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Disadvantaged Businesses: A Review of Federal Assistance

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Summary

It is the policy of the federal government to encourage the development of small disadvantaged businesses (SDBs) owned by minorities and women. SDBs are statutorily defined as small businesses that are owned and controlled by socially and economically disadvantaged individuals who have been subjected to racial or ethnic prejudice or cultural bias and who have limited capital and credit opportunities. Under the Small Business Act, as amended, African Americans, Asian Americans, Hispanic Americans, and Native Americans are presumed to be socially disadvantaged. Other business owners who do not belong to these racial or ethnic groups (such as *nonminority* women) can establish disadvantaged status as individuals for participation in certain federal programs. In other programs, women and handicapped persons are defined as socially disadvantaged and are eligible for participation as long as they are also economically disadvantaged.

Federal assistance to SDBs includes procurement goals, contract price evaluation preferences, management and technical assistance, grants for education and training, surety bonding assistance, loans, and loan guarantees. These affirmative action programs include the Small Business Administration's section 8(a) program, which provides preferential treatment in obtaining federal procurement contracts to SDBs enrolled in the program. There are no federal programs specifically designed to help disadvantaged individuals obtain start-up capital for new business ventures, although such assistance can be sought from privately owned Small Business Investment Companies, which receive federal support.

All federal agencies with procurement powers are required by law to establish annual percentage goals for the awarding of procurement contracts and subcontracts to SDBs. These agencies have Offices of Small and Disadvantaged Business Utilization that are responsible for carrying out their SDB responsibilities and for coordinating their programs with the Small Business Administration. Some federal statutes contain specific requirements relating to SDBs. These include the Defense Department's section 2323 program, which mandates a DOD contracting goal of 5% for SDBs; the Department of Transportation's 10% goal; and the Energy Policy Act of 1992 (P.L. 102-486), which created a 10% goal for certain Department of Energy and other programs.

The 1995 Supreme Court decision in the case of *Adarand Constructors, Inc. v. Peña*, which challenged a federal program that gave cash bonuses to prime contractors for awarding subcontracts to minority-owned businesses, could have far-reaching implications for all governmental programs that give special consideration to disadvantaged businesses. Some changes have already been made in federal procurement programs targeting SDBs. The practice of setting aside contracts for exclusive bidding by SDBs, for example, was discontinued by the Clinton Administration.

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This report is based in large part on an earlier CRS report by Mark Eddy, Specialist in American National Government.

Disadvantaged Businesses: A Review of Federal Assistance

Introduction

Since the late 1960s, it has been the policy of the federal government to assist small businesses owned by minorities and women to become fully competitive and viable business concerns. Federal assistance to women and minority-owned firms, which have come to be known as small disadvantaged businesses (SDBs), includes the following:

- preferential treatment in obtaining procurement contracts and subcontracts,
- percentage contracting goals by federal agencies,
- management and technical assistance,
- grants for education and training,
- surety bonding assistance,
- loans, and
- loan guarantees.

Small Business Administration regulations define SDBs as small businesses that are owned and controlled by socially *and* economically disadvantaged individuals who have been subjected to racial or ethnic prejudice or cultural bias and who have limited capital and credit opportunities.¹ African Americans, Asian Americans, Hispanic Americans, and Native Americans are presumed to be socially disadvantaged by the Small Business Act, as amended;² but they must prove economic disadvantage for participation in some programs of other agencies. Business owners who do not belong to these racial or ethnic groups (such as *nonminority* women and handicapped persons) can individually establish disadvantaged status for purposes of some federal programs. There are also programs in which women and handicapped persons are

¹13 CFR §124.103 (a); 13 CFR §124.104 (a). Business owners who are not members of designated groups may petition to be classified as disadvantaged. To do so, business owners must provide narrative and supporting documentation that demonstrates social disadvantage. That evidence must include the following elements: (1) possession of at least one objective distinguishing feature that has contributed to the business owners' social disadvantage — such as race, ethnic origin, gender, physical handicap, or long-term residence in an environment that is isolated from mainstream America; (2) description of how business owner has personally experienced substantial and chronic social disadvantage within American society, not in other countries; and (3) how disadvantage has had a negative impact upon business owners' entry into or advancement in the business world.

²P.L. 85-536, as amended, sec. 2(f)(1)(c). Indian tribes, Native Hawaiian organizations, and other minorities may also qualify.

included within the definition of socially disadvantaged and are eligible for participation if they are also economically disadvantaged.

This report presents an overview of the major federal programs now in existence and indicates where interested persons can obtain further information about specific programs.

Historical Background. Federal small disadvantaged business programs find their antecedents in long-established federal contracting policies and programs, including contract set-asides, designed to support the development of small businesses. Federal contracting authority to assist small businesses first appeared in federal legislation in 1942, when Congress acted to mobilize the productive capacity of small business and augment production during World War II.³ Section 4 of the law created the Smaller War Plants Corporation and granted it authority to contract with federal agencies to furnish articles, equipment, supplies, or materials and to arrange for the performance of these contracts by letting subcontracts to small business concerns or, if necessary, larger firms. The law specified that, if the War Production Board certified that the Smaller War Plants Corporation was competent to perform any specific government contract, the corporation had the right to receive the contract. The corporation was also empowered to make loans or advances to small businesses and to assist small businesses in other ways to manufacture articles, equipment, supplies, or materials for the war effort or for essential civilian purposes.

This same contracting authority reappeared in the Defense Production Act Amendments of 1951.⁴ This law created the independent Small Defense Plants Administration and empowered it to enter into contracts with federal agencies to furnish articles, equipment, supplies, or materials to the federal government; to arrange for the performance of such contracts by letting subcontracts to small businesses or others; and to provide technical and managerial aid to small businesses. Like the earlier law, the thrust was national defense: “It shall be the duty of the Administration and it is hereby empowered, to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized for national defense and essential civilian production.”⁵

The legislation that created the Small Business Administration (SBA) two years later, the Small Business Act of 1953, contained the same authority in almost identical wording.⁶ During the Cold War, the thrust of the contracting provision was once again national defense. Consistent with regulations prescribed under the First War Powers Act of 1941, as amended, SBA would use its contracting authority to insure that small businesses would not be bypassed in wartime. In fact, the Small Business Act of 1953 authorized the President to transfer records, property, and personnel

³ P.L. 77-603, 56 Stat. 351, June 11, 1942.

⁴ P.L. 82-96, 65 Stat. 131 at 139, July 31, 1951.

⁵ *Ibid.*, 65 Stat. 141, sec. 110(a), adding sec. 714(d)(1) to Title VII of the Defense Production Act of 1950.

⁶ P.L. 83-163, 67 Stat. 230 at 236, sec. 207 (c)-(e) and 208, July 30, 1953.

from the Small Defense Plants Administration, which was being liquidated, to the newly created Small Business Administration.

When the Small Business Act of 1953 was restructured and reauthorized in 1958 as the Small Business Act,⁷ SBA's authority to enter into contracts with federal agencies and to let subcontracts "to small-business concerns or others" reappeared in the new legislation in section 8(a).⁸ In 1958, SBA issued its first regulations implementing this section. The 8(a) contracting authority was to be exercised in the event of emergency for the benefit of small business as a class and on a publicized, competitive basis. At the time, however, SBA's contracting authority contained in section 8(a) was not used.

