

111TH CONGRESS  
1ST SESSION

# H. R. 4343

To establish in the Department of Commerce the Minority Business Development Program to provide qualified minority businesses with technical assistance, loan guarantees, and contracting opportunities, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Mr. RUSH introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Oversight and Government Reform, 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 establish in the Department of Commerce the Minority Business Development Program to provide qualified minority businesses with technical assistance, loan guarantees, and contracting opportunities, 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 “Minority Business De-  
5       velopment Improvements Act of 2009”.

1 **SEC. 2. MINORITY BUSINESS DEVELOPMENT PROGRAM.**

2       The Director of the Minority Business Development  
3 Agency shall establish the Minority Business Development  
4 Program (hereinafter in this Act referred to as the “Pro-  
5 gram”) to assist qualified minority businesses. The Pro-  
6 gram shall provide to such businesses the following:

- 7           (1) Technical assistance.
- 8           (2) Loan guarantees.
- 9           (3) Contract procurement assistance.

10 **SEC. 3. QUALIFIED MINORITY BUSINESS.**

11       (a) CERTIFICATION.—For purposes of the Program,  
12 the Director may certify as a qualified minority business  
13 any entity that satisfies each of the following:

- 14           (1) Not less than 51 percent of the entity is di-  
15 rectly and unconditionally owned or controlled by  
16 historically disadvantaged individuals.
- 17           (2) Each officer or other individual who exer-  
18 cises control over the regular operations of the entity  
19 is a historically disadvantaged individual.
- 20           (3) The net worth of each principal of the enti-  
21 ty is not greater than \$2,000,000. (The equity of a  
22 disadvantaged owner in a primary personal residence  
23 shall be considered in this calculation.)
- 24           (4) The principal place of business of the entity  
25 is in the United States.

1           (5) Each principal of the entity maintains good  
2           character in the determination of the Director.

3           (6) The entity engages in competitive and bona  
4           fide commercial business operations in not less than  
5           one sector of industry that has a North American  
6           Industry Classification System code.

7           (7) The entity submits reports to the Director  
8           at such time, in such form, and containing such in-  
9           formation as the Director may require.

10          (8) Any additional requirements that the Direc-  
11          tor determines appropriate.

12          (b) TERM OF CERTIFICATION.—A certification under  
13          this section shall be for a term of 5 years and may not  
14          be renewed.

15       **SEC. 4. TECHNICAL ASSISTANCE.**

16          (a) IN GENERAL.—In carrying out the Program, the  
17          Director may provide to qualified minority businesses  
18          technical assistance with regard to the following:

19               (1) Writing business plans.

20               (2) Marketing.

21               (3) Management.

22               (4) Securing sufficient financing for business  
23          operations.

1 (b) CONTRACT AUTHORITY.—The Director may enter  
 2 into agreements with persons to provide technical assist-  
 3 ance under this section.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
 5 are authorized to be appropriated \$200,000,000 to the Di-  
 6 rector to carry out this section. Such sums shall remain  
 7 available until expended.

8 **SEC. 5. LOAN GUARANTEES.**

9 (a) IN GENERAL.—Subject to subsection (b), the Di-  
 10 rector may guarantee up to 90 percent of the amount of  
 11 a loan made to a qualified minority business to be used  
 12 for business purposes, including the following:

13 (1) Purchasing essential equipment.

14 (2) Payroll expenses.

15 (3) Purchasing facilities.

16 (4) Renovating facilities.

17 (b) TERMS AND CONDITIONS.—

18 (1) IN GENERAL.—The Director may make  
 19 guarantees under this section for projects on such  
 20 terms and conditions as the Director determines ap-  
 21 propriate, after consultation with the Secretary of  
 22 the Treasury, in accordance with this section.

23 (2) REPAYMENT.—No guarantee shall be made  
 24 under this section unless the Director determines  
 25 that there is reasonable prospect of repayment of the

1 principal and interest on the obligation by the bor-  
2 rower.

3 (3) DEFAULTS.—

4 (A) PAYMENT BY DIRECTOR.—

5 (i) IN GENERAL.—If a borrower de-  
6 faults on the obligation (as defined in reg-  
7 ulations promulgated by the Director and  
8 specified in the guarantee contract), the  
9 holder of the guarantee shall have the  
10 right to demand payment of the unpaid  
11 amount from the Director.

