

112TH CONGRESS  
1ST SESSION

# S. 1334

To amend the Small Business Act to ensure that certain Federal contracts are set aside for small businesses, to enhance services to small businesses that are disadvantaged, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 6, 2011

Mr. UDALL of New Mexico introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Small Business Act to ensure that certain Federal contracts are set aside for small businesses, to enhance services to small businesses that are disadvantaged, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Expanding Opportuni-  
5 ties for Main Street Act of 2011”.

1           **TITLE I—SMALL BUSINESS**  
2                   **ADMINISTRATION**

3 **SEC. 101. CONTRACT OPPORTUNITIES FOR SMALL BUSI-**  
4                   **NESS CONCERNS.**

5           (a) DEFINITIONS.—In this section—

6                   (1) the term “eligible contract” means any con-  
7           tract for the acquisition of goods or services that is  
8           in an amount (including options) of more than  
9           \$3,000 and less than \$500,000; and

10                   (2) the term “small business concern” has the  
11           meaning given that term under section 3(a) of the  
12           Small Business Act (15 U.S.C. 632(a)).

13           (b) IN GENERAL.—Notwithstanding any other provi-  
14           sion of law, a Federal department or agency shall, to the  
15           extent practicable, award to a small business concern each  
16           eligible contract let by the department or agency.

17           (c) SOLE SOURCE CONTRACTS.—A Federal depart-  
18           ment or agency may award an eligible contract as a sole  
19           source contract to a small business concern if at least 1  
20           small business concern submits an offer with respect to  
21           the eligible contract.

22           (d) AWARD TO SMALL BUSINESS NOT PRAC-  
23           TICABLE.—

24                   (1) IN GENERAL.—If a contracting officer of a  
25           Federal department or agency determines that

1       awarding an eligible contract to a small business  
2       concern under subsection (b) is not practicable, the  
3       contracting officer shall make available to the Ad-  
4       ministrator of the Small Business Administration  
5       and the public—

6               (A) the determination and reasoning of  
7               such officer with respect to the eligible contract;  
8               and

9               (B) the name of each small business con-  
10              cern that submitted an offer with respect to the  
11              eligible contract.

12             (2) REVIEW.—The Administrator of the Small  
13             Business Administration shall—

14               (A) review each determination under para-  
15               graph (1); and

16               (B) if the Administrator determines it is  
17               appropriate, open the eligible contract oppor-  
18               tunity for the submission of additional offers.

19     **SEC. 102. ENHANCEMENT OF SERVICES TO SMALL BUSI-**  
20             **NESSES THAT ARE DISADVANTAGED.**

21             (a) NET WORTH.—Section 8(a)(6)(A) of the Small  
22     Business Act (15 U.S.C. 637(a)(6)(A)) is amended by in-  
23     serting after “disadvantaged individual.” the following:  
24     “For purposes of this section, an individual having a net

1 worth of more than \$1,500,000 is not economically dis-  
2 advantaged.”.

3 (b) TIME LIMIT ON PARTICIPATION.—Section  
4 7(j)(15) of the Small Business Act (15 U.S.C. 636(j)(15))  
5 is amended—

6 (1) by redesignating subparagraphs (A) and  
7 (B) as clauses (i) and (ii), respectively;

8 (2) by inserting “(A)” after “(15)”; and

9 (3) by adding at the end the following:

10 “(B) No time limitation relating to the period that  
11 a small business concern may receive developmental assist-  
12 ance under the Program and contracts under section 8(a)  
13 shall apply to a small business concern that has not com-  
14 pleted a contract under section 8(a).”.

15 **SEC. 103. SURETY BOND GUARANTEES.**

16 (a) MAXIMUM BOND AMOUNT.—Section 411(a)(1) of  
17 the Small Business Investment Act of 1958 (15 U.S.C.  
18 694b(a)(1)) is amended by striking “(1)” and all that fol-  
19 lows and inserting the following: “(1)(A) The Administra-  
20 tion may, upon such terms and conditions as it may pre-  
21 scribe, guarantee and enter into commitments to guar-  
22 antee any surety against loss resulting from a breach of  
23 the terms of a bid bond, payment bond, performance bond,  
24 or bonds ancillary thereto, by a principal on any total work

1 order or contract amount at the time of bond execution  
2 that does not exceed \$5,000,000.

3 “(B) The Administrator may guarantee a surety  
4 under subparagraph (A) for a total work order or contract  
5 amount that does not exceed \$10,000,000, if a contracting  
6 officer of a Federal agency certifies that such a guarantee  
7 is necessary.”.

