

BUILDING BETTER BUSINESS PARTNERSHIPS ACT
OF 2012

DECEMBER 20, 2012.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GRAVES of Missouri, from the Committee on Small Business,
submitted the following

R E P O R T

[To accompany H.R. 3985]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 3985) to amend the Small Business Act with respect to mentor-protégé programs, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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I. AMENDMENT

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 4, line 23, strike the period at the end and insert the following: “, and to protect proteges against actions by the mentor that—”

(i) may adversely affect the proteges status as a small business; or

(ii) provide disproportionate economic benefits to the mentor relative to those provided the protege.

Page 7, line 24, insert after “the Administrator.” the following:

“(e) CURRENT MENTOR PROTEGE AGREEMENTS.—Mentors and proteges with approved agreement in a program operating pursuant to subsection (b)(4)(C) shall be permitted to continue their relationship according to the terms specified in their agreement until the expiration date specified in the agreement.

“(f) SUBMISSION OF AGENCY PLANS.—Agencies operating mentor protege programs pursuant to subsection (b)(4)(C) must submit the plans specified in subsection (b)(1)(A) to the Administrator within 6 months of the promulgation of rules required by subsection (b)(3). The Administrator shall provide initial comments on each plan within 60 days of receipt, and final approval or denial of each plan with 180 days of receipt.”

Page 7, insert after line 24 the following:

SEC. 3. GOVERNMENT ACCOUNTABILITY OFFICE REPORT.

Not later than the date that is 2 years after the agencies operating subject to section 45(b)(4)(C) of the Small Business Act have their plans approved or denied by the Administrator, the Comptroller General of the United States shall conduct a study to—

(1) update the study required by section 1345 of the Small Business Jobs Act of 2010 (Pub. Law 111-240);

(2) examine whether potential affiliation issues between mentors and proteges under the prior programs have been resolved by enactment of this Act; and

(3) examine whether the regulations issued pursuant to section 45(b)(3)(I) of the Small Business Act have increased opportunities for mentor-protege pairs, and if they have decreased the paperwork required for such pairs participating in programs at multiple agencies.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 3985, the “Building Better Business Partnerships Act of 2012,” is to amend the Small Business Act (the Act)¹ to allow the Small Business Administration (SBA) to oversee civilian agency mentor-protégé programs. This will promote portability of agreements between agencies, guarantee that the programs benefit small businesses, and ensure that the mentor-protégé agreement does not inadvertently harm the protégé’s small business status.

H.R. 3985 seeks to improve mentor-protégé programs to ensure that they assist small businesses. First, it authorizes the Administrator of the SBA to create a mentor-protégé program for small

¹ Originally, title II of the Act of July 30, 1953, c. 282, 67 Stat. 232 was designated as the Small Business Act of 1953. A plethora of amendments in subsequent Congresses led to a rewrite in 1958. Pub. L. No. 85-536, § 1, 72m Stat. 384 (1958). The Act is codified at 15 U.S.C. §§ 631-657q.

businesses and directs the Administrator to use the existing SBA 8(a) mentor-protégé program established pursuant to 8(a) of the Act as a model. Second, it requires agencies and departments to seek prior approval for their mentor-protégé programs from the SBA Administrator and requires the proposed program plan to be approved or disapproved depending on: whether the proposed program will assist small business concerns to compete for Federal prime contracts and subcontracts; and complies with SBA program regulations. Third, it requires that the Administrator present an annual report to the House Committee on Small Business and the Senate Committee on Small Business and Entrepreneurship assessing the benefits of each mentor-protégé program and describing the number of program participants, protégé assistance received, and the progress protégé firms have made to improve their competitive viability. Fourth, it provides definitions of mentor, protégé, and mentor-protégé program. Finally, it requires the Government Accountability Office (GAO) to conduct a study of mentor-protégé programs within two years after agencies have had their plans approved or denied.