12 (ii) PAYMENT REQUIRED.—Within  
13 such period as may be specified in the  
14 guarantee or related agreements, the Di-  
15 rector shall pay to the holder of the guar-  
16 antee the unpaid interest on, and unpaid  
17 principal of the obligation as to which the  
18 borrower has defaulted, unless the Director  
19 finds that there was no default by the bor-  
20 rower in the payment of interest or prin-  
21 cipal or that the default has been rem-  
22 edied.

23 (iii) FORBEARANCE.—Nothing in this  
24 paragraph precludes any forbearance by  
25 the holder of the obligation for the benefit

1 of the borrower which may be agreed upon  
2 by the parties to the obligation and ap-  
3 proved by the Director.

4 (B) SUBROGATION.—

5 (i) IN GENERAL.—If the Director  
6 makes a payment under subparagraph (A),  
7 the Director shall be subrogated to the  
8 rights of the recipient of the payment as  
9 specified in the guarantee or related agree-  
10 ments including, where appropriate, the  
11 authority (notwithstanding any other pro-  
12 vision of law) to—

13 (I) complete, maintain, operate,  
14 lease, or otherwise dispose of any  
15 property acquired pursuant to such  
16 guarantee or related agreements; or

17 (II) permit the borrower, pursu-  
18 ant to an agreement with the Direc-  
19 tor, to continue to pursue the pur-  
20 poses of the project if the Director de-  
21 termines this to be in the public inter-  
22 est.

23 (ii) SUPERIORITY OF RIGHTS.—The  
24 rights of the Director, with respect to any  
25 property acquired pursuant to a guarantee

1 or related agreements, shall be superior to  
2 the rights of any other person with respect  
3 to the property.

4 (iii) TERMS AND CONDITIONS.—A  
5 guarantee agreement shall include such de-  
6 tailed terms and conditions as the Director  
7 determines appropriate to—

8 (I) protect the interests of the  
9 United States in the case of default;  
10 and

11 (II) have available all the patents  
12 and technology necessary for any per-  
13 son selected, including the Director, to  
14 complete and operate the project.

15 (C) PAYMENT OF PRINCIPAL AND INTER-  
16 EST BY DIRECTOR.—With respect to any obliga-  
17 tion guaranteed under this section, the Director  
18 may enter into a contract to pay, and pay, hold-  
19 ers of the obligation, for and on behalf of the  
20 borrower, from funds appropriated for that pur-  
21 pose, the principal and interest payments which  
22 become due and payable on the unpaid balance  
23 of the obligation if the Director finds that—

24 (i)(I) the borrower is unable to meet  
25 the payments and is not in default;

1 (II) it is in the public interest to  
2 permit the borrower to continue to  
3 pursue the purposes of the project;  
4 and

5 (III) the probable net benefit to  
6 the Federal Government in paying the  
7 principal and interest will be greater  
8 than that which would result in the  
9 event of a default;

10 (ii) the amount of the payment that  
11 the Director is authorized to pay shall be  
12 no greater than the amount of principal  
13 and interest that the borrower is obligated  
14 to pay under the agreement being guaran-  
15 teed; and

16 (iii) the borrower agrees to reimburse  
17 the Director for the payment (including in-  
18 terest) on terms and conditions that are  
19 satisfactory to the Director.

20 (D) ACTION BY ATTORNEY GENERAL.—

21 (i) NOTIFICATION.—If the borrower  
22 defaults on an obligation, the Director  
23 shall notify the Attorney General of the de-  
24 fault.



1                   (ii) RECOVERY.—On notification, the  
2                   Attorney General shall take such action as  
3                   is appropriate to recover the unpaid prin-  
4                   cipal and interest due from—

5                   (I) such assets of the defaulting  
6                   borrower as are associated with the  
7                   obligation; or

8                   (II) any other security pledged to  
9                   secure the obligation.

10               (4) FEES.—

11               (A) IN GENERAL.—The Director shall  
12               charge and collect fees for guarantees in  
13               amounts the Director determines are sufficient  
14               to cover applicable administrative expenses, not  
15               to exceed 1 percent of the amount guaranteed.

16               (B) AVAILABILITY.—Fees collected under  
17               this paragraph shall—

18                   (i) be deposited by the Director into  
19                   the Treasury; and

20                   (ii) remain available until expended,  
21                   subject to such other conditions as are con-  
22                   tained in annual appropriations Acts.

