

**United States Small Business Administration
Office of Hearings and Appeals**

IN THE MATTER OF:

ACC International, Incorporated,

Petitioner

SBA No. BDPT-637

Decided: March 9, 2026

APPEARANCES

Peter B. Ford, Esq., Meghan F. Leemon, Esq., Emily A. Reid, Esq., PilieroMazza PLLC, Washington, DC, for ACC International Incorporated

Edward Bentley, Esq., Office of General Counsel, Washington, DC, for U.S. Small Business Administration

DECISION

I. Introduction and Jurisdiction

On September 8, 2025, ACC International Incorporated (Petitioner) appealed the decision of the U.S. Small Business Administration (SBA) graduating Petitioner early from SBA's 8(a) Business Development program. SBA found that, Mr. Christian Lopez, the individual upon whom Petitioner's eligibility is based, was no longer economically disadvantaged, as required by title 13 C.F.R. § 124.104. For the reasons discussed *infra*, the appeal is denied.

SBA's Office of Hearings and Appeals (OHA) decides appeals of 8(a) BD early graduation and termination determinations under 15 U.S.C. §§ 634(i) and 637(a), and 13 C.F.R. parts 124 and 134. Petitioner filed its appeal within 45 calendar days after its receipt of the AA/BD's determination, so the appeal is timely. 13 C.F.R. § 134.404. Accordingly, this matter is properly before OHA for decision.

II. Background

A. Proposed Termination

On May 5, 2025, the Director, Compliance Division, Office of Business Development and Certifications, Office of Government Contracting and Business Development of SBA (Director), gave Petitioner Notice of Intent to Terminate Petitioner from the 8(a) Business Development Program. The Director relied upon the authority in SBA's regulations that the Agency may terminate a concern's participation in the 8a Program early for good cause, citing 13

C.F.R. § 124.303. The Director's reason for proposing early termination was Petitioner's failure to maintain eligibility for program participation, including failure by its owner to continue to meet the requirements for economic disadvantage at 13 C.F.R. § 124.104 where such status is required for eligibility. SBA will presume an individual is not economically disadvantaged if their adjusted gross income (AGI) averaged over the three preceding years exceeds \$400,000. (Letter of Intent to Terminate (LOIT) at 1, citing 13 C.F.R. § 124.104(c)(3).) The Director noted the presumption may be rebutted by showing the income level was unusual and not likely to occur in the future, that the individual suffered losses commensurate with and directly related to the earnings, or by evidence that the income is not indicative of lack of economic disadvantage. (*Id.*, at 2.)

The Director reviewed Mr. Lopez's self-reported income in Certify.gov and his Federal tax returns for the years 2021, 2022 and 2023. The LOIT has a detailed chart which breaks down Mr. Lopez's various sources of income for the three years, adds them and calculates his total income for each year, and averages his personal income for the three years. Mr. Lopez's income for 2021 was \$581,846, for 2022 \$477,786, for 2023 \$420,793.14. The Director concluded his AGI for the period was \$493,475.70. This exceeded the \$400,000 AGI limit for continued 8(a) program participation. The Director thus presumed that Mr. Lopez, the individual upon Petitioner's claim of eligibility was based, was no longer economically disadvantaged. (*Id.*)

The Director informed Petitioner it had 30 days in which to respond in writing to the LOIT, explaining how the firm planned to proceed and justifying its retention in the 8a program. The Director further informed Petitioner it had 30 days from its receipt to submit a written response to SBA, explaining how the firm planned to proceed and justifying its retention in the 8(a) program. Petitioner was specifically informed that information received after the 30-day period would not be considered in making the final determination as to its eligibility. (*Id.*, at 3.)

