

U.S. DOT Ready to Overhaul DBE Program

Special Report – Revised October 3, 2025

What Happened: The U.S. Department of Transportation (U.S. DOT) published an “[interim final rule](#)” (IFR) Oct. 3 detailing its intentions to revise the Disadvantaged Business Enterprise (DBE) program. The planned changes are consistent with a May court filing, in which U.S. DOT is proposing to settle a lawsuit challenging the program by eliminating race- and gender-based DBE goals on federal-aid highway and transit projects. While the judge in that case has not yet approved the proposed settlement, the Department is now moving to enact its key terms. These DBE program changes take effect immediately with the IFR’s publication in the *Federal Register*.

Changes to the DBE Program:

- U.S. DOT is rescinding the longstanding presumption that women, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Subcontinent Asian Americans are “socially and economically disadvantaged” for purposes of DBE program participation.
- That term can now apply on a case-by-case basis to any U.S. citizen (or lawfully admitted permanent resident), as determined by a Unified Certification Program (UCP).
- All existing DBE firms will need to be reevaluated. “As quickly as practicable,” UCPs will need to identify and contact these firms (which U.S. DOT estimates as 41,000 nationwide) so they can submit documentation for recertification based on the new standards.
- Additional firms, not previously eligible for the DBE program, may also apply for certification.
- All applicants must submit a “Personal Narrative” documenting “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, non-disadvantaged persons.”
- The UCPs will provide results to the relevant transportation agencies. U.S. DOT “will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process.”

- A state DOT “may not count any DBE participation toward DBE goals” until the reevaluation process is complete for their jurisdiction. This effectively suspends compliance with a state’s overall goal until its pool of DBE firms is reconstituted.

Remaining as Part of the DBE Program:

- Other limitations for ownership of a DBE firm (such as control and personal net worth) and the firm itself (small business size standards) will remain.
- There will still be DBE goals in each state, although...
 - Program goals will now seek to remediate the effects of “social and economic disadvantage” instead of “discrimination.”
 - Agencies no longer need to consult with minority and women’s contractor groups in goal setting.
 - They may still utilize disparity studies, but under revised guidelines.
- For the time being, the DBE rule will retain most of a Biden administration mandate for submission of additional information on primes and subcontractors at bid time. Under the May 2024 DBE rule revision, state DOTs were to collect this data and submit it to a U.S. DOT online portal, although it does not yet exist.
- It is unclear how several of these provisions will apply to existing contracts or procurements. ARTBA will seek clarity on this and related issues.

Background: In Oct. 2023, two non-DBE industry firms filed a federal lawsuit in Kentucky challenging the program’s constitutionality. In Sept. 2024, Judge Gregory Van Tatenhove indicated the likelihood he would declare the DBE program unconstitutional once deciding the case on its merits.

For the interim, the judge issued a series of preliminary injunctions requiring state DOTs to zero out DBE goals on any projects nationwide for which either of the plaintiffs – Mid-America Milling Co. and Bagshaw Trucking – expressed interest in bidding or quoting. In a July court filing, U.S. DOT reported nearly 600 federal-aid projects across 17 transportation agencies had been affected in this way.

The suit’s defendants originally included U.S. DOT, the Federal Highway Administration and their top officials under President Biden. However, the change in administrations brought new leadership in those positions and a willingness to settle the case by revising longstanding DBE policies, with Executive Orders from President Trump and directives from Attorney General Pam Bondi providing a legal basis.

In May, the plaintiffs and U.S. DOT filed their [consent order](#) with the court proposing revisions to the DBE program. Judge Van Tatenhove has yet to approve the order.

What's Next: U.S. DOT chose to implement these changes in an interim final rule, meaning they will take effect immediately upon formal publication. The Department will still take public comments on the changes (and ARTBA urges all interested members to submit them.) [Comments are due Nov. 3.](#)

More often, an agency will publish a “notice of proposed rulemaking,” take comments, and consider that feedback in formulating a final rule. U.S. DOT chose the more expeditious method because it believes the DBE program’s current race- and gender-based presumptions are unconstitutional and need to be revised as soon as possible.

Because of the pending *MAMCO* litigation, these DBE program changes were expected, but perhaps not until resolution of the proposed consent order. However, Transportation Secretary Sean Duffy and U.S. DOT have referenced this issue in dialogues over megaprojects in [Maryland](#), [New York](#) and [Illinois](#), as well as the federal government shutdown, which likely added urgency to the rulemaking process.

U.S. DOT issued a [short guidance document](#) with initial release of the IFR on Sept. 30. ARTBA will join with allies in urging the Department to provide much greater detail about implementing these changes, given the number of unanswered questions raised by the IFR.

Finally, it should be noted that Congress will have an opportunity to further revise the DBE program as part of surface transportation reauthorization legislation due a year from now.

If you have questions or concerns about DBE program implementation, please contact Rich Juliano or Prianka Sharma.