administration offices are uniformly applying criteria for determining an applicant's economic or social disadvantage for participation in the 8(a) program.

In a subsequent discussion with your office on January 30, 1978, we agreed to limit our work to Small Business Administration Region IX fiscal year 1977 8(a) applications and to:

- Analyze the applications to determine if the criteria specified in the 8(a) procedures have been met. (See app. I.)
- Prepare a schedule disclosing applicant's financial resources. (See app. II.)
- Prepare a statement of facts on a specific architect/engineering applicant. (See app. III.)

We have reviewed the records of applicants considered eligible for entry into the Small Business Administration 8(a) program. We analyzed applications, supporting documentation, and held discussions with agency officials to examine how program criteria were applied and to determine whether they were uniformly or subjectively applied. We also summarized the economic data on each applicant contained in agency files and prepared a detailed study on one applicant of special interest to your office. This work was performed at the San Francisco regional office and the San Francisco, Los Angeles, San Diego, and Phoenix district offices of the Small Business Administration.

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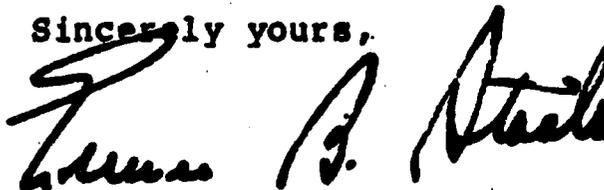
We have reached three basic conclusions on 8(a) program eligibility. First, the eligibility criteria are vague and not applied in a uniform and consistent manner. Second, Region IX is not complying with program procedures because its files do not identify the specific criteria used to approve eligibility, nor does it document the connection between an applicants' social or economic disadvantage and their inability to successfully compete in the economic mainstream. Last, different offices can reach different decisions on eligibility--as we noted in one case where the same applicant was recommended for acceptance by one office while rejected by another.

Previously, our April 1975 report to the Congress, "Questionable Effectiveness of the 8(a) Procurement Program" (GGD-75-57), addressed applicant eligibility. We recommended that the Small Business Administration establish the connection between an applicant's disadvantage and the applicant's inability to compete successfully in the business world. While the Small Business Administration has established new procedures to require this, these procedures have not been successfully complied with. Under the circumstances it is not possible for uniform decisions to be made.

Because of time constraints our report has not been presented to the Small Business Administration for formal comments. However, during the course of the review we solicited the comments of Agency officials at all levels and have included their remarks where appropriate in this report.

As arranged with your office, this report will be released 30 days after the issuance date unless you publicly release its contents before this time or unless hearings are held.

Sincerely yours,



Comptroller General
of the United States

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ABBREVIATIONS

GAO	General Accounting Office
SBA	Small Business Administration

ANALYSIS OF HOW ELIGIBILITY
CRITERIA ARE APPLIED FOR PARTICIPATION
IN THE 8(a) PROGRAM

BACKGROUND

The Administrator of the Small Business Administration (SBA) is authorized under section 8(a) of the Small Business Act of 1953, as amended, to help small businesses, owned and controlled by socially or economically disadvantaged persons, achieve a competitive position in the market place. Under section 8(a) SBA enters into procurement contracts with other Federal agencies and departments and subcontracts the work to disadvantaged small businesses.

On July 25, 1977, responding to indications of program abuse, the SBA Administrator appointed a headquarters review board to evaluate the program. At the same time the Administrator imposed a temporary moratorium on new program entries. Under the moratorium's terms no further action was to be taken in processing applications. The moratorium was lifted by the Administrator 3 months later.

From the program's implementation in 1967 to September 30, 1977, SBA has awarded 14,233 subcontracts worth \$1.6 billion to over 3,000 businesses. In fiscal year 1977 SBA accepted 212 new entries into the 8(a) program. Twenty-eight of these were in Region IX, which encompasses Arizona, California, Nevada, Hawaii, Guam, and the Pacific Trust Territories. (See app. II.) This report analyzes the methods by which these entries were made into the program.

ELIGIBILITY

The criteria for determining an applicant's social or economic disadvantage and the application of criteria has been criticized by GAO and discussed in congressional hearings. To establish a firm's 8(a) program eligibility, SBA requires that the firm be a small business and that 50 percent of a partnership or 51 percent of a corporation be owned and controlled by socially or economically disadvantaged persons. The definition of social or economic disadvantage, however, has been controversial. SBA regulations state that an applicant's disadvantage "may arise from cultural, social or chronic economic circumstances or background or other similar cause." Such persons include, but are not limited to, members of the following minority groups: Black Americans, American Indians, Spanish Americans, Oriental Americans, Eskimos, and Aleuts.

