

109TH CONGRESS  
1ST SESSION

# H. R. 4474

To enhance the section 8(a) program of the Small Business Act.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2005

Mr. BARROW (for himself, Ms. VELÁZQUEZ, Ms. MOORE of Wisconsin, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. DAVIS of Alabama, Mr. CLAY, Mr. SCOTT of Georgia, Mrs. CHRISTENSEN, Mrs. JONES of Ohio, Mr. OWENS, Mr. GRIJALVA, Ms. BORDALLO, Mr. TOWNS, Mr. WYNN, Ms. KILPATRICK of Michigan, Mr. MEEKS of New York, Mr. CONYERS, Ms. MILLENDER-MCDONALD, Mr. CASE, Mr. DAVIS of Illinois, Ms. CORRINE BROWN of Florida, Ms. JACKSON-LEE of Texas, Mr. FORD, Mr. CUMMINGS, Mr. LEWIS of Georgia, Mr. AL GREEN of Texas, Mr. BUTTERFIELD, Mr. UDALL of New Mexico, Ms. LEE, Ms. BEAN, Mr. MICHAUD, Mr. LIPINSKI, Ms. MCKINNEY, and Ms. LINDA T. SÁNCHEZ of California) introduced the following bill; which was referred to the Committee on Small Business

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## A BILL

To enhance the section 8(a) program of the Small Business Act.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Minority-Owned Venture Empowerment Act of 2005”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.  
 Sec. 2. Findings.

#### TITLE I—PRE-8(A) PHASE

Sec. 101. Purpose.  
 Sec. 102. Technical assistance program.

#### TITLE II—MODIFICATIONS TO 8(A) PROGRAM

Sec. 201. Purpose.  
 Sec. 202. Administration of section 8(a) program.

#### TITLE III—POST-8(A) ASSISTANCE

Sec. 1. Purpose.  
 Sec. 2. Retention of status after completion of 8(a) program.  
 Sec. 3. Restricted competition for small businesses owned and controlled by socially and economically disadvantaged individuals.

### 3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Minority-owned businesses play a vital role  
 6 in shaping the Nation's economy, having an impact  
 7 in communities across the country, generating  
 8 \$700,000,000 in revenue, and employing nearly  
 9 5,000,000 people.

10 (2) Businesses owned by minorities have a  
 11 rapid growth rate, as much as 8.5 percent annually,  
 12 which is three times higher than the average for  
 13 United States firms, and minority owned firms represent  
 14 15 percent of all United States businesses.

15 (3) Despite the phenomenal growth of minority  
 16 entrepreneurship, it lags behind mainstream businesses,  
 17 facing numerous barriers and obstacles.

1           (4) While the purchasing power of the Federal  
2           Government is an effective way to expand entrepre-  
3           neurship, minority business owners continue to have  
4           limited opportunities to break into the Federal mar-  
5           ketplace, largely due to several factors including a  
6           lack of credit, denial of contracts, and unequal treat-  
7           ment by large contractors.

8           (5) The section 8(a) program of the Small  
9           Business Administration acts as an important cata-  
10          lyst for helping minority entrepreneurs overcome  
11          these barriers and aiding in their overall growth and  
12          development.

13          (6) From its inception, the program has been  
14          responsible for the growth of more than 20,000 com-  
15          panies in every State across the Nation, including  
16          the District of Columbia, Puerto Rico and the Virgin  
17          Islands, which have received over \$100 billion in  
18          government contracts and are currently employing  
19          more than 200,000 people.

20          (7) In the nearly 20 years since the last com-  
21          prehensive modernization of the 8(a) program, the  
22          Federal marketplace has changed significantly.

23          (8) The changes in the buying strategies of  
24          Federal agencies have cost minority entrepreneurs  
25          billions of dollars in lost contracting opportunities,

1 and last year alone the section 8(a) program suf-  
 2 fered a record loss of \$2,400,000,000, a drop of one-  
 3 fifth in the program level leaving a significant num-  
 4 ber of minority business owners locked out of the  
 5 Federal marketplace.

6 (9) The section 8(a) program, which bridges the  
 7 entrepreneurial divide, is important to minority busi-  
 8 ness development, and to operate at its fullest poten-  
 9 tial, it must be supported by agency heads, modern-  
 10 ized by Congress on a regular basis, and adequately  
 11 funded.