After outbreaks of racial violence in several U.S. cities during 1967, pressure arose in Congress to use the 8(a) authority to assist small businesses in inner cities to help alleviate high unemployment and other circumstances thought to contribute to social unrest. The Small Business Act's unutilized section 8(a), which authorized SBA to let federal procurement contracts to *small* businesses, was administratively reformulated to funnel federal procurement contracts to *minority-owned* small businesses.⁹

The earliest statutory basis for federal aid to *economically disadvantaged* entrepreneurs appeared in the 1967 amendments to the Economic Opportunity Act of 1964, which, in part, directed SBA to assist small businesses owned by low-income individuals.¹⁰ The first law to establish a specific percentage goal for federal procurement from minority-owned businesses was the Public Works Employment Act of 1977. Implemented by the Economic Development Administration within the Department of Commerce, it required that at least 10% of the total dollar value of federal grants for local public works projects be expended through minority business enterprises.¹¹ Statutes that contained additional percentage goals for individual programs or agencies followed, as described below.

Over the years, the emphasis of this effort has broadened somewhat, from *minority* entrepreneurs to entrepreneurs who are "socially and economically disadvantaged." In 1978, for example, P.L. 95-507¹² explicitly recognized that it is possible for *nonminorities* to be disadvantaged. This trend has caused the long-

⁷P.L. 85-536, 72 Stat. 384, July 15, 1958, 15 U.S.C. 661 *et seq.*

⁸*Ibid.*, 72 Stat. 389.

⁹SBA's administrative decision to turn section 8(a) into a *minority* business program eventually gained statutory basis with the passage in 1978 of P.L. 95-507, which is discussed below.

¹⁰P.L. 90-222, Sec. 106 (a), repealed in 1974 by P.L. 93-386, which established the position of administrator for minority small business within the SBA (88 Stat. 742, 748, Aug. 23, 1974).

¹¹P.L. 95-28, 91 Stat. 117, 118. This law also set aside 2½ % for "Indian tribes and Alaska Native villages."

¹²92 Stat. 1757, 1760 and 1767, Oct. 24, 1978.

standing term “minority business enterprise,” or “MBE,” to be supplemented, and in some cases replaced, by the terms “small disadvantaged business,” or “SDB,” and “disadvantaged business enterprise,” or “DBE.” Currently, the Small Business Administration also uses the term “historically underutilized businesses” (HUBs) in its contracting program.

Constitutional Issues. Beginning in the mid-1990s, the constitutionality of some programs to assist disadvantaged businesses was called into question. In 1995, the Supreme Court declared in *Adarand Constructors, Inc. v. Peña* that, in order to pass constitutional standards on equal protection, race-based federal programs must be narrowly tailored to serve a compelling governmental interest.¹³ The case challenged a federal program that gave cash bonuses to prime contractors for awarding subcontracts to minority-owned businesses. The decision for the first time applied the criterion of “strict scrutiny,” an established judicial standard for reviewing state and local affirmative action measures, to race-conscious decision making by the federal government.

Federal programs for minority and women-owned businesses have been reviewed as a result of *Adarand* and the ongoing controversy over the proper role of affirmative action in such areas as employment, education, and contracting. On July 19, 1995, President Clinton ordered the Department of Justice to review all federal race-based affirmative action programs, and ordered that any program that did not meet the constitutional standard of strict scrutiny as set forth in *Adarand* be reformed or eliminated.¹⁴ As a result of this review, new regulations were proposed for specific programs and promulgated; those affecting SDBs are explained in new program descriptions below. The range of federal statutes and regulations designed to promote small businesses owned by minorities and women remains largely intact.¹⁵

The Court did not precisely define “racial classification” in *Adarand*, but a plurality of Justices described the concept in terms of burdens or benefits placed on individuals because of race, or subjecting individuals to unequal treatment. Race-conscious action by government or private employers that neither confers a benefit nor imposes a burden on individuals might not be subject to strict scrutiny or

¹³*Adarand Constructors, Inc. v. Peña*, 115 S.Ct. 2097 (June 12, 1995). See also CRS Report RL30470, *Affirmative Action Revisited: A Legal History and Prospectus*, by Charles V. Dale, pp. 6-7.

¹⁴U.S. President, 1993- (Clinton), “Memorandum on Affirmative Action,” July 19, 1995, *Weekly Compilation of Presidential Documents*, vol. 31, July 24, 1995, pp. 1264-1265.

¹⁵Nevertheless, among statutory changes was repeal of a Federal Communications Commission statute designed to encourage minority ownership of radio and television stations by granting a capital gains tax break for majority-owned broadcast companies that sell broadcast or cable facilities to minority buyers (P.L. 104-7, 109 Stat. 93, April 11, 1995). Congress also removed the Agency for International Development’s (AID) 10% goal for contracting with minorities and women from the agency’s FY1996 appropriations bill. Known as the “Gray amendment,” the goal had been renewed by Congress in every AID appropriations act since its first adoption in 1984. For a brief review of earlier developments in affirmative action, see CRS Report RL30142, *Affirmative Action: Recent Congressional and Presidential Activity, 1995-1998*, by Andorra Bruno.

heightened judicial review. Thus, courts have found data collection activities concerning the racial or gender makeup of a workforce do not violate the Constitution. “Statistical information as such is a rather neutral entity which only becomes meaningful when it is interpreted.”¹⁶

Similarly, strict scrutiny has generally not been applied by the courts to minority outreach or recruitment efforts that do not amount to an actual preference in employment decision making. A public university, for example, may be racially “aware” or “conscious” by amassing statistics on the racial and ethnic makeup of its faculty and encouraging broader recruiting of racial or ethnic minorities, without triggering strict scrutiny review. These activities do not impose burdens or benefits, it has been held, nor do they subject individuals to unequal treatment. If that institution, however, then engages in race-preferential hiring, firing, or promotion, that action is subject to strict scrutiny. This distinction between “inclusive” forms of affirmative action — such as recruitment, advertising in minority media, and other outreach to minority communities — and “exclusive” affirmative action — quotas, set-asides, layoff preferences, etc. — has been central to several recent decisions.¹⁷

On remand, the district court in *Adarand II*¹⁸ decided that *Adarand* did not mean that federal affirmative action must be supported by a particularized showing of past discrimination as state and local programs. On September 25, 2000, the 10th Circuit Court of Appeals issued its latest ruling in *Adarand Constructors Inc. v. Slater (Adarand III)*.¹⁹ Reversing the district court injunction against future implementation of the affirmative action program in question in *Adarand*, it found that the challenged federal highway program of financial incentives to promote minority and “disadvantaged” small business utilization was unconstitutional as it existed at the time of *Adarand I*, and held that, as revised and amended in 1997, the program was narrowly tailored to a compelling governmental interest and passed constitutional muster. The U.S. Supreme Court on March 26, 2001, granted *certiorari* in an appeal from the Circuit Court’s latest decision.

Since *Adarand I*, there have been numerous lower federal court cases that have dealt with the question of congressional authority to fashion affirmative action remedies. While these courts have generally acknowledged the government’s interest

¹⁶ *Sussman v. Tanoue*, 39 F.Supp.2d 13, 24 (D. D.C. 1999) (quoting *United States v. New Hampshire*, 539 F.2d 277, 280 (1st Cir. 1976)).

¹⁷ See *Duffy v. Wolle*, 123 F.3d 1026, 1038-39 (8th Cir. 1997) (“An employer’s affirmative efforts to recruit female and minority applicants does not constitute discrimination.”); *Allen v. Alabama State Board of Education*, 164 F.3d 1347, 1352 (11th Cir. 1999) (racially conscious outreach efforts to broaden applicant pool not subject to strict scrutiny), vacated 216 F.3d 1263 (11th Cir. 2000); *Ensley Branch, NAACP*, 31 F.3d 1548 (11th Cir. 1994) (describing efforts to actively encourage African Americans to apply for jobs, including waivers of application fees, as “race-neutral”); *Billish v. City of Chicago*, 962 F.2d 1269, 1290 (7th Cir. 1992) (describing aggressive recruiting as “race-neutral procedures”), rev’d on other grounds, 989 F.2d 890 (7th Cir. 1993) (en banc). For a discussion of each of these cases, see CRS Report RL30470, by Charles V. Dale.

