

105TH CONGRESS  
1ST SESSION

# H. R. 168

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

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

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Entrepre-  
5 neurship Promotion Act of 1997”.

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

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

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

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

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

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

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

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

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

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

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

5 “(o) For purposes of this Act—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9   **SEC. 5. REPORTING.**

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

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

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

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

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

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

3 **SEC. 6. SUBCONTRACTING.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

16           “(i) the type and amount of such assistance re-  
17 quested by such concern is not otherwise available  
18 on reasonable terms from other sources;

19           “(ii) with such assistance such concern has a  
20 reasonable prospect for operating soundly and profit-  
21 ably within a reasonable period of time;

22           “(iii) the proceeds of such assistance will be  
23 used within a reasonable time for plant construction,  
24 conversion, or expansion, including the acquisition of

1 equipment, facilities, machinery, supplies, or mate-  
2 rial or to supply such concern with working capital  
3 to be used in the manufacture of articles, equipment,  
4 supplies, or material for defense or civilian produc-  
5 tion or as may be necessary to ensure a well bal-  
6 anced national economy; and

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

11 “(B)(i) No loan shall be made under this paragraph  
12 if the total amount outstanding and committed (by partici-  
13 pation or otherwise) to the borrower would exceed  
14 \$750,000.

15 “(ii) Subject to the provisions of clause (i), in agree-  
16 ments to participate in loans on a deferred (guaranteed)  
17 basis, participation by the Administration shall be not less  
18 than 85 per centum of the balance of the financing out-  
19 standing at the time of disbursement.

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

22 “(iv) Financings made pursuant to this paragraph  
23 shall be subject to the following limitations:

1           “(I) No immediate participation may be pur-  
2           chased unless it is shown that a deferred participa-  
3           tion is not available.

4           “(II) No direct financing may be made unless  
5           it is shown that a participation is unavailable.

6           “(C) A direct loan or the Administration’s share of  
7           an immediate participation loan made pursuant to this  
8           paragraph shall be any secured debt instrument—

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

11          “(ii) the rate of interest on which shall not ex-  
12          ceed the current average market yield on outstand-  
13          ing marketable obligations of the United States with  
14          remaining periods to maturity comparable to the av-  
15          erage maturities of such loan and adjusted to the  
16          nearest one-eighth of 1 per centum;

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

19          “(iv) the principal on which is amortized at  
20          such rate as may be deemed appropriate by the Ad-  
21          ministration, and the interest on which is payable  
22          not less often than annually.”.

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

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

9           (2) in assessing the collateral of borrowers for  
10       the purpose of making loans in which the Adminis-  
11       tration participates, the lender makes a favorable  
12       value assessment of such collateral when determin-  
13       ing the overall probability of recovery in the event of  
14       liquidation.

15 **SEC. 10. ENTREPRENEURIAL TRAINING, COUNSELING, AND**  
16 **MANAGEMENT ASSISTANCE.**

17       The Administrator shall take such actions as may be  
18       necessary to ensure that small business concerns owned  
19       and controlled by eligible veterans have access to programs  
20       established under the Small Business Act which provide  
21       entrepreneurial training, business development assistance,  
22       counseling, and management assistance to small business  
23       concerns. Such programs include the Small Business De-  
24       velopment Center, Small Business Institute, Service Corps

1 of Retired Executives (SCORE), and Active Corps of Ex-  
2 ecutives (ACE) programs.