Vietnam-era service in the armed forces is also a contributing factor in establishing social or economic disadvantage.

SBA's General Counsel established additional 8(a) eligibility criteria in 1971. Alone or combined, these criteria may establish an applicant's eligibility: (1) social background, which may affect the applicant's ability to obtain adequate technical, business, or financial assistance, (2) past experiences with discrimination, which may impede the applicant's entry into the economic mainstream, (3) previous failures to compete for Government contracts because of restrictions imposed by financial and commercial institutions in favor of established firms, (4) length of residence in an urban area with a high concentration of unemployed or low-income persons, (5) record of unemployment or marginal employment, and (6) chronic low-income status. Furthermore, where eligibility cannot be readily determined 8(a) procedures provide seven additional considerations for determining eligibility. These generally overlap the criteria above; the one exception being an applicant's veteran status and its effect on social or economic disadvantage. All criteria are included in appendix IV to this report.

In the past, we have reviewed various aspects of the 8(a) program, including eligibility. In our April 16, 1975, report to the Congress, "Questionable Effectiveness of the 8(a) Procurement Program" (GGD-75-57), we recommended that SBA revise its procedures to require consideration of all eligibility criteria before determining the need for 8(a) assistance. Second, we stated that before awarding contracts field offices should establish the connection between an applicant's disadvantage and the applicant's inability to compete successfully in the business world. These requirements were included by SBA in the February 1976 revised 8(a) procedures.

Congressional hearings on the 8(a) program were held in October 1977. Much of the testimony centered on the general lack of uniformity in determining an applicant's social or economic disadvantage. The SBA Administrator testified that because eligibility criteria may be applied subjectively it is possible for evaluators to reach different decisions while considering the same applicant information. Moreover, it is very difficult, according to the SBA Administrator, to establish criteria that does not risk being assessed subjectively.

In January 1978 the 8(a) review board (established by the Administrator to reassess the program's functions) reported its findings. On the critical question of eligibility criteria, the board majority held that specific minority

groups were "rebuttably presumed" to be socially or economically disadvantaged. A minority of board members advocated instead a case-by-case determination of both the applicant's social and economic disadvantage. The majority and minority board recommendations on eligibility, which were being considered by the Administrator in March 1978, are included as appendix V.

Approval authority rests with the various regions. The Region IX approval process begins at the district, where the 8(a) application is initially screened by an SBA specialist and is then evaluated by a review board of district officials. If the district recommends acceptance, the application is forwarded to the region, where another board of SBA officials reviews the case and makes appropriate recommendations to the Regional Director--final approval rests with the Regional Director. At any level an applicant may appeal a decision and receive further consideration of his application.

APPLICANTS APPROVED BASED ON VAGUE INFORMATION
SUBJECTIVELY RELATED TO ELIGIBILITY CRITERIA

Our review of the 28 Region IX applicants found eligible in fiscal year 1977 for participation in the 8(a) program revealed that approval often was given on the basis of vague information about the applicant's social or economic position. The apparent level of disadvantage varied considerably. While the applicants experienced disadvantage during their youth, they later moved in two different socioeconomic directions. One undoubtedly disadvantaged group included applicants with a long history of low wages (possibly earned in the trades) that were attempting to succeed with such ventures as painting or janitorial services. The other group included applicants with college educations and moderate-to-high incomes, that typically were involved in more sophisticated ventures such as architect/engineering, consulting, or computer-oriented businesses.

In approving applicants, SBA did not identify the applicant's specific problems and relate them to the six principal criteria that alone or combined establish eligibility. Approvals appeared to rely instead on vague statements professing disadvantage made either by the applicant or by an SBA official from information supplied by the applicant. Approvals rarely stated the specific criteria used to approve eligibility, but referred instead to several different documents--including the disadvantage statements. Thus, it is not possible to determine the specific basis for approval. These six criteria are examined in subsequent sections, not to judge whether the applicant should have been admitted to the program but rather to demonstrate SBA's application of criteria to the wide range of individuals approved.

Social background effect on access to assistance

Social background and its detrimental effect on the applicant appears to be the leading factor used in assessing applicant eligibility. The SBA criterion is:

"Because of his social background, the individual has been unable to obtain technical assistance, business assistance or financing of a quality or quantity similar to that available to the average entrepreneur in the economic mainstream (where possible, exclusions of this nature should be confirmed by specific examples)."

In the 28 cases reviewed, there was some discussion, extensive at times, on the individual's earlier years in poverty. The discussions rarely compared the applicant's experience to the average entrepreneur. In some cases the information suggested that an applicant's disadvantage had even been overcome, while in other cases it was apparent that the individual was in a very low social or economic status.