## 12 **TITLE I—PRE-8(a) PHASE**

### 13 **SEC. 101. PURPOSE.**

14 The purpose of this title is as follows:

15 (1) To establish a developmental training initia-  
 16 tive to provide small business concerns with the  
 17 technical assistance necessary to navigate the Fed-  
 18 eral marketplace.

19 (2) To ensure that owners of small business  
 20 concerns are adequately prepared to perform con-  
 21 tracts upon entrance into the Federal marketplace.

### 22 **SEC. 102. TECHNICAL ASSISTANCE PROGRAM.**

23 (a) ESTABLISHMENT.—The Administrator of the  
 24 Small Business Administration shall establish a program  
 25 to be know as the “Pre-8(a) Program” (in this section

1 referred to as the “Program”) to provide technical assist-  
2 ance to small business concerns with respect to the receipt  
3 and performance of Federal procurement contracts.

4 (b) ELIGIBILITY.—

5 (1) OWNERSHIP AND NET WORTH.—To be eligi-  
6 ble to participate in the Program under this section,  
7 a small business concern shall—

8 (A) be owned and controlled by one or  
9 more socially and economically disadvantaged  
10 individual; and

11 (B) have a net worth that does not exceed  
12 the maximum level specified pursuant to sub-  
13 section (g).

14 (2) APPLICATION.—To participate in the Pro-  
15 gram under this section, a small business concern  
16 shall submit an application describing the ownership,  
17 control, and social and economic disadvantage of the  
18 small business concern.

19 (3) NONAPPLICABILITY OF OTHER FACTORS.—

20 In approving a small business concern for participa-  
21 tion in the Program, the Administrator shall not  
22 consider the following factors:

23 (A) The length of time for which the small  
24 business concern has been in business in its pri-  
25 mary industry classification.

1 (B) The prospects for success of the small  
2 business concern in competing in the private  
3 sector.

4 (C) The access to credit and capital of the  
5 small business concern.

6 (D) The technical and managerial experi-  
7 ence of the managers of the small business con-  
8 cern.

9 (E) The operating history of the small  
10 business concern.

11 (F) The demonstrated technical knowledge  
12 of the small business concern.

13 (G) The record of performance on Federal  
14 and private sector contracts of the small busi-  
15 ness concern.

16 (H) The financial history of the small busi-  
17 ness concern.

18 (I) Any outside employment of the owner  
19 of the small business concern.

20 (c) NEEDS ASSESSMENT.—

21 (1) ASSESSMENT REQUIRED.—Not less than  
22 once every two years, the Administrator shall con-  
23 duct a needs assessment of each small business con-  
24 cern participating in the Program under this section.

25 Such needs assessment shall include the following:

1           (A) An assessment of the training and  
2           skills of the owner of the small business concern  
3           (including business management training, mar-  
4           keting, accounting, bookkeeping, and Federal  
5           contracting).

6           (B) A determination of the likelihood that  
7           the small business concern will receive Federal  
8           prime contracts in its primary industry or in  
9           associated industry areas through technical as-  
10          sistance and development provided through the  
11          Program.

12          (2) TERMINATION OF PARTICIPATION.—If the  
13          Administrator determines, pursuant to a needs as-  
14          sessment, that a participating small business con-  
15          cern is not making progress toward financial sound-  
16          ness and participation in Federal contracts, the Ad-  
17          ministrator may terminate the participation of the  
18          small business concern in the Program.

19          (d) NONELIGIBILITY FOR SOLE SOURCE OR COM-  
20          PETITIVE CONTRACTS.—A small business concern partici-  
21          pating in the Program shall not be eligible to be awarded  
22          a Federal contract awarded using procedures other than  
23          competitive procedures or a contract awarded using com-  
24          petitive procedures under section 8(a) of the Small Busi-  
25          ness Act (15 U.S.C. 637(a)).

1       (e) AGREEMENT FOR FACILITATION OF TRAINING.—

2     In order to facilitate the provision of technical assistance  
3     under the Program, the Administrator shall enter into an  
4     agreement with the Secretary of Defense regarding the  
5     use of Procurement Technical Assistance Centers. The  
6     Administrator may enter into such other agreements with  
7     other providers of technical assistance as the Adminis-  
8     trator finds appropriate.