3 **SEC. 11. GRANTS FOR ELIGIBLE VETERANS OUTREACH**  
4 **PROGRAMS.**

5 Section 8(b) of the Small Business Act (15 U.S.C.  
6 637(b)) is amended—

7 (1) by striking “and” at the end of paragraph  
8 (15);

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

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

12 (4) by adding at the end the following new  
13 paragraph:

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

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

22 The Administrator, the Secretary of Veterans Affairs,  
23 and the Assistant Secretary of Labor for Veterans’ Em-  
24 ployment and Training shall establish an interagency

1 working group to develop a comprehensive outreach pro-  
2 gram to assist eligible veterans. Such outreach program  
3 shall include business training and management assist-  
4 ance, employment and relocation counseling, and dissemi-  
5 nation of information on veterans benefits, veterans enti-  
6 tlements, and the Veterans Business Opportunity and De-  
7 velopment Program established under section 30 of the  
8 Small Business Act, as inserted by section 14 of this Act.

9 **SEC. 13. ASSOCIATE ADMINISTRATOR FOR VETERANS PRO-**  
10 **GRAMS.**

11 Section 4(b)(1) of the Small Business Act (15 U.S.C.  
12 633(b)(1)) is amended—

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

15 (2) by inserting after the fifth sentence the fol-  
16 lowing new sentence:

17 “One of the Associate Administrators shall be designated  
18 at the time of his appointment as the Associate Adminis-  
19 trator for Veterans Programs who shall be a career em-  
20 ployee in the Senior Executive Service and who shall be  
21 responsible to the Administrator for the formulation and  
22 execution of policies and programs under this Act which  
23 provide assistance to small business concerns owned and  
24 controlled by eligible veterans, including programs estab-  
25 lished under section 30.”.

1 **SEC. 14. ESTABLISHMENT OF VETERANS BUSINESS OPPOR-**  
2 **TUNITY AND DEVELOPMENT PROGRAM.**

3 The Small Business Act (15 U.S.C. 631 et seq.) is  
4 amended by redesignating sections 30 and 31 as sections  
5 31 and 32, respectively, and by inserting after section 29  
6 the following new section:

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

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

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



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

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

23 “(C) to make an award to a small business con-  
24 cern owned and controlled by eligible veterans which

1 has completed its period of program participation as  
2 prescribed by subsection (b)(6), if—

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

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

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

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

20 “(II) the anticipated award price of the  
21 contract (including options) will exceed  
22 \$5,000,000 in the case of a contract oppor-  
23 tunity assigned a standard industrial classifica-  
24 tion code for manufacturing and \$3,000,000

1 (including options) in the case of all other con-  
2 tract opportunities.

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

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

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

20 “(ii) The estimate of a current fair market price for  
21 a new procurement requirement, or a requirement that  
22 does not have a satisfactory procurement history, shall be  
23 derived from a price or cost analysis. Such analysis may

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

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

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

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

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

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

22           “(B) A requirement that such concern certify  
23       that it has been in business as a small business con-  
24       cern owned and controlled by eligible veterans for

1 the 1 year period beginning before the date of appli-  
2 cation for program participation; except that the Ad-  
3 ministrator may waive such requirement in appro-  
4 priate cases.

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

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

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

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

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

19 “(B)(i) Whenever, on the basis of information  
20 provided by a program participant pursuant to sub-  
21 paragraph (A) or otherwise, the Administration has  
22 reason to believe that the amount of funds or other  
23 assets withdrawn from a program participant for the

1 personal benefit of its owners or any person or en-  
2 tity affiliated with such owners may have been un-  
3 duly excessive, the Administration shall conduct a  
4 review to determine whether such withdrawal of  
5 funds or other assets was detrimental to the achieve-  
6 ment of the targets, objectives, and goals contained  
7 in such program participant's business plan.

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

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

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

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

23 “(i) the value of investments that eligible  
24 veteran owners have in their concerns, except  
25 that such value shall be taken into account

1 under this paragraph when comparing such  
2 concerns to other concerns in the same business  
3 area that are owned by other than eligible vet-  
4 erans;

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

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

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



1       “(6)(A) Subject to the provisions of subparagraph  
2 (E), the Administrator, prior to taking any action de-  
3 scribed in subparagraph (B), shall provide the small busi-  
4 ness concern that is the subject of such action, an oppor-  
5 tunity for a hearing on the record, in accordance with  
6 chapter 5 of title 5, United States Code.