In 20 of the 28 cases reviewed, the statement about the individuals' social background problems were generally vague. It was unclear about how the applicants' background had excluded them from the economic mainstream. The following examples are indicative:

--The statement of one minority applicant with average earnings of \$16,000 a year discussed his childhood poverty and his present inability to obtain financing, which forced him to turn down contracts. However, no examples were found to document his inability to obtain contracts. The applicant's social background was not connected to his ability to obtain financing.

--Another applicant with a salary of \$45,000 a year, company sales of over \$700,000, and an after-tax profit of \$66,000 argued that his social background had prevented him from obtaining traditional financing, especially from friends, relatives, and parents. The statement mentioned an unsuccessful attempt to obtain financing from a bank that had made loans to a competitor. Aside from the vague remark that his social background had made it difficult to obtain assistance, there was no discussion about how this precluded obtaining assistance or what efforts had been made to obtain help.

In another four cases the individuals had been raised in poverty but had nevertheless made substantial progress in

education and business. The information presented suggests that these individuals had in fact overcome their disadvantage. This type of case has given SBA officials the most difficulty in determining an applicant's eligibility. The following example is illustrative. Other examples are discussed on pages 9 and 10.

--Two applicants earning \$27,000 or more a year and whose company was new were declared eligible for the program. Their applications claimed that they were raised in poverty, lacked money for business education, and had received neither training nor orientation in business careers. However, one applicant received an MBA from Harvard and the other received an MBA from the University of Southern California. No SBA analysis supported the presumption that social disadvantage precluded the applicants from obtaining the necessary technical, business, or financial assistance.

Four other cases stressed the applicants's adolescent problems but gave little attention to how this related to eligibility criteria. One case involved a minority applicant who was raised in poverty but who had received some college education. The applicant, a veteran, had held managerial positions in business. When he assumed the operation of his father's business (which was under SBA sponsorship) he was found eligible to participate in the program. There was no further discussion of how the individual's social background had affected his eligibility for the 8(a) program.

From the foregoing discussion of the application of this criteria, which seems to be the one used most in approving eligibility, it is apparent that it has been used very subjectively and that it is extremely difficult to assure uniformity in the various SBA offices.

Past practices of discrimination

The question of past discrimination was addressed only to a limited extent in determining applicant eligibility. SBA 8(a) procedures specify the criterion on discrimination:

"Because of past practice of discrimination, the individual has been impeded from normal entry into the economic mainstream (this example should be based upon specific facts applying to the individual involved and should not be based upon a generality applicable to a group, e.g., although many individual Blacks are "disadvantaged" and therefore eligible, it is insufficient to state that all Blacks are eligible simply because they are Black)."

About half of the 28 applicant cases reviewed neither discussed nor presented information about discrimination. The remaining applicants claimed past experience of discrimination without specifically disclosing how it had impeded normal entry into the economic mainstream. Only one applicant provided specific examples of past discrimination. That applicant cited two non-Government contracts that he bid on and that were later awarded to nonminority firms.

In 12 of 13 instances where applicants commented on discrimination, vague and generalized information was presented without reference to specific examples. In one instance, the SBA analysis concluded that the applicant was disadvantaged because his ethnic background had resulted in discrimination in bonding and financing. This conclusion was based on the applicant's lack of collateral and financing because of the "arbitrary powers of financial and bonding institutions, who refuse to brand most minority contractors as anything other than a high risk." We found no indication in the applicant's file of any attempt by SBA to determine if this individual's experience is any different from that normally encountered by any businessperson attempting to obtain bonding or financing.

The 8(a) procedures stress that although many individual blacks are disadvantaged and therefore eligible, blacks are not eligible simply because they are black. Yet, SBA presented only the following general statement by an applicant to support a conclusion of disadvantaged status for 1 of the 13 applicants:

"Contrary to the instructions above, with the exception of one black owned engineering firm in the country, all other black owned firms fit the category of disadvantaged. Specifically with respect to this firm, we have demonstrated our qualifications and capabilities but we are constantly denied professional assignments by government agencies and the private sector on the basis that we do not have the specific experience they are looking for on the specific project."

We found no examples in the applicant's file to substantiate this statement nor any that showed how the applicant's experience did or did not meet Government needs.

In another case, the one instance where a specific example of discrimination was provided, the applicant furnished three pages of data about his deprived childhood, his experience with discrimination while a milkman, and his unsuccessful attempts to bid for contracts. In the most

graphic reference to discrimination of the 28 cases, the applicant was the low bidder on a contract that was awarded to a higher bidding white firm.