9       (f) COMPLETION OF PROGRAM PARTICIPATION.—A

10    small business concern shall have completed the Program  
11    if the Administrator determines that it is financially sound  
12    and has successfully performed a Federal contract.

13       (g) NET WORTH REQUIREMENTS.—

14           (1) ESTABLISHMENT OF MAXIMUM LEVELS.—

15       Not later than 180 days, the Administrator shall es-  
16       tablish, for each industry classification, a maximum  
17       level of net worth for a small business entering the  
18       Program. In establishing such maximum levels, the  
19       Administrator shall take into consideration the cap-  
20       ital needs of each industry.

21           (2) TREATMENT OF REAL ESTATE.—In deter-

22       mining the net worth of a small business concern for  
23       purposes of this subsection, the Administrator shall  
24       not include the value of any real estate owned by the  
25       owner of the small business concern.



1           (3) TRANSITIONAL RULE.—Until the Adminis-  
2           trator establishes maximum net worth levels pursu-  
3           ant to paragraph (1), the maximum net worth of a  
4           small business eligible to enter the Program shall  
5           not exceed \$750,000.

6           **TITLE II—MODIFICATIONS TO**  
7           **8(a) PROGRAM**

8           **SEC. 201. PURPOSE.**

9           The purpose of this title is as follows:

10           (1) to ensure that the section 8(a) program of  
11           the Small Business Act continues as an effective de-  
12           velopmental business tool that aids in the further  
13           growth of minority entrepreneurs.

14           (2) To enhance the section 8(a) program to ac-  
15           curately reflect the dynamics of the modern procure-  
16           ment system so as to better equip minority small  
17           businesses to obtain contracts.

18           **SEC. 202. ADMINISTRATION OF SECTION 8(A) PROGRAM.**

19           (a) MODIFICATIONS TO 8(A) PROGRAM.—Notwith-  
20           standing any provision of the Small Business Act (15  
21           U.S.C. 631 et seq.), the Administrator shall administer  
22           the program under section 8(a) of such Act with the fol-  
23           lowing modifications:

24           (1) PROGRAM PARTICIPATION REQUIREMENT.—

1 (A) REQUIREMENT.—No small business  
2 concern shall be eligible to participate in the  
3 program under section 8(a) of the Small Busi-  
4 ness Act (15 U.S.C. 637(a)) before completing  
5 the Program established under section 2

6 (B) WAIVER OF PARTICIPATION REQUIRE-  
7 MENT.—The requirement under subparagraph  
8 (A) may be waived if the Administrator deter-  
9 mines that a small business concern is finan-  
10 cially sound and has successfully completed a  
11 Federal contract.

12 (2) LIMITATION ON AGGREGATE VALUE OF  
13 CONTRACTS.—The aggregate value of the contracts  
14 a participant in the program under such section may  
15 enter into shall not exceed \$100,000,000.

16 (3) ECONOMIC DISADVANTAGE.—

17 (A) DEADLINE FOR DETERMINATION OF  
18 MAXIMUM LEVELS OF NET WORTH.—Not later  
19 than 180 days after the date of the enactment  
20 of this Act, the Administrator shall establish,  
21 for each industry classification, a maximum  
22 level of net worth for an economically disadvan-  
23 taged individual. In establishing such maximum  
24 levels, the Administrator shall take into consid-  
25 eration the capital needs of each industry.

1 (B) DETERMINATION FOR TERM OF PRO-  
2 GRAM.—For the purpose of this section, an in-  
3 dividual who has been determined by the Ad-  
4 ministrator to be economically disadvantaged at  
5 the time of program entry shall be deemed to  
6 be economically disadvantaged for the term of  
7 the program.

8 (C) PERSONAL NET WORTH.—In deter-  
9 mining personal net worth for the purpose of  
10 program entry, the Administrator shall exclude  
11 from such determination the following:

12 (i) The value of any investment of a  
13 disadvantaged owner have in the small  
14 business concern, except that such value  
15 shall be taken into account under this  
16 paragraph when comparing such concerns  
17 to other concerns in the same business  
18 area that are owned by other than socially  
19 disadvantaged persons.

