



U.S. Small Business
Administration

Legislative & Regulatory Update

**For Small Business Government Contracting
Programs**

November 16, 2020

Legislative Action

Coronavirus Aid, Relief, and Economic Security (CARES) Act

[Public Law No. 116-136](#)

- Establishes a \$349 billion Paycheck Protection Program (sect. 1102)
 - Forms and guidance available at www.sba.gov/ppp
 - Includes [Frequently Asked Questions for Lenders and Borrowers](#)
 - Extended in [Public Law 116-139](#) with additional \$310B
- Authorizes reimbursement of paid leave for government contractors (sect. 3610)
 - DOD implemented through [Class Deviation 2020-00013 - CARES Act Section 3610 Implementation \(FAQs\)](#)
 - OMB issued general guidance in memorandum [M-20-22, Preserving the Resilience of the Federal Contracting Base in the Fight Against the Coronavirus Disease 2019 \(COVID-19\)](#)

Legislation to Watch – NDAA FY2021 (House version)

[H.R. 6395 \(Report\)](#)

- **Sec. 831. Transfer of verification of small business concerns owned and controlled by veterans or service-disabled veterans to the Small Business Administration** - would transfer VOSB and SDVOSB certification from VA to SBA within 2 years, as may be extended an unlimited number of times; limits sole-source and competitive set-asides to SBA-certified firms.
- **Sec. 832. Equitable adjustments to certain construction contracts** - would require interim partial payments to small businesses that submit requests for equitable adjustments on a construction contract.
- **Sec. 833. Exemption of certain contracts awarded to small business concerns from category management requirements** - would exempt 8(a), WOSB, HUBZone and SDVOSB contracts from procedural requirements for category management and from category management goaling.
- **Sec. 834. Report on accelerated payments to certain small business concerns** - would require agencies to report on whether they are providing accelerated payments to small business prime contractors and subcontractors.
- **Sec. 835. Extension of participation in 8(a) program** - would extend the term of an 8(a) firm that was participating in the 8(a) program on or before March 13, 2020 by one year, regardless of whether the firm suspended its participation.

Legislation to Watch – NDAA FY2021 (House version cont.)

[H.R. 6395 \(Report\)](#)

- **Sec. 836. Past performance ratings of certain small business concerns** - would require that contracting officers consider the past performance of small business concerns gained while participating in a joint venture, and would permit small business subcontractors to request that the prime submit a past performance rating to an agency considering the small business's offer on a prime contract.
- **Sec. 837. Category management training** – would require SBA training
- **Sec. 838. Small businesses in territories of the United States** – adds territories to surplus property, mentor-protégé benefits
- **Sec. 840A. Employment size standard requirements** - would extend averaging for employee-based size standards to 24 months.
- **Sec. 841(c). Small business credit for local contractors** – would double subcontracting credit for subcontracting to small businesses in same state or within 60-mile radius of work to be performed
- **Sec. 844. Small Business Industrial Base Resiliency Program** – would establish program to purchase items from small business concerns for response to COVID-19

Legislation to Watch – NDAA FY2021 (Senate version)

[S. 4049 \(Report\)](#)

- **Sec. 871. Prompt payment of contractors** - would amend contract financing law to strengthen the requirement that the Department of Defense establish a goal to pay small business contractors within 15 days of receipt of an invoice.
- **Sec. 872. Extension of pilot program for streamlined awards for innovative technology programs**- would extend by 3 years the authorization of a pilot program to streamline contracting and auditing processes for certain innovative technology projects carried out by small businesses by alleviating requirements for small businesses to submit certified cost and pricing data and requirements for certain types of audit and records examination.
- **Sec. 5871. Office of Small Business and Disadvantaged Business Utilization** – would require report to Congress if OSDDBU was deficient in compliance with Small Business Act
- **Sec. 5874. Temporary extension for 8(a) participants** – would add a year to 8(a) term for active participants.
- **Sec. 5875. Maximum award price for sole source manufacturing contracts** – would raise manufacturing sole-source thresholds to \$7 million for 8(a), WOSB, HUBZone, and SDVOSB

Recent SBA and FAR Regulatory Action

Final Rule: Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments

[85 FR 66146](#)

- Proposed rule published Nov. 8, 2019 (84 FR 60846)
 - Initial 70-day comment period extended additional 21 days to Feb 21, 2020
 - Tribal consultations held in Minneapolis, Anchorage, Albuquerque, and Oklahoma City
 - SBA received 189 comments
- Final Rule
 - Published October 16, 2020
 - Effective November 16, 2020

Final Rule: Consolidation of Mentor Protégé Programs (cont.)