B. Petitioner's Response to LOIT

On June 3, 2025, Petitioner, through counsel, responded to the LOIT. Petitioner maintained the sole reason cited in the LOIT does not support termination and has been rectified. (Petitioner's Response at 1.) Petitioner first discusses the business success it has achieved working under the 8(a) Program. Petitioner the notes the COVID-19 pandemic hit the company very hard, and Mr. Lopez needed to seek outside employment to support his family. In the summer of 2020, Mr. Lopez began working for Delta Point, LLC. This outside employment was disclosed to and approved by SBA as part of Petitioner's 8(a) Program annual review. The work took place outside of Petitioner's normal operating hours and thus did not affect Mr. Lopez's control of the company. His employment with Delta Point ended September 30, 2024. (*Id.*, at 2.) Petitioner concedes Mr. Lopez was in error when he thought SBA's approval of his outside employment meant his Delta Point earnings would not impact his eligibility. (*Id.*, at fn. 2.)

Petitioner concedes SBA's personal income calculation properly accounted for Mr. Lopez's wages and earnings from all sources and resulted in his personal income exceeding the regulatory threshold by \$93,476. On May 30, 2025, in response to the LOIT, Mr. Lopez reinvested \$100,000 of his personal funds into Petitioner. Petitioner complains the LOIT did not explain SBA's methodology for its calculations (despite the chart included in the LOIT) but did

not contest the accuracy of the \$493,475.50 personal income figure SBA is relying upon to support Petitioner's early exit from the Program. However, Petitioner maintains it has cured the deficiency as a result of Mr. Lopez's May reinvestment. (*Id.*, at 3.)

Petitioners pointed to the regulation which provides that, with respect to participating 8(a) firms taxed as S-corporations, such as Petitioner, income received from the participant will be excluded from an individual's income where the participant provides documentary evidence demonstrating that the individual reinvested the income in the firm. (*Id.* at 4, citing 13 C.F.R. § 124.104(c)(3)(ii).) Here, SBA found Mr. Lopez's income exceeded the \$400,000 regulatory limit by \$93,475.70. This is slightly less than the May reinvestment amount of \$100,000. Petitioner requested SBA to treat the May reinvestment similar to those contemplated by the regulation and find Mr. Lopez's personal income for the years in question to be \$393,476, which is within the threshold prescribed by SBA regulations. (*Id.*)

C. Early Graduation

On July 25, 2025, SBA notified Petitioner it was graduating Petitioner early from the 8(a) program. SBA noted the 8(a) BD Program regulations provide that an individual is presumed to be not economically disadvantaged if their adjusted gross income averaged over the preceding years three years exceeded \$400,000. (Early Graduation letter, at 1 citing 13 C.F.R. § 124.104(c)(3)(i).) The presumption may be rebutted by a showing the income level was unusual and likely to occur in the future, that the individual suffered losses commensurate with and directly related to the earnings, or by evidence the income was not indicative of lack of economic disadvantage. (*Id.*)

SBA then noted it had sent Petitioner the LOIT on May 5, 2025. The LOIT notified Petitioner SBA had reviewed Mr. Lopez's personal financial information Petitioner had reported during the annual review process and determined that Mr. Lopez was no longer economically disadvantaged. SBA based the decision on its calculation of Mr. Lopez's average adjusted gross income being \$493,476, which exceeds the \$400,000 regulatory threshold. SBA pointed out a table in the LOIT displayed SBA's calculations. SBA had afforded Petitioner the opportunity to respond by submitting information which would address SBA's concerns and eliminate the grounds for the proposed termination. (*Id.*, at 2.)

SBA noted Petitioner's Response of June 3rd, arguing the employment with Delta Point was unusual and not likely to occur in the future, and that Mr. Lopez had reinvested \$100,000 in Petitioner. SBA did not agree that the wages Mr. Lopez earned from Delta Point were unusual and unlikely to occur in the future because the wages were earned in at least three consecutive years, and it is reasonable to expect Mr. Lopez could obtain outside employment in the future.

