

# LEGAL ALERT

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## DEPARTMENT OF TRANSPORTATION ISSUES NEW RULE USHERING IN MAJOR CHANGES FOR DBE CERTIFICATION

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On October 3, 2025, the United States Department of Transportation (“DOT”) issued an [interim final rule](#) (“IFR”) that fundamentally modifies its Disadvantaged Business Enterprise (“DBE”) program based on its determination that race and sex based rebuttable presumptions in federal contracting are “unconstitutional.”<sup>1</sup> The IFR is effective immediately as of October 3, 2025. The major impact of the IFR is that it eliminates the DBE program practice of presuming social and economic disadvantage based on race or gender. In response to the IFR, some state agencies, including the Ohio and Illinois Departments of Transportation, [have already announced](#) they are [taking action to ensure](#) they are in compliance with the new standards.

### FOUR KEY TAKEAWAYS

#### 1. NEW CERTIFICATION STANDARDS

The most significant immediate takeaway from the IFR is that DBEs will no longer be presumed to be disadvantaged based solely on race or gender. A business seeking DBE status under the new framework will be required to submit a detailed personal narrative (“PN”) that establishes the existence of disadvantage. To support claims of disadvantage, applicants can provide “specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner’s progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated persons who did not face barriers in obtaining terms.”

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<sup>1</sup> While this article primarily focuses on the effect of the IFR on DBEs in the construction industry, the IFR also affects Airport Concession Disadvantaged Business Enterprise (“ACDBE”) in substantially similar ways.

In addition, a PN must state “state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.”

Lastly, the applicant must also attach a current personal net worth statement as well as any additional financial information they consider relevant. Moreover, until the reevaluation process described below is completed, a recipient covered by the Unified Certification Program (“UCP”)—which handles applications by companies seeking DBE status—may not set contract goals or count any previously identified DBE entity under the previous framework towards a DBE goal.

## 2. RECERTIFICATION PROCESS

Businesses that currently hold DBE status will need to reapply under the new legal framework in order to retain that status. To this end, the IFR requires the UCP “to reevaluate any currently certified DBE... to recertify any DBE...that meets the new certification standards, and to decertify any DBE...that do[] not meet the new certification standards.”

In an effort to establish a race-neutral basis for determining DBE status, the IFR requires recertification to be done on a case-by-case basis and approval of an entity as a DBE will be based on the existence of social and economic disadvantage. Furthermore, the IFR expressly states that that determination “must not be based in whole or in part on race or sex.”

## 3. EFFECT ON EXISTING CONTRACTS

In general, existing contracts will be unaffected. However, while the recertification process is ongoing, until an entity is recertified, the inclusion of their business may not count towards DBE goals. In addition, while reevaluation of both new and existing DBE applicants is ongoing, recipients will not be required to follow or adhere to DBE targets or goals established under the prior framework.

## 4. STATE LEVEL REACTION

In response to the IFR, some state-level agencies have announced their intention to re-evaluate DBE firms to determine eligibility under the new standards. For example, the Ohio Department of Transportation released a notice announcing, in accordance with the IFR, that all state-level DBE firms certified using race- or sex-based rebuttable presumptions of social or economic disadvantage must be reevaluated. Now, those DBE firms must submit a PN while DBE goals for future projects have been suspended. The Illinois Department of Transportation is taking similar action and holding workshops for DBE firms regarding the IFR. As changes occur at both the state and federal level, it will be imperative for contracting entities to stay informed of current developments at all levels of government.

## CONCLUSION

As has been the case since [Executive Order 14173](#) was issued in early 2025, federal contracting continues to undergo a sea-change and this space remains volatile. Accordingly, it remains best practice for recipients of federal grants and contracts to remain vigilant as changes occur.