¹⁸ *Adarand Constructors, Inc. v. Pena*, 965 F. Supp. 1556 (D. Colo. 1997).

¹⁹ 2000 WL 1375571 (10th Cir. (Colo.)).

for the program in question, the outcome of such cases has largely turned on each court's view of the program in actual operation.²⁰ Consequently, post-*Adarand* judicial activity has been mixed, with some decisions invalidating federal affirmative action programs and others allowing such plans to continue.

As of this writing, the Bush Administration has not announced its plans for disadvantaged business programs.²¹

Defining and Certifying Small Disadvantaged Businesses

The definitions in federal law of small disadvantaged businesses and women-owned businesses are not uniform. For example, in some statutes women are included within the definition of socially disadvantaged individuals, but in others they are not. Some statutes do not define the terms at all. Section 8(d) of the Small Business Act²² does contain a comprehensive definition of socially and economically disadvantaged small businesses that applies to SBA programs and that is incorporated by reference into many other statutes. Section 8(d) defines a small disadvantaged business as a small business concern that is at least 51% owned by a citizen or citizens of the United States who are socially and economically disadvantaged; or, in the case of a publicly owned business, that has at least 51% of its stock owned by socially and economically disadvantaged citizens. The daily management and operation of the business concern must also be controlled by an owner or owners who are socially and economically disadvantaged.

Socially disadvantaged individuals are defined by section 8(d) as persons who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group, without regard to their individual qualities. As the law specifically states, the social disadvantage of such individuals must stem from circumstances beyond their control. African Americans, Asian Americans, Hispanic Americans, and Native Americans are presumed by statute to be socially disadvantaged, absent evidence to the contrary.

Economically disadvantaged individuals are defined by section 8(d) as socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or in a similar line of business and competitive market area who are not socially disadvantaged. (Small businesses owned and managed by economically disadvantaged Native American tribes or Native Hawaiian organizations also fit the definition of small disadvantaged business.)

²⁰ See *Christian v. United States*, 2000 WL 760521 (Fed. Cl.); *Rothe Development Corp. v. U.S. Department of Defense*, 49 F. Supp. 2d 937 (W.D. Tex. 1999); *In re Sherbrooke Sodding Co.*, 17 F. Supp. 2d 1026 (D. Minn. 1998); *Cortez III Serv. Corp. v. National Aeronautics & Space Administration*, 950 F. Supp. 357 (D. D.C. 1996).

²¹Rainnie Deane, U.S. Small Business Administration, Office of Congressional and Legislative Affairs, discussion by telephone, Friday, January 11, 2002.

²²15 U.S.C. 637(d).

In order to qualify as *small*, a disadvantaged business must meet the size standard established by regulation for the firm's primary Standard Industrial Classification (SIC) Code.²³ The size standards, which are based upon either the firm's maximum number of employees or its amount of annual receipts, are set forth at length in the *Code of Federal Regulations* at 13 C.F.R. Part 121.101 et seq.

In a major post-*Adarand* reform adopted by the Clinton Administration, firms that meet the above criteria must be formally certified as SDBs by the Small Business Administration before they are eligible to participate in federal SDB procurement programs. Previously, many federal SDB programs relied on self-certification by the business owners themselves as to their economic and social disadvantage, with provisions for competing firms to dispute a firm's self-proclaimed SDB status. Self-certification is no longer possible. SBA or a private certifier determines if a firm meets SDB status.²⁴

Business owners not in the groups *presumed* to be socially disadvantaged, as described above, may qualify for SDB certification by individually establishing their disadvantaged status. This could be done before, as well, but the new rule lowered the standard of proof from "clear and convincing evidence" to "a preponderance of the evidence" in order to make it easier for persons not in the groups presumed to be socially disadvantaged to establish eligibility. SBA records show that 9,034 small business firms were certified as SDBs as of August 24, 2000. According to SBA officials, approximately 6,405 of these firms were automatically certified due to their 8(a) certification. As of August 24, 2000, SBA had certified 2,629, or about half, of the 5,456 small business firms that submitted applications for certification to the Small Disadvantaged Business Certification (SDBC) program.²⁵

²³SIC is the acronym for Standard Industrial Classification (SIC) Code. An SIC is a code that represents a category within the Standard Industrial Classification System administered by the Statistical Policy Division of the U.S. Office of Management and Budget. The system was established to classify all firms in the U.S. economy.

²⁴63 FR 35772, June 30, 1998, as amended at 65 FR 33250, May 23, 2000; 65 FR 57542, Sept. 25, 2000.

²⁵U.S. General Accounting Office, "Small Business: Status of Small Disadvantaged Business Certifications," (Washington: Government Printing Office, Jan. 2001), p. 2. Also, according to GAO's study, for those applications that it did not certify, SBA returned 1,990 applications as incomplete and denied certification for 241 applicants. Applicants withdrew 307 applications for unknown reasons. The remaining 289 applications were in various stages of screening and processing.

**Table 1. Composition of SDB Certification
as of August 24, 2000***

SDB Certification Categories	Number of SDBs
8(a) business development	5,689
8(a) business development graduates	716
SBA Certifications	2,629
Total Certifications	9,034

Source: GAO analysis of SBA-provided data, reported in U.S. General Accounting Office, "Small Business: Status of Small Disadvantaged Business Certifications," (Washington: Government Printing Office, Jan. 2001), p. 8.

* 8(a) business development (BD) firms were grandfathered into the SDBC program. These firms automatically qualified as SDBs by virtue of their status as 8(a) BD concerns. Firms that have graduated from SBA's 8(a) BD program but continued to be eligible for the 8(a) BD program as determined by an annual review also qualified as SDBs and were grandfathered into the SDBC program. These firms will remain on the list of certified SDBs for three years from the date of the last annual review.

Women-Owned Business Enterprises (WBEs)

Federal efforts to directly support female business owners began in 1979 with the issuance by President Carter of Executive Order 12138.²⁶ The Executive Order, which responded to the findings of the Interagency Task Force on Women Business Owners and to congressional findings, was designed to discourage discrimination against female entrepreneurs and to create programs responsive to their special needs, including assistance in federal procurement. As a result, the Office of Women's Business Ownership was established within the Small Business Administration. This office negotiates annually with each federal agency a percentage goal for the awarding of federal prime procurement contracts to women-owned business enterprises (WBEs). **Table 2** presents data on women-owned business participation in U.S. government prime contracts and subcontracts.

²⁶44 F.R. 29637, May 18, 1979, 15 U.S.C. 631 note.

Table 2. Women-Owned Business Share of U.S. Government Contracting and Subcontracting, 1997-2000

(in billions)

Fiscal Year	Total Dollars	Small Business Dollars	Women-Owned Businesses		
			Dollars	Percent of Total	Percent of Small Business
Prime Contract Dollars					
1997	177.5	40.0	3.3	1.9	8.3
1998	181.8	42.5	4.0	2.2	9.4
1999	185.8	43.0	4.6	2.5	10.5
2000	200.9	44.7	4.6	2.3	10.2
Subcontract Dollars					
1997	109.2	450.5	4.3	3.9	0.9
1998	97.8	27.4	3.1	4.6	11.3
1999	99.0	27.9	3.0	4.3	10.7
2000	22.3	9.1	1.3	5.7	13.9

Source: U.S. Small Business Administration, Office of Advocacy, *Women in Business, 2001*, Table A-5, p. 28.