SBA agreed that \$100,000 can be deducted from Mr Lopez's total income for 2021-2023 but disagreed with the conclusion this adjustment would impact the determination he was no longer economically disadvantaged. (*Id.*)

Mr. Lopez's total income for 2021-2023 was \$1,480,427 for an average income of \$493,476 per year. Reducing this total by \$100,000 would result in an updated income of

\$1,380,427 for an average income of \$460,142, which still exceeds the regulatory threshold for determining economic disadvantage. SBA found that Petitioner had failed to overcome the grounds for the proposed termination, and thus early graduated Petitioner from the 8(a) Business Development Program. (*Id.*, at 3.)

D. The Appeal

On September 8, 2025, Petitioner filed the instant appeal. Petitioner noted that on July 28, 2025, Mr. Lopez made an additional \$200,000 reinvestment into Petitioner, which further reduced his total income. Petitioner notified SBA of this reinvestment on July 29, 2025, but the early graduation was not rescinded. (Appeal at 2-3.)

Petitioner argues SBA decision to early graduate it was arbitrary, capricious and contrary to law because it denied Petitioner due process of law. Petitioner asserts the LOIT, without providing methodology or supporting documentation for the calculation, calculated Mr. Lopez's average income for 2021-2023 to be \$493,476. In the Graduation Determination, while SBA accepted Mr. Lopez's reinvestment, its revised calculation was \$460,142. Petitioner claims it could not have anticipated this revised calculation, particularly because SBA has not used this method in the past. Petitioner assert that, based upon its counsel's experience, SBA has historically accepted a reinvestment by which the average AGI exceeded the regulatory limit, not the total income amount over the three-year period. SBA's refusal to permit Petitioner to respond to these new facts and reasons to early graduate Petitioner denied Petitioner of its legal right to be advised of these facts and reasons as well as the opportunity to respond to them. (*Id.*, at 4, fn. 2.)

Petitioner notes the regulation requires that a letter of intent to terminate or early graduate “set forth the specific facts and reasons for SBA's findings and will notify the concern that it has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed grounds do not justify termination or early graduation.” (*Id.*, citing 13 C.F.R § 124.304(b)(1).) Petitioner's Response to the LOIT presented evidence why Mr. Lopez's average income for 2021-2023 was, at worst, \$393,476 but SBA rejected this evidence and moved forward without providing Petitioner an opportunity to respond. (*Id.*)

Petitioner relies upon *Matter of Peniel Solutions, LLC*, SBA No. BDP-336 (2009), where SBA made mistakes of fact in determining whether to graduate a concern early and the administrative record did not show the evidence SBA relied upon for its conclusion. Petitioner maintains it is unclear how SBA's numbers were determined. As in *Peniel*, SBA rejected a revised calculation and failed to give the concern an opportunity to respond. In *Peniel* OHA held that SBA has to provide a clear explanation of why it intends to graduate a concern so that it has an opportunity to preserve its status. Petitioner states it responded to the LOIT in good faith and welcomed further discussion. SBA moved on with a new calculation Petitioner had no opportunity to contest. (*Id.*)

Petitioner asserts that after it received the early graduation letter with the new calculation, it responded in four days, presenting evidence based upon SBA's new calculation showing why Mr. Lopez's average income is under \$400,000. As this was new evidence presented to SBA

within 30 days of SBA's revised calculations, SBA should have considered it. (*Id.*, at 5, citing 13 C.F.R. § 124.304(b)(1).)

Petitioner asserts SBA has a documented history of engaging with participants multiple times before reaching an early graduation or termination decision, but here it declined to communicate after Petitioner responded to the LOIT, and the next communication was the early graduation letter, which was based upon new evidence. Petitioner points to *Matter of CTS Group, LLC*, SBA No. BDPT-621 (2025); *Matter of Geotechnical Innovation, PLLC*, SBA No. BDPT-598 (2022); *Matter of Irby Spine Care Professional Corp.*, SBA No. BDPT-612 (2024); *Matter of Caduceus Healthcare, Inc.*, SBA No. BDPT-578 (2019) as cases where SBA engaged with firms and assisted in the application and review process. (*Id.*, at 6.)