III. NEED FOR LEGISLATION

Mentor-protégé relationships are defined by the Small Business Jobs Act of 2010 (Jobs Act) as “relationships and strategic alliances pairing a larger business and a small business concern partner to gain access to Federal Government contracts.”² Mentor-protégé programs are arrangements by which experienced prime contractors, including small businesses, serve as mentors to eligible small businesses, or protégés. Mentors provide protégés with technical, managerial, and other business development assistance.

Currently, 13 federal departments or agencies³ sponsor mentor-protégé programs. Agencies, through the Offices of Small and Disadvantaged Small Business Utilization (OSDBUs),⁴ encourage mentor participation by providing the mentor with credit toward subcontracting goals, additional evaluation points toward the awarding of contracts, an annual award to the mentor providing the most effective developmental support to a protégé, and in three cases, cost reimbursement.⁵ The SBA 8(a) Mentor-protégé Program is the largest program, having twice as many participants as the next largest program.

Mentor-protégé programs are intended to partner small businesses with established mentors in order improve the small business’ ability to win and perform on contracts and subcontracts, but the 13 federal agency programs are duplicative (creating an unnecessary paperwork burden for participants) and lack standardized

²Small Business Jobs Act of 2010, Pub. L. No. 111–240, § 1245, 124 Stat. §§ 2504, 2546 (2010).

³Department of Defense (DoD); Department of Energy (DOE); Department of State (DOS); Environmental Protection Agency (EPA); Federal Aviation Administration (FAA); General Services Administration (GSA); Department of Homeland Security (DHS); National Aeronautics and Space Administration (NASA); Small Business Administration (SBA); Department of Treasury (Treasury); United States Agency for International Development (USAID); and Department of Veterans Affairs (VA).

⁴Some agencies refer to the statutorily defined OSDBU position by different titles. For example, GSA refers to their office as the Office of Small Business Utilization. However, for simplicity’s sake, all such offices and position shall be referred to as OSDBUs in this report.

⁵GAO, *Mentor-Protégé Programs Have Policies That Aim To Benefit Participants But Do Not Require Postagreement Tracking* 1(2011) (GAO–11–548R) (hereinafter “Mentor Protégé Programs”).

measures of success. In addition, while the SBA Administrator is authorized to create mentor-protégé programs for certain subsets of small businesses, the Small Business Act does not currently allow the Administrator to create a mentor-protégé program for all small businesses.

In the Jobs Act, Congress required the GAO to study both the SBA's 8(a) Mentor-protégé program and the other mentor-protégé programs "to determine whether the programs and relationships are effectively supporting the goal of increasing the participation of small business concerns in Government contracting."⁶ Specifically, the report was to address a broad cross section of industries and evaluate how the procurement agencies were administering the programs, what types of controls were in place, and how agencies were ensuring that the protégés were deriving benefit from the programs which prepared them to better compete for federal contracts.⁷

As part of its study of the mentor-protégé programs, the GAO reviewed the policies and procedures for the 13 programs, and then focused on the controls used "to help ensure that mentor-protégé programs are beneficial to program participants and eligibility requirements are being met,"⁸ particularly whether the programs met the goal of helping firms ultimately compete for federal contracts. The GAO report revealed that there were a number of issues that needed to be addressed with mentor-protégé programs, especially as the duplication among the 13 programs creates unnecessary paperwork for small businesses. GAO also noted that some mentor-protégé programs lack accountability or metrics for tracking success. Based on the GAO study, the Committee further examined the programs, and found that program participants risk losing their small business size status due to the principal of affiliation when working with other businesses, and that the programs are not available to assist the majority of small businesses seeking federal contracts.

With the exception of the SBA, DoD, DOE and FAA mentor-protégé programs, the programs reviewed by the GAO provide the same benefits to mentors, provide very similar assistance to small businesses, and have similar reporting requirements. Despite the similarities and the SBA's overarching role in determining the size of firms in federal procurement, a firm that wants to participate in more than one program must be vetted by each agency. One of the strengths of the SBA program is that it allows a mentor and protégé to contract at any federal agency. However, the SBA program is limited to participants in the 8(a) and HUBZone programs. Given the diversity of programs and the limitations of the SBA programs, there should be a civilian agency mentor-protégé program. This will allow greater participation, impose fewer paperwork burdens on businesses, and facilitate greater access to contracts.

