

**MARKUP OF: H.R. 5450; H.R. 6591; H.R. 7102;
H.R. 7103; H.R. 6156; H.R. 7104; H.R. 7105;
H.R. 7128; AND H.R. 7129**

HEARING
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTEENTH CONGRESS

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HEARING HELD
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MARKUP OF: H.R. 5450, THE ENHANCING COMPETITION IN CONTRACTING ORDERS ACT; H.R. 6591, THE ENCOURAGING SUCCESS ACT; H.R. 7102, THE NATIVE AMERICAN ENTREPRENEURIAL OPPORTUNITY ACT; H.R. 7103, THE AGENCY ACCOUNTABILITY ACT OF 2024; H.R. 6156, THE CHILD CARE SMALL BUSINESS INSIGHT AND IMPROVEMENT ACT OF 2023; H.R. 7104, THE NATIONAL SBDC ADVISORY BOARD IMPROVEMENT ACT; H.R. 7105, THE WOSB CERTIFICATION AND OPPORTUNITY EXPANSION ACT; H.R. 7128, THE WOSB INTEGRITY ACT OF 2024; AND H.R. 7129, THE PUT AMERICA ON COMMISSION ACT OF 2024.

WEDNESDAY, JANUARY 31, 2024

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 9:50 a.m., in Room 2360, Rayburn House Office Building, Hon. Roger Williams [chairman of the Committee] presiding.

Present: Representatives Williams, Luetkemeyer, Stauber, Meuser, Van Duyne, Salazar, Mann, Ellzey, Molinaro, Alford, Crane, Bean, Hunt, LaLota, Maloy, Velázquez, Golden, Mfume, Landsman, McGarvey, Gluesenkamp Perez, Scholten, Thanedar, Chu, Davids, and Pappas.

Chairman WILLIAMS. Okay. If I can have everyone's attention. If we can have everybody's attention. Before we get started, I want to recognize Congressman Alford from the great state of Missouri to say the Pledge of Allegiance and a short prayer.

Mr. ALFORD. Well, let's start with a prayer, Chairman.

Dear God, we just thank you for providing us a place and a manner and a time to conduct the business of this nation. I thank you for our Chair and our Ranking Member, for the guidance and leadership they provide each day in this Committee. God, thank you for the Members here. Bless us. Give us strength, courage, wisdom, and discernment as we move forward for the American people.

And God, I just thank you for our small businesses. Thank you for the men and women who roll up their sleeves, who empty their wallets, who spend time with their families, who dedicate their lives, basically, to starting a small business. And I just ask that every decision we make here, every rule we put forward or bill we put forward, as we are doing today, it is your will and your guidance to help those families succeed in America.

Through Christ, I pray. Amen.

I pledge allegiance to the flag of the United States of America. And to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

The Committee will now come to order. A quorum is present. Without objection, the Chair is authorized to declare a recess of the Committee at any time. As required by the House rules, a copy of the legislative measures have been made available to Members and the public at least 24 hours in advance. Pursuant to Committee rule 13 and House rule XI, all votes will be rolled to the end of the meeting.

I now recognize myself for opening remarks.

Good morning again to everyone, and I welcome today's markup, where we will be discussing nine bills that address the various needs of our nation's small businesses. I am going to be speaking on each of the bills we bring up today in greater detail, so I want to keep my opening statement brief and just highlight a few points.

When I took over as the Chairman of this Committee, I wanted to bring my private sector experience to the forefront. And I employ hundreds of people back home in Texas at my car dealerships, and almost all of them work on commission. It incentivizes them to work hard and take ownership of what they are selling. This was the inspiration behind one of the bills we were marking up today, and I want to thank our colleague, Chairman Luetkemeyer, for a lot of his input on this very thing.

This was the inspiration behind one of the bills we are marking up today. It is Put America on Commission Act of 2024. This bill creates a whistleblower program that will align the incentives of the public and the government to help achieve the shared goal of holding criminals that took advantage of the government lending programs during the COVID-19 pandemic accountable.

When Congress passed the Pandemic Assistance Program here, there was a need to strike the balance between getting money out quickly and having appropriate fraud mitigation tools in place. There was always the assumption that we would be able to catch the fraudsters on the back end. However, as the inspector general shared with the Committee, he knew this would lead to a disaster and the after action report show he was correct. There has been an estimated \$200 billion in fraud in the SBA pandemic programs and the OIG has 100-year backlog. A 100-year backlog to get through all of these cases. This is not an issue that can simply be fixed by throwing money at the existing problem. We need something that will speed up the process.

That is where this bill will come into play. By creating this new whistleblower program within the SBA, the inspector general will receive a higher quality information that will lead to more and quicker convictions.

Whistleblower programs have been proven to be effective in many other agencies, such as the IRS and the SEC, and I am confident that this bill will lead to more convictions of COVID fraud when we look to replicate it at the SBA.

I will have more to say on this bill when it is brought up later today, but I want to thank the staff on both sides of the aisle for making this bill a reality.

And in closing, I would like to thank our Members for bringing all of the bills forward for consideration in today's markup. Every piece of legislation we are going to look at today is the product of hearings and our oversight efforts that we have conducted, and I am proud to see our Committee activity being turned into legislation that will make main street even stronger.

With that, I look forward to today's markup, and I yield to distinguished Ranking Member from New York, Ms. Velázquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman, for holding this markup today.

I plan to lend my support to the nine bills we are considering. They make important improvements to the contracting programs at SBA, codify the Office of Native American Affairs, takes a good first step on childcare, and works to recover fraudulent pandemic funds.

This Committee has a long tradition of working together to get things done for small businesses, and I appreciate Chairman Williams and his staff for their efforts to work with us. I would like to also commend the Members of the Committee to put differences aside and improve SBA programs for small businesses.

Small business growth has proven resilient in uncertain times. Since President Biden took office, 16 million Americans have filed to start new businesses and more than 14 million jobs have been created. Our nation's 33 million small businesses play an important role in driving our nation's economy, and I am committed to supporting entrepreneurs as they create good paying jobs in our local community.

Thank you, Mr. Williams for joining forces with me on behalf of small businesses and I look forward to a productive markup.

I yield back.

Chairman WILLIAMS. Yields back. And does any other Member seek recognition for the purpose of making an opening statement?

Okay, if none, seeing none, we will now move to the consideration of the first bill.

H.R. 5450

The first bill we will mark up is H.R. 5450, the Enhancing Competition in Contracting Orders Act, introduced by Representatives Scholten and Salazar. The clerk will report.

The CLERK. H.R. 5450 to amend the Small Business Act—

Chairman WILLIAMS. Without objection, H.R. 5450 is considered as read and open for amendment. The bill sponsor, Ms. Scholten, has an amendment in the nature of a substitute at the desk. The amendment has been predistributed to all Members and the clerk will report the amendment.

The CLERK. Amendment in the nature of a substitute to H.R. 5450 offered by Ms. Scholten.

Chairman WILLIAMS. Without objection, the amendment is considered as read and the substitute will be considered base text of the bill for the purpose of amendment.

I now recognize the bill's sponsor, Ms. Scholten, for her statement.

Ms. SCHOLTEN. Thank you so much, Mr. Chair. I am proud to speak on behalf of my bill, the Enhancing Competition in Contracting Orders, which is cosponsored by my wonderful colleague, Congresswoman Salazar.

The job of this Committee is to foster small business growth, which means uplifting small businesses from historically underutilized business zones, HUBZones, and ensuring that they can compete and continue contributing to the American economy. My district in Michigan is home to several HUBZones where businesses who qualify for the program are eligible for certain contracting opportunities, including contract set-asides, sole source awards, and price evaluation preferences.

My bill would provide additional clarification to federal agencies on how and when to apply price evaluation preferences to HUBZones. Currently, the HUBZone price evaluation preference is not widely used because some agencies have incorrectly interpreted that the preference does not apply to orders. As the federal government increasingly drives its spending through indefinite delivery and indefinite quantity contracts, significant opportunities for HUBZone small businesses are being lost because the HUBZone price evaluation is not being applied in the award of orders.

Importantly, the price evaluation preference language in the Small Business Act is broad and does not exclude orders. It states, in fact, that, "In any case in which a contract is to be awarded on the basis of a full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as lowering—or, excuse me, as lower than the price offered by another offerer."

The only exception in the Small Business Act for the application of the HUBZone price evaluation preference is for procurements of agricultural commodities. The fact that Congress explicitly provided one exception, but did not provide an exception for orders indicates that Congress did not intend there to be an exception for orders. How could it? The price evaluation preference applies to orders because orders are contracts.

Given the broad language in the statute and the fact that there is only one explicit exception and that orders are themselves contracts, the HUBZone price evaluation preference should be applied as broadly as possible. And my bill, the Enhancing Competition for Contracting Orders, would do just that, leveling the playing field for all qualifying small businesses under the HUBZone program. Many small businesses are unable to competitively bid on large contracts—on contracts against these larger companies, and this would make it more tenable to do so.

The 10 percent price preference granted by the HUBZone program has been game-changing for HUBZone small businesses and their ability to participate in the contracting marketplace. This legislation would further clarify HUBZone benefits and ensure even more businesses in West Michigan and across the country can com-

pete for government contracts. I strongly urge Members to vote yes on this important legislation.

Thank you so much, Mr. Chair, and I yield back.

Chairman WILLIAMS. Yields back. And I now recognize the bill's cosponsor, Ms. Salazar, for a statement.

Ms. SALAZAR. Thank you, Mr. Chairman. And thank you very much for calling me your wonderful colleague. Very good.

You see, this is the way we have to work in Congress, in a bipartisan fashion. And I think this is a fantastic bill because it is called Enhancing Competition in Contracting Orders. Basically what it does is that the pie, it cuts the pie, the big pie of a government contract and gives big pieces to the small guy. And that is what I like.

We have 250 HUBZones in Florida, 22 in the city of Miami that I proudly represent. So that means that the big guys are now need to share the pie with the small people. Those people that up to now have not been able to bid and become what we consider the American dream, which is to be a client of the federal government. What a fantastic bill. So thank you very much for cosponsoring with me. And thank you, Mr. Chairman, for allowing me to speak. I am very, very excited that we are going to be able to bring the American dream down to the small business owners. I yield back.

Chairman WILLIAMS. Yields back. And are there any other Members who wish to be recognized for a statement on this bill?

Okay. I now recognize the gentlewoman, Ranking Member Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. I commend Ms. Scholten and Ms. Salazar for their bipartisan work to bring H.R. 5450 before the Committee today.

When the government invests in small businesses, they in turn invest in their communities by creating jobs and buying local products. This is a driving force behind the HUBZone program. Unfortunately, the program has not reached its full potential. In the more than 25 years since Congress created HUBZones, the federal government has never achieved the 3 percent procurement goal.

It is clear that efforts like the HUBZone preference can work. This preference is now providing HUBZones with a competitive advantage when bidding against larger companies, but the authority has not been properly interpreted and it is, therefore, underutilized. This bill will clarify the original intent of Congress that the preference be applied to all contracts and specifically to task orders.

Again, I appreciate the sponsors for prioritizing this bill and the HUBZone program.

I yield back, Mr. Chairman.

Chairman WILLIAMS. Ranking Member yields back. And I now recognize myself to speak in support of this legislation.

H.R. 5450, the Enhancing Competition in Contracting Orders Act, seeks to encourage business development and hiring in areas that are historically underutilized from a business perspective. This bill provides the needed certainty about price preference when the SBA HUBZone firm is competing for task order contracts. HUBZone firms have the ability to utilize this price preference tool

for other government contracts. This allows them to compete against some of their larger counterparts.

Unfortunately, there has been some confusion on if specific task orders are also able to utilize this price preference tool. This legislation looks to end unnecessary confusion for HUBZone firms and make it clear that task orders do qualify for the same price preference as normal contracts.

The legislation should increase the ability for small businesses to do business with the federal government and I urge my colleagues to support H.R. 5450.

Do any Members seek recognition for the purpose of offering an amendment to the amendment in the nature of a substitute?

Okay. If there is no further discussion, the question is now on the amendment in the nature of a substitute, H.R. 5450 offered by Ms. Scholten.

All those in favor, say aye.

All those opposed, say no.

In the opinion of the Chair, the ayes have it, and the amendment in the nature of a substitute, H.R. 5450 offered by Ms. Scholten is agreed to.

Okay. The question is now on favorably reporting H.R. 5450, as amended, to the House.

All those in favor, say aye.

Opposed?

In the opinion of the Chair, the ayes have it, and H.R. 5450 is amended as agreed and to and ordered favorably to the house.

H.R. 6591

The next bill we will mark up is H.R. 50—or I am sorry 6591, the Encouraging Success Act introduced by Representatives Ellzey and Thanedar and the clerk will report.

The CLERK. H.R. 6591, to amend section—

Chairman WILLIAMS. Without objection, H.R. 6591 is considered as read and open for amendment. The bill sponsor, Mr. Ellzey, has an amendment in the nature of a substitute at the desk. The amendment has been predistributed to all Members and the clerk will report the amendment.

The CLERK. Amendment in the nature of a substitute to H.R. 65—

Chairman WILLIAMS. Without objection, the amendment is considered as read and the substitute will be considered based text of the bill for the purpose of amendment.

I now recognize the bill sponsor, Mr. Ellzey, for an opening statement.

Mr. ELLZEY. Thank you, Mr. Chairman. I would like to thank Mr. Thanedar for joining me on this bill.

Thanks for allowing us to mark up H.R. 6591, the Encouraging Success Act. The amendment in the nature of a substitute is a technical correction by striking language on page 3, line 5 in the original bill. Retained is the CutGo language stating no additional amounts are authorized to be appropriated to carry out this act or the amendments made by this act.

The Small Business Administration's 8(a) program was established in the '70s to help small businesses compete with large corporations for U.S. Government contracts. A qualifying small busi-

ness can only be a part of the program for up to 9 years. To initially qualify and remain in the 8(a) program, there is a cap as to the value of a small business' assets. Since the program's inception, the asset cap has only been raised twice and is currently capped at \$6-1/2 million. That asset threshold is set through SBA-determined regulation, and the law does not outline any process of when or how the SBA should reassess the threshold to remain in line with market changes.

Unfortunately, because the requirements to initially qualify for the program or remain in it haven't kept up with market changes, the cap is set to a level at which a small business is disadvantaged to compete in the open market at the end of the 9-year program. The SBA's slow to change attitude with the asset cap can limit the success of an 8(a) small business.

With the threat of being graduated out of the 8(a) program, small business owners must decide whether their firm's growth is worth being removed from the program. My bill, H.R. 6591, with the amendment, helps solve this situation and encourages success of small businesses by compelling the SBA administrator to review the qualification caps with greater frequency to ensure that small businesses participating in the 8(a) program are allowed to grow big enough to compete with larger companies once their participation in the program ends.

This bill is needed because if an 8(a) participating small business surpasses the SBA-determined asset threshold, the small business will then be graduated or removed from the 8(a) program. This has literally killed many small businesses. Although the graduated small businesses would still complete existing contracts, they would not be able to compete for future 8(a) contracts while not having grown big enough to compete with the big companies.

Mr. Chairman and Members, by supporting this bill, you are supporting small businesses while ensuring they are not punished for their success. Mr. Chairman and Members, I humbly request your support for H.R. 6591, as amended, to send to the full House for consideration.

Thank you, Chair Williams. I yield back.

Chairman WILLIAMS. Yields back. Now, Mr. Thanedar, the bill's cosponsor, is not here. Are there any other Members who wish to be recognized for a statement on the bill?

Ms. VELAZQUEZ. Mr. Chairman?

Chairman WILLIAMS. Ranking Member.

Ms. VELAZQUEZ. Mr. Thanedar is here.

Chairman WILLIAMS. Oh, he just walked in, huh? You are late, but early.

So, Mr. Thanedar, I recognize you as the bill's cosponsor for an opening statement.

Ms. VELAZQUEZ. Getting his glasses.

Mr. THANEDAR. Good morning and thank you, Mr. Chair. And also thank you, Representative Ellzey, for introducing this important bill.

I am proud to strongly support this bill as regular monitoring and assessment of thresholds for the 8(a) program will ensure that this invaluable program is helping those it is intended to. In my home state of Michigan, there were 217 million worth of 8(a) con-

tracts in fiscal year 2022, making up almost 5 percent of Michigan's firms that received federal contracts in that year, according to the Small Business Administration.

Fostering entrepreneurship is a key goal. Empowering individuals to start their own businesses not only helps achieve their dreams, but also adds to the economic vibrancy of our nation. Entrepreneurs drive innovation and job creation. Minority entrepreneurs bring diverse perspectives and valuable skills to our local economy. However, they often face unique challenges when starting or growing their businesses, including continued discrimination and discriminatory barriers.

The 8(a) program helps address these challenges by providing access to resources, mentorship, and federal contract assistance to the minority community. This supports not only helps minority and immigrant owned businesses thrive, but also enriches our district by contributing to its cultural and economic diversity. It is a win-win.

Federal contracts can significantly boost the growth and revenues of local businesses. Programs like the 8(a) program are essential for providing these opportunities.

Small business owned by minorities enhance diversity. Encouraging the growth of small businesses owned by minorities and underrepresented groups not only promotes diversity, but also creates economic opportunities and growth for all Members of our community. A diverse economy with thriving small business is more resilient. By fostering a diverse range of small businesses, we ensure that our economy can weather economic challenges more effectively. A resilient economy benefits everyone in our district.

In conclusion, the support and encouragement of minority-owned small businesses through continued refinement of the 8(a) program not only benefits the entrepreneurs, but also contributes to the overall wellbeing and prosperity of our community. I urge all Members to support this bipartisan bill.

As a serial entrepreneur, Mr. Chair, I have been benefited by small business and small business programs, one of the small business programs, 504, which helped me grow my business. And I have experienced firsthand what these programs can do to help minorities, immigrants, and others to start small businesses create jobs.

So I strongly urge support for this and I yield back.

Chairman WILLIAMS. Yields back. Are there any other Members who wish to be recognized for a statement on the bill?

Yes, ma'am. Refer to the Ranking Member on her statement.

Ms. VELAZQUEZ. Thank you, Chairman Williams, and thank you to Representatives Ellzey and Thanedar for their work on H.R. 6591, which will require SBA to regularly update the thresholds for determining economic disadvantage.

This bill is designed to help keep the 8(a) program relevant and current, and that is needed. Last week, for only the second time, the SBA released small business federal contracting data disaggregated by race. While I applaud the SBA for releasing it, I and many of my colleagues on the Committee asked them to do it. The data shines a bright light on the inequities in our federal procurement system. It highlights the need to prioritize and protect

programs like the 8(a) a program that assists minority business owners who have been subject to discrimination.

Seeing that minority-owned businesses do not receive a fair share of contracting dollars does not come as a surprise. We know that discrimination persists and creates barrier. In fact, the Department of Justice annually compiles a report on discrimination and discriminatory barriers faced by women and minority business owners in government contracting. It is compelling, and, Mr. Chairman, I ask unanimous consent to insert that into the record.

Chairman WILLIAMS. So moved.

Ms. VELAZQUEZ. This bill is a productive step designed to ensure that minority business owners can succeed and thrive in the 8(a) program and the federal marketplace. That is why I am pleased to support it, and I urge my colleagues to support as well.

Chairman WILLIAMS. Yields back, thank you. I now recognize myself to speak in support of this legislation.

H.R. 6591, the Encouraging Success Act, requires the SBA to reassess the 8(a) business development program asset threshold every 4 years. The SBA 8(a) program allows certain small businesses to compete for valuable contracting opportunities. Small businesses can participate in the program for 9 years. However, there are certain circumstances where a firm will be removed from the program. One of these if the owner's assets reach a certain threshold, essentially punishing a business owner for their success.

The goal of this program is to ensure small businesses are not crowded out from the competing for government contracts. With the prices of everything rising the past few years, we should ensure that the SBA is appropriately tailoring this program to true small businesses. The Encouraging Success Act will ensure that this threshold matches current market realities by requiring the SBA to reevaluate it every few years.

I encourage all my colleagues to support H.R. 6591.

Do any Members seek recognition for the purpose of offering an amendment to the amendment in the nature of a substitute?

Okay. If no, there is no further discussion. The question is now on the amendment in the nature of a substitute to H.R. 6591 offered by Mr. Ellzey.

All those in favor, say aye.

All those opposed, say no.

In the opinion of the Chair, the ayes have it. The amendment in the nature of a substitute to H.R. 6591 offered by Mr. Ellzey is agreed to.

The question is now on favorably reporting H.R. 6591, as amended, to the House.

All those in favor, say aye.

Mr. STAUBER. Mr. Chairman?

Chairman WILLIAMS. Yes.

Mr. STAUBER. Request a recorded vote.

Chairman WILLIAMS. Okay. A recorded vote is requested and pursuant to rule 13 and House rule XI, further proceedings on the bill are postponed.

H.R. 7102

Next is consideration of H.R. 7102, the Native American Entrepreneurial Opportunity Act. The next bill we will mark up is H.R.

7102, the Native American Entrepreneurial Opportunity Act, introduced by Representatives Davids and Crane.

I now recognize the bill's sponsor, Ms. Davids, for an opening statement.

Ms. DAVIDS. Thank you, Chairman Williams and Ranking Member Velázquez.

Look, it is no secret that our nation's entrepreneurs face challenges in starting and operating their small businesses. I can attest that these challenges are often more pronounced in Tribal communities. Native Americans are twice as likely to live in poverty than other Americans. This affects their ability to use their savings and assets to finance a small business, to access credit, and to undertake just the general risk of entrepreneurship.

Also, these business owners face geographical barriers with longer distances for supply deliveries, lack of reliable broadband and telephone service. These long distances have also made it harder for Native American entrepreneurs to network, to find mentors, to reach their consumer base, and ultimately, it reduces their chances of success.

Native entrepreneurs also frequently face bigger challenges in attracting private investment and accessing federal contracting opportunities. We really must do everything that we can in our power to find solutions to these challenges, to level the playing field for Tribal small businesses and to boost our overall economy.

Currently, the U.S. Small Business Administration Office of Native American Affairs does work diligently to connect Native business owners with entrepreneurial development, with lending and procurement programs. However, the SBA currently lacks a congressional mandate for this office, limiting the capacity for the office to do the work that it needs to do, and leaves it vulnerable to challenges or changes from one administration to the next.

This is why we really need to advance my Native American Entrepreneurial Opportunity Act. This bill codifies the SBA's Office of Native American Affairs into federal law and establishes an assistant administrator role to oversee the operations and report directly to SBA leadership.

It also directs the office to report to Congress on its success or maybe challenges in Indian Country.

Native-owned entities employing over 300,000 Americans are vital drivers for our national economy, which is why these Tribal businesses deserve a seat at the table to advocate not only for the challenges, as I mentioned earlier, but also for their successes and their achievements.

I do want to thank Congressman Crane for his partnership in introducing this bill, and I absolutely encourage my colleagues to support the Native American Entrepreneurial Opportunity Act and vote in favor of successful entrepreneurship in Tribal communities.

And with that, I yield, Mr. Chairman.

Chairman WILLIAMS. Yields back. I now recognize the bill's cosponsor, Mr. Crane, for an opening statement.

Mr. CRANE. Thank you, Mr. Chairman. I am proud to colead H.R. 7102, which officially establishes the Office of Native American Affairs under the Small Business Administration. I want to

thank my colleague, Representative Davis, for your leadership and the opportunity to work in a bipartisan way.

Tribal entrepreneurs face complex hurdles when it comes to running a business. This can come in the form of property rights questions, tax implications, regulatory burdens, and lending opportunities, to name a few. Entrepreneurs should have the flexibility to start a business on a Reservation, just like anywhere else. But in reality, the federal government has created barriers to enter the market. Tribal communities could especially benefit from specialized expertise SBA offers to assist business owners in navigating the unique complexities of running a business on a Reservation.

I am hopeful that passing this bill will bring attention to these complexities, as this office will ensure Tribal businesses are not overlooked. Starting a dialogue with our Tribal small business owners, who may be unaware that this office even exists, could spur economic development that supports our entire nation's economic growth and prosperity, which protects freedom for all.

Thank you, Mr. Chairman. I yield back.

Chairman WILLIAMS. Yields back. And are there any of the Members who wish to be recognized for a statement on this bill?

Ms. VELAZQUEZ. Yes, Mr. Chairman.

Chairman WILLIAMS. Refer to the Ranking Member.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. I strongly support the Native American Entrepreneurial Development Opportunity Act.

Let me begin by commending Ms. Davids for her leadership on efforts to codify the Office of Native American Affairs at the Small Business Administration. The office has been a valuable resource for American Indians, Alaskan Natives, and Native Hawaiians seeking to launch and grow their small businesses. Codifying the office will ensure that Tribal small businesses will have access to SBA full range of business development tools, regardless of the administration. Importantly, the legislation requires the assistant administrator report directly to the administrator, ensuring the voices of their Tribal communities will be heard at the SBA.

Native American owned businesses are economic engines, contributing over \$33 billion to the U.S. economy every year and employing 200,000 people in their communities. Statutorily authorizing the Office of Native American Affairs as SBA will increase access to federal programs and services that support Native American entrepreneurs across the country and promote economic development.

I would also like to thank Mr. Crane for coleading this bill with Ms. Davis. I urge Members to support the bill and I yield back, Mr. Chairman, thank you.

Chairman WILLIAMS. Yields back. And I now recognize myself to speak in support of this legislation.

H.R. 7102, the Native American Entrepreneurial Opportunity Act, establishes the Office of Native American Affairs within the Small Business Administration. The SBA Office of Native American Affairs has been providing services like counseling, training, and Tribal consultations for many years. However, the office has not been codified into law. This bill will codify this office and provide Congress with better oversight and performance metrics that

could be tracked. This will require the office to provide a report on the services this office provides to ensure that this office is performing their task appropriately.

I want to thank my colleagues for introducing this bill and urge my colleagues to support H.R. 7102.

If there is no further discussion, the Committee now moves to consideration of H.R. 7102. The clerk will report.

The CLERK. H.R. 7102, to establish the office—

Chairman WILLIAMS. Without objection, the first reading of the bill is dispensed. And without objection, the bill is considered as read and open for amendment.

Do any Members seek recognition for the purpose of offering an amendment?

If no, seeing none, the question is now on adoption of H.R. 7102 in favor of reporting it to the House.

All those in favor, say aye.

Mr. ELLZEY. Mr. Chairman.

Chairman WILLIAMS. All opposed, say no.

Mr. ELLZEY. Mr. Chairman, I call for a recorded vote.

Chairman WILLIAMS. All right. A recorded vote has been requested and a roll call vote is ordered. Pursuant to Committee Rule 13 and House rule XI, further proceedings on the bill are postponed.

H.R. 7103

The next bill we will mark up is H.R. 7103, the Agency Accountability Act of 2024, introduced by Representatives Stauber and McGarvey.

I now recognize the bill's sponsor, Mr. Stauber, for an opening statement.

Mr. STAUBER. Thank you, Mr. Chairman. I rise today to speak in favor of my bill, H.R. 7103, the Agency Accountability Act of 2024.

It is well known that endless bureaucracy and red tape crushes small businesses. Yet since President Biden took office, over 700 regulations have been added to the Federal Register, costing nearly \$440 billion and adding more than 236 million paperwork hours. It is clear that Main Street America is not a priority of this administration. If the Biden administration insists on burdening small businesses with such an overregulated landscape, the very least they could do is ensure that small businesses have every opportunity to contract with the largest purchaser of goods and services in the world, the federal government.

Right now, federal agencies set goals for awarding contracts to small businesses. But meeting those goals is often treated like a suggestion and not a requirement. The result? Too many agencies fall short, leaving billions of dollars in contracts off the reach of American dreamers.

My bill, the Agency Accountability Act, changes the game. It shines a spotlight on agency performance by requiring public testimony for failures. Agency heads will answer directly to Congress for missing goals, explaining why they haven't prioritized small businesses and what they will do to fix it.

This isn't just about finger pointing. It is about finding solutions. Public scrutiny paired with mandated reporting on scorecard per-

formance will expose systemic roadblocks and identify best practices.

Our small businesses are more than just economic engines. They are the embodiment of the American spirit, equipped with creativity, resilience, and a fierce determination to succeed. This bill gives them a fighting chance, a seat at the table, and the opportunity to prove themselves on the national stage.

I urge my colleagues to support this important legislation as it will help ensure the federal government is doing everything it can to support small businesses in America.

Mr. Chair, I yield back.

Chairman WILLIAMS. Yields back. And I now recognize the bill's cosponsor, Mr. McGarvey, for an opening statement.

Mr. MCGARVEY. Thank you, Mr. Chairman, and thank you, Representative Stauber.

Each week we sit on this Committee and we discuss how we can help ensure the federal government actually supports our small businesses, the small business growth and entrepreneurship in this country. This bill will do exactly that. It is going to bring the federal government one step closer to meeting its small business contracting goals. We can't just walk the walk. We have to talk the talk, too. And that's why I am proud to join Representative Stauber as a proud sponsor of H.R. 7103, the Agency Accountability Act. And I am grateful it was included in today's markup.

The bill would require the head of the Office of Small and Disadvantaged Business Utilization of any federal agency that does not receive an A grade on the SBA scorecard or whose agency does not meet two or more of the subcategory goals to hit their quota of contracts awarded to small business recipients to testify before the House and Senate Small Business Committees. We can hold failing agencies accountable, and we can ensure that small businesses everywhere have the opportunity to compete for and win federal contracts that should be going to small enterprises.

I urge my colleagues to support the bill and look forward to its passage today. I yield back.

Chairman WILLIAMS. Yields back. Are there any other Members who wish to be recognized for a statement on the bill?

Ms. VELAZQUEZ. Yes, Mr. Chairman.

Chairman WILLIAMS. Recognize the Ranking Member.

Ms. VELAZQUEZ. Thank you, Mr. Chairman, and to Representative Stauber and Mr. McGarvey for their bipartisan work on H.R. 7103.

I believe that most agency officials are making good faith efforts to ensure that small businesses are able to participate and maximize opportunities in the federal marketplace. The goals are only goals, though, and agencies are not penalized if they do not meet them. The way we encourage agencies to meet their goal is to name and shame them when they don't. Requiring testimony is an additional way to do that and to use our leverage and congressional oversight tools to hold their feet to the fire.

I am particularly pleased to see that this bill includes agencies that have not received an A on the scorecard, but also agencies that have not met two or more of their subcategory goals. Each of the categories, including and especially the HUBZone and WOSB

programs, continue to need additional focus, and this is a helpful step in that direction.

I am pleased to support it, and I urge my colleagues to do as well. I yield back.

Chairman WILLIAMS. Yields back. And I now recognize myself to speak in support of this legislation.

H.R. 7103, the Agency Accountability Act, brings accountability to agencies who fail to meet their goals by bringing them in front of Congress to answer to the American people. Government agencies are required to meet a goal of spending a certain amount of their contracting dollars with small businesses. Unfortunately, these goals are not always met, and specifically, certain small businesses, like those that are service-disabled veteran-owned, are commonly left out.

To evaluate how agencies are meeting these goals, the SBA produces a scorecard which shows vital information on awards made to small businesses by each agency. Each agency is given a letter grade in the SBA scorecard. This legislation will require those agencies that do not receive an A on their scorecard to be brought before Congress.

I urge all my colleagues support H.R. 7103 so that we can finally hold the government accountable for failing to meet its commitment to small businesses.

If there is no further discussion, the Committee now moves to consideration of H.R. 7103. The clerk will report.

The CLERK. H.R. 7103, to amend the Small—

Chairman WILLIAMS. Without objection, the first reading of the bill is dispensed with. And without objection, the bill is considered as read and open for amendment.

Do any Members seek recognition for the purpose of offering an amendment?

Seeing none, the question is now in the adoption of H.R. 7103 and favorably reporting it to the House.

All those in favor, say aye.

All those opposed, say no.

In the opinion of the Chair, the ayes have it.

Mr. STAUBER. Mr. Chair.

Chairman WILLIAMS. Yes, sir?

Mr. STAUBER. Request a recorded vote.

Chairman WILLIAMS. The recorded vote has been requested and a roll call vote is ordered. Pursuant to Committee rule 13 and House rule XI, further proceedings on the bill are postponed.

H.R. 6156

The next bill we will mark up is H.R. 6156, the Childcare Small Business Insight and Improvement Act of 2023, introduced by Representatives Landsman, Molinaro, and Meuser. The clerk will report.

The CLERK. H.R. 6156, to require the administrator—

Chairman WILLIAMS. Without objection, H.R. 6156 is considered as read and open for amendment. The bill's sponsor, Mr. Landsman, has an amendment in the nature of a substitute at the desk. The amendment has been predistributed to all Members. The clerk will report the amendment.

The CLERK. Amendment in the nature of a substitute to H.R.—

Chairman WILLIAMS. Without objection, the amendment is considered as read and the substitute will be considered base text of the bill for the purpose of amendment.

I now recognize the bill sponsor, Mr. Landsman, for an opening statement.

Mr. LANDSMAN. Thank you, Mr. Chairman, and to my Republican colleagues who helped us put this bill together, Congresswoman Letlow and, of course, here Congressmembers Molinaro and Meuser.

The Childcare Small Business Insight and Improvement Act is an important step in lifting up and supporting childcare providers, which are uniquely special and uniquely important small businesses. They help children as they are developing, and they help families so that they can work. They are, as it has been said, the workforce behind the workforce. They are essential to our economy.

And many, if not most, of our childcare providers are, in fact, small businesses. We think about them sometimes as nonprofits, and there are many that are, in fact, nonprofits and many that are part of larger companies or bigger businesses. But the fact is, most are small businesses. But the SBA was not really built for these small businesses.