Petitioner argues that SBA's issuance of one LOIT, failing to communicate with it regarding its response, and issuance of the notice of early graduation, not termination, without giving Petitioner the opportunity to respond to new facts and revised calculations was a denial of due process, and the decision to graduate Petitioner early arbitrary, capricious and contrary to law. (*Id.*, at 6, citing *Matter of L.D.V., Inc.*, SBA No. BDP-257 (2007).

Petitioner maintains that it overcame the presumption Mr. Lopez was not economically disadvantaged, and therefore SBA's determination to graduate because it showed that this income level was unusual and not likely to occur in the future. Mr. Lopez sought outside employment during the COVID-19 pandemic due to Petitioner's drop in revenues. SBA was aware of and approved this outside employment. Mr. Lopez received income from this outside employment of \$114,005 in 2021, \$126,402 in 2022 and \$148,320 in 2023. Mr. Lopez assumed that this income would be excluded by SBA in determining his economic disadvantage. If this deduction is made, Mr. Lopez's average annual income would be well under the \$400,000 threshold for determining economic disadvantage. Petitioner cites *Caduceus, supra*, where OHA held that while an AGI over the threshold creates a presumption the individual is not economically disadvantaged, the record should be construed in the light most favorable to the petitioner, and draw inferences in the petitioner's favor, so that the presumption might be overcome. (*Id.*, at 7-9.)

Petitioner asserts Mr. Lopez now understands the impact of all sources of income on his annual average income and will ensure that his income remains under the threshold in the future. It is arbitrary and capricious for SBA to find Mr. Lopez not economically disadvantaged because he could earn such income through outside employment in the future. It is arbitrary and capricious for SBA to discount Mr. Lopez's statement that he will ensure his personal income remains below the regulatory threshold. Mr. Lopez's income level for 2021-2023 was unusual and not likely to reoccur in the future. SBA made a mistake of fact and its decision to graduate Petitioner was arbitrary, capricious, and contrary to law.

D. Agency Response

On February 25, 2026, the Agency responded to the appeal. SBA asserts that under 13 C.F.R. § 124.104(c)(3), it will presume that an individual is not economically disadvantaged if their adjusted gross income over the three preceding years exceeds \$400,000. Here, the individual upon whom Petitioner's eligibility is based is Mr. Lopez. SBA determined his three-

year average AGI for 2021-2013 was \$493,476. SBA sent Petitioner the LOIT. Petitioner did not contest the correctness of the calculation but conceded it. Mr. Lopez reinvested \$100,000 into Petitioner in the 30-day period after the LOIT. However, because the calculation is a three-year average, his three-year average AGI was still over the threshold. Consequently, Mr. Lopez's three-year AGI only dropped to \$460,142 still well above the threshold. The extra income came from outside employment he had held for four years. Extra income over four years can hardly be described as unusual, and Mr. Lopez could get another job. (Agency Response at 1-2.)

SBA reviewed the LOIT and the chart it included, showing the calculation of Mr. Lopez's average AGI. SBA noted the LOIT informed Petitioner it had 30 days from its receipt to submit a written response to SBA, explaining how the firm planned to proceed and justifying its retention in the 8(a) program. Petitioner was specifically informed that information received after the 30-day period would not be considered in making the final determination as to its eligibility.

SBA argues it has simply enforced the regulations as written. Petitioner has conceded Mr. Lopez's three-year AGI exceeded the threshold for determining economic disadvantage. The extra income came from an outside job Mr. Lopez held for four years, it therefore cannot be considered unusual, and Mr. Lopez could always get another job, so the income could recur in the future. In addition, the reinvestment was insufficient to push his 3-year average AGI below the regulatory threshold. By the time Mr. Lopez had reinvested enough money to push his AGI below the threshold, the 30-day period had elapsed, and SBA had issued its Notice of Early Graduation. (*Id.*, at 6.)

