

104TH CONGRESS
2D SESSION

H. R. 4080

To amend the Small Business Act to establish programs and undertake efforts to assist and promote the creation, development, and growth of small business concerns owned and controlled by veterans of service in the Armed Forces, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 1996

Mr. FILNER introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committee on Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Small Business Act to establish programs and undertake efforts to assist and promote the creation, development, and growth of small business concerns owned and controlled by veterans of service in the Armed Forces, 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 "Veterans Entrepre-
5 neurship Promotion Act of 1996".

1 **SEC. 2. PURPOSES AND DEFINITIONS.**

2 (a) PURPOSES.—The purposes of this Act are—

3 (1) to foster enhanced entrepreneurship among
4 veterans by providing increased opportunities;

5 (2) to vigorously promote the legitimate inter-
6 ests of business concerns owned and controlled by el-
7 igible veterans; and

8 (3) to ensure that those concerns receive a fair
9 share of purchases made by the Federal Govern-
10 ment.

11 (b) DEFINITIONS.—For the purposes of this Act, the
12 following definitions apply:

13 (1) ADMINISTRATION.—The term “Administra-
14 tion” means the Small Business Administration.

15 (2) ADMINISTRATOR.—The term “Adminis-
16 trator” means the Administrator of the Small Busi-
17 ness Administration.

18 (3) ELIGIBLE VETERAN; SMALL BUSINESS CON-
19 CERN OWNED AND CONTROLLED BY ELIGIBLE VET-
20 ERANS.—The terms “eligible veteran” and “small
21 business concern owned and controlled by eligible
22 veterans” have the meaning such terms have in sec-
23 tion 3(n) of the Small Business Act, as added by
24 section 3 of this Act.

1 **SEC. 3. SMALL BUSINESS ACT DEFINITIONS.**

2 Section 3 of the Small Business Act (15 U.S.C. 632)
3 is amended by adding at the end the following new sub-
4 section:

5 “(o) For purposes of this Act—

6 “(1) the term ‘eligible veteran’ means any per-
7 son who—

8 “(A) is a disabled veteran, as such term is
9 defined in section 4211(3) of title 38, United
10 States Code; or

11 “(B) served on active duty during a period
12 of war or in a campaign or expedition for which
13 a campaign badge is authorized and was dis-
14 charged or released from such duty with other
15 than a dishonorable discharge; and

16 “(2) the term ‘small business concern owned
17 and controlled by eligible veterans’ means a small
18 business concern—

19 “(A) which is at least 51 percent owned by
20 one or more eligible veterans, or in the case of
21 a publicly owned business, at least 51 percent
22 of the stock of which is owned by one or more
23 eligible veterans; and

24 “(B) whose management and daily busi-
25 ness operations are controlled by such veter-
26 ans.”.

1 **SEC. 4. PROCUREMENT ASSISTANCE.**

2 (a) GOVERNMENT-WIDE GOALS.—Subsection (g)(1)
3 of section 15 of the Small Business Act (15 U.S.C. 644)
4 is amended—

5 (1) in the first sentence, by inserting “small
6 business concerns owned and controlled by eligible
7 veterans,” after “small business concerns,”;

8 (2) by inserting after the second sentence the
9 following: “The Government-wide goal for participa-
10 tion by small business concerns owned and con-
11 trolled by eligible veterans shall be established at not
12 less than 5 percent of the total value of all prime
13 contract and subcontract awards for each fiscal
14 year.”; and

15 (3) in the second to last sentence, by inserting
16 “small business concerns owned and controlled by el-
17 ible veterans,” after “small business concerns,”.

18 (b) ANNUAL PARTICIPATION GOALS.—Subsection
19 (g)(2) of section 15 of the Small Business Act (15 U.S.C.
20 644) is amended—

21 (1) in the first sentence, by inserting “by small
22 business concerns owned and controlled by eligible
23 veterans,” after “small business concerns,”;

24 (2) in the second sentence, by inserting “small
25 business concerns owned and controlled by eligible
26 veterans,” after “small business concerns,”;

1 (3) in the fourth sentence, by inserting “small
2 business concerns owned and controlled by eligible
3 veterans, participation by” after “including partici-
4 pation by”; and

5 (4) in subparagraph (B), by striking “under the
6 program established under section 8(a)” and insert-
7 ing “under the programs established under sections
8 8(a) and 30”.

9 **SEC. 5. REPORTING.**

10 (a) **REPORTS TO SMALL BUSINESS ADMINISTRA-**
11 **TION.**—Subsection (h)(1) of section 15 of the Small Busi-
12 ness Act (15 U.S.C. 644) is amended by inserting “small
13 business concerns owned and controlled by eligible veter-
14 ans,” after “small business concerns,”.

15 (b) **REPORTS TO THE PRESIDENT AND CONGRESS.**—
16 Subsection (h)(2) of section 15 of the Small Business Act
17 (15 U.S.C. 644) is amended—

18 (1) by inserting “and Congress” before the pe-
19 riod at the end of the first sentence;

20 (2) in subparagraphs (A), (D), and (E), by in-
21 serting “small business concerns owned and con-
22 trolled by eligible veterans,” after “small business
23 concerns,”; and

24 (3) in subparagraph (D)(ii), by inserting “small
25 business concerns owned and controlled by eligible

1 veterans and competition restricted to” after “re-
2 stricted to”.

3 **SEC. 6. SUBCONTRACTING.**

4 (a) STATEMENT OF POLICY.—Paragraph (1) of sec-
5 tion 8(d) of the Small Business Act (15 U.S.C. 637(d))
6 is amended by inserting “small business concerns owned
7 and controlled by eligible veterans,” after “small business
8 concerns,” in the first and second sentences.

9 (b) CONTRACT CLAUSE.—The contract clause speci-
10 fied in section 8(d)(3) of the Small Business Act (15
11 U.S.C. 637(d)(3)) is amended as follows:

12 (1) Subparagraph (A) of such clause is amend-
13 ed by inserting “small business concerns owned and
14 controlled by eligible veterans,” after “small busi-
15 ness concerns,” in the first and second sentences.

16 (2) Subparagraph (E) of such clause is redesign-
17 nated as subparagraph (F) and the following new
18 subparagraph is inserted after subparagraph (D) of
19 such clause:

20 “(E) The term ‘small business concern owned
21 and controlled by eligible veterans’ shall mean a
22 small business concern—

23 “(i) which is at least 51 per centum owned
24 by one or more eligible veterans; or, in the case
25 of any publicly owned business, at least 51 per

1 centum of the stock of which is owned by one
2 or more eligible veterans; and

3 “(ii) whose management and daily business
4 operations are controlled by such veterans.

5 The contractor shall treat as eligible veterans all in-
6 dividuals who are eligible veterans within the mean-
7 ing of section 3(n) of the Small Business Act.”.

8 (3) Subparagraph (F) of such clause, as redes-
9 ignated by paragraph (2) of this subsection, is
10 amended by inserting “small business concern owned
11 and controlled by eligible veterans,” after “small
12 business concern,”.

13 (c) CONFORMING AMENDMENTS.—Section 8(d) of
14 the Small Business Act (15 U.S.C. 637(d)) is amended—

15 (1) by inserting “small business concerns owned
16 and controlled by eligible veterans,” after “small
17 business concerns,” in paragraphs (4)(D), (6)(A),
18 (6)(C), (6)(F), and (10)(B); and

19 (2) in paragraph (4)(E), by striking “small
20 business concerns and” and inserting “small busi-
21 ness concerns, small business concerns owned and
22 controlled by eligible veterans,”.

1 **SEC. 7. INFORMATION COLLECTION.**

2 (a) INFORMATION ON FEDERAL PROCUREMENT
3 PRACTICES.—The Administrator shall, for each fiscal
4 year—

5 (1) obtain information concerning the procure-
6 ment practices and procedures of each Federal agen-
7 cy having procurement authority; and

8 (2) make such information available to any
9 small business concern requesting it.