This bill will change that. It assesses the needs of our childcare small businesses. It looks at the resources that the SBA currently provides, but, most importantly, it starts to tackle the gaps of what the SBA could be doing to lift up and support our childcare small businesses and the leadership within the SBA that would be needed to implement the recommendations.

So I am grateful for the bipartisan support for our childcare small businesses, the workforce behind our workforce.

And with that, I yield back.

Chairman WILLIAMS. Yields back. I now recognize the bill's cosponsor, Mr. Meuser, for an opening statement.

Mr. MEUSER. Thank you very much, Mr. Chairman. And I thank my colleague, Mr. Landsman, for his leadership.

For parents in the workforce, access to reliable and affordable childcare is not just a convenience, it is a necessity. It enables parents to focus on their careers, contribute to the economy, and pursue their entrepreneurial aspirations with the confidence that their children are in safe hands.

Entrepreneurs face unique challenges in balancing the demands of building a successful business and caring for their families. Access to reliable and affordable childcare can make all the difference, allowing entrepreneurs to concentrate on their businesses while providing a secure environment for their children's development.

In talking with many small businesses, particularly as of late, and local chambers in my district, such as Mr. Bob Carl, he's president of the Schuylkill County Chamber, they have emphasized the importance and prioritized the importance of access to reliable childcare for our small business owners and local economy. This legislation recognizes the significant role for-profit childcare providers play in supporting working parents. By directing the SBA to

conduct a thorough study of the needs and challenges faced by these businesses, this legislation will help this Committee and the SBA understand how to appropriately assist increasing the overall availability and affordability of childcare, benefiting both small business childcare providers as well as the businesses and entrepreneurs.

So I do thank my colleague again, Mr. Landsman. I thank my colleague, Mr. Molinaro, for his leadership on this legislation. I urge my colleagues to support its passage and look forward to its consideration on the floor.

Mr. Chairman, I yield back.

Chairman WILLIAMS. The gentleman yields back.

I now recognize the bill's cosponsor, Mr. Molinaro, for an opening statement.

Mr. MOLINARO. Thank you, Mr. Chairman. I certainly appreciate it. And I am grateful to my colleague, Mr. Landsman.

This bipartisan legislation seeks to address a significant challenge for certainly many families across America. Quality and affordable childcare is as much about providing assistance to children as it is a part of developing young children. And so H.R. 6156, the Childcare Small Business Insight and Improvement Act, is meant to address the need for affordable childcare. The bill seeks to enhance the SBA's role in supporting for-profit childcare providers while seeking to foster a greater understanding of the needs and challenges of small businesses.

New York, as sadly in many cases, is either the top or the bottom when it comes to most expensive or least opportunity. New York is the third least affordable state for single parents. And we know in particular in upstate New York, we continue to face the challenge of accessibility to affordable and quality childcare. We hear consistently not only from constituents, but also constituent business owners about the lack of access to quality, affordable childcare and how difficult it is, especially for families in rural communities like mine, to access childcare.

The Childcare Small Business Insight and Improvement Act sets our childcare providers up for long-term success and works to ensure that access to quality childcare is not a workforce barrier for our growing communities. We have seen it consistently, too many are locked out of the workforce simply because of lack of access to childcare. And again, I reinforce that access to quality childcare is as much about providing the opportunity for individuals to get to work and kids to have those social relationships. But quality childcare is quality early child development, and all of that is critically important to growing the American economy and closing the gaps in places like upstate New York.

And with that, again, I thank my colleagues Mr. Landsman, Mr. Chairman, thank you. And I encourage my colleagues to support of the bill.

And I yield back.

Chairman WILLIAMS. Yields back. Are there any other Members who wish to be recognized for a statement on this bill?

Ms. VELAZQUEZ. Yes, Mr. Chairman.

Chairman WILLIAMS. Ranking Member.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Let me begin by thanking Mr. Landsman and Molinaro and Mr. Meuser. But let me also praise Mr. Landsman for his leadership on this important issue. Since being elected to Congress, he has made it his mission to make life better for children and families, and increasing access to quality childcare is one way to accomplish that goal.

Affordable, high-quality childcare is essential to working families, small businesses, and our economy. A recent study found nearly two-thirds of parents of infants and toddlers face childcare issues that affect their productivity at work, resulting in \$78 billion in foregone earnings and job search expenses for families. It also means \$23 billion in workforce shortages for employers and \$21 billion in lower federal, state and local tax revenues.

Unfortunately, quality childcare services has been in short supply, and the pandemic exacerbated the shortages within the industry. To make matters worse, the emergency funding provided in the American Rescue Plan for childcare centers has ended. Put simply, we are in the midst of a crisis.

In December, we heard testimony that the loss of funds is threatening the existence of more than a third of our nation's centers, and many providers have had to increase their fees. We must tackle this crisis head-on and provide families the support they need to enter and stay in the workforce. That is why I am pleased to support the Childcare Business Insight and Improvement Act, which will make sure our nation's 600,000 childcare businesses have the resources they need to thrive.

Mr. Williams, I yield back.

Chairman WILLIAMS. The Ranking Member yields back and I now recognize myself to speak in support of the amendment in nature of a substitute to H.R. 6156, the Childcare Small Business Insight and Improvement Act of 2023.

This legislation requires the SBA to examine the landscape of access to childcare through a report that will assess the needs and challenges of for-profit childcare providers as well as potential gaps in federal support for childcare small businesses. The report will include recommendations for the administrator on how to address the challenges uncovered in the study.

This amendment preserves the intent of the original bill while removing the mandate to create a new position to carry out the bill before the study is conducted. I commend my colleagues for supporting this legislation today while also maintaining fiscal responsibility.

I urge my colleagues to vote yes on the amendment to H.R. 6156.

Do any Members seek recognition for the purpose of offering an amendment to the amendment in the nature of a substitute?

If there is no further discussion, this question is now on the amendment in the nature of a substitute to H.R. 6156 offered by Mr. Landsman.

All those in favor, say aye.

All those opposed, say no. In the opinion of the Chair, the ayes have it, and the amendment and nature of a substitute to H.R. 6156 offered by Mr. Landsman is agreed to.

Mr. LANDSMAN. Mr. Chair?

Chairman WILLIAMS. Yes. Recognized.

Mr. LANDSMAN. May I ask for a recorded vote?

Chairman WILLIAMS. A recorded vote has been requested and a roll call vote is ordered. Pursuant to Committee rule 13 and House rule XI, further proceedings on the amendment are postponed.

The question is now on favorably reporting H.R. 6156, as amended, to the House.

All those in favor, say aye.

All those opposed, say no.

In the opinion of the Chair, the ayes have it and H.R. 6156—

Mr. MEUSER. Mr. Chairman?

Chairman WILLIAMS. Yes.

Mr. MEUSER. I request a recorded vote.

Chairman WILLIAMS. Okay. A recorded vote has been requested and a roll call vote is ordered. Pursuant to Committee rule 13 and House rule XI, further proceedings on the bill are postponed.

H.R. 7104

The next bill we will mark up is H.R. 7104, the National SBDC Advisory Board Improvement Act, introduced by Representatives Mann and Golden.

I now recognize the bill's sponsor, Mr. Mann, for an opening statement.

Mr. MANN. Thank you, Mr. Chairman.

I rise to speak in support of H.R. 7104. In Kansas' big 1st Congressional District, more than 80 percent of employees in the district are employed by small business. There are five small business development centers, or SBDCs, in the district, and they operate in partnership with colleges or universities across the state. We have ones in Liberal, Dodge City, Hayes, Manhattan, and Lawrence. These SBDCs and those around the country offer beneficial resources to small businesses, support entrepreneurship, and drive economic development.

Between rampant inflation, high interest rates, a disruptive supply chain, and burdensome federal regulation, our small businesses are struggling. SBDCs often offer the tools and resources that America's small business owners need to get their business off the ground and to keep it running.

This legislation, the National SBDC Advisory Board Improvement Act, would require the National Small Business Development Center Advisory Board to provide an annual report to Congress recommending improvements to SBDC's outreach, technical assistant, and training for small businesses. The National SBDC Advisory Board should be a part of the solution to offer recommendations on how to keep those services and resources current and of the highest quality, especially in rural America.

I appreciate Representative Golden joining me in this bipartisan legislation, and I encourage my colleagues to join me in voting yes to advance this legislation to the full House.

Thank you, Mr. Chairman. I yield back.

Chairman WILLIAMS. The gentleman yields back. I now recognize the bill's cosponsor, Mr. Golden, for an opening statement.

Mr. GOLDEN. Thank you, Mr. Chair, Madam Ranking Member. I want to thank Congressman Mann for bringing this bill forward and for asking me to go ahead and partner with him on this.

In the interest of time, I will simply say that I am strongly supportive of the work of Small Business Development Centers and take seriously the responsibility of this Committee and Congress to have good oversight of taxpayer-funded programs. So I think this bill makes good sense. It is a commonsense bill, it is a good bill, and I encourage the Committee to support it. Thank you.

Chairman WILLIAMS. Are there any other Members who wish to be recognized for a statement on the bill?

Yes, ma'am?

Ms. DAVIDS. Thank you, Chairman. And I would just like to speak in support of the National SBDC Advisory Board Improvement Act.

As Mr. Mann from the Big 1st in Kansas already stated, we have quite a bit of entrepreneurship going on in the state of Kansas. I know certainly the SBDCs in our state, including the one in the 3rd district at Johnson County Community College, works closely with the folks in Lawrence and other places in the state. And just wanted to thank my colleagues for bringing this bill up in a bipartisan way. I think this is a great example of the ways that we can work together to improve the entrepreneurial pursuits of the folks in our communities.

So I speak in support of the bill and encourage my colleagues to support it here and on the House floor. I yield.

Chairman WILLIAMS. Yields back. Are there any other Members who wish to be recognized for a statement on the bill?

Ms. VELAZQUEZ. Mr. Chairman?

Chairman WILLIAMS. Ranking Member.

Ms. VELAZQUEZ. Thank you. I am pleased to support the legislation offered by Mr. Mann and Mr. Golden, which will require the Small Business Development Center Advisory Board to submit an annual report to Congress and the SBA on their activities and, also, and this is the part that is so important, to make recommendations to improve the program.

I applaud Mr. Mann and Mr. Golden for their leadership on this issue, but I will be remiss if I did not mention the importance of reauthorizing the entrepreneurial development programs. It is imperative that this Committee review these programs and make improvements to better meet the needs of today small business owners. As the former Chair of this Committee, I made certain we reauthorized these bills in both the 116 and 117 Congresses. We worked together in a bipartisan manner and all of the bills passed the House overwhelmingly.

In closing, Mr. Chairman, I look forward to working together to mark up those reauthorization bills and appreciate your commitment to that effort. I support this bill and I yield back my time.

Chairman WILLIAMS. The gentlelady yields back. I now recognize myself to speak in support of the legislation.

H.R. 7104, the National Small Business Development Center Advisory Board Improvement Act ensures our nation's SBDCs function at the highest level possible. The National SBDC Advisory Board consists of educators, small business leaders, and industry experts to give advice on improvements to the SBDC program, to the associate administrator. This bill elevates this important advi-

sory board by providing an annual report to Congress on opportunities to improve services and the program as a whole.

I want to thank my colleague from Kansas and my colleague from Maine for introducing this bill. I urge my colleagues to support H.R. 7104.

If there is no further discussion, the Committee now moves to consideration of H.R. 7104. The clerk will report.

The CLERK. H.R. 7104, to require the—

Chairman WILLIAMS. Without objection, the first reading of the bill is dispensed with. And without objection, the bill is considered as read and open for floor amendment.

Do any Members seek recognition for the purpose of offering an amendment?

Seeing none, the question is now an adoption of H.R. 7104 and favorably reporting it to the House.

All those in favor, say aye.

Opposed, say no.

In the opinion of the Chair, the ayes have it, and H.R. 7104 is agreed to.

Mr. MEUSER. Mr. Chairman, I ask for a recorded vote.

Chairman WILLIAMS. Request for a recorded vote has been requested and a roll call vote is ordered. Pursuant to Committee rule 13 and House rule XI, further proceedings on the bill are postponed.

H.R. 7105

The next bill we will mark up is H.R. 7105, the WOSB Certification and Opportunity Expansion Act, introduced by Ranking Member of Velázquez and Representative LaLota.

I now recognize the bill's sponsor, Ranking Member Velázquez, for an opening statement.

Ms. VELAZQUEZ. Thank you, Chairman Williams, and thank you, Representative LaLota, for cosponsoring this bill.

Our Committee has regularly worked to strengthen the SBA Small business contracting programs and to protect their integrity. Continuing this tradition, the WOSB Certification and Opportunity Expansion Act will move away from self-certification for the women-owned small business program by requiring federal agencies to only count contracts awarded to certified WOSBs toward meeting their procurement goals. This will bring the WOSB certification process in line with certifications from the other three small business program. And while it will strengthen the program, it is further intended to bolster its use.

This administration has awarded a record amount of contracting dollars to women-owned small businesses, yet the top line goal of 5 percent of contracting dollars to WOSBs remains unmet. Simply put, women-owned small businesses are not seeing the contracting opportunities that should accompany their level of participation in the federal market. This is not surprising when looking at the utilization of the contracting authorities for small business programs.

According to CRS last analysis, the percentage set-aside or sole sources to the other programs ranges from a low of 17 percent for HUBZones to well over half, about 58 percent, for 8(a)'s. The veteran's programs seized 44 percent of its dollars reserved exclusively for veterans. Of the spending now going to women-owned small

businesses, only about 5 percent is moved through the contracting authority.

Stakeholders point to confusion around WOSB-specific requirements and processes. By moving more WOSB through the SBA certification contracting process, we are expecting that contracting officers will more confidently and more frequently set aside and sole source contracts to women-owned small businesses.

I will close by highlighting two key points. First, we know this will take time and resources for SBA to implement. I appreciate the Chairman's willingness to work with us to provide sufficient time, and in doing so, we expect that WOSBs will not be penalized if SBA faces delays.

Second, the WOSB program is unique in its use of third-party certifiers, and those third-party certifiers charge fees. We believe that existing and new processes laid out in the bill will ensure that no WOSB is required to pay for a certification. I intend to monitor both of these issues closely during implementation.

Again, thank you, Mr. Williams. I urge Members to support the bill, and I yield back.

Chairman WILLIAMS. The lady yields back.

I now recognize the bill's cosponsor, Mr. LaLota, for an opening statement.

Mr. LALOTA. Thank you, Chairman Williams. Thank you to Ranking Member Velázquez, a proud fellow New Yorker, for leading this effort with me. It is a good day when Members of the same state delegation, but from opposite sides of the aisle work together on an important issue that will not just benefit our state's small businesses, but America's small businesses.

Our Women-Owned Small Business Certification Opportunity Expansion Act will phase out self-certified women-owned small businesses from the governmentwide procurement goals. In doing so, we will achieve two main things: protect the integrity of the women-owned small business program; and two, prevent the abuse of federal small business contracting goals.

While our federal government has a goal to spend at least 5 percent of its procurement dollars with women-owned small businesses, at present this includes self-certified firms. The SBA Office of Inspector General has consistently pointed out that with small disadvantaged businesses, the ability to self-certify opens up the designation to risk. This holds true to the ability for self-certified women-owned small businesses as well.

Meanwhile, women-owned small business owners in the SBA's Women-Owned Small Business Program go through a certification program to ensure that only women-owned firms enter. This aligns the Women-Owned Small Business Program with similar programs that no longer count self-certified firms in these goals. A similar provision phasing out self-certified service-disabled veteran-owned small businesses from the procurement goals passed in the fiscal year 2024 NDAA.

I ask that my colleagues support and vote yes on the Women-Owned Small Business Certification and Opportunity Expansion Act.

Mr. Chairman, I yield back.

Chairman WILLIAMS. The gentleman yields back.

Are there any other Members who wish to be recognized for a statement on the bill?

Seeing none, I now recognize myself to speak in support of H.R. 7105, the Women-Owned Small Business Opportunity and Expansion Act.

This bill will remove self-certification from the governmentwide women-owned small business procurement goals, allowing anyone to self-certify their business status could lead to fraud and abuse. Women small business owners competing for critical government contracts deserve to know that their competition did not falsely self-certify their business status.

I am proud of the work already done to remove self-certification from the service-disabled veteran-owned small business program in the NDAA. And now it is time to do the same with the WOSB program to help ensure integrity across SBA programs.

I urge my colleagues to join me in supporting H.R. 7105.

If there is no further discussion, the Committee now moves to consideration of H.R. 7105. The clerk will report.

The CLERK. H.R. 7105, to establish—

Chairman WILLIAMS. Without objection, the first reading of the bill is dispensed with. And without objection, the bill is considered as read and open for amendment.

Do any Members seek recognition for the purpose of offering an amendment?

Seeing none, the question is now on the adoption of H.R. 7105 and favorably reporting it to the House.

All those in favor, say aye.

All those opposed, say no.

In the opinion of the Chair, the ayes haven it, and H.R. 7105 is agreed to and ordered favorably to the House.

Mr. MANN. Chairman, request a recorded vote, please.

Chairman WILLIAMS. A recorded vote has been requested. A roll call vote is ordered. Pursuant to Committee rule 13 and House rule XI, further proceedings on the bill are postponed.

H.R. 7128

The next bill we will mark up is H.R. 7128, the WOSB Integrity Act of 2024, introduced by Representatives Maloy and Scholten.

I now recognize the bill's sponsor, Ms. Maloy, for an opening statement.

Mr. MALOY. Thank you, Mr. Chairman. Thank you, Mr. Chairman. I'll be brief.

We have already talked a fair amount about women-owned small businesses, or WOSBs. This bill seeks to close a loophole. The SBA inspector general found that while the SBA certifies that firms are women-owned, the SBA does not have procedures in place to verify size.

And this bill will close a loophole that allows women-owned businesses that are not small businesses to use the resources that have been set aside for women-owned small businesses. It cleans up the process and makes sure that the resources that we have set aside to support women who are trying to enter the marketplace are, in fact, going to women in small businesses who are entering the marketplace.

I represent Utah. Utah is the home to a lot of women who are entrepreneurs, and I want to make sure that they can compete and succeed. And in order to make that happen, we have got to level the playing field and make sure these programs are operating the way they were intended to.

With that, I yield back.

Chairman WILLIAMS. Yields back. I now recognize the bill sponsor, Ms. Scholten, for an opening statement.

Ms. SCHOLTEN. Yes, sir. Thank you so much.

I am so proud to speak on behalf of this bill. The Women-Owned Small Business—WOSB—Integrity Act, which is cosponsored, of course, by Congresswoman Maloy. Women working together, happy to see it.

Women, in particular, have been a driving force behind America's economic rebound from the COVID-19 pandemic, creating about half of new businesses for the third year in a row. To that end, it is incumbent on us to continue to find ways to support them. I strongly believe that one of the easiest ways to do this is by streamlining the bureaucratic process required when registering as a women-owned small business with the SBA. That is why I am so proud to support this bill that would require the SBA, or third-party certifiers, to certify that an applicant meets the SBA's size standards as a Small business for participation in the WOSB program.

By incorporating the certification at the beginning of the registration process, WOSBs will be able to spend their time running their business instead of defending their legitimacy and being forced to engage in lengthy battles with the competing companies that challenge the contracts they earn in the federal marketplace.

As the Ranking Member on the Small Business Committee on Contracting and Infrastructure, I look forward to continuing to find solutions that lighten the bureaucratic burden of running a women-owned small business in America.

I urge Members to vote yes on this important legislation. Thank you, Mr. Chair. And I yield back the remainder of my time.

Chairman WILLIAMS. Yields back. Are there any Members who wish to be recognized for a statement on this bill?

Ms. VELAZQUEZ. Mr. Chairman?

Chairman WILLIAMS. Yes, Ranking Member.

Ms. VELAZQUEZ. Thank you. I really appreciate this bill's sponsors, Representatives Maloy and Scholten, for their work to bring it before us today.

The SBA's IG has routinely highlighted what it believes is a discrepancy in SBA implementation of the WOSB program. Like all small business contracting programs, WOSBs must meet a number of criteria for participation, including that the firm is owned and controlled by women, it is certified, and it is small, among others. The IG has stated that implementation of the size requirement is, and I quote, inconsistent with the statutory requirement.

The purpose of this bill is to clarify that we expect SBA to have a process similar to the other contracting programs when reviewing WASP applicants. The OIG report states that they acknowledge, and I quote, "that size determination is a specific process and is not

recommending SBA perform size determinations for each applicant.” The legislation mirrors that language to clarify the intent.

With that, I support this bill and I ask for a yes vote.

Thank you, Mr. Chairman. I yield back.

Chairman WILLIAMS. Yields back. I now recognize myself to speak in support of H.R. 7128, the Women-Owned Small Business Integrity Act.

This bill will ensure that women small businesses’ owners and the SBA’s women-owned small business program do not have to worry about a large firm and misrepresenting themselves as a small business when they enter the program. Self-certification in the SBA contracting programs presents a major concern, as the Committee has heard directly from witnesses in our hearings.

Unfortunately, the SBA does not have processes and procedures in place to verify that WOSB applicants are in fact women-owned small businesses. This is a missed opportunity by the SBA to ensure that only small businesses are entering the program and WOSB participants are not competing with fraudulent actors.

I urge my colleagues to support H.R. 7128, the WOSB Integrity Act, and take this step to prevent fraud and abuse. If there is no further discussion, the Committee now moves consideration of H.R. 7128. The clerk will report.

The CLERK. H.R. 7128, to establish requirements—

Chairman WILLIAMS. Without objection, The first reading of the bill is dispensed. And without objection, the bill is considered as read and open for amendment.

Do any Members seek recognition for the purpose of offering an amendment?

Seeing none, the question is now on the adoption of H.R. 7128 in favor of reporting it to the House.

All those in favor, say aye.

All those opposed, say no.

In the opinion of the Chair, the ayes have it, and H.R. 7128 is agreed to and ordered favorably to the House.

Ms. SCHOLTEN. Mr. Chair?

Chairman WILLIAMS. Recognized.

Ms. SCHOLTEN. I request a recorded vote.

Chairman WILLIAMS. A recorded vote has been requested and a roll call vote is ordered. Pursuant to Committee Rule 13 and House rule XI, further proceedings on the bill are postponed.

H.R. 7129

The next bill we will mark up is H.R. 7129, the Put America on Commission Act of 2024, which I introduced along with many of my colleagues on this Committee.

I now recognize myself to speak in support of this legislation

H.R. 7129, the Put America on Commission Act of 2024, will maximize recovery efforts of fraudulent pandemic loan funds by incentivizing everyday Americans to submit information on fraudulent loans in exchange for a commission. This bill will establish the Office of Whistleblower awards within the SBA to pass along tips to the Office of Inspector General and credible evidence of pandemic loan fraud submitted by the public. If that information leads to a final conviction, the office will then disperse award money to eligible whistleblowers.

The need for this bill was demonstrated during our Committee hearing last year where we examined the SBA inspector general's estimate that over \$200 billion in taxpayer money was given out to bad actors through PPP, EIDL, and other COVID-19 funding programs by the SBA. This accounts for nearly 20 percent of all pandemic lending and it is totally unacceptable.

One thing became particularly clear in that hearing was that whistleblowers could serve as the key to uncovering this unprecedented amount of fraud. The newly established Office of Whistleblower Awards will be led by one staffer to coordinate tips to the SBA inspector general for investigation.

Uniquely, the cost of the office's operations and the whistleblower awards are fully funded by the recovered fraudulent loan amounts which are deposited into the whistleblower award fund. The office will sunset at the conclusion of the final investigation under the expiration of the statute of limitations for pandemic loan fraud.

Lastly, the bill provides authority to the SBA to seek a separate civil monetary penalty against convicted fraudsters, which must also be deposited the Whistleblower award fund. Any unused monies in the whistleblower award fund are mandated to be returned to the general fund.

In the private sector commission works, this bill will look to bring this common practice to help bring accountability to these individuals that chose to defraud the taxpayers during a global pandemic. I greatly appreciate the work that the Office of the Inspector General has done thus far to uncover the extent of the fraud. But it is clear that more work must be done to do the American people what they need to have done, and also small businesses.

I am proud to put forward this piece of legislation that will hold fraudsters accountable and recoup the billions of dollars stolen from the taxpayers. I urge my colleagues to vote yes on H.R. 7129.

Are there any other Members who wish to be recognized for a statement on this bill?

Seeing none, I would—oh, Mr. Luetkemeyer, sorry. Yes, sir.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. I appreciate your hard work on this bill. And you and I have been talking about this for a long time, and I think you articulated some of the problems and ways that we can deal with this.

You know, the Inspector general did his job. He did the job of going through the files, seeing what the problem is and showing us how large it was. Now it is our job, the SBA's job, to fix it. SBA doesn't want to do it. They think they can't do it, which is, in my judgment, I don't believe that. But if they can't do it, then maybe we need to help them. And so if that is the case, then this bill is a way to do that. It is a way to take back our first target, the dollars that are taxpayer dollars. They are not the government dollars. They are taxpayer dollars, our dollars that we are supposed to be overseeing and then have SBA go find them, DOJ go find them, whoever and however this is going to work.

I think this is extremely important piece of legislation, maybe the most important piece of legislation that comes out of this Committee, because of the total amount of money that you're talking about, number one. And number two, the principle that if you owe money to the government, we are not going to write it off. We are

going to ask you to pay it back. Just like every single business in this country, when they do—or individual, when you take out a loan, when you take something from somebody and you commit to pay it back, you pay it back. That is a principle that has to be maintained, and this bill will help do that.

Mr. Chairman, again, sincerely, thank you for your hard work on this. I look forward to supporting it and urge my colleagues to do as well.

With that, I yield back.

Chairman WILLIAMS. I now recognize Representative Meuser from Pennsylvania for 5 minutes.

Mr. MEUSER. Thank you, Mr. Chairman.

So we have discussed in detail, in multiple hearings this year, the SBA's inspector general estimate \$200 billion of pandemic loan dollars were potentially obtained fraudulently. So this number includes 8 percent of PPP, 44 percent of vital loans.

So by establishing an Office of Whistleblower Rewards within the SBA and putting America on commission, as you have named the bill, and as the Chairman likes to say, this legislation will incentivize Americans to come forward with tips on potential pandemic loan fraud. This office will be another tool at our disposal to fight to recover as much of the potential COVID fraud as possible. This Committee must and will take seriously our role in overseeing the SBA's loan programs, especially the Pandemic Relief Programs, and assure bad actors are pursued.

So I thank Chairman Williams for his leadership. I urge my colleagues to support its passage and look forward to its swift consideration on the House floor.

Mr. Chairman, thank you. And I yield back.

Chairman WILLIAMS. Yields back.

I would like to recognize the Ranking Member to speak on the bill.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Throughout the 118th Congress, this Committee has been primarily focused on recovering fraudulent pandemic loans. I share your commitment, and that is why I led efforts, along with Congressman Luetkemeyer, to extend the statute of limitations for fraud in the EIDL and PPP programs.

This bill, which became law, sent a strong message that unscrupulous behavior will not be tolerated and that those who commit fraud will be held accountable in the years to come. The estimates of potential fraud in SBA programs vary significantly, ranging from 26 billion to 200 billion. And while we may never know the exact number, there is no doubt that the vast majority of the fraud occurred in the first 9 months of the pandemic under the leadership of former President Trump.

We also know with certainty that the Biden administration, led by Administrator Guzman at SBA, took a number of steps to curtail the fraud, including reinstituting longstanding controls, establishing a fraud risk management board, and creating a special council for enterprise risk. The IG has attested to that in our Committee, and he reported that the oversight work has provided an exponential return on investment, 1,300 percent on the dollar.

Given the stellar return on the investment, the single most important action we can take to recover fraud is to fully fund the IG and our law enforcement community. I should note that the IG has more than 90,000 actionable leads that have been submitted to their hotline. The underlying issue is not necessarily a failure to identify fraud, because the IG and DOJ have enough leads to stay active for decades. The issue is adequately funding the law enforcement community to investigate and prosecute potential fraud.

With that said, I appreciate the efforts of the Chairman to come up with a creative solution to help recover fraudulent funds, and I plan to support this bill. New spending will be needed to establish the office and hire staff because this type of investigations and prosecutions can take time and the recoveries, unfortunately, will not flow immediately into account.

I am committed to making sure that SBA and the IG have the resources they need to recover fraudulent funds. And I thank the Chairman for working with me to bridge the differences on this bill. Thank you and I yield back.

Chairman WILLIAMS. Yields back. If there is no further discussion, the Committee now moves to consideration of H.R. 7129. The clerk will report.

The CLERK. H.R. 7129, to amend the Small Business Act—

Chairman WILLIAMS. Without objection, the first reading of the bill is dispensed with. And without objection, the bill is considered as read and open for amendment.

Do any Members seek recognition for the purpose of offering an amendment?

Seeing none, the question is now on the adoption of H.R. 7129 and favorably reporting to the house.

All those in favor, say aye.

Those opposed, say no.

In the opinion of the Chair, the ayes have it, and H.R. 7129 is agreed to and ordered favorably to the House.

Mr. ELLZEY. Mr. Chairman, I request a recorded vote.

Chairman WILLIAMS. A recorded vote has been requested. A roll call vote is ordered. Pursuant to Committee rule 13 and House rule XI, further proceedings on the bill are postponed.

The Committee now stands in recess subject to the call of the Chair. We will resume at a later today at 11:45.

[Recess.]

Chairman WILLIAMS. Okay, if I can have everybody's attention. The Committee will now come to order.

Without objection, the request for a recorded vote on the agreeing to the amendment in the nature of a substitute for H.R. 6156 is withdrawn and the amendment in the nature of a substitute offered by Mr. Landsman is agreed to.

The Committee will now resume consideration of the bills on which roll call votes are requested and postponed. We will start with H.R. 6591.

The question now is on adopting H.R. 6591, as amended, and ordering it favorably reported to the House. The clerk will call the roll.

The CLERK. Mr. Luetkemeyer?

Mr. LUETKEMEYER. Yes.

The CLERK. Mr. Luetkemeyer votes aye.
 Mr. Stauber?
 Mr. STAUBER. Aye.
 The CLERK. Mr. Stauber votes aye.
 Mr. Meuser?
 Mr. MEUSER. Aye.
 The CLERK. Mr. Meuser votes aye.
 Ms. Van Duyne?
 Ms. VAN DUYNE. Aye.
 The CLERK. Ms. Van Duyne votes aye.
 Ms. Salazar?
 Ms. SALAZAR. Aye.
 The CLERK. Ms. Salazar votes aye.
 Mr. Mann?
 Mr. MANN. Aye.
 The CLERK. Mr. Mann votes aye.
 Mr. Ellzey?
 Mr. ELLZEY. Aye.
 The CLERK. Mr. Ellzey votes aye.
 Mr. Molinaro?
 [No response.]
 The CLERK. Mr. Alford?
 Mr. ALFORD. Aye.
 The CLERK. Mr. Alford votes aye.
 Mr. Crane?
 Mr. CRANE. Aye.
 The CLERK. Mr. Crane votes aye.
 Mr. Bean?
 Mr. BEAN. Aye.
 The CLERK. Mr. Bean votes aye.
 Mr. Hunt?
 Mr. HUNT. Aye.
 The CLERK. Mr. Hunt votes aye.
 Mr. LaLota?
 Mr. LALOTA. Aye.
 The CLERK. Mr. LaLota votes aye.
 Ms. Maloy?
 [No response.]
 Mr. Golden?
 Mr. GOLDEN. Aye.
 The CLERK. Mr. Golden votes aye.
 Mr. Mfume?
 Mr. MFUME. Aye.
 The CLERK. Mr. Mfume votes aye.
 Mr. Phillips?
 [No response.]
 Mr. Landsman?
 Mr. LANDSMAN. Aye.
 The CLERK. Mr. Landsman votes aye.
 Mr. McGarvey?
 [No response.]
 Ms. Gluesenkamp Perez?
 Ms. GLUESENKAMP PEREZ. Aye.
 The CLERK. Ms. Gluesenkamp Perez votes aye.

Ms. Scholten?
 [No response.]
 Mr. Thanedar?
 Mr. THANEDAR. Aye.
 The CLERK. Mr. Thanedar votes aye.
 Ms. Chu?
 Ms. CHU. Aye.
 The CLERK. Ms. Chu votes aye.
 Ms. Davids?
 Ms. DAVIDS. Ms. Davids votes aye.
 Mr. Pappas?
 [No response.]
 The CLERK. Ranking Member Velázquez?
 Ms. VELÁZQUEZ. Aye.
 The CLERK. Ranking Member Velázquez votes aye.
 Chairman Williams?
 Chairman WILLIAMS. Aye.
 The CLERK. Chairman Williams votes aye.
 Mr. MOLINARO. Mr. Chairman?
 Chairman WILLIAMS. Yes.
 Mr. MOLINARO. Mr. Chairman, how am I recorded?
 Chairman WILLIAMS. Who said that?
 Mr. MOLINARO. Mr. Molinaro. Okay. The other Italian from New York.
 The CLERK. Mr. Molinaro is recorded as not voted.
 Mr. MOLINARO. I vote yes.
 The CLERK. Mr. Molinaro votes aye.
 Chairman WILLIAMS. Okay. Are there any other Members who have not voted or wish to change their vote?
 Seeing none, the clerk will report it.
 The CLERK. Mr. Chairman, on that vote, 22 ayes, 0 nays, and 0 present.
 Chairman WILLIAMS. The motion is agreed to, and H.R. 6591, as amended, is adopted and will be reported favorably to the House.
 The question now is on adopting H.R. 7102 and ordering it favorably reported to the House. The clerk will call the roll.
 The CLERK. Mr. Luetkemeyer?
 Mr. LUETKEMEYER. Aye.
 The CLERK. Mr. Luetkemeyer votes aye.
 Mr. Stauber?
 Mr. STAUBER. Aye.
 The CLERK. Mr. Stauber votes aye.
 Mr. Meuser?
 Mr. MEUSER. Aye.
 The CLERK. Mr. Meuser votes aye.
 Ms. Van Duyne?
 Ms. VAN DUYNE. Aye.
 The CLERK. Ms. Van Duyne votes aye.
 Ms. Salazar?
 Ms. SALAZAR. Aye.
 The CLERK. Ms. Salazar votes aye.
 Mr. Mann?
 Mr. MANN. Aye.