From 1982 to 1992, the number and revenue of women-owned business grew at rates that outpaced those of all other small business sectors. According to Small Business Administration data, the number of women-owned businesses grew in every sector of the economy in which the type of business can be determined from 1982 to 1992. The number of women-owned businesses in determinable industries grew during this period from a low of 73.2% (retail trade) to high of 382.1% (wholesale trade). From a revenue standpoint, the increase ranged from 53.2% (mining) to 742.3% (manufacturing).²⁷

The federal promotion of WBEs was given statutory authority with the enactment of the Women's Business Ownership Act of 1988.²⁸ This law defined a WBE as a small business that is at least 51% owned, managed, and operated by one or more women. It established a new loan guarantee program administered by SBA to guarantee commercial bank loans of up to \$50,000 to small firms (not just female-owned firms); created a National Women's Business Council to monitor the progress

²⁷Small Business Administration, *Women in Business*, Washington: Small Business Administration, October 1998, Table 3.

²⁸P.L. 100-533, 102 Stat 2689, Oct. 25, 1988.

of federal, state, and local governments in assisting WBEs; and authorized grants to private organizations to provide management and technical assistance to WBEs.

Table 3. Number and Receipts for Women-Owned Firms by Industry Division, 1997

Industry Division	Number of Firms	Sales and Receipts (billions)
All Industries	5,417,034	\$818.7
Agricultural Services, Forestry, and Fishing	74,444	\$5.9
Mining	20,030	\$7.2
Construction	157,173	\$67.6
Manufacturing	121,108	\$113.7
Transportation, Communications, and Utilities	128,999	\$32.9
Wholesale Trade	125,645	\$188.5
Retail Trade	919,990	\$152.0
Finance, Insurance, and Real Estate	479,469	\$56.0
Services	2,981,266	\$186.2

Source: Survey of Women-Owned Business Enterprises (SWOBE), 1997, U.S. Department of Commerce, Bureau of the Census (as reported in U.S. Small Business Administration, Office of Advocacy, *Women in Business, 2001* (Washington: October 2001), p. 18).

Annual procurement goals for WBEs continued to be negotiated between federal agencies and the SBA under the authority of Executive Order 12138 until enactment of the Federal Acquisition Streamlining Act of 1994.²⁹ This law, known by its acronym, "FASA," amended section 15 of the Small Business Act³⁰ to establish a 5% annual goal for WBE participation in federal prime contracts and subcontracts. FASA also amended section 8(d) of the Small Business Act³¹ to give WBEs equal standing with small businesses and small disadvantaged businesses in the subcontracting plans of federal prime contractors.³²

Further measures to facilitate the federal government's promotion of WBEs were contained in the Small Business Administration Reauthorization and Amendments Act

²⁹P.L. 103-355, 108 Stat. 3243, 3374, Oct. 13, 1994.

³⁰15 U.S.C. 644.

³¹15 U.S.C. 637(d).

³²48 CFR 19.7.

of 1994.³³ This law codified the SBA's Office of Women's Business Ownership;³⁴ established an Interagency Committee on Women's Business Enterprise to recommend policies to promote the development of WBEs; and restructured the National Women's Business Council as a bipartisan federal government council to the Interagency Committee, the SBA, and Congress.

There is no centralized federal program for certification of WBEs, such as has been put in place for SDBs.

Federal Assistance for Starting a Small Business

Although there are no federal programs specifically designed to help disadvantaged individuals obtain startup capital for new business ventures, SBA offers assistance to small business entrepreneurs who, despite sound business plans, are unable to borrow on reasonable terms from conventional lenders. This assistance most often takes the form of loan guarantees under the section 7(a) program, by which SBA guarantees to pay part of any loss sustained by a bank or other financial institution in the event of default.³⁵ In general, however, SBA is a lender of last resort, after other possible sources have been exhausted.

SBA also helps finance Minority Business Enterprises (MBEs) through its assistance to privately owned Small Business Investment Companies (SBICs). Created by the Small Business Investment Act of 1958,³⁶ SBICs are private firms that raise funds to provide venture capital for small businesses by selling securities guaranteed by SBA. Located throughout the United States, they provide equity capital, long-term loans, and management assistance to small businesses for expansion, modernization, and operating expenses, as well as venture capital for startup costs and research and development expenses. Assistance to small businesses often takes the form of equity-type investments, by which SBICs share in the future growth and profits of the firms.³⁷

Some federal agencies, such as the Department of Energy and the Farmers Home Administration in the Department of Agriculture, have programs to promote specific kinds of small business creation and development, for which eligible minorities or women can apply. These programs can be identified in the *Catalog of Federal Domestic Assistance* published by the General Services Administration. The catalog can be found at many libraries and is available by subscription from the

³³P.L. 103-403, 108 Stat. 4175, 4192, Oct. 22, 1994.

³⁴The Office of Women's Business Ownership maintains a Web site at [<http://www.sba.gov/womensbusiness>].

³⁵P.L. 91-606. The SBA has not provided funding for direct handicapped assistance loans, but such individuals are eligible for all SBA loan guaranty programs.

³⁶P.L. 85-699, 72 Stat. 689, Aug. 21, 1958.

³⁷Information on SBICs can be obtained from the National Association of Small Business Investment Companies, 666 11th St., NW, Washington, DC 20001; [<http://www.nasbic.org>], visited Sept. 14, 2001.

Superintendent of Documents, Government Printing Office, Washington, DC 20402. It can also be consulted on the Internet at [<http://www.cfda.gov/>].

The Minority Business Development Agency

President Nixon issued Executive Order 11458 in 1969.³⁸ That executive order created the Office of Minority Business Enterprise, which, in 1979, became the Minority Business Development Agency (MBDA). Located in the Department of Commerce, MBDA is the only federal agency charged exclusively with promoting the creation and growth of minority-owned businesses in the United States. Although its scope of operations has been reduced in recent years due to budgetary reductions, MBDA continues to help federal, state, and local government agencies, as well as major corporations, increase their contracting activities with minority-owned firms.

MBDA also provides funding for a network of some 36 Minority Business Development Centers (MBDCs) and nine Native American Business Development Centers (NABDCs) located throughout the country. These centers provide management and technical assistance to minority entrepreneurs to help them to create, manage, and expand their businesses, and to identify business development opportunities. The MBDCs and NABDCs are not sources of capital; they do not make grants or provide loans or loan guarantees. They do, however, offer assistance in locating possible sources of capital and in preparing funding and bonding proposals for submission to financial institutions and government agencies.

Persons who qualify for assistance from MBDA include African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian-Pacific Americans, Asian Indians, American Indians, Eskimos, and Hasidic Jews. *Nonminority* women are eligible on an individual basis if they are found to be socially or economically disadvantaged, but they are not eligible as a group for MBDA assistance. Unlike most other federal programs for disadvantaged businesses, size standards do not apply; MBDA serves minority-owned firms of any size.

Further information about MBDA and its network of MBDCs and NABDCs is available from MBDA regional offices in Atlanta, Chicago, Dallas, New York, and San Francisco, and from district offices in Boston, Miami, Philadelphia, and El Monte, CA. MBDA's home page is available at [<http://mbda.gov/>].

Contracting and Subcontracting Goals

In P.L. 95-507, Congress amended the Small Business Act and the Small Business Investment Act of 1958 to require all federal agencies to set percentage goals for the awarding of procurement contracts to MBEs.³⁹ These goals are

³⁸34 F.R. 4937, March 5, 1969. MBDA now operates under the authority of two subsequent executive orders: E.O. 11625, Oct. 13, 1971, 15 U.S.C. 631 note (36 F.R. 19967), issued by President Nixon; and E.O. 12432, July 14, 1983, 15 U.S.C. 631 note (48 F.R. 32551), issued by President Reagan.