7       “(B) The actions referred to in subparagraph (A)  
8 are—

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

11              “(ii) a termination pursuant to subsection  
12 (b)(1)(F);

13              “(iii) a graduation pursuant to subsection  
14 (b)(1)(H); and

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

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

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

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

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

7               “(ii) is untimely filed;

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

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

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

17       “(7) The Administration shall develop and implement  
18 an outreach program to inform and recruit small business  
19 concerns to apply for eligibility for assistance under this  
20 subsection. Such program shall make a sustained and sub-  
21 stantial effort to solicit applications for certification from  
22 small business concerns located in areas of concentrated  
23 unemployment or underemployment or within labor sur-  
24 plus areas and within States having relatively few program  
25 participants and from small business concerns owned and

1 controlled by eligible veterans in industry categories that  
2 have not substantially participated in the award of con-  
3 tracts let under the authority of this subsection.

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

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

1 types of items or services described on the capability state-  
2 ments.

3       “(B) Contracting activities receiving capability state-  
4 ments shall, within 60 days after receipt, contact the rel-  
5 evant veterans business counselor to indicate the number,  
6 type, and approximate dollar value of contract opportuni-  
7 ties that such activities may be awarding over the succeed-  
8 ing 12-month period and which may be appropriate to con-  
9 sider for award to those concerns for which it has received  
10 capability statements.

11       “(10)(A) A concern may not be awarded a contract  
12 under this subsection as a small business concern unless  
13 the concern agrees that—

14               “(i) in the case of a contract for services (ex-  
15 cept construction), at least 50 per centum of the  
16 cost of contract performance incurred for personnel  
17 shall be expended for employees of the concern; and

18               “(ii) in the case of a contract for procurement  
19 of supplies (other than procurement from a regular  
20 dealer in such supplies), the concern will perform  
21 work for at least 50 per centum of the cost of manu-  
22 facturing the supplies (not including the cost of ma-  
23 terials).

1       “(B) The Administration may change the percentage  
2 under clause (i) or (ii) of subparagraph (A) if the Admin-  
3 istrator determines that such change is necessary to re-  
4 flect conventional industry practices among business con-  
5 cerns that are below the numerical size standard for busi-  
6 nesses in that industry category. A percentage established  
7 under the preceding sentence may not differ from a per-  
8 centage established under section 15(o).

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

19       “(11)(A) An otherwise responsible business concern  
20 that is in compliance with the requirements of subpara-  
21 graph (B) shall not be denied the opportunity to submit  
22 and have considered its offer for any procurement contract  
23 for the supply of a product to be let pursuant to this sub-  
24 section or subsection (a) of section 15 solely because such

1 concern is other than the actual manufacturer or proc-  
2 essor of the product to be supplied under the contract.

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

6 “(i) be primarily engaged in the wholesale or  
7 retail trade;

8 “(ii) be a small business concern under the nu-  
9 merical size standard for the Standard Industrial  
10 Classification Code assigned to the contract sollicita-  
11 tion on which the offer is being made;

12 “(iii) be a regular dealer, as defined pursuant  
13 to section 35(a) of title 41, United States Code  
14 (popularly referred to as the Walsh-Healey Public  
15 Contracts Act), in the product to be offered the Gov-  
16 ernment; and

17 “(iv) represent that it will supply the product of  
18 a domestic small business manufacturer or proc-  
19 essor, unless a waiver of such requirement is grant-  
20 ed—

21 “(I) by the Administrator, after reviewing  
22 a determination by the contracting officer that  
23 no small business manufacturer or processor  
24 can reasonably be expected to offer a product  
25 meeting the specifications (including period for

1 performance) required of an offeror by the so-  
2 licitation; or

3 “(II) by the Administrator for a product  
4 (or class of products), after determining that no  
5 small business manufacturer or processor is  
6 available to participate in the Federal procure-  
7 ment market.

