

117TH CONGRESS
2D SESSION

S. 5044

To improve the Federal contracting programs of the Small Business
Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2022

Mr. CARDIN (for himself and Ms. DUCKWORTH) introduced the following bill;
which was read twice and referred to the Committee on Small Business
and Entrepreneurship

A BILL

To improve the Federal contracting programs of the Small
Business Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Contracting
5 Fairness Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) There remain disparities in education, em-
9 ployment, and business history, which includes un-
10 equal contracting opportunities, unequal access to

1 credit or capital, and acquisition of credit or capital
2 under commercially unfavorable circumstances, be-
3 tween individuals defined as socially and economi-
4 cally disadvantaged under the Small Business Act
5 (15 U.S.C. 631 et seq.) and other individuals.

6 (2) The following statistics reiterate the dispari-
7 ties described in paragraph (1):

8 (A) Of the 16,300,000 students enrolled in
9 4-year undergraduate university in the fall of
10 2016, 9,100,000 were White, 3,200,000 were
11 Hispanic, 2,200,000 were Black, and 1,100,000
12 million were Asian. In 2018, 41 percent of all
13 18- to 24-year-olds were enrolled in college.
14 However, 37 percent of Black 18- to 24-year-
15 olds and 26 percent of Hispanic 18- to 24-year-
16 olds were enrolled in college. Additionally, in
17 2019, 29 percent of Black adults had a bach-
18 elor's degree or higher, 21 percent of Latino or
19 Hispanic adults had a bachelor's degree or
20 higher, and 22 percent of Pacific Islander
21 adults had a bachelor's degree or higher, as
22 compared to 45 percent of White adults.

23 (B) In 2020, 24 percent of Black employ-
24 ees and 24 percent of Hispanic employees re-
25 port having been discriminated against at work,

1 compared to 15 percent of White employees re-
2 porting discrimination at work. In the first
3 quarter of 2022, the unemployment rate in the
4 United States among White workers was 3.6
5 percent compared to 6.8 percent among Black
6 workers and 4.9 percent among Hispanic work-
7 ers.

8 (C) With regards to contracting, in 2021,
9 2.78 percent of Federal contracts were awarded
10 to Asian-owned small businesses, 1.67 percent
11 went to Black-owned small businesses, 1.78
12 percent went to Hispanic-owned small busi-
13 nesses, and 2.69 percent went to Native Amer-
14 ican-owned small businesses compared to 15.64
15 percent of Federal contracts awarded to White-
16 owned small businesses. In total, 9.4 percent of
17 contracting dollars went to minority-owned
18 businesses when 19 percent of United States
19 employer businesses are minority-owned.

20 (D) In terms of access to capital, in 2021,
21 15 percent of Asian-owned small businesses re-
22 ceived all the financing they sought, 16 percent
23 of Black-owned small businesses received all the
24 non-emergency financing they sought, and 19
25 percent of Hispanic-owned small businesses re-

1 ceived all the non-emergency financing they
 2 sought, as compared to 35 percent of White-
 3 owned small businesses.

4 (3) Given these disparities, the program estab-
 5 lished under section 8(a) of the Small Business Act
 6 (15 U.S.C. 637(a)) remains a vital part in increas-
 7 ing access to Federal contracting opportunities for
 8 business owners considered socially and economically
 9 disadvantaged, as defined in such Act, and is a crit-
 10 ical business development program for ensuring
 11 these individuals can start and grow their businesses
 12 to compete for Federal contracts.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) ADMINISTRATION; ADMINISTRATOR.—The
 16 terms “Administration” and “Administrator” mean
 17 the Small Business Administration and the Adminis-
 18 trator thereof, respectively.