The CLERK. Mr. Mann votes aye.
 Mr. Ellzey?
 Mr. ELLZEY. Aye.
 The CLERK. Mr. Ellzey votes aye.
 Mr. Molinaro?
 Mr. MOLINARO. Aye.
 The CLERK. Mr. Alford?
 Mr. ALFORD. Aye.
 The CLERK. Mr. Alford votes aye.
 Mr. Crane?
 Mr. CRANE. Aye.
 The CLERK. Mr. Crane votes aye.
 Mr. Bean?
 Mr. BEAN. Aye.
 The CLERK. Mr. Bean votes aye.
 Mr. Hunt?
 Mr. HUNT. Aye.
 The CLERK. Mr. Hunt votes aye.
 Mr. LaLota?
 Mr. LALOTA. Aye.
 The CLERK. Mr. LaLota votes aye.
 Ms. Maloy?
 [No response.]
 Mr. Golden?
 Mr. GOLDEN. Aye.
 The CLERK. Mr. Golden votes aye.
 Mr. Mfume?
 Mr. MFUME. Aye.
 The CLERK. Mr. Mfume votes aye.
 Mr. Phillips?
 [No response.]
 Mr. Landsman?
 Mr. LANDSMAN. Aye.
 The CLERK. Mr. Landsman votes aye.
 Mr. McGarvey?
 [No response.]
 Ms. Gluesenkamp Perez?
 Ms. GLUESENKAMP PEREZ. Aye.
 The CLERK. Ms. Gluesenkamp Perez votes aye.
 Ms. Scholten?
 [No response.]
 Mr. Thanedar?
 Mr. THANEDAR. Aye.
 The CLERK. Mr. Thanedar votes aye.
 Ms. Chu?
 Ms. CHU. Aye.
 The CLERK. Ms. Chu votes aye.
 Ms. Davids?
 Ms. DAVIDS. Ms. Davids votes aye.
 Mr. Pappas?
 [No response.]
 The CLERK. Ranking Member Velázquez?
 Ms. VELÁZQUEZ. Aye.
 The CLERK. Ranking Member Velázquez votes aye.

Chairman Williams?

Chairman WILLIAMS. Aye.

The CLERK. Chairman Williams votes aye.

Chairman WILLIAMS. Are there any Members who have not voted?

Mr. MCGARVEY. I wish to be recorded as an I vote, Mr. Chairman.

The CLERK. Mr. McGarvey votes aye.

Ms. SCHOLTEN. Aye.

The CLERK. Ms. Scholten votes aye.

Mr. Chairman, on that vote, 24 ayes, 0 nays, and 0 present.

Chairman WILLIAMS. Okay. The motion is agreed to and H.R. 7102 is adopted and will be reported favorably to the House.

The question now is adopting H.R. 7103 and ordering it favorably to the House. The clerk will call the roll.

The CLERK. Mr. Luetkemeyer?

Mr. LUETKEMEYER. Aye.

The CLERK. Mr. Luetkemeyer votes aye.

Mr. Stauber?

Mr. STAUBER. Aye.

The CLERK. Mr. Stauber votes aye.

Mr. Meuser?

Mr. MEUSER. Aye.

The CLERK. Mr. Meuser votes aye.

Ms. Van Duyne?

Ms. VAN DUYNÉ. Aye.

The CLERK. Ms. Van Duyne votes aye.

Ms. Salazar?

Ms. SALAZAR. Aye.

The CLERK. Ms. Salazar votes aye.

Mr. Mann?

Mr. MANN. Aye.

The CLERK. Mr. Mann votes aye.

Mr. Ellzey?

Mr. ELLZEY. Aye.

The CLERK. Mr. Ellzey votes aye.

Mr. Molinaro?

[No response.]

Mr. Alford?

Mr. ALFORD. Aye.

The CLERK. Mr. Alford votes aye.

Mr. Crane?

Mr. CRANE. Aye.

The CLERK. Mr. Crane votes aye.

Mr. Bean?

Mr. BEAN. Aye.

The CLERK. Mr. Bean votes aye.

Mr. Hunt?

Mr. HUNT. Aye.

The CLERK. Mr. Hunt votes aye.

Mr. LaLota?

Mr. LALOTA. Aye.

The CLERK. Mr. LaLota votes aye.

Ms. Maloy?

[No response.]
 Mr. Golden?
 Mr. GOLDEN. Aye.
 The CLERK. Mr. Golden votes aye.
 Mr. Mfume?
 Mr. MFUME. Aye.
 The CLERK. Mr. Mfume votes aye.
 Mr. Phillips?
 [No response.]
 Mr. Landsman?
 Mr. LANDSMAN. Aye.
 The CLERK. Mr. Landsman votes aye.
 Mr. McGarvey?
 Mr. MCGARVEY. Aye.
 The CLERK. Mr. McGarvey votes aye.
 Ms. Gluesenkamp Perez?
 Ms. GLUESENKAMP PEREZ. Aye.
 The CLERK. Ms. Gluesenkamp Perez votes aye.
 Ms. Scholten?
 Ms. SCHOLTEN. Yes.
 The CLERK. Ms. Scholten votes aye.
 Mr. Thanedar?
 Mr. THANEDAR. Aye.
 The CLERK. Mr. Thanedar votes aye.
 Ms. Chu?
 Ms. CHU. Aye.
 The CLERK. Ms. Chu votes aye.
 Ms. Davids?
 Ms. DAVIDS. Ms. Davids votes aye.
 Mr. Pappas?
 [No response.]
 The CLERK. Ranking Member Velázquez?
 Ms. VELAZQUEZ. Aye.
 The CLERK. Ranking Member Velázquez votes aye.
 Chairman Williams?
 Chairman WILLIAMS. Aye.
 The CLERK. Chairman Williams votes aye.
 Chairman WILLIAMS. Okay. Are there any of the Members who have not voted or wished to change their vote?
 Seeing none, the clerk will report.
 The CLERK. Mr. Chairman, on that vote, 23 ayes, 0 nays, and 0 present.
 Chairman WILLIAMS. Okay. The motion is agreed to and H.R. 7103 is adopted and will be reported favorably to the House.
 The question now is on adopting H.R. 6156, as amended, and ordering it favorably reported to the House. The clerk will call the roll.
 The CLERK. Mr. Luetkemeyer?
 Mr. LUETKEMEYER. Aye.
 The CLERK. Mr. Luetkemeyer votes aye.
 Mr. Stauber?
 Mr. STAUBER. Aye.
 The CLERK. Mr. Stauber votes aye.
 Mr. Meuser?

Mr. MEUSER. Aye.
 The CLERK. Mr. Meuser votes aye.
 Ms. Van Duyne?
 Ms. VAN DUYNE. Aye.
 The CLERK. Ms. Van Duyne votes aye.
 Ms. Salazar?
 Ms. SALAZAR. Aye.
 The CLERK. Ms. Salazar votes aye.
 Mr. Mann?
 Mr. MANN. Aye.
 The CLERK. Mr. Mann votes aye.
 Mr. Ellzey?
 Mr. ELLZEY. Aye.
 The CLERK. Mr. Ellzey votes aye.
 Mr. Molinaro?
 [No response.]
 Mr. Alford?
 Mr. ALFORD. Aye.
 The CLERK. Mr. Alford votes aye.
 Mr. Crane?
 Mr. CRANE. Aye.
 The CLERK. Mr. Crane votes aye.
 Mr. Bean?
 Mr. BEAN. Aye.
 The CLERK. Mr. Bean votes aye.
 Mr. Hunt?
 Mr. HUNT. Aye.
 The CLERK. Mr. Hunt votes aye.
 Mr. LaLota?
 Mr. LALOTA. Aye.
 The CLERK. Mr. LaLota votes aye.
 Ms. Maloy?
 [No response.]
 Mr. Golden?
 Mr. GOLDEN. Aye.
 The CLERK. Mr. Golden votes aye.
 Mr. Mfume?
 Mr. MFUME. Aye.
 The CLERK. Mr. Mfume votes aye.
 Mr. Phillips?
 [No response.]
 Mr. Landsman?
 Mr. LANDSMAN. Aye.
 The CLERK. Mr. Landsman votes aye.
 Mr. McGarvey?
 Mr. MCGARVEY. Aye.
 The CLERK. Mr. McGarvey votes aye.
 Ms. Gluesenkamp Perez?
 Ms. GLUESENKAMP PEREZ. Aye.
 The CLERK. Ms. Gluesenkamp Perez votes aye.
 Ms. Scholten?
 Ms. SCHOLTEN. Aye.
 The CLERK. Ms. Scholten votes aye.
 Mr. Thanedar?

Mr. THANEDAR. Aye.

The CLERK. Mr. Thanedar votes aye.

Ms. Chu?

Ms. CHU. Aye.

The CLERK. Ms. Chu votes aye.

Ms. Davids?

Ms. DAVIDS. Ms. Davids votes aye.

Mr. Pappas?

[No response.]

The CLERK. Ranking Member Velázquez?

Ms. VELÁZQUEZ. Aye.

The CLERK. Ranking Member Velázquez votes aye.

Chairman Williams?

Chairman WILLIAMS. Aye.

The CLERK. Chairman Williams votes aye.

Chairman WILLIAMS. Okay. Are there any of the Members who have not voted or wish to change their vote?

Seeing none, the clerk will report.

The CLERK. Mr. Chairman, on that vote, 23 ayes, 0 nays, and 0 present.

Chairman WILLIAMS. Okay. The motion is agreed to and H.R. 6156, as amended, is adopted and will be reported favorably to the House.

The question now is on adopting H.R. 7104, and ordered favorably reported to the House. The clerk will call the roll.

The CLERK. Mr. Luetkemeyer?

Mr. LUETKEMEYER. Aye.

The CLERK. Mr. Luetkemeyer votes aye.

Mr. Stauber?

Mr. STAUBER. Aye.

The CLERK. Mr. Stauber votes aye.

Mr. Meuser?

Mr. MEUSER. Aye.

The CLERK. Mr. Meuser votes aye.

Ms. Van Duyne?

Ms. VAN DUYNÉ. Aye.

The CLERK. Ms. Van Duyne votes aye.

Ms. Salazar?

Ms. SALAZAR. Aye.

The CLERK. Ms. Salazar votes aye.

Mr. Mann?

Mr. MANN. Aye.

The CLERK. Mr. Mann votes aye.

Mr. Ellzey?

Mr. ELLZEY. Aye.

The CLERK. Mr. Ellzey votes aye.

Mr. Molinaro?

[No response.]

Mr. Alford?

Mr. ALFORD. Aye.

The CLERK. Mr. Alford votes aye.

Mr. Crane?

Mr. CRANE. Aye.

The CLERK. Mr. Crane votes aye.

Mr. Bean?
 Mr. BEAN. Aye.
 The CLERK. Mr. Bean votes aye.
 Mr. Hunt?
 Mr. HUNT. Aye.
 The CLERK. Mr. Hunt votes aye.
 Mr. LaLota?
 Mr. LALOTA. Aye.
 The CLERK. Mr. LaLota votes aye.
 Ms. Maloy?
 [No response.]
 Mr. Golden?
 Mr. GOLDEN. Aye.
 The CLERK. Mr. Golden votes aye.
 Mr. Mfume?
 Mr. MFUME. Aye.
 The CLERK. Mr. Mfume votes aye.
 Mr. Phillips?
 [No response.]
 Mr. Landsman?
 Mr. LANDSMAN. Aye.
 The CLERK. Mr. Landsman votes aye.
 Mr. McGarvey?
 Mr. MCGARVEY. Aye.
 The CLERK. Mr. McGarvey votes aye.
 Ms. Gluesenkamp Perez?
 Ms. GLUESENKAMP PEREZ. Aye.
 The CLERK. Ms. Gluesenkamp Perez votes aye.
 Ms. Scholten?
 Ms. SCHOLTEN. Aye.
 The CLERK. Ms. Scholten votes aye.
 Mr. Thanedar?
 Mr. THANEDAR. Aye.
 The CLERK. Mr. Thanedar votes aye.
 Ms. Chu?
 Ms. CHU. Aye.
 The CLERK. Ms. Chu votes aye.
 Ms. Davids?
 Ms. DAVIDS. Ms. Davids votes aye.
 Mr. Pappas?
 [No response.]
 The CLERK. Ranking Member Velázquez?
 Ms. VELAZQUEZ. Aye.
 The CLERK. Ranking Member Velázquez votes aye.
 Chairman Williams?
 Chairman WILLIAMS. Aye.
 The CLERK. Chairman Williams votes aye.
 Chairman WILLIAMS. Are there any other Members who have not voted or wish to change their vote?
 The clerk will report.
 The CLERK. Mr. Chairman, on that vote, 23 ayes, 0 nays, and 0 present.
 Chairman WILLIAMS. The motion is agreed to and H.R. 7104 is adopted and will be reported favorably to the House.

The question now is on adopting H.R. 7105 and ordering it favorably reported to the House. The clerk will call the roll.

The CLERK. Mr. Luetkemeyer?

Mr. LUETKEMEYER. Aye.

The CLERK. Mr. Luetkemeyer votes aye.

Mr. Stauber?

Mr. STAUBER. Aye.

The CLERK. Mr. Stauber votes aye.

Mr. Meuser?

Mr. MEUSER. Aye.

The CLERK. Mr. Meuser votes aye.

Ms. Van Duyne?

Ms. VAN DUYNÉ. Aye.

The CLERK. Ms. Van Duyne votes aye.

Ms. Salazar?

Ms. SALAZAR. Aye.

The CLERK. Ms. Salazar votes aye.

Mr. Mann?

Mr. MANN. Aye.

The CLERK. Mr. Mann votes aye.

Mr. Ellzey?

Mr. ELLZEY. Aye.

The CLERK. Mr. Ellzey votes aye.

Mr. Molinaro?

[No response.]

Mr. Alford?

Mr. ALFORD. Aye.

The CLERK. Mr. Alford votes aye.

Mr. Crane?

Mr. CRANE. Aye.

The CLERK. Mr. Crane votes aye.

Mr. Bean?

Mr. BEAN. Aye.

The CLERK. Mr. Bean votes aye.

Mr. Hunt?

Mr. HUNT. Aye.

The CLERK. Mr. Hunt votes aye.

Mr. LaLota?

Mr. LALOTA. Aye.

The CLERK. Mr. LaLota votes aye.

Ms. Maloy?

[No response.]

Mr. Golden?

Mr. GOLDEN. Aye.

The CLERK. Mr. Golden votes aye.

Mr. Mfume?

Mr. MFUME. Aye.

The CLERK. Mr. Mfume votes aye.

Mr. Phillips?

[No response.]

Mr. Landsman?

Mr. LANDSMAN. Aye.

The CLERK. Mr. Landsman votes aye.

Mr. McGarvey?

Mr. MCGARVEY. Aye.
 The CLERK. Mr. McGarvey votes aye.
 Ms. Gluesenkamp Perez?
 Ms. GLUESENKAMP PEREZ. Aye.
 The CLERK. Ms. Gluesenkamp Perez votes aye.
 Ms. Scholten?
 Ms. SCHOLTEN. Aye.
 The CLERK. Ms. Scholten votes aye.
 Mr. Thanedar?
 Mr. THANEDAR. Aye.
 The CLERK. Mr. Thanedar votes aye.
 Ms. Chu?
 Ms. CHU. Aye.
 The CLERK. Ms. Chu votes aye.
 Ms. Davids?
 Ms. DAVIDS. Ms. Davids votes aye.
 Mr. Pappas?
 [No response.]
 The CLERK. Ranking Member Velázquez?
 Ms. VELAZQUEZ. Aye.
 The CLERK. Ranking Member Velázquez votes aye.
 Chairman Williams?
 Chairman WILLIAMS. Aye.
 The CLERK. Chairman Williams votes aye.
 Chairman WILLIAMS. Are there any other Members who have not voted or wish to change their vote?
 Mr. MOLINARO. Mr. Chairman? Mr. Molinaro votes aye.
 The CLERK. Mr. Molinaro votes aye.
 Chairman WILLIAMS. The clerk will report.
 The CLERK. Mr. Chairman, on that vote, 24 ayes, 0 nays, and 0 present.
 Chairman WILLIAMS. The motion is agreed to and H.R. 7105 is adopted and will be reported favorably to the House.
 The question now is on adopting H.R. 7128 and ordering it favorably reported to the House. The clerk will call the roll.
 The CLERK. Mr. Luetkemeyer?
 Mr. LUETKEMEYER. Aye.
 The CLERK. Mr. Luetkemeyer votes aye.
 Mr. Stauber?
 Mr. STAUBER. Aye.
 The CLERK. Mr. Stauber votes aye.
 Mr. Meuser?
 Mr. MEUSER. Aye.
 The CLERK. Mr. Meuser votes aye.
 Ms. Van Duyne?
 Ms. VAN DUYNE. Aye.
 The CLERK. Ms. Van Duyne votes aye.
 Ms. Salazar?
 Ms. SALAZAR. Aye.
 The CLERK. Ms. Salazar votes aye.
 Mr. Mann?
 Mr. MANN. Aye.
 The CLERK. Mr. Mann votes aye.
 Mr. Ellzey?

Mr. ELLZEY. Aye.
 The CLERK. Mr. Ellzey votes aye.
 Mr. Molinaro?
 Mr. MOLINARO. Aye.
 The CLERK. Mr. Molinaro votes aye.
 Mr. Alford?
 Mr. ALFORD. Aye.
 The CLERK. Mr. Alford votes aye.
 Mr. Crane?
 Mr. CRANE. Aye.
 The CLERK. Mr. Crane votes aye.
 Mr. Bean?
 Mr. BEAN. Aye.
 The CLERK. Mr. Bean votes aye.
 Mr. Hunt?
 Mr. HUNT. Aye.
 The CLERK. Mr. Hunt votes aye.
 Mr. LaLota?
 Mr. LALOTA. Aye.
 The CLERK. Mr. LaLota votes aye.
 Ms. Maloy?
 [No response.]
 Mr. Golden?
 Mr. GOLDEN. Aye.
 The CLERK. Mr. Golden votes aye.
 Mr. Mfume?
 Mr. MFUME. Aye.
 The CLERK. Mr. Mfume votes aye.
 Mr. Phillips?
 [No response.]
 Mr. Landsman?
 Mr. LANDSMAN. Aye.
 The CLERK. Mr. Landsman votes aye.
 Mr. McGarvey?
 Mr. MCGARVEY. Aye.
 The CLERK. Mr. McGarvey votes aye.
 Ms. Gluesenkamp Perez?
 Ms. GLUESENKAMP PEREZ. Aye.
 The CLERK. Ms. Gluesenkamp Perez votes aye.
 Ms. Scholten?
 Ms. SCHOLTEN. Aye.
 The CLERK. Ms. Scholten votes aye.
 Mr. Thanedar?
 Mr. THANEDAR. Aye.
 The CLERK. Mr. Thanedar votes aye.
 Ms. Chu?
 Ms. CHU. Aye.
 The CLERK. Ms. Chu votes aye.
 Ms. Davids?
 Ms. DAVIDS. Ms. Davids votes aye.
 Mr. Pappas?
 [No response.]
 The CLERK. Ranking Member Velázquez? Can you repeat that?
 Ms. VELAZQUEZ. Aye.

The CLERK. Ranking Member Velázquez votes aye.

Chairman Williams?

Chairman WILLIAMS. Aye.

The CLERK. Chairman Williams votes aye.

Chairman WILLIAMS. Are there any of the Members who have not voted wish to change their votes?

The clerk will report.

The CLERK. Mr. Chairman on that vote 24 ayes, 0 nays, and 0 present.

Chairman WILLIAMS. The motion is agreed to and H.R. 7128 is adopted and will be reported favorably to the House. I think this is about as perfect as going to get right here for the people of this great country that we are doing things to help Main Street America.

So with that being said, the question now is on adopting H.R. 7129 and ordering it favorably to the House. The clerk will call the roll.

The CLERK. Mr. Luetkemeyer?

Mr. LUETKEMEYER. Aye.

The CLERK. Mr. Luetkemeyer votes aye.

Mr. Stauber?

Mr. STAUBER. Aye.

The CLERK. Mr. Stauber votes aye.

Mr. Meuser?

Mr. MEUSER. Aye.

The CLERK. Mr. Meuser votes aye.

Ms. Van Duyne?

Ms. VAN DUYNE. Aye.

The CLERK. Ms. Van Duyne votes aye.

Ms. Salazar?

Ms. SALAZAR. Aye.

The CLERK. Ms. Salazar votes aye.

Mr. Mann?

Mr. MANN. Aye.

The CLERK. Mr. Mann votes aye.

Mr. Ellzey?

Mr. ELLZEY. Aye.

The CLERK. Mr. Ellzey votes aye.

Mr. Molinaro?

Mr. MOLINARO. Aye.

The CLERK. Mr. Molinaro votes aye.

Mr. Alford?

Mr. ALFORD. Aye.

The CLERK. Mr. Alford votes aye.

Mr. Crane?

Mr. CRANE. Aye.

The CLERK. Mr. Crane votes aye.

Mr. Bean?

Mr. BEAN. Aye.

The CLERK. Mr. Bean votes aye.

Mr. Hunt?

Mr. HUNT. Aye.

The CLERK. Mr. Hunt votes aye.

Mr. LaLota?

Mr. LALOTA. Aye.
The CLERK. Mr. LaLota votes aye.
Ms. Maloy?
[No response.]
Mr. Golden?
Mr. GOLDEN. Aye.
The CLERK. Mr. Golden votes aye.
Mr. Mfume?
Mr. MFUME. Aye.
The CLERK. Mr. Mfume votes aye.
Mr. Phillips?
[No response.]
Mr. Landsman?
Mr. LANDSMAN. Aye.
The CLERK. Mr. Landsman votes aye.
Mr. McGarvey?
Mr. MCGARVEY. Aye.
The CLERK. Mr. McGarvey votes aye.
Ms. Gluesenkamp Perez?
Ms. GLUESENKAMP PEREZ. Aye.
The CLERK. Ms. Gluesenkamp Perez votes aye.
Ms. Scholten?
Ms. SCHOLTEN. Aye.
The CLERK. Ms. Scholten votes aye.
Mr. Thanedar?
Mr. THANEDAR. Aye.
The CLERK. Mr. Thanedar votes aye.
Ms. Chu?
Ms. CHU. Aye.
The CLERK. Ms. Chu votes aye.
Ms. Davids?
Ms. DAVIDS. Ms. Davids votes aye.
Mr. Pappas?
[No response.]
The CLERK. Ranking Member Velázquez?
Ms. VELÁZQUEZ. Aye.
The CLERK. Ranking Member Velázquez votes aye.
Chairman Williams?
Chairman WILLIAMS. Aye.
The CLERK. Chairman Williams votes aye.
Mr. Chairman, on that vote, 24 ayes, 0 nays, and 0 present.
Chairman WILLIAMS. The motion is agreed to and H.R. 7129 is adopted and will be reported favorably to the House.
Let me also say, without objection, Committee staff is authorized to make technically conforming changes, and Members have 2 business days to file additional supplemental descending and minority views.
Thanks for being here today. We did a good job. I am proud of all of you. Thank you.
[Whereupon, at 12:14 p.m., the committee was adjourned.]

APPENDIX

1

118TH CONGRESS
1ST SESSION**H. R. 5450**

To amend the Small Business Act to modify the application of price evaluation preference for qualified HUBZone small business concerns to certain contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2023

Ms. SCHOLTEN (for herself and Ms. SALAZAR) introduced the following bill;
which was referred to the Committee on Small Business

A BILL

To amend the Small Business Act to modify the application of price evaluation preference for qualified HUBZone small business concerns to certain contracts, 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,*

1 **SECTION 1. APPLICATION OF PRICE EVALUATION PREF-**
2 **ERENCE FOR QUALIFIED HUBZONE SMALL**
3 **BUSINESS CONCERNS TO CERTAIN CON-**
4 **TRACTS.**

5 (a) IN GENERAL.—Section 31(c)(3) of the Small
6 Business Act (15 U.S.C. 657a(c)(3)) is amended by add-
7 ing at the end the following new subparagraph:

8 “(E) APPLICATION TO CERTAIN CON-
9 TRACTS.—The requirements of subparagraph
10 (A) shall apply to an unrestricted order issued
11 under an unrestricted multiple award contract
12 or the unrestricted portion of a contract that is
13 partially set aside for competition restricted to
14 small business concerns.”.

15 (b) RULEMAKING.—Not later than 90 days after the
16 date of the enactment of this section, the Administrator
17 of the Small Business Administration shall revise any
18 rules or guidance to implement the requirements of this
19 section.

○

118TH CONGRESS
1ST SESSION

H. R. 6591

To amend section 8(a) of the Small Business Act to require the Administrator of the Small Business Administration to regularly reassess the asset and net worth thresholds for qualifying as an economically disadvantaged individual, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2023

Mr. ELLZEY introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend section 8(a) of the Small Business Act to require the Administrator of the Small Business Administration to regularly reassess the asset and net worth thresholds for qualifying as an economically disadvantaged individual, 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 “Encouraging Success
5 Act”.

1 **SEC. 2. REGULAR REASSESSMENT OF THE THRESHOLDS**
2 **FOR ECONOMICALLY DISADVANTAGED INDIVIDUALS.**
3 **VIDUALS.**

4 (a) IN GENERAL.—Section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) is amended by adding at
5 the end the following new subparagraph:

7 “(F)(i) Not later than one year after the date
8 of the enactment of this subparagraph, and not less
9 frequently than every four years thereafter, the Administrator shall assess and, if appropriate, revise
10 the maximum value of asset and the maximum net
11 worth an individual may have to qualify as an economically disadvantaged individual under subparagraph (A) to account for changes in the economy,
12 including inflation and other factors as determined
13 appropriate by the Administrator.

17 “(ii) The Administrator shall make each covered revision by issuing a rule after an opportunity
18 for public notice and comment.

20 “(iii) To the extent practicable, the Administrator shall coordinate the activities carried out
21 under clause (i) with the activities required under
22 section 1344(a)(2) of the Small Business Jobs Act
23 of 2010 (15 U.S.C. 632 note).

25 “(iv) In this subparagraph, the term ‘covered
26 revision’ means a revision described in clause (i)

1 that the Administrator determines is appropriate
2 pursuant to an assessment under such clause.”.

3 (b) COMPLIANCE WITH CUTGO.—No additional
4 amounts are authorized to be appropriated to carry out
5 this Act or the amendments made by this Act. Such Act
6 and the amendments made by this Act shall be carried
7 out using amounts otherwise appropriated to the Adminis-
8 trator of the Small Business Administration.

○

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.....
(Original Signature of Member)118TH CONGRESS
2D SESSION**H. R.** _____To establish an Office of Native American Affairs within the Small Business
Administration, and for other purposes._____
IN THE HOUSE OF REPRESENTATIVESMs. DAVIDS of Kansas introduced the following bill; which was referred to the
Committee on __________
A BILLTo establish an Office of Native American Affairs within
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 “Native American En-
5 trepreneurial Opportunity Act”.6 **SEC. 2. OFFICE OF NATIVE AMERICAN AFFAIRS.**7 The Small Business Act (15 U.S.C. 631 et seq.) is
8 amended—

1 (1) by redesignating section 49 (15 U.S.C. 631
2 note) as section 50; and

3 (2) by inserting after section 48 (15 U.S.C.
4 657u) the following:

5 **“SEC. 49. OFFICE OF NATIVE AMERICAN AFFAIRS.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) ASSISTANT ADMINISTRATOR.—The term
8 ‘Assistant Administrator’ means the Assistant Ad-
9 ministrator for Native American Affairs appointed
10 under subsection (c).

11 “(2) INDIAN TRIBE.—The term ‘Indian Tribe’
12 has the meaning given the term ‘Indian tribe’ in sec-
13 tion 8(a)(13).

14 “(3) NATIVE HAWAIIAN ORGANIZATION.—The
15 term ‘Native Hawaiian Organization’ has the mean-
16 ing given the term in section 8(a)(15).

17 “(4) OFFICE.—The term ‘Office’ means the Of-
18 fice of Native American Affairs described in this sec-
19 tion.

20 “(b) ESTABLISHMENT.—

21 “(1) IN GENERAL.—There is established within
22 the Administration the Office of Native American
23 Affairs, which shall be responsible for establishing a
24 working relationship with Indian Tribes and Native
25 Hawaiian Organizations by targeting programs of

1 the Administration relating to entrepreneurial devel-
2 opment, contracting, and capital access to—

3 “(A) establish or expand small business
4 concerns owned and controlled by individuals
5 who are members of Indian Tribes or Native
6 Hawaiian Organizations; and

7 “(B) promote economic development in In-
8 dian country (as defined in section 1151 of title
9 18, United States Code).

10 “(2) CONNECTION WITH OTHER PROGRAMS.—
11 To the extent reasonable, the Office shall educate
12 Indian Tribes and Native Hawaiian Organizations
13 about programs administered by other Federal agen-
14 cies related to the interests described in paragraph
15 (1).

16 “(c) ASSISTANT ADMINISTRATOR.—The Office shall
17 be headed by an Assistant Administrator for Native Amer-
18 ican Affairs, who shall—

19 “(1) be appointed by and report to the Admin-
20 istrator;

21 “(2) have knowledge of Native American cul-
22 tures and experience providing culturally tailored
23 small business development assistance to Native
24 Americans;

1 “(3) provide assistance to Indian Tribes and
2 Native Hawaiian Organizations and small business
3 concerns owned and controlled by individuals who
4 are members of Indian Tribes or Native Hawaiian
5 Organizations;

6 “(4) formulate policies, and promote policies
7 and existing programs, to better address the entre-
8 preneurial, capital access, business development, and
9 contracting needs of persons described in paragraph
10 (3);

11 “(5) collaborate with Associate Administrators
12 within the Administration and officials of other Fed-
13 eral agencies to develop policies and plans to imple-
14 ment programs of the Administration to holistically
15 address the needs described in paragraph (4);

16 “(6) provide assistance, including grants, con-
17 tracts, cooperative agreements, or other financial as-
18 sistance, to Indian Tribes and Native Hawaiian Or-
19 ganizations, or to private nonprofit organizations
20 governed by members of Indian Tribes or Native
21 Hawaiian Organizations that have the experience
22 and capability to use the assistance to—

23 “(A) deploy training, counseling, work-
24 shops, educational outreach, and supplier
25 events; and

1 “(B) access the entrepreneurial, capital,
2 and contracting programs of the Administra-
3 tion;

4 “(7) assist the Administrator in conducting, or
5 conduct, Tribal consultation to solicit input and fa-
6 cilitate discussion of potential modifications to pro-
7 grams and procedures of the Administration; and

8 “(8) recommend annual budgets for the Office.

9 “(d) REPORT TO CONGRESS.—On an annual basis
10 until the termination date, the Assistant Administrator
11 shall submit to Congress a report on the effectiveness of
12 the Office of Native American Affairs that includes the
13 number of clients served in Tribal communities, the num-
14 ber of consultations conducted, and the number of
15 trainings held in Tribal country.

16 “(e) TERMINATION.—The authority under this sec-
17 tion shall terminate seven years after the date of the en-
18 actment of this section.”.

19 **SEC. 3. COMPLIANCE WITH CUTGO.**

20 No additional amounts are authorized to be appro-
21 priated to carry out this Act or the amendments made
22 by this Act.

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 (Original Signature of Member)

118TH CONGRESS
 2D SESSION

H. R. _____

To amend the Small Business Act to require Federal agencies to testify and report on scores received under the scorecard program for evaluating Federal agency compliance with small business contracting goals, to testify for failure to meet Governmentwide contracting goals, and for other purposes.

 IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
 Committee on _____

A BILL

To amend the Small Business Act to require Federal agencies to testify and report on scores received under the scorecard program for evaluating Federal agency compliance with small business contracting goals, to testify for failure to meet Governmentwide contracting goals, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Agency Accountability
3 Act of 2024”.

4 **SEC. 2. FEDERAL AGENCY TESTIMONY ON SCORECARD**
5 **SCORES AND FAILURE TO ACHIEVE CERTAIN**
6 **GOALS.**

7 Section 15(g)(2) of the Small Business Act (15
8 U.S.C. 644(g)(2)) is amended by adding at the end the
9 following:

10 “(G) TESTIMONY REQUIRED.—The head of the
11 office established in a Federal agency under sub-
12 section (k) shall testify before the Committee on
13 Small Business and Entrepreneurship of the Senate
14 and the Committee on Small Business of the House
15 of Representatives under the following cir-
16 cumstances:

17 “(i) If such agency fails to receive a score
18 equivalent to a letter grade of ‘A’ or above on
19 the scorecard established under subsection (y)
20 for a fiscal year, on the reasons for such fail-
21 ure.

22 “(ii) If such agency fails to meet two or
23 more of the Governmentwide goals established
24 under paragraph (1)(A), on the reasons for
25 such failure,”.