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

19 “(B) The activities and transactions prohibited by  
20 subparagraph (A) include—

21 “(i) the buying, selling, or receiving (except by  
22 inheritance) of any legal or beneficial ownership of  
23 stock or any other ownership interest or the right to  
24 acquire any such interest;

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

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

7           “(C)(i) The employees designated in clause (ii) shall  
8           annually submit a written certification to the Administra-  
9           tion regarding compliance with the requirements of this  
10          paragraph.

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

12                  “(I) regional administrators;

13                  “(II) district directors;

14                  “(III) the Associate Administrator for Veterans  
15          Programs;

16                  “(IV) employees whose principal duties relate to  
17          the award of contracts or the provision of other as-  
18          sistance pursuant to this subsection or subsection  
19          (b); and

20                  “(V) such other employees as the Administrator  
21          may deem appropriate.

22          “(iii) Any present or former employee of the Adminis-  
23          tration who violates this paragraph shall be subject to a  
24          civil penalty, assessed by the Attorney General, that shall  
25          not exceed 300 per centum of the maximum amount of



1 gain such employee realized or could have realized as a  
2 result of engaging in those activities and transactions pre-  
3 scribed by subparagraph (B).

4 “(iv) In addition to any other remedy or sanction pro-  
5 vided for under law or regulation, any person who falsely  
6 certifies pursuant to clause (i) shall be subject to a civil  
7 penalty under the Program Fraud Civil Remedies Act of  
8 1986 (31 U.S.C. 3801–3812).

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

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

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

5       “(D) The prohibitions of subparagraph (A), and re-  
6 medial measures provided for under subparagraphs (B)  
7 and (C) with regard to such prohibitions, shall be in addi-  
8 tion to, and not in lieu of, any other prohibitions, meas-  
9 ures, or liabilities that may arise under any other provision  
10 of law.

11       “(14)(A) Small business concerns participating in the  
12 program under subsection (b) and eligible to receive con-  
13 tracts pursuant to this subsection shall semiannually re-  
14 port to their assigned veterans business counselor the fol-  
15 lowing:

16               “(i) A listing of any agents, representatives, at-  
17 torneys, accountants, consultants, and other parties  
18 (other than employees) receiving compensation to as-  
19 sist in obtaining a Federal contract for such pro-  
20 gram participant.

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

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

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

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

22       “(B) The Administrator may, as a matter of discre-  
23 tion and on a nondelegable basis, waive the requirements  
24 of subparagraph (A) if requested to do so prior to the ac-  
25 tual relinquishment of ownership or control. In addition

1 to the requirement of the preceding sentence, a waiver  
2 may be given only if any of the following conditions exist:

3 “(i) It is necessary for the owners of the con-  
4 cern to surrender partial control of such concern on  
5 a temporary basis in order to obtain equity financ-  
6 ing.

7 “(ii) The head of the contracting agency for  
8 which the contract is being performed certifies that  
9 termination of the contract would severely impair at-  
10 tainment of the agency’s program objectives or mis-  
11 sions.

12 “(iii) Ownership and control of the concern that  
13 is performing the contract will pass to another small  
14 business concern that is a program participant, but  
15 only if the acquiring firm would otherwise be eligible  
16 to receive the award directly pursuant to this sub-  
17 section.

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

21 “(v) In order to raise equity capital, it is nec-  
22 essary for the owners of the concern upon whom eli-  
23 gibility was based to relinquish ownership of a ma-  
24 jority of the voting stock of such concern, but only  
25 if—

1           “(I) such concern has exited the eligible  
2           veterans business opportunity and development  
3           assistance program;

4           “(II) such owners will maintain ownership  
5           of the largest single outstanding block of voting  
6           stock (including stock held by affiliated par-  
7           ties); and

8           “(III) such owners will maintain control of  
9           daily business operations.

