Public Law 100-533
100th Congress

An Act

To amend the Small Business Act to establish programs and initiate efforts to assist the development of small business concerns owned and controlled by women, and for other purposes.

Oct. 25, 1988
[H.R. 5050]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Women's Business Ownership Act of 1988.
15 USC 631 note.

SECTION 1. SHORT TITLE.

This Act, together with the following table of contents, may be cited as the "Women's Business Ownership Act of 1988".

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TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

SEC. 101. FINDINGS AND PURPOSES.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by adding at the end thereof the following new subsection:

"(h)(1) With respect to the programs and activities authorized by this Act, the Congress finds that—

"(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

"(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

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"(C) despite such progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

"(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

"(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

"(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

"(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

"(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove such discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

Discrimination, prohibition.

"(2) It is, therefore, the purpose of those programs and activities conducted under the authority of this Act that assist women entrepreneurs to—

"(A) vigorously promote the legitimate interests of small business concerns owned and controlled by women;

"(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

"(C) require that the Government engage in a systematic and sustained effort to identify, define and analyze those discriminatory barriers facing women and that such effort directly involve the participation of women business owners in the public/private sector partnership.".

TITLE II—DEMONSTRATION PROJECTS

SEC. 201. ESTABLISHMENT.

Subsection (c) of section 8 of the Small Business Act (15 U.S.C. 637(c)) is amended to read as follows:

"(c)(1) Subject to the requirements of paragraph (2), the Administration shall provide financial assistance to private organizations to conduct demonstration projects for the benefit of small business concerns owned and controlled by women.

"(2) No amount of financial assistance shall be provided pursuant to this subsection unless the recipient organization agrees, as a condition of receiving such assistance, that—

"(A) it will obtain, after its application has been approved but prior to the disbursement of funds pursuant to this subsection, cash contributions from private sector sources in an amount at least equal to the amount of funds such organization will receive under this subsection; and

"(B) it will provide the types of services and assistance to present and potential women owners of small business concerns

as are described in paragraph (3). For the purposes of this subsection such concerns may be either 'start-up' businesses or established 'on-going' concerns.

"(3) The types of services and assistance referred to in paragraph (2)(B) shall include the following:

"(A) Financial assistance, which assistance shall include training and counseling in how to apply for and secure business credit and investment capital; prepare and present financial statements; manage cash-flow and otherwise manage the financial operations of a business concern.

"(B) Management assistance, which assistance shall include training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

"(C) Marketing assistance, which assistance shall include training and counseling in how to identify and segment domestic and international market opportunities; prepare and execute marketing plans; develop pricing strategies; locate contract opportunities; negotiate contracts; and utilize varying public relations and advertising techniques.

"(4) Applications for financial assistance pursuant to this subsection shall be evaluated and ranked in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. Such criteria shall include— Public information.

"(A) a criterion that specifically refers to the experience of the offering organization in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;

"(B) a criterion that specifically refers to the present ability of the offering organization to commence a demonstration project within a minimum amount of time; and

"(C) a criterion that specifically refers to the ability of the applicant organization to provide training and services to a representative number of women who are both socially and economically disadvantaged.

"(5) The financial assistance authorized pursuant to this subsection shall be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. Grants. Contracts.

"(6)(A) The Administration shall prepare and transmit a report to the Committees on Small Business of the Senate and House of Representatives on the effectiveness of all demonstration projects conducted under the authority of this subsection. Such report shall provide information concerning— Reports.

"(i) the number of individuals receiving assistance;

"(ii) the number of start-up business concerns formed;

"(iii) the gross receipts of assisted concerns;

"(iv) increases or decreases in profits of assisted concerns; and

"(v) the employment increases or decreases of assisted concerns.

"(B) The report required pursuant to subparagraph (A) shall cover at least a twenty-four-month period and shall be submitted not later than thirty months after the effective date of this paragraph.

Termination date.

"(7) This subsection shall cease to be effective after September 30, 1991.".

SEC. 202. TECHNICAL.