³⁹P.L. 95-507 was approved on Oct. 24, 1978. 92 Stat. 1757, 1770, 15 U.S.C. 644 (g).

established annually by consultations between SBA and each federal agency. The same law also amended section 8(d) of the Small Business Act to require prime contractors with federal contracts that exceed \$1,000,000 for the construction of any public facility, or \$500,000 in the case of all other contracts, to establish percentage goals for the utilization of MBEs as *subcontractors* whenever subcontracting opportunities are present.

The procedure established by P.L. 95-507 for determining annual MBE procurement goals was changed and strengthened in 1988 by a provision of P.L. 100-656 requiring the President to establish a governmentwide procurement goal for SDBs at not less than 5% of the total value of all prime contracts.⁴⁰ (The goal for *all* small businesses, including those that are minority-owned, is set at 20%.) The 5% SDB goal went into effect at the beginning of FY1990 and helped to increase the share of federal contracting and subcontracting dollars going to minority-owned firms despite declining federal procurement budgets.

In addition, P.L. 95-507 amended the Small Business Act to require each federal agency with procurement powers to create an Office of Small and Disadvantaged Business Utilization (OSDBU).⁴¹ These offices are responsible for each agency's contracting and development programs for small, disadvantaged, and women-owned businesses, and are responsible for coordinating these programs with the SBA. This means, in effect, that virtually every federal agency has procurement programs for MBEs and WBEs. Minority and female entrepreneurs wanting to do business with a specific federal agency should contact the OSDBU of that agency for information on contracting and subcontracting opportunities. A list of OSDBUs is available on the Internet at [<http://www.sba.gov/GC/osdbu.html>].

Price Evaluation Adjustment Program and Benchmarking

The price evaluation adjustment program is an SDB program incentive and benefit. Benchmarking is a mechanism designed to facilitate compliance with *Adarand*.

Price Evaluation Adjustment Program. The governmentwide affirmative-action effort for SDBs was further strengthened by the Federal Acquisition Streamlining Act of 1994,⁴² which reiterated the 5% SDB goal and extended to civilian agencies two devices previously authorized for use by the Department of Defense in its SDB program. First, when at least two capable SDBs were expected to bid on a contract, that contract could be set aside for exclusive bidding by SDBs.

⁴⁰102 Stat. 3853, 3881, P.L. 100-656, Nov. 15, 1988, 15 U.S.C. 644(g)-(h). The final policy letter to heads of departments and agencies on implementing small business and SDB goals and on reporting their results to the SBA was published in the *Federal Register* on March 20, 1991 (56 F.R. 11798). It requires that the 5% SDB goal be calculated separately for prime contracts and subcontracts.

⁴¹15 U.S.C. 644(k).

⁴²P.L. 103-355, Sec. 7102, 108 Stat. 3243, 3367, Oct. 13, 1994, 15 U.S.C. 644 note.

This was known as the “Rule of Two.”⁴³ Second, in the case of unrestricted competitions, SDBs can receive a price evaluation preference of up to 10%. This is achieved by increasing the offers of all non-SDBs by the determined percentage. The winning bid, however, cannot exceed fair market price. Proposed regulations to implement this new provision of federal procurement law were published in the *Federal Register* on January 6, 1995.⁴⁴ (Other procurement reforms contained in FASA — such as simplifying acquisition processes for contracts under \$100,000 and reserving contracts between \$2,500 and \$100,000 for exclusive bidding by small businesses — were designed for *all* small businesses, not just SDBs.)

The *Adarand* decision of June 1995 and the subsequent federal review of all race-based affirmative action programs ordered by President Clinton in July 1995 resulted in the proposed rules to implement FASA’s SDB provisions being delayed and ultimately not being adopted. The Rule of Two, which had already been discontinued by DOD, was deemed not to meet the *Adarand* standard and was dropped entirely. The 10% price evaluation preference was adopted, but on a more limited scale.

The “price evaluation adjustment program” implements FASA’s 10% price evaluation provision in a way that is intended to address discrimination, meet the legal requirements of *Adarand*, preserve competition, and not unfairly harm businesses that do not qualify as SDBs.

Under this program, SDBs submitting bids on competitively awarded federal contracts may qualify for a price evaluation credit of up to 10%, as described above. Since January 1, 1999, the credits have been available only to businesses that have been certified as SDBs by the Small Business Administration. The price evaluation credit is used only in industries in which it has been determined, by a method called “benchmarking,” that minority-owned firms continue to suffer the effects of discrimination.⁴⁵ If price credits, offered over a sustained period of implementation, prove inadequate to remedy discrimination in a particular industry, agencies can consider the use of set-asides in awarding contracts to SDBs. Otherwise, the moratorium on set-asides, initiated by the Clinton Administration in 1996, remains in effect.

⁴³In the aftermath of the *Adarand* decision, and after consultation with the Department of Justice, DOD suspended use of the “Rule of Two” in October 1995.

⁴⁴U.S. Office of Management and Budget, “Federal Acquisition Regulation; Small Business,” *Federal Register*, vol. 60, Jan. 6, 1995, pp. 2301-2320. Final rules to implement Section 7102 were held up pending completion of the review of federal race-based affirmative action programs ordered by the President’s directive of July 19, 1995, in response to the Supreme Court’s decision in *Adarand Constructors, Inc. v. Peña*. A final rule was published at U.S. Office of Management and Budget, “Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement,” *Federal Register*, vol. 64, Jul. 2, 1999, pp. 36221-36225.

⁴⁵U.S. Office of Management and Budget, “Small Disadvantaged Business Procurement; Reform of Affirmative Action in Federal Procurement,” *Federal Register*, vol. 63, June 30, 1998, pp. 35714-35718.

Benchmarking. Benchmarking was developed in an attempt to meet the *Adarand* requirement that race-conscious contracting programs must serve a “compelling interest” and must be “narrowly tailored.” In order to determine markets in which it is still necessary to offset the effects of discrimination, the *utilization* and *capacity* of minority-owned businesses in 70 SIC major groups, and in nine geographic areas for each of the three construction SIC major groups, were determined by analyzing data representing the firms in the United States that bid on federal contracts or participated in the SBA’s 8(a) program during FY1996. Utilization was based on the percentage of the total dollar value of federal contracts awarded to SDBs in each SIC code or geographic area in FY1996. Capacity, more difficult to determine, was estimated by taking into account various characteristics of firms that bear directly on the value of contracts that they receive, such as the size and age of the firm. This approach allowed Commerce Department statisticians to estimate the percentage of the dollar value of contracts that SDBs would be expected to receive if the success of individual SDBs in winning federal contracts equaled that of all other firms of equal age and size in the industry.

SBA’s Section 8(a) Program

Named for the section of the Small Business Act from which it derives its authority,⁴⁶ the purpose of the 8(a) program is to assist eligible small disadvantaged business concerns to compete in the American economy and gain access to the federal procurement market through business development. SBA enters into contracts with other federal agencies for their procurement needs; it then subcontracts the actual performance of the work to the limited number of economically and socially disadvantaged firms certified by the SBA for participation in the program. All federal departments and major independent agencies participate in the 8(a) program.

For purposes of program enrollment, African Americans, Asian Americans, Hispanic Americans, and Native Americans are presumed to be socially disadvantaged. Others, such as women or disabled persons who do not belong to the presumptively disadvantaged minority groups, can individually establish social disadvantage by demonstrating that they have been subjected to racial or ethnic prejudice or cultural bias because of their membership in a particular group. In the past, there have been few nonminority business owners in the 8(a) program.

