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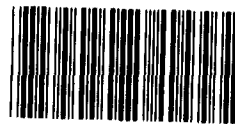
United States General Accounting Office

Report to the Chairman, Committee on
Small Business, House of
Representatives

June 1991

SMALL BUSINESS

Participation in SBA's 8(a) Business Development Program



144368

Resources, Community, and
Economic Development Division

B-244146

June 11, 1991

The Honorable John J. LaFalce
Chairman, Committee on Small Business
House of Representatives

Dear Mr. Chairman:

To promote the development of small businesses that are owned and controlled by socially and economically disadvantaged individuals, the Small Business Administration (SBA) operates the Minority Small Business and Capital Ownership Development Program, commonly referred to as the 8(a) program. Under this program, SBA, acting as a prime contractor, enters into contracts with other federal agencies and subcontracts the performance of the work to firms in the 8(a) program. Firms in the 8(a) program are eligible for financial, technical, managerial, and other types of assistance from SBA to aid their development.

You requested that we provide you with information on the extent to which nonminority women have participated in the 8(a) program.¹ This report provides information on (1) the number of Caucasian women in the 8(a) program, (2) the number of these women who sued SBA to gain entry, and (3) the criteria SBA uses to determine whether Caucasian women and others are socially disadvantaged.

Results in Brief

Sixteen Caucasian women have been admitted to the program since 1973. As of February 1991, there were 3,665 active participants in the program, 9 of whom were Caucasian women.

Of the 16 Caucasian women, 12 were admitted into the program without suing SBA. The four remaining women brought three lawsuits against SBA to gain or regain entry into the program. Common to each lawsuit was an allegation that SBA had discriminated against each woman on the basis of her sex, race, or marital status. As of April 1991, two other lawsuits, filed by two Caucasian women seeking entry into the 8(a) program, were pending.

¹As agreed with your office, for purposes of this report, our review of program participation by nonminority women focused specifically on Caucasian women.

Women are not among the groups presumed by law or by SBA to be socially disadvantaged for purposes of participating in the 8(a) program. Since 1980, five SBA criteria have existed to ensure that Caucasian women and other members of nondesignated groups seeking entry into the 8(a) program provide clear and convincing evidence that they have suffered racial or ethnic prejudice or cultural bias and are therefore socially disadvantaged.

Background

To participate in the 8(a) program, a firm must be a small business that is at least 51 percent unconditionally owned by one or more individuals who are citizens of the United States and are socially and economically disadvantaged.² The Small Business Act, as amended, defines socially disadvantaged individuals as those subjected to racial or ethnic prejudice or cultural bias because of their membership in a certain group without regard to their individual qualities. The legislation specifically identifies Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, or Native Hawaiians), and Asian Pacific Americans as groups whose members are presumed to be socially disadvantaged.

The legislation also provides that SBA may designate other groups as socially disadvantaged. In August 1982, SBA included Subcontinent Asian Americans as a designated group presumed to be socially disadvantaged. Individuals who are not members of one of the designated groups are eligible for the 8(a) program if they can provide clear and convincing evidence, on a case-by-case basis, that they have suffered racial or ethnic prejudice or cultural bias and are therefore socially disadvantaged.

According to SBA, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the open market has been impaired because their credit or capital opportunities have been more limited than those of nonsocially disadvantaged individuals in the same or similar business lines and market areas. The 8(a) program regulations provide that any individual whose personal net worth exceeds \$250,000 (excluding the equity in his or her primary personal residence and ownership interest in the applicant 8(a) firm) is not economically disadvantaged for purposes of entry into the 8(a) program.

²Public Law 95-507, enacted in October 1978, changed the 8(a) program to require that applicants be both socially and economically disadvantaged rather than only socially or economically disadvantaged, as had been required.

Authority to approve or deny 8(a) program applications (as well as applicants' subsequent requests to reconsider initial 8(a) denial decisions) ultimately rests with SBA's Associate Administrator for Minority Small Business and Capital Ownership Development (MSB&COD). MSB&COD's Division of Program Certification and Eligibility (DPCE) is responsible for reviewing and evaluating 8(a) program applications and making recommendations to the Associate Administrator regarding each applicant's eligibility for participation in the program. An individual whose firm has been denied entry into the program solely on the basis of a MSB&COD determination that he or she is not socially and economically disadvantaged and/or does not own or control the applicant firm may appeal the decision to SBA's Office of Hearings and Appeals. Otherwise, the decision regarding eligibility by the Associate Administrator, MSB&COD, is final.