Subsection (b) of section 8 of the Small Business Act (15 U.S.C. 637(b)) is amended by—

(1) striking out "and" at the end of paragraph (14);

(2) striking out "public." at the end of paragraph (15) and inserting in lieu thereof "public; and"; and

(3) by adding the following new paragraph:

"(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business.".

15 USC 637 note.

SEC. 203. AUTHORIZATION.

There is authorized to be appropriated $10,000,000 to carry out the demonstration projects required pursuant to section 201. The initial projects authorized to be financed by this title shall be funded by January 31, 1989. Notwithstanding any other provision of law, the Small Business Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this section, except that it shall ensure that all eligible sources are provided a reasonable opportunity to submit proposals.

15 USC 637 note.

SEC. 204. DEFINITION.

For the purposes of this title, the term "small business concern owned and controlled by women" means any small business concern—

(1) that is at least 51 per centum owned by one or more women; and

(2) whose management and daily business operations are controlled by one or more of such women.

TITLE III—ACCESS TO CAPITAL

SEC. 301. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

Subsection (a) of section 703 of the Consumer Credit Protection Act (15 U.S.C. 1691b(a)) is amended to read as follows:

Regulations.

"(a)(1) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

"(2) Such regulations may exempt from the provisions of this title any class of transactions that are not primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type within a class of such transactions may be exempted if the Board determines, after making an express finding that the application of this title or of any provision of this title of such transaction would not contribute substantially to effecting the purposes of this title.

"(3) An exemption granted pursuant to paragraph (2) shall be for no longer than five years and shall be extended only if the Board makes a subsequent determination, in the manner described by such paragraph, that such exemption remains appropriate.

"(4) Pursuant to Board regulations, entities making business or commercial loans shall maintain such records or other data relating to such loans as may be necessary to evidence compliance with this subsection or enforce any action pursuant to the authority of this Act. In no event shall such records or data be maintained for a period of less than one year. The Board shall promulgate regulations to implement this paragraph in the manner prescribed by chapter 5 of title 5, United States Code.

Loans.
Records.

Regulations.

"(5) The Board shall provide in regulations that an applicant for a business or commercial loan shall be provided a written notice of such applicant's right to receive a written statement of the reasons for the denial of such loan.".

Loans.

SEC. 302. FORM SIMPLIFICATION AND PREFERRED FINANCING.

(a) CERTIFIED LOAN PROGRAM.—Section 7 of the Small Business Act (15 U.S.C. 636) is amended by adding to subsection (a) the following new paragraph:

"(19) During fiscal years 1989, 1990, and 1991, in addition to the preferred lenders program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a certified loan program for lenders who establish their knowledge of Administration laws and regulations concerning the loan guarantees program and their proficiency in program requirements. In order to encourage certified lenders and preferred lenders to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration (A) shall develop and shall allow participating lenders in the certified loan program and in the preferred loan program to solely utilize a uniform and simplified loan form for such loans and (B) shall allow such lenders to retain one-half of the fee collected pursuant to section 7(a)(16) on such loans: *Provided,* That a participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed $50,000 unless such excess amount was not approved under the provisions of this paragraph. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or if the Administration determines that the loss experience of the lender is excessive as compared to other lenders: *Provided further,* That any suspension or revocation of the designation shall not affect any outstanding guarantee: *And provided further,* That the Administration may not reduce the per centum of guarantee as a criterion of eligibility for participation in this program, except as otherwise provided by law.".

(b) REPORTS.—The Administration shall take appropriate steps to expand participation in the certified loan program and shall report to the Small Business Committees of the Senate and the House of Representatives on the amount of loans approved and the amount of losses sustained under the provisions of section 7(a)(19) of the Small Business Act. An interim report shall be submitted not later than one year after date of enactment of this Act and a final report shall

15 USC 636 note.

be submitted not later than eighteen months after the date of enactment.

15 USC 631 note.

TITLE IV—NATIONAL WOMEN'S BUSINESS COUNCIL

SEC. 401. ESTABLISHMENT.

There is established a Council to be known as the "National Women's Business Council" (hereinafter in this title referred to as the Council).

SEC. 402. DUTIES OF THE COUNCIL.