SBA responds to the argument it never provided methodology or supporting documentation for its calculation of Mr. Lopez's three-year average AGI by noting that Petitioner's Response to the LOIT conceded SBA properly accounted for Mr. Lopez's wages and earnings from all sources and agreed that SBA's three-year average AGI of \$493,476 for Mr. Lopez was accurate. SBA also notes that Petitioner's Response also conceded Mr. Lopez was in error when he thought SBA's approval of his outside employment meant his income from Delta Point would not impact his eligibility. (*Id.*, at 7.)

SBA maintains Petitioner's argument that Mr. Lopez's reinvesting \$100,000 into Petitioner would drop the three-year average AGI to \$393,475 makes no sense mathematically. The regulation makes clear the threshold figure is a three-year average. The \$100,000 figure needed to be divided by three, with one-third applied to each year. This is what SBA did, and it reduces Mr. Lopez's three-year average AGI to \$460,142, still well above the regulatory threshold. The calculation is self-explanatory and dictated by the regulation itself. (*Id.*, at 7-8.)

SBA disputes that the Graduation letter applied "new facts and reasons" for the decision. SBA asserts it is simply a straightforward application of the regulation. Petitioner's proposed approach does not comport with the terms of the regulation. (*Id.*, at 8.)

SBA asserts it made no mistakes of fact, and *Matter of Peniel Solutions, LLC*, SBA No. No. BDP-336 (2009) is inapposite. Petitioner has conceded SBA's calculation of a three-year average AGI of \$493,476 for Mr. Lopez was correct. It is further undisputed that Mr. Lopez reinvested \$100,000 into Petitioner before the Notice of Early Graduation was issued. The only

dispute is how the \$100,000 reinvestment should have been applied. This is a question of law. The calculation speaks for itself. (*Id.*, at 8.)

SBA disputes Petitioner's argument that SBA has historically engaged in back-and-forth discussions with firms over eligibility questions. The Agency maintains there is no requirement that it do so. Whether it engages in back-and-forth discussions with concerns is a matter of its discretion. SBA followed the regulation, and it is not required to do more. (*Id.*, at 9-10, citing *Matter of CTS Group, LLC*, SBA No. BDPT-621 (2025).)

SBA argues Petitioner has failed to rebut the presumption that Mr. Lopez is no longer economically disadvantaged. In order to do so, it bears the burden of showing that the income was both unusual and unlikely to occur in the future. The test is phrased in the disjunctive, so both elements must be established. Income from a job held for four years is not unusual. Unusual income is from such sources as lottery winnings. (*Id.*, at 10, citing SOP 80 05 8, at p. 88.) In contrast, even gambling winnings are not "unusual." (*Id.*, citing *Matter of C & S Paving, Inc.*, SBA No. BDP-231 (2006).)

SBA found that the wages earned from Delta Point were not unusual because they were earned in at least three consecutive years and it is reasonable to expect Mr. Lopez could obtain outside employment in the future. Steady income from outside employment over four years is clearly not unusual. SBA also relies on *Matter of Izen AI, Inc.* SBA No. BDPE-619 (2025), where IRA withdrawals were found to be income and not unusual, and likely to occur in the future, even when they were embezzled. (*Id.*, at 11.)

SBA takes issue with Petitioner's reliance upon *Matter of Caduceus Healthcare, Inc.*, SBA No. BDPT-578 (2019), which construed the record in favor of the petitioner in that case. The issue there was a motion for summary judgement, and so the standard cited was that for a dispositive motion, not for the final decision. (*Id.*, at 13.)