8 (b) DENIAL OF LIABILITY.—Section 411 of the Small  
9 Business Investment Act of 1958 (15 U.S.C. 694b) is  
10 amended—

11 (1) by striking subsection (e) and inserting the  
12 following:

13 “(e) REIMBURSEMENT OF SURETY; CONDITIONS.—  
14 Pursuant to any such guarantee or agreement, the Admin-  
15 istration shall reimburse the surety, as provided in sub-  
16 section (c) of this section, except that the Administration  
17 shall be relieved of liability (in whole or in part within  
18 the discretion of the Administration) if—

19 “(1) the surety obtained such guarantee or  
20 agreement, or applied for such reimbursement, by  
21 fraud or material misrepresentation;

22 “(2) the total contract amount at the time of  
23 execution of the bond or bonds exceeds \$5,000,000;

24 “(3) the surety has breached a material term or  
25 condition of such guarantee agreement; or

1           “(4) the surety has substantially violated the  
2 regulations promulgated by the Administration pur-  
3 suant to subsection (d).”;

4           (2) by striking subsection (k); and

5           (3) by adding after subsection (i) the following:

6           “(j) DENIAL OF LIABILITY.—For bonds made or exe-  
7 cuted with the prior approval of the Administration, the  
8 Administration shall not deny liability to a surety based  
9 upon material information that was provided as part of  
10 the guaranty application.”.

11 **SEC. 104. BUNDLED CONTRACTS.**

12           (a) DEFINITIONS.—Section 3(o) of the Small Busi-  
13 ness Act (15 U.S.C. 632(o)) is amended to read as follows:

14           “(o) DEFINITIONS OF BUNDLING OF CONTRACT RE-  
15 QUIREMENTS AND RELATED TERMS.—In this Act:

16           “(1) BUNDLED CONTRACT.—

17           “(A) IN GENERAL.—The term ‘bundled  
18 contract’ means a contract or order that is en-  
19 tered into to meet procurement requirements  
20 that are consolidated in a bundling of contract  
21 requirements, without regard to how the pro-  
22 curing agency has designated the contract or  
23 order or whether a study of the effects of the  
24 solicitation on civilian or military personnel has  
25 been made.

1           “(B) EXCEPTIONS.—The term does not in-  
2           clude—

3                   “(i) a contract or order with an aggre-  
4                   gate dollar value below the dollar thresh-  
5                   old; or

6                   “(ii) a contract or order that is en-  
7                   tered into to meet an exempted require-  
8                   ment.

9           “(2) BUNDLING OF CONTRACT REQUIRE-  
10           MENTS.—

11                   “(A) IN GENERAL.—The term ‘bundling of  
12                   contract requirements’ means the use of any  
13                   bundling methodology to satisfy 2 or more pro-  
14                   curement requirements for goods or services  
15                   previously supplied or performed under separate  
16                   smaller contracts or orders, or to satisfy 2 or  
17                   more procurement requirements for construc-  
18                   tion services of a type historically performed  
19                   under separate smaller contracts or orders, that  
20                   is likely to be unsuitable for award to a small  
21                   business concern due to—

22                           “(i) the diversity, size, or specialized  
23                           nature of the elements of the performance  
24                           specified;

1           “(ii) the aggregate dollar value of the  
2           anticipated award;

3           “(iii) the geographical dispersion of  
4           the contract or order performance sites; or

5           “(iv) any combination of the factors  
6           described in clauses (i), (ii), and (iii).

7           “(B) INCLUSION OF NEW FEATURES OR  
8           FUNCTIONS.—A combination of contract re-  
9           quirements that would meet the definition of a  
10          bundling of contract requirements but for the  
11          addition of a procurement requirement with at  
12          least 1 new good or service shall be considered  
13          to be a bundling of contract requirements un-  
14          less the new features or functions substantially  
15          transform the goods or services and will provide  
16          measurably substantial benefits to the Federal  
17          Government in terms of quality, performance,  
18          or price.

19          “(C) EXCEPTIONS.—The term ‘bundling of  
20          contract requirements’ does not include—

21                 “(i) the use of a bundling method-  
22                 ology for an anticipated award with an ag-  
23                 gregate dollar value below the dollar  
24                 threshold; or



1                   “(ii) the use of a bundling method-  
2                   ology to meet an exempted requirement.

3                   “(3) BUNDLING METHODOLOGY.—The term  
4                   ‘bundling methodology’ means—

5                   “(A) a solicitation to obtain offers for a  
6                   single contract or order, or a multiple award  
7                   contract or order; or

8                   “(B) a solicitation of offers for the  
9                   issuance of a task or a delivery order under an  
10                  existing single or multiple award contract or  
11                  order.

12                  “(4) SEPARATE SMALLER CONTRACT.—The  
13                  term ‘separate smaller contract’, with respect to  
14                  bundling of contract requirements, means a contract  
15                  or order that has been performed by 1 or more small  
16                  business concerns or was suitable for award to 1 or  
17                  more small business concerns.

18                  “(5) DOLLAR THRESHOLD.—The term ‘dollar  
19                  threshold’ means—

20                  “(A) \$65,000,000, in the case of a con-  
21                  tract or order that is solely for construction  
22                  services; and

23                  “(B) \$5,000,000 for a contract or order  
24                  not described in subparagraph (A).