Caucasian Women's Participation in the 8(a) Program

Information provided by each of SBA's 10 regional offices shows that a total of 16 Caucasian women have participated in the 8(a) program since 1973. The women were admitted into the program at various times; the last one was admitted in 1987. Of the 3,665 participants in the 8(a) program as of February 1991, 9 were Caucasian women.

SBA groups 8(a) program participants into eight categories, as shown in table 1. Caucasian women participating in the program are grouped in the "Other" category along with other program participants admitted on a case-by-case basis, such as Iranian Americans, Hasidic Jews, and handicapped individuals (who are not members of one of the other categories).

Table 1: SBA's Categories of 8(a) Program Participants, as of February 1991

Category	Number of participants	Percent
Black	1,779	48.5
Spanish speaking	884	24.1
Asian	615	16.8
American Indian	238	6.5
Puerto Rican	100	2.7
Eskimo/Aleut	6	0.2
Undetermined	2	0.1
Other	41	1.1
Total	3,665	100

Source: SBA.

Because SBA's management information system does not identify the ethnic makeup of the "Other" category, information regarding the number of Caucasian women in the 8(a) program had to be obtained directly from each of SBA's 10 regional offices. This information showed that as of November 1990, a total of 16 Caucasian women have participated in the 8(a) program; the first woman was admitted in 1973 and the last one in 1987. In addition, SBA's information showed that as of February 1991, 9 of the 16 Caucasian women were still in the program, while the program participation period for the 7 remaining women had expired. The Director, DPCE, told us that no Caucasian women had been admitted to the 8(a) program between the time we received the data from the regional offices and February 1991.

SBA does not track the ethnic background of individuals who have applied for admission to the 8(a) program. Consequently, we were unable to determine how many Caucasian women may have applied for, but were denied entry into, the program. However, the Director, DPCE, told us that a computerized certification and eligibility system that SBA is developing will identify the category to which each applicant belongs. He also told us that the system will identify Caucasian women in the "Other" category.

Some Caucasian Women Have Sued to Gain Entry Into the 8(a) Program

Of the 16 Caucasian women who have participated or are participating in the 8(a) program, 12 entered without suing SBA. Of the four remaining women, one sued SBA in 1977 to regain admission to the program after SBA terminated her firm's participation because it had determined that she was not socially disadvantaged. Two Caucasian women jointly sued SBA in 1978 after SBA determined that they were not socially disadvantaged and denied their applications. SBA settled both cases out of court and admitted the three women into the program. In 1980, three Caucasian women filed a joint lawsuit seeking entry into the program after SBA determined that they were not socially disadvantaged and denied their applications. SBA subsequently admitted one of the three women into the program but declined to admit the other two, and in 1984 the court upheld SBA's denial. Common to each lawsuit was an allegation that SBA had discriminated against each woman on the basis of her sex, race, or marital status. In addition to the three resolved cases, two lawsuits filed separately by two Caucasian women seeking entry into the 8(a) program were pending as of April 1991. As of that date, SBA was investigating allegations of 8(a) program discrimination by one Caucasian woman and had recently completed an investigation of another's complaint.

Appendix I of this report discusses each of the five lawsuits and the two SBA investigations in greater detail.

8(a) Program Eligibility Criteria for Individuals From Nondesignated Groups

The Small Business Act, as amended, does not designate women as a group presumed to be socially disadvantaged. Moreover, in 1982, SBA denied a request from a women's business group to consider women business owners, as a group, as socially disadvantaged for purposes of the 8(a) program. As a result, Caucasian women and other nondesignated group members seeking entry into the 8(a) program must provide clear and convincing evidence, on a case-by-case basis, that they have suffered racial or ethnic prejudice or cultural bias and are therefore socially disadvantaged.