10 (b) IDENTIFICATION OF SMALL BUSINESSES OWNED
11 BY ELIGIBLE VETERANS.—The Secretary of Veterans Af-
12 fairs shall, in consultation with the Assistant Secretary of
13 Labor for Veterans' Employment and Training and the
14 Administrator, engage in affirmative efforts each fiscal
15 year to identify small business concerns owned and con-
16 trolled by eligible veterans in the United States. The Sec-
17 retary shall inform each small business concern identified
18 under this paragraph that information on Federal pro-
19 curement is available from the Administrator.

20 **SEC. 8. STATE OF SMALL BUSINESS REPORT.**

21 Section 303(e) of the Small Business and Economic
22 Policy Act of 1980 (15 U.S.C. 631b(e)) is amended—

23 (1) in paragraph (1), by striking “and” after
24 the semicolon;

25 (2) in paragraph (2), by striking the period at
26 the end and inserting a semicolon; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(3) small business concerns owned and con-
4 trolled by eligible veterans.”.

5 **SEC. 9. LOANS TO VETERANS.**

6 (a) PARTICIPATION IN LOANS.—Section 7(a) of the
7 Small Business Act (15 U.S.C. 636) is amended by adding
8 at the end the following new paragraph:

9 “(25)(A) The Administration is empowered to make
10 loans either directly or in cooperation with banks or other
11 financial institutions through agreements to participate on
12 an immediate or deferred (guaranteed) basis to small busi-
13 ness concerns eligible for assistance under section 30.
14 Such assistance may be provided only if the Administra-
15 tion determines that—

16 “(i) the type and amount of such assist-
17 ance requested by such concern is not otherwise
18 available on reasonable terms from other
19 sources;

20 “(ii) with such assistance such concern has
21 a reasonable prospect for operating soundly and
22 profitably within a reasonable period of time;

23 “(iii) the proceeds of such assistance will
24 be used within a reasonable time for plant con-
25 struction, conversion, or expansion, including

1 the acquisition of equipment, facilities, machin-
2 ery, supplies, or material or to supply such con-
3 cern with working capital to be used in the
4 manufacture of articles, equipment, supplies, or
5 material for defense or civilian production or as
6 may be necessary to ensure a well-balanced na-
7 tional economy; and

8 “(iv) such assistance is of such sound
9 value as reasonably to assure that the terms
10 under which it is provided will not be breached
11 by the small business concern.

12 “(B)(i) No loan shall be made under this para-
13 graph if the total amount outstanding and commit-
14 ted (by participation or otherwise) to the borrower
15 would exceed \$750,000.

16 “(ii) Subject to the provisions of clause (i), in
17 agreements to participate in loans on a deferred
18 (guaranteed) basis, participation by the Administra-
19 tion shall be not less than 85 per centum of the bal-
20 ance of the financing outstanding at the time of dis-
21 bursement.

22 “(iii) The rate of interest on financings made
23 on a deferred (guaranteed) basis shall be legal and
24 reasonable.

1 “(iv) Financings made pursuant to this para-
2 graph shall be subject to the following limitations:

3 “(I) No immediate participation may be
4 purchased unless it is shown that a deferred
5 participation is not available.

6 “(II) No direct financing may be made un-
7 less it is shown that a participation is unavail-
8 able.

9 “(C) A direct loan or the Administration’s
10 share of an immediate participation loan made pur-
11 suant to this paragraph shall be any secured debt in-
12 strument—

13 “(i) that is subordinated by its terms to all
14 other borrowings of the issuer;

15 “(ii) the rate of interest on which shall not
16 exceed the current average market yield on out-
17 standing marketable obligations of the United
18 States with remaining periods to maturity com-
19 parable to the average maturities of such loan
20 and adjusted to the nearest one-eighth of 1 per
21 centum;

22 “(iii) the term of which is not more than
23 25 years; and

24 “(iv) the principal on which is amortized at
25 such rate as may be deemed appropriate by the

1 Administration, and the interest on which is
2 payable not less often than annually.”.

3 (b) REGULATIONS.—Not later than 90 days after the
4 date of the enactment of this Act, the Administrator shall
5 issue regulations which ensure that—

6 (1) the maturity for a loan to an eligible vet-
7 eran in which the Administration participates is the
8 longest feasible term commensurate with the repay-
9 ment ability of the eligible veteran, except that the
10 maturity for such a loan may exceed 12 years only
11 if the loan is made to finance real estate or the con-
12 struction or acquisition of equipment which has a
13 useful life which exceeds 12 years; and

14 (2) in assessing the collateral of borrowers for
15 the purpose of making loans in which the Adminis-
16 tration participates, the lender makes a favorable
17 value assessment of such collateral when determin-
18 ing the overall probability of recovery in the event of
19 liquidation.

20 **SEC. 10. ENTREPRENEURIAL TRAINING, COUNSELING, AND**
21 **MANAGEMENT ASSISTANCE.**

22 The Administrator shall take such actions as may be
23 necessary to ensure that small business concerns owned
24 and controlled by eligible veterans have access to programs
25 established under the Small Business Act which provide

1 entrepreneurial training, business development assistance,
2 counseling, and management assistance to small business
3 concerns. Such programs include the Small Business De-
4 velopment Center, Small Business Institute, Service Corps
5 of Retired Executives (SCORE), and Active Corps of Ex-
6 ecutives (ACE) programs.

7 **SEC. 11. GRANTS FOR ELIGIBLE VETERANS OUTREACH**
8 **PROGRAMS.**

9 Section 8(b) of the Small Business Act (15 U.S.C.
10 637(b)) is amended—

11 (1) by striking “and” at the end of paragraph
12 (15);

13 (2) by striking the period at the end of the first
14 paragraph (16) and inserting “; and”;

15 (3) by striking the second paragraph (16); and

16 (4) by adding at the end the following new
17 paragraph:

18 “(17) to make grants to, and enter into con-
19 tracts and cooperative agreements with, educational
20 institutions, private businesses, veterans’ nonprofit
21 community-based organizations, and Federal, State,
22 and local departments and agencies for the estab-
23 lishment and implementation of outreach programs
24 for eligible veterans.”.

1 **SEC. 12. OUTREACH PROGRAM FOR ELIGIBLE VETERANS.**

2 The Administrator, the Secretary of Veterans Affairs,
3 and the Assistant Secretary of Labor for Veterans' Em-
4 ployment and Training shall establish an interagency
5 working group to develop a comprehensive outreach pro-
6 gram to assist eligible veterans. Such outreach program
7 shall include business training and management assist-
8 ance, employment and relocation counseling, and dissemi-
9 nation of information on veterans benefits, veterans enti-
10 tlements, and the Veterans Business Opportunity and De-
11 velopment Program established under section 30 of the
12 Small Business Act, as inserted by section 14 of this Act.

13 **SEC. 13. ASSOCIATE ADMINISTRATOR FOR VETERANS PRO-**
14 **GRAMS.**

15 Section 4(b)(1) of the Small Business Act (15 U.S.C.
16 633(b)(1)) is amended—

17 (1) by striking “four” in the fifth sentence and
18 inserting “five”; and

19 (2) by inserting after the fifth sentence the fol-
20 lowing new sentence:

21 “One of the Associate Administrators shall be designated
22 at the time of his appointment as the Associate Adminis-
23 trator for Veterans Programs who shall be a career em-
24 ployee in the Senior Executive Service and who shall be
25 responsible to the Administrator for the formulation and
26 execution of policies and programs under this Act which

1 provide assistance to small business concerns owned and
2 controlled by eligible veterans, including programs estab-
3 lished under section 30.”.