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

15          “(D) Notwithstanding any other provision of law, for  
16          the purposes of determining ownership and control of a  
17          concern under this section, any potential ownership inter-  
18          ests held by investment companies licensed under the  
19          Small Business Investment Act of 1958 shall be treated  
20          in the same manner as interests held by the individuals  
21          upon whom eligibility is based.

22          “(b)(1) There is established within the Administra-  
23          tion an eligible veterans business opportunity and develop-  
24          ment assistance program (hereinafter in this section re-  
25          ferred to as the ‘program’) which shall provide assistance

1 exclusively for small business concerns eligible to receive  
2 contracts pursuant to subsection (a). The program, and  
3 all other services and activities authorized under this sub-  
4 section and subsection (a), shall be managed by the Asso-  
5 ciate Administrator for Veterans Programs under the su-  
6 pervision of, and responsible to, the Administrator:

7           “(A) The program shall—

8                   “(i) assist small business concerns partici-  
9                   pating in the program (either through public or  
10                   private organizations) to develop and maintain  
11                   comprehensive business plans which set forth  
12                   the program participant’s specific business tar-  
13                   gets, objectives, and goals developed and main-  
14                   tained in conformity with subparagraph (D);

15                   “(ii) provide for such other nonfinancial  
16                   services as deemed necessary for the establish-  
17                   ment, preservation, and growth of small busi-  
18                   ness concerns participating in the program, in-  
19                   cluding (I) loan packaging, (II) financial coun-  
20                   seling, (III) marketing assistance, and (IV)  
21                   management assistance;

22                   “(iii) assist small business concerns par-  
23                   ticipating in the program to obtain equity and  
24                   debt financing;

1           “(iv) establish regular performance mon-  
2           itoring and reporting systems for small business  
3           concerns participating in the program to assure  
4           compliance with their business plans;

5           “(v) analyze and report the causes of suc-  
6           cess and failure of small business concerns par-  
7           ticipating in the program; and

8           “(vi) provide assistance necessary to help  
9           small business concerns participating in the  
10          program to procure surety bonds, including (I)  
11          the preparation of application forms required to  
12          receive a surety bond, (II) special management  
13          and technical assistance designed to meet spe-  
14          cific needs of small business concerns partici-  
15          pating in the program and which have received  
16          or are applying to receive a surety bond, and  
17          (III) preparation of all forms necessary to re-  
18          ceive a surety bond guarantee from the Admin-  
19          istration pursuant to title IV, part B of the  
20          Small Business Investment Act of 1958.

21          “(B) Small business concerns eligible to receive  
22          contracts pursuant to subsection (a) shall participate  
23          in the program.

1           “(C)(i) A small business concern participating  
2           in any program or activity conducted under the au-  
3           thority of this subsection shall be permitted contin-  
4           ued participation and eligibility in such program or  
5           activity for a period of 5 years from the date of cer-  
6           tification for program participation.

7           “(ii) Nothing contained in this subparagraph  
8           shall be deemed to prevent the Administration from  
9           instituting a termination or graduation pursuant to  
10          subparagraph (F) or (J) for issues unrelated to the  
11          expiration of any time period limitation.

12          “(D)(i) Promptly after certification under para-  
13          graph (2) a program participant shall submit a busi-  
14          ness plan (hereinafter in this section referred to as  
15          the ‘plan’) as described in clause (ii) of this subpara-  
16          graph for review by the veterans business counselor  
17          assigned to assist such program participant. The  
18          plan may be a revision of a preliminary business  
19          plan submitted by the program participant or re-  
20          quired by the Administration as a part of the appli-  
21          cation for certification under this section. Such plan,  
22          and subsequent modifications submitted under  
23          clause (iii) of this subparagraph, shall be approved



1 by the veterans business counselor prior to the pro-  
2 gram participant being eligible for award of a con-  
3 tract pursuant to subsection (a).