SBA Declines Women's Request for Social Disadvantage Status

The Small Business Act, as amended, provides that SBA may designate groups that have been subjected to racial or ethnic prejudice or cultural bias as socially disadvantaged. In December 1981, an association of women contractors requested that SBA determine that women business owners, as a group, are presumed to be socially disadvantaged for purposes of participating in the 8(a) program. In support of its request, the association cited congressional findings that women, as a class, were excluded from equal participation in the economy as business owners and that this lack of access was a direct and indirect result of sexual discrimination.

In May 1982, SBA denied the request, stating that its review of Public Law 95-507 and the act's legislative history led it to conclude that women business owners could not qualify as a presumptively socially disadvantaged group. According to SBA, it based the conclusion on its finding that presumptive group social disadvantage was primarily intended for the traditional minority groups and should not be extended to the broader class of women. In an April 1991 meeting with the Acting Associate Administrator, MSB&COD, and other SBA officials, we were told that SBA has also denied similar petitions for social disadvantage status from other groups, including Hasidic Jews, severely disabled veterans, and Iranian Americans.

Eligibility Criteria

SBA's 8(a) program regulations identify five criteria for demonstrating clear and convincing evidence of social disadvantage. Specifically, an applicant must show that his or her disadvantage (1) stemmed from his

or her color, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to small business persons who are not socially disadvantaged; (2) was rooted in the treatment the applicant experienced in American society and not in other countries; (3) was chronic and substantial and not fleeting and insignificant; (4) was personally experienced; and (5) negatively affected the applicant's entry into and/or advancement in the business world. Regarding the last element, the regulations do not limit the types of evidence that applicants can present to establish a causal relationship between their social disadvantage and impairment of business opportunities. However, the regulations state specifically that SBA will place particular emphasis on experiences indicating unequal access to, or discrimination in, education, employment, and various business opportunities, such as credit, federal contracts, and membership in professional organizations.

In contrast to the criteria for determining whether an individual has clearly and convincingly demonstrated social disadvantage, the other 8(a) program eligibility criteria are generally expressed in monetary terms. The criteria for determining if a firm is a small business are expressed in terms of annual receipts (e.g., sales, fees, and rents) or average employment. Firms in the building construction industry, for example, are considered small if their annual receipts do not exceed \$17 million. The criteria for determining whether a socially disadvantaged individual is also economically disadvantaged are expressed in terms of his or her net worth. To be eligible for the program, net worth (excluding equity in a personal residence and ownership in the applicant firm) cannot exceed \$250,000. To remain in the program, net worth cannot exceed \$750,000.

SBA adopted the clear and convincing evidence requirement in December 1980 as part of revised program regulations that were designed to define more clearly the meaning of socially disadvantaged. Public Law 95-507 stated that many persons are socially disadvantaged because of their membership in certain groups that have suffered the effects of discrimination, including, but not limited to, Black Americans, Hispanic Americans, Native Americans, and other minorities. At the same time, the act's legislative history noted that other persons may be socially disadvantaged because of cultural bias. Cited as an example was a poor Appalachian Caucasian person whose situation denied him or her the opportunity to receive a quality education or to expand his or her cultural horizons.

In adopting the regulations, SBA noted that it had attempted to adhere to the legislative intent of Public Law 95-507—namely, that designated racial and ethnic minorities were to be the prime beneficiaries of the 8(a) program, but that other individuals could be admitted on a case-by-case basis. SBA stated that the Congress, in enacting the legislation, did not intend to bestow 8(a) program benefits indiscriminately on small business persons. Rather, it desired to single out for special treatment those individuals who, through no fault of their own, have had the greatest difficulty in achieving a competitive position in the business world. SBA stated that its requiring members of nondesignated groups to provide clear and convincing evidence would ensure that only those individuals who were socially disadvantaged to the same degree as designated group members would have access to the 8(a) program.

In the Federal Register notice accompanying the December 1980 regulations, SBA provided examples of what it considered clear and convincing evidence of social disadvantage. For example, in illustrating the first criterion that an individual's social disadvantage must stem from his or her color, ethnic origin, or other similar causes not common to persons not socially disadvantaged, SBA noted that many small businesses have difficulty obtaining credit through normal credit channels. However, SBA stated that any individual basing a social disadvantage claim on the denial of bank credit would have to establish that the credit denial was based on a discrimination factor, such as the individual's color or gender, and not simply on the marginal status of the individual's business, which is a condition shared by many small businesses. Similarly, to demonstrate personal suffering from social disadvantage, according to SBA, a person who is a member of a nondesignated group cannot merely assert his or her membership in the group as evidence of social disadvantage. For example, SBA stated that since the Congress did not intend to designate women as a socially disadvantaged group, a female applicant could not simply claim that her gender established her as socially disadvantaged for purposes of the 8(a) program.