4 **SEC. 14. ESTABLISHMENT OF VETERANS BUSINESS OPPOR-**
5 **TUNITY AND DEVELOPMENT PROGRAM.**

6 The Small Business Act (15 U.S.C. 631 et seq.) is
7 amended by redesignating section 30 as section 31 and
8 by inserting after section 29 the following new section:

9 “SEC. 30. (a)(1) It shall be the duty of the Adminis-
10 tration and it is hereby empowered, whenever it deter-
11 mines such action is necessary or appropriate—

12 “(A) to enter into contracts with the United
13 States Government and any department, agency, or
14 officer thereof having procurement powers obligating
15 the Administration to furnish articles, equipment,
16 supplies, services, or materials to the Government or
17 to perform construction work for the Government.
18 In any case in which the Administration certifies to
19 any officer of the Government having procurement
20 powers that the Administration is competent and re-
21 sponsible to perform any specific Government pro-
22 curement contract to be let by any such officer, such
23 officer shall be authorized in his discretion to let
24 such procurement contract to the Administration
25 upon such terms and conditions as may be agreed

1 upon between the Administration and the procure-
2 ment officer. Whenever the Administration and such
3 procurement officer fail to agree, the matter shall be
4 submitted for determination to the Secretary or the
5 head of the appropriate department or agency by the
6 Administrator. Not later than 5 days from the date
7 the Administration is notified of a procurement offi-
8 cer's adverse decision, the Administration may notify
9 the contracting officer of the intent to appeal such
10 adverse decision, and within 15 days of such date
11 the Administrator shall file a written request for a
12 reconsideration of the adverse decision with the Sec-
13 retary of the department or agency head. For the
14 purposes of this subparagraph, a procurement offi-
15 cer's adverse decision includes a decision not to
16 make available for award pursuant to this subsection
17 a particular procurement requirement or the failure
18 to agree on the terms and conditions of a contract
19 to be awarded under the authority of this subsection.
20 Upon receipt of the notice of intent to appeal, the
21 Secretary of the department or agency head shall
22 suspend further action regarding the procurement
23 until a written decision on the Administrator's re-
24 quest for reconsideration has been issued by such
25 Secretary or agency head, unless such officer makes

1 a written determination that urgent and compelling
2 circumstances which significantly affect interests of
3 the United States will not permit waiting for a re-
4 consideration of the adverse decision. If the Admin-
5 istrator's request for reconsideration is denied, the
6 Secretary of the department or agency head shall
7 specify the reasons why the selected firm was deter-
8 mined to be incapable to perform the procurement
9 requirement, and the findings supporting such deter-
10 mination, which shall be made a part of the contract
11 file for the requirement. A contract may not be
12 awarded under this subsection if the award of the
13 contract would result in a cost to the awarding agen-
14 cy which exceeds a fair market price;

15 “(B) to arrange for the performance of such
16 procurement contracts by negotiating or otherwise
17 letting subcontracts to small business concerns
18 owned and controlled by eligible veterans for con-
19 struction work, services, or the manufacture, supply,
20 assembly of such articles, equipment, supplies, mate-
21 rials, or parts thereof, or servicing or processing in
22 connection therewith, or such management services
23 as may be necessary to enable the Administration to
24 perform such contracts; and

1 “(C) to make an award to a small business con-
2 cern owned and controlled by eligible veterans which
3 has completed its period of program participation as
4 prescribed by subsection (b)(6), if—

5 “(i) the contract will be awarded as a re-
6 sult of an offer (including price) submitted in
7 response to a published solicitation relating to
8 a competition conducted pursuant to subpara-
9 graph (D); and

10 “(ii) the prospective contract awardee was
11 a program participant eligible for award of the
12 contract on the date specified for receipt of of-
13 fers contained in the contract solicitation.

14 “(D)(i) A contract opportunity offered for
15 award pursuant to this subsection shall be awarded
16 on the basis of competition restricted to eligible pro-
17 gram participants if—

18 “(I) there is a reasonable expectation that
19 at least two eligible program participants will
20 submit offers and that award can be made at
21 a fair market price, and

22 “(II) the anticipated award price of the
23 contract (including options) will exceed
24 \$5,000,000 in the case of a contract oppor-
25 tunity assigned a standard industrial classifica-

1 tion code for manufacturing and \$3,000,000
2 (including options) in the case of all other con-
3 tract opportunities.

4 “(ii) The Associate Administrator for Veteran
5 Programs, on a nondelegable basis, is authorized to
6 approve a request from an agency to award a con-
7 tract opportunity under this subsection on the basis
8 of a competition restricted to eligible program par-
9 ticipants even if the anticipated award price is not
10 expected to exceed the dollar amounts specified in
11 clause (i)(II). Such approvals shall be granted only
12 on a limited basis.

13 “(2)(A) Any program participant selected by the Ad-
14 ministration to perform a contract to be let pursuant to
15 this subsection shall, when practicable, participate in any
16 negotiation of the terms and conditions of such contract.

17 “(B)(i) For purposes of paragraph (1), a ‘fair market
18 price’ shall be determined by the agency offering the pro-
19 curement requirement to the Administration, in accord-
20 ance with clauses (ii) and (iii).

21 “(ii) The estimate of a current fair market price for
22 a new procurement requirement, or a requirement that
23 does not have a satisfactory procurement history, shall be
24 derived from a price or cost analysis. Such analysis may
25 take into account prevailing market conditions, commer-

1 cial prices for similar products or services, or data ob-
2 tained from any other agency. Such analysis shall consider
3 such cost or pricing data as may be timely submitted by
4 the Administration.

5 “(iii) The estimate of a current fair market price for
6 a procurement requirement that has a satisfactory pro-
7 curement history shall be based on recent award prices
8 adjusted to ensure comparability. Such adjustments shall
9 take into account differences in quantities, performance
10 times, plans, specifications, transportation costs, packag-
11 ing and packing costs, labor and materials costs, overhead
12 costs, and any other additional costs which may be deemed
13 appropriate.

14 “(C) An agency offering a procurement requirement
15 for potential award pursuant to this subsection shall, upon
16 the request of the Administration, promptly submit to the
17 Administration a written statement detailing the method
18 used by the agency to estimate the current fair market
19 price for such contract, identifying the information, stud-
20 ies, analyses, and other data used by such agency. The
21 agency’s estimate of the current fair market price (and
22 any supporting data furnished to the Administration) shall
23 not be disclosed to any potential offeror (other than the
24 Administration).

1 “(D) A small business concern selected by the Admin-
2 istration to perform or negotiate a contract to be let pur-
3 suant to this subsection may request the Administration
4 to protect the agency’s estimate of the fair market price
5 for such contract pursuant to paragraph (1)(A).

6 “(3) In order to be eligible for selection by the Ad-
7 ministration to perform or negotiate a contract to be let
8 pursuant to this subsection a small business concern
9 owned and controlled by eligible veterans shall meet cer-
10 tification requirements contained in regulations issued by
11 the Administrator. Such certification requirements shall
12 include:

13 “(A) A requirement that such concern certify
14 on an annual basis that it meets the requirements
15 of section 3(n) concerning ownership and control by
16 eligible veterans. Certification of ownership and con-
17 trol by eligible veterans shall be accompanied by doc-
18 umentation obtained from the Secretary of Veterans
19 Affairs by such concern which verifies that individ-
20 uals who own and control such concern are eligible
21 veterans as defined in section 3(n).

22 “(B) A requirement that such concern certify
23 that it has been in business as a small business con-
24 cern owned and controlled by eligible veterans for
25 the 1 year period beginning before the date of appli-

1 cation for program participation; except that the Ad-
2 ministrator may waive such requirement in appro-
3 priate cases.

4 “(C) A requirement that such concern certify
5 that it has not received and will not assert eligibility
6 to receive a procurement contract pursuant to sec-
7 tion 8(a) of this Act.

8 “(4) The Administrator shall also issue regulations
9 establishing a limitation on the personal net worth of a
10 program participant.

11 “(A) Each program participant shall annually
12 submit to the Administration—

13 “(i) a personal financial statement for each
14 owner upon whom eligibility was based; and

15 “(ii) such other information as the Admin-
16 istration may deem necessary to make the de-
17 terminations required by this paragraph.