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3

1 SEC. 3. FEDERAL AGENCY REPORTING ON SCORECARD**2 SCORES.**

3 Section 15(h)(1)(D) of the Small Business Act (15
4 U.S.C. 644(h)(1)(D)) is amended by inserting “and to im-
5 prove the score on the scorecard established under sub-
6 section (y)” after “better meet such goals”.

7 SEC. 4. COMPLIANCE WITH CUTGO.

8 No additional amounts are authorized to be appro-
9 priated to carry out this Act or the amendments made
10 by this Act.

118TH CONGRESS
1ST SESSION

H. R. 6156

To require the Administrator of the Small Business Administration to designate a point of contact for for-profit child care providers, submit a report to Congress, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2023

Mr. LANDSMAN (for himself and Ms. LETLOW) introduced the following bill;
which was referred to the Committee on Small Business

A BILL

To require the Administrator of the Small Business Administration to designate a point of contact for for-profit child care providers, submit a report to Congress, 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 “Child Care Small Busi-
5 ness Insight and Improvement Act of 2023”.

6 **SEC. 2. REPORT ON FOR-PROFIT CHILD CARE PROVIDERS.**

7 (a) IN GENERAL.—Not later than 120 days after the
8 date of the enactment of this Act, the Administrator of

1 the Small Business Administration shall submit to Con-
2 gress a study and report on for-profit child care providers
3 that includes—

4 (1) an assessment of the challenges and needs
5 of such providers;

6 (2) a description of the resources and support
7 that the Small Business Administration provides to
8 such providers;

9 (3) any deficiencies in the resources and sup-
10 port described under paragraph (2); and

11 (4) any recommendations for legislative actions
12 necessary to address any challenges or needs faced
13 by such providers that are identified by the report
14 required in this subsection.

15 (b) DESIGNATED EMPLOYEE DUTIES.—The Admin-
16 istrator of the Small Business Administration shall des-
17 ignate a full-time employee within the Administration as
18 a point of contact for for-profit child care providers. Such
19 employee shall—

20 (1) carry out the study required under sub-
21 section (a); and

22 (2) provide recommendations to the Adminis-
23 trator on how to better deliver existing resources
24 and support to for-profit child care providers.

1 (c) FOR-PROFIT CHILD CARE PROVIDER DE-
2 FINED.—The term “for-profit child care provider” has the
3 meaning given the term “eligible child care provider” in
4 section 658P of the Child Care and Development Block
5 Grant Act of 1990 (42 U.S.C. 9858n) and is a provider
6 that operates—

- 7 (1) on a for-profit basis; and
8 (2) in one or more of the several States or the
9 District of Columbia.

10 (d) COMPLIANCE WITH CUTGO.—No additional
11 amounts are authorized to be appropriated to carry out
12 this Act. This Act shall be carried out using amounts oth-
13 erwise appropriated to the Administrator of the Small
14 Business Administration.

○

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.....
 (Original Signature of Member)

118TH CONGRESS
 2D SESSION

H. R. _____

To require the National Small Business Development Center Advisory Board to submit an annual report on the activities of the Board and other information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
 Committee on _____

A BILL

To require the National Small Business Development Center Advisory Board to submit an annual report on the activities of the Board and other information, 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 “National SBDC Advi-
 5 sory Board Improvement Act”.

1 **SEC. 2. NATIONAL SMALL BUSINESS DEVELOPMENT CEN-**
2 **TER ADVISORY BOARD ANNUAL REPORT.**

3 (a) IN GENERAL.—Section 21(i) of the Small Busi-
4 ness Act (15 U.S.C. 648(i)) is amended by adding at the
5 end the following new paragraph:

6 “(3) The Board shall annually submit to the
7 Associate Administrator for Small Business Develop-
8 ment Centers, the Committee on Small Business of
9 the House of Representatives, and the Committee on
10 Small Business and Entrepreneurship of Senate a
11 report on the activities of the Board during the year
12 covered by the report, including—

13 “(A) any recommendations of the Board
14 for improving the small business development
15 center program; and

16 “(B) such other information with respect
17 to such program that the Board determines ap-
18 propriate.”.

19 (b) COMPLIANCE WITH CUTGO.—No additional
20 amounts are authorized to be appropriated to carry out
21 this Act or the amendments made by this Act.

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 (Original Signature of Member)

118TH CONGRESS
 2D SESSION

H. R. _____

To establish requirements relating to certification of small business concerns owned and controlled by women for certain purposes, and for other purposes.

 IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
 Committee on _____

A BILL

To establish requirements relating to certification of small business concerns owned and controlled by women for certain purposes, 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 “WOSB Certification
 5 and Opportunity Expansion Act”.

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1 **SEC. 2. EXCLUSION OF SELF-CERTIFIED SMALL BUSINESS**
 2 **CONCERNS OWNED AND CONTROLLED BY**
 3 **WOMEN FROM GOALS.**

4 (a) EXCLUSION OF SELF-CERTIFIED WOSBs FROM
 5 GOVERNMENTWIDE AND AGENCY GOALS.—

6 (1) IN GENERAL.—Section 15(g) of such Act
 7 (15 U.S.C. 644(g)) is amended by adding at the end
 8 the following new paragraph:

9 “(4) EXCLUSION OF SELF-CERTIFIED WOSBs FROM
 10 GOALS.—Only small business concerns owned and con-
 11 trolled by women that have been certified under section
 12 8(m)(2)(E) shall be included in calculating the goals es-
 13 tablished—

14 “(A) under paragraph (1)(A)(v); and

15 “(B) by the head of a Federal agency for small
 16 business concerns owned and controlled by women
 17 under paragraph (2).”.

18 (2) EFFECTIVE DATE.—The amendments made
 19 by paragraph (1) shall take effect on the first day
 20 after the end of the second fiscal year beginning
 21 after the Administrator issues the regulations re-
 22 quired under subsection (b)(2).

23 (b) REQUIREMENTS RELATING TO SELF-CERTIFIED
 24 WOSBs.—

25 (1) INCLUSION OF CERTAIN SELF-CERTIFIED
 26 WOSBs IN GOALS.—

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1 (A) IN GENERAL.—Notwithstanding any
2 other provision of law, a small business concern
3 described in subparagraph (B) shall be deemed
4 to have been certified by the Administrator or
5 a national certifying entity approved by the Ad-
6 ministrator under section 8(m) of the Small
7 Business Act (15 U.S.C. 637(m)) as a small
8 business concern owned and controlled by
9 women under paragraph (2)(E) of such section
10 (15 U.S.C. 637(m)(2)(E)) for the purposes of
11 calculating the goals described in paragraph (4)
12 of section 15(g) of the such Act (as added by
13 subsection (a) of this Act) until the Adminis-
14 trator or such a national certifying entity make
15 a determination with respect to the certification
16 of such concern.

17 (B) SMALL BUSINESS CONCERNS DE-
18 SCRIBED.—A small business concern described
19 in this subparagraph is a small business con-
20 cern—

21 (i) that is self-certified as a small
22 business concern owned and controlled by
23 women as of the date on which the amend-
24 ments made by subsection (a) take effect;

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4

1 (ii) that files a certification applica-
2 tion with the Administrator or a national
3 certifying entity approved by the Adminis-
4 trator under section 8(m) of the Small
5 Business Act (15 U.S.C. 637(m)) prior to
6 such date; and

7 (iii) for which the Administrator or
8 such a national certifying entity does not
9 make a determination prior to such date
10 regarding certification pursuant to such
11 certification application.

12 (2) RULEMAKING.—Not later than one year
13 after the date of the enactment of this Act, the Ad-
14 ministrator shall issue regulations carrying out this
15 section.

16 (c) QUARTERLY BRIEFINGS REQUIRED.—Not later
17 than 60 days after the date of the enactment of this Act
18 and on a quarterly basis thereafter until the date specified
19 in subsection (b), the Administrator shall provide to the
20 Committee on Small Business of the House of Representa-
21 tives and the Committee Small Business and Entrepre-
22 neurship of the Senate a briefing on the implementation
23 of the requirements of this section. Such briefings shall
24 include—

1 (1) the total number of small business concerns
2 expected to seek certification as a small business
3 concern owned and controlled by women;

4 (2) the number of applications for certification
5 pending with the Administrator or a national certi-
6 fying entity approved by the Administrator under
7 section 8(m) of the Small Business Act during the
8 period covered by the briefing;

9 (3) the total number of applications approved
10 by the Administrator or such a national certifying
11 entity since the date of the enactment of this Act;

12 (4) the timelines associated with processing
13 such applications by the Administrator or such a na-
14 tional certifying entity between submission and ap-
15 proval;

16 (5) the administrative costs to the Administra-
17 tion to make determinations on such applications
18 and the estimated cost to such applicant to seek cer-
19 tification from a national certifying entity;

20 (6) a discussion of the Administrator's current
21 and future outreach efforts to small business con-
22 cerns owned and controlled by women and to Fed-
23 eral agencies on the requirements of this Act; and

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1 (7) recommendations for additional legislative
2 authority or resources required to fully implement
3 the requirements of this Act.

4 (d) DEFINITIONS.—In this section:

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

7 (2) ADMINISTRATOR.—The term “Adminis-
8 trator” means the Administrator of the Small Busi-
9 ness Administration.

10 (3) SMALL BUSINESS CONCERN.—The term
11 “small business concern” has the meaning given
12 under section 3 of the Small Business Act (15
13 U.S.C. 632).

14 (4) SMALL BUSINESS CONCERN OWNED AND
15 CONTROLLED BY WOMEN.—The term “small busi-
16 ness concern owned and controlled by women” has
17 the meaning given the term in section 8(m) of the
18 Small Business Act (15 U.S.C. 637(m)).

19 (e) COMPLIANCE WITH CUTGO.—No additional
20 amounts are authorized to be appropriated to carry out
21 this Act or the amendments made by this Act.

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.....
 (Original Signature of Member)

118TH CONGRESS
 2D SESSION

H. R. _____

To establish requirements relating to size standard compliance of small business concerns owned and controlled by women for certain purposes, and for other purposes.

 IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
 Committee on _____

A BILL

To establish requirements relating to size standard compliance of small business concerns owned and controlled by women for certain purposes, 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 “The WOSB Integrity
 5 Act of 2024”.

1 **SEC. 2. WOMEN OWNED SMALL BUSINESS SIZE STANDARD**
 2 **COMPLIANCE FOR RESTRICTED COMPETI-**
 3 **TION.**

4 (a) IN GENERAL.—Section 8(m)(2)(E) of the Small
 5 Business Act (15 U.S.C. 637(m)(2)(E)) is amended by in-
 6 serting “, including that each such concern does not ex-
 7 ceed the applicable size standard established under section
 8 3(a)” after “by women”.

9 (b) APPLICABILITY.—The amendment made by sub-
 10 section (a) shall not be construed as disqualifying any
 11 small business concern owned and controlled by women
 12 that, as of the date of the enactment of this Act, is cer-
 13 tified by a Federal agency, the Administrator of the Small
 14 Business Administration, or a national certifying entity
 15 approved by the Administrator as a small business concern
 16 owned and controlled by women from competing for con-
 17 tracts restricted under section 8(m)(2) of the Small Busi-
 18 ness Act (15 U.S.C. 637(m)(2)) before the earlier of—

19 (1) the date on which the small business con-
 20 cern owned and controlled by women submits a no-
 21 tice that such concern is no longer a small business
 22 concern owned and controlled by women; or

23 (2) the date on which the Administrator, Fed-
 24 eral agency, or entity that provided such certification
 25 determines that the concern exceeds the applicable

1 size standard established under section 3(a) of the
2 Small Business Act (15 U.S.C. 632(a)).

3 (c) RULE OF CONSTRUCTION.—Nothing in this Act
4 or the amendments made by this Act shall be construed
5 to require the Administrator to perform a formal size de-
6 termination on a small business concern when considering
7 an application from such concern for certification as a
8 small business concern owned and controlled by women.

9 (d) DEFINITIONS.—In this Act:

10 (1) ADMINISTRATOR.—The term “Adminis-
11 trator” means the Administrator of the Small Busi-
12 ness Administration.

13 (2) SMALL BUSINESS CONCERN.—The term
14 “small business concern” has the meaning given
15 under section 3 of the Small Business Act (15
16 U.S.C. 632).

17 (3) SMALL BUSINESS CONCERN OWNED AND
18 CONTROLLED BY WOMEN.—The term “small busi-
19 ness concern” and “small business concern owned
20 and controlled by women” has the meaning given in
21 section 8(m)(1) of the Small Business Act (15
22 U.S.C. 637(m)(1)).

23 (e) TECHNICAL AMENDMENT.—Section 8(m)(2)(C)
24 of the Small Business Act (15 U.S.C. 637(m)(2)(C)) is

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1 amended by striking “paragraph (3)” and inserting “para-
2 graph (4)”.

3 (f) COMPLIANCE WITH CUTGO.—No additional
4 amounts are authorized to be appropriated to carry out
5 this Act or the amendments made by this Act.

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.....
(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R. _____

To amend the Small Business Act to establish the Office of Whistleblower
Awards, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Small Business Act to establish the Office
of Whistleblower Awards, 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 “Put America on Com-
5 mission Act of 2024”.

6 **SEC. 2. ESTABLISHMENT OF THE OFFICE OF WHISTLE-**
7 **BLOWER AWARDS.**

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

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1 (1) in section 7(b), by redesignating the second
2 paragraph (16) (relating to statute of limitations) as
3 paragraph (17);

4 (2) by redesignating section 49 as section 50;
5 and

6 (3) by inserting after section 48 the following
7 new section:

8 **“SEC. 49. OFFICE OF WHISTLEBLOWER AWARDS.**

9 “(a) ESTABLISHMENT.—There is established within
10 the Office of Performance, Planning, and the Chief Finan-
11 cial Officer of the Administration an Office of Whistle-
12 blower Awards.

13 “(b) ADMINISTRATION.—The Office of Whistleblower
14 Awards shall be administered by an employee in the com-
15 petitive service.

16 “(c) AWARDS TO WHISTLEBLOWERS.—

17 “(1) IN GENERAL.—Except as otherwise pro-
18 vided in this section, the head of the Office of Whis-
19 tleblower Awards shall—

20 “(A) with respect to information submitted
21 to head of the Office of Whistleblower Awards
22 by whistleblowers relating to financial mis-
23 conduct or fraudulent misrepresentation by a
24 recipient of financial assistance from the Ad-
25 ministrator—

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1 “(i) determine, in coordination with
2 the Inspector General, whether such infor-
3 mation is original information; and

4 “(ii) for all such information that is
5 original information—

6 “(I) collect and transmit to the
7 Inspector General such original infor-
8 mation information; and

9 “(II) track the use of such origi-
10 nal information in obtaining final con-
11 victions and settlement and plea
12 agreements; and

13 “(B) pay an award in an amount as de-
14 scribed in paragraph (2) to a whistleblower for
15 information described in subparagraph (A) that
16 is original information submitted to head of the
17 Office of Whistleblower Awards by such whistle-
18 blower if a person is finally convicted pursuant
19 to, or enters into a settlement or plea agree-
20 ment with respect to, a COVID loan action that
21 is based, in whole or in part, on such original
22 information, as determined by the Inspector
23 General.

24 “(2) AMOUNTS.—Any amount payable under
25 this section shall be paid from the amounts depos-

1 ited in the Whistleblower Award Fund established
2 under subsection (f) based on a person finally con-
3 victed pursuant to, or a settlement or plea agree-
4 ment with respect to, a COVID loan action that is
5 based, in whole or in part, on original information
6 provided to the head of the Office of Whistleblower
7 Awards by the whistleblower as follows:

8 “(A) 10 percent of the amounts so depos-
9 ited if the person so convicted or who entered
10 into such settlement or plea agreement, as ap-
11 plicable, is a national of the United States or
12 an entity located in the United States.

13 “(B) 15 percent of the amounts so depos-
14 ited if the person so convicted or who entered
15 into such settlement or plea agreement, as ap-
16 plicable, is a foreign national or an entity lo-
17 cated in a country other than the United
18 States.

19 “(3) MULTIPLE WHISTLEBLOWERS.—

20 “(A) IN GENERAL.—If a person is finally
21 convicted pursuant to, or enters into a settle-
22 ment or plea agreement with respect to, a
23 COVID loan action that is based, in whole or
24 in part, on information described in paragraph
25 (1)(A) that is original information from mul-

1 tiple whistleblowers, only the whistleblower who
2 made the most substantial contribution with re-
3 spect to such COVID loan action (including
4 such conviction, settlement agreement, or plea
5 agreement), as determined by the head of the
6 Office of Whistleblower Awards, may receive an
7 award under this section with respect to a con-
8 viction pursuant to, or a settlement or plea
9 agreement with respect to, such COVID loan
10 action.

11 “(B) SUBSTANTIALITY DETERMINATION.—
12 For the purposes of determining which whistle-
13 blower made the most substantial contribution
14 with respect to a COVID loan action under sub-
15 paragraph (A), the head of the Office of Whis-
16 tleblower Awards shall consider—

17 “(i) the significance of the original in-
18 formation of the whistleblower with respect
19 to such COVID loan action;

20 “(ii) the role of the whistleblower and
21 any legal representative of the whistle-
22 blower in contributing to such COVID loan
23 action; and

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1 “(iii) such other criteria as the head
2 of the Office of Whistleblower Awards de-
3 termines appropriate.

4 “(d) ADDITIONAL REQUIREMENTS.—

5 “(1) REDUCTION IN AWARD.—The head of the
6 Office of Whistleblower Awards may reduce to an
7 amount greater than or equal to zero an award to
8 a whistleblower under this section for original infor-
9 mation relating to financial misconduct or fraudu-
10 lent misrepresentation by a recipient of financial as-
11 sistance from the Administrator if the head of the
12 Office of Whistleblower Awards determines that such
13 whistleblower planned or initiated the actions that
14 led to such to financial misconduct or fraudulent
15 misrepresentation.

16 “(2) CRIMINAL CONVICTION.—

17 “(A) DENIAL.—A whistleblower who is fi-
18 nally convicted of an offense arising out of
19 planning or initiating the actions that led to the
20 to financial misconduct or fraudulent misrepre-
21 sentation by a recipient of financial assistance
22 from the Administrator is ineligible for any
23 award under this section with respect any con-
24 viction, settlement agreement, or plea agree-

1 ment related to such financial misconduct or
2 fraudulent misrepresentation.

3 “(B) REPAYMENT.—As a condition of re-
4 ceiving an award under this section, the whistle-
5 blower shall agree to repay the full amount of
6 the award if the whistleblower is finally con-
7 victed of an offense relating to the original in-
8 formation that was the basis for receipt of such
9 award.

10 “(3) NO CONTRACT NECESSARY.—A whistle-
11 blower shall not be required to be a party to a con-
12 tract with the Administrator to be eligible to receive
13 an award under this section.

14 “(4) TIMING.—The head of the Office of Whis-
15 tleblower Awards shall disburse payments to a whis-
16 tleblower under this section not later than one year
17 after the date on which amounts have been deposited
18 into the Whistleblower Award Fund based on a con-
19 viction pursuant to, or a settlement or plea
20 agreement entered into with respect to, a COVID
21 loan action based, in whole or in part, on informa-
22 tion described in subsection (e)(1)(A) that is original
23 information provided by such whistleblower.

24 “(5) STATUS UPDATES.—The head of the Of-
25 fice of Whistleblower Awards shall—

1 “(A) provide confirmation of the receipt of
 2 information described in subsection (c)(1)(A) to
 3 the whistleblower that submitted such informa-
 4 tion;

5 “(B) provide to such whistleblower—

6 “(i) a notice of the determination
 7 whether such information is original infor-
 8 mation; and

9 “(ii) for such information that is
 10 original information, a notice of each de-
 11 termination by the Inspector General pur-
 12 suant to a final conviction or settlement or
 13 plea agreement with respect to a COVID
 14 loan action whether such information was
 15 the basis, in whole or in part, of such
 16 COVID loan action; and

17 “(C) ensure that procedures consistent
 18 with section 1213 of title 5, United States
 19 Code, for findings on the disclosure and for the
 20 whistleblower to comment on any preliminary
 21 determinations.

22 “(6) ANTI-RETALIATION.—

23 “(A) IN GENERAL.—No person may be dis-
 24 criminated against and no other prejudicial ac-
 25 tion may be taken against a person because

1 such person has made, is perceived as about to
2 make, or assisted or associated with a person
3 who made or is about to make a disclosure
4 under this section.

5 “(B) RELIEF.—Any person who alleges to
6 discrimination or other prejudicial action in vio-
7 lation of subparagraph (A) may seek relief for
8 a violation of such subparagraph pursuant to
9 the rights, procedures, burdens of proof and
10 remedies in paragraphs (2) through (5) of sec-
11 tion 5323(g) of title 31, United States Code.

12 “(c) APPEALS.—A determination made under this
13 section by the head of the Office of Whistleblower Awards,
14 except the determination of the amount of an award if
15 the award was made in accordance with the requirements
16 of subsection (c)(2), may be appealed by the whistleblower
17 subject to such determination to the appropriate court of
18 appeals of the United States not more than 30 days after
19 the determination is issued by the head of the Office of
20 Whistleblower Awards. The court shall review the deter-
21 mination in accordance with section 706 of title 5, United
22 States Code.

23 “(f) WHISTLEBLOWER AWARD FUND.—

1 “(1) ESTABLISHMENT.—There is established in
2 the Department of the Treasury a revolving fund to
3 be known as the ‘Whistleblower Award Fund’.

4 “(2) USE OF FUND.—Amounts in the Whistle-
5 blower Award Fund shall be available to head of the
6 Office of Whistleblower Awards, without further ap-
7 propriation or fiscal year limitation, for—

8 “(A) payment of awards made under this
9 section; and

10 “(B) the necessary expenses for the oper-
11 ation of the Office of Whistleblower Awards.

12 “(3) DEPOSITS.—Notwithstanding any other
13 provision of law, if a person is finally convicted pur-
14 suant to, or enters into a settlement or plea agree-
15 ment with respect to, a COVID loan action based,
16 in whole or in part, on original information de-
17 scribed in subsection (c)(1) that is provided to the
18 head of the Office of Whistleblower Awards by a
19 whistleblower, there shall be deposited into the
20 Whistleblower Award Fund all amounts collected
21 from such person by the Federal Government, in-
22 cluding amounts collected as a result of a civil mone-
23 tary penalty under subsection (g)—

24 “(A) for or pursuant to such conviction; or

1 “(B) under or pursuant to such settlement
2 or plea agreement.

3 “(4) REMAINING AMOUNTS.—The Adminis-
4 trator shall deposit into the general fund of the
5 Treasury any amounts in the Whistleblower Award
6 Fund not used to pay whistleblowers under sub-
7 section (c) or the necessary expenses for the oper-
8 ation of the Office of Whistleblower Awards.

9 “(g) CIVIL MONETARY PENALTY.—

10 “(1) IN GENERAL.—Any person who is finally
11 convicted pursuant to a COVID loan action or who
12 enters into a settlement or plea agreement with re-
13 spect to a COVID loan action shall, in addition to
14 any other penalties that may be prescribed by law,
15 be subject to a civil monetary penalty, assessed by
16 the Administrator, in an amount equal to 30 percent
17 of the aggregate of the principal amounts of the
18 loans with respect to which such person was so fi-
19 nally convicted or entered into such a settlement or
20 plea agreement.

21 “(2) COLLECTION.—

22 “(A) IN GENERAL.—Civil money penalties
23 and assessments imposed under this subsection
24 may be compromised by the Administrator and
25 may be recovered in a civil action in the name

1 of the United States brought in United States
2 district court for the district where the conduct
3 serving as the basis for the relevant COVID
4 loan action occurred or in United States district
5 court for the district in which the person
6 against whom the penalty or assessment has
7 been assessed resides, as determined by the Ad-
8 ministrator.

9 “(B) WITHHOLDINGS.—

10 “(i) IN GENERAL.—The amount of a
11 civil money penalty and assessment im-
12 posed under this subsection, when finally
13 determined, or the amount agreed upon in
14 compromise, may be deducted from any
15 sum then or later owing by the United
16 States to the person against whom the
17 penalty or assessment has been assessed.

18 “(ii) TREATMENT.—For the purposes
19 of awards under this section, amounts de-
20 ducted under clause (i) shall be deposited
21 into the Whistleblower Award Fund.

22 “(h) REPORT.—Not later than 12 months after the
23 date of the enactment of this section, and annually there-
24 after, the Administrator shall submit to Congress a report
25 on—

1 “(1) the number of times whistleblowers sub-
2 mitted to the head of the Office of Whistleblower
3 Awards original information relating to financial
4 misconduct or fraudulent misrepresentation by a re-
5 cipient of financial assistance from the Adminis-
6 trator;

7 “(2) the amount of awards disbursed under this
8 section; and

9 “(3) any legislative or administrative rec-
10 ommendations regarding the duties of the Office of
11 Whistleblower Awards.

12 “(i) RULE OF CONSTRUCTION.—Nothing in this sec-
13 tion shall be construed to modify or interfere with any in-
14 vestigations carried out by the Inspector General or an-
15 other Federal agency.

16 “(j) SUNSET.—

17 “(1) IN GENERAL.—Except as provided by
18 paragraph (2), the authority under this section shall
19 terminate on the date that the last COVID loan ac-
20 tion that was timely filed and either—

21 “(A) has not been appealed and is no
22 longer appealable because the time for taking
23 an appeal has expired; or

24 “(B) has been appealed and the appeals
25 process for such conviction is completed.

1 “(2) APPEALS.—Notwithstanding paragraph
 2 (1), the authority under this section shall continue
 3 with respect to a claim for an award under this sec-
 4 tion for which a determination is being appealed or
 5 is appealable under subsection (e) as of the date de-
 6 scribed in such paragraph until a determination for
 7 such award is no longer being appealed or appeal-
 8 able under subsection (e).

9 “(k) DEFINITIONS.—In this section:

10 “(1) COVID LOAN ACTION.—The term ‘COVID
 11 loan action’ means a criminal charge or civil enforce-
 12 ment action described in—

13 “(A) section 7(a)(36)(W);

14 “(B) section 7(a)(37)(P);

15 “(C) section 7(b)(17);

16 “(D) section 1110(e)(9) of the CARES Act
 17 (15 U.S.C. 9009(e)(9)); or

18 “(E) section 331(i) of the Economic Aid to
 19 Hard-Hit Small Businesses, Nonprofits, and
 20 Venues Act (15 U.S.C. 9009b(i)).

21 “(2) FINAL CONVICTION; FINALLY CON-
 22 VICTED.—The terms ‘final conviction’ and ‘finally
 23 convicted’ mean, with respect to a person, that such
 24 person has been convicted of an offense and such
 25 conviction—

1 “(A) has not been appealed and is no
2 longer appealable because the time for taking
3 an appeal has expired; or

4 “(B) has been appealed and the appeals
5 process for such conviction is completed.

6 “(3) INSPECTOR GENERAL.—The term ‘Inspec-
7 tor General’ means the Inspector General of the Ad-
8 ministration.

9 “(4) ORIGINAL INFORMATION.—The term
10 ‘original information’ means information that—

11 “(A) is derived from the independent
12 knowledge or analysis of a whistleblower;

13 “(B) is not known to the Administrator or
14 Inspector General from any source other than
15 the whistleblower, unless the whistleblower is
16 the original source of the information;

17 “(C) is not exclusively derived from an al-
18 legation made in a judicial or administrative ac-
19 tion, in a governmental report, hearing, audit,
20 or investigation, or from the news media, unless
21 the whistleblower is a source of the information;
22 and

23 “(D) was provided to the Inspector Gen-
24 eral—

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1 “(i) after the date of the enactment of
2 this Act; or

3 “(ii) by a means other than a hotline
4 for reporting fraud, waste, and abuse that
5 is maintained by the Inspector General.

6 “(5) WHISTLEBLOWER.—The term ‘whistle-
7 blower’ means an individual who submits informa-
8 tion to the Office of Whistleblower Awards that such
9 individual reasonably believes relates to financial
10 misconduct or fraudulent misrepresentation by a re-
11 cipient of financial assistance from the Adminis-
12 trator.”.

13 SEC. 3. RULEMAKING.

14 (a) IN GENERAL.—Not later than six months after
15 the date of the enactment of this Act, the Administrator
16 of the Small Business Administration shall issue rules nec-
17 essary to carry out the requirements of section 49 of the
18 Small Business Act, as added by this Act.

19 (b) CONTRIBUTION DETERMINATION.—

20 (1) IN GENERAL.—Not later than three months
21 after the date of the enactment of this Act, the Ad-
22 ministrator of the Small Business Administration
23 shall issue rules providing that—

24 (A) after the head of the Office of Whistle-
25 blower Awards transmits original information to

1 the Inspector General of the Small Business
2 Administration under subsection (c)(1)(A)(ii)(I)
3 of section 49 of the Small Business Act, as
4 added by section 2, and tracks such information
5 through a final conviction or settlement or plea
6 agreement with respect to a COVID loan ac-
7 tion, the head of the Office of Whistleblower
8 Awards shall request that the Inspector General
9 indicate, for each piece of such original infor-
10 mation, that—

11 (i) such original information was the
12 basis, in whole or in part, of such COVID
13 loan action;

14 (ii) such original information was not
15 the basis, in whole or in part, of such
16 COVID loan action; or

17 (iii) whether such original information
18 was the basis, in whole or in part, of such
19 COVID loan action may not be disclosed;

20 (B) if the Inspector General indicates that
21 whether a piece of original information was the
22 basis, in whole or in part, of a COVID loan ac-
23 tion may not be disclosed, such original infor-
24 mation shall be deemed to have not been the

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1 basis, in whole or in part, of such COVID loan
2 action.

3 (2) COVID LOAN ACTION; FINAL CONVICTION;
4 ORIGINAL INFORMATION DEFINED.—In this sub-
5 section, the terms “COVID loan action”, “final con-
6 viction”, and “original information” have the mean-
7 ings given such terms in subsection (k) of section 49
8 of the Small Business Act, as added by section 2.

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5450
OFFERED BY M. _____

Strike all after the enacting clause and insert the following:

1 SECTION 1. APPLICATION OF PRICE EVALUATION PREF-
2 ERENCE FOR QUALIFIED HUBZONE SMALL
3 BUSINESS CONCERNS TO CERTAIN CON-
4 TRACTS.

5 (a) IN GENERAL.—Section 31(e)(3) of the Small
6 Business Act (15 U.S.C. 657a(e)(3)) is amended by add-
7 ing at the end the following new subparagraph:

8 “(E) APPLICATION TO CERTAIN CON-
9 TRACTS.—The requirements of subparagraph
10 (A) shall apply to an unrestricted order issued
11 under an unrestricted multiple award contract
12 or the unrestricted portion of a contract that is
13 partially set aside for competition restricted to
14 small business concerns.”.

15 (b) RULEMAKING.—Not later than 90 days after the
16 date of the enactment of this section, the Administrator
17 of the Small Business Administration shall revise any

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1 rules or guidance to implement the requirements of this
2 section.

3 (c) COMPLIANCE WITH CUTGO.—No additional
4 amounts are authorized to be appropriated to carry out
5 this Act or the amendments made by this Act.



AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6591
OFFERED BY M. _____

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE.

2 This Act may be cited as the “Encouraging Success
 3 Act”.

4 SEC. 2. REGULAR REASSESSMENT OF THE THRESHOLDS
5 FOR ECONOMICALLY DISADVANTAGED INDIVIDUALS.
6

7 (a) IN GENERAL.—Section 8(a)(6) of the Small Busi-
 8 ness Act (15 U.S.C. 637(a)(6)) is amended by adding at
 9 the end the following new subparagraph:

10 “(F)(i) Not later than one year after the
 11 date of the enactment of this subparagraph,
 12 and not less frequently than every four years
 13 thereafter, the Administrator shall assess and,
 14 if appropriate, revise the maximum value of
 15 asset and the maximum net worth an individual
 16 may have to qualify as an economically dis-
 17 advantaged individual under subparagraph (A)
 18 to account for changes in the economy, includ-

1 ing inflation and other factors as determined
2 appropriate by the Administrator.

3 “(ii) The Administrator shall make each
4 covered revision by issuing a rule after an op-
5 portunity for public notice and comment.

6 “(iii) To the extent practicable, the Admin-
7 istrator shall coordinate the activities carried
8 out under clause (i) with the activities required
9 under section 1344(a)(2) of the Small Business
10 Jobs Act of 2010 (15 U.S.C. 632 note).

11 “(iv) In this subparagraph, the term ‘cov-
12 ered revision’ means a revision described in
13 clause (i) that the Administrator determines is
14 appropriate pursuant to an assessment under
15 such clause.”.

16 (b) COMPLIANCE WITH CUTGO.—No additional
17 amounts are authorized to be appropriated to carry out
18 this Act or the amendments made by this Act.



**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6156
OFFERED BY MR. LANDSMAN OF OHIO**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Child Care Small Busi-
3 ness Insight and Improvement Act of 2023”.

4 SEC. 2. REPORT ON FOR-PROFIT CHILD CARE PROVIDERS.

5 (a) IN GENERAL.—Not later than 120 days after the
6 date of the enactment of this Act, the Administrator of
7 the Small Business Administration shall submit to Con-
8 gress a study and report on for-profit child care providers
9 that includes—

10 (1) an assessment of the challenges and needs
11 of such providers;

12 (2) a description of the resources and support
13 that the Small Business Administration provides to
14 such providers;

15 (3) any deficiencies in the resources and sup-
16 port described under paragraph (2);

17 (4) any recommendations for legislative actions
18 necessary to address any challenges or needs faced

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1 by such providers that are identified by the report
2 required in this subsection; and

3 (5) an identification of the leadership needs in
4 order to successfully implement such recommenda-
5 tions.