In total, at least five SBA regional and headquarters staff routinely review each 8(a) program application and indicate to the Associate Administrator, MSB&COD, whether the applicant meets the social disadvantage and other 8(a) program eligibility criteria. The Associate Administrator finally decides whether an applicant is or is not eligible to participate in the 8(a) program.

Information presented in this report was obtained from our (1) analysis of 8(a) program participant data submitted by the 10 SBA regional offices and obtained from the agency's management information system; (2) review of SBA legislation, regulations, and standard operating procedures pertaining to the 8(a) program, and of records and other documentation maintained by SBA, the Department of Justice, and the courts regarding 8(a) program litigation; and (3) interviews with SBA officials involved in administering the 8(a) program and those involved in agency litigation matters. (App. II discusses our objectives, scope, and methodology in greater detail.)

We performed our work between September 1990 and April 1991 in accordance with generally accepted government auditing standards. We discussed the facts presented in this report with SBA officials, who generally agreed with their accuracy, and we incorporated these officials' comments where appropriate. However, as requested by your office, we did not obtain formal agency comments on a draft of this report. As agreed with your office, unless you publicly announce its contents earlier, we will not distribute the report until 30 days after the date of this letter. At that time, we will send copies of the report to the Administrator, SBA, and other interested parties.

If you have any questions about this report, please contact me on (202) 275-5525. Major contributors to this report are listed in appendix III.

Sincerely yours,



John M. Ols, Jr.
Director, Housing and Community
Development Issues

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Abbreviations

DPCE	Division of Program Certification and Eligibility
MSB&COD	Minority Small Business and Capital Ownership Development
OCRC	Office of Civil Rights Compliance
SBA	Small Business Administration

Detailed Discussion of 8(a) Program Eligibility Lawsuits by Caucasian Women and SBA Investigations of 8(a) Program Discrimination Allegations

Of the 16 Caucasian women who have participated or are participating in the Small Business Administration's (SBA) 8(a) program, 4 sued SBA either to gain initial entry into the program or to regain admittance to the program. In addition, as of April 1991, two other Caucasian women were suing SBA in two separate actions over its decisions to deny their 8(a) program applications. As of the same date, SBA's Office of Civil Rights Compliance (OCRC) was investigating a decision by the Associate Administrator, Minority Small Business and Capital Ownership Development (MSB&COD) to deny program entry to one Caucasian woman and had just finished investigating an SBA district office's refusal to accept an 8(a) program application from another Caucasian woman. Each of these lawsuits and SBA's investigations are discussed in detail below.

The 1977 Lawsuit

In June 1977, SBA admitted a high technology research and development firm owned by a Caucasian woman into the 8(a) program. However, during an SBA review of all 8(a) program participants in September 1977, SBA's Region III ruled that the woman was not socially disadvantaged and decided to terminate her firm's participation in the program. Among the reasons for its decision, SBA noted that (1) both she and her husband had stated combined net worth in excess of \$300,000, and (2) the firm's problems in obtaining research and development work were common to all small business firms. SBA also stated that it did not believe that either individual was denied social or economic contacts solely because one was a female. SBA's Board of Appeals upheld the regional office's decision.

On November 10, 1977, the woman sued SBA, alleging, among other things, that SBA had (1) unlawfully terminated her firm's participation in the program; (2) discriminated against her on the basis of sex, race, and marital status; and (3) administered the 8(a) program in a discriminatory manner by determining eligibility for program participation on the basis of sex, race, and marital status. The lawsuit claimed that SBA, in deciding to remove her firm from the program, had not considered that she was a female and that, as a result, her firm was unable to compete effectively for government contracts. It also claimed that SBA did not follow its written and established procedures for terminating her firm's participation in the program. A day after the suit was filed, the court issued a temporary restraining order reinstating the firm into the program on the basis that the SBA hearing that resulted in its removal was improper. In March 1978, SBA acknowledged in a court-approved settlement agreement that the problems experienced by the woman's firm in obtaining government contracts were not common in kind or

degree to those of other small business firms and that the woman was socially disadvantaged. SBA agreed to return her firm to the 8(a) program. The firm's program term ended in December 1990.