1           “(6) EXEMPTED REQUIREMENT.—The term  
2           ‘exempted requirement’ means a procurement re-  
3           quirement solely for items that are not commercial  
4           items (as the term ‘commercial item’ is defined in  
5           section 103 of title 41, United States Code).

6           “(7) PROCUREMENT REQUIREMENT.—The term  
7           ‘procurement requirement’ means a determination  
8           by a Federal agency that a specified good or service  
9           is needed to satisfy the mission of the Federal agen-  
10          cy.”.

11          (b) PROPOSED PROCUREMENT REQUIREMENTS.—  
12          Section 15(a) of the Small Business Act (15 U.S.C.  
13          644(a)) is amended—

14                 (1) in the third sentence, by striking “necessary  
15                 and justified” and inserting “necessary and justified,  
16                 and identifying information on the incumbent con-  
17                 tract holders, a description of the industries that  
18                 might be interested in bidding on the contract re-  
19                 quirements, and the number of small businesses list-  
20                 ed in the industry categories that could be excluded  
21                 from future bidding if the contract is combined or  
22                 packaged”; and

23                 (2) by striking the sixth sentence and inserting  
24                 the following: “Whenever the Administration and the  
25                 contracting procurement agency fail to agree, the

1 Administrator may review the proposed procurement  
2 or delay the solicitation process for not more than  
3 10 days to make recommendations, and the matter  
4 shall be submitted to the Director of the Office of  
5 Management and Budget to mediate the disagree-  
6 ment.”.

7 **SEC. 105. FEDERAL CONTRACTING GOALS.**

8 (a) INCREASE IN CERTAIN GOALS.—Section 15(g)(1)  
9 of the Small Business Act (15 U.S.C. 644(g)(1)) is  
10 amended—

11 (1) by striking “not less than 23 percent” and  
12 inserting “not less than 25 percent”; and

13 (2) by striking “not less than 5 percent” each  
14 place it appears and inserting “not less than 10 per-  
15 cent”.

16 (b) LIMITATION ON NUMBER OF CATEGORIES FOR  
17 WHICH A BUSINESS MAY QUALIFY.—Section 15(g) of the  
18 Small Business Act (15 U.S.C. 644(g)) is amended by  
19 adding at the end the following:

20 “(3) A Federal agency may not include a business  
21 concern in more than 2 specified categories for purposes  
22 of determining whether the Federal agency has met the  
23 Government-wide goals under this subsection for the  
24 award of contracts to business concerns in specified cat-  
25 egories. In this paragraph, the term ‘specified category’

1 means small business concerns, small business concerns  
2 owned and controlled by service-disabled veterans, quali-  
3 fied HUBZone small business concerns, small business  
4 concerns owned and controlled by socially and economi-  
5 cally disadvantaged individuals, and small business con-  
6 cerns owned and controlled by women.”.

7 **SEC. 106. IMPLEMENTATION OF SUBCONTRACTING PLANS.**

8 Section 8(d) of the Small Business Act (15 U.S.C.  
9 637(d)) is amended by adding at the end the following:  
10 “(13) In the case of any contract containing a sub-  
11 contracting plan included pursuant to paragraph (4) or  
12 (5)—

13 “(A) the Federal agency awarding the contract  
14 shall include in the contract a clause providing that,  
15 if the contractor does not achieve the percentage  
16 goal for the utilization of small business concerns  
17 owned and controlled by socially and economically  
18 disadvantaged individuals as set forth in the subcon-  
19 tracting plan, the Federal agency shall withhold not  
20 less than—

21 “(i) \$5,000, if the contract amount is not  
22 more than \$100,000;

23 “(ii) 3 percent of the contract amount, if  
24 the contract amount is more than \$100,000  
25 and not more than \$5,000,000; and

1           “(iii) 5 percent of the contract amount, if  
2           the contract amount is more than \$5,000,000;  
3           and

4           “(B) the Federal agency awarding the contract  
5           shall require the contractor to provide written jus-  
6           tification to the agency whenever the contractor, in  
7           performing the contract, does not enter into a sub-  
8           contract with, or substitutes another subcontractor  
9           for, a specific small business concern identified in  
10          the subcontracting plan.

11          “(14) The Administration shall establish a telephone  
12          line or other electronic means of communication through  
13          which a small business concern identified in a subcon-  
14          tracting plan by an offeror or bidder may communicate  
15          to the Administration any concerns regarding major devi-  
16          ations by prime contractors from the use of small business  
17          concerns as subcontractors under the prime contract as  
18          described in the subcontracting plan.”.

