

117TH CONGRESS
2D SESSION

H. R. 9649

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

DECEMBER 21, 2022

Mr. CARSON 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 2022”.

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 “(gg) EMERGING BUSINESS ENTERPRISE.—

1 “(1) IN GENERAL.—In this Act, the term
2 ‘emerging business enterprise’ means a concern des-
3 ignated by the Administrator in accordance with this
4 section.

5 “(2) CRITERIA FOR DESIGNATION.—Not later
6 90 days after the date of enactment of this sub-
7 section, the Administrator shall establish criteria for
8 designation of a small business concern an emerging
9 business enterprise which shall include the following:

10 “(A) NUMBER OF EMPLOYEES.—That the
11 highest number of employees of the concern
12 during the year preceding the date of applica-
13 tion is less than the larger of—

14 “(i) 10 percent of the number of em-
15 ployees that a small business concern with-
16 in that industry category may employ, if
17 that small business concern is so classified
18 by reason of a size standard under sub-
19 section (a) pertaining to the number of
20 employees of the concern; or

21 “(ii) 25 employees.

22 “(B) AGE OF BUSINESS.—That the small
23 business concern has been in operation for less
24 than 5 years on the date of application.

1 “(C) SALARY REQUIREMENTS.—That the
2 small business concern does not, in the Admin-
3 istrator’s determination, pay to an individual
4 who owns any part of the concern or who is in
5 a management position a salary greater than
6 200 percent of the mean annual salary for an
7 individual in the Managers of Companies and
8 Enterprises sector (as assigned a North Amer-
9 ican Industry Classification System code begin-
10 ning with 55) or the equivalent from the most
11 recent employment and wage estimates devel-
12 oped by the Secretary of Labor.

13 “(3) DEADLINE.—The Administrator shall com-
14 plete review of an application for designation as an
15 emerging business enterprise and either issue or
16 deny such designation not later than one year of re-
17 ceipt of such application.

18 “(4) TERMINATION OF DESIGNATION.—A des-
19 ignation as an emerging business enterprise shall
20 terminate on the date on which the concern is no
21 longer in compliance with the criteria under para-
22 graph (2), except that—

23 “(A) with respect to the requirement in
24 paragraph (2)(A), such designation shall termi-
25 nate only if the concern employs 50 percent or

1 more employees than the number of employees
2 that a small business concern within that indus-
3 try category may employ; and

4 “(B) with respect to the requirement in
5 paragraph (2)(C), such designation shall termi-
6 nate only if the concern exceeds such require-
7 ment and employs not more than 10 percent of
8 the number of employees that a small business
9 concern within that industry category may em-
10 ploy, if that small business concern is so classi-
11 fied by reason of a size standard under sub-
12 section (a) pertaining to the number of employ-
13 ees of the concern.

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

19 “(6) CONTRACTOR TRAINING.—The Adminis-
20 trator shall provide training on Federal procurement
21 specifically for emerging business enterprises on an
22 internet website of the Administrator, which shall be
23 available to the public at no charge.”.

1 (b) CONTRACTING PREFERENCE.—Section 15(g)(2)
2 of the Small Business Act (15 U.S.C. 644(g)(2)) is
3 amended by adding at the end the following:

4 “(G) EMERGING BUSINESS ENTER-
5 PRISES.—

6 “(i) IN GENERAL.—The head of each
7 Federal agency shall, after consultation
8 with the Administrator, establish goals for
9 participation by emerging business enter-
10 prises in not less than 3 percent of all
11 prime contracts and subcontracts of such
12 agency for each fiscal year.

13 “(ii) REQUIREMENTS.—The head of a
14 Federal agency—

15 “(I) shall make consistent efforts
16 to annually expand participation by
17 emerging business enterprises from
18 each industry category in contracts of
19 the agency; and

20 “(II) shall, subject to clause (iii),
21 award a contract to an emerging busi-
22 ness enterprise if the head of a Fed-
23 eral agency determines the agency will
24 not meet the goals established under
25 this subparagraph for a fiscal year.

1 “(iii) PREFERENCE.—The preference
2 described in clause (ii)(II) shall take pri-
3 ority over any preference for procurement
4 from the procurement list established pur-
5 suant to section 8503 of title 41, United
6 States Code, or the Federal Prison Indus-
7 tries catalog described under section
8 4124(d) of title 18, United States Code.

9 “(iv) REPORTS.—

10 “(I) REPORTS FROM AGEN-
11 CIES.—At the conclusion of each fiscal
12 year, the head of each Federal agency
13 shall report to the Administrator on
14 the extent of participation by emerg-
15 ing business enterprises in procure-
16 ment contracts of such agency. Such
17 reports shall contain appropriate jus-
18 tifications for failure to meet the goals
19 established under this subparagraph.

