

111TH CONGRESS
2D SESSION

S. 3458

To improve the program under section 8(a) of the Small Business Act and to establish a surety bond pilot program.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2010

Ms. LANDRIEU (for herself and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To improve the program under section 8(a) of the Small Business Act and to establish a surety bond pilot program.

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 “Section 8(a) Improve-
5 ments Act of 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Despite the significant progress businesses
9 owned by socially and economically disadvantaged
10 individuals have made as a result of the business de-

1 velopment program under section 8(a) of the Small
2 Business Act (15 U.S.C. 637(a)), such businesses
3 remain subject to discrimination that creates sub-
4 stantial barriers to success in the marketplace. The
5 business development program under section 8(a) of
6 the Small Business Act reflects the commitment of
7 the Nation to eradicating discriminatory barriers to
8 the formation and development of viable businesses
9 by socially and economically disadvantaged individ-
10 uals.

11 (2) Recent evidence presented in Congressional
12 hearings, roundtables, and academic studies dem-
13 onstrates, among other things, the following:

14 (A) Significant disparities still exist be-
15 tween the number, size, and income of busi-
16 nesses owned by socially and economically dis-
17 advantaged individuals and other businesses.
18 These disparities remain even after controlling
19 for factors such as industry, geography, edu-
20 cation, age, and labor market status.

21 (B) Discrimination still limits the ability of
22 socially and economically disadvantaged individ-
23 uals to access capital. Socially and economically
24 disadvantaged individuals are more often denied
25 loans than individuals who are not minorities,

1 and often pay higher rates of interest on small
2 business loans.

3 (C) Socially and economically disadvan-
4 tagged individuals who own businesses often ex-
5 perience—

6 (i) discrimination from prime contrac-
7 tors and exclusion from critical business
8 networks; and

9 (ii) discrimination by bonding compa-
10 nies and suppliers that impedes the ability
11 of the businesses to compete equally for
12 Government contracts.

13 **SEC. 3. DEFINITIONS.**

14 In this Act, the terms “Administration” and “Admin-
15 istrator” means the Small Business Administration and
16 the Administrator thereof, respectively.

17 **SEC. 4. PROGRAMS FOR SOCIALLY AND ECONOMICALLY**
18 **DISADVANTAGED SMALL BUSINESS CON-**
19 **CERNS.**

20 (a) NET WORTH THRESHOLD.—

21 (1) IN GENERAL.—Section 8(a)(6)(A) of the
22 Small Business Act (15 U.S.C. 637(a)(6)(A)) is
23 amended—

24 (A) by inserting “(i)” after “(6)(A)”;

1 (B) by striking “In determining the degree
 2 of diminished credit” and inserting the fol-
 3 lowing:

4 “(ii)(I) In determining the degree of diminished cred-
 5 it”;

6 (C) by striking “In determining the eco-
 7 nomic disadvantage” and inserting the fol-
 8 lowing:

9 “(iii) In determining the economic disadvantage”;
 10 and

11 (D) by inserting after clause (ii)(I), as so
 12 designated by this section, the following:

13 “(II)(aa) Not later than 1 year after the date of en-
 14 actment of the Section 8(a) Improvements Act of 2010,
 15 the Administrator shall—

16 “(AA) assign each North American Industry
 17 Classification System industry code to a category de-
 18 scribed in item (cc); and

19 “(BB) for each category described in item (cc),
 20 establish a maximum net worth for the socially dis-
 21 advantaged individuals who own or control small
 22 business concerns in the category that participate in
 23 the program under this subsection.

24 “(bb) The maximum net worth for a category de-
 25 scribed in item (cc) shall be not less than the modified

1 net worth limitations established by the Administrator
2 under section 4(a)(2) of the Section 8(a) Improvements
3 Act of 2010.

4 “(cc) The categories described in this item are—

5 “(AA) manufacturing;

6 “(BB) construction;

7 “(CC) professional services; and

8 “(DD) general services.

9 “(III) The Administrator shall establish procedures
10 that—

11 “(aa) account for inflationary adjustments to,
12 and include a reasonable assumption of, the average
13 income and net worth of the owners of business con-
14 cerns that are dominant in the field of operation of
15 the business concern; and

16 “(bb) require an annual inflationary adjustment
17 to the average income and maximum net worth re-
18 quirements under this clause.

19 “(IV) In determining the assets and net worth of a
20 socially disadvantaged individual under this subparagraph,
21 the Administrator shall not consider any assets of the indi-
22 vidual that are held in a qualified retirement plan, as that
23 term is defined in section 4974(c) of the Internal Revenue
24 Code of 1986.”.

1 (2) TEMPORARY INFLATIONARY ADJUST-
2 MENT.—

3 (A) IN GENERAL.—Not later than 30 days
4 after the date of enactment of this Act, the Ad-
5 ministrators shall modify the net worth limita-
6 tions established by the Administrator for pur-
7 poses of the program under section 8(a) of the
8 Small Business Act (15 U.S.C. 637(a)) by ad-
9 justing the amount of the net worth limitations
10 for inflation during the period beginning on the
11 date on which the Administrator established the
12 net worth limitations and the date of enactment
13 of this Act.