Affiliation is the name given to the principles the SBA uses to determine whether two entities will be considered under common management or control, and thus considered one company, for the purposes of determining whether a firm is small.⁹ Pursuant to SBA

⁶Jobs Act § 1245, 124 Stat. at 2546.

⁷*Id.*

⁸Mentor Protégé Programs, *supra* note 5, at 2.

⁹13 C.F.R. § 121.103(a).

regulations, two firms may be considered affiliated if SBA finds that one firm is controlled by the other.¹⁰ To determine affiliation, SBA's Office of Hearing and Appeals considers factors such as "ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists."¹¹ Indeed, SBA looks at the totality of factors when considering affiliation, and "may find affiliation even though no single factor is sufficient to constitute affiliation."¹² Affiliation can be found based on "identity of interest" which includes firms that are "economically dependent through contractual or other relationships."¹³ Affiliation can be found based on shared space and employees,¹⁴ joint ventures,¹⁵ undue use by the protégé of the mentor as a subcontractor,¹⁶ and license agreements.¹⁷

The development assistance that is encouraged by nearly all mentor-protégé programs, aside from the SBA program, and is provided under typical mentor-protégé agreements risks triggering a finding of affiliation and thus a potential determination the protégé may be found to be other-than-small. Despite the fact that participation in a program is not cause to find affiliation, the Committee is concerned that by encouraging well-intentioned mentors and protégés to engage in activities, the programs put small businesses' size status at risk. Additionally, the Committee also is concerned that nine of the thirteen mentor-protégé programs claim to waive affiliation.¹⁸ Pursuant to the Small Business Act, only the SBA has the ability to waive affiliation,¹⁹ and SBA has simply stated that a protégé firm is not an affiliate of a mentor firm "solely because the protégé [sic] firm receives assistance from the mentor firm under Federal Mentor-Protege programs" but that "[a]ffiliation may be found for other reasons."²⁰ The DoD program has a statutory exemption from affiliation,²¹ but seven of the remaining programs claim this exemption without a basis in law or a waiver from SBA.

A purported waiver is particularly dangerous, as it may lead small firms to believe that they have safe harbor from affiliation rules when they provide or accept assistance pursuant to a mentor-protégé agreement. However, even the programs that do not claim to waive affiliation inadvertently put small businesses in danger, since the underlying technical assistance itself may trigger a loss of small business status. Since SBA is the only entity with authority to waive affiliation for mentor-protégé participants, it is logical that SBA should have regulatory authority over all civilian mentor-protégé programs.

While nine of the agencies agreed to implement GAO's recommendation on post-program success, to date only one has made changes. If mentor-protégé programs are intended to develop the capacity of small firms to compete for contracts, measuring post-

¹⁰ *Id.*

¹¹ *Id.* at § 121.103(a)(2).

¹² *Id.* at § 121.103(a)(5).

¹³ *Id.* at § 121.103(f).

¹⁴ *Id.* at § 121.103(g).

¹⁵ *Id.* at § 121.103(h).

¹⁶ *Id.* at § 121.103(h)(4).

¹⁷ *Id.* at § 121.103(i).

¹⁸ SBA, DoD, DHS, DOS, Treasury, VA, NASA, FAA and HHS.

¹⁹ *See, e.g., Associated Refuse & Compactions Services, Inc.*, B-189,740 at 1-2 (Comp. Gen. 1977).

²⁰ 13 CFR § 121.103(b)(6).

²¹ 10 U.S.C. § 2302 note.

program performance is crucial. A uniform program administered by SBA with each agency reporting on its progress will give a more complete picture of a firm's successes and challenges.