1 **SEC. 107. REQUIREMENT TO CONSIDER USE OF SMALL**  
 2 **BUSINESS CONCERNS OWNED AND CON-**  
 3 **TROLLED BY SOCIALLY AND ECONOMICALLY**  
 4 **DISADVANTAGED INDIVIDUALS WHEN CON-**  
 5 **SIDERING PAST COMPLIANCE WITH SUBCON-**  
 6 **TRACTING PLANS.**

7 Section 8(d) of the Small Business Act (15 U.S.C.  
 8 637(d)) is amended—

9 (1) in paragraph (4)(C), in the second sentence,  
 10 by inserting “, especially compliance with the goal  
 11 set forth in such plans for the utilization of small  
 12 business concerns owned and controlled by socially  
 13 and economically disadvantaged individuals,” after  
 14 “other such subcontracting plans”; and

15 (2) in paragraph (5)(B), in the second sentence,  
 16 by inserting “, especially compliance with the goal  
 17 set forth in such plans for the utilization of small  
 18 business concerns owned and controlled by socially  
 19 and economically disadvantaged individuals,” after  
 20 “other such subcontracting plans”.

21 **TITLE II—MINORITY BUSINESS**  
 22 **DEVELOPMENT AGENCY**

23 **SEC. 201. DEFINITIONS.**

24 In this title:

25 (1) **HISTORICALLY DISADVANTAGED INDI-**  
 26 **VIDUAL.**—The term “historically disadvantaged indi-

1       vidual” means any individual who is a member of a  
2       group that is designated as eligible to receive assist-  
3       ance under section 1400.1 of title 15, Code of Fed-  
4       eral Regulations, as in effect on January 1, 2009.

5           (2) PRINCIPAL.—The term “principal” means  
6       any person that the Director determines to exercise  
7       significant control over the regular operations of a  
8       business entity.

9           (3) PROGRAM.—The term “Program” means  
10      the Minority Business Development Program estab-  
11      lished under section 202.

12 **SEC. 202. MINORITY BUSINESS DEVELOPMENT PROGRAM.**

13       The National Director of the Minority Business De-  
14      velopment Agency shall establish the Minority Business  
15      Development Program to assist qualified minority busi-  
16      nesses. The Program shall provide to such businesses the  
17      following:

18           (1) Technical assistance under section 204.

19           (2) Loan guarantees under section 205.

20           (3) Contract procurement assistance under sec-  
21      tion 206.

22 **SEC. 203. QUALIFIED MINORITY BUSINESS.**

23       (a) CERTIFICATION.—For purposes of the Program,  
24      the National Director of the Minority Business Develop-

1 ment Agency may certify as a qualified minority business  
2 any entity that satisfies each of the following:

3 (1) Not less than 51 percent of the entity is di-  
4 rectly and unconditionally owned or controlled by  
5 historically disadvantaged individuals.

6 (2) Each officer or other individual who exer-  
7 cises control over the regular operations of the entity  
8 is a historically disadvantaged individual.

9 (3) The net worth of each principal of the enti-  
10 ty is not greater than \$2,000,000. (The equity of a  
11 disadvantaged owner in a primary personal residence  
12 shall not be considered in this calculation.)

13 (4) The principal place of business of the entity  
14 is in the United States.

15 (5) Each principal of the entity maintains good  
16 character in the determination of the National Di-  
17 rector.

18 (6) The entity engages in competitive and bona  
19 fide commercial business operations in not less than  
20 one sector of industry that has a North American  
21 Industry Classification System code.

22 (7) The entity submits reports to the National  
23 Director at such time, in such form, and containing  
24 such information as the National Director may re-  
25 quire.



1           (8) Such other requirements as the National  
2 Director considers appropriate.

3           (b) TERM OF CERTIFICATION.—A certification under  
4 this section shall be for a term of 5 years and may not  
5 be renewed.

6 **SEC. 204. TECHNICAL ASSISTANCE.**

7           (a) IN GENERAL.—In carrying out the Program, the  
8 National Director of the Minority Business Development  
9 Agency may provide to qualified minority businesses tech-  
10 nical assistance with regard to the following:

11           (1) Writing business plans.

12           (2) Marketing.

13           (3) Management.

14           (4) Securing sufficient financing for business  
15 operations.

16           (b) CONTRACT AUTHORITY.—The National Director  
17 may enter into agreements with persons to provide tech-  
18 nical assistance under this section.

19           (c) AUTHORIZATION OF APPROPRIATIONS.—There  
20 are authorized to be appropriated \$200,000,000 to the  
21 National Director to carry out this section. Such sums  
22 shall remain available until expended.

23 **SEC. 205. LOAN GUARANTEES.**

24           (a) IN GENERAL.—Subject to subsection (b), the Na-  
25 tional Director of the Minority Business Development

1 Agency may guarantee up to 90 percent of the amount  
2 of a loan made to a qualified minority business to be used  
3 for business purposes, including the following:

4 (1) Purchasing essential equipment.

5 (2) Payroll expenses.

6 (3) Purchasing facilities.

7 (4) Renovating facilities.

8 (b) TERMS AND CONDITIONS.—

9 (1) IN GENERAL.—The National Director may  
10 make guarantees under this section for projects on  
11 such terms and conditions as the National Director  
12 determines appropriate, after consultation with the  
13 Secretary of the Treasury, in accordance with this  
14 section.