(a) The Council shall review—

(1) the status of women owned business nationwide, including progress made and barriers that remain in order to assist such businesses to enter the mainstream of the American economy;

(2) the role of the Federal Government and State and local governments in assisting and promoting aid to, and the promotion of, women owned business;

(3) data collection procedures and the availability of data relating to (A) women owned businesses; (B) women owned small business, and (C) small business owned and controlled by socially and economically disadvantaged women; and

(4) such other government initiatives as may exist relating to women owned business including, but not limited to, those relating to Federal procurements.

(b) Based upon its review, the Council shall, by December 31, 1989, and every twelve months thereafter, recommend to the Congress and the President—

(1) new private sector initiatives that would provide management and technical assistance to women owned small business;

(2) ways to promote greater access to public and private sector financing and procurement opportunities for such businesses; and

(3) detailed multiyear plans of action, with specific goals and timetables, for both public and private sector actions needed to overcome discriminatory barriers to full participation in the economic mainstream.

(c) For the purposes of this title the term "small business concern owned and controlled by women" shall have the same meaning as that term is given in section 204 of this Act.

SEC. 403. MEMBERSHIP.

(a) The Council shall be composed of nine members to be selected as follows:

(1) the Administrator of the Small Business Administration, the Secretary of Commerce (or such Secretary's deputy) and the Chairman of the Federal Reserve Board (or such Chairman's designee, who shall be a member of the Board);

(2) two members shall be appointed by the majority leader, and one member shall be appointed by the minority leader of the Senate; and

(3) two members shall be appointed by the Speaker, and one member shall be appointed by the minority leader of the House of Representatives.

(b)(1) Appointments under section (a) (2) and (3) shall be made from individuals who are specially qualified to serve on the Council by virtue of their education, training, and experience and who are

not officers or employees of the Federal Government nor of the Congress.

(2)(A) Of the individuals to be appointed under subsection (a) (2) and (3)—

(i) no more than two members to be appointed under each such paragraph of such subsection shall be of the same political party;

(ii) at least two members appointed under each such paragraph of such subsection shall be women; and

(iii) at least two members to be appointed under each such paragraph of such subsection shall be owners of small business concerns as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(B) Appointments made pursuant to subsection (a) (2) and (3) shall be made in the following sequence—

(i) appointments under (a)(2) shall be made within ninety days of the effective date of this title; and

(ii) appointments under (a)(3) shall be made within one hundred and twenty days of the effective date of this title.

(3) In making appointments under subsection (a), the appointing authorities shall give due consideration to achieving balanced geographical representation.

(C) Members appointed under subsection (a) (2) and (3) shall be appointed for a three-year term, except if any such appointee becomes an officer or employee of the Federal Government or of the Congress, such individual may continue as a member of the Council for not longer than the thirty-day period beginning on the date such individual becomes such an officer or employee.

(D) A vacancy on the Council shall be filled in the manner in which the original appointment was made.

(E) Members of the Council shall serve without pay for such membership, except members of the Council shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Council, in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(F)(1) Two members of the Council shall constitute a quorum for the receipt of testimony and other evidence.

(2) A majority of the Council shall constitute a quorum for the approval of a recommendation or report submitted pursuant to section 402 or section 406.

(G) The Chairperson and Vice Chairperson of the Council shall be designated by the President. The term of office of the Chairperson and Vice Chairperson shall be at the discretion of the President. President of U.S.

(H) The Council shall meet not less than four times a year. Meetings shall be at the call of the Chairperson.

SEC. 404. DIRECTOR AND STAFF OF THE COUNCIL.

(a)(1) The Council shall have a Director who shall be appointed by the Chairperson. Upon recommendation by the Director, the Chairperson may appoint and fix the pay of four additional personnel.

(2) The Director and staff of the Council may be appointed without regard to section 5311(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title

relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(b) The Council may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(c) Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this title without regard to section 3341 of title 5 of the United States Code.

SEC. 405. POWERS OF THE COUNCIL.

(a) The Council may, for the purpose of carrying out this title sit and act at such times and places, hold such hearings, take such testimony, receive such evidence, and consider such information, as the Council considers appropriate. The Council may administer oaths or affirmations for the receipt of such testimony.