[85 FR 66146](#)

- Combines 8(a) MPP and ASMPP
- Changes to M/P program
 - MPA will not count if terminated within 18 months (with one caveat)
 - Does not require mentor good character in every instance
 - Mentor cannot submit competing offers
 - Does **not** adopt proposal to limit mentors to revenues less than \$100 million
 - Protégés from Puerto Rico don't count for 3 limit, up to 2 (NDAA 2019)
 - Eliminates reconsideration
 - Implements changes to M/P annual evaluations

Final Rule: Consolidation of Mentor Protégé Programs (cont.)

[85 FR 66146](#)

- Changes to joint venture rules:
 - Eliminates SBA approval for competitive 8(a) JV
 - 3-in-2 rule to 2 years
 - Measures to restrict changes in JV partners **not** adopted
 - Facility Security Officers may be administrative personnel
 - JV contract awards requiring a facility clearance
 - Clarification as to size of JV partners
- MACs, NAICS codes and eligibility
 - Assign single NAICS code to each order—must be included in underlying MAC
 - Except for FSS, eligibility for SB order on unrestricted MAC based on time of offer for order
 - Same for required order status that differs from the underlying contract
 - Final rule clarifies the use of reserves or pools – size and status flow down to orders

Final Rule: Consolidation of Mentor Protégé Programs (cont.)

[85 FR 66146](#)

Changes to 8(a) rules:

- Defines follow-on requirement
 - Buying activity must notify SBA where work previously performed through 8(a) program will be performed through a different means
 - SBA Administrator may appeal a determination that work previously performed as 8(a) contract is "new"
- More clarity on immediate family member participation
- Prior-SBA approval for change of ownership not needed:
 - Insertion/deletion of holding company as between Participant and ANC/tribe
 - All non-DVDs involved in transaction own >20% before and after the change
 - DVD individual (entity) will increase his/her (its) ownership interest
- Appeal process for changes in primary NAICS code
- Re-apply after decline after 90 days
 - Final rule added 12 month waiting period where a concern has been declined 3 times within 18 months of the date of the first final agency decline decision

Final Rule: Consolidation of Mentor Protégé Programs (cont.)

[85 FR 66146](#)

Changes to 8(a) rules (cont.):

- Eliminate provision that Participant cannot receive 8(a) BD benefits until SBA has approved business plan
 - Must submit business plan within 60 days of program admittance
 - Failure to do so will result in a program suspension
- Release
 - Requires SBA release for non-8(a) competition even where statutorily required and where buying activity seeks to resolicit work as an 8(a) order on a non-8(a) vehicle
 - Notification required where agency seeks to migrate 8(a) contract to a limited competition 8(a) vehicle

Final Rule: Consolidation of Mentor Protégé Programs (cont.)

[85 FR 66146](#)

Changes to 8(a) rules (cont.):

- Bona fide place of business
 - Timeframes for bona fide place of business (at least 20 days before offer, review within 15 days of request).
 - Expands applicable geographic scope to include Metropolitan Statistical Areas and contiguous counties (in the same or a different state)
 - Allows a concern to submit an offer for a construction requirement if the request is made timely (i.e., at least 20 working days before offers are due) even if SBA approval has not occurred
 - Clarifies that BFPOB applies to competitive and sole source 8(a) construction contracts
- Limit on sole-source awards changed to \$100 million in all cases

Final Rule: WOSB Certification Program

85 FR 27650

- The rule eliminates self-certification for WOSB/EDWOSB set-aside and sole-source contracts. Self-certification remains for prime/sub credit.
- To receive a WOSB/EDWOSB set-aside or sole-source contract, the firm must be certified:
 - by SBA,
 - an authorized Federal or state entity, or
 - an authorized third-party certifier (TPC)
- All WOSBs must download their documentation currently housed in the WOSB Program Repository from certify.sba.gov.
- Firms can begin submitting applications for initial processing.
- On October 15, SBA began issuing decisions on certification applications.