In discussing this lawsuit, SBA's Associate General Counsel, Office of Litigation, told us that SBA had handled this firm's termination very poorly from a procedural standpoint. This, in turn, significantly affected SBA's decision to settle out of court and allow this individual's firm to return to the 8(a) program.

The 1978 Lawsuit

The second lawsuit against SBA was filed in August 1978 by two Caucasian women. One woman was the president, chief executive officer, and majority stockholder of a firm conducting human systems development research. The other held the same positions in, and was the sole stockholder of, a management consulting firm.

In January 1978, SBA denied the application submitted by each of the women because it had determined that their firms were not owned or controlled by socially disadvantaged persons. SBA also found that the business development plan submitted for the human systems development firm was incomplete.

In their August 1978 lawsuit, the women alleged, among other things, that SBA had (1) rejected their applications in violation of the Small Business Act and its regulations, procedures, and eligibility standards; (2) discriminated against them in rejecting their applications on the basis of their race, sex, and marital status; and (3) administered the 8(a) program in a discriminatory manner by determining eligibility for program participation on the basis of sex, race, and marital status. In August 1979, SBA acknowledged in a court-approved settlement agreement that both individuals were socially and economically disadvantaged and that their firms were eligible for the program. SBA admitted the human systems development research firm into the program in August 1979 and the management consulting firm in October 1979.

In discussing this case, SBA's Associate General Counsel, Office of Litigation, told us that SBA had decided to settle out of court to avoid the cost and burden of complying with an extensive discovery request filed by the counsel for the two women. At the time, SBA estimated that to comply with the request, it would have to review in detail the files of 4,039 program participants, all files still in existence of rejected applicants, and some 2,000 general correspondence files.

The human systems development research firm completed the program in October 1990. The management consulting firm is not scheduled to complete the program until September 1993.

The 1980 Lawsuit

The third lawsuit occurred in September 1980 when three Caucasian women jointly sued SBA over its decision to deny each of their 8(a) program applications. Each woman was the president, chief executive officer, and sole stockholder of her respective firm. One firm was engaged in designing, writing, and editing government and private sector publications; the second in survey research, training, and management and personnel consulting activities; and the third in cleaning and custodial services. In February, May, and July 1980, SBA denied the initial applications of two of the women and denied the third woman's request for reconsideration on the basis that SBA did not consider sexual discrimination as one of the elements that may lead to social disadvantage. Also, SBA stated that it did not equate sexual discrimination with cultural bias.

In their September 1980 lawsuit, the three women alleged, among other things, that SBA had (1) discriminated against them in rejecting their applications on the basis of their sex and deprived them of equal protection under the law, in violation of the Small Business Act; (2) violated the provisions of the Small Business Act by unlawfully concluding that sexual discrimination could not give rise to cultural bias as defined in the act and program regulations; and (3) violated the due process clause of the Fifth Amendment by creating a presumption of social disadvantage in favor of certain groups while at the same time concluding that sexual discrimination could not give rise to social disadvantage.

In November 1980, SBA notified the three women that it was publishing regulations to clarify the meaning of social disadvantage and advised them to file amended applications. In January and February 1981, the three women filed amended 8(a) applications. In February 1981, SBA approved the amended application of the woman owning the cleaning and custodial firm, finding that she had detailed specific instances of discrimination, including two successful sex discrimination suits before the Equal Employment Opportunity Commission. However, SBA denied the amended applications filed by the other two women because one had not demonstrated a chronic, long-standing history of social disadvantage that had substantially and negatively affected her business' development, while the other had presented only isolated instances of gender

bias and her documentation was general and was not related to her business' development. The two women continued the suit, and in July 1984, the United States District Court for the District of Columbia upheld SBA's decision to deny their applications. The cleaning and custodial firm's 8(a) program term ended in October 1990.