20 (ii) The equity of a disadvantaged  
21 owner in a primary personal residence.

22 (D) MAXIMUM NET WORTH.—The Admin-  
23 istrator shall not establish a maximum net  
24 worth that prohibits program entry of less than  
25 \$750,000.

1 (b) MODIFICATIONS TO DEVELOPMENTAL PHASE.—

2 (1) ELIGIBILITY FOR RESTRICTED COMPETI-  
3 TION CONTRACTS.—A small business concern par-  
4 ticipating in the developmental phase of such pro-  
5 gram, shall be eligible to enter into a contract  
6 awarded using procedures other than competitive  
7 procedures that—

8 (A) is assigned an industrial classification  
9 code for manufacturing and is valued at not  
10 more than \$10,000,000; or

11 (B) is assigned an industrial classification  
12 code other than a code for manufacturing and  
13 is valued at not more than \$6,000,000.

14 (2) DURATION OF PHASE.—A small business  
15 concern participating in such program shall complete  
16 the developmental phase of the program in six years.

17 (c) MODIFICATIONS TO TRANSITIONAL PHASE.—

18 (1) REDUCTION OF SOLE SOURCE CON-  
19 TRACTS.—In each year of the transitional phase, a  
20 small business concern participating in such pro-  
21 gram shall—

22 (A) reduce by 25 percent the aggregate  
23 value of the contracts it performs that are  
24 awarded using procedures other than competi-  
25 tive procedures; and

1 (B) increase the aggregate value of the  
2 contracts (awarded under this section or other-  
3 wise) it performs that are awarded using com-  
4 petitive procedures.

5 (2) ELIGIBILITY FOR RESTRICTED COMPETI-  
6 TION CONTRACTS.—A small business concern par-  
7 ticipating in the transitional phase of such program,  
8 shall be eligible to enter into a contract awarded  
9 using procedures other than competitive procedures  
10 that—

11 (A) is assigned an industrial classification  
12 code for manufacturing and is valued at not  
13 more than \$10,000,000; or

14 (B) is assigned an industrial classification  
15 code other than a code for manufacturing and  
16 is valued at not more than \$6,000,000.

17 (d) EFFECTIVE DATE FOR MODIFICATIONS TO THE  
18 8(A) PROGRAM.—

19 (1) IN GENERAL.—This Act shall apply with re-  
20 spect to small business concerns that apply to the  
21 program under section 8(a) of the Small Business  
22 Act after the date of the enactment of this Act.

23 (2) TRANSITIONAL RULE.—A small business  
24 concern participating in the program under section

1       8(a) of the Small Business Act (15 U.S.C. 637(a))  
2       may participate for not more than ten years.

3                   **TITLE III—POST-8(a)**  
4                   **ASSISTANCE**

5   **SEC. 1. PURPOSE.**

6       The purpose of this title is as follows:

7           (1) To provide a restricted contracting competi-  
8       tion program limited to small business concerns that  
9       have successfully graduated from the section 8(a)  
10      program and certified small disadvantaged busi-  
11      nesses.

12          (2) To enable 8(a) program graduates to utilize  
13      the expertise they have developed during the pro-  
14      gram.

15          (3) To increase minority business representa-  
16      tion in the Federal marketplace.

17   **SEC. 2. RETENTION OF STATUS AFTER COMPLETION OF**  
18                   **8(A) PROGRAM.**

19      A small business concern that successfully completes  
20      the program under section 8(a) of the Small Business Act  
21      (15 U.S.C. 637(a)) shall be considered a small disadvan-  
22      taged business for purposes of Government contracting  
23      unless the ownership or control of the small business con-  
24      cern changes.