19 (2) QUALIFIED HUBZONE SMALL BUSINESS
 20 CONCERN; SMALL BUSINESS CONCERN; SMALL BUSI-
 21 NESS CONCERN OWNED AND CONTROLLED BY SERV-
 22 ICE-DISABLED VETERANS; SMALL BUSINESS CON-
 23 CERN OWNED AND CONTROLLED BY WOMEN.—The
 24 terms “qualified HUBZone small business concern”,
 25 “small business concern”, “small business concern

1 owned and controlled by service-disabled veterans”,
 2 and “small business concern owned and controlled
 3 by women” have the meanings given those terms in
 4 section 3 of the Small Business Act (15 U.S.C.
 5 632).

6 **SEC. 4. DURATION OF PARTICIPATION; RAMP-UP PERIOD;**
 7 **TRANSITION PERIOD.**

8 (a) EXTENSION OF PROGRAM PARTICIPATION PE-
 9 RIOD.—Section 7(j)(15) of the Small Business Act (15
 10 U.S.C. 636(j)(15)) is amended—

11 (1) in the matter preceding subparagraph (A),
 12 by striking “nine years” and inserting “10 years”;

13 (2) in subparagraph (A), by striking “four
 14 years” and inserting “5 years”; and

15 (3) in subparagraph (B), by striking “five
 16 years” and inserting “5 years”.

17 (b) RAMP-UP PERIOD.—

18 (1) DEFINITION.—In this subsection, the term
 19 “covered small business concern” means a small
 20 business concern that, as of the date of enactment
 21 of this Act—

22 (A) is in the first 3 years as a participant
 23 in the program established under section 8(a)
 24 of the Small Business Act (15 U.S.C. 637(a));

25 (B) is an individually owned entity; and

(C) has not been awarded a contract under such section 8(a), excluding contracts that meet the simplified acquisition threshold described in section 134 of title 41, United States Code.

(2) ELECTION.—

(A) IN GENERAL.—Subject to subparagraph (B), a covered small business concern may elect at the time of certification to begin the 10-year program participation period under section 7(j)(15) of the Small Business Act (15 U.S.C. 636(j)(15)), as amended by subsection (a), on the earlier of—

(i) the date on which the covered small business concern is awarded a contract under section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(ii) 3 years after the date on which the covered small business concern was certified to participate in the program established under such section 8(a).

(B) LIMITATION.—Notwithstanding subparagraph (A), the program participation period for a covered small business concern under section 7(j)(15) shall not exceed 13 years.

(3) TRAINING.—

1 (A) IN GENERAL.—Except as provided in
 2 subparagraph (B), if a covered small business
 3 concern makes an election under paragraph (2),
 4 the covered small business concern shall—

5 (i) participate in 12 hours per year of
 6 marketing, business development training,
 7 and engagement to show intent in building
 8 capacity to participate in the Federal con-
 9 tracting market, which shall be satisfied
 10 through training provided by the Adminis-
 11 tration, the Minority Business Develop-
 12 ment Agency, resource partners of the Ad-
 13 ministration, Procurement Technical As-
 14 sistance Centers, or national organizations
 15 with expertise in Federal contracting or
 16 that provide contracting certifications; and

17 (ii) log the progress of the covered
 18 small business concern on the training car-
 19 ried out under subparagraph (A) in the an-
 20 nual review submitted by the covered small
 21 business concern.

22 (B) EXCEPTION.—

23 (i) IN GENERAL.—The requirements
 24 under subparagraph (A)(i) shall be waived
 25 for a covered small business concern if, be-

fore reaching 36 hours of training under subparagraph (A)(i), the covered small business concern is awarded a contract under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(ii) REQUIREMENT TO LOG.—Notwithstanding clause (i), a covered small business concern that receives a waiver under clause (i) is required to log the training in which the small business concern participates under subparagraph (A) in accordance with clause (ii) of such subparagraph.

(c) TRANSITION PERIOD.—

(1) DEFINITIONS.—In this subsection—

(A) the term “covered small business concern” means a small business concern that is in the final 3 years of participation in the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)); and

(B) the term “economically disadvantaged individual” means an individual described in section 8(a)(6)(A) of the Small Business Act (15 U.S.C. 637(a)(6)(A)).

