



U.S. Small Business
Administration



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Legislative & Regulatory Update

**For Small Business Government Contracting
Programs**

May 23, 2022

Hosts

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Welcome to “SBA Virtual Learning 2022”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact your IT admin who manages Teams settings for your organization.
3. Captioning available for this presentation.
4. We cover the “SBA Quick Reference” as time allows.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

Association of Procurement Technical Assistance Centers (APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

- APTAC posts past “First Wednesday” programming at this link: <http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting officer resources: “How PTACs partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest Procurement Technical Assistance Center at <http://www.aptac-us.org>

Small Business Administration YouTube Page

SBA YouTube page posts past “First Wednesday” programming at links below.

- October 6, 2021 – 8(a) Program Updates: <https://youtu.be/yNQ4u-Ha9Go>
- November 3, 2021 – Non-Manufacture Rule (NMR): <https://youtu.be/QnN2XvlaupQ>
- December 1, 2021 – Releasing Requirements from 8(a): <https://youtu.be/htkYbkajS4o>
- January 5, 2022 – Category Management Part 1: <https://youtu.be/JJ-OyTIT3HM>
- February 2, 2022 – Category Management Part 2: <https://youtu.be/tRw0yVR5fBA>
- March 2, 2022 – Market Research: <https://youtu.be/aDmwe1vBzIA>
- April 6, 2022 – SBA Mentor Protégé Program: <https://youtu.be/wh5BXPxM-P4>
- May 4, 2022 – eSRS System:
- Jun 1, 2022 – Legislative and Regulatory Update:
- July 6, 2022 – Women Owned Small Business Program:
- August 3, 2022 – HUBZone Program:

FIRST WEDNESDAY VIRTUAL LEARNING SERIES
FY 2022 SCHEDULE
 1:00 to 2:00 PM Central Time

| FY 2022 | Date | Topic |
|---------|------------------|---|
| 1 | October 6, 2021 | 8(a) Business Development Program Updates |
| 2 | November 3, 2021 | Non-Manufacturing Rule (NMR) |
| 3 | December 1, 2021 | Releasing Requirements from 8(a) Business Development Program |
| 4 | January 5, 2022 | Part I: Category Management: Policy Considerations and Flexibilities and Small Business Utilization |
| 5 | February 2, 2022 | Part 2: Category Management: Increasing Small Business Participation Through Subcontracting and Legal Obligations |
| 6 | March 2, 2022 | Market Research |
| 7 | April 6, 2022 | SBA Mentor Protégé Program |
| 8 | May 4, 2022 | Electronic Subcontract Reporting System (eSRS) |
| 9 | June 1, 2022 | Legislative and Regulatory Update |
| 10 | July 6, 2022 | Women-Owned Small Business Program |
| 11 | August 3, 2022 | HUBZone Program |



The program schedule is for information only and is subject to change.

One Continuous Learning Point

- Self-service: Using the PowerPoint that was sent with your invitation for this training event, fill in your name on the certificate slide and save. Download the certificate and print for your records. You submit your request for training credit IAW your agency policy, i.e. FAITAS.
- If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

“SBA 1st Wednesday Virtual Learning 2022”

This Certificate is awarded to

Insert Your Name Here

For completion of

Legislative and Regulatory Update

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Pamela J. Beavers
Director, Area IV
SBA Office of Government Contracting

6/01/2022

DATE

Today's Speaker(s)

Sam Le
Director, Office of Policy, Planning and Liaison
Office of Government Contracting and Business Development
U.S. Small Business Administration

Legislative Action

National Defense Authorization Act for Fiscal Year 2022

[Pub. Law 117-81](#), signed by the President on 12/27/21

Sect. 861 - Keeps the Miller Act threshold for bonding protection for small-business subcontractors on construction projects at its present level, instead of raising it for inflation.