III. Discussion

OHA must sustain SBA's determination to graduate a concern from the 8(a) BD Program early unless a review of the written administrative record demonstrates the SBA acted arbitrarily, capriciously, or contrary to law in concluding Mr. Lopez was not economically disadvantaged. 13 C.F.R. § 134.406(b). Such a review is narrow and does not permit a reviewing authority to substitute its own judgment for that of the SBA. The review should examine whether the SBA considered all of the facts presented and correctly applied the applicable laws and regulations to those facts in deciding whether or not to approve Petitioner's 8(a) application. Then, the review must examine if there was a clear error of judgment by the SBA in making the determination before a finding of arbitrary and capricious can be made. *Matter of Information Sciences Corp.*, SBA No. MSBE-563, at 4 (1996) citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

A clear error of judgment can be found if the SBA fails to properly apply the law and regulations to the facts of the case; fails to consider an important aspect of the problem; offers an explanation for its determination that runs contrary to the evidence; or provides an implausible

explanation that is more than a difference in the views of the SBA and the administrative judge. In sum, the SBA must articulate a satisfactory explanation for its action, including a rational connection between the facts found and its determination. *See Id.*

An 8(a) Participant firm may be graduated early from the 8(a) BD Program if one or more of the disadvantaged owners upon whom the Participant's eligibility is based are no longer economically disadvantaged. 13 C.F.R. § 124.302(a)(2). If SBA intends to terminate or early graduate an 8(a) firm, it must send a notice of intent to terminate or graduate early to the firm. It must set forth the specific facts and reasons for SBA's findings and give the concern 30 days to submit a written response. 13 C.F.R. § 124.304(b)(1). After the 30 day response period, SBA may issue a Notice of Early Graduation or Termination, setting forth the specific facts and reasons for the decision. 13 C.F.R. § 124.304(d).

To be eligible to be a participant in SBA's 8(a) BD program, a concern must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals. 13 C.F.R. § 124.101. An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared with non-socially disadvantaged competitors in the same or similar line of business. 13 C.F.R. § 124.104(a). In considering diminished capital and credit opportunities, SBA will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including income for the past three years, personal net worth, and the fair market value of all assets, whether encumbered or not. An individual who exceeds any one of the thresholds set forth in the regulation for personal income, net worth or total assets will generally be deemed to have access to credit and capital and not be economically disadvantaged. 13 C.F.R. § 124.104(c).

SBA will presume an individual is not economically disadvantaged if his or her adjusted gross income (AGI) averaged over the three preceding years exceeds \$400,000. An individual who exceeds this threshold for personal income will generally be deemed to have access to credit and capital and not economically disadvantaged. 13 C.F.R. § 124.104(c)(3)(i). The presumption may be rebutted by a showing this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage. *Id.* SBA regulations further state that “[i]ncome received from an applicant or Participant that is an S corporation, LLC or partnership will be excluded from an individual's income where the applicant or Participant provides documentary evidence demonstrating that the income was reinvested in the firm or used to pay taxes arising in the normal course of operations of the firm.” 13 C.F.R. § 124.104(c)(3)(ii).

The principal issue presented here is whether SBA properly determined that Mr. Lopez is not economically disadvantaged because his AGI over the preceding three years 2021-2023 exceeded the \$400,000 threshold allowable for program qualification. SBA based these calculations on the records Petitioner itself provided.

Petitioner claims that SBA failed to provide any methodology or supporting documentation for its calculation. However, this statement is not supported by the record. The

LOIT and Early Graduation letters both have charts which lay out the figures showing Mr. Lopez's various sources of income and calculate the amount of Mr Lopez's income for each year in the period 2021-2023. The charts then average the income from the three years, to calculate Mr Lopez's average annual AGI for the period in question. The regulation defining economic disadvantage specifically states that the \$400,000 threshold is an average of the individual's income over a three-year period. Therefore, SBA aggregated Mr. Lopez's income over three years, divided by three, and obtained the figure of \$493,475. The "methodology" is no complicated piece of financial analysis. It is simple arithmetic, dictated by the regulation which calls for obtaining an average over three years of the income of the individual in question. Any question Petitioner had about the methodology could be answered by a simple reading of the plain language of the regulation.

