

115TH CONGRESS
2D SESSION

H. R. 6565

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

JULY 26, 2018

Mr. CARSON of Indiana 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 2018”.

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:

10 “(dd) EMERGING BUSINESS ENTERPRISES.—

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

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

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

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

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

13 “(2) CRITERIA FOR DESIGNATION.—The Ad-
14 ministrator 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 not more than 5 years old,
6 beginning on the date on which the business
7 was first registered.

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

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

23 “(4) CONTRACTOR TRAINING.—The Adminis-
24 trator shall provide for training regarding Federal
25 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 3 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) FEE WAIVERS.—Section 7(a) of the Small Busi-
23 ness Act (15 U.S.C. 636(a)) is amended by adding at the
24 end the following:

1 “(35) FEE WAIVERS.—In the case of any loan
2 under this section to an emerging business enter-
3 prise, the Administrator may waive the collection of
4 any fee associated with the origination or guarantee
5 of such a loan, unless—

6 “(A) in the case of a fiscal year, the Presi-
7 dent’s budget for the upcoming fiscal year, sub-
8 mitted to Congress pursuant to section 1105(a)
9 of title 31, United States Code, includes a cost
10 for the program established under this sub-
11 section that is above zero; and

12 “(B) no adverse effect on the waivers pro-
13 vided under paragraph (31)(G) or (33)(E)(ii).

14 “(36) EMERGING BUSINESS ENTERPRISES.—

15 “(A) REPORTS.—On the date that is one
16 year after the end of the first fiscal year for
17 which a loan is first guaranteed under this sub-
18 section, and annually thereafter, each lender
19 making a loan guaranteed under this section
20 shall report to the Administrator the total num-
21 ber of loans made under such section during
22 the preceding fiscal year, the total amount
23 loaned, and the number of waivers under para-
24 graph (35) provided.

1 “(B) VERIFICATION.—A lender making a
2 loan guaranteed under this section shall verify
3 the status of a business concern as an emerging
4 business enterprise before issuing a loan. The
5 Administrator shall ensure that applications
6 submitted under this section are required to in-
7 clude sufficient documentation to ensure that a
8 lender can verify such status.

9 “(C) SANCTION.—If a business concern
10 has received a loan under this subsection and
11 that business concern has fraudulently mis-
12 represented its status as an emerging business
13 enterprise, that business concern shall repay the
14 amount of the loan to the lender (from which
15 amount the lender shall repay the amount of
16 any guarantee paid on the loan), and shall in
17 addition pay a fine in an amount determined by
18 the Administrator.”.

19 **SEC. 3. SELF-CERTIFICATION.**

20 Not later than 180 days after the date of enactment
21 of this Act, the Administrator shall by rule establish a
22 process for initial self-certification of emerging business
23 enterprises for purposes of participation in Federal con-
24 tracts, and eligibility for Express Loans under section

- 1 7(a)(31)(G) of the Small Business Act or other loans
- 2 under section 7(a) of such Act.