18 “(B)(i) Whenever, on the basis of information
19 provided by a program participant pursuant to sub-
20 paragraph (A) or otherwise, the Administration has
21 reason to believe that the amount of funds or other
22 assets withdrawn from a program participant for the
23 personal benefit of its owners or any person or en-
24 tity affiliated with such owners may have been un-
25 duly excessive, the Administration shall conduct a

1 review to determine whether such withdrawal of
2 funds or other assets was detrimental to the achieve-
3 ment of the targets, objectives, and goals contained
4 in such program participant’s business plan.

5 “(ii) If the Administration determines, pursuant
6 to such review, that funds or other assets have been
7 withdrawn to the detriment of the program partici-
8 pant’s business, the Administration shall—

9 “(I) initiate a proceeding to terminate the
10 program participant pursuant to subsection
11 (b)(1)(F), subject to the right to a hearing
12 under paragraph (6); or

13 “(II) require an appropriate reinvestment
14 of funds or other assets and such other steps as
15 the Administration may deem necessary to en-
16 sure the protection of the concern.

17 “(C) Whenever the Administration computes
18 personal net worth for any purpose under this para-
19 graph, it shall exclude from such computation—

20 “(i) the value of investments that eligible
21 veteran owners have in their concerns, except
22 that such value shall be taken into account
23 under this paragraph when comparing such
24 concerns to other concerns in the same business

1 area that are owned by other than eligible vet-
2 erans;

3 “(ii) the equity that eligible veteran owners
4 have in their primary personal residences, ex-
5 cept that any portion of such equity that is at-
6 tributable to unduly excessive withdrawals from
7 a program participant or a concern applying for
8 program participation shall be taken into ac-
9 count.

10 “(5)(A) No small business concern shall be deemed
11 eligible for any assistance pursuant to this subsection un-
12 less the Administration determines that with contract, fi-
13 nancial, technical, and management support the small
14 business concern will be able to perform contracts which
15 may be awarded to such concern under paragraph (1)(B).

16 “(B) Limitations established by the Administration
17 in its regulations and procedures restricting the award of
18 contracts pursuant to this subsection to a limited number
19 of standard industrial classification codes in an approved
20 business plan shall not be applied in a manner that inhib-
21 its the logical business progression by a participating
22 small business concern into areas of industrial endeavor
23 where such concern has the potential for success.

24 “(6)(A) Subject to the provisions of subparagraph
25 (E), the Administrator, prior to taking any action de-

1 scribed in subparagraph (B), shall provide the small busi-
2 ness concern that is the subject of such action, an oppor-
3 tunity for a hearing on the record, in accordance with
4 chapter 5 of title 5, United States Code.

5 “(B) The actions referred to in subparagraph (A)
6 are—

7 “(i) denial of program admission based upon a
8 negative determination pursuant to paragraph (4);

9 “(ii) a termination pursuant to subsection
10 (b)(1)(F);

11 “(iii) a graduation pursuant to subsection
12 (b)(1)(H); and

13 “(iv) the denial of a request to issue a waiver
14 pursuant to paragraph (15)(B).

15 “(C) The Administrator’s proposed action, in any
16 proceeding conducted under the authority of this para-
17 graph, shall be sustained unless it is found to be arbitrary,
18 capricious, or contrary to law.

19 “(D) A decision rendered pursuant to this paragraph
20 shall be the final decision of the Administration and shall
21 be binding upon the Administration and those within its
22 employ.

23 “(E) The adjudicator selected to preside over a pro-
24 ceeding conducted under the authority of this paragraph
25 shall decline to accept jurisdiction over any matter that—

1 “(i) does not, on its face, allege facts that, if
2 proven to be true, would warrant reversal or modi-
3 fication of the Administration’s position;

4 “(ii) is untimely filed;

5 “(iii) is not filed in accordance with the rules
6 of procedure governing such proceedings; or

7 “(iv) has been decided by or is the subject of
8 an adjudication before a court of competent jurisdic-
9 tion over such matters.

10 “(F) Proceedings conducted pursuant to the author-
11 ity of this paragraph shall be completed and a decision
12 rendered, insofar as practicable, within 90 days after a
13 petition for a hearing is filed with the adjudicating office.

14 “(7) The Administration shall develop and implement
15 an outreach program to inform and recruit small business
16 concerns to apply for eligibility for assistance under this
17 subsection. Such program shall make a sustained and sub-
18 stantial effort to solicit applications for certification from
19 small business concerns located in areas of concentrated
20 unemployment or underemployment or within labor sur-
21 plus areas and within States having relatively few program
22 participants and from small business concerns owned and
23 controlled by eligible veterans in industry categories that
24 have not substantially participated in the award of con-
25 tracts let under the authority of this subsection.

1 “(8) To the maximum extent practicable, construc-
2 tion subcontracts awarded by the Administration pursuant
3 to this subsection shall be awarded within the county or
4 State where the work is to be performed.

5 “(9)(A) The Administration shall require each con-
6 cern eligible to receive subcontracts pursuant to this sub-
7 section to annually prepare and submit to the Administra-
8 tion a capability statement. Such statement shall briefly
9 describe such concern’s various contract performance ca-
10 pabilities and shall contain the name and telephone num-
11 ber of the veterans business counselor assigned such con-
12 cern. The Administration shall separate such statements
13 by those primarily dependent upon local contract support
14 and those primarily requiring a national marketing effort.
15 Statements primarily dependent upon local contract sup-
16 port shall be disseminated to appropriate buying activities
17 in the marketing area of the concern. The remaining state-
18 ments shall be disseminated to the directors of small and
19 disadvantaged business utilization for the appropriate
20 agencies who shall further distribute such statements to
21 buying activities with such agencies that may purchase the
22 types of items or services described on the capability state-
23 ments.

24 “(B) Contracting activities receiving capability state-
25 ments shall, within 60 days after receipt, contact the rel-

1 evant veterans business counselor to indicate the number,
2 type, and approximate dollar value of contract opportuni-
3 ties that such activities may be awarding over the succeed-
4 ing 12-month period and which may be appropriate to con-
5 sider for award to those concerns for which it has received
6 capability statements.

7 “(10)(A) A concern may not be awarded a contract
8 under this subsection as a small business concern unless
9 the concern agrees that—

10 “(i) in the case of a contract for services (ex-
11 cept construction), at least 50 percent of the cost of
12 contract performance incurred for personnel shall be
13 expended for employees of the concern; and

14 “(ii) in the case of a contract for procurement
15 of supplies (other than procurement from a regular
16 dealer in such supplies), the concern will perform
17 work for at least 50 percent of the cost of manufac-
18 turing the supplies (not including the cost of mate-
19 rials).

20 “(B) The Administration may change the percentage
21 under clause (i) or (ii) of subparagraph (A) if the Admin-
22 istrator determines that such change is necessary to re-
23 flect conventional industry practices among business con-
24 cerns that are below the numerical size standard for busi-
25 nesses in that industry category. A percentage established

1 under the preceding sentence may not differ from a per-
2 centage established under section 15(o).

3 “(C) The Administration shall establish, through
4 public rulemaking, requirements similar to those specified
5 in subparagraph (A) to be applicable to contracts for gen-
6 eral and specialty construction and to contracts for any
7 other industry category not otherwise subject to the re-
8 quirements of such subparagraph. The percentage applica-
9 ble to any such requirement shall be determined in accord-
10 ance with subparagraph (B), except that such a percent-
11 age may not differ from a percentage established under
12 section 15(o) for the same industry category.

13 “(11)(A) An otherwise responsible business concern
14 that is in compliance with the requirements of subpara-
15 graph (B) shall not be denied the opportunity to submit
16 and have considered its offer for any procurement contract
17 for the supply of a product to be let pursuant to this sub-
18 section or subsection (a) of section 15 solely because such
19 concern is other than the actual manufacturer or proc-
20 essor of the product to be supplied under the contract.