15 (2) REPAYMENT.—No guarantee shall be made  
16 under this section unless the National Director de-  
17 termines that there is reasonable prospect of repay-  
18 ment of the principal and interest on the obligation  
19 by the borrower.

20 (3) DEFAULTS.—

21 (A) PAYMENT BY NATIONAL DIRECTOR.—

22 (i) IN GENERAL.—If a borrower de-  
23 faults on the obligation (as defined in reg-  
24 ulations promulgated by the National Di-  
25 rector and specified in the guarantee con-

1           tract), the holder of the guarantee shall  
2           have the right to demand payment of the  
3           unpaid amount from the National Direc-  
4           tor.

5           (ii) PAYMENT REQUIRED.—Within  
6           such period as may be specified in the  
7           guarantee or related agreements, the Na-  
8           tional Director shall pay to the holder of  
9           the guarantee the unpaid interest on, and  
10          unpaid principal of the obligation as to  
11          which the borrower has defaulted, unless  
12          the National Director finds that there was  
13          no default by the borrower in the payment  
14          of interest or principal or that the default  
15          has been remedied.

16          (iii) FORBEARANCE.—Nothing in this  
17          paragraph precludes any forbearance by  
18          the holder of the obligation for the benefit  
19          of the borrower which may be agreed upon  
20          by the parties to the obligation and ap-  
21          proved by the Director.

22          (B) SUBROGATION.—

23          (i) IN GENERAL.—If the National Di-  
24          rector makes a payment under subpara-  
25          graph (A), the National Director shall be

1 subrogated to the rights of the recipient of  
2 the payment as specified in the guarantee  
3 or related agreements including, where ap-  
4 propriate, the authority (notwithstanding  
5 any other provision of law) to—

6 (I) complete, maintain, operate,  
7 lease, or otherwise dispose of any  
8 property acquired pursuant to such  
9 guarantee or related agreements; or

10 (II) permit the borrower, pursu-  
11 ant to an agreement with the National  
12 Director, to continue to pursue the  
13 purposes of the project if the National  
14 Director determines this to be in the  
15 public interest.

16 (ii) SUPERIORITY OF RIGHTS.—The  
17 rights of the National Director, with re-  
18 spect to any property acquired pursuant to  
19 a guarantee or related agreements, shall be  
20 superior to the rights of any other person  
21 with respect to the property.

22 (iii) TERMS AND CONDITIONS.—A  
23 guarantee agreement shall include such de-  
24 tailed terms and conditions as the National  
25 Director determines appropriate to—

1 (I) protect the interests of the  
2 United States in the case of default;  
3 and

4 (II) have available all the patents  
5 and technology necessary for any per-  
6 son selected, including the National  
7 Director, to complete and operate the  
8 project.

9 (C) PAYMENT OF PRINCIPAL AND INTER-  
10 EST BY NATIONAL DIRECTOR.—With respect to  
11 any obligation guaranteed under this section,  
12 the National Director may enter into a contract  
13 to pay, and pay, holders of the obligation, for  
14 and on behalf of the borrower, from funds ap-  
15 propriated for that purpose, the principal and  
16 interest payments which become due and pay-  
17 able on the unpaid balance of the obligation if  
18 the National Director finds that—

19 (i)(I) the borrower is unable to meet  
20 the payments and is not in default;

21 (II) it is in the public interest to per-  
22 mit the borrower to continue to pursue the  
23 purposes of the project; and

24 (III) the probable net benefit to the  
25 Federal Government in paying the prin-

1            cipal and interest will be greater than that  
2            which would result in the event of a de-  
3            fault;

4            (ii) the amount of the payment that  
5            the National Director is authorized to pay  
6            shall be no greater than the amount of  
7            principal and interest that the borrower is  
8            obligated to pay under the agreement  
9            being guaranteed; and

10           (iii) the borrower agrees to reimburse  
11           the National Director for the payment (in-  
12           cluding interest) on terms and conditions  
13           that are satisfactory to the National Direc-  
14           tor.

15           (D) ACTION BY ATTORNEY GENERAL.—

16           (i) NOTIFICATION.—If the borrower  
17           defaults on an obligation, the National Di-  
18           rector shall notify the Attorney General of  
19           the default.

20           (ii) RECOVERY.—On notification, the  
21           Attorney General shall take such action as  
22           is appropriate to recover the unpaid prin-  
23           cipal and interest due from—

1 (I) such assets of the defaulting  
2 borrower as are associated with the  
3 obligation; or

4 (II) any other security pledged to  
5 secure the obligation.

6 (4) FEES.—

7 (A) IN GENERAL.—The National Director  
8 shall charge and collect fees for guarantees in  
9 amounts the National Director determines are  
10 sufficient to cover applicable administrative ex-  
11 penses, not to exceed 1 percent of the amount  
12 guaranteed.

13 (B) AVAILABILITY.—Fees collected under  
14 this paragraph shall—

15 (i) be deposited by the National Di-  
16 rector into the Treasury; and

17 (ii) remain available until expended,  
18 subject to such other conditions as are con-  
19 tained in annual appropriations Acts.