(2) INCREASED AMOUNTS.—The Administrator may permit the owner of a covered small business

1 concern to have an adjusted gross income and per-
 2 sonal net worth that is not more than 3 times higher
 3 than the amount allowed for the covered small busi-
 4 ness program under the program established under
 5 section 8(a) of the Small Business Act (15 U.S.C.
 6 637(a)), and continue to be considered economically
 7 disadvantaged for the purposes of that program, if
 8 the owner demonstrates—

9 (A) an investment in the covered small
 10 business concern to continue to compete in the
 11 Federal contracting market, such as investment
 12 in company infrastructure;

13 (B) a plan for how the covered small busi-
 14 ness concern is being prepared to compete for
 15 Federal contracts after exiting the program es-
 16 tablished under section 8(a) of the Small Busi-
 17 ness Act (15 U.S.C. 637(a)); and

18 (C) any other metrics as determined by the
 19 Administrator.

20 **SEC. 5. ADMINISTRATIVE REQUIREMENTS FOR 8(A) FIRMS.**

21 Not later than 90 days after the date of enactment
 22 of this Act, the Administrator shall issue or revise regula-
 23 tions to—

24 (1) make the review process for small business
 25 concerns already certified under section 8(a) of the

1 Small Business Act (15 U.S.C. 637(a)) less burden-
2 some by modifying the annual review of each such
3 small business concern, including by—

4 (A) providing that, with respect to such an
5 annual review, each such small business con-
6 cern—

7 (i) shall submit to the Administrator
8 a new business plan, including a contract
9 forecast, a transitional management plan,
10 and an annual performance of contracts,
11 and a business capture strategy approach
12 only if the plan or approach, as applicable,
13 has changed, as compared with the pre-
14 vious year; and

15 (ii) may indicate to the Administrator
16 that there has been no change to the busi-
17 ness plan or business capture strategy ap-
18 proach described in clause (i) during the
19 previous year; and

20 (B) making such other reductions in the
21 number of forms and documents submitted by
22 each such small business concern that the Ad-
23 ministrator determines necessary, while still en-
24 suring that each such small business concern

1 maintains good standing with respect to the
 2 program carried out under such section 8(a);

3 (2) determine a new process for how the Ad-
 4 ministrator processes the annual review of each such
 5 small business concern that, at a minimum, requires
 6 the Administrator to conduct a review, which shall
 7 be expedited, of the small business concern when the
 8 small business concern is awarded a contract under
 9 such section 8(a); and

10 (3) coordinate with the General Services Ad-
 11 ministration to streamline the Past Performance
 12 Questionnaire form for small business concerns and
 13 Federal agencies participating in the programs es-
 14 tablished under sections 8(a), 8(m), 31, and 36 of
 15 the Small Business Act (15 U.S.C. 637(a), 637(m),
 16 657a, 657f).

17 **SEC. 6. SBA REPRESENTATION ON THE FEDERAL ACQUISI-**
 18 **TION REGULATION COUNCIL.**

19 Section 1302(b) of title 41, United States Code, is
 20 amended—

21 (1) in paragraph (1)—

22 (A) in subparagraph (C), by striking
 23 “and” at the end;

24 (B) in subparagraph (D), by striking the
 25 period at the end and inserting “; and”; and

1 (C) by adding at the end the following:

2 “(E) the Administrator of the Small Busi-
3 ness Administration.”; and

4 (2) in paragraph (2)(A), by striking “subpara-
5 graphs (B) to (D)” and inserting “subparagraphs
6 (B) through (E)”.

7 **SEC. 7. OFFICE OF SMALL AND DISADVANTAGED BUSINESS**

8 **UTILIZATION; DIRECTOR.**

9 Section 15(k)(3) of the Small Business Act (15
10 U.S.C. 644(k)(3)) is amended by inserting “be at a level
11 that is not less senior than the Under Secretary of Defense
12 for Policy or the Under Secretary of Defense for Acquisi-
13 tion and Sustainment,” after “appraisals),”.