23               (c) CREDIT REQUIREMENTS.—To receive a loan  
24               guaranteed under this section a qualified minority busi-  
25               ness shall—

1           (1) be in good standing with regard to the cred-  
 2           it of that business in the determination of the Direc-  
 3           tor;

4           (2) have received technical assistance under sec-  
 5           tion 4; and

6           (3) submit reports, at such time, in such form,  
 7           and containing such information as the Director  
 8           may require regarding the credit of the business.

9           (d) LIMITS ON GUARANTEE AMOUNTS.—

10           (1) MAXIMUM AMOUNT OF GUARANTEE.—The  
 11           Director may guarantee not more than \$450,000 of  
 12           any loan under this section.

13           (2) MAXIMUM GROSS LOAN AMOUNT.—A loan  
 14           guaranteed under this section may not be for a gross  
 15           loan amount in excess of \$500,000.

16           (e) AUTHORIZATION OF APPROPRIATIONS.—There  
 17           are authorized to be appropriated to the Director not more  
 18           than \$500,000,000 to carry out this section during fiscal  
 19           years 2011 through 2016.

20           **SEC. 6. SET-ASIDE CONTRACTING OPPORTUNITIES.**

21           (a) IN GENERAL.—The Director may enter into  
 22           agreements with the United States Government and any  
 23           department, agency, or officer thereof having procurement  
 24           powers for purposes of providing for the fulfillment of pro-

1 curement contracts and providing opportunities for quali-  
2 fied minority businesses with regard to such contracts.

3 (b) QUALIFICATIONS ON PARTICIPATION.—The Di-  
4 rector shall by rule establish requirements for partici-  
5 tion under this section by a qualified minority business  
6 in a contract.

7 (c) ANNUAL LIMIT ON NUMBER OF CONTRACTS PER  
8 QUALIFIED MINORITY BUSINESS.—A qualified minority  
9 business may not participate under this section in con-  
10 tracts in an amount that exceeds \$10,000,000 for goods  
11 and services each fiscal year.

12 (d) LIMITS ON CONTRACT AMOUNTS.—

13 (1) GOODS AND SERVICES.—Except as provided  
14 in paragraph (2), a contract for goods and services  
15 under this section may not exceed \$6,000,000.

16 (2) MANUFACTURING AND CONSTRUCTION.—A  
17 contract for manufacturing and construction services  
18 under this section may not exceed \$10,000,000.

19 **SEC. 7. TERMINATION FROM THE PROGRAM.**

20 The Director may terminate a qualified minority  
21 business from the Program for any violation of a require-  
22 ment of sections 3 through 6 of this Act by that qualified  
23 minority business, including the following:

1           (1) Conduct by a principal of the qualified mi-  
2           nority business that indicates a lack of business in-  
3           tegrity.

4           (2) Willful failure to comply with applicable  
5           labor standards and obligations.

6           (3) Consistent failure to tender adequate per-  
7           formance with regard to contracts under the Pro-  
8           gram.

9           (4) Failure to obtain and maintain relevant cer-  
10          tifications.

11          (5) Failure to pay outstanding obligations owed  
12          to the Federal Government.

13 **SEC. 8. REPORTS.**

14          (a) REPORT OF THE DIRECTOR.—Not later than Oc-  
15          tober 1, 2011, and annually thereafter, the Director shall  
16          submit to the Committee on Energy and Commerce of the  
17          House of Representatives and the Committee on Com-  
18          merce, Science, and Transportation of the Senate a report  
19          describing the activities of the Director during the pre-  
20          ceding year with respect to the Program.

21          (b) REPORT OF THE SECRETARY OF COMMERCE.—  
22          Not later than October 1, 2011, and annually thereafter,  
23          the Secretary of Commerce shall submit to the Committee  
24          on Energy and Commerce of the House of Representatives  
25          and the Committee on Commerce, Science, and Transpor-

1 tation of the Senate a report describing the activities the  
2 Secretary engaged in during the preceding year to build  
3 wealth among historically disadvantaged individuals.

4 **SEC. 9. DEFINITIONS.**

5 In this Act:

6 (1) The term “historically disadvantaged indi-  
7 vidual” means any individual who is a member of a  
8 group that is designated as eligible to receive assist-  
9 ance under section 1400.1 of title 15 of the Code of  
10 Federal Regulations, as in effect on January 1,  
11 2009.

12 (2) The term “principal” means any person  
13 that the Director determines to exercise significant  
14 control over the regular operations of a business en-  
15 tity.

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