



UNITED STATES DEPARTMENT OF
COMMERCE
Minority Business Development Agency
Washington, D.C. 20230

Guidance to Minority Business Development Agency (MBDA) Business Center Operators

To: MBDA Business Center Operators

From: Eric Morrissette, Acting Under Secretary for Minority Business Development

Re: Guidance Regarding *Nuziard, et al., v. MBDA, et al.*, No. 4:23-cv-00278

Date: March 20, 2024

This memorandum provides guidance on the Minority Business Development Act eligibility requirements for MBDA Business Center Program services in the wake of the decision in *Nuziard, et al., v. MBDA, et al.*, No. 4:23-cv-00278-P (N.D. Tex. March 5, 2024).

In *Nuziard*, the court found any “provision of the MBDA Statute that is contingent on the presumption in 15 U.S.C. § 9501(15)(B)” unconstitutional and ordered that the MBDA is prohibited from “imposing the racial and ethnic classifications defined in 15 U.S.C. § 9501 and implemented in 15 U.S.C. §§ 9511, 9512, 9522, 9523, 9524, and 15 C.F.R. § 1400.1, or otherwise considering or using an applicant’s race or ethnicity in determining whether they can receive Business Center programming.” The court’s injunction applies to the sections of the Minority Business Development Act and supporting regulations that require the Under Secretary of Commerce for Minority Business Development to presume that “socially or economically disadvantaged individual” “includes any individual who is--(i) Black or African American; (ii) Hispanic or Latino; (iii) American Indian or Alaska Native; (iv) Asian; (v) Native Hawaiian or other Pacific Islander.” 15 U.S.C. § 9501(15)(B). Similarly, the Court enjoined the application of 15 C.F.R. § 1400.1(b) to the extent that it imposes racial and ethnic classifications, and designates “Blacks, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts” as individuals who are socially or economically disadvantaged. Finally, the Court also enjoined 15 CFR § 1400.1(c), which designates “Hasidic Jews, Asian-Pacific Americans, and Asian Indians” as socially or economically disadvantaged.

Consequently, under the court’s order, Business Centers **MUST NOT** apply these statutory or regulatory presumptions. Instead, under the Minority Business Development Act, each individual must meet the statutory definition of “socially or economically disadvantaged individual” to be eligible to receive Business Center services. 15 U.S.C. § 9501(15)(A).

The Minority Business Development Act considers an individual “socially disadvantaged” if he or she “has been subjected to racial or ethnic prejudice or cultural bias 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 Minority Business Development Act considers an individual “economically disadvantaged” if his or her “ability 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.”

Therefore, pursuant to the injunction, each individual seeking Business Center services must confirm that they qualify as “socially disadvantaged” or “economically disadvantaged.” This includes individuals from groups that were previously presumed socially or economically disadvantaged in 15 U.S.C. § 9501 and 15 C.F.R. §§ 1400.1(b) & (c). In determining their eligibility for services, Business Centers may rely upon an individual applicant’s certification in the Client Engagement Form that they are socially disadvantaged or economically disadvantaged and treat that certification as establishing that the individual is socially disadvantaged or economically disadvantaged.

Business Centers should help applicants understand that a business owner of any race or ethnicity may meet the definition of socially or economically disadvantaged if their membership in a group resulted in their experiencing racial or ethnic prejudice, cultural bias, or an impairment of their ability to compete in the free enterprise system due to diminished capital and credit opportunities. Examples of groups that could satisfy this requirement include:

- racial or ethnic groups, including the groups previously presumed to be disadvantaged;
- religious groups;
- geographically defined groups;
- groups based on a disability; and
- any other group for which membership might have subjected someone to cultural bias.

The court’s order does not prohibit Business Centers from conducting outreach or promotion of Business Center services that are targeted to reach business owners who may benefit from Business Center services, including outreach or promotion focused on particular racial, ethnic, or cultural communities. All promotion or outreach conducted by a Business Center should make clear that Business Center services are available for individuals of any race or ethnicity who qualify as socially or economically disadvantaged.

Business Centers must ensure that their operations and communications, including promotional materials, websites, and intake processes, align with the court’s recent order as described above.

Business Centers may continue to use race-neutral qualification requirements for applicants, such as age of business, net worth, and sustainability, to determine eligibility for Business Center services.

Business Centers should keep MBDA apprised of their ability to meet demand for their services with available resources, including any growth in demand following this court decision.

MBDA will follow up with an updated Client Engagement Form which complies with the court’s order. The appropriate grants officer will be in touch regarding amending the grant award while this injunction remains in effect.