1 **SEC. 3. RESTRICTED COMPETITION FOR SMALL BUSI-**  
2 **NESSES OWNED AND CONTROLLED BY SO-**  
3 **CIALY AND ECONOMICALLY DISADVAN-**  
4 **TAGED INDIVIDUALS.**

5 (a) **AUTHORITY TO RESTRICT COMPETITION.**—Sec-  
6 tion 8 of the Small Business Act (15 U.S.C. 637(a)) is  
7 amended by adding at the end the following new sub-  
8 section:

9 “(o) **RESTRICTED COMPETITION FOR SMALL BUSI-**  
10 **NESSES OWNED AND CONTROLLED BY SOCIALLY AND**  
11 **ECONOMICALLY DISADVANTAGED INDIVIDUALS.**—

12 “(1) **AUTHORITY TO RESTRICT COMPETITION.**—

13 In accordance with this subsection, a contracting of-  
14 ficer may restrict competition for any contract for  
15 the procurement of goods or services by the Federal  
16 Government to small business concerns owned and  
17 controlled by socially and economically disadvan-  
18 taged individuals, if—

19 “(A) each of the concerns is not less than  
20 51 percent owned by one or more socially and  
21 economically disadvantaged individuals (and  
22 such ownership is determined without regard to  
23 any community property law);

24 “(B) the contracting officer has a reason-  
25 able expectation that two or more small busi-  
26 ness concerns owned and controlled by socially

1 and economically disadvantaged individuals will  
2 submit offers for the contract;

3 “(C) the contract is for the procurement of  
4 goods or services with respect to an industry  
5 identified by the Secretary of Commerce as  
6 underrepresented by small business concerns  
7 owned and controlled by socially and economi-  
8 cally disadvantaged individuals;

9 “(D) the anticipated award price of the  
10 contract (including options) does not exceed—

11 “(i) \$10,000,000, in the case of a con-  
12 tract assigned an industrial classification  
13 code for manufacturing; or

14 “(ii) \$6,000,000, in the case of all  
15 other contracts;

16 “(E) in the estimation of the contracting  
17 officer, the contract award can be made at a  
18 fair and reasonable price; and

19 “(F) each of the concerns—

20 “(i) is certified by a Federal agency,  
21 a State government, or a national certi-  
22 fying entity approved by the Adminis-  
23 trator, as a small business concern owned  
24 and controlled by socially and economically  
25 disadvantaged individuals; or



1 “(ii) certifies to the contracting officer  
2 that it is a small business concern owned  
3 and controlled by socially and economically  
4 disadvantaged individuals and provides  
5 adequate documentation, in accordance  
6 with standards established by the Adminis-  
7 tration, to support such certification.

8 “(2) ENFORCEMENT; PENALTIES.—

9 “(A) VERIFICATION OF ELIGIBILITY.—In  
10 carrying out this subsection, the Administrator  
11 shall establish procedures relating to—

12 “(i) the filing, investigation, and dis-  
13 position by the Administration of any chal-  
14 lenge to the eligibility of a small business  
15 concern to receive assistance under this  
16 subsection (including a challenge, filed by  
17 an interested party, relating to the veracity  
18 of a certification made or information pro-  
19 vided to the Administration by a small  
20 business concern under paragraph (1)(F));  
21 and

22 “(ii) verification by the Administrator  
23 of the accuracy of any certification made  
24 or information provided to the Administra-

tion by a small business concern under paragraph (1)(F).

“(B) EXAMINATIONS.—The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (1)(F).

“(C) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by socially and economically disadvantaged individuals for purposes of this subsection, shall be subject to—

“(i) section 1001 of title 18, United States Code; and

“(ii) sections 3729 through 3733 of title 31, United States Code.

“(3) PROVISION OF DATA.—Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Adminis-

1       trator determines to be necessary to carry out this  
2       subsection.

3               “(4) DEFINITIONS.—In this subsection, the fol-  
4       lowing definitions apply:

5               “(A) CONTRACTING OFFICER.—The term  
6       ‘contracting officer’ has the meaning given such  
7       term in section 27(f)(5) of the Office of Federal  
8       Procurement Policy Act (41 U.S.C. 423(f)(5)).

9               “(B) SMALL BUSINESS CONCERN OWNED  
10       AND CONTROLLED BY SOCIALLY AND ECONOMI-  
11       CALLY DISADVANTAGED INDIVIDUALS.—The  
12       term ‘small business concern owned and con-  
13       trolled by socially and economically disadvan-  
14       taged individuals’ has the meaning given such  
15       term under subsection (d)(3)(C).”.

16       (b) EFFECTIVE DATE.—The amendments made by  
17       this section shall apply with respect to a contracts an-  
18       nounced after the date of the enactment of this Act.

○