6 (b) FOR-PROFIT CHILD CARE PROVIDER DE-
7 FINED.—The term “for-profit child care provider” has the
8 meaning given the term “eligible child care provider” in
9 section 658P of the Child Care and Development Block
10 Grant Act of 1990 (42 U.S.C. 9858n) and is a provider
11 that operates—

12 (1) on a for-profit basis; and

13 (2) in one or more of the several States, terri-
14 tory or possession of the United States, or the Dis-
15 trict of Columbia.

16 (c) COMPLIANCE WITH CUTGO.—No additional
17 amounts are authorized to be appropriated to carry out
18 this Act.



Minority Views
H.R. 5450, The Enhancing Competition in Contracting Orders Act

The Small Business Administration's (SBA) Historically Underutilized Business Zone (HUBZone) program is one of four small business federal contracting programs, and the only one that assists small businesses based on their geographic location. When the government invests in small businesses, small businesses invest in their communities. They create local jobs and buy local products. That is a driving force behind the HUBZone program.

The program works to "promote job growth, capital investment, and economic development to historically underutilized business zones... to small businesses located in these economically distressed communities."¹

To level the playing field for small business competing in the federal market, Congress has established an annual 3% goal for contract dollars to HUBZone small businesses. Unfortunately, most federal agencies fall short of meeting the HUBZone goals. In FY 22, the federal government sent 2.6% of spend to HUBZone small businesses, and saw a reduction in the number of HUBZone smalls participating in the federal market.² The HUBZone prime contracting goal has never been met government-wide.

There are three contracting authorities that federal agencies can use on certified HUBZone small businesses: (a) set aside the contract exclusively for HUBZone competition; (b) sole source the contract directly to a qualified HUBZone when certain conditions are met; and (c) provide a price preference to HUBZone firms who have bid on work in full-and-open competitions. The preference is applied when a qualified HUBZone small businesses bids on a contract. The firms bid is then "deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 10% higher than the price offered by the otherwise lowest, responsive, and responsible offeror."

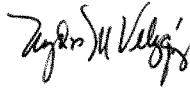
This bill will provide additional clarification to federal agencies on how and when to apply the preference. Currently, the HUBZone price evaluation preference is not widely used because some agencies have incorrectly interpreted that the preference does not apply to orders, only standalone contracts.

¹ Small Business Administration, Office of the HUBZone Program: <https://www.sba.gov/about-sba/sba-locations/headquarters-offices/office-hubzone-program>.

² FY2022 Small Business Procurement Scorecard: <https://www.sba.gov/agency-scorecards/scorecard.html?agency=GW&year=2022>.

As the Federal Government increasingly drives its spending through these vehicles, significant opportunities for HUBZone small businesses are being lost because the HUBZone price evaluation is not being applied in the award of task orders—as Congress originally intended.

Sincerely,

A handwritten signature in black ink, appearing to read "Nydia M. Velázquez". The signature is stylized with a large, looped "N" and a cursive "Velázquez".

Nydia M. Velázquez
Ranking Member

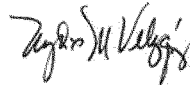
Minority Views
H.R. 7102, The Native American Entrepreneurial Opportunity Act

The mission of the Office of Native American Affairs is to ensure American Indians, Alaska Natives, and Native Hawaiians seeking to start and grow small businesses have access to SBA's entrepreneurial development, lending, and procurement programs. The Office currently engages in numerous outreach activities, including tribal consultations, development and distribution of promotional materials, and participation in national economic development conferences. The Office also contracts with third-party vendors to provide workshops on business development and financial literacy, training webinars, incubator training, and online entrepreneurial classes.¹

In 2020, there were more than 3.7 million people who identified as American Indian and Alaska Native alone,² and there are 574 federally recognized Indian tribes in the United States.³ In exchange for the surrender of their lands, their removal, and resettlement, the United States signed 375 treaties, passed laws, and instituted policies to shape and define the special relationship between the federal government and tribal governments.⁴ However, the U.S. government also forced many Native Americans to give up their culture and, historically, has not provided the resources to support Native American interconnected infrastructure, self-governance, housing, education, health, and economic development needs.⁵ As a result, Native Americans continue to experience lower educational attainment, higher unemployment rates, and lower median incomes than other racial and ethnic groups.⁶

Entrepreneurship can provide a pathway out of poverty for American Indians and Alaska Natives, which have the highest poverty rate among all racial and ethnic groups. Native American-owned businesses contribute over \$33 billion to the U.S. economy every year and employ 200,000 people.⁷ Statutorily authorizing the Office of Native American Affairs at SBA will increase access to federal programs and services that support Native American entrepreneurs across the country and help Native Americans launch and grow small businesses, and in turn, promote economic development in their tribal communities.

Sincerely,



Nydia M. Velázquez
 Ranking Member

¹ *Office of Native American Affairs*, U.S. SMALL BUS. ADMIN. (Nov. 14, 2023), <https://www.sba.gov/about-sba/sba-locations/headquarters-offices/office-native-american-affairs>.

² *Table P1: Race*, U.S. CENSUS BUREAU (2020), <https://data.census.gov/table?q=010XX00US>.

³ *Facts for Features: American Indian and Alaska Native Heritage Month*, U.S. CENSUS BUREAU (Nov. 15, 2023), <https://www.census.gov/newsroom/facts-for-features/2023/aian-month.html>.

⁴ U.S. COMM'N ON C.R., *BROKEN PROMISES: CONTINUING FEDERAL FUNDING SHORTFALL FOR NATIVE AMERICANS*, (Dec. 20, 2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

⁵ *Id.*

⁶ Dedrick Asante Muhammad, Esha Kamra, Connor Sanchez, Kathy Ramirez, & Rogelio Tec, *Racial Wealth Snapshot: Native Americans*, NAT'L CMTY. REINVESTMENT COAL. (Feb. 14, 2022), <https://nrcr.org/racial-wealth-snapshot-native-americans>.

⁷ *Table AB1900NED01: Statistics for Employer and Nonemployer Firms by Industry, Sex, Ethnicity, Race, and Veteran Status*: U.S. CENSUS BUREAU (2019), <https://data.census.gov/table/ABSNEED2019.AB1900NED01?q=ab1900NED01&g=010XX00US&y=2019>.

Minority Views
H.R. 7103, The Agency Accountability Act

The Small Business Administration (SBA) is tasked with ensuring that small businesses are awarded a “fair proportion of the total purchases and contracts for goods and services of the Government in each industry category....” In accordance with this mandate, Congress set forth the governmentwide goal of awarding at least 23% of all small business eligible Federal prime contracting dollars to small businesses.

Additionally, Congress has created four contracting programs that seek to level the playing field for small businesses by providing contracting opportunities and preferences to firms in certain socioeconomic categories. The Congress has further established goals for prime and subcontract dollars to each of the categories, and this process is overseen by SBA in consultation with federal agencies.

The statutory goals are as follows: of awarding 5% of prime contracts and subcontracts for women-owned small businesses (WOSB) and small disadvantaged businesses (SDB); and 3% of prime contracts and subcontracts for service-disabled veteran-owned small businesses (SDVOSB) and HUBZone certified small businesses. Recently, the administration raised the SDB goal to 15% by 2025 and the Fiscal Year 2024 National Defense Authorization Act raised the SDVOSB goal to 5%.

Each agency works to meet both the topline, total small business goal of 23% and each of the subcategory goals. Agencies are then assigned a “score” for spending towards the goals for the previous fiscal year. SBA publishes an annual Small Business Procurement Scorecard that grades each agency on their spending toward the goals.

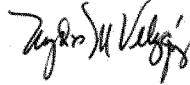
In FY22, the federal government met its overall goal for small business participation. SBA’s scorecard showed that the federal government awarded 26.5% of federal contract dollars to small businesses, a total of \$162.9 billion.¹

The committee believes and appreciates that most agency officials are making good faith efforts to ensure that small businesses are able to participate in the federal marketplace and providing maximize opportunities for small business government contractors. Requiring testimony is an additional way to encourage agencies to meet their federal contracting goals by using Congressional leverage and oversight tools to enhance accountability.

¹ The Small Business Administration, Fiscal Year 2022 Small Business Procurement Scorecard: <https://www.sba.gov/document/support-small-business-procurement-scorecard-overview#scorecard-versions>.

The committee is particularly pleased to see that this bill includes not only agencies that have not received an 'A' on the scorecard, but also agencies that have not met two or more of their subcategory goals. Each of the categories—including and especially the HUBZone Small Business and the WOSB federal contracting programs—continue to need additional focus and this is a helpful step in that direction.

Sincerely,

A handwritten signature in black ink, appearing to read "Nydia M. Velázquez", written in a cursive style.

Nydia M. Velázquez
Ranking Member

Minority Views

H.R. 6156, The Child Care Small Business Insight and Improvement Act

Affordable, high-quality childcare is essential for working families. Today, 60 percent of children have parents in the workforce,¹ and of the 60 million children under 14 in the United States, (pre-pandemic) 12 million were placed in paid childcare.² When quality, affordable childcare is readily available, the benefits are felt not only by families, but by small businesses, as well.

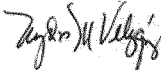
Access to affordable and quality childcare has a positive impact on workforce participation, allowing small firms to access a larger pool of workers and maintain a reliable workforce. Employers report fewer absences, less turnover, increased stability, and generally greater satisfaction among workers who have access to childcare.

On the other hand, a lack of access to affordable, quality childcare for children under the age of three costs \$122 billion each year, resulting in a staggering economic toll on working parents, their employers, and taxpayers. A recent study found nearly two-thirds of parents of infants and toddlers face childcare issues that affect their productivity at work, resulting in \$78 billion in forgone earnings and job search expenses for families, \$23 billion in workforce shortages for employers, and \$21 billion in lower federal, state, and local tax revenues.³

Unfortunately, quality childcare services and programs have been in short supply in the United States, and the COVID-19 pandemic further exacerbated the shortages within the industry. In 2019 there were 675,000 childcare establishments producing \$47.2 billion in revenue and employing 1.5 million workers.⁴ However, in 2021, there were only 595,366 childcare businesses, producing \$58.4 billion in revenue and employing 1.3 million workers.

Expanding access to quality childcare services is critical to families, small businesses, and local economies. The Small Business Administration is well-poised to deliver critical assistance, particularly through its entrepreneurial development ecosystem. Requiring the SBA to conduct a study on the needs and challenges for for-profit childcare providers is an important first step that will provide policy makers with the information needed to meet the labor needs of small businesses and working families.

Sincerely,



Nydia M. Velázquez
Ranking Member

¹ *Economic Role of Paid Childcare*, COMMITTEE FOR ECONOMIC DEVELOPMENT (Feb. 2022), https://www.ced.org/pdf/Economic_Role_of_Paid_Child_Care_Part_I_-_Final.pdf

² *Id.*

³ *\$122 Billion: The Growing, Annual Cost of the Infant Toddler Child Care Crisis*, READY NATION COUNCIL FOR A STRONG AMERICA (February 2023) <https://strongnation.s3.amazonaws.com/documents/1598/05d917e2-9618-4648-a0ee-1b35d17e2a4d.pdf?1674854626&inline;filename=%20The%20Growing,%20Annual%20Cost%20of%20the%20Infant-Toddler%20Child%20Care%20Crisis.pdf%22>

⁴ *Child Care in State Economies*, COMMITTEE FOR ECONOMIC DEVELOPMENT (2019), <https://www.ced.org/assets/reports/childcareimpact/181104%20CCE%20Report%20Jan30.pdf>

Minority Views**H.R. 7104, The National SBDC Advisory Board Improvement Act**

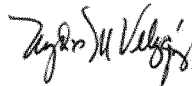
The Small Business Development Centers Act of 1980 (P.L. 96-302) established Small Business Development Centers (SBDCs) to provide free counseling, training, and resources to small businesses. SBDCs operate in partnership with higher education institutions and state governments. Previously, the Small Business Administration (SBA) had been operating the technical assistance program directly or through third party partners. The Small Business Development Centers Act of 1980 Act also established the National Small Business Development Center Advisory Board to provide advice and counsel to the SBA Administrator and the Associate Administrator for Small Business Development Centers.

The National Small Business Development Center Advisory Board is comprised of nine members appointed by the Administrator who are "sympathetic to small business needs." Not more than three of the Board Members are from universities and the remaining six are from small businesses or associations. Board Members serve three-year terms, and one one-third of the Board changes every year. The Board is required to meet semi-annually.

The Board has met regularly over the years to discuss a wide range of issues, including but not limited to the Administration's priorities, SBDC annual plan, outreach and engagement with state directors, the ASBDC annual conference, and cybersecurity issues. The legislation would require the SBDC Advisory Board to submit an annual report to Congress on their SBA activities and make recommendations to improve the program. This information would be valuable to the Members on the Small Business Committee.

With that said, it is imperative for the Committee to review the entrepreneurial development programs and make improvements to better meet the needs of small business owners. As the former Chair of the Committee, I made certain we reauthorized the programs in the 116th and 117th Congress in a bipartisan manner, and all the bills passed the House of Representatives unanimously. I look forward to working with the Chairman to mark-up those entrepreneurial development reauthorization bills in the coming months.

Sincerely,



Nydia M. Velázquez
Ranking Member

Minority Views
H.R. 7105, The WOSB Certification and Opportunity Expansion Act

The Small Business Administration's (SBA) Women-Owned Small Business (WOSB) Contracting Program is designed to help level the playing field for women-owned small businesses and economically disadvantaged women-owned small businesses (EDWOSBs) in the federal marketplace. The federal government attempts to expand contracting opportunities for WOSBs in two main ways: (a) setting an overall goal of sending 5% of federal contracting dollars to women-owned firms and (b) using streamlined authorities to make it easier for federal agencies to contract with women-owned firms. These authorities allow contracting officers to set-aside a contract for exclusively WOSBs competition and to sole source contracts to a WOSB firm, when certain conditions are met.

The federal government topline goal of 5% for WOSBs has only been met twice and federal agencies routinely miss their individual WOSB goals. Historically, women-owned small businesses have not been provided with the contracting opportunities that should accompany their level of participation in the federal market.

SBA administers contracting programs for small businesses in four categories: 1) the 8(a) Business Development program; (2) Women-Owned Small Business program (WOSB); (3) Historically Underutilized Business Zone small business program (HUBZone); and (4) Service-Disabled Veteran-Owned Small Business program (SDVOSB). The FY24 National Defense Authorization Act eliminated self-certification for the SDVOSB program. As a result, the three other contracting programs will now require participants to be certified by the SBA.

Stakeholders have pointed to the lack of SBA certification and other WOSB unique requirements as limitations on contracting officers that prohibit great use of the program's authorities. For example, the Government Accountability Office (GAO) surveyed WOSB stakeholders and some mentioned that having to review additional documentation on their own, since SBA didn't certify the firms, was burdensome and limited use of the program.¹

The goal of requiring an SBA certification is to protect the integrity of the program but also to incentivize contracting officers to use the authorities designed to streamline contracting with WOSB firms. Right now, these authorities are underutilized.

According to CRS's last analysis in fiscal year 2021, the percentage of contracts awarded through a set-aside or a sole source varies significantly by program. For 17% of contract spending awarded to HUBZone companies, contracting officers use the set-aside or sole-source authorities, while well over half—about 58%—of 8(a) contracts can be awarded only to 8(a) certified firms. The SDVOSB program has 44% of its dollars reserved exclusively for program participants. Of the contract spending now awarded to women-owned small businesses, only 5% is moved through the

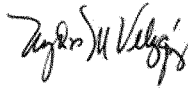
¹ Government Accountability Office. "Women-Owned Small Business Program: Actions Needed to Address Continued Oversight Issues" (GAO-19-563) May 16, 2019: <https://www.gao.gov/products/gao-19-563>.

contracting authorities.² This bill is intended to strengthen the WOSB program while also encouraging greater use of the contracting authorities for certified WOSB firms.

To date, both the establishment and administration of the WOSB program, as well as federal agencies' efforts to meet the WOSB goals have been significant challenges. Requiring all WOSB to be certified by the SBA or a third-party certifier will take time and resources for SBA to implement. The legislation builds in additional time for SBA to implement these requirements, and specifically includes processes to ensure that current and future WOSB firms are not penalized if SBA faces delays. The committee intends for SBA to ensure that WOSB firms who have applied for certification with the SBA or a third-party certifier by the deadline are able to continue to receive contracts that are counted toward an agency's small business procurement goals until a decision on their certification is made by the SBA.

Finally, the WOSB program is unique in its use of third-party certifiers. The third-party certifiers are now required to tell prospective applicants that the SBA certification is an option and does not charge a fee. The committee believes that existing and new processes laid out in the bill will ensure that no WOSB is required to pay for a certification.

Sincerely,



Nydia M. Velázquez
Ranking Member

² Congressional Research Service. "An Overview of Small Business Contracting" (R45576), Updated July 29, 2022: <https://crsreports.congress.gov/product/pdf/R/R45576>.

Minority Views
H.R. 7128, The WOSB Integrity Act

SBA's Women-Owned Small Business (WOSB) Program is designed to help level the playing field for women-owned small businesses and economically disadvantaged women-owned small businesses (EDWOSBs) in the federal marketplace. The federal government attempts to expand contracting opportunities for WOSBs in two main ways: (a) setting an overall goal of sending 5% of federal contracting dollars to women-owned firms and (b) using certain authorities to make it easier to contract with women-owned firms. These authorities allow contracting officers to set-aside a contract exclusively for WOSBs competition and allow contracting officers to sole source contracts to a WOSB firm, when certain conditions are met.

The federal government topline goal of 5% of federal spending for WOSBs has only been met twice and federal agencies routinely miss their individual WOSB goals.

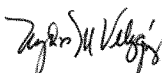
To participate in the WOSB program, the firm must be: (a) a small business; (b) owned and controlled by one or more women who are U.S. citizens; (c) have women manage day-to-day operations and make long-term decisions; and (d) be certified by the SBA, or a national certifying entity approved by the SBA.

The IG has stated that SBA is required to verify that WOSB program applicants meet the program criteria, including that the firm meets the small business size requirements. The Inspector General further believes that SBA's implementation "is inconsistent with the statutory requirement for SBA to certify the business meets program requirements."¹

The language and the intent of this legislation are to align the SBA's implementation of the WOSB program with the IG's recommendation that "program officials should establish procedures similar to the third-party certifiers, HUBZone, and 8(a) programs to ensure analysts consistently verify that WOSB applicants are small businesses."

The authors of this legislation deliberately and specifically included the rule of construction in subsection (c) to ensure that implementation is aligned with the IG's comments: "OIG acknowledges that a size determination is a specific process and is not recommending SBA perform size determinations for each applicant." The committee does not intend for SBA to conduct a size determination for WOSB program applicants.

Sincerely,



Nydia M. Velázquez
Ranking Member

¹ "SBA Inspector General Audit Report: SBA'S Implementation of the Women-owned Small Business Certification Program." Report Number 22-20, September 29, 2022: <https://www.sba.gov/sites/sbagov/files/2022-09/SBA%20OIG%20Report%2022-20.pdf>.

Minority Views
H.R. 7129, The Put America on Commission Act

Over the course of the COVID-19 pandemic, the Small Business Administration (SBA) disbursed approximately \$1.2 trillion of economic aid to help small businesses adversely impacted by the crisis.¹ In an effort to disburse PPP and COVID-19 funds swiftly, the SBA weakened and removed internal controls. Beginning in early 2021, long-standing anti-fraud controls were reinstituted, and new safeguards were put into place by the Biden-Harris Administration to reduce the potential for fraud.² On June 27, 2023, the Office of the Inspector General (OIG) issued a white paper to provide a comprehensive review reporting that SBA disbursed more than \$200 billion in *potentially* fraudulent COVID-19 EIDLs, EIDL Targeted Advances, Supplemental Targeted Advances, and PPP loans.³ SBA also issued a report, entitled “Protecting the Integrity of the Pandemic Relief Programs,” which estimates that \$36 billion of the \$1.2 trillion in pandemic relief emergency funds were obtained fraudulently.⁴ Moreover, the agency asserts that 86 percent of the *likely* fraud originated in the first nine months of the pandemic,⁵ under the Trump Administration.

As fraudsters increasingly exploited the weakened controls at SBA and the complexity of the schemes grew, the OIG coordinated with multiple agencies and increased evidence gathering. The OIG created SBA-centric task forces to collaborate with the Department of Justice (DOJ) and other law enforcement agencies. The OIG participated in DOJ COVID-19 Fraud Strike Force Teams and has investigated more than 1,000 cases, and has 539 open investigations, as of November 30, 2023. Moreover, their work on COVID-19 EIDL and PPP has resulted in 1,232 indictments, 977 arrests, and 658 convictions.⁶ In a recent appearance before the Committee, Inspector General Ware testified that “In the past two years, OIG’s work has resulted in more than \$9 billion in dollar accomplishments, which includes investigative recoveries, fines, and forfeitures.”⁷

The OIG, in collaboration with its law enforcement partners and financial institutions, played a key role in the return of funds to the Treasury. Its ability to further combat fraud is dependent on the availability of budgetary resources. The \$50 million in supplemental funds appropriated to OIG in FY 2020-21 will be exhausted near the conclusion of FY 2024. In FY 2023, the OIG received \$32 million to carry out its responsibilities. In the FY 2024 budget proposal, the Biden Administration requested \$47 million, and the House Committee on Appropriations Subcommittee on Financial Services, and General Government (FSGG) later recommended \$32 million. Without additional funds, the OIG will not have a sufficient operating budget to combat the fraud within SBA programs and to provide effective oversight over the programs. More importantly, the OIG will not have a sufficient operating budget to capitalize on the new laws (P.L. 117-165 and P.L. 117-166), which extended the statute of limitations for fraud in the PPP and EIDL programs to 10

¹ U.S. Small Bus. Admin., Office of Inspector Gen., COVID-19 Pandemic EIDL and PPP Loan Fraud Landscape, Report 23-09. (2023).

² *Id.*

³ *Id.*

⁴ U.S. Small Bus. Admin. “Protecting the Integrity of the Pandemic Relief Emergency Programs: SBA’s Actions to Prevent, Detect, and Address Fraud.”

⁵ *Id.*

⁶ U.S. Small Bus. Admin., Office of Inspector Gen., December 2023 newsletter.

⁷ <https://docs.house.gov/meetings/SM/SM00/20230713/116162/HHRG-118-SM00-Wstate-WareH-20230713.pdf>

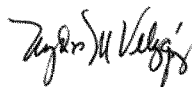
years. The single most effective action the Committee can take to help the OIG recover funds is to support full funding of their FY 2024 budget request. On September 27, 2023, Ms. Linda Miller, former Deputy Director of the Pandemic Response Accountability Committee (PRAC) testified before the Committee in support of fully funding the Office of the Inspector General, as well as more funding for prosecutors to try the cases. She said, “the backlog is enormous, and the law enforcement community is stretched thin.”

There are a number of ways for individuals to report potential fraud. They can report directly to the OIG, either through the [SBA Office of Inspector General Hotline \(OIG hotline\)](#) or the [Pandemic Response Accountability Committee \(PRAC\)](#). SBA also has a [link](#) on their main page that will lead to a page entitled, “Preventing Fraud and Identity Theft.” This page has a direct link to the OIG hotline for reporting fraud, waste, abuse, or mismanagement of federal funds involving SBA programs. Moreover, the Department of Justice administers the [National Center for Disaster Fraud Hotline](#). The OIG has received more than 250,000 complaints, resulting in 90,000 actionable leads.

Moreover, the qui tam provision in the False Claims Act allows an individual (or relator) who uncovers fraud against the government to sue in the name of the government and share the proceeds of a successful settlement. Settlements and judgements under the False Claims Act exceeded \$2.2 billion in Fiscal Year 2022. The government and whistleblower were party to 351 settlements and judgements, the second highest in a single year. While the majority of the claims were related to the health care industry, the recoveries included monies from the government’s new focus on pandemic relief programs.⁸ In December 2023, a relator received \$1 million of a \$9 million settlement against a Texas-based commercial roofing contractor for falsely certifying that eight of their affiliates were able to receive loans through the Paycheck Protection Program.

The Put America on Commission Act will create another opportunity for whistleblowers to report pandemic fraud. In order to be successful, new funds will be needed to launch the office, hire staff, and issue regulations. Unfortunately, no authorization of appropriations was included in order to comply with the CUTGO rules of the 118th Congress. While the Act specifies that recoveries will be used to operate the office, those recoveries could take years before they flow to the new office. The Ranking Member is committed to fully funding the office, and working with the Chairman to ensure that additional resources are appropriated to SBA for the purposes of creating the whistleblower office.

Sincerely,



Nydia M. Velázquez
Ranking Member

⁸ U.S. Dept. of Justice, False Claims Act Report, <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-2-billion-fiscal-year-2022>.

**The Compelling Interest to Remedy the Effects of Discrimination in
Federal Contracting: A Survey of Recent Evidence**

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Introduction

This report summarizes recent evidence required to justify the use of race- and sex-conscious provisions in federal contracting programs. Federal programs that involve racial classifications must meet the strict scrutiny standard of review to withstand constitutional challenge.¹ This is the most exacting standard of review, and it requires, among other things, evidence supporting the conclusion that such measures are necessary to further the compelling governmental interest in remedying the effects of past and present discrimination. If a program contains affirmative measures based on sex, those measures are subject to the somewhat lower standard of intermediate scrutiny.² That standard demands that any gender-based preference be substantially related to an important governmental objective.³

In 2010, the Department of Justice submitted to Congress a report compiling and summarizing evidence of discriminatory barriers that racial minorities and women face that impede participation in government contracting.⁴ The 2010 report has been cited in federal court as evidence that there is a compelling governmental interest in programs that support the ability of businesses owned by women or people of color to compete on an equal basis.⁵ The 2010 report updated and expanded upon a 1996 Department of Justice report, which was published in the Federal Register.⁶

This report compiles and summarizes evidence accumulated and analyzed since 2010. A substantial body of evidence, both quantitative and qualitative, demonstrates the continued pervasiveness of discriminatory barriers that impede the full and fair participation of businesses owned by women or people of color in government contracting. The nature and breadth of the evidence discussed in this report supports the compelling interest in the continued use of federal programs that contain remedial measures to eliminate discriminatory barriers to contracting opportunities for businesses owned by women or people of color.

Section I of this report provides an overview of the legal landscape surrounding constitutional challenges to affirmative action in contracting programs that are subject to strict and intermediate scrutiny, including a discussion of some recent cases challenging various federal and state contracting programs. Section II reviews a

¹ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).

² *United States v. Virginia*, 518 U.S. 515, 533 (1996).

³ *Id.*

⁴ *Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: An Update to the May 23, 1996 Review of Barriers for Minority- and Women-Owned Businesses* (2010). This report summarized 47 studies and reports and 75 disparity studies between 2000 and 2010, and 39 congressional hearings between 2006 and 2010. The report and associated studies were provided to Congress as testimony. See *Minority Contracting: Opportunities and Challenges for Current and Future Minority-Owned Business: Hearing before Subcomm. on Gov't Mgmt., Org. and Procurement of the House Comm. on Oversight & Gov't Reform*, 111th Cong., 2d Sess. (2010) (testimony of David A. Hinson, National Director, Minority Business Development Agency, U.S. Dep't of Commerce).

⁵ *Midwest Fence Corp. v. United States Dep't of Transp.*, No. 10 C 5627, 2011 WL 2551179, at *12 (N.D. Ill. June 27, 2011).

⁶ *The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey*, 61 Fed. Reg. 26,050 (May 23, 1996). This report summarized more than 50 documents and 30 congressional hearings between 1980 and 1996.

substantial body of statistical evidence published in the last decade, which demonstrates the existence of significant disparities in the amount of public contracting dollars going to businesses owned by women or people of color as compared to their availability for such contracts. Section III explores the various ways that discriminatory barriers can limit access to contracting markets, resulting in the statistical disparities identified in Section II. These include discrimination by procurement agencies and prime contractors, whether overt or subtle; exclusion from business networks crucial to making the connections necessary to learn about and compete effectively for contracting opportunities; and discrimination by bonding companies and suppliers. Section IV discusses stark disparities in the formation and success of businesses owned by women or people of color as compared to other businesses. Section V addresses discriminatory barriers that limit minority and female business owners' access to capital. These barriers impose a significant burden on minority- and women-owned businesses that affects both the ability to form and grow businesses in the first instance as well as the ability to compete effectively for contracts. Finally, Section VI addresses how the economic downturn that began in 2020 as a result of the COVID-19 pandemic has disproportionately affected businesses owned by women or minorities. Evidence discussed in this report, or related to the issues discussed herein, is listed in the appendices. Appendix A identifies congressional hearings from 2010-2021 that address challenges facing business enterprises owned by women or people of color. Appendix B identifies over 200 disparity studies published between 2010 and 2021. Appendix C identifies additional studies and reports pertaining to the issues discussed herein.

This report is particularly timely in light of the January 20, 2021, Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, which charges the federal government with “pursu[ing] a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”⁷ The Executive Order makes explicit that “[t]he Federal Government’s goal in advancing equity is to provide everyone with the opportunity to reach their full potential” and that “[c]onsistent with these aims, each agency must assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups” in order to “better equip agencies to develop policies and programs that deliver resources and benefits equitably to all.”⁸ Of particular relevance to this report, the Executive Order provides that “Government contracting and procurement opportunities should be available on an equal basis to all eligible providers of goods and services.”⁹ It is thus especially appropriate for the Department of Justice to take an updated look at the barriers and challenges that businesses owned by women or people of color face today.

The Executive Order also mandates that the federal government use every available tool to ensure the equitable distribution of federal funds, including by increasing access for, and promoting the diversity of, small businesses participating in

⁷ Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

⁸ *Id.*

⁹ *Id.*

government contracting opportunities. To that end, federal agencies are empowered to implement a broad range of programs to expand equity and diversity without triggering a heightened standard of review. In the contracting realm, these programs include race- and gender-neutral measures like the Historically Underutilized Business Zone (“HUBZones”) Program and the Service-Disabled Veteran-Owned Small Business (“SDVOSBs”) Program.¹⁰ Because these programs provide preferential access to government contracting opportunities based on non-suspect classifications, if challenged, they must only survive the lowest standard of scrutiny—rational basis.¹¹ That is to say, the programs will survive challenges so long as they bear a rational relation to some legitimate end.¹² Because they are not subject to heightened scrutiny, the HUBZone program, the program for SDVOSBs, and other government programs that do not include race- or gender-conscious classifications fall outside the scope of this report.

I. Legal Landscape

A. Overview

In *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995), the United States Supreme Court held that federal race-conscious classifications are subject to strict scrutiny, meaning they “are constitutional only if they are narrowly tailored measures that further compelling governmental interests.” There is no doubt that remedying discrimination and its lingering effects is a compelling governmental interest.¹³ That compelling government interest includes a public entity’s attempt to remedy past discrimination by rectifying its own actions.¹⁴ It also includes remedying a public entity’s passive complicity in private sector discrimination, as the Supreme Court has noted that “[it] is beyond dispute that any public entity . . . has a compelling interest in assuring that public dollars drawn from the tax contributions of all citizens do not serve to finance the evil of private prejudice.”¹⁵ In either case, the government must demonstrate a “strong basis in evidence for its conclusion that remedial action was necessary” to further that interest.¹⁶

A “strong basis in evidence” is that which “approach[es] a prima facie case of a constitutional or statutory violation.”¹⁷ The Supreme Court held in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 500 (1989) (plurality opinion), that “[w]here there is a

¹⁰ Robert Jay Dilger, Cong. Rsch. Serv., R45576, *An Overview of Small Business Contracting* 17-18 (2021), <https://fas.org/srg/crs/misc/R45576.pdf>.

¹¹ The “mere awareness” or consideration of race in efforts to remedy discrimination and its effects does not automatically equate to a racial classification. See *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 545 (2015). Public entities can undertake efforts to eliminate racial disparities through a variety of race-neutral means without triggering strict scrutiny. See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring).

¹² *Romer v. Evans*, 517 U.S. 620, 631 (1996).

¹³ *Shaw v. Hunt*, 517 U.S. 899, 909 (1996).

¹⁴ *Parents Involved in Cmty. Schs. v. Seattle Sch. District No. 1*, 551 U.S. 701, 741, (2007).

¹⁵ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 492 (1989) (plurality opinion); *Associated Gen. Contractors of Ohio, Inc. v. Drabnik*, 214 F.3d 730, 735 (6th Cir. 2000).

¹⁶ *Croson*, 488 U.S. at 500 (1989) (plurality opinion).

¹⁷ *Id.*

significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise." The evidence of discrimination must have a sufficient nexus with the proposed remedial action such that it involves more than general societal discrimination.¹⁸ In recent decisions concerning race- and gender-conscious COVID-related relief efforts, courts have conveyed that the policy cannot rest on a "generalized assertion that there has been past discrimination in an entire industry."¹⁹ Consequently, courts in these cases have expected statistical evidence of disparities presented in defense of race- or gender-conscious programs to describe the appropriate marketplace with specificity and to tie evidence of current disparities to discrimination in that marketplace. In cases where race- or gender-conscious government contracting programs have been successfully defended from constitutional challenges, courts have relied on disparity studies analyzing statistical and anecdotal evidence of public and private discrimination in the appropriate contracting arena. Disparity studies examine the utilization of minority-owned firms as compared to their availability in the relevant market area. These state and local disparity studies also include qualitative evidence describing discriminatory barriers that minority- and women-owned businesses face not only in participating in contracting markets, but also in forming and developing businesses in the first place.