Final Rule: WOSB Certification Program (cont.)

[85 FR 27650](#)

Other changes:

- Outlined new oversight procedures for third-party certifiers.
- Detailed the timeline and process for firms seeking to re-apply after a decline.
- Detailed procedures for how WOSBs/EDWOSBs will maintain certification and how SBA will conduct program examinations.

Final Rule: WOSB Certification Program (cont.)

85 FR 27650

Other changes:

- Aligned the economic disadvantage thresholds between the EDWOSB and 8(a) Business Development Programs.
 - Established a \$750,000 personal net worth standard for economically disadvantaged individuals in the 8(a) program. This matches the standard in place for EDWOSBs.
 - Revised both programs' regulations so that qualified retirement accounts are backed out of the personal net worth calculation for an economically disadvantaged individual, regardless of age.
- Clarified that if a firm is unable to recertify its socioeconomic status (WOSB/EDWOSB, HUBZone, SDVO, or SDB) on a long-term contract, the award may not count towards the procuring agency's goals for that socioeconomic group.

Final Rule: HUBZone Comprehensive Review

[84 FR 65222](#)

- HUBZone maps, currently frozen through 2021, will be updated every five years
- Moves to annual recertification (from three-year), effective for all HUBZone contracts for the one-year period
- Requires HUBZone status in DSBS at time of *offer* (not time of award)
- For non-HUBZone multiple-award contract (other than FSS contract), firm must be certified as a HUBZone at time of offer on a HUBZone set-aside order

Final Rule: HUBZone Comprehensive Review (cont.)

84 FR 65222

- Requires 35% employee HUBZone residency at time of certification and recertification; “attempt to maintain” during contract performance
- Defines “attempt to maintain” HUBZone status during HUBZone contract performance as having at least 20% HUBZone employees (must be 35% at application and recertification) and recruiting HUBZone employees
- An employee who resides in a HUBZone for at least 6 months before and after time of certification continues to count as HUBZone employee as long as an employee of the firm—even if employee moves or residence no longer qualifies
- Employees temporarily living overseas in connection with performance of a contract will be considered to reside at their U.S. residence

Final Rule: HUBZone Comprehensive Review (cont.)

[84 FR 65222](#)

- Firms that invest in HUBZones by purchasing building or entering into long-term lease are deemed to meet principal office requirement for 10 years—even if office location no longer qualifies as a HUBZone
- Includes affiliate employees in 35% and principal office calculations if no clear line of fracture between firms
- Applications for HUBZone certification are processed within 60 days of a complete submission

Proposed Rule: Size Standards for Professional, Scientific and Technical Services; Management; Administrative and Support and Waste Management and Remediation Services

[85 FR 72584](#)

- No proposed decreases
- Reviewed 48 prof., sci., tech. servs. standards, proposed to increase 27
- Proposed to increase both management standards
- Reviewed 44 admin., support, waste management/remediation standards; proposed to increase 17
- Would add 2,600 small businesses
- Comments accepted until January 12

Proposed Rule: Size Standards for Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction

[85 FR 62239](#)

- No proposed decreases
- Reviewed 64 agricultural standards, proposed to increase 60
- Reviewed 4 mining/oil standards, proposed to increase 3
- Proposed to increase all 3 utilities standards reviewed
- Reviewed 32 construction standards, proposed to increase 2
- Would add 49,400 small businesses (almost all in agricultural)
- Comments accepted until December 1

Proposed Rule: Size Standards for Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing

[85 FR 62372](#)

- No proposed decreases in size standards
- Reviewed 43 transportation/warehousing standards, proposed to increase 25
- Reviewed 19 information standards, proposed to increase 8
- Reviewed 39 finance/insurance standards, proposed to increase 10
- Reviewed 25 real estate standards, proposed to increase 9
- Would add 1,790 small businesses (half from real estate)
- Comments accepted until December 1

Final Rule: Surplus Property for Veteran-owned, Puerto Rico, and Disaster-affected Small Businesses

[85 FR 69120](#)

- Implements three provisions of the Small Business Act to give access to and manage the distribution of U.S.-owned surplus personal property to three additional groups of small businesses
 - small businesses owned and controlled by veterans,
 - small businesses located in major disaster areas, and
 - small businesses located in Puerto Rico.
- GSA operates the [Donation Program](#) through State Agencies for Surplus Property (SASPs).

