



U.S. Small Business
Administration

MEMORANDUM

DATE: September 28, 2023

TO: Susan Minson
SBA Desk Officer
Office of Information and Regulatory Affairs (OIRA)
Office of Management and Budget (OMB)

FROM: Larry Stubblefield
Acting Associate Administrator
Office of Government Contracting and Business Development
U.S. Small Business Administration (SBA)

SUBJECT: Request for Emergency Processing of an Information Collection, OMB Control No. 3245-0331

In accordance with 5 CFR 1320.13(a), SBA's Office of Government Contracting and Business Development is requesting emergency use of an information collection for six months. The U.S. Small Business Administration (SBA or Agency) seeks emergency use of a revised version of SBA Form 1010, the 8(a) Business Development Program Application ("8(a) Application") (OMB Control No. 3245-0331).

The 8(a) Program is essential to SBA's mission. It is designed to enhance the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals whose 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 or similar line of business. Historically, over 2,000 entrepreneurs apply for 8(a) Program certification each year. SBA Form 1010 is used by individuals requesting certification of their business to be eligible for government contracting awards.

On July 19, 2023, the U.S. District Court for the Eastern District of Tennessee enjoined SBA from administering the 8(a) Program using a "rebuttable presumption" of social disadvantage for members of certain identified groups to determine eligibility for the 8(a) Program. *Ultima Servs. Corp. v. U.S. Dep't of Agric.*, 2:20-CV-00041-DCLC-CRW (E.D. Tenn. Jul. 19, 2023). In response, SBA sought and received emergency approval to temporarily modify its application process by requiring a submission of a narrative of social disadvantage for all those who previously were approved under the rebuttable presumption and are attempting to receive contract awards under the 8(a) program.

SBA now seeks clearance to use the newly developed questionnaire for individual-owned applicants to the 8(a) Program and current participants in the program who have not yet submitted narratives to demonstrate their social disadvantage. SBA has consulted with the Department of Justice and the White House Domestic Policy Counsel in developing this information collection. The estimated burden hours per response for each participant is 1 hour. The estimated number of such participants in the next twelve months is 6,286. This brings the total burden to 6,286 hours. In addition to seeking emergency/expedited clearance, SBA will submit a request for normal clearance for the approved use of the revised form beyond the maximum six-month period provided by emergency approval.



As required by 5 CFR 1320.13(a)(1), SBA has determined this collection of information is needed prior to the expiration of the time periods established under 5 CFR Part 1320 due to the injunction by the U.S. District Court for the Eastern District of Tennessee. As a result, approval of this collection of information is needed as soon as possible to continue operating the 8(a) Program.

Pursuant to 5 CFR 1320.13(a)(2), SBA has determined that the Agency cannot reasonably comply with normal clearance procedures. Public harm will result if SBA is not granted emergency clearance to use this information collection as SBA is currently unable to accept or process applications or authorize the award of 8(a) contracts due to the Court's ruling in *Ultima*. 5 CFR 1320.13(a)(2)(i); *Ultima Servs. Corp. v. U.S. Dep't of Agric.*, 2:20-CV-00041-DCLC-CRW (E.D. Tenn. Jul. 19, 2023). Without use of this information collection, SBA cannot certify small, disadvantaged businesses to receive critical business development assistance. The Court's decision in *Ultima Services* was an unanticipated event, as discussed in 55 CFR 1320.13(a)(2)(ii). Given that the injunction was ordered by the Court and was effective immediately upon release of the decision, SBA was not able to predict the revisions necessary to the form. Finally, given that SBA must revise the application to comply with the Court's July 19 order and August 31 guidance, the use of normal clearance procedures is also reasonably likely to prevent the collection of information under 5 CFR 1320.13(a)(2)(iii). Under normal clearance procedures, SBA would not be able to process new 8(a) applications or consider submissions of social disadvantage from current program participants in connection with the award of 8(a) contracts for at least 90 days to allow for the 60- and 30-day comment periods, halting the program. The last two months of the fiscal year are critical to the success of the 8(a) program, as 46% of the 8(a) contract awards and 49% of the 8(a) contract dollars in FY 22 were awarded during August and September. Suspending the award of 8(a) contracts pending a normal clearance process at this time would be catastrophic.

Given that the collection of information is needed prior to the expiration of time periods established under 5 CFR Part 1320, is essential to the mission of the Agency, and that SBA cannot reasonably comply with normal OMB clearance procedures, the Agency respectfully requests that OMB grants emergency processing for the revised 8(a) Application for six months. SBA will pursue OMB approval for the revised form and reinstatement of the information collection to obtain a three-year expiration date.