Economic disadvantage is established, in part, by the personal net worth of the owners and managers claiming disadvantage. Individuals whose personal net worth exceeds \$250,000 (excluding their ownership interests in the firm and the equity in their primary places of residence) will not be considered economically disadvantaged for purposes of 8(a) program entry. All firms currently in the 8(a) program will automatically receive SDB status and will not have to be recertified. All firms that have exited the 8(a) program in good standing within the last three years and have undergone a routine annual review during that period will also receive automatic certification.

⁴⁶Section 8(a) of the Small Business Act, P.L. 85-536, as amended, can be found at 15 U.S.C. 637(a). Regulations appear at 13 CFR 124.

Revised by the Business Opportunity Development Reform Act of 1988,⁴⁷ and more recently by the Department of Justice's post-*Adarand* review of federal affirmative action programs, the 8(a) program's current regulations were published in the *Federal Register* on June 30, 1998.⁴⁸ The regulations can also be consulted online via SBA's Office of Minority Enterprise Development at [<http://www.sbaonline.sba.gov/8abd/>].

SBA is directed to rely on the benchmarking system described above in administering the 8(a) program. The benchmarks are to provide guidance to program administrators in determining, for example, the number and types of firms that will participate in the program, and in deciding what contracts will be authorized under the program.

The 8(a) program is designed as a business development program, and certified SDB firms are required to develop comprehensive business plans with specific business targets, objectives, and goals. Program participation is limited to a period of nine years. As companies move through the program, they are required to obtain a progressively larger share of their revenues from non-8(a) sources in order to enhance their chances of survival after graduating from the program.

To help meet these objectives, section 7(j) of the Small Business Act⁴⁹ requires SBA to provide management and technical assistance to 8(a) firms. Assistance is provided in such areas as loan packaging, financial counseling, accounting and bookkeeping, marketing, and management. There are also provisions for surety bonding assistance and for advance payments to help in meeting financial requirements necessary to the performance of a contract.

SDBs can participate in many other SBA programs that are available to small businesses in general. These include a national network of Small Business Development Centers that offers technical and management assistance, a surety bonding program for contractors who are unable to obtain bonding through normal channels, and several business development programs that emphasize improvement of management skills. Small business owners interested in participating in the 8(a) program or other SBA assistance programs should contact their nearest SBA field office or go online at [<http://www.sbaonline.sba.gov>].

Department of Transportation's Programs

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)⁵⁰ required the Department of Transportation (DOT) to expend not less than 10% of federal highway and transit funds with disadvantaged business

⁴⁷P.L. 100-656, 102 Stat. 3853, Nov. 15, 1988.

⁴⁸U.S. Office of Management and Budget, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations," *Federal Register*, vol. 63, June 30, 1998, pp. 35726-35780.

⁴⁹15 U.S.C. 636.

⁵⁰P.L. 100-17, 101 Stat. 132, 145, April 2, 1987.

enterprises. STURAA was one of the first pieces of federal legislation to include women in the definition of socially disadvantaged individuals. Prior to its passage, DOT maintained separate programs and goals for MBEs and WBEs. DOT's 10% goal was reauthorized by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA),⁵¹ and was unchanged by the Transportation Equity Act for the 21st Century (TEA-21),⁵² despite efforts to terminate it.⁵³ According to the most recent data available, from 1983 through 1999, about \$35 billion of the federal funds expended through DOT-assisted highway and transit contracts went to DBEs — an increase from 9.9% to 12.8%.⁵⁴

Federal transportation funds are distributed by DOT through state departments of transportation and state and local mass transit agencies, which are not covered by the new federal benchmarking requirements. These agencies are required to adopt specific annual goals for DBE participation in their highway and transit contracts. The state and local transportation agencies are also responsible for establishing certification procedures for their DBE programs, although all 8(a) firms are automatically certified. Regulations containing changes in response to *Adarand* were published in 1999.⁵⁵ Information on highway and transit contracting opportunities for DBEs can be obtained from state highway departments and state and local transit agencies.

Amendments in 1987 and 1992 to the Airport and Airway Improvement Act of 1982⁵⁶ require DOT to expend not less than 10% of federal airport improvement funds with DBEs. Also, an airport must ensure, to the maximum extent practicable, that at least 10% of concession contracts go to DBEs. This law requires DOT to establish uniform criteria to be used by state governments and airport agencies in certifying whether firms qualify as DBEs and, like STURAA and its successors, includes women in the definition of disadvantaged individuals.

DBEs seeking to compete in transportation contracting opportunities can experience difficulties in obtaining capital and meeting bonding requirements. Two programs conducted by DOT's Minority Business Resource Center in Washington are designed to assist DBEs in these areas. Short term working capital at prime interest rates can be obtained through the Short Term Lending Program, and payment and

⁵¹P.L. 102-240, 105 Stat. 1914, 1919, Dec. 18, 1991.

⁵²P.L. 105-178, June 9, 1998.

⁵³Proposed floor amendments to kill the program failed in both the Senate ("Amendment No. 1708," *Congressional Record*, daily edition, vol. 144, March 6, 1998, pp. S1481-S1498) and the House ("Amendment No. 3 Offered by Mrs. Roukema," *Congressional Record*, daily edition, vol. 144, April 1, 1998, pp. H2000-H2012).

⁵⁴U.S. General Accounting Office, "Disadvantaged Business Enterprises: Critical Information Is Needed to Understand Program Impact," GAO report GAO-01-586 (Washington: May 1, 2001), p. 3.

⁵⁵U.S. Office of Management and Budget, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs," *Federal Register*, vol. 64, Feb. 2, 1999, pp. 5095-5148.

⁵⁶49 U.S.C. App. 2204.

performance bonds can be issued through the Bonding Assistance Program. To be eligible for these assistance programs, certified DBEs must have been awarded a transportation-related contract.

As noted by the General Accounting Office, the DBE program has changed significantly since DOT issued regulations in 1999, in part, to respond to *Adarand*.⁵⁷ The regulations overhauled the DBE goal-setting process, so that states and transit authorities are no longer required to justify goals lower than 10% — the amount identified in the statutory DBE provision.⁵⁸ Further, goals are to be based on the number of “ready, willing, and able” DBEs in local markets.⁵⁹ Among other changes are:

States and transit authorities must now use race-neutral measures (i.e., measures intended to help small businesses, not just DBEs), such as outreach and technical assistance, to the greatest extent possible to achieve their DBE goals. Furthermore, the new regulations revised the eligibility requirements to include a personal net worth cap of \$750,000 for the individuals who own and control DBEs.⁶⁰

States and transit authorities were required to submit to DOT new DBE program plans that reflected the new regulations in August 1999.

Department of Defense’s SDB Program

Section 1207 of the National Defense Authorization Act of 1987 established a goal, for FY1987 through FY1989, of awarding 5% of the total value of Department of Defense (DOD) procurement contracts to minority firms, historically black colleges and universities, and other minority institutions.⁶¹ Repeatedly reauthorized, this requirement was extended through FY2003, by the National Defense Authorization Act for Fiscal Year 2001.⁶² This same law also codified the program as section 2323 of Title 10, *U.S. Code*. The recently enacted Federal Acquisition Streamlining Act extended section 2323 to the U.S. Coast Guard and the National Aeronautics and Space Administration. Regulations implementing this program can be found in the *Code of Federal Regulations* at 48 CFR Part 219.

In pursuit of the 5% goal, DOD is the largest participant by far in the 8(a) program. SDBs can receive a price evaluation preference of up to 10% when competing against non-SDBs in open solicitations. In addition, winning bids with DOD, unlike those with civilian agencies, are allowed to exceed fair market price.

⁵⁷U.S. General Accounting Office, “Disadvantaged Business Enterprises: Critical Information Is Needed to Understand Program Impact,” p. 3.

⁵⁸Ibid, p. 4.

⁵⁹Ibid.