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

6 “(I) An analysis of market potential and  
7 other business analyses estimating the program  
8 participant’s prospects for profitable operations  
9 during the term of program participation and  
10 after graduation.

11 “(II) An analysis of the program partici-  
12 pant’s strengths and weaknesses with particular  
13 attention to financial, managerial, technical,  
14 and personnel conditions which are likely to im-  
15 pede small business concerns from receiving  
16 contracts other than those awarded under sub-  
17 section (a).

18 “(III) Specific targets, objectives, and  
19 goals for the business development of the pro-  
20 gram participant during the next and succeed-  
21 ing years utilizing the results of the analyses  
22 conducted pursuant to subclauses (I) and (II).

1           “(IV) A transition management plan out-  
2           lining specific steps to assure profitable busi-  
3           ness operations after graduation (to be incor-  
4           porated into the program participant’s plan  
5           during the first year of the transitional stage of  
6           program participation).

7           “(V) Estimates of contract awards pursu-  
8           ant to subsection (a) and from other sources  
9           which the program participant will require to  
10          meet the specific targets, objectives, and goals  
11          for the years covered by its plan. The estimates  
12          established shall be consistent with the provi-  
13          sions of subparagraph (I) and subsection (a).

14          “(iii) Each program participant shall annually  
15          review its currently approved plan with its veterans  
16          business counselor and modify such plan as may be  
17          appropriate. Any modified plan shall be submitted to  
18          the Administration for approval. The currently ap-  
19          proved plan shall be considered valid until such time  
20          as a modified plan is approved by the veterans busi-  
21          ness counselor. Annual reviews pertaining to years  
22          in the transitional stage of program participation  
23          shall require, as appropriate, a written verification  
24          that such program participant has complied with the  
25          requirements of subparagraph (I).

1           “(iv) Each program participant shall annually  
2           forecast its needs for contract awards under sub-  
3           section (a) for the next program year and the suc-  
4           ceeding program year during the review of its busi-  
5           ness plan, conducted pursuant to clause (iii). Such  
6           forecast shall be known as the section 30(a) contract  
7           support level and shall be included in the program  
8           participant’s business plan. Such forecast shall in-  
9           clude—

10                 “(I) the aggregate dollar value of contract  
11                 support to be sought under subsection (a), re-  
12                 flecting compliance with the requirements of  
13                 subparagraph (I),

14                 “(II) the types of contract opportunities  
15                 being sought, identified by Standard Industrial  
16                 Classification (SIC) Code or otherwise,

17                 “(III) such other information as may be  
18                 requested by the veterans business counselor to  
19                 provide effective business development assist-  
20                 ance to the program participant.

21                 “(E) A small business concern participating in  
22                 the program conducted under the authority of this  
23                 subsection and eligible for the award of contracts  
24                 pursuant to subsection (a) shall be denied all such  
25                 assistance if such concern—

1           “(i) voluntarily elects not to continue par-  
2           ticipation;

3           “(ii) participates in the program for a pe-  
4           riod in excess of the time limits prescribed by  
5           paragraph (6);

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

9           “(iv) is graduated pursuant to a gradua-  
10          tion proceeding conducted in accordance with  
11          subsection (a)(6).

12          “(F) For the purposes of this section, the terms  
13          ‘terminated’ or ‘termination’ mean the total denial  
14          or suspension of any assistance provided pursuant to  
15          this section prior to the graduation of the participat-  
16          ing small business concern pursuant to subpara-  
17          graph (H) or the expiration of the maximum pro-  
18          gram participation in terms prescribed by paragraph  
19          (6). An action for termination shall be based upon  
20          good cause, including—

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

1           “(ii) a demonstrated pattern of unjustified  
2 delinquent performance or terminations for de-  
3 fault with respect to contracts awarded under  
4 the authority of subsection (a);

5           “(iii) a demonstrated pattern of failing to  
6 make required submissions or responses to the  
7 Administration in a timely manner;