21 “(B) To be in compliance with the requirements re-
22 ferred to in subparagraph (A), such a business concern
23 shall—

24 “(i) be primarily engaged in the wholesale or
25 retail trade;

1 “(ii) be a small business concern under the nu-
2 merical size standard for the Standard Industrial
3 Classification Code assigned to the contract solicita-
4 tion on which the offer is being made;

5 “(iii) be a regular dealer, as defined pursuant
6 to section 35(a) of title 41, United States Code
7 (popularly referred to as the Walsh-Healey Public
8 Contracts Act), in the product to be offered the Gov-
9 ernment; and

10 “(iv) represent that it will supply the product of
11 a domestic small business manufacturer or proc-
12 essor, unless a waiver of such requirement is grant-
13 ed—

14 “(I) by the Administrator, after reviewing
15 a determination by the contracting officer that
16 no small business manufacturer or processor
17 can reasonably be expected to offer a product
18 meeting the specifications (including period for
19 performance) required of an offeror by the so-
20 licitation; or

21 “(II) by the Administrator for a product
22 (or class of products), after determining that no
23 small business manufacturer or processor is
24 available to participate in the Federal procure-
25 ment market.

1 “(12)(A) No person within the employ of the Admin-
2 istration shall, during the term of such employment and
3 for a period of 2 years after such employment has been
4 terminated, engage in any activity or transaction specified
5 in subparagraph (B) with respect to any program partici-
6 pant certified during such person’s term of employment,
7 if such person participated personally (either directly or
8 indirectly) in decisionmaking responsibilities relating to
9 such program participant or with respect to the adminis-
10 tration of any assistance provided to program participants
11 generally under this subsection or subsection (b).

12 “(B) The activities and transactions prohibited by
13 subparagraph (A) include—

14 “(i) the buying, selling, or receiving (except by
15 inheritance) of any legal or beneficial ownership of
16 stock or any other ownership interest or the right to
17 acquire any such interest;

18 “(ii) the entering into or execution of any writ-
19 ten or oral agreement (whether or not legally en-
20 forceable) to purchase or otherwise obtain any right
21 or interest described in clause (i); and

22 “(iii) the receipt of any other benefit or right
23 that may be an incident of ownership.

24 “(C)(i) The employees designated in clause (ii) shall
25 annually submit a written certification to the Administra-

1 tion regarding compliance with the requirements of this
2 paragraph.

3 “(ii) The employees referred to in clause (i) are—

4 “(I) regional administrators;

5 “(II) district directors;

6 “(III) the Associate Administrator for Veterans
7 Programs;

8 “(IV) employees whose principal duties relate to
9 the award of contracts or the provision of other as-
10 sistance pursuant to this subsection or subsection
11 (b); and

12 “(V) such other employees as the Administrator
13 may deem appropriate.

14 “(iii) Any present or former employee of the Adminis-
15 tration who violates this paragraph shall be subject to a
16 civil penalty, assessed by the Attorney General, that shall
17 not exceed 300 percent of the maximum amount of gain
18 such employee realized or could have realized as a result
19 of engaging in those activities and transactions prescribed
20 by subparagraph (B).

21 “(iv) In addition to any other remedy or sanction pro-
22 vided for under law or regulation, any person who falsely
23 certifies pursuant to clause (i) shall be subject to a civil
24 penalty under the Program Fraud Civil Remedies Act of
25 1986 (31 U.S.C. 3801–3812).

1 “(13)(A) Any employee of the Administration who
2 has authority to take, direct others to take, recommend,
3 or approve any action with respect to any program or ac-
4 tivity conducted pursuant to this subsection or subsection
5 (b), shall not, with respect to any such action, exercise
6 or threaten to exercise such authority on the basis of the
7 political activity or affiliation of any party. Employees of
8 the Administration shall expeditiously report to the In-
9 spector General of the Administration any such action for
10 which such employee’s participation has been solicited or
11 directed.

12 “(B) Any employee who willfully and knowingly vio-
13 lates subparagraph (A) shall be subject to disciplinary ac-
14 tion, imposed by the Administrator, which may consist of
15 separation from service, reduction in grade, suspension,
16 or reprimand.

17 “(C) Subparagraph (A) shall not apply to any action
18 taken as a penalty or other enforcement of a violation of
19 any law, rule, or regulation prohibiting or restricting polit-
20 ical activity.

21 “(D) The prohibitions of subparagraph (A), and re-
22 medial measures provided for under subparagraphs (B)
23 and (C) with regard to such prohibitions, shall be in addi-
24 tion to, and not in lieu of, any other prohibitions, meas-

1 ures, or liabilities that may arise under any other provision
2 of law.

3 “(14)(A) Small business concerns participating in the
4 program under subsection (b) and eligible to receive con-
5 tracts pursuant to this subsection shall semiannually re-
6 port to their assigned veterans business counselor the fol-
7 lowing:

8 “(i) A listing of any agents, representatives, at-
9 torneys, accountants, consultants, and other parties
10 (other than employees) receiving compensation to as-
11 sist in obtaining a Federal contract for such pro-
12 gram participant.

13 “(ii) The amount of compensation received by
14 any person listed under clause (i) during the rel-
15 evant reporting period and a description of the ac-
16 tivities performed in return for such compensation.

17 “(B) The veterans business counselor shall promptly
18 review and forward such report to the Associate Adminis-
19 trator for Veterans Programs. Any report that raises a
20 suspicion of improper activity shall be reported imme-
21 diately to the Inspector General of the Administration.

22 “(C) The failure to submit a report pursuant to the
23 requirements of this subsection and applicable regulations
24 shall be considered ‘good cause’ for the initiation of a ter-
25 mination proceeding pursuant to subsection (b)(1)(F).

1 “(15)(A) Subject to the provisions of subparagraph
2 (B), a contract (including options) awarded pursuant to
3 this subsection shall be performed by the concern that ini-
4 tially received such contract. Notwithstanding the provi-
5 sions of the preceding sentence, if the owner or owners
6 upon whom eligibility was based relinquish ownership or
7 control of such concern, or enter into any agreement to
8 relinquish such ownership or control, such contract or op-
9 tion shall be terminated for the convenience of the Govern-
10 ment, except that no repurchase costs or other damages
11 may be assessed against such concerns due solely to the
12 provisions of this subparagraph.

13 “(B) The Administrator may, as a matter of discre-
14 tion and on a nondelegable basis, waive the requirements
15 of subparagraph (A) if requested to do so prior to the ac-
16 tual relinquishment of ownership or control. In addition
17 to the requirement of the preceding sentence, a waiver
18 may be given only if any of the following conditions exist:

19 “(i) It is necessary for the owners of the con-
20 cern to surrender partial control of such concern on
21 a temporary basis in order to obtain equity financ-
22 ing.

23 “(ii) The head of the contracting agency for
24 which the contract is being performed certifies that
25 termination of the contract would severely impair at-

1 tainment of the agency’s program objectives or mis-
2 sions.

3 “(iii) Ownership and control of the concern that
4 is performing the contract will pass to another small
5 business concern that is a program participant, but
6 only if the acquiring firm would otherwise be eligible
7 to receive the award directly pursuant to this sub-
8 section.

9 “(iv) The individuals upon whom eligibility was
10 based are no longer able to exercise control of the
11 concern due to incapacity or death.

12 “(v) In order to raise equity capital, it is nec-
13 essary for the owners of the concern upon whom eli-
14 gibility was based to relinquish ownership of a ma-
15 jority of the voting stock of such concern, but only
16 if—

17 “(I) such concern has exited the eligible
18 veterans business opportunity and development
19 assistance program;

20 “(II) such owners will maintain ownership
21 of the largest single outstanding block of voting
22 stock (including stock held by affiliated par-
23 ties); and

24 “(III) such owners will maintain control of
25 daily business operations.

1 “(C) Concerns performing contracts awarded pursu-
2 ant to this subsection shall be required to notify the Ad-
3 ministration immediately upon entering an agreement (ei-
4 ther oral or in writing) to transfer all or part of its stock
5 or other ownership interest to any other party.