Sect. 863 - Requires update to SAM.gov for small business status changes and notification to agencies where the firm has a pending offer, if the change would affect eligibility.

Sect. 864 - Gives OHA jurisdiction over HUBZone appeals.

Sect. 866 - Requires DoD report on CMMC effects on small business.

The Price Act

Promoting Rigorous and Innovative Cost Efficiencies for Federal Procurement and Acquisitions Act of 2021

[Pub. Law 117-88](#), signed by the President on 2/22/21

- DHS operates a Procurement Innovation Lab aimed at experimenting with innovative acquisition techniques
- Directs DHS to issue an annual report on innovative procurement techniques, including those used to meet small-business goals.
 - Sunsets after 3 years
- Requires OMB to convene the CAO Council to examine best practices in acquisition innovation, including in contracting with small businesses
 - CAO Council may form a working group to address
 - CAO Council (or the working group) must issue a report on innovative acquisition techniques that lead to meeting or exceeding small-business goals

Introduced in the House

- [H.R. 4697](#), to strike section 8(a)(11), which is the basis of [bona-fide-office rule](#) in the 8(a) program
 - SBA has temporarily waived the requirement: [SBA Announces Moratorium on Bona Fide Place of Business Requirements for the 8\(a\) Business Development Program](#)
- [H.R. 6347](#), Military Spouse Entrepreneurs Act of 2021 – to establish a 5-year pilot procurement program for small businesses owned and controlled by military spouses, with a 5% goal
- [H.R. 6504](#), Native Pacific Islanders of America Equity Act - to define a Native CHamoru Organizations as a nonprofit corporation owned by Guam natives or direct ancestors, define Native Northern Marianas Organizations, and give both such organizations the same treatment as Native Hawaiian Organizations for SDB and HUBZone eligibility.
- [H.R. 6923](#), the Accelerating Small Business Growth Act - create a grant program to help transportation agencies carry out innovative programs to compete for federally funded transportation projects.

Introduced in the House

- [H.R. 7628](#), IMPROVE the SBA Act would
 - mandate annual testimony from SBA's GCBD,
 - require agencies to allocate small-business-contract credit to no more than one socioeconomic category,
 - create a confidential questionnaire for first-tier small business subcontractors, and
 - require that a contractor's failure to submit timely subcontracting reports result in a negative effect on past performance
- [H.R. 7670](#), the Women-Owned Small Business Program Transparency Act, would require SBA to issue an annual report on the WOSB Program.
- [H.R. 5879](#), the Hubzone Price Evaluation Preference Clarification Act of 2021, would extend the HUBZone price evaluation preference to unrestricted task orders.
- [H.R. 7694](#), the Strengthening Subcontracting for Small Businesses Act of 2022, would require agencies to, when awarding a contracting with subcontracting opportunities, use evaluation factors for subcontracting plans and prior small-business subcontracting.

Introduced in the Senate

- [S. 3928](#), the Accelerating Small Business Growth Act - create a DOT grant program (\$20mil over four years) to fund programs for SDBs to compete for contracts and subcontracts funded by DOT financial assistance.
- [S. 3929](#), the Disadvantaged Business Enterprise Supportive Services Expansion Act – raise the funding cap for FHWA supportive services program, and provide for supportive services programs at FTA and FAA

Passed House and Senate – in conference

- [H.R. 4521](#), America COMPETES Act of 2022
 - Sect. 50101 – would require one-third small-business purchasing for certain items from frontline operational components (TSA, Secret Service, FEMA, and others)
 - Sect. 50103 – would create a DHS mentor-protégé program for small businesses, HBCUs, and MSIs.
 - Sect. 61007 – would include small-business contracting percentage in the annual report of the Defense Production Act Fund