14 (B) TERMINATION.—The Administrator
15 shall apply the net worth limitations established
16 under subparagraph (A) until the effective date
17 of the net worth limitations established by the
18 Administrator under clause (ii)(II) of section
19 8(a)(6)(A) of the Small Business Act (15
20 U.S.C. 637(a)(6)(A)), as added by this sub-
21 section.

22 (b) TRANSITION PERIOD.—Section 7(j)(15) of the
23 Small Business Act (15 U.S.C. 636(j)(15)) is amended—

24 (1) by redesignating subparagraphs (A) and

25 (B) as clauses (i) and (ii), respectively;

1 (2) by striking “Subject to” and inserting “(A)
 2 Except as provided in subparagraph (B), and sub-
 3 ject to”; and

4 (3) by adding at the end the following:

5 “(B)(i) A small business concern may receive develop-
 6 mental assistance under the Program and contracts under
 7 section 8(a) during the 3-year period beginning on the
 8 date on which the small business concern graduates—

9 “(I) because the small business concern has
 10 participated in the Program for the total period au-
 11 thorized under subparagraph (A); or

12 “(II) under section 8(a)(6)(C)(ii), because the
 13 socially disadvantaged individuals who own or con-
 14 trol the small business concern have a net worth
 15 that is more than the maximum net worth estab-
 16 lished by the Administrator.

17 “(ii) After the end of the 3-year period described in
 18 clause (i), a small business concern described in clause
 19 (i)—

20 “(I) may not receive developmental assistance
 21 under the Program or contracts under section 8(a);
 22 and

23 “(II) may continue to perform and receive pay-
 24 ment under a contract received by the small business

1 concern under section 8(a) before the end of the pe-
2 riod, under the terms of the contract.”.

3 (c) GAO STUDY.—Section 8(a) of the Small Business
4 Act (15 U.S.C. 637(a)) is amended by adding at the end
5 the following:

6 “(22) REVIEW OF EFFECTIVENESS.—

7 “(A) GAO STUDY.—Not later than 5 years
8 after the date of enactment of this paragraph, and
9 every 5 years thereafter, the Comptroller General of
10 the United States shall—

11 “(i) conduct an evaluation of the effective-
12 ness of the program under this subsection, in-
13 cluding an examination of—

14 “(I) the number and size of contracts
15 applied for, as compared to the number re-
16 ceived by, small business concerns after
17 successfully completing the program;

18 “(II) the percentage of small business
19 concerns that continue to operate during
20 the 3-year period beginning on the date on
21 which the small business concerns success-
22 fully complete the program;

23 “(III) whether the business of small
24 business concerns increases during the 3-
25 year period beginning on the date on which

1 the small business concerns successfully
 2 complete the program; and

3 “(IV) the number of training sessions
 4 offered under the program; and

5 “(ii) submit to the Committee on Small
 6 Business and Entrepreneurship of the Senate
 7 and the Committee on Small Business of the
 8 House of Representatives a report regarding
 9 each evaluation under clause (i).

10 “(B) SBA REPORT.—Not later than 1 year
 11 after the date of enactment of this paragraph, and
 12 every year thereafter, the Administrator shall submit
 13 to the Committee on Small Business and Entrepre-
 14 neurship of the Senate and the Committee on Small
 15 Business of the House of Representatives a report
 16 evaluating the program under this section, including
 17 an assessment of—

18 “(i) the regulations promulgated to carry
 19 out the program;

20 “(ii) online training under the program;
 21 and

22 “(iii) whether the structure of the program
 23 is conducive to business development.”.

24 **SEC. 5. SURETY BOND PILOT PROGRAM.**

25 (a) DEFINITIONS.—In this section—

1 (1) the terms “bid bond”, “payment bond”,
2 “performance bond”, and “surety” have the mean-
3 ings given those terms in section 410 of the Small
4 Business Investment Act of 1958 (15 U.S.C. 694a);

5 (2) the term “Board” means the pilot program
6 advisory board established under subsection (d)(1);

7 (3) the term “eligible small business concern”
8 means a socially and economically disadvantaged
9 small business concern that is participating in the
10 program under section 8(a) of the Small Business
11 Act (15 U.S.C. 637(a));

12 (4) the term “Fund” means the Small Business
13 Surety Bond Pilot Program Fund established under
14 subsection (e)(1);

15 (5) the term “graduated” has the meaning
16 given that term in section 7(j)(10)(H) of the Small
17 Business Act (15 U.S.C. 636(j)(10)(H));

18 (6) the term “pilot program” means the surety
19 bond pilot program established under subsection
20 (b)(1); and

21 (7) the term “socially and economically dis-
22 advantaged small business concern” has the mean-
23 ing given that term in section 8(a) of the Small
24 Business Act (15 U.S.C. 637(a)).