20 “(II) REPORTS TO CONGRESS.—

21 The Administrator shall annually
22 compile and analyze the reports sub-
23 mitted by agencies pursuant to sub-
24 clause (I) and shall submit to the
25 President and the Committee on

1 Small Business and Entrepreneurship
2 of the Senate and the Committee on
3 Small Business of the House of Rep-
4 resentatives the compilation and anal-
5 ysis, which shall include the following:

6 “(aa) The goals in effect for
7 each agency and the agency’s
8 performance in attaining such
9 goals.

10 “(bb) An analysis of any
11 failure to achieve individual agen-
12 cy goals and the actions planned
13 by such agency (that have been
14 approved by the Administrator)
15 to achieve the goals in the suc-
16 ceeding fiscal year.

17 “(cc) The total number and
18 dollar value of prime contracts
19 and subcontracts awarded to
20 emerging business enterprises for
21 each agency.

22 “(III) ANNUAL PRESIDENTIAL
23 REPORT ON THE STATE OF SMALL
24 BUSINESS.—The President shall in-
25 clude the information required by sub-

1 clause (II) in each annual report to
2 the Congress on the state of small
3 business prepared pursuant to section
4 303(a) of the Small Business Eco-
5 nomic Policy Act of 1980 (15 U.S.C.
6 631b(a)).”.

7 (c) FEE WAIVERS.—Section 7(a) of the Small Busi-
8 ness Act (15 U.S.C. 636(a)) is amended by adding at the
9 end the following:

10 “(38) FEE WAIVERS.—The Administrator may
11 not collect an origination fee or a guarantee fee de-
12 scribed in paragraph (18) in connection with a loan
13 made under this subsection to an emerging business
14 enterprise, unless—

15 “(A) the President’s budget for the upcom-
16 ing fiscal year, submitted to Congress pursuant
17 to section 1105(a) of title 31, United States
18 Code, includes a cost for the program estab-
19 lished under this paragraph that is above zero;
20 and

21 “(B) the Administrator determines car-
22 rying out this paragraph will have no adverse
23 effect on the waivers provided under paragraph
24 (31)(G) or (33)(E)(ii) for a fiscal year.

25 “(39) EMERGING BUSINESS ENTERPRISES.—

1 “(A) REPORTS.—On the date that is 1
2 year after the end of the first fiscal year for
3 which a guaranteed loan is made to an emerg-
4 ing business enterprise under this subsection,
5 and annually thereafter, each lender making
6 such a loan shall submit to the Administrator
7 a report with respect to the preceding fiscal
8 year on the total number and dollar amount of
9 such loans made and the number of waivers
10 issued under paragraph (38).

11 “(B) VERIFICATION.—A lender shall verify
12 with the Administrator the status of a concern
13 as an emerging business enterprise before mak-
14 ing a loan guaranteed under this subsection to
15 such emerging business enterprise.

16 “(C) PENALTY.—If a concern received a
17 loan under this subsection and fraudulently
18 misrepresented the status of the concern as an
19 emerging business enterprise, that concern
20 shall—

21 “(i) repay the amount of the loan to
22 the lender (from which amount the lender
23 shall repay the amount of any guarantee
24 paid on the loan to the Administrator);
25 and

1 “(ii) pay a fine to the Administrator
2 in an amount determined by the Adminis-
3 trator.”.

4 **SEC. 3. RULEMAKING.**

5 (a) IN GENERAL.—Not later 1 year after the date
6 of enactment of this subsection and for each industry cat-
7 egory for which the Administrator of the Small Business
8 Administration established a size standard under section
9 3(a) of the Small Business Act (15 U.S.C. 632(a)), the
10 Administrator shall issue a rule—

11 (1) establishing procedures for designating a
12 small business concern in each such industry cat-
13 egory as an emerging business enterprise that in-
14 clude the criteria under subsection (gg)(3) of section
15 3 of the Small Business Act (15 U.S.C. 632), as
16 added by this Act, and a process for appealing des-
17 ignation decisions of the Administrator;

18 (2) establishing procedures for certification by
19 the Administrator as an emerging business enter-
20 prise;

21 (3) requiring a small business concern to annu-
22 ally submit documentation to the Administrator to
23 establish eligibility for designation as an emerging
24 business enterprise; and

1 (4) establishing compliance requirements for
2 emerging business enterprises.

3 (b) DEFINITIONS.—In this section:

4 (1) SMALL BUSINESS CONCERN.—The term
5 “small business concern” has the meaning given
6 under section 3 of the Small Business Act (15
7 U.S.C. 632).

8 (2) EMERGING BUSINESS ENTERPRISE.—The
9 term “emerging business enterprise” has the mean-
10 ing given under subsection (gg) of section 3 of the
11 Small Business Act (15 U.S.C. 632), as added by
12 this Act.

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