20 (c) CREDIT REQUIREMENTS.—To receive a loan  
21 guaranteed under this section a qualified minority busi-  
22 ness shall—

23 (1) be in good standing with regard to the cred-  
24 it of that business in the determination of the Na-  
25 tional Director;

1           (2) have received technical assistance under sec-  
2           tion 104; and

3           (3) submit reports, at such time, in such form,  
4           and containing such information as the National Di-  
5           rector may require regarding the credit of the busi-  
6           ness.

7           (d) LIMITS ON GUARANTEE AMOUNTS.—

8           (1) MAXIMUM AMOUNT OF GUARANTEE.—The  
9           National Director may not guarantee more than  
10          \$450,000 of any loan under this section.

11          (2) MAXIMUM GROSS LOAN AMOUNT.—A loan  
12          guaranteed under this section may not be for a gross  
13          loan amount in excess of \$500,000.

14          (e) AUTHORIZATION OF APPROPRIATIONS.—There  
15          are authorized to be appropriated to the National Director  
16          not more than \$500,000,000 to carry out this section dur-  
17          ing fiscal years 2012 through 2016.

18          **SEC. 206. SET-ASIDE CONTRACTING OPPORTUNITIES.**

19          (a) IN GENERAL.—The National Director of the Mi-  
20          nority Business Development Agency may enter into  
21          agreements with the United States Government and any  
22          department, agency, or officer thereof having procurement  
23          powers for purposes of providing for the fulfillment of pro-  
24          curement contracts and providing opportunities for quali-  
25          fied minority businesses with regard to such contracts.



1 (b) QUALIFICATIONS ON PARTICIPATION.—The Na-  
2 tional Director shall by rule establish requirements for  
3 participation under this section by a qualified minority  
4 business in a contract.

5 (c) ANNUAL LIMIT ON NUMBER OF CONTRACTS PER  
6 QUALIFIED MINORITY BUSINESS.—A qualified minority  
7 business may not participate under this section in con-  
8 tracts in an amount that exceeds \$10,000,000 for goods  
9 and services each fiscal year.

10 (d) LIMITS ON CONTRACT AMOUNTS.—

11 (1) GOODS AND SERVICES.—Except as provided  
12 in paragraph (2), a contract for goods and services  
13 under this section may not exceed \$6,000,000.

14 (2) MANUFACTURING AND CONSTRUCTION.—A  
15 contract for manufacturing and construction services  
16 under this section may not exceed \$10,000,000.

17 **SEC. 207. TERMINATION FROM PROGRAM.**

18 The National Director of the Minority Business De-  
19 velopment Agency may terminate a qualified minority  
20 business from the Program for any violation of a require-  
21 ment of sections 203 through 206 by that qualified minor-  
22 ity business, including the following:

23 (1) Conduct by a principal of the qualified mi-  
24 nority business that indicates a lack of business in-  
25 tegrity.

1           (2) Willful failure to comply with applicable  
2 labor standards and obligations.

3           (3) Consistent failure to tender adequate per-  
4 formance with regard to contracts under the Pro-  
5 gram.

6           (4) Failure to obtain and maintain relevant cer-  
7 tifications.

8           (5) Failure to pay outstanding obligations owed  
9 to the Federal Government.

10 **SEC. 208. REPORTS.**

11       (a) REPORT OF THE DIRECTOR.—Not later than Oc-  
12 tober 1, 2012, and annually thereafter, the National Di-  
13 rector of the Minority Business Development Agency shall  
14 submit to the Committee on Commerce, Science, and  
15 Transportation of the Senate and the Committee on En-  
16 ergy and Commerce of the House of Representatives a re-  
17 port describing the activities of the National Director dur-  
18 ing the preceding year with respect to the Program.

19       (b) REPORT OF THE SECRETARY OF COMMERCE.—  
20 Not later than October 1, 2012, and annually thereafter,  
21 the Secretary of Commerce shall submit to the Committee  
22 on Commerce, Science, and Transportation of the Senate  
23 and the Committee on Energy and Commerce of the  
24 House of Representatives a report describing the activities

1 the Secretary engaged in during the preceding year to  
 2 build wealth among historically disadvantaged individuals.

3 **SEC. 209. MINORITY BUSINESS DEVELOPMENT AGENCY**  
 4 **DATABASE.**

5 Not later than 90 days after the date of the enact-  
 6 ment of this Act, the National Director of the Minority  
 7 Business Development Agency shall establish a database  
 8 to assist prime contractors in identifying historically dis-  
 9 advantaged firms for subcontracting.

10 **TITLE III—COMMUNITY ECO-**  
 11 **NOMIC DEVELOPMENT PRO-**  
 12 **VISIONS**

13 **SEC. 301. TARGETED HIRING REQUIREMENT FOR CERTAIN**  
 14 **CONSTRUCTION JOBS.**

15 (a) **CONTRACTS SUBJECT TO THIS SECTION.**—The  
 16 requirements of this section shall apply to all contracts  
 17 for construction and rehabilitation of facilities and infra-  
 18 structure funded directly by or assisted in whole or in part  
 19 by or through the Federal Government in fiscal year 2012.