14 **SEC. 8. SOLE SOURCE THRESHOLDS.**

15 The Small Business Act (15 U.S.C. 631 et seq.) is
16 amended—

17 (1) in section 8 (15 U.S.C. 637)—

18 (A) in subsection (a)(1)(D)(i), by striking
19 subclause (II) and inserting the following:

20 “(II) the anticipated award price
21 of the contract (including options and
22 options periods) will exceed—

23 “(aa) \$12,000,000 in the
24 case of a contract opportunity as-
25 signed a North American Indus-

1 try Classification System code for
2 research and development, except
3 that such amount shall be
4 \$14,000,000 if the small business
5 concern is a participating or
6 graduated mentor in, or a joint
7 venture established under, the
8 mentor-protege program under
9 section 45;

10 “(bb) \$14,000,000 (or
11 \$16,000,000, if the small busi-
12 ness concern is a participating or
13 graduated mentor in, or a joint
14 venture established under, the
15 mentor-protege program under
16 section 45) in the case of a con-
17 tract opportunity described in
18 item (aa), if the small business
19 concern subcontracts with an in-
20 stitution of higher education de-
21 scribed in section 371(a) of the
22 Higher Education Act of 1965
23 (20 U.S.C. 1067q(a)), for which
24 the limitations on subcontracting
25 under section 46 shall not apply;

1 “(cc) \$14,000,000 in the
2 case of a contract opportunity as-
3 signed a North American Indus-
4 try Classification System code for
5 manufacturing, except that such
6 amount shall be \$16,000,000 if
7 the small business concern is a
8 participating or graduated men-
9 tor in, or a joint venture estab-
10 lished under, the mentor-protege
11 program under section 45; or

12 “(dd) \$10,000,000 in the
13 case of any other contract oppor-
14 tunity, except that such amount
15 shall be \$12,000,000 if the small
16 business concern is a partici-
17 pating or graduated mentor in,
18 or a joint venture established
19 under, the mentor-protege pro-
20 gram under section 45.”; and

21 (B) in subsection (m)—

22 (i) in paragraph (7)(B), by striking
23 clauses (i) and (ii) and inserting the fol-
24 lowing:

1 “(i) \$12,000,000 in the case of a con-
2 tract opportunity assigned a North Amer-
3 ican Industry Classification System code
4 for research and development;

5 “(ii) \$14,000,000 in the case of a con-
6 tract opportunity described in item (aa), if
7 the small business concern partners with
8 an institution of higher education de-
9 scribed in section 371(a) of the Higher
10 Education Act of 1965 (20 U.S.C.
11 1067q(a));

12 “(iii) \$14,000,000 in the case of a
13 contract opportunity assigned a North
14 American Industry Classification System
15 code for manufacturing; or

16 “(iv) \$10,000,000 in the case of any
17 other contract opportunity; and”;

18 (ii) in paragraph (8)(B), by striking
19 clauses (i) and (ii) and inserting the fol-
20 lowing:

21 “(i) \$12,000,000 in the case of a con-
22 tract opportunity assigned a North Amer-
23 ican Industry Classification System code
24 for research and development;

1 “(ii) \$14,000,000 in the case of a con-
 2 tract opportunity described in item (aa), if
 3 the small business concern partners with
 4 an institution of higher education de-
 5 scribed in section 371(a) of the Higher
 6 Education Act of 1965 (20 U.S.C.
 7 1067q(a));

8 “(iii) \$14,000,000 in the case of a
 9 contract opportunity assigned a North
 10 American Industry Classification System
 11 code for manufacturing; or

12 “(iv) \$10,000,000 in the case of any
 13 other contract opportunity; and”;

14 (2) in section 31(c)(2)(A)(ii) (15 U.S.C.
 15 657a(c)(2)(A)(ii)), by striking subclauses (I) and
 16 (II) and inserting the following:

17 “(I) \$12,000,000 in the case of a
 18 contract opportunity assigned a North
 19 American Industry Classification Sys-
 20 tem code for research and develop-
 21 ment;