Of the thirteen programs reviewed, only eight accept small businesses that do not qualify for one of the other socio-economic contracting or business development programs. Some of the restrictions are logical. For example, the SBA only admits 8(a) and Historically Underutilized Business Zone (HUBZone) firms into its mentor-protégé program because the program is intended to be a business development tool, and the VA only admits veteran or service-disabled veteran firms in keeping with the agency's mission. In other cases, the restriction is statutory; DoD is statutorily barred from allowing small businesses or veteran-owned small businesses from participating as protégés. Other restrictions are harder to fathom; the EPA excludes protégés that are small businesses, HUBZone businesses, and veteran or service-disabled veteran-owned firms.

The Building Better Business Partnerships Act addresses the problems of duplication, affiliation, accountability and accessibility discussed above. It allows the SBA to oversee civilian agency mentor-protégé programs in order to promote portability of agreements between the agencies, guarantee that the programs benefit the small businesses, and ensure that the mentor-protégé agreement does not inadvertently harm the protégé's small business size status. Ultimately, H.R. 3985 will improve mentor-protégé programs, making it easier for small firms to compete for and win government contracts, enabling them to grow and create jobs.

IV. HEARINGS

In the 112th Congress, the Committee held one hearing that looked at mentor-protégé programs. On September 15, 2011, the Subcommittee on Contracting and Workforce held a hearing titled, "Helping Small Businesses Compete: Challenges within Programs Designed to Assist Small Contractors." This hearing addressed issues related to the inadequacy of current mentor-protégé programs. Specifically, three GAO reports on programs that exist to help small businesses compete for federal contracts were reviewed,²² and three problems with agency mentor-protégé programs were examined: affiliation, duplication and accountability. The hearing found that the eleven non-statutory mentor-protégé programs provided assistance that could lead to a finding of affiliation which could cause small businesses participating as mentors or protégés to lose their small business size status. Furthermore, it found that the civilian-agency mentor-protégé programs are duplicative and a firm must be vetted by each agency if it wants to participate in more than one program. Finally, the hearing found that although nine agencies have agreed to implement GAO's recommendation to measure post-program success, none had made changes as of the hearing date.

²² Mentor Protégé Programs, *supra* note 5, at 2; GAO, Improvements Needed To Help Ensure Reliability of SBA's Performance Data on Procurement Center Representatives (2011) (GAO-22-549R); and GAO, Small Business Contracting: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required (2011) (GAO-11-418).

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session on March 22, 2012 and ordered H.R. 3985 reported, as amended, to the House by a voice vote at 10:16 a.m. During the markup, one amendment was offered and adopted. Disposition of the amendment is addressed below.

Amendment Number One filed by Ms. Chu (D-CA) ensures that current mentor-protégé agreements will continue according to the terms and until the expiration of the date specified in the agreement, requires agencies operating mentor-protégé programs to submit their program plans to the Administrator of the SBA within 6 months of the regulations required under H.R. 3985, and requires the GAO to update its study on mentor-protégé programs after agency plans are approved or denied. Amendment Number One was adopted by voice vote at 10:15 a.m.

VI. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. No recorded votes were taken in consideration of H.R. 3985.

AMENDMENT TO H.R. 3985 OFFERED BY MS. CHU OF CALIFORNIA

Page 4, line 23, strike the period at the end and insert the following: “, and to protect proteges against actions by the mentor that—”

(i) may adversely affect the proteges status as a small business; or

(ii) provide disproportionate economic benefits to the mentor relative to those provided the protege.

Page 7, line 24, insert after “the Administrator.” the following:

“(e) CURRENT MENTOR PROTEGE AGREEMENTS.—Mentors and proteges with approved agreement in a program operating pursuant to subsection (b)(4)(C) shall be permitted to continue their relationship according to the terms specified in their agreement until the expiration date specified in the agreement.

“(f) SUBMISSION OF AGENCY PLANS.—Agencies operating mentor protege programs pursuant to subsection (b)(4)(C) must submit the plans specified in subsection (b)(1)(A) to the Administrator within 6 months of the promulgation of rules required by subsection (b)(3). The Administrator shall provide initial comments on each plan within 60 days of receipt, and final approval or denial of each plan with 180 days of receipt.”

Page 7, insert after line 24 the following:

SEC. 3. GOVERNMENT ACCOUNTABILITY OFFICE REPORT.