The remaining 15 applicants did not address discrimination in their disadvantage statements nor did SBA discuss it in the eligibility analysis. We have therefore concluded that discrimination was not identified as a factor in determining these applicants' eligibility.

Previous failures to compete
for Government contracts

Applicants did not usually consider their previous failures in competing for Government contracts to be a disadvantage. In the few instances where this disadvantage was claimed, the supporting statements were general and vague. SBA criteria states that:

"Previous failures to compete effectively for government contracts could be traced, in significant part, to tendencies of regular financing and commercial agents to restrict their services to established businesses (specific instances of contract or financing 'turn downs' would be helpful here)."

In only 4 of the 28 cases did a firm consider the inability to obtain Government procurements to be a disadvantage; the remaining 24 cases did not discuss this as a problem. Seven of these firms had information in their files showing that Federal procurements had been obtained in the past. We could not determine what effect this prior work had in SBA's determination of the applicant's eligibility.

The four cases claiming a disadvantage ascribed their failure to obtain Federal work to their lack of a work record, insufficient funding, or their inability to obtain adequate bonding. Although in some instances specific examples were given where companies were not allowed to compete for Federal work, there was no indication that this problem would not typically prevail at the outset for all new small businesses.

Long-term residents of areas of high
unemployment or low-income persons

Applicants rarely discussed their residency as something that affected their ability to compete in the marketplace. In the few cases where residency was considered a

disadvantage, the applicants usually addressed the issue in very general terms. The residency criterion used was:

"The individual is a long-time resident of urban areas with high concentrations of unemployed or low income persons."

The above criterion was seldom cited by applicants in their statements on disadvantage; in only 6 of the 28 cases was this issue even addressed. One example was a person who claimed to live in Watts, California, which is a high unemployment area with low-income residents. But there was no indication in this person's files to show how his Watts residency had affected his ability to compete in the business world. The fact that the applicant's annual income is \$29,000 suggests that any disadvantage may have been overcome.

Another case portrayed a childhood spent in urban low-income areas. The individual's current home was not discussed in the information provided to SBA.

In another instance an individual, until 8 years ago, spent his entire life in impoverished areas with higher-than-normal unemployment rates. However, the individual now lives in Hollywood, California, in a house valued at \$100,000. We could not determine from his files how the applicant's past homes had proved to be a disadvantage.

Unemployed or marginally employed

The applicant's work record was rarely addressed in SBA eligibility determinations. The cases reviewed infrequently mentioned the applicant's employment record in terms of the following 8(a) eligibility criterion:

"The individual has been frequently unemployed or marginally employed due to his residency in depressed areas or due to past practices of discrimination."

In 3 of the 28 cases the applicant's marginal employment history was discussed. These applicants made general claims of either discrimination or residency in a depressed area and low income or marginal employment. However, no specific examples were presented to substantiate their statements. One applicant stated that he was unable to find work due to his age, medical condition, and language problem, but did not cite any specific examples of discrimination that had occurred in the United States. Another applicant claimed that she had trouble competing because of her sex and ethnic background, yet again no specific examples were presented.

Chronic low-income status

In our review we found that most applicants did not emphasize chronic low incomes in applying for the program, although in several instances it was readily apparent that the applicant was in a low-income status. SBA procedures state that an applicant's income can be considered a disadvantage providing that the individual "has been in a low income status chronically."

SBA has no criteria formula for determining what constitutes chronic low income. Twenty-one of the applicants earned more than \$10,000 a year; only seven earned less. Annual salaries ranged from \$4,800 to \$60,000.

One applicant that earned \$60,000 yearly stated that he considered himself underpaid when compared to individuals with similar or lesser professional skills that worked with him or even under him. We did not find any information supporting this statement in SBA files.

In another case an applicant earning \$19,000 a year claimed to be living at only a subsistent level because he was raising seven children. No other statements in the applicant's files emphasized low or chronic income problems.

Case studies reflecting variety
in approved applications

The applicants approved for the 8(a) program ranged from those of obviously low economic status and social position to those with much greater economic, educational, and professional achievement. The generally vague documentation used to establish eligibility was essentially the same irrespective of whether the individual was obviously from a low or upper income group. The following cases show how the criteria were applied:

- Applicant, a Mexican American, entered the janitorial business with very limited equipment and managed to make an average yearly income of \$6,000 over a 5-year period. The disadvantaged statement referred to his adolescent problems and his failure to complete school. It also stated that he could not find employment to make an adequate living; consequently, he started his own business. Without any further explanation the statement concluded that due to regional social and economic conditions the applicant had been unable to become competitive in his field.
- Applicant, a Japanese American, owns a newly established construction business. He graduated from

college in 1964 with a B.S. in civil engineering had been employed for 12 years, and, at the time he started his business, had been averaging \$24,000 a year for 5 years. His last position had been general manager of a construction firm at a salary of \$30,600. No specific examples or documentation are in his file to show economic or social disadvantage. The case appears to have been approved because it was a new firm, not competitive in a slumping construction industry, experiencing difficulties in financing and bonding, and in need of SBA support.