22 “(II) \$14,000,000 in the case of
 23 a contract opportunity described in
 24 item (aa), if the qualified HUBZone
 25 small business concern partners with

1 an institution of higher education de-
 2 scribed in section 371(a) of the High-
 3 er Education Act of 1965 (20 U.S.C.
 4 1067q(a));

5 “(III) \$14,000,000 in the case of
 6 a contract opportunity assigned a
 7 North American Industry Classifica-
 8 tion System code for manufacturing;
 9 or

10 “(IV) \$10,000,000 in the case of
 11 any other contract opportunity; and”;
 12 and

13 (3) in section 36(c)(2) (15 U.S.C. 657f(c)(2)),
 14 by striking subparagraphs (A) and (B) and inserting
 15 the following:

16 “(A) \$12,000,000 in the case of a contract
 17 opportunity assigned a North American Indus-
 18 try Classification System code for research and
 19 development;

20 “(B) \$14,000,000 in the case of a contract
 21 opportunity described in item (aa), if the small
 22 business concern partners with an institution of
 23 higher education described in section 371(a) of
 24 the Higher Education Act of 1965 (20 U.S.C.
 25 1067q(a));

1 “(C) \$14,000,000 in the case of a contract
 2 opportunity assigned a North American Indus-
 3 try Classification System code for manufac-
 4 turing; or
 5 “(D) \$10,000,000 in the case of any other
 6 contract opportunity; and”.

7 **SEC. 9. MENTOR-PROTEGE PROGRAM.**

8 (a) REMOVAL OF RESTRICTION ON NUMBER OF
 9 MENTORS.—

10 (1) IN GENERAL.—Section 45(b)(3)(A) of the
 11 Small Business Act (15 U.S.C. 657r(b)(3)(A)) is
 12 amended by striking “, including any restrictions”
 13 and all that follows through the end of the subpara-
 14 graph and inserting a period.

15 (2) REGULATIONS.—The Administrator shall
 16 issue regulations to provide that there is no restric-
 17 tion on the number of mentors under section 45 of
 18 the Small Business Act (15 U.S.C. 657r) that a
 19 small business concern participating in the program
 20 established under section 8(a) of the Small Business
 21 Act (15 U.S.C. 637(a)) may have while participating
 22 in the program, if the mentor-protege relationships
 23 do not conflict or compete with each other.

24 (b) DATABASE.—The Administrator shall create an
 25 online centralized database for mentors and proteges (as

1 defined in section 45 of the Small Business Act (15 U.S.C.
 2 657r)) to foster connection and support business develop-
 3 ment between the 2 groups.

4 (c) STREAMLINED PROCESS.—The Administrator
 5 shall issue regulations to streamline the process for apply-
 6 ing to the mentor-protege program established under sec-
 7 tion 45 of the Small Business Act (15 U.S.C. 657r).

8 **SEC. 10. CERTIFICATION PROCESS.**

9 (a) REGULATIONS.—Not later than 1 year after the
 10 date of enactment of this Act, the Administrator shall
 11 issue regulations to streamline the certification process for
 12 small business concerns seeking to become certified as—

13 (1) a participant in the program established
 14 under section 8(a) of the Small Business Act (15
 15 U.S.C. 637(a));

16 (2) a small business concern owned and con-
 17 trolled by women;

18 (3) a qualified HUBZone small business con-
 19 cern; or

20 (4) a small business concern owned and con-
 21 trolled by service-disabled veterans.

22 (b) REPORT.—Not later than 180 days after the date
 23 of enactment of this Act, the Administrator shall submit
 24 to the Committee on Small Business and Entrepreneur-
 25 ship of the Senate and the Committee on Small Business

1 of the House of Representatives a report that outlines how
2 the Administrator plans to streamline the certification
3 process described in subsection (a).

