

113TH CONGRESS
2D SESSION

H. R. 4876

To amend the Small Business Act to provide for contracting preferences and other benefits for emerging business enterprises, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2014

Mr. CARSON of Indiana (for himself, Mr. ENYART, Mr. CONYERS, Mr. SABLAN, and Ms. BROWN of Florida) introduced the following bill; which was referred to the Committee on Small Business

A BILL

To amend the Small Business Act to provide for contracting preferences and other benefits for emerging business enterprises, 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 “Emerging Business
5 Encouragement Act of 2014”.

6 **SEC. 2. EMERGING BUSINESS ENTERPRISES.**

7 (a) DESIGNATION.—Section 3 of the Small Business
8 Act (15 U.S.C. 632) is amended by adding at the end the
9 following:

1 “(dd) EMERGING BUSINESS ENTERPRISES.—

2 “(1) IN GENERAL.—Not later than the date
3 that is 1 year after the date of enactment of this
4 paragraph, for each industry category for which the
5 Administrator established a size standard under this
6 subsection, the Administrator shall by rule establish
7 procedures for designating a small business concern
8 in that industry category as an emerging business
9 enterprise. Such procedures shall include the criteria
10 under paragraph (2), and a process for appealing
11 decisions of the Administrator on designations. Such
12 a designation shall expire on the date that the small
13 business concern is no longer in compliance with
14 such criteria, except that—

15 “(A) in the case of an emerging business
16 enterprise that receives a designation as such
17 but which existed as a business entity prior to
18 such designation, the designation shall not ex-
19 pire by reason of the emerging business enter-
20 prise being more than 5 years old; instead, the
21 designation shall expire on the date that is 5
22 years after the date of the designation; and

23 “(B) if the emerging business enterprise
24 exceeds the size limitation described in the cri-
25 terion under paragraph (2)(A) following des-

1 ignation as an emerging business enterprise,
2 the designation shall expire only if the size is
3 50 percent or more of the maximum size of a
4 small business concern within that industry cat-
5 egory.

6 The rulemaking under this paragraph shall include
7 a procedure for self certification as an emerging
8 business enterprise, for annual submission of docu-
9 mentation establishing eligibility for designation as
10 an emerging business enterprise, and for periodic
11 audits of emerging business enterprises based on
12 such documentation.

13 “(2) CRITERIA FOR DESIGNATION.—The Ad-
14 ministrators shall establish criteria for designation of
15 an emerging business enterprise, which shall include
16 the following:

17 “(A) NUMBER OF EMPLOYEES.—That the
18 small business concern employs, in the Adminis-
19 trator’s determination a number of employees
20 that is less than the larger of—

21 “(i) not more than 10 percent of the
22 number of employees that a small business
23 concern within that industry category may
24 employ, if that small business concern is so
25 classified by reason of a size standard

1 under section 3(a) pertaining to the num-
2 ber of employees of the concern; or

3 “(ii) 25 employees.

4 “(B) AGE OF BUSINESS.—That the small
5 business concern is, in the Administrator’s de-
6 termination, not more than 5 years old.

7 “(C) SALARY REQUIREMENTS.—That the
8 small business concern does not, in the Admin-
9 istrator’s determination, pay to an individual
10 who owns any part of the concern or who is in
11 a management position a salary greater than
12 200 percent of the mean annual salary for
13 Managers of Companies and Enterprises or the
14 equivalent from the most recent Employment
15 and Wage Estimates developed by the Secretary
16 of Labor.

17 “(3) PUBLIC NOTIFICATION.—The Adminis-
18 trator shall take appropriate action to publicize the
19 establishment of the procedures for designations
20 under this paragraph, including by conducting out-
21 reach to eligible small business concerns.

22 “(4) CONTRACTOR TRAINING.—The Adminis-
23 trator shall provide for training regarding Federal
24 procurement on an Internet Web site of the Admin-

1 istrator, which shall be available to the public at no
2 charge.”.

3 (b) CONTRACTING PREFERENCE.—Section 15(g)(2)
4 of the Small Business Act (15 U.S.C. (g)(2)) is amended
5 by adding at the end the following:

6 “(G) EMERGING BUSINESS ENTER-
7 PRISES.—

8 “(i) IN GENERAL.—The head of each
9 Federal agency shall, after consultation
10 with the Administrator, establish goals for
11 participation by emerging business enter-
12 prises designated under section 3(a)(6) in
13 not less than 5 percent of all contracts, in-
14 cluding prime contracts and subcontracts,
15 for each fiscal year. The head of the agen-
16 cy may give preference in making contract
17 awards to such emerging business enter-
18 prises and shall make consistent efforts to
19 annually expand participation by emerging
20 business enterprises from each industry
21 category in procurement contracts of the
22 agency.