--Applicants, Black, own an established architect/engineering firm. Before going into business, the applicants, both graduates of prestigious universities, had worked for several architectural firms. Over the last 5 years each had an average income of \$50,000. Both have acquired personal net worths exceeding \$300,000. Against the recommendation of both district and regional review boards, the Region IX Director brought the firm into the 8(a) program. The review boards felt that the company had overcome any social or economic disadvantage that the owners might have suffered. The regional board noted that the firm's sales were over \$1.7 million, its net worth was \$251,358, and its net income was \$254,421. Backlogs of over \$300 million in projects (the firm received a percentage of this in commissions) were also considered by the regional review board as a further indication that the company was highly competitive. No specific evidence in the file documented instances of either social or economic disadvantage. No contracts have been awarded to the company since it entered the program, but it currently is negotiating a \$250,000 Government contract (discussed more fully in app. III.)

Conclusion

In summary, SBA eligibility criteria are not precisely defined, and from applicants' files it is difficult to determine why an applicant is deemed eligible. SBA has not complied with its own procedures which require, when possible, that specific examples of how an applicant meets the eligibility criteria be cited. Nor has it complied with its procedures calling for documentation of the connection between applicants' social or economic disadvantage and their inability to compete successfully in the economic mainstream.

**DIFFERENT INTERPRETATIONS OF
ELIGIBILITY REQUIREMENTS EXPRESSED
BY SBA OFFICIALS**

SBA officials at all levels acknowledge that the eligibility criteria for 8(a) admission is very subjective. As a result, the same company may be considered eligible in one office but rejected in another.

The various officials contacted view the criteria for eligibility differently. The Director, Office of Business Development at SBA headquarters, and the San Francisco Regional Director consider the 8(a) program as designed to insure minority parity with firms owned by the majority population. According to this view, almost all minorities presumptively qualify for the 8(a) program. The market share of the company, rather than the financial condition of the company's owners, is considered the basis for eligibility. Consequently, a company with some measure of success may still be eligible if it is trying to obtain a larger market share.

SBA officials at the Region IX district offices interpret the eligibility criteria differently. Company viability is considered a major factor in determining eligibility, and there is little or no emphasis on making viable companies more affluent.

The consideration given the personal finances of individual applicants varies considerably among district offices. Los Angeles district officials share the Regional Director's views on an applicant's personal income. The district has accepted several firms whose owners receive annual incomes between \$20,000 and \$60,000. Los Angeles recently recommended a firm for admission in which the owner has an income over \$60,000. On the other hand, both San Francisco and San Diego district officials stated that their office would probably consider this same company ineligible since whatever disadvantage the owner had suffered had obviously not affected his company's ability to support the owner's large salary.

Some district offices emphasize an applicant's social disadvantage in determining his eligibility while others stress his economic disadvantage. The Los Angeles district office accepts applicants into the program primarily based upon social disadvantage, whereas the San Francisco, San Diego, and Phoenix offices base their determination primarily on the economic needs of the applicant's company.

Since there is no criteria for assessing an applicant's financial disadvantage, officials in Los Angeles give primary attention to his social disadvantage with minor consideration of the company's economic status. San Diego and Phoenix officials, on the other hand, consider the social criteria to be too loosely defined to be of much use in determining eligibility. The San Francisco officials consider both social and economic criteria to be vague and very subjective.

SBA officials all agree that the eligibility criteria is not applied evenly throughout the 8(a) program. The case presented in appendix III is a good example of what happens when field offices rely on different interpretations of eligibility criteria. Although the San Francisco district office approved the firm as eligible for the 8(a) program, Los Angeles refused to recommend the company when the application was transferred to its district. To further complicate matters, the regional committee found that the applicant was ineligible while the Regional Director, interpreting the criteria differently, admitted the firm to the program.

In summary, the 8(a) program is presently not uniformly administered because of the varying interpretations made in application of existing subjective eligibility criteria. Different conclusions can be reached on an applicant's eligibility, depending on the point of view of SBA evaluators.