4 **SEC. 11. REPEAL OF BONAFIDE OFFICE RULE.**

5 Section 8(a) of the Small Business Act (15 U.S.C.
6 637(a)) is amended by repealing paragraph (11).

7 **SEC. 12. REPORTS.**

8 (a) DEMOGRAPHIC DATA.—Not later than 180 days
9 after the date of enactment of this Act, and annually
10 thereafter, the Administrator shall—

11 (1) make publicly available on the website of
12 the Administration—

13 (A) disaggregated data on the size and
14 number of contracts in total by the Federal
15 Government and by each Federal agency to
16 small business concerns by demographics, in-
17 cluding, at a minimum, the gender, race, and
18 ethnicity categories published by the Adminis-
19 tration in the disaggregated Federal contracting
20 data in December 2021, and the size of the
21 small business concern; and

22 (B) data on the number of small business
23 concerns owned and controlled by disabled indi-
24 viduals that are participating in the program
25 established under section 8(a); and

1 (2) with consultation with the Administrator of
2 General Services, include on SAM.gov the ability for
3 small business concerns to report the data described
4 in paragraph (1)(B).

5 (b) REVIEW OF SIZE STANDARDS.—Not later than
6 180 days after the date of enactment of this Act, the Ad-
7 ministrator shall conduct a review of and submit to Con-
8 gress a report on the size standards applicable to partici-
9 pants in the program established under section 8(a) of the
10 Small Business Act (15 U.S.C. 637(a)), and outline ways
11 in which the Administration can modify size standards to
12 allow program participants to grow and continue to exist
13 after exiting the program.

14 (c) ABILITY TO OBTAIN SET-ASIDE AND SOLE
15 SOURCE CONTRACTS.—Not later than 1 year after the
16 date of enactment of this Act, the Administrator shall sub-
17 mit to Congress a report on—

18 (1) the ability of small business concerns par-
19 ticipating in the program established under 8(a) of
20 the Small Business Act (15 U.S.C. 637(a)) that are
21 not owned by Alaska Native Corporations or Native
22 Hawaiian Organizations to compete for and success-
23 fully obtain set-aside contracts, including by report-
24 ing data comparing the distribution of awarded set-
25 aside contracts among—

1 (A) small business concerns participating
2 in that program that are not owned by Alaska
3 Native Corporations or Native Hawaiian Orga-
4 nizations; and

5 (B) small business concerns participating
6 in that program that are owned by Alaska Na-
7 tive Corporations or Native Hawaiian Organiza-
8 tions; and

9 (2) the best sole source thresholds to enable
10 small business concerns participating in the program
11 established under 8(a) of the Small Business Act
12 (15 U.S.C. 637(a)) to secure available sole source
13 contracts.

14 (d) CHANGES TO 8(a) PROGRAM.—Not later than
15 180 days after the date of enactment of this Act, the Ad-
16 ministrator shall submit to Congress a report on a plan
17 to implement the changes to the program established
18 under section 8(a) of the Small Business Act (15 U.S.C.
19 637(a)) required under this Act and the amendments
20 made by this Act.

21 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

22 There is authorized to be appropriated to the Admin-
23 istration—

24 (1) for fiscal year 2023 and every fiscal year
25 thereafter—

1 (A) \$20,000,000 to increase the number of
2 procurement center representatives under sec-
3 tion 15(l) of the Small Business Act (15 U.S.C.
4 644(l)) and commercial marketing representa-
5 tives, of which \$2,000,000 of those amounts
6 shall be used to provide those individuals with
7 increased training on the process to be awarded
8 a sole-source contract;

9 (B) \$20,000,000 to increase the number of
10 district office business specialists available
11 under the 8(a) program;

12 (C) \$5,000,000 for costs related to certi-
13 fying small business concerns as small business
14 concerns owned and controlled by women; and

15 (D) \$400,000 for costs related to proc-
16 essing applications to participate in the mentor-
17 protege program established under section 45 of
18 the Small Business Act (15 U.S.C. 657r); and

19 (2) for fiscal year 2023, to remain available
20 until expended, \$2,500,000 to replace the dynamic
21 small business search database of the Administra-
22 tion.

○