20 (b) **EMPLOYMENT OF TARGETED WORKERS.**—

21 (1) **PROJECT WORK HOURS REQUIREMENT.**—

22 The Secretary of Labor shall establish a minimum  
 23 percentage of construction work hours to be per-  
 24 formed by targeted workers for each contract subject  
 25 to this section in each labor market area.

1           (2) UTILIZATION OF APPRENTICESHIP PRO-  
2           GRAMS.—

3                   (A) CONTRACTOR PARTICIPATION RE-  
4                   QUIREMENTS.—Each contractor and subcon-  
5                   tractor that seeks to provide construction serv-  
6                   ices on contracts subject to this section shall  
7                   submit adequate assurances with its bid or pro-  
8                   posal that it participates in a qualified appren-  
9                   ticeship program, with a written arrangement  
10                  with a qualified pre-apprenticeship program, as  
11                  defined by the Secretary of Labor, for each  
12                  craft or trade classification of worker that the  
13                  contractor or subcontractor intends to employ  
14                  to perform work on the project.

15                  (B) CERTIFICATION OF OTHER PROGRAMS  
16                  IN CERTAIN LOCALITIES.—In the event that the  
17                  Secretary of Labor certifies that a qualified ap-  
18                  prenticeship program (as defined in subpara-  
19                  graph (A)) for a craft or trade classification  
20                  that a prospective contractor or subcontractor  
21                  intends to employ, is not operated in the local-  
22                  ity where the contract or subcontract will be  
23                  performed, an apprenticeship or other training  
24                  program that is not an employee welfare benefit  
25                  plan (as defined in such section) may be cer-

1           tified by the Secretary as a qualified appren-  
2           ticeship or other training program provided it is  
3           registered with the Department of Labor, Office  
4           of Apprenticeship, or a State apprenticeship  
5           agency recognized by the Office of Apprentice-  
6           ship for Federal purposes.

7           (C) APPRENTICE UTILIZATION.—Each con-  
8           tractor and subcontractor performing work on  
9           contracts subject to this section shall employ  
10          apprentices or trainees enrolled in qualified ap-  
11          prenticeship programs to the maximum extent  
12          permitted in the program’s written standards,  
13          and shall submit adequate assurances that it is  
14          not party to contractual agreements that pre-  
15          clude its ability to meet the targeted hiring re-  
16          quirements set forth in paragraph (1).

17          (3) DEFINITIONS.—For purposes of this sec-  
18          tion—

19                (A) the term “labor market area” has the  
20                meaning given such term in section 101(18) of  
21                the Workforce Investment Act of 1998 (29  
22                U.S.C. 2801(18));

23                (B) the term “qualified apprenticeship pro-  
24                gram” means an apprenticeship or other train-  
25                ing program that qualifies as an “employee wel-

1 fare benefit plan” as defined in section 3(1) of  
2 the Employee Retirement Income Security Act  
3 of 1974 (29 U.S.C. 1002(1)); and

4 (C) the term “targeted workers” means in-  
5 dividuals who reside in the same labor market  
6 area as the applicable project and who—

7 (i)(I) are members of families that re-  
8 ceived a total income, that during the 2-  
9 year period prior to employment on the  
10 project or admission to the pre-apprentice-  
11 ship program, did not exceed 200 percent  
12 of the Federal poverty guidelines (exclusive  
13 of unemployment compensation, child sup-  
14 port payments, payments described in 29  
15 United States Code section 2801(25)(A),  
16 and old-age and survivors insurance bene-  
17 fits received under section 202 of the So-  
18 cial Security Act (42 U.S.C. 402); and

19 (II) reside in a census tract in which  
20 not less than 20 percent of the households  
21 have income below the Federal poverty  
22 guidelines;

23 (ii) are members of a targeted group,  
24 within the meaning of section 51 of the In-  
25 ternal Revenue Code of 1986; or

1                   (iii) qualify as “displaced home-  
2                   makers” as such term is defined in section  
3                   3(10) of the Carl D. Perkins Career and  
4                   Technical Education Act of 2006 (20  
5                   U.S.C. 2302(10)).

6           (c) FACILITATING COMPLIANCE AND PROJECT EFFI-  
7           CIENCY.—In order to achieve the purposes of this section  
8           and to promote prompt completion of construction projects  
9           undertaken pursuant to this Act, the Secretary of Labor  
10           may require that contractors and subcontractors per-  
11           forming construction work under a contract subject to this  
12           section enter into an agreement consistent with the stand-  
13           ards set forth in section 4 of Executive Order 13502 and  
14           the requirements of subsection (b)(1) of this section.