⁶⁰Ibid.

⁶¹P.L. 99-661, 100 Stat. 3816, 3973, Nov. 14, 1986.

⁶²P.L. 106-398, 114 Stat. 1654, Oct. 30, 2000.

Major DOD prime contractors are also required to submit plans and goals for subcontracting with SDB concerns.

The FY1999 defense authorization act contains a provision that places restrictions on DOD's SDB program. Section 801⁶³ amends current law to require that the Secretary of Defense determine, at the beginning of each fiscal year, whether the department has met its 5% SDB goal in the most recent fiscal year for which data are available. If the goal has been met, DOD is required to suspend, for one year, the regulations providing for the granting of price evaluation preferences to SDBs. During that one-year period, DOD is prohibited from entering into a contract with an SDB for a price exceeding fair market cost.

DOD contracting offices throughout the country maintain active programs to identify small disadvantaged businesses and place them on mailing lists that are used in the solicitation of proposals and bids. Unlike SBA's section 8(a) program and DOT's DBE program, DOD's section 2323 program had no certification requirements. All SDB contractors will have to be certified by the SBA. Although nonminority women are not presumed to be disadvantaged for purposes of Section 2323, DOD does actively seek out female-owned small businesses as prime contractors and subcontractors in its attempts to meet its 5% WBE goal.

To encourage DOD contractors to increase SDB participation in subcontracting, Congress in 1990 created the Mentor-Protégé Pilot Program. Mandated by section 831 of the National Defense Authorization Act for Fiscal Year 1991,⁶⁴ the program authorizes prime contractors (mentors) to award noncompetitive subcontracts to SDBs (protégés) and to provide loans or make other investments in protégé firms. Mentors receive incentives in the form of reimbursements for their assistance to protégés and earn credit towards their SDB subcontracting goals. In this voluntary program, mentors are responsible for selecting their protégés, subject to the approval of DOD's Office of Small and Disadvantaged Business Utilization, which oversees the program.

"Small business specialists" are available at each defense procurement agency to assist SDBs in marketing their products and services with DOD. Information and guidance are available on defense procurement procedures, how to be placed on solicitation mailing lists, and how to identify prime contracting and subcontracting opportunities. A list of the locations of Army, Navy, Air Force, Defense Logistics Agency, and other DOD procurement and contract administration offices, together with the names of each location's small business specialist, can be found in the DOD publication *Small Business Specialists*, which can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The home page of DOD's Office of Small and Disadvantaged Business Utilization can be visited on the Internet at [<http://www.acq.osd.mil/sadbu/>].

⁶³P.L. 105-261. For the text of the conference report (H.Rept. 105-736), see *Congressional Record*, daily edition, vol. 144, Sept. 22, 1998, pp. H8097-H8460.

⁶⁴P.L. 101-510, 104 Stat. 1485, 1607, Nov. 5, 1990.

Two other DOD publications, *Selling to the Military* and *Guide to the Preparation of Offers for Selling to the Military*, provide background information on DOD procurement procedures, items purchased, the location of military purchasing offices, and how to prepare bids and proposals. Subcontracting opportunities with DOD prime contractors can be identified in the DOD directory *Subcontracting Opportunities with DoD Major Prime Contractors*, which lists the names and addresses of DOD prime contractors, the names and telephone numbers of the firms' small business liaison officers, and the products or services being provided to DOD. These publications are also for sale by the superintendent of documents.

Laws That Apply to Other Departments and Agencies

Other federal laws that contain provisions designed to assist small disadvantaged businesses and that apply to specific executive departments or independent agencies not discussed above are described here. Some of these statutes, as noted, include women as socially or economically disadvantaged, making firms owned by nonminority women eligible for participation.

Department of Energy. The Energy Policy Act of 1992⁶⁵ requires that not less than 10% of the total combined amounts obligated for contracts and subcontracts by each agency under this Act be expended with small business concerns controlled by socially and economically disadvantaged individuals or women, historically black colleges and universities (HBCUs), or colleges and universities having a student body in which more than 20% of the students are Hispanic Americans or Native Americans.

The National Defense Authorization Act for FY1994⁶⁶ establishes for the Department of Energy (DOE) a 5% goal for contracts and subcontracts with SDBs, HBCUs, and minority institutions in carrying out national security programs for the Department of Defense. This goal applies to procurement funds obligated in each fiscal year from 1994 through 2000.

DOE has initiated a pilot mentor-protégé program to help energy-related SDBs and WBEs improve their business and technical capabilities in order to obtain a larger share of DOE prime and subcontracts. Final guidelines for this program were published in the *Federal Register* on April 21, 2000.⁶⁷

⁶⁵P.L. 102-486, 106 Stat. 2776, 3133, Oct. 24, 1992, 42 U.S.C. 13556.

⁶⁶P.L. 103-160, 107 Stat. 1547, 1956, Nov. 30, 1993.

⁶⁷U.S. Office of Management and Budget, "Office of Economic Impact and Diversity; Guidelines for Department of Energy Mentor Protégé Initiative," *Federal Register*, vol. 65, Apr. 21, 2000, pp. 21367-21371.

Department of State.⁶⁸ The Omnibus Diplomatic Security and Anti-Terrorism Act of 1986,⁶⁹ which authorizes funds for the construction and maintenance of U.S. embassies abroad, requires that not less than 10% of the amount appropriated for diplomatic construction or design projects each fiscal year shall be allocated to the extent practicable for contracts with American minority contractors.

The Foreign Relations Authorization Act, Fiscal Years 1990 and 1991,⁷⁰ requires the Secretary of State to: establish a pilot program of voluntary set-asides to increase SDB participation in contract, procurement, grant, and research and development activities funded by the Department of State and the United States Information Agency (Sec. 126); allocate not less than 10% of the amount of funds obligated for local guard contracts for Foreign Service buildings abroad for contracts with U.S. MBEs (Sec. 136);⁷¹ and make available to U.S. SDBs not less than 10% of the amounts available for U.S. contracts for the broadcasting relay station in Israel (Sec. 301). Nonminority women are *not* presumed to be socially or economically disadvantaged under this law.

Environmental Protection Agency.⁷² The Superfund Amendments and Reauthorization Act of 1986⁷³ authorizes funds to clean up hazardous waste sites throughout the country. While there is no specific set-aside goal or quota in this legislation, it does require the Environmental Protection Agency (EPA) to submit to Congress an annual report on contracts awarded to minority businesses under this law.

EPA's appropriations act for FY1991 provided that at least 8% of federal funding for prime contracts and subcontracts awarded in support of authorized programs, including grants, loans, and contracts for wastewater treatment and leaking underground storage tanks grants be made available to SDBs (including WBEs) and

⁶⁸For more information on Department of State disadvantaged business programs, contact the Office of Small and Disadvantaged Business Utilization, Department of State, SA-6, Room L500, Washington, DC 20522. Its Web site can be accessed at [<http://www.statebuy.gov/osdbu1.htm>].

⁶⁹P.L. 99-399, 100 Stat. 853, 865, Aug. 27, 1986.

⁷⁰P.L. 101-246, 104 Stat. 15, 28, 33, and 63, Feb. 16, 1990.

⁷¹This provision was amended in 1994 by the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236, 108 Stat. 401, April 30, 1994) and was codified at 22 U.S.C. 4864.

⁷²For more information on Environmental Protection Agency programs for disadvantaged business, contact the Office of Small and Disadvantaged Business Utilization, Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W. (1230A), Washington, DC 20460. Its Web site can be accessed at [<http://www.epa.gov/osdbu>].