SBA 8(a) PARTICIPANTS**APPROVED BY REGION IX IN FISCAL YEAR 1977**

Minority status/ participant	District	Type of business	Date approved	Net worth		Income (note a)		Level of support (note b)	Awards to date
				Company	Owner	Company	Owner		
1. Black-male	s/ S. F.	Janitorial	6-30-77	14,000	e/106,000	18,200	26,300	30,000	16,813
2. Black-male	S. F.	Food service	12-27-76	New company	5,000	New company	12,100	500,000	461,325
3. Mexican American-male	S. F.	Janitorial	2-18-77	14,500	12,800	10,200	9,300	60,000	124,940
4. Latino-male	S. F.	Painting	6-29-77	4,500	44,200	4,000	7,200	75,000	None
5. Black-female	S. F.	Real estate	2-18-77	77,500	41,700	12,000	21,000	90,000	None
6. Black-male	S. F.	Engineering	1-21-77	41,900	31,600	57,900	26,000	130,000	178,032
7. Black-male	d/ L. A.	Consulting engineers	3-17-77	101,500	172,900	110,400	60,000	150,000	None
8. Black-male	L. A.	Decorating	4-11-77	27,600	163,800	35,400	29,000	250,000	453,141
9. Mexican American-male	L. A.	Software programs	4-20-77	24,900	61,400	66,700	45,000	1,750,000	257,325
10. Mexican American- two males	L. A.	Management consultant	9-27-77	4,600	51,300	(3,900)	27,000	250,000	99,598
11. Latino-male	L. A.	Architectural	11-26-76	37,100	38,300	19,500	19,000	30,000	42,761
12. Black-male	L. A.	Carpets, upholstery, draperies	1-25-77	(2,900)	2,300	3,100	4,800	100,000	None
13. Black-two males	L. A.	Architectural engineering	9-16-77	251,400	347,400	254,000	50,000	2,200,000	None
14. Indian-male	L. A.	General contracting	5-12-77	56,200	317,000	(8,100)	12,000	200,000	174,645
15. Mexican American- male and female	Phoenix	Construction	11-1-76	22,300	67,500	7,800	9,600	125,000	317,870
16. Mexican American- male and female	Phoenix	Painting contractor	5-25-77	37,600	51,300	1,500	20,000	120,000	134,922
17. Mexican American-male	Phoenix	Sewer and pipe contractor	6-28-77	12,700	99,800	2,900	9,800	150,000	32,670
18. Irish-male	Phoenix	General contractor	4-19-77	18,500	31,900	New company	16,600	30,000	None
19. White-male- handicapped	Phoenix	Janitorial	12-29-76	400	700	12,800	12,000	10,000	48,570
20. Latino-male	Phoenix	Floor covering	3-1-77	10,800	43,800	17,300	13,000	70,000	106,646
21. Latino-male	Phoenix	Roofing contractor	3-31-77	35,400	16,300	29,700	15,600	60,000	26,102
22. Latino-male	Phoenix	Painting	7-18-77	32,800	101,800	4,500	17,300	75,000	None
23. Indian-female	San Diego	Electronics	3-1-77	25,800	14,700	8,000	12,000	42,958	None
24. Saipenese-family	Hawaii	Termite control	12-23-76	11,900	52,500	17,600	8,400	20,000	19,677
25. Spanish American-male	Guam	Janitorial	12-27-76	7,300	4,700	7,800	8,400	27,000	26,887
26. Filipino American- female	Hawaii	Laundry	11-29-76	600	66,800	5,900	26,400	30,000	41,000
27. Japanese American- male	Hawaii	Custodial	10-20-76	1,100	94,600	(1,900)	32,700	10,000	21,227
28. Japanese American- male	Hawaii	Construction	2-8-77	New company	145,800	New company	30,600	150,000	162,866

s/Annualized.

b/The SBA estimate of the 8(a) contract commitments from Federal procuring activities in the first year for the firm.

c/San Francisco.

d/Los Angeles.

e/The owner's equity in the company was excluded from personal net worth to the extent that it could be identified so as not to count the amount twice under net worth.

CASE STUDY: ARCHITECTURAL FIRM PERMITTED
TO ENTER 8(a) DURING MORATORIUM

During the 1977 moratorium on 8(a) entry, the Region IX Director approved the architect/engineering firm as an 8(a) client, although SBA district and regional evaluations indicated that whatever social or economic disadvantage the owner had initially experienced had since been overcome. It is worth noting that the firm was approved against the recommendations of both district and regional review boards. The firm is currently negotiating an 8(a) contract with the Department of Energy worth approximately \$250,000. As of March 1, 1978, the company has not received any 8(a) contracts.