6 “(D) Notwithstanding any other provision of law, for
7 the purposes of determining ownership and control of a
8 concern under this section, any potential ownership inter-
9 ests held by investment companies licensed under the
10 Small Business Investment Act of 1958 shall be treated
11 in the same manner as interests held by the individuals
12 upon whom eligibility is based.

13 “(b)(1) There is established within the Administra-
14 tion an eligible veterans business opportunity and develop-
15 ment assistance program (hereinafter in this section re-
16 ferred to as the ‘program’) which shall provide assistance
17 exclusively for small business concerns eligible to receive
18 contracts pursuant to subsection (a). The program, and
19 all other services and activities authorized under this sub-
20 section and subsection (a), shall be managed by the Asso-
21 ciate Administrator for Veterans Programs under the su-
22 pervision of, and responsible to, the Administrator:

23 “(A) The program shall—

24 “(i) assist small business concerns partici-
25 pating in the program (either through public or

1 private organizations) to develop and maintain
2 comprehensive business plans which set forth
3 the program participant's specific business tar-
4 gets, objectives, and goals developed and main-
5 tained in conformity with subparagraph (D);

6 “(ii) provide for such other nonfinancial
7 services as deemed necessary for the establish-
8 ment, preservation, and growth of small busi-
9 ness concerns participating in the program, in-
10 cluding (I) loan packaging, (II) financial coun-
11 seling, (III) marketing assistance, and (IV)
12 management assistance;

13 “(iii) assist small business concerns par-
14 ticipating in the program to obtain equity and
15 debt financing;

16 “(iv) establish regular performance mon-
17 itoring and reporting systems for small business
18 concerns participating in the program to assure
19 compliance with their business plans;

20 “(v) analyze and report the causes of suc-
21 cess and failure of small business concerns par-
22 ticipating in the program; and

23 “(vi) provide assistance necessary to help
24 small business concerns participating in the
25 program to procure surety bonds, including (I)

1 the preparation of application forms required to
2 receive a surety bond, (II) special management
3 and technical assistance designed to meet spe-
4 cific needs of small business concerns partici-
5 pating in the program and which have received
6 or are applying to receive a surety bond, and
7 (III) preparation of all forms necessary to re-
8 ceive a surety bond guarantee from the Admin-
9 istration pursuant to title IV, part B of the
10 Small Business Investment Act of 1958.

11 “(B) Small business concerns eligible to receive
12 contracts pursuant to subsection (a) shall participate
13 in the program.

14 “(C)(i) A small business concern participating
15 in any program or activity conducted under the au-
16 thority of this subsection shall be permitted contin-
17 ued participation and eligibility in such program or
18 activity for a period of 5 years from the date of cer-
19 tification for program participation.

20 “(ii) Nothing contained in this subparagraph
21 shall be deemed to prevent the Administration from
22 instituting a termination or graduation pursuant to
23 subparagraph (F) or (J) for issues unrelated to the
24 expiration of any time period limitation.

1 “(D)(i) Promptly after certification under para-
2 graph (2) a program participant shall submit a busi-
3 ness plan (hereinafter in this section referred to as
4 the ‘plan’) as described in clause (ii) of this subpara-
5 graph for review by the veterans business counselor
6 assigned to assist such program participant. The
7 plan may be a revision of a preliminary business
8 plan submitted by the program participant or re-
9 quired by the Administration as a part of the appli-
10 cation for certification under this section. Such plan,
11 and subsequent modifications submitted under
12 clause (iii) of this subparagraph, shall be approved
13 by the veterans business counselor prior to the pro-
14 gram participant being eligible for award of a con-
15 tract pursuant to subsection (a).

16 “(ii) The plans submitted under this subpara-
17 graph shall include the following:

18 “(I) An analysis of market potential and
19 other business analyses estimating the program
20 participant’s prospects for profitable operations
21 during the term of program participation and
22 after graduation.

23 “(II) An analysis of the program partici-
24 pant’s strengths and weaknesses with particular
25 attention to financial, managerial, technical,

1 and personnel conditions which are likely to im-
2 pede small business concerns from receiving
3 contracts other than those awarded under sub-
4 section (a).

5 “(III) Specific targets, objectives, and
6 goals for the business development of the pro-
7 gram participant during the next and succeed-
8 ing years utilizing the results of the analyses
9 conducted pursuant to subclauses (I) and (II).

10 “(IV) A transition management plan out-
11 lining specific steps to assure profitable busi-
12 ness operations after graduation (to be incor-
13 porated into the program participant’s plan
14 during the first year of the transitional stage of
15 program participation).

16 “(V) Estimates of contract awards pursu-
17 ant to subsection (a) and from other sources
18 which the program participant will require to
19 meet the specific targets, objectives, and goals
20 for the years covered by its plan. The estimates
21 established shall be consistent with the provi-
22 sions of subparagraph (I) and subsection (a).

23 “(iii) Each program participant shall annually
24 review its currently approved plan with its veterans
25 business counselor and modify such plan as may be

1 appropriate. Any modified plan shall be submitted to
2 the Administration for approval. The currently ap-
3 proved plan shall be considered valid until such time
4 as a modified plan is approved by the veterans busi-
5 ness counselor. Annual reviews pertaining to years
6 in the transitional stage of program participation
7 shall require, as appropriate, a written verification
8 that such program participant has complied with the
9 requirements of subparagraph (I).

10 “(iv) Each program participant shall annually
11 forecast its needs for contract awards under sub-
12 section (a) for the next program year and the suc-
13 ceeding program year during the review of its busi-
14 ness plan, conducted pursuant to clause (iii). Such
15 forecast shall be known as the section 30(a) contract
16 support level and shall be included in the program
17 participant’s business plan. Such forecast shall in-
18 clude—

19 “(I) the aggregate dollar value of contract
20 support to be sought under subsection (a), re-
21 flecting compliance with the requirements of
22 subparagraph (I),

23 “(II) the types of contract opportunities
24 being sought, identified by Standard Industrial
25 Classification (SIC) Code or otherwise,

1 “(III) such other information as may be
2 requested by the veterans business counselor to
3 provide effective business development assist-
4 ance to the program participant.

5 “(E) A small business concern participating in
6 the program conducted under the authority of this
7 subsection and eligible for the award of contracts
8 pursuant to subsection (a) shall be denied all such
9 assistance if such concern—

10 “(i) voluntarily elects not to continue par-
11 ticipation;

12 “(ii) participates in the program for a pe-
13 riod in excess of the time limits prescribed by
14 paragraph (6);

15 “(iii) is terminated pursuant to a termi-
16 nation proceeding conducted in accordance with
17 subsection (a)(6); or

18 “(iv) is graduated pursuant to a gradua-
19 tion proceeding conducted in accordance with
20 subsection (a)(6).

21 “(F) For the purposes of this section, the terms
22 ‘terminated’ or ‘termination’ mean the total denial
23 or suspension of any assistance provided pursuant to
24 this section prior to the graduation of the participat-
25 ing small business concern pursuant to subpara-

1 graph (H) or the expiration of the maximum pro-
2 gram participation in terms prescribed by paragraph
3 (6). An action for termination shall be based upon
4 good cause, including—

5 “(i) the failure by such concern to main-
6 tain its eligibility for program participation;

7 “(ii) a demonstrated pattern of unjustified
8 delinquent performance or terminations for de-
9 fault with respect to contracts awarded under
10 the authority of subsection (a);

11 “(iii) a demonstrated pattern of failing to
12 make required submissions or responses to the
13 Administration in a timely manner;

14 “(iv) the willful violation of any rule or
15 regulation of the Administration pertaining to
16 material issues;

17 “(v) the debarment of the concern or its el-
18 igible veteran owners by any agency pursuant
19 to subpart 9.4 of title 48, Code of Federal Reg-
20 ulations (or any successor regulation); or

21 “(vi) the conviction of the eligible veteran
22 owner or an officer of the concern for any of-
23 fense indicating a lack of business integrity in-
24 cluding any conviction for embezzlement, theft,
25 forgery, bribery, falsification or violation of sec-

1 tion 16. For purposes of this clause, no termi-
2 nation action shall be taken with respect to an
3 eligible veteran owner solely because of the con-
4 viction of an officer of the concern (who is other
5 than an eligible veteran owner) unless such
6 owner conspired with, abetted, or otherwise
7 knowingly acquiesced in the activity or omission
8 that was the basis of such officer’s conviction.