In addition to being supported by a compelling interest, federal programs must be narrowly tailored to accomplish that interest. Courts consider several factors to determine whether a program is narrowly tailored, including: (1) the necessity for the race-conscious remedy; (2) the duration of the remedy; (3) the relationship of the numerical target of the program to the relevant labor market; (4) the flexibility of the program, including the availability of waiver provisions; (5) over-inclusiveness or under-inclusiveness of the program; and (6) the effect of the remedy on innocent third parties.²⁰

B. Constitutional Challenges to Race- and Gender-Conscious Contracting Programs

Over the past 10 years, courts have evaluated numerous constitutional challenges to federal, state, and local contracting programs that contain race- and gender-conscious provisions. Courts have rejected facial challenges that assert such programs are per se unconstitutional. Courts have, however, found that the administration of some programs did not meet strict scrutiny standards. This is typically because the available evidence did not support the application of the program to particular government contracting industries. In addition, several recent constitutional challenges

¹⁸ *Parents Involved*, 551 U.S. 701 (holding that remedying racially identifiable housing patterns did not justify race-conscious criteria for school assignments).

¹⁹ *Holman v. Vilsack*, No. 1:21-cv-1085 (W.D. Tenn. Jul. 8, 2021) (citing *Vitolo*, 2021 WL 2172181 at *2, *8-9). As of August 2021, these cases are still in litigation, and the Department of Justice is continuing to defend the constitutionality of the programs at issue.

²⁰ *United States v. Paradise*, 480 U.S. 149, 171 (1987) (plurality and concurring opinions); *Croson*, 488 U.S. at 508 (plurality opinion).

outside of the contracting arena have been brought seeking to end the use of race- and gender-conscious measures in programs established in the American Rescue Plan Act of 2021 to provide pandemic-related relief to businesses in the restaurant and agricultural industries. While courts have granted temporary restraining orders and preliminary injunctions in these cases, litigation on the merits is ongoing as of the date of this report.

1. Challenges to the Small Business Act's Section 8(a) Business Development Program

The Small Business Act establishes certain contracting preferences to aid small businesses in competing for government contracts. Among these are several programs that create contracting opportunities for certain small disadvantaged businesses. One such program, known as the 8(a) program, allows the government to prioritize the issuance of certain contracting opportunities to businesses owned by "socially and economically disadvantaged" individuals.²¹ The statute defines socially disadvantaged individuals as "those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities."²² The Small Business Administration (SBA), which administers the program, has promulgated a regulation that provides that applicants to the 8(a) program who are members of certain designated racial or ethnic groups are entitled to a rebuttable presumption of social disadvantage.²³ Because this regulation includes a race-conscious classification, it has been subjected to strict scrutiny when faced with constitutional challenge.

Unlike some federal programs that are limited to particular agencies, all federal departments and major independent agencies participate in the 8(a) program. In Fiscal Year 2019, the federal government awarded \$30.4 billion to 8(a) firms, more funding than any of the SBA's other small disadvantaged business programs.²⁴ Since the Department of Justice's 2010 report, the 8(a) program has survived two constitutional challenges brought by businesses alleging that the program on its face violates the guarantee of equal protection found in the Due Process Clause of the Fifth Amendment to the Constitution, and it is currently facing a third.²⁵ The courts in the two decided cases found a strong basis in evidence that the program is necessary to further the compelling governmental interest in remedying racial discrimination in the government contracting arena. In addition, the courts found that the 8(a) program is narrowly tailored to further that interest.

²¹ 15 U.S.C. § 637(a).

²² *Id.* § 637(a)(5).

²³ 13 C.F.R. § 124.103(b)(1). This presumption may be rebutted with "credible evidence to the contrary."

Id. § 124.103(b)(3).

²⁴ Robert Jay Dilger, Cong. Rsch. Serv., R45576, *An Overview of Small Business Contracting 16* (2021), <https://fas.org/sgp/crs/misc/R45576.pdf>.

²⁵ See *Ultima Servs. Corp. v. U.S. Dep't of Agric.*, 2:20-CV-00041-DCLC (E.D. Tenn. filed Mar. 4, 2020).

i. *DynaLantic Corporation v. United States Department of Defense*, 885 F. Supp. 2d 237 (D.D.C. 2012).

DynaLantic is a small business that manufactures aircrafts, submarines, ships, and training equipment. When the Navy awarded a contract to develop a flight simulator for the Huey helicopter through the 8(a) program, DynaLantic sued the Department of Defense (DOD), alleging that the 8(a) program was unconstitutional both on its face and as applied in the military simulation and training industry.

The court rejected the facial challenge, concluding that the government had articulated a compelling interest in the program and presented a strong basis in evidence to support its conclusion that race-conscious remedial action was necessary to further that interest. The court considered the evidence before Congress at the time the 8(a) program was enacted, as well as post-enactment evidence that supports the continued need for the program.²⁶ The evidence fell into “three broad categories: (1) evidence of barriers to the formation of qualified minority contractors due to discrimination, (2) evidence of discriminatory barriers to fair competition between minority and non-minority contractors, and (3) evidence of discrimination in state and local disparity studies.”²⁷ In reviewing the evidence, the court noted that it was not necessary to examine “the vast amount of statistical evidence” presented by the government in detail because the burden was on DynaLantic to show “no set of circumstances exist under which the Act would be valid” in order to succeed in its facial challenge to the program’s constitutionality.²⁸ In addition, in response to DynaLantic’s arguments that there were flaws in some of the evidence, the court found that any flaws did not rise to the level of the “credible, particularized evidence” necessary to rebut the government’s initial showing of a compelling interest.²⁹ The court explained that the government can establish a strong basis in evidence with evidence “approaching a *prima facie* case of a constitutional or statutory violation” and that it is not required to present “irrefutable or definitive proof of discrimination.”³⁰

In addition to finding that the government articulated a compelling interest, the court considered several factors in determining that the program is narrowly tailored, including that: (1) Congress attempted to use race-neutral measures to assist minority-owned businesses for at least 25 years before incorporating a race-conscious component into the 8(a) program; (2) the program is sufficiently flexible in that it contains only aspirational goals with no penalties for failing to meet them, the presumption of social disadvantage available to certain racial and ethnic groups is rebuttable and applicants who are not presumptively disadvantaged may still demonstrate social disadvantage, and all applicants must meet the same economic disadvantage requirements; (3) the program is not over-inclusive as the government presented sufficient evidence of discrimination to justify granting the rebuttable presumption to the five groups

²⁶ *DynaLantic Corp. v. U.S. Dep’t of Def.*, 885 F. Supp. 2d 237, 253-58 (D.D.C. 2012).

²⁷ *Id.* at 258.

²⁸ *Id.* at 265 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

²⁹ *Id.* at 271 (quoting *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1175 (10th Cir. 2000)).

³⁰ *Id.* at 276 (quoting *Concrete Works of Colo., Inc. v. City and Cnty. of Denver*, 321 F.3d 950, 971 (10th Cir. 2003) (internal quotation omitted)).

identified in the regulation; (4) there are time limits on participation in the program, and participants graduate from the program earlier if they meet certain business development goals; (5) the goal for participation in the program is reasonably tied to the pool of available minority-owned businesses, taking into account that the availability of minority-owned businesses reflects discrimination that has prevented minorities from forming and developing businesses; and (6) the program includes several provisions that minimize the burden on non-minority businesses, including a waiver provision to ensure that an award will not be accepted for the program if there would be an adverse impact on small businesses operating outside the 8(a) program.³¹

But in evaluating the as-applied challenge, the court determined that the government failed to demonstrate a compelling interest in utilizing the 8(a) program in DOD's award of contracts for military simulators, as the government conceded that it did not have evidence of discrimination in that industry.³²

ii. *Rothe Development, Inc. v. United States Department of Defense*, 836 F.3d 57 (D.C. Cir. 2016).

Just a few years after the *DynaLantic* decision, the United States District Court for the District of Columbia again upheld the constitutionality of the 8(a) program, rejecting a facial challenge brought by Rothe Development, Inc., a small business that bids on DOD contracts.³³ The *Rothe* district court decision relied on much of the same reasoning as the court in the *DynaLantic* opinion. On appeal, the D.C. Circuit upheld the constitutionality of the 8(a) program, concluding that the statute itself does not contain a racial classification that would subject the program to strict scrutiny.³⁴ Because Rothe challenged only the statutory provisions and not the SBA regulation, the court applied rational basis review, which requires only that the statute "bear[] a rational relation to some legitimate end," and determined that the statute "readily survives" such review.³⁵

2. Challenges to States' Implementation of the United States Department of Transportation Disadvantaged Business Enterprise Program

For more than 30 years, the United States Department of Transportation (USDOT) has implemented variations of a program wherein states that receive federal funds for highway planning and construction must implement a state-designed, federally-approved Disadvantaged Business Enterprise (DBE) program.³⁶ In the following cases, courts examined whether a state's implementation of the federal DOT DBE program withstands strict scrutiny.

³¹ *Id.* at 283-91.

³² *Id.* at 280.

³³ *Rothe Dev., Inc. v. Dep't of Def.*, 107 F. Supp. 3d 183 (D.D.C. 2015).

³⁴ *Rothe Dev., Inc. v. Dep't of Def.*, 836 F.3d 57, 68 (D.C. Cir. 2016).

³⁵ *Id.* at 63, 72-73.

³⁶ See e.g., Safe, Accountable, Flexible, Efficient Transportation Equity Act, 49 C.F.R. § 26.1 (2005).

When reviewing the constitutionality of the program as applied by a particular state, courts do not require the state to demonstrate an independent compelling interest for its DBE program; instead, states may rely on the compelling nationwide interest identified by Congress in adopting the program.³⁷ Courts differ as to how they articulate the precise standard for evaluating the constitutionality of a state's DBE program, but ultimately, whether such a program can withstand heightened scrutiny depends primarily on whether there is sufficient evidence of discrimination in the relevant contracting market to support the specific race- or gender-conscious goals set by the program.

- i. *Mountain West Holding Co. v. Montana*, 691 F. App'x 326 (9th Cir. 2017) (Memorandum opinion).

The plaintiff, a subcontractor who competes to win subcontracts from prime contractors who have contracted with the Montana DOT, was denied a contract despite offering the lowest bid on the project. As a result, the plaintiff raised an as-applied challenge to Montana's DBE program under the Equal Protection Clause and also under Title VI of the Civil Rights Act, alleging that it unlawfully required prime contractors to give preference to minority- or female-owned companies.³⁸ Relying on statistical and anecdotal evidence from a Montana disparity study, the district court concluded that the program was narrowly tailored to further the compelling government interest identified by Congress when it passed the DOT DBE legislation.³⁹ The district court accordingly granted summary judgment in favor of the defendants.

On appeal, because Montana had discontinued using race- and sex-conscious goals, the Ninth Circuit dismissed the plaintiff's claim for injunctive and declaratory relief as moot.⁴⁰ However, as to the plaintiff's claims for damages under Title VI, the Ninth Circuit reversed the district court's grant of summary judgment in favor of Montana. The court first noted that in an as-applied challenge to a state's DBE contracting program, Ninth Circuit precedent established in *Western States Paving Co. v. Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005), holds that "(1) the state must establish the presence of discrimination within its transportation contracting industry, and (2) the remedial program must be 'limited to those minority groups that have actually suffered discrimination.'" ⁴¹ The court then concluded that the district court erred in granting summary judgment, finding genuine issues of material fact based on issues that the plaintiff's expert raised as to the validity of the defendants' disparity study.⁴² The court also concluded that without this statistical evidence, the state could not rely on anecdotal evidence of discrimination

³⁷ See, e.g., *W. States Paving Co. v. Wash. State Dep't of Transp.*, 407 F.3d 983, 997 (9th Cir. 2005); *Sherbrooke Turf, Inc. v. Minn. Dep't of Transp.*, 345 F.3d 964, 970 (8th Cir. 2003).

³⁸ *Mountain W. Holding Co. v. Montana*, 691 F. App'x 326, 328 (9th Cir. 2017).

³⁹ *Mountain W. Holding Co. v. Montana*, No. CV 13-49-BLG-DLC, 2014 WL 6686734 (D. Mont. Nov. 26, 2014), *aff'd in part, rev. in part, dismissed in part by Mountain W. Holding Co. v. Montana*, 691 F. App'x 326 (9th Cir. 2017).

⁴⁰ *Mountain W. Holding Co. v. Montana*, 691 F. App'x 326, 328 (9th Cir. 2017).

⁴¹ *Id.* at 329-30 (quoting *W. States Paving*, 407 F.3d at 997-99).

⁴² *Id.* at 330.

alone.⁴³ Finally, the court determined that it was improper for the district court to rely on the decrease in DBE participation after the state halted use of race- and gender-based preferences, concluding that such a decrease in participation is not necessarily evidence of discrimination against DBEs.⁴⁴

ii. *Midwest Fence Corporation v. Department of Transportation*, 840 F.3d 932 (7th Cir. 2016).

Midwest Fence, a fencing and guardrail contractor, filed an 18-count complaint against the USDOT, the Illinois DOT (IDOT), and the Illinois State Tollway Highway Authority (Tollway) challenging the constitutionality of the federal DBE program, the application of the program by IDOT, and Tollway's analogous DBE program. The Seventh Circuit affirmed the district court's ruling upholding the constitutionality of the federal, IDOT, and Tollway programs.⁴⁵ The plaintiff did not challenge whether a compelling interest justified the federal program, and the Seventh Circuit joined the Eighth, Ninth, and Tenth Circuits in concluding that the federal program is narrowly tailored and thus constitutional on its face.⁴⁶ Because not all of IDOT's contracts are federally funded, and the Tollway's DBE program did not make use of federal funds, they could not rely on the federal compelling interest in establishing the programs; thus, the court considered whether IDOT and the Tollway established a strong basis in evidence to support their programs.⁴⁷ Based on a review of studies presenting statistical evidence of disparities between the availability and utilization of DBEs in the relevant market areas, the court found that both IDOT and the Tollway had a strong basis in evidence to adopt their programs.⁴⁸ The court also concluded that all three programs are narrowly tailored, including because they use race- and gender-neutral alternatives, and because they include waivers from provisions that require specific goals when a contractor has made good faith efforts to comply with a DBE goal.⁴⁹

iii. *Dunnet Bay Construction Co. v. Borggren*, 799 F.3d 676 (7th Cir. 2015).

Dunnet Bay, a corporation specializing in general highway construction, was owned and operated by White males. After its bid proposal for the Eisenhower Highway construction project was rejected for failing to meet IDOT's DBE goal, despite being the lowest bid, it filed a claim challenging the constitutionality of IDOT's DBE program. The court held that Dunnet Bay lacked standing to raise an equal protection claim because it could not show that it was excluded from competing for contracts because of race-based measures.⁵⁰ Rather, IDOT did not award the contract on which Dunnet Bay bid to anyone and re-bid the project because Dunnet Bay's low bid substantially exceeded the

⁴³ *Id.* at 331.

⁴⁴ *Id.*

⁴⁵ *Midwest Fence Corp. v. Dep't of Transp.*, 840 F.3d 932, 941, 935-36 (7th Cir. 2016).

⁴⁶ *Id.* at 942.

⁴⁷ *Id.* at 948.

⁴⁸ *Id.* at 949-51.

⁴⁹ *Id.* at 942-43, 954.

⁵⁰ *Dunnet Bay Constr. Co v. Borggren*, 799 F.3d 676, 690 (7th Cir. 2015).

program's estimated budget.⁵¹ When Dunnet Bay bid on one of the rebid projects, it was not awarded the contract because it was not the lowest bid.⁵² In addition, the court found that even if Dunnet Bay could establish that it was disadvantaged in competing for contracts as compared to DBEs, the reason was not because of race, but was equally attributable to the fact that Dunnet Bay exceeded the business size standard established to qualify as a DBE.⁵³

The court then determined that even if Dunnet Bay had standing, IDOT was still entitled to summary judgment. Relying on *Northern Contracting, Inc. v. Illinois*, 473 F.3d 715, 720–21 (7th Cir. 2007), the court first noted that IDOT could rely on “the federal government’s compelling interest in remedying the effects of past discrimination in the national construction market,” and then stated that a “state is insulated from [a constitutional challenge as to whether its program is narrowly tailored to achieve this compelling interest], absent a showing that the state exceeded its federal authority.”⁵⁴ The court held that IDOT did not exceed its authority in establishing its DBE program and accordingly affirmed the district court’s grant of summary judgment in favor of IDOT.

- iv. *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation*, 713 F.3d 1187 (9th Cir. 2013).

An association of general contractors challenged the California Department of Transportation’s (Caltrans) DBE program on constitutional grounds because it provided race- and gender-based preferences on certain transportation contracts. After the United States District Court for the Eastern District of California upheld the constitutionality of the program, the association appealed. The Ninth Circuit dismissed the appeal for lack of jurisdiction on the grounds that the plaintiff association did not have standing to bring the suit because it did not identify a single member of its association who had suffered or would suffer harm under Caltrans’s program.⁵⁵ The court also found that even if the plaintiff did have standing, the program survived strict scrutiny.⁵⁶ Relying on *Western States*, the Court first explained that Caltrans could rely on the compelling nationwide interest identified by Congress when passing the federal statute and did not need to demonstrate an independent compelling interest for the program.⁵⁷ The court then applied the two-prong narrow-tailoring test set forth in *Western States*.⁵⁸ First, the court found that a 2007 disparity study commissioned by Caltrans contained “substantial statistical and anecdotal evidence of discrimination in

⁵¹ *Id.* at 692.

⁵² *Id.* at 687.

⁵³ *Id.* at 692–93.

⁵⁴ *Id.* at 697 (quoting *N. Contracting*, 473 F.3d at 720, 721).

⁵⁵ *Assoc. Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dep’t of Transp.*, 713 F.3d 1187, 1194–95 (9th Cir. 2013).

⁵⁶ *Id.* at 1195.

⁵⁷ *Id.* at 1195–96 (citing *Western States*, 407 F.3d at 995–1002).

⁵⁸ *Id.* at 1196.

the California transportation contracting industry.”⁵⁹ Second, the court found that Caltrans’s program was limited only to those groups actually identified in the disparity study as having experienced discrimination: African Americans, Native Americans, Asian Pacific Americans, and women.⁶⁰ Accordingly, the court concluded that the program was narrowly tailored to benefit only those groups that had actually suffered discrimination in the relevant contracting market.

- v. *Geyer Signal, Inc. v. Minnesota Department of Transportation*, No. 11-321 (JRT/LIB), 2014 WL 1309092 (D. Minn. Mar. 31, 2014).

Geyer Signal, a White male-owned signage contractor in Minnesota, filed a complaint challenging the constitutionality of the state’s DBE program. The complaint also challenged the constitutionality of the USDOT regulations regarding DBE programs as Minnesota’s DBE program follows those regulations.⁶¹ The United States intervened in order to defend the USDOT regulations.⁶² The court granted summary judgment in favor of both the United States and Minnesota. In June 2014, plaintiffs abandoned a pending appeal in the Seventh Circuit.

- vi. *Geod Corporation v. New Jersey Transit Corporation*, 678 F. Supp. 2d 276 (D.N.J. 2009), and 746 F. Supp. 2d 642 (D.N.J. 2010).

GEOD, a White male-owned corporation that specializes in surveying, topographic mapping, and photogrammetry, challenged the New Jersey Transit Corporation’s (NJT) DBE program on constitutional grounds. In ruling on the parties’ cross-motions for summary judgment, the district court followed numerous other courts in determining that NJT did not need to independently establish a compelling interest because states inherit the federal government’s compelling interest in enacting the legislation.⁶³ The parties disputed the appropriate standard for determining whether the program was narrowly tailored. Plaintiff relied on the Ninth Circuit’s decision in *Western States* to assert that its as-applied challenge to the constitutionality of the DBE program required NJT to demonstrate that the program is narrowly tailored.⁶⁴ Defendants relied on the Seventh Circuit’s decision in *Northern Contracting* to contend that the program was narrowly tailored as long as it complied with the requirements of the federal program.⁶⁵ While the parties presented these two approaches as a circuit split, the court seemingly disagreed, stating that each case involved “considerably the same analysis,” because determining whether a state’s DBE program complies with the federal program requirements involves much the same considerations as the narrow

⁵⁹ *Id.*

⁶⁰ *Id.* at 1198-99.

⁶¹ *Geyer Signal, Inc. v. Minn. Dep’t of Transp.*, No. 11-321 (JRT/LIB), 2014 WL 1309092 (D. Minn. Mar. 31, 2014).

⁶² *Id.*

⁶³ *Geod Corp. v. N.J. Transit Corp.*, 678 F. Supp. 2d 276, 282 (D.N.J. 2009).

⁶⁴ *Id.*

⁶⁵ *Id.*

tailoring analysis.⁶⁶ Ultimately, the court found that a genuine issue of material fact remained concerning whether the method NJT used to determine its DBE goal was sufficiently narrowly tailored.⁶⁷

Following a bench trial, the court upheld the constitutionality of the program. The court first clarified that it agreed with the Seventh Circuit's holding in *Northern Contracting* that "a challenge to a state's application of a federally mandated program must be limited to the question of whether the state exceeded its authority."⁶⁸ After reviewing the steps NJT undertook to set its DBE goals, the court ruled that NJT's DBE program was sufficiently narrowly tailored because it did not exceed the authority granted by the federal statute.⁶⁹ The court also found that even under the as-applied narrow tailoring test set forth in *Western States*, the program was still constitutional as it was narrowly tailored to further a compelling governmental interest.⁷⁰

3. Challenges to Race- and Gender-Conscious COVID-related Relief Efforts

In early 2021, Congress enacted the American Rescue Plan Act of 2021 ("ARPA"), which included several race- and gender-conscious relief plans to assist minority-, female-, and veteran-owned businesses in the restaurant and agricultural industries. Some of the programs prioritize socially and economically disadvantaged individuals for certain pandemic relief, in some cases adopting the SBA's definition of social and economic disadvantage.⁷¹ A number of constitutional challenges to the race- and gender-conscious provisions in the ARPA followed. These lawsuits fall into two main groups: those challenging a debt relief program for socially disadvantaged farmers and ranchers,⁷² and those challenging an emergency grant fund's 21-day prioritization of restaurants owned by socially and economically disadvantaged individuals.⁷³

⁶⁶ *Id.* at 282-83.

⁶⁷ *Id.* at 284.

⁶⁸ *Geod Corp. v. N.J. Transit Corp.*, 746 F. Supp. 2d 642, 652 (D.N.J. 2010).

⁶⁹ *Id.* at 954-55.

⁷⁰ *Id.* at 656-57.

⁷¹ American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 5003(c)(3)(A) (adopting the Small Business Act's definition of social and economic disadvantage for the purpose of prioritizing applications for restaurant relief grants); *see also*, ARPA § 1005(a) (providing debt relief for socially disadvantaged farmers and ranchers); § 1006(b)(1)-(2), (5) (establishing educational training and providing grants, loans, and financial assistance to socially disadvantaged farmers); § 3206(c)(2) (prioritizing a portion of a homeowner assistance fund for socially disadvantaged individuals); § 3301(b), (d), (f) (distributing funds to the states to help small businesses owned and controlled by socially and economically disadvantaged individuals).

⁷² ARPA § 1005(a). *See, e.g.*, *Miller v. Vilsack*, No. 4:21-cv-595 (N.D. Tex. filed Apr. 26, 2021); *Faust v. Vilsack*, No. 1:21-cv-548 (E.D. Wis. filed Apr. 29, 2021); *Wynn v. Vilsack*, No. 3:21-cv-514 (M.D. Fla. filed May 18, 2021); *Carpenter v. Vilsack*, No. 0:21-cv-103 (D. Wyo. filed May 24, 2021); *Holman v. Vilsack*, No. 1:21-cv-1085 (W.D. Tenn. filed June 2, 2021).

⁷³ ARPA § 5003(c)(3)(A). *See Vitolo v. Guzman*, 999 F.3d 353 (6th Cir. 2021); *Blessed Cajuns v. Guzman*, No. 21-cv-00677-O (N.D. Tex. filed May 23, 2021).

One challenge to the emergency relief fund for restaurants, *Vitolo v. Guzman*, 999 F.3d 353, 357 (6th Cir. 2021), was filed by a bar and grill equally co-owned by Antonio Vitolo, who is White, and his wife, who is Hispanic. Their restaurant struggled during the COVID-19 pandemic, and they applied for relief from the Restaurant Revitalization Fund (“RRF”) the first day the SBA accepted applications.⁷⁴ Congress directed the SBA to process applications and distribute the funds on a first come, first served basis, with the exception of a 21-day priority applicant period for restaurants that are at least 51 percent owned and controlled by women, veterans, or the “socially and economically disadvantaged,” as defined by the SBA.⁷⁵ Non-priority restaurants would not receive a grant until the 21-day period ended, if any funds remained.⁷⁶ Vitolo and his restaurant sued the SBA, claiming that the race- and sex-based preferences in the RRF’s 21-day priority period violated his constitutional rights under the Equal Protection Clause, and requested a temporary restraining order and a preliminary injunction.⁷⁷

While the United States District Court for the Eastern District of Tennessee denied the plaintiff’s motion for a temporary restraining order and a preliminary injunction,⁷⁸ the Sixth Circuit granted an emergency motion for an injunction pending appeal, enjoining the SBA from relying on the regulatory presumption that certain racial and ethnic groups are socially disadvantaged and from using any race-based criteria to evaluate social disadvantage in the distribution of RRF grants.⁷⁹ It directed the SBA to “fund the plaintiffs’ grant application, if approved, before all after-filed applications, without regard to processing time or the applicants’ race or sex.”⁸⁰ The court held that Vitolo had standing even though he might not otherwise qualify for priority consideration without the use of race-conscious preferences and that even though the 21-day period had expired, the claim was not moot because the SBA had not yet paid out any funds.⁸¹

The court held that the government likely failed to demonstrate a compelling interest in targeting restaurants owned by socially and economically disadvantaged individuals for relief assistance because: (1) the government pointed only to societal discrimination against business owners, not to any specific instances of discrimination; (2) the government’s statistical evidence of past discrimination against the groups protected by the presumption was “not nearly enough” to support an inference of intentional discrimination; and (3) a congressional hearing identifying a “theme” that minority-owned businesses required targeted relief assistance because prior pandemic

⁷⁴ *Vitolo*, 999 F.3d at 357. The \$28.6 billion RRF was created by the ARPA to help small, private restaurant owners meet payroll and other expenses. ARPA, Pub. L. No. 117-2, § 5003(b)(2)(A).

⁷⁵ ARPA §§ 5003(c)(1)-(3)(A).

⁷⁶ *Id.* See *Vitolo*, 999 F.3d at 357.

⁷⁷ *Vitolo*, 999 F.3d at 358.

⁷⁸ *Vitolo v. Guzman*, No. 3:21-cv-176, 2021 WL 2132106 (E.D. Tenn. May 25, 2021).

⁷⁹ *Vitolo*, 999 F.3d at 365.

⁸⁰ *Id.* at 366.

⁸¹ *Id.* at 358-59.

programs failed to reach them was not enough to show that the government participated in the discrimination it sought to remedy.⁸²

Even if the government had shown a compelling interest, the court held that the RRF likely was not narrowly tailored because: (1) there were a number of race-neutral alternatives relying on economic rather than racial indicators; (2) the vastly different evidentiary burdens on those who are eligible for the racial presumption and those who are not render the program underinclusive; and (3) the regulation’s “racial gerrymandering”—presuming that some ethnicities are socially disadvantaged, and not others—makes the program overbroad.⁸³

The court also held that the RRF’s prioritization of women-owned businesses did not survive intermediate scrutiny because the government failed to show that (1) the sex-based classification serves an important governmental objective, and (2) the classification is substantially related to that objective.⁸⁴ The government’s statistics were insufficient to show actual evidence of discrimination, and the RRF prioritized *all* women-owned restaurants, not just those who were economically disadvantaged.⁸⁵

The USDA loan forgiveness program for socially and economically disadvantaged farmers has received a similar reception in a number of federal court cases. For example, a Wisconsin district court issued a temporary restraining order halting the program’s implementation, finding that the program “purportedly intended to provide economic relief to disadvantaged individuals without actually considering the financial circumstances of the applicant.”⁸⁶ Subsequently, a Florida district court issued a nationwide preliminary injunction, temporarily halting enforcement of the program.⁸⁷ These and other equal protection challenges to the race-conscious aspects of the USDA’s loan forgiveness program remain pending as of the publication of this report, and the government is continuing to defend the program on the merits.

4. Challenges to State and Local Disadvantaged Business Enterprise Programs

Some states have implemented programs to promote the use of DBEs, minority business enterprises (MBEs), and/or women’s business enterprises (WBEs) in state-funded contracts. Since these contracts are not federally funded, states are not required to adhere to the federal government’s mandate requiring states to implement a DBE program. Thus, even though a state program may mirror the federal DBE program, the state does not inherit the federal government’s compelling interest. Instead, the state must prove that it has its own compelling interest in remedying discrimination in contracting within the state.

⁸² *Id.* at 361-62.

⁸³ *Id.* at 362-64.

⁸⁴ *Id.* at 364-65.

⁸⁵ *Id.* at 365. As of July 19, 2021, the case remains pending in district court.

⁸⁶ *Faust v. Vilsack*, 519 F. Supp. 3d 470, 476 (E.D. Wis. 2021).

⁸⁷ *Wynn v. Vilsack*, --- F. Supp. 2d ---, 2021 WL 2580678 (M.D. Fla June 23, 2021).

In a recent circuit court decision involving such a challenge, the plaintiff, a prime contractor in North Carolina who was denied a contract on a state-funded construction project for failing to demonstrate “good faith efforts” to satisfy participation goals for minority- and women-owned subcontractors, alleged that North Carolina’s participation goals violated its equal protection rights.⁸⁸ After the district court found the program constitutional both on its face and as applied, the plaintiff appealed. Since North Carolina DOT’s DBE program applied to state-funded, not federally funded, contracts, the state did not inherit the government’s compelling interest.⁸⁹ North Carolina had commissioned a consulting firm to conduct a disparity study every few years regarding the state’s transportation construction industry. Relying heavily on these studies, the Fourth Circuit concluded that there was a strong basis in evidence of discrimination in North Carolina against Black and Native American subcontractors, and finding the program narrowly tailored, it upheld it both on its face and as applied to these two groups.⁹⁰ However, the Court found that the evidence did not justify application of the program to female, Asian American, and Hispanic subcontractors, and thus held that the statute was unconstitutional as applied to those groups.⁹¹

II. There are Identified Disparities in Government Contracting between Minority- and Women-Owned Businesses and Their Non-Minority, Male-Owned Counterparts

Following the *Croson* decision, in which the Supreme Court articulated the type of evidence necessary to support the use of race-conscious measures in contracting programs, state and local governments began commissioning disparity studies to determine whether evidence of racial and gender discrimination existed in their contracting markets sufficient to justify race- and gender-conscious remedial action. While disparity studies vary in approach, the central component of most disparity studies is a comparison between the availability of minority- and women-owned businesses as a percentage of businesses operating in distinct categories of a particular contracting market and the utilization of such businesses by the spending authority as defined by the percentage of dollars that goes to those firms. Simply put, dividing utilization percentage by availability percentage results in a disparity index. A disparity index of 100 indicates that the utilization of a particular category of businesses is equivalent to the availability of those businesses in the relevant market. For example, if 25% of the construction firms in a particular geographic area were women-owned, and 25% of the spending authority’s construction contracting was spent with women-owned businesses, that would yield a disparity index of 100. As a general rule of thumb, a

⁸⁸ *H.B. Rowe Co. v. Tippet*, 615 F.3d 233 (4th Cir. 2010).

⁸⁹ *Id.*

⁹⁰ *Id.* at 257.

⁹¹ *Id.* at 245, 258 (noting that the study found that female subcontractors were overutilized during the study period and that underutilization of Hispanic American and Asian American subcontractors was not statistically significant).

disparity index of less than .80, or 80 for those studies that multiply the disparity index by 100, indicates a substantial disparity.⁹²

The Department of Justice's 2010 report reviewed approximately 70 disparity studies, which showed that "minority-owned businesses and women-owned businesses throughout the nation continue to face large disparities in almost every aspect of business enterprise activity that can be quantified" in a pattern of discriminatory barriers that is repeated across the nation.⁹³ Since then, over 200 disparity studies have been published. A review of these studies shows that the "needle has not moved."⁹⁴ Disparity studies continue to identify substantial disparities between the availability of minority- and women-owned businesses and the utilization of such businesses in state and local government procurement. Overwhelmingly, the studies also present evidence linking such disparities to discriminatory factors. A list of 189 of these recent studies from state and local jurisdictions in 34 different states and the District of Columbia is attached as Appendix B.

In a 2016 report, the U.S. Department of Commerce's Minority Business Development Agency conducted a comprehensive review of 100 publicly available disparity studies, summaries, and reports, focusing on studies conducted in the prior ten years (hereinafter, "2016 MBDA Report").⁹⁵ The 2016 MBDA Report found that the studies "indicated significant contracting disparities for minority business enterprises (MBEs), pervasive across different ethnic and racial groups, industries, and geographies."⁹⁶ Over 78% of the observed disparity ratios fell below the 80% threshold signifying a "substantial" disparity. The median value for the observed disparities was just 19%, indicating that minority businesses were being utilized at less than one-fifth of their availability in a given marketplace. The report concluded that "these results indicate that contracting disparities for MBEs are pervasive."⁹⁷

Disparity studies published since the 2016 MBDA Report continue to show substantial and pervasive disparities. For example, a 2019 disparity study commissioned by the City of Indianapolis and Marion County found that the participation of minority- and women-owned businesses in contracts the city awarded from 2014-2018 was substantially lower than what one would expect based on the availability of those businesses for that work, with a disparity index of 76.⁹⁸ This means that "minority- and woman-owned businesses received approximately \$0.76 for every dollar that they might

⁹² *Uniform Guidelines on Employee Selection Procedures*, 29 C.F.R. § 1607.4 (D); *Connecticut v. Teal*, 457 U.S. 440, 443 n.4 (1982).