Not later than the date that is 2 years after the agencies operating subject to section 45(b)(4)(C) of the Small Business Act have their plans approved or denied by the Administrator, the Comptroller General of the United States shall conduct a study to—

(1) update the study required by section 1345 of the Small Business Jobs Act of 2010 (Pub. Law 111-240);

(2) examine whether potential affiliation issues between mentors and proteges under the prior programs have been resolved by enactment of this Act; and

(3) examine whether the regulations issued pursuant to section 45(b)(3)(I) of the Small Business Act have increased opportunities for mentor-protége pairs, and if they have decreased the paperwork required for such pairs participating in programs at multiple agencies.

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 3985 AS AMENDED

Section 1. Short title

This section provides that the bill may be cited as the “Building Better Business Partnerships Act of 2012.”

Section 2. Mentor-Protégé programs

Subsection (a)—Administrative Program

Currently, the Act addresses contracting-related mentor-protégé relationships in two ways. First, in Section 8(d)(11), it acknowledges that mentors may receive subcontracting credit for providing developmental assistance to protégé through the pilot Mentor-Protégé [sic] Program established by section 831 of the National Defense Authorization Act for Fiscal Year 1991.²³ Additionally, in a note to 15 U.S.C. § 637(a),²⁴ the Administrator is authorized to create mentor-protégé programs for service-disabled veteran-owned small business concerns (SDVOSBs), women-owned small business concerns (WOSBs) and qualified HUBZone firms, with each program to be modeled on the mentor-protégé program that the Administrator created for the 8(a) program through regulation. This subsection amends Section 45 of the Small Business Act and provides the Administrator with authority to establish a mentor-protégé program for all small business concerns and directs the Administrator to use the existing 8(a) mentor-protégé program as a model.

Subsection (b)—Programs of Other Agencies.

This subsection amends Section 45 of the Small Business Act. Under subsection (b)(1), agencies will be required to seek prior approval for their mentor-protégé programs. Subsection (b)(2) states that the Administrator’s approval shall be based on: whether the proposed program will assist small business concerns to compete for Federal prime contracts and subcontracts; and whether the program complies with SBA regulations.

Subsection b(3) requires the Administrator to promulgate regulations on mentor-protégé programs. The regulations must address the criteria for eligibility; the type of assistance mentors may provide; the effect of the findings of affiliation; the length of the mentor-protégé relationship; the effect of the relationship on contracts awarded; the benefits, if any, to the mentor; the reporting requirements during and after participation in the program; the portability of the mentor-protégé relationship to other agencies; and the actions the agencies will take to ensure protégé receive benefits

²³ Pub. Law No. 104–201, 110 Stat. 2422 (1996).

²⁴ Small Business Jobs Act a, § 1245.

and protect protégé against actions by a mentor that may adversely affect the protégé's status as a small business or provide disproportionate economic benefits to the mentor relative to the protégé. This level of specificity is necessary to ensure that all participants have reasonable expectations of the program. Unlike the SBA's 8(a) mentor-protégé program, the bill does not contemplate joint ventures between mentors and protégé under the protégé's small business status, unless such practice is otherwise authorized. Benefits to the mentors and the effect of the relationship on contracting are included so that SBA, if it deems appropriate, may allow mentors to receive subcontracting credit for providing assistance to protégé, or to provide protégé with priority access to subcontracts.

Subsection b(4) clarifies that these new regulations and approval process do not apply to the Department of Defense's Mentor-Protégé Program,²⁵ nor do they apply to any of the mentoring requirements by the Small Business Innovation Research or the Small Business Technology Transfer Programs.²⁶ Furthermore, the civilian agencies to which the regulations and approval process do apply will have a year after the Administrator issues the final regulations to bring their programs into compliance.

Subsection (c)—Reporting

This subsection amends Section 45 of the Small Business Act, to require that the Administrator annually submit a report to the Committee on Small Business and the Senate Committee on Small Business and Entrepreneurship which assesses the benefits of the mentor-protégé programs. The report is required to include each mentor-protégé program and the number of participants in each program, including whether the protégé are small, WOSB, SDVOSB, HUBZone or small disadvantaged firms. Furthermore, it must describe the types of assistance the protégé received, the benefits the mentors received, and the progress the protégé firms made to improve their competitive viability. The agencies with mentor-protégé programs are expected to assist with this report.