The 1990 Lawsuits

In addition to the three resolved lawsuits, two other lawsuits by two Caucasian women—one filed in October 1990 and the other in November 1990—were pending in the courts as of April 1991.

The October 1990 Lawsuit

The first pending lawsuit was filed in October 1990 by a Caucasian woman who is the president and sole director of a construction company. This individual initially applied for the 8(a) program in October 1988. In May 1989, the Associate Administrator, MSB&COD, denied her application after determining that the evidence presented did not show that she was socially and economically disadvantaged. The individual subsequently submitted additional information and requested that the denial be reconsidered. In January 1990, the Associate Administrator, MSB&COD, again denied her firm admission to the program on the basis that she was not socially and economically disadvantaged. The decision noted, among other things, that the documentation provided in the reconsideration request referred to the treatment of women as a group rather than of her as an individual.

In February 1990, MSB&COD's denial was appealed to SBA's Office of Hearings and Appeals. In appealing the decision, this individual stated that the Associate Administrator had wrongfully denied her application and that the conclusions reached by the Associate Administrator were contrary to 8(a) program standards. In early October 1990, the Office of Hearings and Appeals issued its final decision, which upheld the denial, stating that the Associate Administrator's determination that the applicant was ineligible for the 8(a) program was not arbitrary, capricious, or contrary to law.

In late October 1990, the individual brought legal action against SBA over its decision to deny her 8(a) program application. The lawsuit states that SBA wrongfully denied the application and subsequent request for reconsideration and alleges, among other things, that SBA's determination was (1) unlawful, arbitrary and capricious; (2) unsupported by substantial evidence; and (3) unjustified by the facts contained in the agency record.

The November 1990 Lawsuit

The most recent lawsuit was filed in November 1990 by a Caucasian woman who owns a firm that specializes in recruiting scientists, engineers, and other highly skilled personnel for defense contractors. She sued SBA for denying her 8(a) program application.

In February 1989, the individual submitted a request for SBA to determine whether sufficient federal contracts existed to support her firm in the 8(a) program. Under the regulations in effect at that time, this request represented the first step in the application process. In March 1989, SBA notified her that sufficient contract support was not available and that it was unable to process her application further. She subsequently alleged in a complaint to OCRC that SBA had discriminated against her on the basis of her sex and race in denying her participation in the 8(a) program. In July 1989, OCRC concluded that her allegation lacked substance.

In September 1989, SBA, on the basis of information received from the Department of Defense, notified the individual that potential contract support was available for her firm and that the processing of her 8(a) application could continue. However, SBA advised her that because of recent changes in the law and regulations governing the 8(a) program, she would have to submit her application on the new application form that SBA was developing. SBA sent her the new application form in December 1989, and she returned it to SBA in January 1990.

In May 1990, SBA rejected her application based on its determination that (1) she was not socially and economically disadvantaged and (2) her firm lacked the financial resources necessary to perform contract work successfully. In June 1990, the woman provided additional information to support her claim of social and economic disadvantage and requested that SBA reconsider her application. In August 1990, SBA again rejected her application for the same reasons.

In November 1990, this individual sued SBA. Her lawsuit alleges, among other things, that (1) SBA's denial of her initial request for contract support and application were arbitrary, capricious, and unsupported by substantial evidence; (2) SBA's regulations requiring members of nondesignated groups to prove their social disadvantage by clear and convincing evidence are inconsistent with the Small Business Act; and (3) SBA, in considering her application, intentionally discriminated against her because of her sex and race.

Internal SBA Investigations of Caucasian Women's Complaints of Discrimination

In July 1990, a Caucasian woman who is president of a firm engaged in computer system design, consulting, and training services filed a discrimination complaint with SBA's Office of Equal Employment Opportunity and Compliance regarding MSB&COD's decision to deny her firm entry into the 8(a) program. In July 1989, SBA denied the woman's application because it had determined that she was not socially and economically disadvantaged. In February 1990, SBA reconsidered and again denied her application, stating that despite evidence of discrimination in her early years in education and business opportunities, she had not, according to the records she presented, experienced chronic and long-standing discrimination or been denied entry into and/or advancement in the business world. SBA also stated that there was no indication that she had been prevented from pursuing educational opportunities.