The firm's 8(a) program approval was gained in the following manner. On May 22, 1977, the company applied for entrance to the 8(a) program. Both economic and social data--consisting of financial records and social disadvantage statements from the two major owners--were then submitted to SBA for its assessment of their eligibility. The record showed that the firm was established in July 1968 to perform architectural engineering and design. In 1972 the firm incorporated, with two major owners holding equal shares in the company (47.5 percent each). At the time program admission was applied for, the company showed prior fiscal year sales of \$1,742,787 with a \$254,421 profit. Each owner's net worth exceeded \$300,000, and each drew salaries of \$50,000 a year from the firm. The firm's work backlog at this time was over \$300 million, ranging in projects worth \$1.4 million to \$110 million. Many projects appeared to be affiliated with either State or local governments.

According to one owner, the firm has done moderately well compared to other architect/engineering firms, but it has been unable to secure the bonding that would permit work on larger Federal projects. Both owners submitted statements alleging past socioeconomic disadvantage. The two owners, who are black, cited several instances of alleged social discrimination; their backgrounds did indicate impoverished circumstances. One owner told SBA that

"members of minorities including Blacks, Mexican Americans, Orientals and others are denied the opportunity to obtain the training and other help necessary to obtain a skill which will ensure their happiness and well-being."

He believed that every minority group member is socially and/or economically disadvantaged.

The firm's board chairman stated that the company has been deprived of the opportunity to develop and maintain a competitive architectural business practice due to the following:

- The owners' difficulty as minority architects in gaining positions with established firms during their formative professional years.
- The realization that their firm's practice would be limited to work in the minority community, whereas larger community projects would be given to established firms.
- The continued tendency to consider the firm only as a joint venturer with established firms or only for projects requiring minority participation, although the company has independently completed major design and construction projects.

There was no further indication in the files of the company's social or economic disadvantage. The firm did not attempt to show that it met each criterion for eligibility. Where a criterion was addressed, it was supported with broad, undocumented statements.

On May 23, 1977, the San Francisco SBA district office received the firm's application for 8(a) program admission. Regional officials were notified by the district on June 15, 1977, that the company had qualified for 8(a) admission. The district apparently based eligibility on both social and economic disadvantage; officials referred to the applicants' ethnic and poverty backgrounds. They also pointed out that the firm was unable to break into the Federal procurement process due to its inability to secure the necessary bonding. District officials felt that 8(a) assistance would help gain a foothold in the Federal market with which it will be able to overcome the bonding and financial barriers.

Region IX, in reviewing the district recommendation, noted that the company's home office was in Los Angeles. Since an 8(a) application must be made in the district where a firm's home office is domiciled, the region recommended that the Los Angeles district office decide whether to recommend the firm for approval.

The case was forwarded to the Los Angeles district on July 14, 1977. After reviewing the case file, the district unanimously recommended disapproval of the firm for 8(a) admission. Los Angeles considered the firm ineligible because the firm had not been "deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic disadvantage." The district felt that the owners had overcome whatever disadvantage they had initially experienced. Additionally, the committee stated that the firm's financial position (for example, financial condition, sales history, large dollar volume sales, etc.) indicated that it was viable and accordingly did not meet eligibility criteria.

The firm appealed the case to the regional office, questioning SBA grounds for disapproval and stressing the owners' past social and economic disadvantage. According to the company, minority architects were by definition unable to compete with the majority and therefore automatically entitled to 8(a) assistance.

Although the owners considered themselves technically qualified for an 8(a) project, they believed that their firm would not be competitive outside 8(a) unless they first acquired resources equivalent to the multimillion dollar firms they compete with.

The Region IX review committee met on August 17, 1977, to consider Los Angeles' refusal to recommend the firm as a potential 8(a) participant. A majority of this committee held that the applicants did not meet the eligibility criteria, and that the owners had overcome any past socioeconomic disadvantage. In support, the committee pointed to the owners' holdings that exceeded \$300,000 each and company sales that exceeded \$1.7 million for the preceding year.

According to the committee, the firm was in sound economic shape. The firm was compared with the 1976 Robert Morris and Associates studies for similar architect/engineering firms and found them substantially stronger financially than the general industry. The committee also noted that, while the firm had never received a Federal contract, there was no evidence that the firm had ever attempted to obtain such work. Regional officials pointed to company projects completed in 1975 and 1976 worth over \$118 million and current projects worth \$304,750,000, with ranges between \$1 million and \$110 million, as evidence of the firm's viable condition.

Although the regional board upheld the Los Angeles decision on eligibility, this ruling was reversed. The associate

APPENDIX III

APPENDIX III

administrator for procurement assistance determined that the firm was eligible for program admission, stating that the private commercial market has traditionally excluded minority-owned architect/engineering firms. The presence of successful minority architect/engineering firms had not altered the fact that most were still disproportionately disadvantaged.