⁹³ *Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: An Update to the May 23, 1996 Review of Barriers for Minority- and Women-Owned Businesses* 10 (2010) (quoting *The Department of Transportation's Disadvantaged Business Enterprise Program: Hearing Before the H. Comm. on Transp. and Infrastructure*, 111th Cong. 326 (2009) (statement of Jon Wainwright, Vice President, NERA Economic Consulting)).

⁹⁴ U.S. Dep't of Com., Minority Bus. Dev. Agency, *Contracting Barriers and Factors Affecting Minority Business Enterprises: A Review of Existing Disparity Studies* (2016) (hereinafter, "2016 MBDA Report").

⁹⁵ 2016 MBDA Report, at 70.

⁹⁶ *Id.* at 69.

⁹⁷ *Id.* at vi.

⁹⁸ BBC Rsch. & Consulting, *City of Indianapolis and Marion County Disparity Study* 15 (2019).

be expected to receive based on their availability for the relevant prime contracts and subcontracts that the City awarded during the study period.”⁹⁹ A 2018 disparity study prepared for the City of New York found even greater disparities. Analysis of disparities across all procurement categories revealed a disparity index of 20.43% for minority- and women-owned businesses.¹⁰⁰ The study further found that this “quantitatively significant disparity” was corroborated by qualitative evidence of “barriers that M/WBES face in participating in the City’s procurement process.”¹⁰¹

A 2021 disparity study report prepared for the California Department of Transportation (“Caltrans”) found that women- and minority-owned businesses were substantially underutilized, receiving only 20.3 percent of Caltrans contracts despite being available to perform 27.6 percent of the construction and professional services contracts funded by USDOT.¹⁰² This disparity persists despite the fact that all Caltrans construction and professional services contracts funded by USDOT are subject to race- and gender-conscious subcontracting programs. In contrast, Caltrans’ state-funded projects do not use race- or gender-conscious measures. In those projects, women- and minority-owned business participation lags at a meager 10.8 percent despite an availability of 23.4 percent.¹⁰³ The resulting disparity index is 46, meaning that W/MBEs received \$.46 of every dollar they should have expected to receive based on their availability to perform state-funded construction and professional services contracts.¹⁰⁴ The systemic barriers to the marketplace that cause these disparities are rooted in discriminatory systems. By way of example, the report cited that the average business loan approved for W/MBEs in the Pacific region was \$289,131, whereas, for non-Hispanic White men it was \$455,636.¹⁰⁵

Similarly, the Commonwealth of Virginia’s 2020 disparity study found that the overall availability of minority- and women-owned businesses in construction, professional services, and goods and other services was 32.8 percent.¹⁰⁶ However, minority- and women-owned businesses received only 13.4 percent of the relevant contract and procurement dollars that the Commonwealth awarded during the study period (2014-2019).¹⁰⁷ As a result, the disparity index was 41, representing a significant underutilization of minority- and women-owned businesses.¹⁰⁸

These findings comport with other comprehensive reviews of disparity studies and related statistical materials. For example, in a 2013 expert report prepared for

⁹⁹ *Id.*

¹⁰⁰ MGT Consulting Grp., *City of New York Disparity Study* 4-12 (May 2018).

¹⁰¹ *Id.* at 6-3.

¹⁰² BBC Rsch. & Consulting, *California Department of Transportation Availability and Disparity Study Report*, ES 3 & 5 (2021).

¹⁰³ *Ibid.*

¹⁰⁴ *Id.* at ES-8

¹⁰⁵ *Id.* at App’x C, Fig. C-16.

¹⁰⁶ BBC Rsch & Consulting, *Commonwealth of Virginia 2020 Disparity Study*, ES-3 (2020).

¹⁰⁷ *Id.* at ES-6.

¹⁰⁸ *Id.* at ES-8.

litigation, Dr. Jon Wainwright, Senior Vice President of NERA Economic Consulting, reviewed 107 disparity studies conducted since 2000 covering 142 public contracting entities in 35 states encompassing 89% of the national population. Dr. Wainwright concluded that “these materials contain significant evidence of large and adverse disparities facing minority business enterprises.”¹⁰⁹ Dr. Wainwright further concluded that the observed disparities “are consistent with the presence of discrimination and its lingering effects in the small business contracting environment.”¹¹⁰

While the evidence indicates that the barriers that have impeded the growth and success of minority- and women-owned businesses continue to exist, the evidence also shows that government contracting preference programs ameliorate the effects of public and private discrimination. For example, a 2017 disparity study prepared for the Los Angeles County Metropolitan Transportation Authority compared the participation of minority- and women-owned business on contracts that contained goals to encourage utilization of minority- and women-owned businesses as opposed to contracts that did not contain such goals.¹¹¹ The results showed that on contracts without goals, minority- and women-owned firms earned only 53 cents on the dollar, but on contracts with goals, such firms earned 96 cents on the dollar—almost what would be expected given the availability of such firms in the marketplace.¹¹²

The presence of substantial disparities does not in itself indicate that discrimination is the cause of the observed disparities. Researchers use both quantitative and qualitative methods to examine the causes of disparities in public contracting. One method includes testing the results for statistical significance, which helps to determine whether the observed disparities could be due to random chance alone. The 2016 MBDA Report found that the majority of substantial disparities observed were “statistically significant at high levels, such that disparity study consultants could reject chance as a prime driver of contracting disparities.”¹¹³

Another quantitative method used to identify the underlying causes of the observed disparities is regression analysis. Regression analysis is a statistical technique that allows for the “comparison between certain business outcomes, such as business formation, business earnings, or loan denials, and minority status, while holding other, potentially non-discriminatory factors, such as geographic location, industry affiliation,

¹⁰⁹ Jon Wainwright, Report of Defendant’s Expert, submitted in *Rothe Dev., Inc. v. Dep’t of Def.*, No. 12-CV-744 (D.D.C.) (2013), at 1 (“Wainwright Report”).

¹¹⁰ *Id.* at 21, 25-35 (Table 5), 36-54.

¹¹¹ BBC Rsch. & Consulting, *2017 LA Metro Disparity Study* 7-7 (2018).

¹¹² See also BBC Rsch. & Consulting, *Pennsylvania Department of Transportation Disparity Study*, ES-8-9 (2018) (noting that PennDOT’s use of DBE contract goals during the study period applied most directly to MWBE participation in subcontracts rather than on prime contracts and found that MWBEs showed a substantial disparity for prime contracts (75) but not for subcontracts); BBC Rsch. & Consulting, *City of Charlotte Disparity Study*, ES-5 (2017) (MWBEs, considered together, showed higher participation in goals contracts—18.3%—than in no-goals contracts—11.3%); BBC Rsch. & Consulting, *Illinois Department of Transportation Disparity Study*, ES-8 (2017) (MWBEs considered together showed a substantial disparity of 34 for prime contracts, which do not include goals, but do not show a disparity for subcontracts, which do use goals).

¹¹³ 2016 MBDA Report, at 69.

education, age, or balance sheets, constant.”¹¹⁴ This allows researchers to investigate various factors in private-sector marketplace discrimination, such as disparities in business formation, business earnings, and access to capital, and whether these contribute to observed contracting disparities.¹¹⁵ The 2016 MBDA report determined through these regression analyses that “the majority of the studies in the set that utilized quantitative data on marketplace discrimination found that minorities and minority business enterprises: “[e]arned significantly lower wages than similarly situated non-minority male counterparts in relevant markets; [h]ad significantly lower business earnings than similarly situated non-MBEs in relevant markets; [h]ad lower rates of business formation than non-minority males; [w]ere more likely to be denied commercial or personal loans than similarly situated non-minority males or non-MBEs; and [h]ad lower revenues and market shares than similarly situated non-MBEs.”¹¹⁶ Analyses of such private-sector disparities is important because the Supreme Court has found that governments have a compelling interest in not being a passive participant in private discrimination.¹¹⁷

Disparity studies also analyze qualitative evidence to identify and explain what factors lead to the contracting disparities observed through statistical evidence. Certainly, there are some challenges that all businesses face regardless of the identity of the business owner. Yet the 2016 MBDA Report also identifies discriminatory factors that lead to the observed disparities, including overt prejudicial treatment and exclusion based on race and systemic discrimination in the public and private marketplace. Key discriminatory barriers identified include “[a]gency and prime contractors employing capability stereotypes, double or higher standards, and manipulating bid processes based on prejudicial factors unrelated to business performance; also systemic discrimination against MBEs related to key market-based issues including access to capital.”¹¹⁸ Each of these will be discussed in more detail below.

In addition to the substantial body of evidence showing disparities in state and local contracting, the evidence shows that substantial disparities are also present in federal contracting. In 2017, just 9.8% of federal spending on contracts went to minority-owned businesses.¹¹⁹ The same year, woman-owned businesses received only 5% of federal prime contract awards.¹²⁰ In a 2012 expert report prepared for litigation, Dr. Robert N. Rubinovitz, the Deputy Chief Economist in the Economics and Statistics Administration at the Department of Commerce, conducted regression analyses comparing the likelihood of minority-owned businesses winning federal prime contracts

¹¹⁴ Wainwright Report, at 64 n. 69.

¹¹⁵ 2016 MBDA Report at vii.

¹¹⁶ *Id.* at 44-45.

¹¹⁷ *Croson*, 488 U.S. at 492.

¹¹⁸ *Id.* at 69.

¹¹⁹ Megan Janetsky, Ctr. for Responsive Politics, *Women- and minority-owned businesses receive only a small fraction of federal contracts*, Apr. 13, 2018, <https://www.opensecrets.org/news/2018/04/women-owned-biz-receive-fraction-of-fed-contracts/>.

¹²⁰ *Strengthening the Entrepreneurial Ecosystem for Women: Hearing Before the S. Comm. on Small Business and Entrepreneurship*, 115th Cong. 29 (2017) (opening statement from Sen. Shaheen).

when compared to majority-owned businesses of similar size in the same industry.¹²¹ Dr. Rubinovitz analyzed data on government contracts for small businesses for Fiscal Year 2012 and found consistent, statistically significant underutilization of small, minority-owned businesses in federal prime contracting. Dr. Rubinovitz conducted regression analyses to control for factors other than race that might contribute to differences in the success of minority-owned firms in winning contracts compared to non-minority-owned firms. Specifically, Dr. Rubinovitz's regression analyses controlled for the industry in which the firm did business, business age, business size (both in terms of average number of employees and annual receipts), business form, and security clearance, and compared the likelihood of minority-owned businesses receiving a federal contract versus similar businesses.¹²² The analysis showed that in the vast majority of industries, minority-owned businesses remained less likely to win a federal contract, usually to a statistically significant degree.¹²³

III. Discrimination Limits Access to Contracting Markets

The statistical evidence discussed in the prior section is bolstered by qualitative evidence that shows the various ways discrimination hinders the ability of minority- and women-owned businesses to compete equitably for government contracts. While this discrimination can take many forms, three primary obstacles are: (1) discrimination by procurement agencies and prime contractors, (2) exclusion from business networks, and (3) discrimination by bonding companies and suppliers.

A. Discrimination By Procurement Agencies and Prime Contractors Creates Obstacles for Minority- and Women-Owned Businesses

As the 2016 MBDA Report found, “[t]he most obvious barriers arising due to discrimination lie in actions by procurement agencies and non-MBE prime contractors (when considering MBE subcontractors) to purposely exclude or hinder MBE participation.”¹²⁴ The report identified these barriers as including “outright prejudicial treatment, attitudes, stereotypes, implementing higher and double standards for MBEs, or manipulating the bid process.”¹²⁵

Unfortunately, recent studies and reports show that the prejudicial treatment and discriminatory attitudes discussed in the Department of Justice’s 1996 and 2010 reports persist. The 2016 MBDA Report found that “instances of outright discrimination permeated” the reviewed disparity studies across industries, geographic areas, and all ethnic, racial, and gender groups.¹²⁶ Studies published since the 2016 MBDA Report show the same. In a 2018 disparity study commissioned by the City of New Orleans, a

¹²¹ Robert N. Rubinovitz, Report of Defendants’ Expert, submitted in *Rothe Dev., Inc. v. Dep’t of Def.*, No. 12-cv-0744 (KBJ) (2012) (“Rubinovitz Report”).

¹²² *Id.* at 10-11.

¹²³ *Id.* at 11-12.

¹²⁴ 2016 MBDA Report, at 54.

¹²⁵ *Id.*

¹²⁶ *Id.* at 63-64.

business owner reported an instance of a federal agency revoking his contract once it was discovered he was a minority, directly saying to him that they did not want an “n-word” to have the job.”¹²⁷ The same study noted that “[o]ther interviewees reported hearing racial slurs and gender-based insults used against minority and female business owners.”¹²⁸ In a 2015 study conducted in Arizona, a Black business owner explained: “I have seen everything from looks to gestures, hearing the ‘n-word’ and different things from Hispanics to whites. . . . Getting your truck sprayed, different things like tearing checks open [to] see what you make, or you are blocked off a job because you are the only woman or African American out there.”¹²⁹ In Nevada, an Asian-American female representing a woman-focused organization said, “It is still very difficult for women business owners to get contracts, especially in construction. I don’t want to say it is a man’s world, but it is here [in Las Vegas]. When I go out and do site visits for our WBE’s, they are still having difficulty accessing the contract that they need. Not so much with the smaller contracts like \$25,000 or under, but beyond that, they still struggle.” She shared an experience from a WBE who believes she lost the bid on an environmental project in her county to an out-of-state contractor because she was a woman-owned business.”¹³⁰

Some minority and female business owners report dealing with assumptions by prime contractors that they are a worker and not the business owner of a subcontracting firm. This evidence could demonstrate that the under-utilization of minority and women-owned subcontracting firms in a particular market place was due to discrimination. For example, “[t]he vice president of a DBE-certified Black American engineering firm said that he was on a job where they had to go inside a sewer and he saw a worker point at him and overheard him say, ‘Send that boy down there.’”¹³¹ In another study, the vice president, non-owner of a minority-owned contracting business stated that “it is often assumed that the business owner (a minority) works for him (a non-minority).”¹³² A minority business owner even went so far as to change his company name and to hire a non-Hispanic White engineer to be his employee manager, and he noticed that “we started to get quite a few prime jobs in the rural areas. . . . So that tell[s] me something.”¹³³

¹²⁷ Keen Indep. Rsch. LLC, *City of New Orleans Disparity Study* Appendix J-37 (2018).

¹²⁸ *Id.*

¹²⁹ Keen Indep. Rsch. LLC, *Arizona Department of Transportation Disparity Study Report* Appendix J-66 (2015).

¹³⁰ BBC Rsch. & Consulting, *2017 Nevada Transportation Consortium Disparity Study* Appendix D-54 (2017).

¹³¹ BBC Rsch. & Consulting, *2014 Imperial County, CA Transportation Disparity Study* Appendix D-54 Appendix J-69 (2014). In the same study, a Hispanic female who is part-owner of a towing company reports not only her own issues with proving she is a business owner, but also that her husband faces the same issues, explaining, “nobody believes him, that he’s an owner. . . . They just say, ‘You’re just a driver [or] you’re just a worker.’” *Id.*

¹³² Keen Indep. Rsch., LLC, *Arizona Department of Transportation Disparity Study Report* Appendix J-65 (2015).

¹³³ BBC Rsch. & Consulting, *Caltrans 2016 Disparity Study* Appendix D-128 (2016).

The 2016 MBDA Report also found that the studies reviewed “support the presence of double or higher standards for minority-owned businesses.”¹³⁴ In one study, a minority male business owner reported that “[s]ome City managers will require me as a minority-owned business to do work that was not required of others doing similar work. . . . I have seen other jobs where the work was not nearly as professional as mine but they did not have to redo it.”¹³⁵ In a 2018 study conducted in Maryland, a business owner stated that “we’ve seen situations where a majority contractor or a White firm would do the same thing, and a lot of times what happens, it’s an accident. With a minority firm . . . it happened because you didn’t manage it properly, you didn’t look far enough ahead, you didn’t anticipate.”¹³⁶

Other barriers occur through manipulation of bid processes, such as bid shopping and held bids, or “bait and switch” practices. Some of these practices can affect all businesses to some extent, but the 2016 MBDA Report found a “strong discriminatory pattern” associated with certain process-related barriers.¹³⁷

The Department of Justice’s 2010 report described the practice known as “bait and switch,” in which a prime contractor commits to using a minority- or woman-owned business to meet a race- or gender-conscious goal for subcontractors, but never gives the minority- or woman-owned business the promised work. Recent disparity studies have documented that this practice continues. For example, in a 2018 study conducted in Pennsylvania, a Black female owner of a professional services firm stated: “I have been approached and included on contracts and never gotten an order. . . . There have been several times when I have been put on the contract as a subcontractor and never heard another word.”¹³⁸ Similarly, a 2019 study in Florida reported that an “African American professional services firm stated there is no accountability for primes utilizing MWBE firms. Primes get work and submit names of MWBE subs but do not use the subs named in their proposals.”¹³⁹

Bid shopping is another practice frequently cited in disparity studies as presenting barriers to minority- and woman-owned businesses. Bid shopping occurs when a prime contractor solicits a bid from a minority- or woman-owned business, but instead of selecting them as a subcontractor, the prime uses the bid to get lower bids from non-minority- and male-owned firms. For example, a minority business owner in

¹³⁴ 2016 MBDA Report, at 65.

¹³⁵ *Id.* at 66 (quoting Mason Tillman Assoc., Ltd., *City of Cincinnati Disparity Study* 10-6 (2015)).

¹³⁶ NERA Econ. Consulting, *Disadvantaged Business Enterprise Disparity Study: Volume I* (prepared for the Maryland Department of Transportation) 275 (2018).

¹³⁷ 2016 MBDA Report, at 60.

¹³⁸ BBC Rsch. & Consulting, *Commonwealth of Pennsylvania Department of General Services 2018 Disparity Study* Appendix D-100 (2018).

¹³⁹ MGT Consulting Group, *City of Tallahassee, Leon County, and Blueprint 2019 Disparity Study* 7-10 (2019); see also Keen Indep. Rsch. LLC, *Arizona Department of Transportation 2020 Disparity Study* J-59 (2020) (listing examples of minority-owned firms being used in “bait and switch” bidding and contracting processes).

Indiana noted that after faxing in his bids, the prime contractor would “use our bid with another contractor to get a lower bid.”¹⁴⁰

B. Exclusion From Business Networks Limits Opportunities

Often referred to as the “good ol’ boy” network, the lack of access to business networks is a barrier identified in almost all disparity studies. The 2016 MBDA Report identified networking barriers as the most frequently cited barrier, with 86% of minority- and women-owned businesses identifying exclusionary networks as a barrier to obtaining contracts. In one recent study, the Black owner of a construction firm reported that “general contractors would tell him that his subcontracting bid was too high but then he would later find out that the winning subcontracting bid was even higher than his bid, but was accepted because ‘[t]hey knew the guy. [The general contractor] had a working relationship with them.’”¹⁴¹

Exclusionary networks also can result in a lack of transparency, precluding some businesses from even hearing about opportunities. In a recent study conducted in North Carolina, the Black male owner of a minority-owned and veteran-certified professional services firm stated, “It is [a barrier]. No notification. If you’re not a part of the good old boy network, you’ll never know about it. It’s not open and transparent.”¹⁴² Some treatment is more blatantly discriminatory. In a 2017 disparity study conducted for Palm Beach County, a female business owner noted: “My industry is the good old boys. I am called ‘Girlie,’ even though I’m over 60. The construction industry is a male-dominated White industry. If you are not in the club, you are ignored.”¹⁴³

To be sure, some exclusion of minorities and women from business networks may not be due to overt discrimination, but to the reality that people are comfortable working with people who they know or already have experience working with. But considering many of these longstanding business and social connections have developed in environments that have historically excluded minorities and women, it is difficult to ignore the discriminatory foundation for such networks. As a female owner of a disadvantaged business-certified engineering and consulting firm noted when asked if there is a good ol’ boy network: “It is huge—it definitely exists,” and she knows that she is not going to get jobs that are discussed “while golfing at the country club or in the locker room at the gym.”¹⁴⁴ The Black co-owner of a professional services firm commented that he is from the generation that “sat at the back of the bus” and that some of his White peers are in charge now and still have that old mentality.¹⁴⁵ The

¹⁴⁰ Mason Tillman Assoc., Ltd., *City of St. Louis Disparity Study Volume 1* 8-6 (2015).

¹⁴¹ Keen Indep. Rsch. LLC, *City of Baton Rouge, Parish of East Baton Rouge Disparity Study* 4-15 (2019).

¹⁴² BBC Rsch. & Consulting, *2018 Disparity Study City of Asheville, North Carolina* Appendix D-70 (2018).

¹⁴³ Mason Tillman Assoc., Ltd., *Palm Beach County Disparity Study Final Report* 10-12 (2017).

¹⁴⁴ Keen Indep. Rsch. LLC, *2016 Availability and Disparity Study* (prepared for the Montana Department of Transportation) 5-18 (2016).

¹⁴⁵ Keen Indep. Rsch. LLC, *Missouri Department of Transportation 2019 DBE Availability Study Final Report* Appendix F-47 (2019).

existence of exclusionary networks supports the use of measures that encourage agencies and businesses to go outside of their usual networks to expand opportunities.

C. Discrimination in Bonding and by Suppliers Burdens Disadvantaged Firms

Most public contracting projects require a contractor to obtain a surety bond, which financially guarantees the performance of the agreed upon work. Inability to meet bonding requirements can be a challenge for any small business trying to break into the marketplace, but numerous studies show that bonding requirements burden minority- and women-owned businesses to an even greater degree. Barriers to meeting bonding requirements not only inhibit the successful formation and growth of businesses, but also place such businesses at a disadvantage in competing for contracts.

Both quantitative and qualitative evidence shows that bonding requirements disproportionately affect businesses owned by women or people of color. The 2016 MBDA Report noted that 83% of minority- and women-owned businesses identified bonding requirements as a specific barrier to the ability to obtain contracts.¹⁴⁶ A number of recent studies show that minority-owned firms are significantly more likely to face difficulties in obtaining required bonds compared with majority-owned firms.¹⁴⁷ In some circumstances, minority- and women-owned businesses may even face double standards related to bonding requirements. A Black specialty contractor relayed a situation in which he was the low bidder for a contract and was required to provide bonding. While he was acquiring a bond, he learned that another contractor received the contract and was not required to have bonding on the project.¹⁴⁸

Discriminatory barriers in the bonding market are closely related to the access to capital issues discussed below in Section V. Not only do the same factors affect both access to capital and access to bonding, but the inability to obtain adequate capital contributes to a business's ability to obtain bonding. In this way, even if contracts are

¹⁴⁶ 2016 MBDA Report, at 55.

¹⁴⁷ BBC Rsch. & Consulting, *City of Indianapolis and Marion County Disparity Study* 9-4 (2019) (concluding that minority- and women-owned businesses do not have the same access to certain business inputs, including bonding, as businesses owned by non-Hispanic White men); Keen Indep. Rsch. LLC, *City of Baton Rouge, Parish of East Baton Rouge Disparity Study* 4-10 (2019) (finding that among construction firms that had tried to obtain a bond for a project, 31% of minority-owned firms had difficulty obtaining the required bond compared with only 4% of majority-owned firms); Keen Indep. Rsch. LLC, *City of New Orleans Disparity Study* 9 (2018) (reporting that minority-owned businesses (42%) and women-owned businesses (21%) were much more likely than majority-owned firms (7%) to indicate they had experienced difficulties trying to obtain a bond); BBC Rsch. & Consulting, *Illinois Department of Transportation Disparity Study* 8-4 (2017) (finding that minority- and woman-owned businesses in Illinois do not have the same access to bonding and other business inputs as businesses owned by non-Hispanic White men); NERA Econ. Consulting, *Business Disparities in the DCAMM Construction and Design Market Area* (prepared for the Commonwealth of Massachusetts Division of Capital Asset Management and Maintenance) 15 (2017) (reporting that bonding requirements were statistically significantly more difficult for minority- and women-owned business even when holding constant factors such as business size and other characteristics related to business capacity).

¹⁴⁸ MGT of America, Inc., *Comprehensive Disparity Study for the City of Pensacola* 7-12 (2012).

otherwise awarded on a race-and gender-neutral basis, public entities may still become passive participants in private sector discrimination.

The Department of Justice's 2010 report concluded that discrimination by suppliers also limited minority- and women-owned businesses' ability to compete. That remains the case. For example, a recent disparity study commissioned by New Orleans found that one-third of minority- and women-owned businesses reported experiencing competitive disadvantages due to supplier pricing compared to only 15% of majority-owned firms.¹⁴⁹ In another study, a minority female owner of an architecture and engineering company reported that "it's very well-known that suppliers have two to three tiers of pricing structures based on relationships where certain contractors get preferred pricing with our supplier. We can't be competitive on bids if someone else can rent the same equipment for \$50 a day and I get charged \$75 a day."¹⁵⁰ Discriminatory pricing by suppliers creates a significant barrier for minority- and women-owned businesses because they have to include those prices in their bid, resulting in a less competitive bid.

IV. There Are Significant Disparities in Business Formation and Success Between Minority- and Women-Owned Businesses Relative to Their Non-Minority, Male-Owned Counterparts

As was discussed in the Department of Justice's 2010 report, minority- and women-owned businesses make up a disproportionately small share of small businesses. Unfortunately, this remains true a decade later. Even though people of color constitute 40% of the U.S. population, they make up only 20% of the nation's business owners.¹⁵¹ This disparity is even more stark for some racial and ethnic groups. The business ownership rate among non-Latino Whites is 11%, but for Black Americans it is only 3% and approximately 7% for Latinos.¹⁵² While 12.7% of White men own businesses, the same is true of only 8.3% of Asian American women, 7.3% of White women, 6.9% of Hispanic women, and 3.5% of Black women.¹⁵³ Women-owned businesses represent about 38% of all firms.¹⁵⁴

It is not merely that minority- and women-owned businesses are less common than businesses owned by White men; they are also less profitable. In 2012, the average

¹⁴⁹ Keen Indep. Rsch. LLC, *City of New Orleans Disparity Study* Appendix H, 42 (2018).

¹⁵⁰ Mason Tillman Assoc., Ltd., *City of St. Louis Disparity Study Volume 1* 8-4 (2015).

¹⁵¹ *Promoting Inclusive Lending During the Pandemic: Community Development, Financial Institutions, and Minority Depository Institutions*, Hearing Before the H. Comm. on Financial Services, 116th Cong. (2020).

¹⁵² Robert W. Fairlie, *Latino Business Ownership: Contributions and Barriers for U.S.-born and Immigrant Latino Entrepreneurs*, produced under contract with the SBA, Office of Advocacy 6, 27 (2018).

¹⁵³ *Strengthening the Entrepreneurial Ecosystem for Minority Women: Hearing Before the S. Comm. on Small Business and Entrepreneurship*, 113th Cong. 105 (2013) (report by Robert W. Fairlie, *Wealth Inequality, Business Success, and Minority Women*).

¹⁵⁴ *Strengthening the Entrepreneurial Ecosystem for Women: Hearing Before the S. Comm. on Small Business and Entrepreneurship*, 115th Cong. 16 (2017) (statement of Michelle Richards, Executive Director, Great Lakes Women's Business Council).

minority-owned firm generated gross receipts of \$173,552, roughly one-third of the average non-minority-owned firm gross receipts of \$550,472.¹⁵⁵ Certain minority groups fare even worse. A Black-owned firm averages about \$58,000 in sales per firm, while a Hispanic-owned firm generates two and a half times this amount; an Asian American-owned firm, six times as much; and a White-owned firm, over nine times this amount.¹⁵⁶ Although African Americans own 9.5% of businesses, these businesses only account for 1.3% of sales.¹⁵⁷ Hispanic-owned firms are 12.2% of businesses but only 4.0% of sales.¹⁵⁸ Women-owned businesses earn less than male-owned firms, as they employ only 8% of the nation's private workforce and produce 4% of business revenues.¹⁵⁹

The 2018 Small Business Credit Survey, an annual survey of over 6,000 businesses with fewer than 500 employees, found that:

- Smaller shares of Asian American- (51%) and Black-owned businesses (46%) were profitable at the end of 2017 compared to White-owned firms (55%).
- A larger share of White-owned firms reported revenue growth (58%) compared to Black-owned firms (49%).
- A larger share of White-owned firms reported growth in the number of employees (37%) compared to Black-owned firms (31%).
- Minority-owned firms more frequently reported financial challenges. Seventy-eight percent of Black-owned firms, and 69% of Asian American- and Hispanic-owned firms did so, compared to 62% of White-owned businesses.¹⁶⁰

These disparities in sales, growth, and profitability make minority- and women-owned businesses less stable and less able to withstand challenges. This has been made even more apparent with the economic effects of the COVID-19 pandemic disproportionately affecting minority- and women-owned businesses, as discussed below in Section VI.

V. **Discrimination Limiting Access to Capital Affects the Formation and Development of Businesses Owned by Women or People of Color**

Businesses owned by women or people of color have far less access to capital than White male business owners, and this significantly limits their ability to establish and grow their businesses and compete equally in the marketplace. Both statistical and

¹⁵⁵ U.S. Dep't of Com., Minority Bus. Dev. Agency, *The State of Minority Business Enterprises, An Overview of the 2012 Survey of Business Owners 2* (2018).

¹⁵⁶ *Id.* at 10.

¹⁵⁷ *Id.* at 17.

¹⁵⁸ *Id.* at 18.

¹⁵⁹ *Strengthening the Entrepreneurial Ecosystem for Women: Hearing Before the S. Comm. on Small Business and Entrepreneurship*, 115th Cong. 2 (2017) (opening statement of Sen. Shaheen).

¹⁶⁰ Fed. Rsrv. Bank of Atlanta, *Small Business Credit Survey: Report on Minority-Owned Firms* (Dec. 2019).

qualitative evidence show that minority and female business owners not only are denied loans at a higher rate than White males, but when they are successful in obtaining loans, they are for lower amounts and at less favorable terms and conditions. Because minority- and women-owned businesses cannot access capital at the same cost as firms owned by White males in the same marketplaces, they are at a competitive disadvantage when bidding on government contracts where they must include these higher costs in the price of their bid.¹⁶¹

A. The Wealth Gap Contributes to, and is Exacerbated By, Lack of Access to Capital

One factor contributing to the lack of access to capital is the vast wealth gap between Whites and minorities. The average wealth of White families in 2016 was seven times the wealth of Black families and five times the wealth of Latino families (at the median, White families have 10 times the wealth of Black families and eight times the wealth of Latino families).¹⁶² This disparity has grown over time. In 1963, White families had \$121,000 more in wealth than Black families, on average; by 2016, they had over \$700,000 more.¹⁶³ The disparity also grows with age. On average, White people in their 30s have \$147,000 more in wealth than their Black counterparts. But by the time they are in their 60s, White people have \$1.1 million more in wealth than Black people, on average.¹⁶⁴ This wealth gap has grown in the last few decades. A 2019 McKinsey study found that even adjusting for inflation the overall racial wealth gap between Black and White families widened from about \$100,000 in 1992 to \$154,000 in 2016.¹⁶⁵ Researchers at the Center for Global Policy Solutions suggested that in the recovery period after the 2008 housing crisis, African Americans (45%), Asian Americans (48%) and Latinos (58%) lost nearly half or more than half of their wealth compared to a 21% loss among Whites.¹⁶⁶ In 2017, Prosperity NOW and the Institute for Policy Studies reported that 51% of households of color live in liquid asset poverty compared to 28% of White households.¹⁶⁷ Similar to minorities, “[w]omen start with less capital than men.”¹⁶⁸ Minority women in particular have low levels of wealth relative to White men

¹⁶¹ See Rubinovitz Report, *supra* at 11 (showing a consistent, statistically significant underutilization of small, minority-owned businesses in federal prime contracting); see also Robert Rubinovitz, *Utilization of Women-Owned Businesses in Federal Prime Contracting*, Department of Commerce (Dec. 31, 2015) (finding that the odds of winning a contract for Woman-Owned Businesses (WOBs) are estimated to be roughly 21 percent lower relative to the odds of winning contracts by otherwise similar firms that were not identified as WOBS).

¹⁶² *Examining the Racial and Gender Wealth Gap in America: Hearing Before Subcomm. on Diversity and Inclusion of the H. Comm. on Financial Services*, 116th Cong. (2019) (testimony of Kilolo Kijakazi, PhD, Urban Institute).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* “Liquid asset poverty” is defined as a status of a four-person household that maintains less than three months’ worth of savings at any given time.

