



## Changes to Certification as a Disadvantaged Business Enterprise

On October 3, 2025, the United States Department of Transportation (“USDOT”) issued an Interim Final Rule eliminating the automatic race- and sex-based presumption of social and economic disadvantage for Disadvantaged Business Enterprise (“DBE”) eligibility. Due to this change, all entities that were previously certified as a DBE or Airport Concession Disadvantaged Business Enterprise (“ACDBE”) need to be re-evaluated to determine if they remain eligible for certification.

By way of background, the DBE program, originally enacted by Congress in 1983, is a federal program administered by the USDOT through each state’s Unified Certification Program. The DBE and ACDBE programs, in part, aim to ensure disadvantaged small businesses have a fair opportunity to participate in federally funded highway construction contracts and airport concession contracts. State agencies, such as the New York State Department of Transportation (“NYSDOT”), receive federal funds from the USDOT and therefore are required to comply with federal regulations, including the regulations related to the administration of the DBE and ACDBE programs. For clarity, however, the DBE and ACDBE programs are separate from the New York State Minority Business Enterprise and Women-Owned Business Enterprise Program, which are governed by New York State Law and relate to state-funded contracts.

To certify as a DBE or ACDBE, or to recertify as a DBE or ACDBE, any owner of the company who claims disadvantaged status needs to submit a detailed Personal Narrative (“PN”). A PN is a detailed story explaining how an individual faced actual economic disadvantage, such as instances of difficulty obtaining financing, bonding, or insurance on terms available to similarly situated firms; barriers to entry or advancement in relevant industries or markets; documented disparities in business opportunities, partnerships, or professional development; and/or specific examples of systemic or institutional obstacles encountered in education, employment, or business growth. Because the new rule has eliminated the automatic presumption of disadvantage based on race or sex, a PN cannot exclusively focus on situations framed solely as based on race or sex.

Instead, the PN needs to use specific details and examples of such social and economic disadvantage. The PN cannot be based on general feelings or assumptions of disadvantage – the narrative must be specific and identify the “who, what, when, where, and why” of the incident. Moreover, the PN should include a description of how the owner reacted to the incident and the actual negative business and/or economic result. Additionally, the PN needs to link how the owner’s past experiences have led to the current economic disadvantage, which must be supported by the owner’s Personal Net Worth Statement. Thus, it is critical that the narrative in the PN aligns with the Net Worth Statement.

An applicant should also consider providing documentary proof of such disadvantage, such as loan denials, contract rejections, school/education rejection letters, etc. to support the applicant’s claims.

To be clear, the PN is about the owner or owners of the business – not the business itself. The focus of the PN should not be about the challenges the business has faced, but about the challenges the owner has faced. While applicants are not prohibited from discussing the challenges the business has faced, the applicant must connect those challenges back to how the owner was affected personally, including from an economic standpoint. Moreover, experiences of others (such as parents) should not be included, unless those experiences relate back to the owner (e.g., growing up in poverty and how it affected the owner).

For more information on the Interim Final Rule or how your business may be impacted, please contact:

**Russell H. Stern, Esq.**  
516.663.6582  
rstern@rmfpc.com

**Samantha M. Guido, Esq.**  
516.663.6570  
sguido@rmfpc.com