25 (b) PROGRAM.—

1 (1) IN GENERAL.—The Administrator shall es-
2 tablish a surety bond pilot program under which the
3 Administrator may guarantee any surety against
4 loss resulting from a breach of the terms of a bid
5 bond, payment bond, performance bond, or bonds
6 ancillary thereto, by an eligible small business con-
7 cern.

8 (2) GUARANTEE PERCENTAGE.—A guarantee
9 under the pilot program shall obligate the Adminis-
10 tration to pay to a surety 90 percent of the loss in-
11 curred and paid by the surety.

12 (3) APPLICATION.—An eligible small business
13 concern desiring a guarantee under the pilot pro-
14 gram shall submit an application at such time, in
15 such manner, and accompanied by such information
16 as the Administrator may require.

17 (4) REVIEW.—A surety desiring a guarantee
18 under the pilot program against loss resulting from
19 a breach of the terms of a bid bond, payment bond,
20 performance bond, or bonds ancillary thereto by an
21 eligible small business concern shall—

22 (A) submit to the Administrator a report
23 evaluating whether the eligible small business
24 concern meets such criteria as the Adminis-
25 trator may establish relating to whether a bond

1 should be issued to the eligible small business
2 concern; and

3 (B) if the Administrator does not guar-
4 antee the surety against loss, submit an update
5 of the report described in subparagraph (A)
6 every 6 months.

7 (c) TECHNICAL ASSISTANCE AND EDUCATIONAL
8 TRAINING.—

9 (1) IN GENERAL.—The Administrator shall pro-
10 vide technical assistance and educational training to
11 an eligible small business concern participating in
12 the pilot program or desiring to participate in the
13 pilot program for a period of not less than 3 years,
14 to promote the growth of the eligible small business
15 concern and assist the eligible small business con-
16 cern in promoting job development.

17 (2) TOPICS.—

18 (A) TECHNICAL ASSISTANCE.—The tech-
19 nical assistance under paragraph (1) shall in-
20 clude assistance relating to—

- 21 (i) scheduling of employees;
- 22 (ii) cash flow analysis;
- 23 (iii) change orders;
- 24 (iv) requisition preparation;
- 25 (v) submitting proposals;

1 (vi) dispute resolution; and

2 (vii) contract management.

3 (B) EDUCATIONAL TRAINING.—The edu-
4 cational training under paragraph (1) shall in-
5 clude training regarding—

6 (i) accounting;

7 (ii) legal issues;

8 (iii) infrastructure;

9 (iv) human resources;

10 (v) estimating costs;

11 (vi) scheduling; and

12 (vii) any other area the Administrator
13 determines is a key area for which training
14 is needed for eligible small business con-
15 cerns.

16 (d) PANEL.—

17 (1) ESTABLISHMENT.—The Administrator shall
18 establish a pilot program advisory board to evaluate
19 and make recommendations regarding the pilot pro-
20 gram.

21 (2) MEMBERSHIP.—The Board shall be com-
22 posed of 5 members—

23 (A) who shall be appointed by the Admin-
24 istrator;

1 (B) not less than 2 of whom shall have
2 graduated from the program under section 8(a)
3 of the Small Business Act (15 U.S.C. 637(a));
4 and

5 (C) not more than 1 of whom may be an
6 officer or employee of the Administration.

7 (3) DUTIES.—The Board shall—

8 (A) evaluate and make recommendations to
9 the Administrator regarding the effectiveness of
10 the pilot program;

11 (B) make recommendations to the Admin-
12 istrator regarding performance measures to
13 evaluate eligible small business concerns apply-
14 ing for a guarantee under the pilot program;
15 and

16 (C) not later than 90 days after the date
17 on which all members of the Board are ap-
18 pointed, and every year thereafter until the au-
19 thority to carry out the pilot program termi-
20 nates under subsection (f), submit to the Com-
21 mittee on Small Business and Entrepreneurship
22 of the Senate and the Committee on Small
23 Business of the House of Representatives a re-
24 port regarding the activities of the Board.

25 (e) FUND.—

1 (1) ESTABLISHMENT OF FUND.—There is es-
2 tablished in the Treasury of the United States a re-
3 volving fund to be known as the “Small Business
4 Surety Bond Pilot Program Fund”, to be adminis-
5 tered by the Administrator.

6 (2) AVAILABILITY.—Amounts in the Fund shall
7 be available without fiscal year limitation or further
8 appropriation by Congress.

9 (3) AUTHORIZATION OF APPROPRIATIONS.—
10 There is authorized to be appropriated to the Fund
11 \$20,000,000.

12 (4) RESCISSION.—Effective on the day after the
13 date on which the term of all guarantees made
14 under the pilot program have ended, all amounts in
15 the Fund are rescinded.

16 (f) TERMINATION.—The Administrator may not
17 guarantee a surety against loss under the pilot program
18 on or after the date that is 7 years after the date the
19 date on which the Administrator makes the first guarantee
20 under the pilot program.

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