SBA headquarters commented that "the professional expertise possessed by [the firm] can bring a fresh new perspective to the diversity of our 8(a) portfolio." Headquarters still believed that the company was a long way from economic success and that 8(a) support could make such success a reality. Furthermore, it was argued, 8(a) support would help the company to become an established competitor for Federal design services and private commercial sector business.

On the basis of the above statements, the associate administrator recommended that the administrator grant a waiver for the firm to enter the 8(a) program during the moratorium. SBA's Administrator concurred with his associate's view and on September 9, 1977, granted an exception to the moratorium. Region IX notified the firm of its acceptance on September 14, 1977.

CURRENT 8(a) PROGRAM ELIGIBILITY CRITERIA
PUBLISHED IN SBA'S STANDARD OPERATING
PROCEDURES ON FEBRUARY 2, 1976

- "(1) The administrative finding should disclose that the individual falls within the eligibility category of socially or economically disadvantaged. The facts behind this finding can include such matters as depicted in the following examples which, alone or together, might justified the finding; there are other situations which undoubtedly would also apply:
- "(a) Because of his social background, the individual has been unable to obtain technical assistance, business assistance or financing of a quality or quantity similar to that available to the average entrepreneur in the economic mainstream (where possible, exclusions of this nature should be confirmed by specific examples).
- "(b) Because of past practice of discrimination, the individual has been impeded from normal entry into the economic mainstream (this example should be based upon specific facts applying to the individual involved and should not be based upon a generality applicable to a group, e.g., although many individual Blacks are 'disadvantaged' and therefore eligible, it is insufficient to state that all Blacks are eligible simply because they are Black).
- "(c) Previous failures to compete effectively for government contracts could be traced, in significant part, to tendencies of regular financing and commercial agents to restrict their services to established businesses (specific instances of contract or financing 'turn downs' would be helpful here).

- "(d) The individual is a long-term resident of urban areas with high concentrations of unemployed or low income persons.
 - "(e) The individual has been frequently unemployed or marginally employed due to his residency in depressed areas or due to past practices of discrimination.
 - "(f) The individual has been in a low income status chronically.
- "(2) In making the administrative finding, care should be exercised to preclude any implication that eligibility is based principally upon the race, creed or ethnic background of the individual.
- "(a) Documentation shall include, in all cases, all information that is required to support the connection between the applicant's social or economic disadvantage and his inability to compete successfully in the economic mainstream.
 - "(b) The administrative finding shall be summarized in writing and a copy, along with supporting documents, where necessary, shall be placed in the applicant's file.
- "(3) If a determination of eligibility cannot be made readily and clearly under the provisions of Chapter 2, paragraph 4, the following factors will be considered in order to determine the applicant's eligibility:
- "(a) Service in the Armed Forces of the United States, resulting in 'veteran status' as it may affect social or economic disadvantage.
 - "(b) Social background.
 - "(c) Inability to obtain technical assistance, business assistance or financing.

- "(d) Impediments and obstacles encountered in entering into the economic mainstream resulting from discrimination or other circumstance.
- "(e) Inability to compete effectively in the marketplace because of restrictive practices on the part of financing or commercial agents.
- "(f) Frequency of unemployment or marginal employment due to residence in depressed areas or past practices or discrimination based on background or other circumstance.
- "(g) History of income status of applicant company and principal owners of company.

"The composite of the above factors and other pertinent information will establish a profile which will be used as the basis for determination of eligibility."

SBA REVIEW BOARD RECOMMENDATIONS**ON 8(a) PROGRAM ELIGIBILITY:****JANUARY 31, 1978**

"The Board recommends that the use of the term 'social or economic disadvantage' is the appropriate language to identify potential eligibility of persons applying for 8(a) program participation. It further described this disadvantage in terms of being chronic, historic and of long standing.

- "a. The majority of the Board recommends that SBA adopt a rebuttable presumption of social or economic disadvantage for members of the following minority groups: Black Americans, Hispanic Americans, American Indians, Oriental Americans, Eskimos and Aleuts. Prospective applicants who do not fall into the above-mentioned categories will be required to support and document their claim of social or economic disadvantages on an individual basis.
- "b. A minority of the Board recommends that the social or economic disadvantage of all applicants should be determined on an individual basis, as opposed to equating social or economic disadvantage with any specific class.
- "c. Another minority opinion was that eligibility be limited to persons who are socially and economically disadvantaged. Under this view, social disadvantage may be presumed from membership in a minority group, however, economic disadvantage may not be so presumed."