Executive Action

OMB Memorandum: Advancing Equity in Procurement

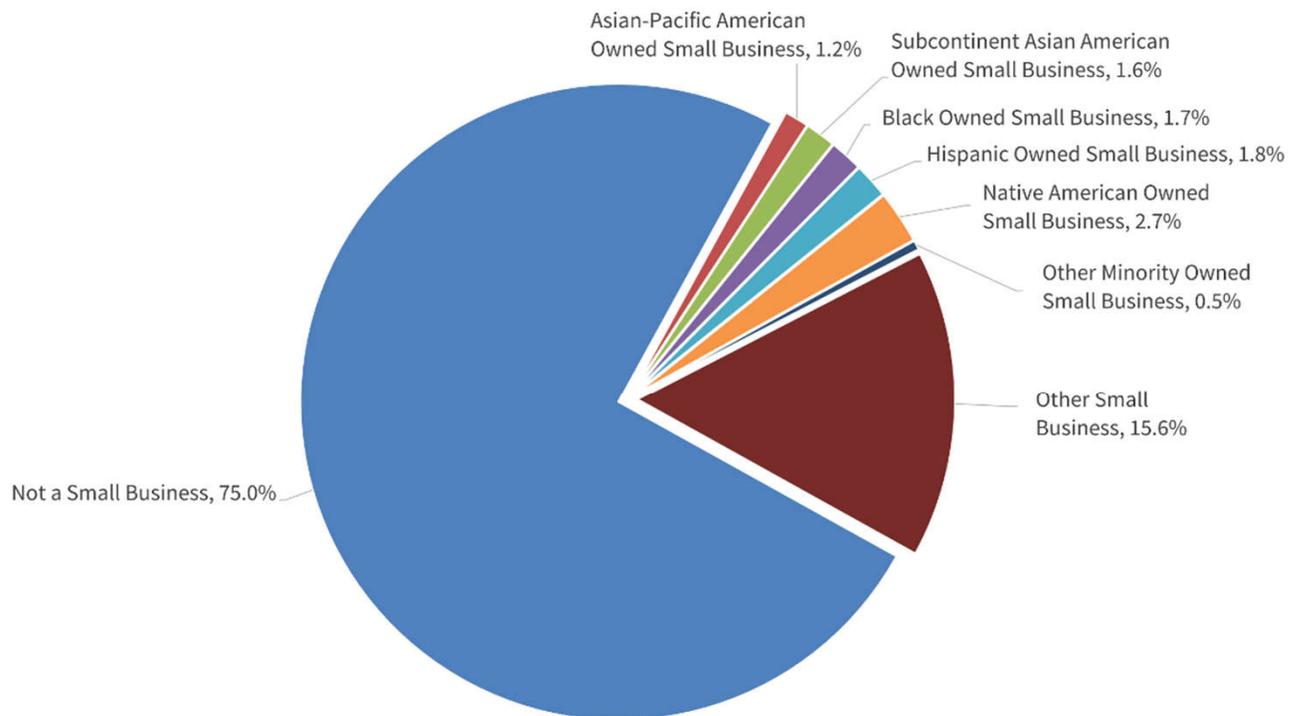
M-22-03, Dec. 2, 2021 – implementing Executive Order 13985

1. Raises governmentwide SDB contracting goal to 11% for FY22, on the way to 15% by 2025.
2. Implements major changes to Category Management.
 - A. automatic Tier 2 credit for socioeconomic small businesses (SDB, WOSB, HUBZone, SDVOSB)
 - B. reinforced importance of small-business goal achievements
 - C. making SBA and Dept. of Commerce voting members on the Category Management Leadership Council.
3. Seeks to increase new entrants and reverse the decline in the small business supplier base.
4. Makes Federal senior managers accountable for small business contracting goals.
5. Ensures OSDBUs have access to senior leadership

SBA Disaggregated Data Release

[SBA.gov](https://www.sba.gov) – as discussed on [whitehouse.gov](https://www.whitehouse.gov) and analyzed by CEA

FY 2020 Federal Contracting¹ by Race² and Business Size



1. Includes only small-business-eligible dollars (\$559 billion in FY 2020). This includes all Federal contracts except those excluded by SBA's Goaling Guidelines. This data does not apply the double-credit and subcontracting adjustments required by statute for SBA's annual scorecard.