Subsection (d)—Definitions

This subsection amends Section 45 of the Small Business Act to provide definitions of mentor, protégé, and mentor-protégé program. Specifically, mentors are defined as: (1) firms of any size that have the ability to help protégé firms compete for Federal prime and subcontracts; (2) firms that commit to actually helping protégé firms compete; and (3) meet any other requirements set by the Administrator. Likewise, a protégé is a small business concern that is eligible to enter into Federal prime contracts or subcontracts and meets any other requirements set by the Administrator. Therefore, a mentor-protégé program is defined as a program that pairs a mentor with a protégé for purposes of assisting the protégé to compete for Federal prime contracts and subcontracts.

Subsection (e)—Current Mentor Protégé Agreements

This subsection provides that mentors and protégé with approved agreements in a program operating pursuant to subsection (b)(4)(C)

²⁵ 10 U.S.C. § 2301 note

²⁶ Section 9(n) of the Small Business Act.

shall be permitted to continue their relationship according to the terms of their agreement until the expiration date specified in the agreement.

Subsection (f)—Submission of Agency Plans

This subsection creates a timetable for the agency plans to be submitted to, commented on, and approved or denied as specified in subsection (b)(1)(A). Within 6 months of the Administrator promulgating the rules required by new subsection (b)(3), agencies operating mentor-protégé programs pursuant to new subsection (b)(4)(c) must submit the plans specified in new subsection (b)(1)(A). The Administrator shall provide initial comments on each plan within 60 days of receipt and shall provide final approval or denial of each plan within 180 days of receipt.

Section 3. Government Accountability Office report

This section amends section 45 of the Act to require the Government Accountability Office to conduct a study of the mentor-protégé programs no later than 2 years after the agencies operating under the Act, as amended by this legislation, have their plans approved or denied. The study must: (1) update the study required by section 1345 of the Jobs Act; (2) examine whether potential affiliation issues between mentors and protégé under the prior programs have been resolved by enactment of this legislation; and (3) examine whether the regulations issued pursuant to section 45(b)(3)(1) of the Small Business Act have increased opportunities for mentor-protégé pairs; and (4) if they have decreased the paperwork required for such pair participating in programs at multiple agencies.

VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 2012.

Hon. SAM GRAVES,
*Chairman, Committee on Small Business,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3985, the Building Better Business Partnerships Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 3985—Building Better Business Partnerships Act of 2012

Summary: H.R. 3985 would amend programs that pair disadvantaged small businesses with other eligible businesses (mentor-protégé programs) in order to allow them to participate in set-aside programs for federal contracts. The bill would direct the Small Business Administration (SBA) to broaden the scope of its mentor-protégé program to cover all small businesses (currently the program is open to a limited pool of participants). The bill also would

direct the SBA to develop regulations that would apply to mentor-protégé programs operating in other federal agencies.

Based on information from the SBA and several federal agencies that operate mentor-protégé programs, CBO estimates that implementing H.R. 3985 would cost \$6 million over the 2013–2017 period, assuming appropriation of the necessary amounts. CBO estimates that enacting H.R. 3985 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3985 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of HR. 3985 is shown in the following table. The costs of this legislation fall within several budget functions, including 250 (general science, space, and technology), 370 (commerce and housing credit), and 550 (health).

	By fiscal year, in millions of dollars					
	2013	2014	2015	2016	2017	2013–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	*	1	2	2	2	7
Estimated Outlays	*	1	1	2	2	6

* = less than \$500,000.

Basis of estimate: H.R. 3985 would expand the SBA’s mentor-protégé program beyond the limited pool of participants eligible to participate under current law and would direct the agency to establish rules to ensure that mentor-protégé programs in other federal agencies improve the ability of protégés to compete for federal contracts. Under current law, 13 agencies have developed mentor-protégé programs with similar but not standardized policies and procedures. Once the SBA has established rules for the program, the bill would give participating agencies one year to develop a plan that conforms to those rules.