9 “(G) The Director of the Division may initiate
10 a termination proceeding by recommending such ac-
11 tion to the Associate Administrator for Veterans
12 Programs. Whenever the Associate Administrator, or
13 a designee of such officer, determines such termi-
14 nation is appropriate, within 15 days after making
15 such a determination the program participant shall
16 be provided a written notice of intent to terminate,
17 specifying the reasons for such action. No program
18 participant shall be terminated from the program
19 pursuant to subparagraph (F) without first being af-
20 forded an opportunity for a hearing in accordance
21 with subsection (a)(6).

22 “(H) For the purposes of this section, the term
23 ‘graduated’ or ‘graduation’ means that the program
24 participant is recognized as successfully completing
25 the program by substantially achieving the targets,

1 objectives, and goals contained in the concern’s busi-
2 ness plan.

3 “(I)(i) During the developmental stage of its
4 participation in the program, a program participant
5 shall take all reasonable efforts within its control to
6 attain the targets contained in its business plan for
7 contracts awarded other than pursuant to subsection
8 (a) (hereinafter referred to as ‘business activity tar-
9 gets’). Such efforts shall be made a part of the busi-
10 ness plan and shall be sufficient in scope and dura-
11 tion to satisfy the Administration that the program
12 participant will engage in a reasonable marketing
13 strategy that will maximize its potential to achieve
14 its business activity targets.

15 “(ii) During the transitional stage of the pro-
16 gram, a program participant shall be subject to reg-
17 ulations regarding business activity targets that are
18 promulgated by the Administration pursuant to
19 clause (iii).

20 “(iii) The regulations referred to in clause (ii)
21 shall—

22 “(I) establish business activity targets ap-
23 plicable to program participants during the 4th
24 and 5th year of program participation; such
25 targets, for such period of time, shall reflect a

1 reasonably consistent increase in contracts
2 awarded other than pursuant to subsection (a),
3 expressed as a percentage of total sales;

4 “(II) require a program participant to at-
5 tain its business activity targets;

6 “(III) provide that, before the receipt of
7 any contract to be awarded pursuant to sub-
8 section (a), the program participant (if it is in
9 the transitional stage) must certify that it has
10 complied with the regulations promulgated pur-
11 suant to subclause (II), or that it is in compli-
12 ance with such remedial measures as may have
13 been ordered pursuant to regulations issued
14 under subclause (V);

15 “(IV) require the Administration to review
16 each program participant’s performance regard-
17 ing attainment of business activity targets dur-
18 ing periodic reviews of such participant’s busi-
19 ness plan; and

20 “(V) authorize the Administration to take
21 appropriate remedial measures with respect to a
22 program participant that has failed to attain a
23 required business activity target for the purpose
24 of reducing such participant’s dependence on
25 contracts awarded pursuant to subsection (a),

1 including assisting the program participant to
2 expand the dollar volume of its competitive
3 business activity or limiting the dollar volume of
4 contracts awarded to the program participant
5 pursuant to subsection (a); except for actions
6 that would constitute a termination, remedial
7 measures taken pursuant to this subclause shall
8 not be reviewable pursuant to subsection (a)(6).

9 “(2)(A) The Associate Administrator for Veterans
10 Programs shall be responsible for coordinating and formu-
11 lating policies relating to Federal assistance to small busi-
12 ness concerns eligible to receive contracts pursuant to sub-
13 section (a).

14 “(B) Any individual upon whom eligibility is based
15 pursuant to subsection (a), shall be permitted to assert
16 such eligibility for only 1 small business concern.

17 “(C) No concern, previously eligible for the award of
18 contracts pursuant to subsection (a), shall be subsequently
19 recertified for program participation if its prior participa-
20 tion in the program was concluded for any of the reasons
21 described in paragraph (1)(E).

22 “(D) A concern eligible for the award of contracts
23 pursuant to this subsection shall remain eligible for such
24 contracts if there is a transfer of ownership and control
25 (as defined pursuant to subsection (a)(3)) to individuals

1 who are determined to be eligible veterans pursuant to
2 subsection (a). In the event of such a transfer, the con-
3 cern, if not terminated or graduated, shall be eligible for
4 a period of continued participation in the program not to
5 exceed the time limitations prescribed in paragraph (6).

6 “(E) There is established a Division of Program Cer-
7 tification and Eligibility (hereinafter referred to as the
8 ‘Division’) that shall be made part of the Office of Veter-
9 ans Programs. The Division shall be headed by a Director
10 who shall report directly to the Associate Administrator
11 for Veterans Programs. The Division shall establish field
12 offices within such regional offices of the Administration
13 as may be necessary to perform efficiently its functions
14 and responsibilities.

15 “(F) Subject to the provisions of subsection (a)(6),
16 the functions and responsibility of the Division are to—

17 “(i) receive, review, and evaluate applications
18 for certification pursuant to paragraphs (3) and (4)
19 of subsection (a);

20 “(ii) advise each program applicant within 15
21 days after the receipt of an application as to whether
22 such application is complete and suitable for evalua-
23 tion and, if not, what matters must be rectified;

1 “(iii) render recommendations on such applica-
2 tions to the Associate Administrator for Veterans
3 Programs;

4 “(iv) review and evaluate financial statements
5 and other submissions from concerns participating
6 in the program established by this subsection to as-
7 certain continued eligibility to receive subcontracts
8 pursuant to subsection (a);

9 “(v) make a request for the initiation of termi-
10 nation or graduation proceedings, as appropriate,
11 with the Associate Administrator for Veterans Pro-
12 grams;

13 “(vi) decide protests from applicants that have
14 been denied program admission; and

15 “(vii) decide protests regarding the status of a
16 concern as a concern owned and controlled by eligi-
17 ble veterans for purposes of any program or activity
18 conducted under the authority of subsection (d) of
19 section 8, or any other provision of Federal law that
20 references such subsection for a definition of pro-
21 gram eligibility; and

22 “(viii) implement such policy directives as may
23 be issued by the Associate Administrator for Veter-
24 ans Programs pursuant to subparagraph (H) re-
25 garding, among other things, the geographic dis-

1 tribution of concerns to be admitted to the program
2 and the industrial make-up of such concerns.

3 “(G) An applicant shall not be denied admission into
4 the program due solely to a determination by the Division
5 that specific contract opportunities are unavailable to as-
6 sist in the development of such concern unless—

7 “(i) the Government has not previously pro-
8 cured and is unlikely to procure the types of prod-
9 ucts or services offered by the concern; or

10 “(ii) the purchases of such products or services
11 by the Federal Government will not be in quantities
12 sufficient to support the developmental needs of the
13 applicant and other program participants providing
14 the same or similar items or services.

15 “(H) Thirty days before the conclusion of each fiscal
16 year, the Director of the Division shall review all concerns
17 that have been admitted into the program during the pre-
18 ceding 12-month period. The review shall ascertain the
19 number of entrants, their geographic distribution and in-
20 dustrial classification. The Director shall also estimate the
21 expected growth of the program during the next fiscal year
22 and the number of additional veterans business coun-
23 selors, if any, that will be needed to meet the anticipated
24 demand for the program. The findings and conclusions of
25 the Director shall be reported to the Associate Adminis-

1 trator for Veterans Programs by September 30 of each
2 year. Based on such report and such additional data as
3 may be relevant, the Associate Administrator shall, by Oc-
4 tober 31 of each year, issue policy and program directives
5 applicable to such fiscal year that—

6 “(i) establish priorities for the solicitation of
7 program applications from underrepresented regions
8 and industry categories;

9 “(ii) assign staffing levels and allocate other
10 program resources as necessary to meet program
11 needs; and

12 “(iii) establish priorities in the processing and
13 admission of new program participants as may be
14 necessary to achieve an equitable geographic dis-
15 tribution of concerns and a distribution of concerns
16 across all industry categories in proportions needed
17 to increase significantly contract awards to small
18 business concerns owned and controlled by eligible
19 veterans. When considering such increase the Ad-
20 ministration shall give due consideration to those in-
21 dustrial categories where Federal purchases have
22 been substantial but where the participation rate of
23 such concerns has been limited.