8           “(iv) the willful violation of any rule or  
9 regulation of the Administration pertaining to  
10 material issues;

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

15           “(vi) the conviction of the eligible veteran  
16 owner or an officer of the concern for any of-  
17 fense indicating a lack of business integrity in-  
18 cluding any conviction for embezzlement, theft,  
19 forgery, bribery, falsification or violation of sec-  
20 tion 16. For purposes of this clause, no termi-  
21 nation action shall be taken with respect to an  
22 eligible veteran owner solely because of the con-  
23 viction of an officer of the concern (who is other  
24 than an eligible veteran owner) unless such  
25 owner conspired with, abetted, or otherwise

1           knowingly acquiesced in the activity or omission  
2           that was the basis of such officer's conviction.

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

16          “(H) For the purposes of this section, the term  
17          ‘graduated’ or ‘graduation’ means that the program  
18          participant is recognized as successfully completing  
19          the program by substantially achieving the targets,  
20          objectives, and goals contained in the concern's busi-  
21          ness plan.

22          “(I)(i) During the developmental stage of its  
23          participation in the program, a program participant  
24          shall take all reasonable efforts within its control to  
25          attain the targets contained in its business plan for

1 contracts awarded other than pursuant to subsection  
2 (a) (hereinafter referred to as ‘business activity tar-  
3 gets’). Such efforts shall be made a part of the busi-  
4 ness plan and shall be sufficient in scope and dura-  
5 tion to satisfy the Administration that the program  
6 participant will engage in a reasonable marketing  
7 strategy that will maximize its potential to achieve  
8 its business activity targets.

9 “(ii) During the transitional stage of the pro-  
10 gram, a program participant shall be subject to reg-  
11 ulations regarding business activity targets that are  
12 promulgated by the Administration pursuant to  
13 clause (iii).

14 “(iii) The regulations referred to in clause (ii)  
15 shall—

16 “(I) establish business activity targets ap-  
17 plicable to program participants during the 4th  
18 and 5th year of program participation; such  
19 targets, for such period of time, shall reflect a  
20 reasonably consistent increase in contracts  
21 awarded other than pursuant to subsection (a),  
22 expressed as a percentage of total sales;

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

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

10           “(IV) require the Administration to review  
11           each program participant’s performance regard-  
12           ing attainment of business activity targets dur-  
13           ing periodic reviews of such participant’s busi-  
14           ness plan; and

15           “(V) authorize the Administration to take  
16           appropriate remedial measures with respect to a  
17           program participant that has failed to attain a  
18           required business activity target for the purpose  
19           of reducing such participant’s dependence on  
20           contracts awarded pursuant to subsection (a),  
21           including assisting the program participant to  
22           expand the dollar volume of its competitive  
23           business activity or limiting the dollar volume of  
24           contracts awarded to the program participant  
25           pursuant to subsection (a); except for actions



1           that would constitute a termination, remedial  
2           measures taken pursuant to this subclause shall  
3           not be reviewable pursuant to subsection (a)(6).

4       “(2)(A) The Associate Administrator for Veterans  
5 Programs shall be responsible for coordinating and formu-  
6 lating policies relating to Federal assistance to small busi-  
7 ness concerns eligible to receive contracts pursuant to sub-  
8 section (a).

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

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

17       “(D) A concern eligible for the award of contracts  
18 pursuant to this subsection shall remain eligible for such  
19 contracts if there is a transfer of ownership and control  
20 (as defined pursuant to subsection (a)(3)) to individuals  
21 who are determined to be eligible veterans pursuant to  
22 subsection (a). In the event of such a transfer, the con-  
23 cern, if not terminated or graduated, shall be eligible for  
24 a period of continued participation in the program not to  
25 exceed the time limitations prescribed in paragraph (6).