The cost of mentor-protégé programs to the participating agencies consists primarily of personnel and associated overhead expenses to process applications, prepare reports, and track outcomes. The organizational structure varies from agency to agency; some agencies have full-time staff members devoted to the mentor-protégé program, with other staff assisting as part of their duties. Most agencies, however, have employees working part-time on the program.

Based on information from the SBA and several agencies with existing programs, CBO expects that the new rules would probably require agencies to revise their current plans, meet new performance tracking and reporting requirements, and track protégé performance after the partnership has expired. CBO estimates that implementing those provisions would cost \$6 million over the 2013–2017 period, assuming appropriation of the necessary amounts.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: H.R. 3985 contains no intergovernmental or private-sector mandates as defined in

UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Susan Willie; Impact on State, local, and Tribal governments: Elizabeth Cove Delisle; Impact on the private sector: Vi Nguyen.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

IX. UNFUNDED MANDATES

H.R. 3985 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Pub. L. No. 104-4, and would impose no costs on state, local or tribal governments.

X. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority and tax expenditures.

The Committee does not adopt as its own the estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to § 402 of the Congressional Budget Act of 1974. CBO estimates that implementation of the program will cost \$6 million over five years. Since the agencies already operate their own mentor-protégé program, the only additional cost will be preparing the plan to obtain approval by the Administrator of the SBA. Such costs, the Committee believes, would be handled under existing levels of appropriations for agency salaries and expenses. However, the costs that will be incurred are simply opportunity costs, as current personnel will need to prioritize revising plans and promulgating regulations. Thus, the Committee does not believe that any additional appropriations will be necessary to implement this legislation.

XI. OVERSIGHT FINDINGS

In accordance with clause 2(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 3985 are incorporated into the descriptive portions of this report.

XII. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the authority for this legislation in Art. I, § 8, cls. 1, 3, and 18 and Art. IV, § 3, cl. 2 of the Constitution of the United States.

XIII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 3985 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Pub. L. No. 104-1.

XIV. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 3985 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App. 2.

XV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 3985 does not contain any congressional earmarks, limited tax benefits or limited tariff benefits as defined in subsections (d), (e) or (f) of clause 9 of rule XXI of the Rules of the House.

XVI. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House, the Committee establishes the following performance-related goals and objectives for this legislation:

H.R. 3985 includes a number of provisions designed to improve establishing mentor-protégé agreements under the Small Business Act, by guaranteeing that the programs benefit small businesses, and ensuring that the mentor-protégé agreement does not inadvertently harm the protégé's small business status.

XVII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * *

SEC. 45. MENTOR-PROTEGE PROGRAMS.*(a) ADMINISTRATION PROGRAM.—*

(1) AUTHORITY.—The Administrator is authorized to establish a mentor-protege program for all small business concerns.

(2) MODEL FOR PROGRAM.—The mentor-protege program established under paragraph (1) shall be identical to the mentor-protege program of the Administration for small business concerns that participate in the program under section 8(a) of this Act (as in effect on the date of enactment of the Building Better Business Partnerships Act of 2012), except that the Administrator may modify the program to the extent necessary given the types of small business concerns included as proteges.

(b) PROGRAMS OF OTHER AGENCIES.—

(1) APPROVAL REQUIRED.—Except as provided in this subsection, a Federal department or agency may not carry out a mentor-protege program for small business concerns unless—

- (A) the head of the department or agency submits a plan to the Administrator for the program; and*
- (B) the Administrator approves such plan.*

(2) *BASIS FOR APPROVAL.*—*The Administrator shall approve or disapprove a plan submitted under paragraph (1) based on whether the program proposed—*

(A) will assist proteges to compete for Federal prime contracts and subcontracts; and

(B) complies with the regulations issued under paragraph (3).