In her complaint, the woman claimed that the decision to deny her entry into the program was the result of discrimination and bias against Caucasian women on the part of the former Associate Administrator, MSB&COD.¹ She stated that her application was denied by the Associate Administrator, despite technical reviews of the application at all levels that recommended its approval. In late April 1991, the Director and Deputy Director, OCRC, which is within SBA's Office of Equal Employment Opportunity and Compliance, told us that their office was still investigating this complaint and had not reached any conclusions.

In late February 1991, OCRC received a complaint from another Caucasian woman who owns a firm engaged in writing, editing, and desk-top publishing services. According to the Deputy Director, OCRC, this woman claimed to have submitted an 8(a) program application to SBA's Washington District Office, only to have it returned to her several weeks later without any explanation. She claimed that when she called the district office to find out why her application had been returned, she was told that SBA does not accept 8(a) program applications from Caucasian women. According to the Deputy Director, OCRC, the firm wrote the Department of Justice about the incident in December 1990, and Justice referred the complaint to SBA in February 1991.

OCRC completed its review of this complaint and notified the woman of its results in early April 1991. According to OCRC, its work showed that the Washington District Office files contained an October 1990 letter showing that the woman's application had been returned because it did not contain sufficient documentation. According to OCRC, the letter also

¹This individual left the position of Associate Administrator, MSB&COD, effective January 13, 1991.

Appendix I
Detailed Discussion of 8(a) Program
Eligibility Lawsuits by Caucasian Women and
SBA Investigations of 8(a) Program
Discrimination Allegations

indicated that a new application, along with a checklist of the information and documentation to be submitted, had been enclosed with the letter. OCRC found that the woman had resubmitted her application and that the district office had notified her in February 1991 that her application was still incomplete. According to OCRC, the district office notified the woman of 16 specific problems or deficiencies in her application. OCRC further stated that it could neither substantiate nor refute her claim that a district office staff person had told her that Caucasian women are not eligible for the 8(a) program.

Objectives, Scope, and Methodology

In July 1990, Congressman Douglas Bosco asked us, on the basis of a constituent's complaint, to investigate SBA's handling of 8(a) program applications from nonminority women and, in particular, to determine whether SBA had failed to give his constituent's 8(a) application serious consideration because she was a Caucasian woman. It was agreed with the Congressman's office that we would determine (1) the number of Caucasian women in the 8(a) program and (2) the number of these women who had sued to gain entry into the program. Subsequently, in December 1990, the Chairman, House Committee on Small Business, asked us to complete the work that former Congressman Bosco had initially requested and report the results to the Committee. In addition, the Chairman asked us to discuss SBA's criteria for determining whether Caucasian women and other members of nondesignated groups are socially disadvantaged.

To determine the number of Caucasian women in the 8(a) program, we obtained statistics on the overall number of 8(a) participants and their ethnic background (e.g., Black, Puerto Rican, Eskimo/Aleut) from a monthly management information system report on the 8(a) program prepared by SBA's Office of Information Resources Management. In addition, in November and December 1990, we obtained from each of SBA's 10 regional offices information on each Caucasian woman who has participated or is participating in the 8(a) program, including the woman's name, the name of her firm, the date the firm was approved for program participation, the date the firm left or is scheduled to leave the program, and a summary of any litigation between SBA and the firm.

To determine how many Caucasian women sued to gain entry into the 8(a) program, we obtained information from SBA's Office of General Counsel and the Department of Justice regarding past and/or present litigation involving Caucasian women and the 8(a) program. We met with and obtained information from officials in SBA's Office of Civil Rights Compliance concerning its investigations of Caucasian women's complaints of discrimination in the 8(a) program. We also reviewed court records maintained at the Washington National Records Center for information on 8(a) program lawsuits filed by Caucasian women. Finally, we reviewed documentation provided to us by the Caucasian woman constituent of former Congressman Bosco and by her attorney regarding her 8(a) program application experiences and subsequent lawsuit against SBA.

To determine SBA's criteria for 8(a) program eligibility, we reviewed the Small Business Act, SBA's 8(a) program regulations, and its 8(a) program

standard operating procedures. We also discussed Caucasian women's participation in the 8(a) program and SBA's criteria for determining their program eligibility with officials in SBA's Office of Minority Small Business and Capital Ownership Development.

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