(b) Any member or person within the employ of the Council may, if so authorized by the Council, take any action which the Council is authorized to take by this section.

(c) Except as otherwise prohibited by law, the Council may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this Act. Upon the request of the Chairperson of the Council, the head of such department or agency shall promptly furnish such information to the Council.

Mail.

(d) The Council may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(e) The Administrator of the General Services Administration shall provide to the Council, on a reimbursable basis, such administrative support services as the Council may request. In addition, the Administrator shall, as appropriate, provide to the Council, upon its request, access to and use of such Federal facilities as may be necessary for the conduct of its business.

SEC. 406. REPORTS.

The Council shall transmit to the President and to each House of the Congress a report no less than once in every twelve-month period. The first such report shall be submitted no later than December 31, 1989. Such reports shall contain a detailed statement on the activities of the Council, and the findings and conclusions of the Council, together with its recommendations for such legislation and administrative actions as it considers appropriate based upon its reviews conducted under section 402.

SEC. 407. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out this title and they may remain available until expended. New spending authority or authority to enter into contracts as authorized in this Act shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts. This title shall cease to be effective five years after the date of enactment.

Contracts.

Termination date.

TITLE V—STATISTICAL DATA AND EFFECT ON OTHER PROGRAMS

SEC. 501. CENSUS DATA. 13 USC 131 note.

(a) BUREAU OF LABOR STATISTICS.—The Bureau of Labor Statistics of the Department of Labor shall include in any census report it may prepare on women owned business data on—

(1) sole proprietorships;

(2) partnerships; and

(3) corporations.

(b) BUREAU OF THE CENSUS.—The Bureau of the Census of the Department of Commerce shall include in its Business Census for 1992 and each such succeeding census data on the number of corporations which are 51 per centum or more owned by women.

(c) COMBINED STUDY.—Not later than one hundred and eighty days after the effective date of this section, the Office of the Chief Counsel for Advocacy of the Small Business Administration (hereinafter referred to in this subsection as the "Office") shall conduct a study and prepare a report recommending the most cost effective and accurate means to gather and present the data required to be collected pursuant to subsections (a) and (b). The Department of Commerce and the Department of Labor shall provide the Office such assistance and cooperation as may be necessary and appropriate to achieve the purposes of this subsection. Reports.

SEC. 502. PROCUREMENT DATA. 41 USC 4717a.

(a) REPORTING.—Each Federal agency shall report to the Office of Federal Procurement Policy the number of small businesses owned and controlled by women and the number of small business concerns owned and controlled by socially and economically disadvantaged businesses, by gender, that are first time recipients of contracts from such agency. The Office of Federal Procurement Policy shall take such actions as may be appropriate to ascertain for each fiscal year the number of such small businesses that have newly entered the Federal market.

(b) DEFINITIONS.—For purposes of this section the terms "small business concern owned and controlled by women" and "small business concerns owned and controlled by socially and economically disadvantaged individuals" shall be given the same meaning as those terms are given under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and section 204 of this Act.

SEC. 503. STATE OF SMALL BUSINESS REPORT.

Section 303 of Public Law 96-302 (15 U.S.C. 631(b)) is amended by adding the following new subsection: 15 USC 631b.

"(e) The information and data required to be reported pursuant to subsection (a) shall separately detail those portions of such information and data that are relevant to—

"(1) small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, as defined pursuant to section 8(d) of the Small Business Act; and

"(2) small business concerns owned and controlled by women.".

15 USC 631 note.

SEC. 504. DISADVANTAGED SMALL BUSINESSES.

Nothing contained in this Act is intended to reduce or limit any programs, benefit, or activity that is authorized by law to assist small business concerns owned and controlled by socially and economically disadvantaged individuals as defined pursuant to section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3)).

Approved October 25, 1988.

LEGISLATIVE HISTORY—H.R. 5050:

HOUSE REPORTS: No. 100-955 (Comm. on Small Business).
CONGRESSIONAL RECORD, Vol. 134 (1988):
Oct. 3, considered and passed House.
Oct. 11, considered and passed Senate, amended.
Oct. 12, House concurred in Senate amendment.