(3) *REGULATIONS.*—*Not later than 270 days after the date of enactment of the Building Better Business Partnerships Act of 2012, the Administrator shall issue, subject to notice and comment, regulations with respect to mentor-protege programs, which shall ensure that such programs improve the ability of proteges to compete for Federal prime contracts and subcontracts and which shall address, at a minimum, the following:*

(A) Eligibility criteria for program participants, including any restrictions on the number of mentor-protege relationships permitted for each participant.

(B) The types of developmental assistance to be provided by mentors, including how the assistance provided shall improve the competitive viability of the proteges.

(C) Whether any developmental assistance provided by a mentor may affect the status of a program participant as a small business concern due to affiliation.

(D) The length of mentor-protege relationships.

(E) The effect of mentor-protege relationships on contracting.

(F) Benefits that may accrue to a mentor as a result of program participation.

(G) Reporting requirements during program participation.

(H) Postparticipation reporting requirements.

(I) The need for a mentor-protege pair, if accepted to participate as a pair in a mentor-protege program of any Federal department or agency, to be accepted to participate as a pair in all Federal mentor-protege programs.

(J) Actions to be taken to ensure benefits for proteges, and to protect proteges against actions by the mentor that—

(i) may adversely affect the proteges status as a small business; or

(ii) provide disproportionate economic benefits to the mentor relative to those provided the protege.

(4) *LIMITATION ON APPLICABILITY.*—*Notwithstanding the provisions of subsection (b)(1), the provisions of subsection (b)(1) shall apply to the following:*

(A) Any mentor-protege program of the Department of Defense in effect on the date of enactment of the Building Better Business Partnerships Act of 2012.

(B) Any mentoring assistance provided under a Small Business Innovation Research Program or a Small Business Technology Transfer Program.

(C) Until the date that is 1 year after the date on which the Administrator issues regulations under paragraph (3), any Federal department or agency operating a mentor-pro-

tege program in effect on the date of enactment of the Building Better Business Partnerships Act of 2012.

(c) REPORTING.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Building Better Business Partnerships Act of 2012, and annually thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report that—

(A) identifies each Federal mentor-protege program;

(B) specifies the number of participants in each such program, including the number of participants that are—

(i) small business concerns;

(ii) small business concerns owned and controlled by service-disabled veterans;

(iii) qualified HUBZone small business concerns;

(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals;

or

(v) small business concerns owned and controlled by women;

(C) describes the type of assistance provided to proteges under each such program;

(D) describes the benefits provided to mentors under each such program; and

(E) describes the progress of proteges under each such program with respect to competing for Federal prime contracts and subcontracts.

(2) PROVISION OF INFORMATION.—The head of each Federal department or agency carrying out a mentor-protege program shall provide to the Administrator, upon request, the information necessary for the Administrator to submit a report required under paragraph (1).

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) MENTOR.—The term “mentor” means a for-profit business concern, of any size, that—

(A) has the ability to assist and commits to assisting a protege to compete for Federal prime contracts and subcontracts; and

(B) satisfies any other requirements imposed by the Administrator.

(2) MENTOR-PROTEGE PROGRAM.—The term “mentor-protege program” means a program that pairs a mentor with a protege for the purpose of assisting the protege to compete for Federal prime contracts and subcontracts.

(3) PROTEGE.—The term “protege” means a small business concern that—

(A) is eligible to enter into Federal prime contracts and subcontracts; and

(B) satisfies any other requirements imposed by the Administrator.

(e) CURRENT MENTOR PROTEGE AGREEMENTS.—Mentors and proteges with approved agreement in a program operating pursuant to subsection (b)(4)(C) shall be permitted to continue their relationship

according to the terms specified in their agreement until the expiration date specified in the agreement.

(f) SUBMISSION OF AGENCY PLANS.—Agencies operating mentor protege programs pursuant to subsection (b)(4)(C) must submit the plans specified in subsection (b)(1)(A) to the Administrator within 6 months of the promulgation of rules required by subsection (b)(3). The Administrator shall provide initial comments on each plan within 60 days of receipt, and final approval or denial of each plan with 180 days of receipt.

SEC. [45.] 46. All laws and parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency.