24 “(I)(i) The Administration shall conduct an evalua-
25 tion of a program participant’s eligibility for continued

1 participation in the program whenever it receives specific
2 and credible information alleging that such program par-
3 ticipant no longer meets the requirements for program eli-
4 gibility. Upon making a finding that a program partici-
5 pant is no longer eligible, the Administration shall initiate
6 a termination proceeding in accordance with subparagraph
7 (F). A program participant's eligibility for award of any
8 contract under the authority of subsection (a) may be sus-
9 pended or terminated pursuant to subpart 9.4 of title 48,
10 Code of Federal Regulations (or any successor regulation).

11 “(ii) No award shall be made pursuant to subsection
12 (a) to other than a small business concern.

13 “(3)(A) The Administration shall segment the pro-
14 gram into two stages: a developmental stage; and a transi-
15 tional stage.

16 “(B) The developmental stage of program participa-
17 tion shall be designed to assist the concern to access its
18 markets and to strengthen its financial and managerial
19 skills.

20 “(C) The transitional stage of program participation
21 shall be designed to prepare such concern for graduation
22 from the program.

23 “(4) A program participant, if otherwise eligible,
24 shall be qualified to receive the following assistance during

1 the stages of program participation specified in paragraph
2 (3):

3 “(A) Contract support pursuant to subsection
4 (a).

5 “(B) Financial assistance pursuant to section
6 7(a).

7 “(C) Training assistance whereby the Adminis-
8 tration shall conduct training sessions to assist indi-
9 viduals and enterprises eligible to receive contracts
10 under subsection (a) in the development of business
11 principles and strategies to enhance their ability to
12 successfully compete for contracts in the market-
13 place.

14 “(D) Joint ventures, leader-follow arrange-
15 ments, and teaming agreements between the pro-
16 gram participant and other program participants
17 and other business concerns with respect to con-
18 tracting opportunities for the research, development,
19 full-scale engineering or production of major sys-
20 tems. Such activities shall be undertaken on the
21 basis of programs developed by the agency respon-
22 sible for the procurement of the major system, with
23 the assistance of the Administration.

24 “(E) Transitional management business plan-
25 ning training and technical assistance.

1 “(5) Program participants in the developmental stage
2 of program participation shall be eligible for the assistance
3 provided by subparagraphs (A), (B), and (C) of paragraph
4 (4). Program participants in the transitional stage of pro-
5 gram participation shall be eligible for the assistance pro-
6 vided by subparagraphs (A), (B), (D), and (E) of para-
7 graph (4).

8 “(6) Subject to the provisions of paragraph (1)(C),
9 a small business concern may receive developmental assist-
10 ance under the program and contracts under subsection
11 (a) for a total period of not longer than 5 years, measured
12 from the date of its certification under the authority of
13 such section, of which—

14 “(A) no more than 3 years may be spent in the
15 developmental stage of program participation; and

16 “(B) no more than 2 years may be spent in the
17 transitional stage of program participation.

18 “(7)(A) The Administrator shall develop and imple-
19 ment a process for the systematic collection of data on
20 the operations of the program established pursuant to
21 paragraph (1).

22 “(B) Not later than April 30 of each year, the Ad-
23 ministrator shall submit a report to the Congress on the
24 program that shall include the following:

1 “(i) The average personal net worth of individ-
2 uals who own and control concerns that were ini-
3 tially certified for participation in the program dur-
4 ing the immediately preceding fiscal year. The Ad-
5 ministrator shall also indicate the dollar distribution
6 of net worths, at \$50,000 increments, of all such in-
7 dividuals.

8 “(ii) A description and estimate of the benefits
9 and costs that have accrued to the economy and the
10 Government in the immediately preceding fiscal year
11 due to the operations of those business concerns that
12 were performing contracts awarded pursuant to sub-
13 section (a).

14 “(iii) A listing of all participants in the pro-
15 gram during the preceding fiscal year identifying, by
16 State and by Region, for each firm: the name of the
17 concern, the race or ethnicity, and gender of the eli-
18 gible veteran owners, the dollar value of all contracts
19 received in the preceding year, the dollar amount of
20 advance payments received by each concern pursu-
21 ant to contracts awarded under subsection (a), and
22 a description including (if appropriate) an estimate
23 of the dollar value of all benefits received pursuant
24 to paragraphs (4) and (5) and section 7(a) during
25 such year.

1 “(iv) The total dollar value of contracts and op-
2 tions awarded during the preceding fiscal year pur-
3 suant to subsection (a) and such amount expressed
4 as a percentage of total sales of (I) all firms partici-
5 pating in the program during such year; and (II) of
6 firms in each of the 5 years of program participa-
7 tion.

8 “(v) A description of such additional resources
9 or program authorities as may be required to pro-
10 vide the types of services needed over the next 2-
11 year period to service the expected portfolio of firms
12 certified pursuant to subsection (a).

13 “(vi) The total dollar value of contracts and op-
14 tions awarded pursuant to subsection (a), at such
15 dollar increments as the Administrator deems appro-
16 priate, for each four digit Standard Industrial Clas-
17 sification (SIC) Code under which such contracts
18 and options were classified.

19 “(C) The first report required by subparagraph (B)
20 shall pertain to the first fiscal year beginning after the
21 date of the enactment of this section.

22 “(c) In carrying out its functions under this section,
23 the Administration is authorized—

24 “(1) to utilize, with their consent, the services
25 and facilities of Federal agencies without reimburse-

1 ment, and, with the consent of any State or political
2 subdivision of a State, accept and utilize the services
3 and facilities of such State or subdivision without re-
4 imbursement;

5 “(2) to accept, in the name of the Administra-
6 tion, and employ or dispose of in furtherance of the
7 purposes of this Act, any money or property, real,
8 personal, or mixed, tangible, or intangible, received
9 by gift, devise, bequest, or otherwise;

10 “(3) to accept voluntary and uncompensated
11 services, notwithstanding the provisions of section
12 1342 of title 31, United States Code; and

13 “(4) to employ experts and consultants or orga-
14 nizations thereof as authorized by section 3109 of
15 title 5, United States Code; except that no individual
16 may be employed under the authority of this sub-
17 section for more than 100 days in any fiscal year;
18 to compensate individuals so employed at rates not
19 in excess of the daily equivalent of the highest rate
20 payable under section 5332 of such title, including
21 travel time; and to allow them, while away from
22 their homes or regular places of business, travel ex-
23 penses (including per diem in lieu of subsistence) as
24 authorized by section 5703 of such title for persons
25 in the Government service employed intermittently,

1 while so employed: *Provided, however,* That contracts
2 for such employment may be renewed annually.”.

3 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

4 There is authorized to be appropriated the following
5 amounts:

6 (1) For salaries and expenses of the Office of
7 Veterans Programs of the Small Business Adminis-
8 tration and its divisions \$4,000,000 per fiscal year
9 for each of fiscal years 1997, 1998, and 1999.

10 (2) For training and education of personnel in
11 the Office of Veterans Programs of the Small Busi-
12 ness Administration and its divisions—

13 (A) \$350,000 for fiscal year 1997;

14 (B) \$200,000 for fiscal year 1998; and

15 (C) \$175,000 for fiscal year 1999.

16 (3) To carry out section 8(b)(17) of the Small
17 Business Act, as added by section 11 of this Act,
18 \$1,250,000 per fiscal year for each of fiscal years
19 1997, 1998, and 1999.

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