23 “(ii) REPORTS.—

24 “(I) REPORTS FROM AGEN-
25 CIES.—At the conclusion of each fiscal

1 year, the head of each Federal agency
2 shall report to the Administrator on
3 the extent of participation by emerg-
4 ing business enterprises in procure-
5 ment contracts of such agency. Such
6 reports shall contain appropriate jus-
7 tifications for failure to meet the goals
8 established under this subparagraph.

9 “(II) REPORTS TO CONGRESS.—

10 The Administrator shall annually
11 compile and analyze the reports sub-
12 mitted by the individual agencies pur-
13 suant to subclause (I) and shall sub-
14 mit to the President and the Com-
15 mittee on Small Business and Entre-
16 preneurship of the Senate and the
17 Committee on Small Business of the
18 House of Representatives the compila-
19 tion and analysis, which shall include
20 the following:

21 “(aa) The goals in effect for
22 each agency and the agency’s
23 performance in attaining such
24 goals.

1 “(bb) An analysis of any
2 failure to achieve individual agen-
3 cy goals and the actions planned
4 by such agency (and approved by
5 the Administrator) to achieve the
6 goals in the succeeding fiscal
7 year.

8 “(cc) The total number and
9 dollar value of prime contracts
10 and subcontracts awarded to
11 emerging business enterprises.

12 “(III) ANNUAL PRESIDENTIAL
13 REPORT ON THE STATE OF SMALL
14 BUSINESS.—The President shall in-
15 clude the information required by sub-
16 clause (II) in each annual report to
17 the Congress on the state of small
18 business prepared pursuant to section
19 303(a) of the Small Business Eco-
20 nomic Policy Act of 1980 (15 U.S.C.
21 631b(a)).”.

22 (c) AMENDMENTS TO SBA EXPRESS.—Section
23 7(a)(31) of the Small Business Act (15 U.S.C.
24 636(a)(31)) is amended by adding at the end the fol-
25 lowing:

1 “(G) EMERGING BUSINESS ENTER-
2 PRISES.—

3 “(i) IN GENERAL.—The Administrator
4 may make a loan under the Express Loan
5 Program to an emerging business enter-
6 prise designated under section 3(dd), ex-
7 cept that such loans shall be made in ac-
8 cordance with the terms of this subpara-
9 graph.

10 “(ii) GUARANTY RATE.—The guaranty
11 rate of such a loan shall be in accordance
12 with the following:

13 “(I) Except as otherwise provided
14 in this clause, 65 percent.

15 “(II) Except as provided in sub-
16 clause (III), if, in a report submitted
17 under clause (iii), the total number of
18 loans made and the total amount
19 loaned by a lender is greater by 10
20 percent than the prior fiscal year, 75
21 percent.

22 “(III) If, in a report submitted
23 under clause (iii), the total rate of de-
24 fault on loans issued under subclauses
25 (I) and (II) is greater by 10 percent

1 than the prior year, 50 percent in the
2 succeeding fiscal year.

3 “(iii) REPORTS.—On the date that is
4 1 year after the end of the first fiscal year
5 for which a loan is first guaranteed under
6 this subparagraph, and annually there-
7 after, each lender making a loan guaran-
8 teed under this section shall report to the
9 Administrator total number of loans made
10 during the preceding fiscal year, the total
11 amount loaned, and the default rate for all
12 guaranteed loans.

13 “(iv) VERIFICATION.—A lender mak-
14 ing a loan guaranteed under this section
15 shall verify the status of a business con-
16 cern as an emerging business enterprise
17 before issuing a loan.

18 “(v) SANCTION.—If a business con-
19 cern has received a loan under this sub-
20 paragraph and that business concern has
21 fraudulently misrepresented its status as
22 an emerging business enterprise, that busi-
23 ness concern shall repay the amount of the
24 loan to the lender (from which amount the
25 lender shall repay the amount of any guar-

1 antee paid on the loan), and shall in addi-
2 tion pay a fine in an amount determined
3 by the Administrator.”.

4 **SEC. 3. RULEMAKINGS.**

5 (a) SELF-CERTIFICATION.—Not later than 180 days
6 after the date of enactment of this Act, the Administrator
7 shall by rule establish a process for initial self-certification
8 of emerging business enterprises for purposes of participa-
9 tion in Federal contracts, and eligibility for Express Loans
10 under section 7(a)(31)(G) of the Small Business Act.

○