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

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

12               “(i) receive, review, and evaluate applications  
13               for certification pursuant to paragraphs (3) and (4)  
14               of subsection (a);

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

19               “(iii) render recommendations on such applica-  
20               tions to the Associate Administrator for Veterans  
21               Programs;

22               “(iv) review and evaluate financial statements  
23               and other submissions from concerns participating

1 in the program established by this subsection to as-  
2 certain continued eligibility to receive subcontracts  
3 pursuant to subsection (a);

4 “(v) make a request for the initiation of termi-  
5 nation or graduation proceedings, as appropriate,  
6 with the Associate Administrator for Veterans Pro-  
7 grams;

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

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

17 “(viii) implement such policy directives as may  
18 be issued by the Associate Administrator for Veter-  
19 ans Programs pursuant to subparagraph (H) re-  
20 garding, among other things, the geographic dis-  
21 tribution of concerns to be admitted to the program  
22 and the industrial make-up of such concerns.

23 “(G) An applicant shall not be denied admission into  
24 the program due solely to a determination by the Division

1 that specific contract opportunities are unavailable to as-  
2 sist in the development of such concern unless—

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

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

11 “(H) Thirty days before the conclusion of each fiscal  
12 year, the Director of the Division shall review all concerns  
13 that have been admitted into the program during the pre-  
14 ceding 12-month period. The review shall ascertain the  
15 number of entrants, their geographic distribution and in-  
16 dustrial classification. The Director shall also estimate the  
17 expected growth of the program during the next fiscal year  
18 and the number of additional veterans business coun-  
19 selors, if any, that will be needed to meet the anticipated  
20 demand for the program. The findings and conclusions of  
21 the Director shall be reported to the Associate Adminis-  
22 trator for Veterans Programs by September 30 of each  
23 year. Based on such report and such additional data as

1 may be relevant, the Associate Administrator shall, by Oc-  
2 tober 31 of each year, issue policy and program directives  
3 applicable to such fiscal year that—

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

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

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

22 “(I)(i) The Administration shall conduct an evalua-  
23 tion of a program participant’s eligibility for continued  
24 participation in the program whenever it receives specific

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

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

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

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

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

22 “(4) A program participant, if otherwise eligible,  
23 shall be qualified to receive the following assistance during  
24 the stages of program participation specified in paragraph  
25 (3):

1           “(A) Contract support pursuant to subsection  
2           (a).

3           “(B) Financial assistance pursuant to section  
4           7(a).

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

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

22          “(E) Transitional management business plan-  
23          ning training and technical assistance.

24          “(5) Program participants in the developmental stage  
25 of program participation shall be eligible for the assistance

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

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

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

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

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

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



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

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

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

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

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

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

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

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

1           “(1) to utilize, with their consent, the services  
2           and facilities of Federal agencies without reimburse-  
3           ment, and, with the consent of any State or political  
4           subdivision of a State, accept and utilize the services  
5           and facilities of such State or subdivision without re-  
6           imbursement;

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

12          “(3) to accept voluntary and uncompensated  
13          services, notwithstanding the provisions of section  
14          1342 of title 31, United States Code; and

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

1 authorized by section 5703 of such title for persons  
2 in the Government service employed intermittently,  
3 while so employed: *Provided, however,* That contracts  
4 for such employment may be renewed annually.”.

5 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

6 There is authorized to be appropriated the following  
7 amounts:

8 (1) For salaries and expenses of the Office of  
9 Veterans Programs of the Small Business Adminis-  
10 tration and its divisions \$4,000,000 per fiscal year  
11 for each of fiscal years 1998, 1999, and 2000.

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

15 (A) \$350,000 for fiscal year 1998;

16 (B) \$200,000 for fiscal year 1999; and

17 (C) \$175,000 for fiscal year 2000.

18 (3) To carry out section 8(b)(17) of the Small  
19 Business Act, as added by section 11 of this Act,  
20 \$1,250,000 per fiscal year for each of fiscal years  
21 1998, 1999, and 2000.

○