15           (d) IMPLEMENTATION.—

16           (1) IN GENERAL.—No law or regulation gov-  
17           erning the operations or activities of any agency re-  
18           sponsible for implementing provisions of this section  
19           shall be interpreted to prohibit Federal agencies,  
20           funding recipients, contractors, or subcontractors,  
21           from advancing the purposes of this section through  
22           additional project requirements or actions. The Sec-  
23           retary of Labor shall be responsible for ensuring the  
24           implementation and enforcement of this section, in-  
25           cluding investigating noncompliance, and shall, not

1 later than 180 days after the date of enactment of  
2 this Act, adopt such rules, regulations, and guid-  
3 ance, and issue such orders as the Secretary deter-  
4 mines necessary and appropriate to achieve the pur-  
5 poses of this section.

6 (2) COMPLIANCE.—In the event of material  
7 noncompliance with this section by a recipient, con-  
8 tractor, or subcontractor, the Secretary of Labor  
9 shall have the authority to assess and collect pen-  
10 alties from such recipient, contractor, or subcon-  
11 tractor of not more than 5 percent of the contract  
12 amount. The Secretary shall allow for reduction or  
13 avoidance of penalty assessments for non-compliance  
14 with the targeted hiring requirements of subsection  
15 (b)(1) only where the entity in question dem-  
16 onstrates that—

17 (A) compliance was impossible because of a  
18 shortage of targeted workers in the local labor  
19 market; and

20 (B) the employer utilized all specified  
21 measures to obtain targeted workers.

22 The Secretary may specify measures required to be  
23 taken to obtain targeted workers.

24 (e) DEDICATED RESOURCES FOR TRAINING AND RE-  
25 CRUITMENT.—In order to facilitate the objectives of this



1 section, not less than 1 percent of any funds authorized  
2 and appropriated or otherwise allocated for construction  
3 for fiscal year 2012 shall be set aside to—

4 (1) provide pre-apprenticeship training and  
5 other support services through programs that have  
6 strong track records of placing targeted workers into  
7 sustained employment in the construction trades and  
8 that have written agreements with qualified appren-  
9 ticeship programs;

10 (2) provide support to community-based organi-  
11 zations that have written agreements with programs  
12 described in subsection (b)(2) to participate in such  
13 programs by recruiting targeted workers; or

14 (3) provide support to contractors either—

15 (A) that are community-based nonprofit  
16 organizations that both—

17 (i) have a governing body in which a  
18 majority the members qualify as targeted  
19 workers; and

20 (ii) have less than one million dollars  
21 in annual revenue from construction work  
22 of any type, or

23 (B) in which such a community-based non-  
24 profit organization has a 100 percent control-  
25 ling interest for work relating to such Act to

1           meet the cost of participating in apprenticeship  
2           programs.

3           (f) **SENSE OF CONGRESS REGARDING PARTICIPATION**  
4 **OF SOCIALLY AND ECONOMICALLY DISADVANTAGED**  
5 **BUSINESSES.**—It is the sense of Congress that each agen-  
6 cy responsible for implementing provisions relating to con-  
7 struction contracting and subcontracting in fiscal year  
8 2012 should ensure that any regulation, policy, or funding  
9 disbursement made provides for the inclusive participation  
10 by socially and economically disadvantaged small business  
11 concerns, as defined under section 8(a) of the Small Busi-  
12 ness Act (15 U.S.C. 637(a)), including through bidding  
13 credits, program eligibility standards, and other means.

14 **SEC. 302. 2-YEAR EXTENSION OF NEW MARKETS TAX CRED-**  
15 **IT NATIONAL LIMITATION.**

16           (a) **IN GENERAL.**—Subparagraph (G) of section  
17 45D(f)(1) of the Internal Revenue Code of 1986 is amend-  
18 ed by striking “2010 and 2011” and inserting “2010,  
19 2011, 2012, and 2013”.

20           (b) **EFFECTIVE DATE.**—The amendment made by  
21 this section shall apply to investments made after Decem-  
22 ber 31, 2011.

1 **SEC. 303. EXTENSION OF EMPOWERMENT ZONE DESIGNA-**  
2 **TION.**

3 (a) IN GENERAL.—Clause (i) of section  
4 1391(d)(1)(A) of the Internal Revenue Code of 1986 is  
5 amended by striking “December 31, 2011” and inserting  
6 “December 31, 2013”.

7 (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to periods after December 31,  
9 2011.

10 (c) TREATMENT OF CERTAIN TERMINATION DATES  
11 SPECIFIED IN NOMINATIONS.—In the case of a designa-  
12 tion of an empowerment zone the nomination for which  
13 included a termination date which is contemporaneous  
14 with the date specified in subparagraph (A)(i) of section  
15 1391(d)(1) of the Internal Revenue Code of 1986 (as in  
16 effect before the enactment of this Act), subparagraph (B)  
17 of such section shall not apply with respect to such des-  
18 ignation if, after the date of the enactment of this Act,  
19 the entity which made such nomination amends the nomi-  
20 nation to provide for a new termination date in such man-  
21 ner as the Secretary of the Treasury (or the Secretary’s  
22 designee) may provide.

○