Mr. Lopez's attempt to cure his exceeding the threshold was to reinvest \$100,000 into Petitioner, as permitted by the regulation. However, he made the mistake of thinking his one-time \$100,000 reinvestment would lower his three-year average AGI below the threshold. As an average over the course of three years, \$100,000 is added to Mr. Lopez's aggregate income for the three years and then to be divided by three and one-third of the amount applied to each year. This resulted in an average AGI of \$460,142 that still exceeded the regulatory threshold. Accordingly, Mr. Lopez was presumed not to be economically disadvantaged. Petitioner claims it could not have anticipated this revised calculation, particularly because SBA has not used this method in the past. However, the calculation is mandated by the regulation, which requires calculation of an average AGI over three years.

Mr. Lopez attempted to further cure his AGI by making further reinvestments. However, these reinvestments were made after the expiration of the 30-day period for Petitioner to respond to the LOIT. 13 C.F.R. § 124.304(b)(1). Accordingly, they were too late to be considered as part of the decision to graduate Petitioner early.

Petitioner argues that Mr. Lopez has rebutted the presumption that he is not economically disadvantaged. This rise in his AGI was due to an outside job which he no longer has, and he says he will avoid extra income which raise his AGI in the future. However, the rebuttal must show that the income level was unusual and not likely to occur in the future. This is a two-prong test, the income level must be both unusual and unlikely to occur in the future. A job that lasted for four years and which Mr. Lopez chose to leave cannot be said to be unusual. SBA's SOP gives lottery winnings as an example of unusual income. SOP 80 05 8, at p. 88, By contrast, gambling winnings are treated as ordinary, and not unusual income. *Matter of C & S Paving, Inc.*, SBA No. BDP-231 (2006). While Mr. Lopez says he will not take this income again, it appears to be available to him should he wish it. Therefore, Petitioner has failed to rebut the presumption that Mr. Lopez is economically disadvantaged and lacks access to capital and credit.

Petitioner further argues SBA is handling this Early Graduation differently than it has previously. That there would be back and forth negotiations between the 8(a) concern and the Agency before a final decision would be made. However, the regulation does not require such negotiations. Whether SBA chooses to engage in them is a matter of Agency discretion. *Matter of CTS Group, LLC*, SBA No. BDPT-621 (2025). Here, SBA followed the procedures set out in the regulation. SBA sent Petitioner a LOIT, with a chart that set out the calculation of Mr.

Lopez's AGI. Petitioner had 30 days in which to respond to the LOIT. After SBA received Petitioner's Response, it issued its final decision with its calculation of Mr. Lopez's AGI. SBA's calculations were those required by the regulation Petitioner cannot say they were a surprise, because they are the calculations required by the regulation itself.

Petitioner also cannot say there was any mistake of fact. Petitioner concedes that the figures SBA relied upon were accurate and does not dispute the calculation of Mr. Lopez's income.¹

SBA appears to have considered all of the facts in the record and correctly applied the laws and regulations applicable to these proceedings to those facts prior to denying eligibility. Accordingly, I find that the decision to graduate Petitioner early from the 8(a) BD program was not arbitrary, capricious, or contrary to law. I DENY the appeal and AFFIRM SBA's decision.

IV. Conclusion

SBA conducted a thorough review of all the evidence, based the conclusion on that evidence; and provided a clear rationale for the conclusion. Petitioner has not demonstrated that the Agency's decision was arbitrary, capricious, or contrary to law. Accordingly, the appeal is DENIED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.409(a).

CHRISTOPHER HOLLEMAN
Administrative Judge

¹ Petitioner reliance upon *Matter of Caduceus Healthcare, Inc.*, SBA No. BDPT-578 (2019) is also misplaced. As SBA points out, the language Petitioner relies upon is the standard for considering a motion for summary judgment.