

District Court Ruling on MBDA Business Development Program

March 25, 2024

In a March 2024 decision, *Nuziard et al. v. Minority Business Development Agency (MBDA) et al.*, the U.S. District Court for the Northern District of Texas found the MBDA’s presumption of social disadvantage for certain program applicants to be unconstitutional and ordered the agency to discontinue using race or ethnicity as criteria for receiving [MBDA Business Center](#) services nationwide. MBDA’s Business Center programs offer technical assistance to minority business enterprises (MBEs) that have “socially or economically disadvantaged” business owners. MBDA does not directly operate the Business Centers; the agency partners with third-party Business Center operators that provide management and technical assistance to help MBEs access private capital for startup and expansion activities. According to the MBDA’s 2023 [Year In Review](#), there were 131 Business Centers in FY2023, including Specialty Centers and other similar projects. See CRS Report [R46816](#) for additional information.

The district court ruled that aspects of the MBDA’s authorizing statute do not pass the “strict scrutiny” test, which applies when a statute or other government action provides burdens or benefits based on race, ethnicity, or national origin (see CRS In Focus [IF12391](#) for additional information about the strict scrutiny test). Among other findings, the district court’s order noted that there was insufficient evidence of government involvement in creating the disparities in credit access or discriminatory practices in private lending markets; thus, the court ruled that the MBDA failed the strict scrutiny test. The district court also ruled that allowing business owners of certain racial or ethnic groups to receive services based on the presumption of social or economic disadvantage was not narrowly tailored and so, all in all, the presumption violated constitutional equal protection principles.

Key Terms Used in MBDA’s Programs

According to the agency’s authorizing statute ([15 U.S.C. §9501 et seq.](#)), MBEs are businesses that are at least 51% owned by one or more socially or economically disadvantaged individuals. The term “socially or economically disadvantaged individual” means

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an individual who has been subjected to racial or ethnic prejudice or cultural bias (or the ability of whom to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area) because of the identity of the individual as a member of a group, without regard to any individual quality of the individual that is unrelated to that identity.

The authorizing statute also noted that the Under Secretary of Commerce for Minority Business Development may presume that “socially or economically disadvantaged individual” includes any individual who is

- Black or African American;
- Hispanic or Latino;
- American Indian or Alaska Native;
- Asian;
- Native Hawaiian or other Pacific Islander; or
- A member of a group that the agency determines under Part 1400 of Title 15, *Code of Federal Regulations*, as in effect on November 23, 1984, is a socially disadvantaged group eligible to receive assistance.

Regulations issued before the authorizing statute was enacted, yet incorporated in the statute ([15 C.F.R. Part 1400](#)), designated members of the following groups as eligible to receive MBDA assistance: Hasidic Jews, Asian Pacific Americans, and Asian Indians. [15 C.F.R. Part 1400](#) also designated “Blacks, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts” as persons who are socially or economically disadvantaged and eligible for MBDA assistance.

MBDA’s Responses

The district court originally issued a preliminary injunction in [June 2023](#) against the Wisconsin, Orlando, and Dallas-Fort Worth MBDA Business Centers. The preliminary injunction ordered the three Business Centers to discontinue using race or ethnicity as criteria for determining who is eligible to receive MBDA Business Center services. In October 2023, the MBDA provided the following [guidance to MBDA Business Center operators](#) to clarify that,

An individual does not need to identify as a member of one of these groups to be a socially or economically disadvantaged individual eligible to receive Business Center services under the MBDA Act. An individual may meet the definition if their membership in a group has resulted in their subjection to racial or ethnic prejudice or cultural bias or impaired their ability to compete in the free enterprise system. A “member of a group” may include, but is not limited to, a member of a religious group, a geographically defined group, or some other group sharing a common characteristic.

On March 11, 2024, in response to the final order, the acting Under Secretary for MBDA issued [a statement](#) disagreeing with the court’s decision, and noting that MBDA will explore its options. The agency indicated that it “will continue MBDA’s programs and work to assist businesses owned by socially or economically disadvantaged individuals in a manner consistent with the court’s decision.”

Congressional Considerations

Congress could decide to revise the statute to change the racial and ethnic classifications defined in 15 U.S.C. §9501 and implemented in 15 U.S.C. §§9511, 9512, 9522, 9523, 9524.

Because the district court has ruled that MBDA cannot presume social disadvantage based on ethnic or racial group membership, the agency is required to implement eligibility criteria for the Business Centers that complies with the court's ruling. MBDA may consider using different eligibility criteria that require all Business Center clients to demonstrate social or economic disadvantage, regardless of race or ethnicity. Members of the racial and ethnic groups that were previously presumed to be disadvantaged would be required to demonstrate social or economic disadvantage—as would all other businesses interested in Business Center services. In this approach, the MBDA would likely issue guidance and the MBDA and/or the Business Centers would take on the role(s) of determining social or economic disadvantage for each potential business client. The MBDA may also consider all businesses eligible for the Business Center services. Alternatively, the agency may choose another approach or to appeal the ruling. The March 2024 ruling does not appear to prevent the MBDA from conducting studies. For example, the agency could evaluate how private lenders take actions to remove barriers to credit for underserved or socially or economically disadvantaged business owners.

In FY2023, the MBDA launched a pilot version of the recently established Rural Business Center program (15 U.S.C. §9552). The program was not enjoined in the district court order. However, it may face similar challenges if it uses the criteria for Business Centers that presumes disadvantage based on race or ethnicity.

In a similar case, in July 2023, a U.S. District Court for the Eastern District of Tennessee enjoined the Small Business Administration (SBA) from continuing to operate its 8(a) Business Development Program (see CRS Insight IN12245). Both rulings are expected to impact the delivery and efficiency of SBA and MBDA services to socially and/or economically disadvantaged business owners.

Author Information

Julie M. Lawhorn
Analyst in Economic Development Policy

Adam G. Levin
Analyst in Economic Development Policy

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