⁷³P.L. 99-499, 100 Stat. 1613, 1627, Oct. 17, 1986.

historically black colleges and universities.⁷⁴ This provision was continued in EPA's FY1993 appropriations act⁷⁵ and remains in effect.⁷⁶

The Clean Air Act Amendments of 1990,⁷⁷ while specifically prohibiting the use of quotas, provide that the EPA shall, to the extent practicable, require that not less than 10% of total federal funding for any research relating to the requirements of the amendments be made available to disadvantaged business concerns, historically black colleges and universities, colleges and universities having a student body in which 40% of the students are Hispanic, or minority institutions. This law includes women and disabled Americans within its definition of economically and socially disadvantaged individuals.

Federal Deposit Insurance Corporation. The Financial Institutions Emergency Acquisitions Amendments of 1987⁷⁸ require the Federal Deposit Insurance Corporation, when assisting in the emergency interstate acquisition of a minority-controlled bank, to seek an offer from other minority-controlled banks before proceeding with the bidding priorities otherwise required.

National Aeronautics and Space Agency. NASA currently operates under a requirement that at least 8% of the total value of its prime contracts and subcontracts be made available to SDBs and minority educational institutions. First included in its FY1990 appropriations act⁷⁹ and codified at 42 U.S.C. 2473b, this 8% goal was restated in subsequent NASA appropriations acts to include women.⁸⁰ As noted above, the Federal Acquisition Streamlining Act extended to NASA DOD's authority to set aside procurement contracts for exclusive bidding by SDBs, to grant SDBs a price evaluation preference of up to 10% when competing against non-SDBs in open solicitations, and to grant contracts at above fair market price. NASA has also formulated its own mentor-protégé program⁸¹ and is taking other steps to enhance the capabilities of SDBs and WBEs to perform as NASA contractors and subcontractors.

⁷⁴P.L. 101-507, 104 Stat. 1351, 1374, Nov. 5, 1990.

⁷⁵P.L. 102-389, 106 Stat. 1571, 1602, Oct. 6, 1992.

⁷⁶42 U.S.C. 4370d.

⁷⁷P.L. 101-549, 104 Stat. 2399, 2708, Nov. 15, 1990, 42 U.S.C. 7601 note.

⁷⁸P.L. 100-86, 101 Stat. 552, 625, Aug. 10, 1987, 12 U.S.C. 1823f(6).

⁷⁹P.L. 101-144, 103 Stat. 839, 863, Nov. 9, 1989, 42 U.S.C. 2473b.

⁸⁰See Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts for 1991 (P.L. 101-507, 104 Stat. 1351, 1380, Nov. 5, 1990) and 1993 (P.L. 102-389, 106 Stat. 1571, 1610, Oct. 6, 1992).

⁸¹For the final rule, see U.S. Office of Management and Budget, "NASA Mentor-Protégé Program Policies," *Federal Register*, vol. 60, March 24, 1995, pp. 15497-15503. Or see 48 CFR Part 1819.

Programs for Native Americans

In addition to the Minority Business Development Agency's Native American Business Development Centers described above, other federal programs have been created specifically for Native American-owned firms. The Department of the Interior's Bureau of Indian Affairs (BIA) operates several such programs, authorized by the Indian Financing Act of 1974, as amended.⁸² BIA's Indian Business Development Grant Program, for example, provides equity capital for Native American entrepreneurs to establish and develop profit-making business ventures on federal Indian reservations.⁸³ Eligibility for this program extends to federally recognized Native American tribes and Alaska Native groups, individual members of such tribes or groups, and Indian-owned corporations, partnerships, and cooperative associations. Businesses must be at least 51% owned and controlled by Native Americans and be located on or near federal Indian reservations.

The BIA also operates a guaranteed loan program for federally recognized Native American tribes, Alaska Native groups, and individual members of such tribes or groups who are otherwise unable to obtain credit from private lending institutions. Loans may be guaranteed for any profit-making purpose (usually business, industry, or agriculture) that will promote the economic development of a federal Indian reservation. The BIA can also make direct loans, funded from a revolving account, to Native Americans and Native American entities for economic development purposes in cases where funds are unavailable from other sources on reasonable terms and conditions.

The Indian Self-Determination and Education Assistance Act requires that Indian organizations and Native American-owned economic enterprises receive preference in the award of subcontracts and subgrants that flow from BIA contracts and grants for the benefit of Native Americans.⁸⁴ Also, the Buy Indian Act gives the secretary of the interior discretion to purchase the products of Native American industry.⁸⁵

DOD's Defense Logistics Agency administers a program with the dual purpose of maintaining a strong national security by expanding the defense industrial base and improving the business climate and economic development on federal Indian reservations.⁸⁶ In this Procurement Technical Assistance (PTA) Program, DOD shares the cost of establishing and supporting PTA programs that are conducted by

⁸²P.L. 93-262, 88 Stat. 77, Apr. 12, 1974, 25 U.S.C. 1451.

⁸³For more information on Bureau of Indian Affairs disadvantaged business programs, contact the Bureau of Indian Affairs, Department of the Interior, 1849 C Street, N.W., Washington, DC 20240. Pursuant to a Court order dated December 6, 2001, the Bureau of Indian Affairs Web site has been temporarily disconnected from the Internet.

⁸⁴P.L. 93-638, 88 Stat. 2203, Jan. 4, 1975, 25 U.S.C. 450e(b).

⁸⁵P.L. 61-313, Sec. 23, 36 Stat. 855, 861, June 25, 1910, 25 U.S.C. 47.

⁸⁶For more information on Department of Defense small business programs, contact the Office of Small and Disadvantaged Business Utilization, Room 2A318, The Pentagon, Washington, DC 20301-3061. Its Website can be accessed at [<http://www.acq.osd.mil/sadbu>].

tribal organizations and Native American economic enterprises to help business firms located on reservations obtain DOD procurement contracts.

The Indian Health Service of the Department of Health and Human Services, in connection with its construction, maintenance, and operation of hospital and health facilities as well as water and sewer systems for Indians, is authorized to grant preferences to products of Native American firms.⁸⁷

Additional Sources of Information

Commerce Business Daily (CBD) is a valuable source of information for identifying opportunities for selling goods and services to the federal government. Published by the Department of Commerce every weekday, it lists proposed procurements of all federal agencies, subcontracting opportunities offered by prime contractors, and other information on federal procurement activities. It is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The CBD is also available for inspection at DOD procurement offices, at the field offices of the Small Business Administration, the Department of Commerce, and the General Services Administration, and at many local chambers of commerce and public libraries. It can also be consulted via the Internet at [<http://cbdnet.gpo.gov>].

Field offices of the Small Business Administration, the General Services Administration, and the Department of Commerce as well as the procurement offices of the Department of Defense are equipped to assist SDBs in locating federal civilian and military procurement opportunities. Many local chambers of commerce also have facilities to provide similar guidance and assistance.

Products and services purchased by federal civilian agencies are described in the SBA's publication *U.S. Government Purchasing and Sales Directory*, which is available for purchase by mail from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Information on the availability and cost of this and other executive agency publications mentioned in this report can be obtained by calling the Government Printing Office in Washington, DC, at 202-512-1800.

⁸⁷P.L. 94-437, Title III, 90 Stat. 1407, Sept. 30, 1976, 90 Stat. 1407, 25 U.S.C. 1633.

Appendix A: List of Acronyms

DBE	Disadvantaged Business Enterprise
FPDC	Federal Procurement Data Center
MBDA	Minority Business Development Agency
MBDC	Minority Business Development Center
MBE	Minority Business Enterprise
NABDC	Native American Business Development Center
OSDBU	Office of Small and Disadvantaged Business Utilization
SBA	Small Business Administration
SDBC	Small Disadvantaged Business Certification
SDB	Small Disadvantaged Business
WBE	Women-Owned Business Enterprise