Part B Interim FAR Rule: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

[85 FR 42665](#) (July 14, 2020)

- Prohibits a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- Applies unless an exception applies or a waiver is granted.
- Requires all offerors to represent, after conducting a reasonable inquiry, whether covered telecommunications equipment or services are used by the offeror, and if so, to provide further information.
- Contractor must report use of any such equipment, systems, or services discovered during contract performance.

Second Part B Interim FAR Rule: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

[85 FR 42665](#) (August 27, 2020)

- Requires an offeror to represent annually, after conducting a reasonable inquiry, whether it uses covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services

FAR Final Rule: Inflation Adjustment of Thresholds

85 FR 62485

- Subcontracting plan threshold raised from \$700,000 to \$750,000;
- 8(a) sole-source thresholds raised from \$7 million to \$7.5 million, and \$4 million to \$4.5 million;
- 8(a) sole-source J&A threshold raised from \$22 million to \$25 million;
- HUBZone sole-source thresholds raised from \$7 million to \$7.5 million, and \$4 million to \$4.5 million; and
- WOSB sole-source thresholds raised from \$6.5 million to \$7 million, and \$4 million to \$4.5 million.
- SDVOSB manufacturing sole-source threshold raised to \$7 million.

FAR Final Rule: Removal of Obsolete Definitions

85 FR 67615

- Removes the definitions of "annual receipts" and "number of employees" from the FAR coverage of Small Business Programs.
- Recognizes that the existing definitions are redundant and outdated because of [SBA's changes](#) to the definition of annual receipts.
- Moves the definition of "affiliates" from section 19.101 to 2.101, where most FAR definitions reside.
- Effective Nov. 23.

DFARS Interim Rule: Assessing Contractor Implementation of Cybersecurity Requirements (CMMC)

[85 FR 61505](#)

- Requires assessments of compliance with NIST 800-171.
 - Self-assessment for Basic; government assessment for Medium/High
- Phases in implementation of CMMC certification over 5 years.
- Applies to all DoD contracts, except below micropurchase threshold or COTS.
- Higher tier flowdown to subcontracts that involve covered defense information.
- Effective November 30, 2020.
- Comments accepted until November 30.

Upcoming SBA proposed rules

1. NDAA 2020, Credit for Lower Tier Subcontracting and Other Amendments
2. Small Business Size Standards: Educational Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services
3. Small Business Size Standards: Wholesale Trade and Retail Trade
4. Small Business Size Standards: Manufacturing and Industries With Employee Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade

Upcoming SBA final rules

1. NDAA 2020, Definition of Surviving Spouse for Service-Disabled Veteran Owned Small Businesses and Change to 8(a) Business Development Contracting Thresholds

Upcoming FAR proposed rules

1. Proposed 2020-016, Representation of Size and Socioeconomic Status
2. Proposed 2020-013, WOSB Certification
3. Proposed 2020-012, Scope of PCR review
4. Proposed 2020-010, SBIR/STTR
5. Proposed 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns
6. Proposed 2019-008, Small Business Program Amendments
7. Proposed 2019-007, Update of HUBZone Program

Upcoming FAR final rules

1. Final 2019-004, Good Faith in Small Business Subcontracting
2. Final 2018-020, Construction Contract Administration
3. Final 2018-007, Applicability of Inflation Adjustments of Acquisition-Related Thresholds
4. Final 2017-019, Policy on Joint Ventures
5. Final 2016-011, Revision of Limitations on Subcontracting
6. Final 2016-002, Applicability of Small Business Regulations Outside the United States



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