¹⁶⁸ *Strengthening the Entrepreneurial Ecosystem for Minority Women: Hearing Before the S. Comm. on Small Business and Entrepreneurship*, 113th Cong. 46 (2013) (quoting *Women-Owned Businesses in the 21st Century*, U.S. Department of Commerce Economics and Statistics Administration, for the White

and women.¹⁶⁹ White men have a median net worth of \$137,775, but the median net worth is lower for all groups of women—\$125,700 for White women, \$106,084 for Asian American women, \$8,902 for Hispanic women, and \$7,645 for Black women.¹⁷⁰ While 32% of White men have startup capital of at least \$10,000 when starting a business, the same is true of only 17% of White women, 15% of Hispanic women, and 11% of Black women.¹⁷¹

This wealth gap has a dramatic effect on the ability of minorities and women to start their own businesses. Underrepresentation of Black business owners can be attributed in large part to Black people having less of their own money to invest in firms and less collateral to put toward a loan due to job, housing, and financing discrimination. Black-owned businesses start with approximately a third less capital than their White peers and have difficulties raising private investments from mainstream investment systems.¹⁷² The situation for minority women, particularly Black and Hispanic women, is especially dire, given that they have low levels of wealth relative to White women and men. This results in less access to startup capital, lower levels of business ownership, and smaller businesses when they are created.¹⁷³

This wealth gap is the product, at least in part, of discrimination. Congress has received testimony that Black wealth accumulation has undergone a sustained process of asset underdevelopment “via an array of American programs and practices.”¹⁷⁴ These include:

- federally sanctioned redlining, which reduced the credit available for Black households, in turn limiting their ability to buy homes;
- discriminatory access to homeownership subsidies in the New Deal legislation;
- denial of the benefits of the G.I. Bill to Black veterans, while White households were able to rely on the G.I. Bill to build wealth;
- racial zoning practices and tax policies; and

House Council on Women and Girls, October 2010); see also *Disparities in Access to Capital: What the Federal Government is Doing to Increase Support for Minority Owned Firms*, Field Hearing Before the H. Comm. on Small Business, 115th Cong. (2018); BBC Rsch. & Consulting, *Illinois Department of Transportation 2017 Disparity Study* 3-6 (2017) (“Women have also faced consistent wage and income gaps relative to men. Nationally, the median hourly wage of women is still only 84 percent the median hourly wage of men.”).

¹⁶⁹ *Id.* at 101 (report by Robert W. Fairlie, *Wealth Inequality, Business Success, and Minority Women*).

¹⁷⁰ *Id.* at 102.

¹⁷¹ *Id.* at 104.

¹⁷² Andre Perry, Jonathan Rothwell, and David Harshbarger, *Five-star reviews, one-star profits: The devaluation of businesses in Black communities*, Metropolitan Policy Program at Brookings (Feb. 2020).

¹⁷³ *Strengthening the Entrepreneurial Ecosystem for Minority Women: Hearing Before the S. Comm. on Small Business and Entrepreneurship*, 113th Cong. (2013).

¹⁷⁴ *How Invidious Discrimination Works and Hurts: An Examination of Lending Discrimination and Its Long-term Economic Impacts on Borrowers of Color*, Hearing before Subcomm. on Oversight and Investigations of the H. Comm. on Financial Services, 117th Cong. (2021) (testimony of William Darity Jr., Samuel DuBois Cook Professor of Public Policy, Duke University) (citations omitted).

- the long-term effects of Jim Crow era state tax policies.¹⁷⁵

B. Businesses Owned by Women and People of Color are Significantly More Likely to Be Denied Access to Capital

Given that women and people of color who own businesses have less of their own personal capital to contribute toward their small businesses, loans are especially critical for them. Unfortunately, these business owners are also less likely than White male business owners to be able to obtain loans. The wealth gap is a contributing factor to the challenges that minority and female business owners face in obtaining capital. The Director of Outreach at Goldman Sachs testified that women and minorities have lower credit, which inhibits their ability to obtain capital, not because they lack moral character or intend to default on loans, but rather for three other reasons: (1) customers are late to pay them, (2) they lack accumulated assets/wealth, and (3) they have debt.¹⁷⁶ The impact is significant: due to the historic barriers and private discrimination that has limited the ability of minority business owners to accumulate assets and wealth, minority-owned businesses are two to three times more likely to be denied credit, more likely to avoid applying for loans based on the belief they will be turned down, and more likely to receive smaller loans and pay higher interest rates on the loans they do receive.¹⁷⁷ Along the same lines, only 30% of businesses owned by women were able to get bank loans in the first part of 2016, and women founders get only 7% of the venture capital in this country.¹⁷⁸ Women receive only 16% of conventional small business loans, and only 4.4% of the total dollar value of loans from all sources.¹⁷⁹

Disparity studies are replete with statistical evidence of disparities in access to capital.¹⁸⁰ For example, a 2017 disparity study conducted in Massachusetts concluded

¹⁷⁵ *Id.*

¹⁷⁶ *Strengthening Access to Capital for Minority-Owned Small Business: Field Hearing Before the S. Committee on Small Business and Entrepreneurship*, 115th Cong. 58 (2018) (statement of Will Holmes, Director of Outreach, Goldman Sachs).

¹⁷⁷ *Id.*

¹⁷⁸ *Strengthening the Entrepreneurial Ecosystem for Women: Hearing Before the S. Comm. on Small Business and Entrepreneurship*, 115th Cong. 3-4 (2017) (statement of Elizabeth Gore).

¹⁷⁹ *Id.* at 15 (statement of Michelle Richards, Executive Director, Great Lakes Women's Business Council).

¹⁸⁰ Keen Indep. Rsch. LLC, *Arizona Department of Transportation Disparity Study Report* 407 (2015) ("There are statistically significant disparities in loan approval rates for African American-owned small businesses compared with similarly-situated non-Hispanic white-owned firms."); NERA Econ. Consulting, *Business Disparities in the San Antonio, Texas Market Area* 9 (2015) ("When minority-owned firms applied for a loan, their loan requests were substantially more likely to be denied than non-minorities, even after accounting for differences in firm size and credit history."); NERA Econ. Consulting, *Business Disparities in the Travis County, Texas Market Area* 119 (2016) ("When minority-owned firms applied for a loan, their loan requests were substantially more likely to be denied than non-minorities, even after accounting for differences in firm size and credit history."); *id.* at 135 ("African American-owned firms are 24 percentage points more likely than nonminority male-owned firms to have their loan application denied . . ."); MGT of America, Inc., *City of Hampton and Hampton Schools Historical M/WBE Utilization Disparity Study* E-10 (2014) ("About 1.3 percent of non-M/WBE loan applicants reported being denied commercial bank loans, as compared to 36.3 percent of African American applicants and 4.5 percent of nonminority woman applicants."); MGT of America, Inc., *Comprehensive Disparity Study for the City of Pensacola* 8-5, 8-6 (2012) ("About 3.7 percent of non-

“that there is evidence of discrimination against M/WBEs in the DCAMM market area in the small business credit market” and that “[t]his discrimination is particularly acute for African American-owned small businesses where, even after adjusting for differences in assets, liabilities, and creditworthiness, the loan denial rates remain substantially higher than for nonminority male-owned small businesses.”¹⁸¹ Another study, conducted in Washington State, analyzed data in the National Survey of Small Business Finance (NSSBF) and found that “African American businesses were much more likely to be denied loans than comparable businesses owned by nonminority males.”¹⁸² In fact, only 2.7% of non-M/WBE loan applicants reported being denied commercial bank loans, as compared to 50% of African American loan applicants.¹⁸³ Another study found that “[m]inorities have a significantly lower probability of obtaining a business loan than Caucasian males in all industries.”¹⁸⁴ Similarly, a 2011 Virginia study found that “[a]bout 20.5 percent of non-M/WBEs reported being denied commercial bank loans, as compared to 52.4 percent of African American-owned firms, 35.3 percent of Hispanic American-owned firms.”¹⁸⁵ Of the minority-owned firms that did not apply for financing, 28% of the Hispanic-owned firms, 27% of the Black-owned firms, and 24% of the Asian American-owned firms explained that they did not apply because of a belief

M/WBE loan applicants reported being denied commercial bank loans, as compared to 52.6 percent of African American-owned firms and 22.2 percent of Nonminority Woman-owned firms.”); NERA Econ. Consulting, *The State of Minority- and Women-Owned Business Enterprise: Evidence from Cleveland* 7 (2012) (“When minority-owned firms did apply for a loan, their loan requests were substantially more likely to be denied than non-minorities, even after accounting for differences like firm size and credit history.”); *id.* at 8 (“[F]or African American-owned small businesses where, even after adjusting for differences in assets, liabilities, and creditworthiness, the loan denial rate ranges from 8 to 22 percentage points higher than for nonminority male-owned small businesses.”); Colette Holt & Assoc., *Texas Department of Transportation Disparity Study* 156 (2019) (“Minority-owned firms are less likely to receive loans than non-minority-owned firms regardless of firm size.”); *Native 8(a) Contracting: Emerging Issues, Hearing Before the H. Comm. on Small Business*, 116th Cong. (2019) (“Native Hawaiians have less access to capital because they have a higher loan denial rate for mortgages due to poor credit history.”); Colette Holt & Assoc., *Washington State Airports Disparity Study* 121 (2019) (“[L]oan denial rates for minority firms were about three times higher, at 42 percent, compared to those of non-minority-owned firms, at 16 percent.”); BBC Rsch. & Consulting, *2013 Sound Transit Disparity Study* 4-10 (2013) (32% of MBEs reported difficulties obtaining lines of credit or loans, compared with 14% of majority-owned businesses); BBC Rsch. & Consulting, *2017 Disparity Study: City of Charlotte* 3-9 (2017) (“Researchers have shown that Black American-owned businesses and Hispanic American-owned businesses are more likely to forego submitting business loan applications and are more likely to be denied business credit when they do seek loans, even after accounting for various race-neutral and gender-neutral factors.”); BBC Rsch. & Consulting, *City of Indianapolis and Marion County Disparity Study* 9-4 (2019) (“Qualitative information collected through public meetings, telephone surveys, and in-depth interviews with local businesses also indicated that minority- and woman-owned businesses often have difficulties obtaining business loans and credit.”).

¹⁸¹ NERA Econ. Consulting, *Business Disparities in the DCAMM Construction and Design Market Area* 9 (2017).

¹⁸² MGT of America, Inc., *2015 Disparity Study for the Washington Suburban Sanitary Commission* ES-9 (2016).

¹⁸³ *Id.*

¹⁸⁴ Mason Tillman Assoc., LTD, *Shelby County (Tennessee) Disparity Study Final Report* 10-31 (2016).

¹⁸⁵ MGT of America, Inc., *A Disparity Study for the Commonwealth of Virginia* 7-16 (2011).

that they would not be approved, compared to only 13% of White-owned firms who reported the same.¹⁸⁶

While these results were reported across the board, individual stories from minority and female business owners supported them. Consistent with the data on the challenges that minority business owners face in obtaining financing, several business owners of color reported how difficult it was to access the financing that their businesses needed.

- “The Hispanic male co-owner of a construction company reported that one major issue he faces is financing. He said that the Contractor’s Licensing Board sets limits on the size of job a contractor can bid on. In order to meet these requirements, they borrowed some money and had friends help them put \$20,000 in the business account. He said that his firm is licensed up to \$200,000 per job, making it ineligible to do jobs over \$200,000. He said that he would love to take on larger jobs but there’s no one who will back them financially without wanting a part of their company.”¹⁸⁷
- “The African American director of a minority development agency reported that one of the biggest challenges a minority-owned business faces is access to capital and the banks are not making loans to minority businesses. He said that the lack of financing is impacting the ability to obtain bonding.”¹⁸⁸
- “An African American owner of a DBE-and MBE-certified specialty contracting firm, when asked about challenges starting the business, reported that money was a challenge, saying ‘Finding people that would give you money to make your payroll without [abusing] you, that’s the hardest part.’”¹⁸⁹

Numerous minority business owners reported on the practical fallout for their businesses resulting from their difficulty in accessing capital. For example:

A Black American male owner of a MBE-certified landscaping firm said that the biggest disadvantage or challenge he faces as a small or disadvantaged business is not being able to obtain capital to buy the equipment he feels the firm needs. He said, “What we would like to do is set up a line of credit and be able to get trucks and stuff, tractors, and Bobcats. We had a chance that one time this guy was going out of business. He was cutting grass, and he was [going to] set us up real good, but we didn’t have the financing to get the equipment.” He said that he believes

¹⁸⁶ Fed. Rsr. Bank of Atlanta, *Small Business Credit Survey: Report on Minority-Owned Firms* 6 (Dec. 2019).

¹⁸⁷ Keen Indep. Rsch. LLC, *Nevada Department of Transportation Disparity Study Final Report* Appendix J-39 (2013).

¹⁸⁸ *Id.* at Appendix J-53.

¹⁸⁹ Keen Indep. Rsch. LLC, *Oregon Department of Transportation 2016 Availability and Disparity Study* Appendix J-18 (2016).

the key to success in his industry is being able to get the financing to be able to grow. He added, “We don’t have the financing to get the type of equipment that we would like to get to go out and expand.”¹⁹⁰

Similarly, “[a] minority male owner of a professional services company reported that he has been unable to receive any financial assistance for his small business: ‘We had a very difficult time getting financing. It obviously has put a strain on my business. We had to make business decisions to not seek certain work. The banks perceived my minority company as a business risk even though we had a great business plan that indicated that we were a minimal risk.’”¹⁹¹

C. When Minority and Female Business Owners Do Obtain Loans, They Are Smaller and on Less Favorable Terms and Conditions

Minority- and women-owned firms receive smaller loans at higher interest rates than firms owned by White males, and they also get smaller equity investments.¹⁹² While 49% of White-owned business applicants were approved for all of the financing for which they applied, the same was true for only 31% of Black-owned firms, 35% of Hispanic-owned firms, and 39% of Asian American-owned firms.¹⁹³ Thirty-eight percent of Black-owned business applicants and 33% of Hispanic-owned business applicants receive none of the financing they applied for, compared to 20% of White-owned business applicants and 24% of Asian American-owned business applicants.¹⁹⁴ At a congressional hearing on disparities in access to capital, Rep. Al Lawson noted that “minority-firms, including women, are more likely than other businesses to be denied traditional financing compared to other businesses. In fact, the average African-American owner raises about \$500 in equity in the first year, compared to \$18,000 for the average White business start-up.”¹⁹⁵

Evidence from disparity studies also shows that the loans obtained by minority and female business owners were smaller than those obtained by White male business owners. A 2015 Arizona study found that “[t]he mean value of approved loans for minority- and female-owned businesses in the Mountain region was less than one-half that for non-Hispanic white male-owned firms.”¹⁹⁶ Additionally, numerous studies found that minority and female business owners pay higher interest rates than White business owners.¹⁹⁷

¹⁹⁰ BBC Rsch. & Consulting, *2015-16 Ohio Public Authorities Disparity Study* Appendix E-29 (2016).

¹⁹¹ Mason Tillman Assoc., LTD, *Palm Beach County Disparity Study Final Report* 10-13 (2017).

¹⁹² *Empowering America to Reach its Full Economic Potential: Closing the Wealth Gap, Hearing Before the S. Comm. on Small Business and Entrepreneurship*, 113th Cong. (2013).

¹⁹³ Fed. Rsrv. Bank of Atlanta, *Small Business Credit Survey: Report on Minority-Owned Firms* 6 (Dec. 2019).

¹⁹⁴ *Id.*

¹⁹⁵ *Disparities in Access to Capital: What the Federal Government is Doing to Increase Support for Minority Owned Firms: Field Hearing Before the H. Comm. on Small Business*, 115th Cong. (2018).

¹⁹⁶ Keen Indep. Rsch. LLC, *Arizona Department of Transportation Disparity Study* 4-7 (2015).

¹⁹⁷ See Colette Holt & Assoc., *Texas Department of Transportation Disparity Study* 156 (2019)

(“Minority-owned firms paid an average of 7.8 percent in interest rates for loans compared to 6.4 percent

The challenges of obtaining financing lead minority business owners to rely more heavily on their personal funds. Twenty-eight percent of Black and Asian American business owners and 29% of Hispanic owners relied on personal funds as the primary funding source for their businesses, compared to only 16% of White business owners.¹⁹⁸ But as already discussed, the wealth gap between White males and minorities and women limits the personal wealth that minority and women owners have at their disposal.¹⁹⁹

The challenges that minority- and women-owned businesses face in accessing capital affect their ability to get established in the first place, compete in the market, and maintain thriving and successful businesses over time.

VI. COVID Has Had a Disproportionate Impact on Minority- and Women-Owned Businesses

The 2020 economic downturn caused by the COVID-19 pandemic has had an extremely disproportionate effect upon minority- and women-owned businesses.²⁰⁰ This disparity exists for two critical reasons: (1) minority- and women-owned businesses tend to face underlying challenges that make them harder to run and scale successfully, and (2) they are more likely to be concentrated in the industries most immediately affected by the pandemic, such as service industries.²⁰¹ Distressed companies were three times as likely to close because of a two-month revenue shock,²⁰² and in April 2020, the Federal Reserve Bank of New York reported that minority- and women-owned businesses were twice as likely to be classified as “at risk” or “distressed” as their non-

for non-minority-owned firms.”); NERA Econ. Consulting, *Business Disparities in the San Antonio, Texas Market Area* at 9 (2015) (“When minority-owned firms did receive a loan they were obligated to pay higher interest rates on the loans than comparable nonminority-owned firms.”); Keen Indep. Rsch. LLC, *Arizona Department of Transportation Disparity Study* 4-7 (2015) (“There is evidence that minority- and women-owned small businesses in the Mountain region paid higher interest rates on their business loans than non-minority male-owned small businesses.”); NERA Econ. Consulting, *Business Disparities in the Travis County, Texas Market Area* 119 (2016) (“When minority-owned firms did receive a loan they were obligated to pay higher interest rates on the loans than comparable nonminority-owned firms.”); NERA Econ. Consulting, *The State of Minority- and Women-Owned Business Enterprise: Evidence from Cleveland* 7 (2012) (“When minority-owned firms did receive a loan they were obligated to pay higher interest rates on the loans than comparable nonminority-owned firms.”).

¹⁹⁸ Fed. Rsrv. Bank of Atlanta, *Small Business Credit Survey: Report on Minority-Owned Firms* 5 (Dec. 2019).

¹⁹⁹ A number of studies have demonstrated that lower start-up capital adversely affects prospects for those businesses. See, e.g., Keen Indep. Rsch. LLC, *2017 Minnesota Joint Disparity Study* (2017).

²⁰⁰ *Capital Access for Minority Small Businesses: COVID-19 Resources for an Equitable and Sustainable Recovery: Hearing Before S. Comm. on Small Business & Entrepreneurship*, 116th Cong. (2020).

²⁰¹ Andre Dua, Deepa Mahajan, Ingrid Millan, and Shelley Stewart, *COVID-19’s effect on minority-owned small businesses in the United States*, McKinsey & Company (May 2020); see also *Access Denied: Challenges for Women- and Minority-Owned Businesses Accessing Capital and Financial Services, Hearing Before Subcomm. on Diversity and Inclusion of the H. Comm. on Financial Services*, 116th Cong. (2020).

²⁰² *Id.*

minority male-owned counterparts.²⁰³ The effects on minority- and women-owned businesses were thus predictable and pronounced. According to a recent survey of Latina and Black female business owners, 70% reported that COVID-19 has caused a decrease or loss of revenue, and 90% reported that they are currently unable to pay themselves a sustainable income.²⁰⁴ The number of active small business owners in the United States dropped by 22% between February and April 2020, but this drop was even greater for minority and women business owners—Black business owners dropped by 41%, Latino business owners dropped by 32%, Asian American business owners dropped by 26%, and female-owned businesses dropped by 25%.²⁰⁵

Notwithstanding the federal government's efforts to assist small businesses in the wake of the economic crisis, this disparity persists. The Paycheck Protection Program (PPP), administered by the Small Business Administration, oversaw the disbursement of 4.4 million private loans totaling over \$511 billion as of May 26, 2020, to help small businesses with employees stay afloat during the COVID-19 economic crisis. A PPP loan is based on the applicant's average monthly payroll costs and could be partially or fully forgiven if the business keeps its employee counts and employee wages stable. However, businesses owned by women and people of color were more likely than White-male-owned businesses to face challenges in taking advantage of the PPP program for several reasons. First, businesses owned by people of color are likely to have fewer employees and lower payroll and thus could not qualify for higher loan amounts. Second, pre-existing disparities in access to capital, discussed in detail above in Section V, made it less likely that business owners of color would have the commercial lending relationships necessary to access the PPP program and discouraged many from applying. Third, the SBA did not issue guidance to lenders about prioritizing borrowers in rural, minority-owned, or women-owned markets and did not collect data that would allow analysis of whether lenders served underserved and rural markets under the PPP program. Fourth, PPP excluded potential loan recipients based on many forms of criminal legal system involvement, including people who have been charged, but not tried or convicted of a crime.²⁰⁶ Due to racial disparities in all aspects of the criminal justice system, there is evidence that this provision had a negative impact on business owners of color.²⁰⁷ These factors and others may have contributed to the fact that 70% of Black firms affiliated with the U.S. Black Chambers, Inc. that applied for PPP loans were denied, and 96% of U.S. Black Chambers, Inc. members who applied did not receive the

²⁰³ *Access Denied: Challenges for Women- and Minority-Owned Businesses Accessing Capital and Financial Services: Hearing Before Subcomm. On Diversity and Inclusion of the H. Comm. on Financial Services*, 116th Cong. (2020).

²⁰⁴ *Access Denied: Challenges for Women- and Minority-Owned Businesses Accessing Capital and Financial Services: Hearing Before Subcomm. On Diversity and Inclusion of the H. Comm. on Financial Services*, 116th Cong. (2020).

²⁰⁵ Robert W. Fairlie, *The Impact of COVID-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey*, National Bureau of Economic Research 1 (June 2020).

²⁰⁶ Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20,811 (Apr. 15, 2020) (to be codified at 13 C.F.R. pt. 120).

²⁰⁷ Ctr. for Responsible Lending, *The Paycheck Protection Program Continues to be Disadvantageous to Smaller Businesses, Especially Businesses Owned by People of Color and the Self-Employed* (Apr. 2020).

PPP loan amount that they requested.²⁰⁸ Women of color similarly suffered. Since less than 7% of businesses owned by women of color have employees, few were in a position to benefit from the PPP despite facing revenue losses.²⁰⁹

The economic fallout of the COVID-19 pandemic is ongoing, and the long-term effects remain to be seen. It is already apparent, however, that this crisis has revealed and exacerbated the hardships that minority- and women-owned businesses continue to face.

²⁰⁸ *Capital Access for Minority Small Businesses: COVID-19 Resources for an Equitable and Sustainable Recovery: Hearing Before S. Comm. on Small Business & Entrepreneurship*, 116th Cong. (2020).

²⁰⁹ Closing the Women's Wealth Gap Initiative, *On the Margins: Economic Security for Women of Color Through the Coronavirus Crisis and Beyond*, Closing the Women's Wealth Gap 17 (Apr. 2020).

APPENDIX A**Congressional Hearings from 2010 to 2021
Addressing Public Procurement and Challenges Facing Minority- and
Women-Owned Business Enterprises**

- *How Invidious Discrimination Works and Hurts: An Examination of Lending Discrimination and Its Long-term Economic Impacts on Borrowers of Color, Hearing before Subcomm. on Oversight and Investigations of the H. Comm. on Financial Services, 117th Cong. (2021).*
- *Capital Access for Minority Small Businesses: COVID-19 Resources for an Equitable and Sustainable Recovery, Hearing Before S. Comm. on Small Business & Entrepreneurship, 116th Cong. (2020).*
- *Small Business in Crisis: The 2020 Paycheck Protection Program and its Future Before S. Comm. on Small Business and Entrepreneurship, 116th Cong. (2020).*
- *Oversight Hearing on “From Languages to Homelands: Advancing Tribal Self-Governance and Cultural Sovereignty for Future Generations,” Hearing Before the S. Comm. on Indian Affairs, 116th Cong. (2020).*
- *Holding Financial Regulators Accountable for Diversity and Inclusion: Perspectives from the Office of Minority and Women Inclusion, Hearing Before Subcomm. On Diversity and Inclusion of the H. Comm. on Financial Services, 116th Cong. (2020).*
- *The Rent is Still Due: America’s Renter, COVID-19, and an Unprecedented Eviction Crisis, Hearing Before the H. Comm. on Financial Services, 116th Cong. (2020).*
- *Access Denied: Challenges for Women- and Minority-Owned Businesses Accessing Capital and Financial Services, Hearing Before Subcomm. On Diversity and Inclusion of the H. Comm. on Financial Services, 116th Cong. (2020).*
- *Promoting Inclusive Lending During the Pandemic: Community Development, Financial Institutions, and Minority Depository Institutions, Hearing Before the H. Comm. on Financial Services, 116th Cong. (2020).*
- *Transparency in Small Business Lending, Hearing Before the H. Comm. on Small Business, 116th Cong. (2020).*
- *Transportation’s Disadvantaged Business Enterprise Program, Hearing Before the H. Comm. on Transportation and Infrastructure, 116th Cong. (2020).*

- *Examining the Racial and Gender Wealth Gap in America, Hearing Before Subcomm. On Diversity and Inclusion of the H. Comm. on Financial Services, 116th Cong. (2019).*
- *Reauthorization of the SBA's Contracting Programs, Hearing Before the S. Comm. on Small Business and Entrepreneurship, 116th Cong. (2019).*
- *Embracing Corporate Social Responsibility: Small Business Best Practices, Hearing Before the H. Comm. on Small Business, 116th Cong. (2019).*
- *Fostering the American Dream: How SBA Can Empower Immigrant Small Business Owners, Field Hearing Before the H. Comm. on Small Business, 116th Cong. (2019).*
- *Native 8(a) Contracting: Emerging Issues, Hearing Before the H. Comm. on Small Business, 116th Cong. (2019).*
- *The Role of the SBA's 8(a) Program in Enhancing Economic Opportunities, Hearing Before the H. Comm. on Small Business, 116th Cong. (2019).*
- *Lost Opportunities? SBA's Engagement with Historically Black Colleges and Universities, Hearing Before the H. Comm. on Small Business, 116th Cong. (2019).*
- *Strengthening Access to Capital for Minority-Owned Small Business, Field Hearing Before the S. Committee on Small Business and Entrepreneurship, 115th Cong. (2018).*
- *Opportunities and Challenges with the Small Business Administration's Federal Contracting Programs, Hearing Before the S. Comm. on Small Business and Entrepreneurship, 115th Cong. (2018).*
- *Disparities in Access to Capital: What the Federal Government is Doing to Increase Support for Minority Owned Firms, Field Hearing Before the H. Comm. on Small Business, 115th Cong. (2018).*
- *Strengthening the Entrepreneurial Ecosystem for Women, Hearing Before the S. Comm. on Small Business and Entrepreneurship, 115th Cong. (2017).*
- *Minority Access to Capital, Field Hearing Before the S. Comm. on Small Business and Entrepreneurship, 114th Cong. (2015).*
- *Accessing Capital in Indian Country, Hearing Before the S. Committee on Indian Affairs, 114th Cong. (2015).*
- *Empowering America to Reach its Full Economic Potential: Closing the Wealth Gap, Hearing Before the S. Comm. on Small Business and Entrepreneurship, 113th Cong. (2013).*

- *Strengthening the Entrepreneurial Ecosystem for Minority Women, Hearing Before the S. Comm. on Small Business and Entrepreneurship, 113th Cong. (2013).*
- *Closing the Gap: Exploring Minority Access to Capital and Contracting Opportunities, Hearing Before the S. Comm. on Small Business and Entrepreneurship, 112th Cong. (2011).*
- *Small Business Participation in the Federal Procurement Marketplace, Hearing Before the H. Comm. on Small Business, 111th Cong. (2010).*
- *Minority Contracting: Opportunities and Challenges for Current and Future Minority-Owned Businesses, Hearing Before the Subcommittee on Government Management, Organization, and Procurement of the H. Comm. on Oversight and Government Reform, 111th Cong. (2010).*

APPENDIX B**State and Local Disparity Studies from 2010-2021****Alaska**

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California

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California Department of Transportation Availability and Disparity Study Report, Prepared by BBC Research & Consulting (2021).

California High-Speed Rail Authority Business Market Availability and Disparity Study, Prepared by Mason Tillman Associates, Ltd. (2014).

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OCTA Disparity Study Final Report, Orange County Transportation Authority, Prepared by BBC Research & Consulting (2010).

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San Francisco Bay Area Rapid Transit District Disparity Study Volume I, Prepared by Miller³ Consulting, Inc. (2017).

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Colorado

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Connecticut

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District of Columbia

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Florida

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Georgia

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Hawaii

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Idaho

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Illinois

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Indiana

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Louisiana

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Nevada

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New Jersey and New York

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Ohio

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Oklahoma

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Oregon

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MORGAN McGARVEY
3RD DISTRICT, KENTUCKY

HOUSE COMMITTEE ON
SMALL BUSINESS

HOUSE COMMITTEE ON
VETERANS' AFFAIRS

Congress of the United States
House of Representatives
Washington, DC 20515-1703

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The Honorable Roger Williams
Chair
Small Business Committee
2361 Rayburn House Office
Washington, D.C. 20515

The Honorable Nydia Velázquez
Ranking Member
Small Business Committee
2069 Rayburn House Office
Washington, D.C. 20515

Dear Chairman Williams and Ranking Member Velázquez,

I'd like to submit for the record my vote on H.R. 6591, the Encouraging Success Act. Let it be known that if I had been present, I would have voted "aye" on this bill.



Morgan McGarvey
Member of Congress

Honorable Mike Johnson, Speaker	Honorable Hakeem Jeffries, Minority Leader
Honorable Roger Williams, Chair Committee on Small Business	Honorable Nydia Velázquez, Ranking Member Committee on Small Business
Honorable Tom Cole, Chair Committee on Rules	Honorable Jim McGovern, Ranking Member Committee on Rules
House of Representatives Washington, DC 20515	

Dear Speaker, Minority Leader, Committee Chairs and Ranking Members:

The 18 undersigned organizations – representing the interests of Indian Tribes, Alaska Native, and Native Hawaiian governing organizations, their business enterprises, and business owned by their community members throughout the United States – write in strong support of the bipartisan Native American Entrepreneurial Opportunity Act (H.R. 7102) introduced by Representatives Sharice Davids (D-KS) and Eli Crane (R-AZ) and received unanimous committee approval last week. The bill formally authorizes and elevates the Office of Native American Affairs (ONAA) of the Small Business Administration (SBA), directed by an Assistant Administrator reporting directly to the SBA Administrator. Similar legislation (S. 1156) awaits Senate passage. Urgent need for Native small business relief and support calls for a fortified ONAA to coordinate with all SBA components and deploy assistance from all SBA programs to catalyze the growth, success, and self-sufficiency of Native communities' businesses and economic development. **We urge prompt full House approval of this important measure.**

This bill properly affords the ONAA the stature and authority it has long needed to work effectively on Indian Country's behalf and coordinate with other offices within SBA and key Cabinet-level Departments to direct federal resources in more targeted ways to Indian Tribes, Alaska Native corporations, Alaskan and Native Hawaiian communities, and Native small businesses across the country. Charged to direct SBA's Native American Outreach activities, the ONAA would formulate and promote policies, programs, and assistance that better address the entrepreneurial, capital access, business development, and contracting needs of Tribes and Native businesses. The ONAA also could provide financial and other assistance directly to: (1) deploy training, counseling, and other educational outreach, workshops, and supplier events; (2) facilitate Native contractors' participation in the SBA's various small business contracting programs; (3) facilitate and improve access to SBA's various loan programs, loan guarantees, disaster assistance, and other capital access programs; and (4) ensure the conducting of Tribal Consultations to solicit input and facilitate discussion of potential modifications to SBA programs and procedures.

Congress must act quickly on this important new legislation to elevate and enhance SBA's ONAA, just as Congress has authorized other such high-level Offices within the Departments of the Interior, Commerce, Energy, Agriculture, Justice, Transportation, and Housing and Urban Development. Elevating and empowering the SBA ONAA will ensure

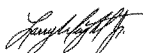
that intended assistance will be effectively delivered to Indian Country's businesses and entrepreneurs in the years to come.

We thank you and look forward to working with you to advance this legislation to enactment this Congress.

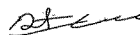
Respectfully,



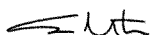
Chris James
President & CEO
National Center for American
Indian Enterprise Development



Larry Wright, Jr.
Executive Director
National Congress of American
Indians



Quinton Carroll
Executive Director
Native American Contractors
Association



Susan Masten
Interim Executive Director
Native American Finance Officers
Association



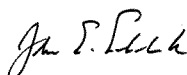
Pete Upton
Chief Executive Officer
Native CDFI Network



Amber Schulz-Oliver
Executive Director
Affiliated Tribes of Northwest
Indians



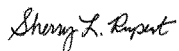
Jason Giles
Executive Director
Indian Gaming Association



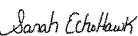
John Echohawk
Executive Director
Native American Rights Fund



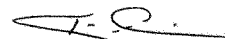
A. Gay Kingman
Executive Director
Great Plains Tribal Chairmen's
Association



Sherry L. Rupert
Chief Executive Officer
American Indian and Alaska Native
Tourism Association



Sarah EchoHawk
Chief Executive Officer
American Indian Science and
Engineering Society (AISES)



Kirk Francis
President
United South and Eastern Tribes
Sovereignty Protection Fund



Lori Pourier
President
First Peoples Fund



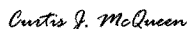
Kim Reitmeier
President
ANCSA Regional Association



Cariann Ah Loo
Board President
Native Hawaiian Organizations
Association



Cole W. Miller
Kari Jo Lawrence
Co-Chairs
Native Farm Bill Coalition



Curtis J. McQueen
Executive Director
Alaska Native Village Corporation
Association



Kari Jo Lawrence
Chief Executive Officer
Intertribal Agriculture Council