2. Racial and ethnic categories are reflected here as they appear in the System for Award Management when an entity registers to do business with the government. Classifications are self-reported. The other small business category reflects those firms who did not report as being minority-owned.

Recent SBA and FAR Regulatory Action

Final Rules (4): Revised Monetary Based Size Standards

[87 FR 18607](#) ; [87 FR 18627](#); [87 FR 18646](#); [87 FR 18665](#) (March 31, 2022)

- SBA issued four final rules to address monetary-based size standards, including all used in government procurement
- Reviewed 468 size standards
 - 229 increases
 - No decreases because of COVID-19
- Notable changes
 - Engineering Services, 541330 to \$22.5 million
 - Administrative Management and Consulting Services, 541611 to \$21.5 million
 - Architectural Services, 541310 to \$11 million

SBA Proposed Rule: Manufacturing and Employee-Based Size Standards

87 FR 24752 (April 26, 2022)

- Reviewed 432 employee-based size standards
 - Proposed to increase 150 size standards
 - 120 of the increases are in manufacturing industries
 - Proposed to retain 282 size standards
- Proposes to retain the 500-employee size standard for the nonmanufacturer rule
- If finalized, would add 250 small businesses
- Comments are due June 27

SBA Proposed Rule: Calculation of Employee-Based Size Standards

86 FR 60396

- Proposes to use a 24-month average to calculate a business's number of employees for eligibility purposes in all of SBA's programs
- Proposes to permit businesses in SBA's loan and SBIC programs to use a 5-year averaging period, in addition to the existing 3-year averaging period, for the purposes of calculating annual average receipts

Direct Final Rule: Definition of Surviving Spouse/Change to Sole-Source Thresholds 86 FR 61670

- Allows surviving spouse of deceased service-disabled veteran to qualify as owner of SDVOSBC for up to:
 - 10 years after veteran's death, if veteran was 100% disabled
 - 3 years after veteran's death, for less than 100% disability
- Changes 8(a) sole-source J&A threshold to \$100 mil for DoD, \$25 mil for civilian
 - Applies to entity-owned (ANC/Tribe for DOD & civilian agencies; NHO for DOD only) firms and
 - Applies if only one eligible Participant would submit a fair-market offer
- Changes sole-source thresholds in 8(a), WOSB, and HUBZone to:
 - \$4.5 mil for nonmanufacturing (but still \$4 mil in SDVOSBC)
 - \$7 mil for manufacturing (same for SDVOSBC)

Direct Final Rule: HUBZone Governor-Designated Covered Areas

84 FR 62447

- Added new type of HUBZone: “Governor-Designated Covered Area”
 - Non-urbanized areas with populations of 50,000 or less
 - Unemployment of at least 120% the state or US average
 - Opportunity Zones encouraged
 - Governors must petition SBA – limited to one petition per year
- Published November 11, 2019
- Effective January 1, 2020
- [Illinois](#), Colorado, and Virginia granted expansions

Direct Final Rule: Extending HUBZone Map Freeze

[86 FR 23863](#)

- Extends the HUBZone Map freeze until June 30, 2023
 - Qualified census tract data using the 2020 Census results will not be available until late 2022.
 - Applies to all current Redesignated Areas and Qualified Base Closure Areas, and most current Qualified Disaster Areas.
 - The HUBZone Map has been updated to reflect the new expiration date for those areas.
 - After SBA receives the Census data from HUD, SBA will post a list identifying areas newly designated as Qualified Census Tracts, Qualified Non-metropolitan Counties, and Redesignated Areas, so that firms can plan accordingly.

HUBZone: New Qualified Non-Metropolitan Counties

[84 FR 65222](#)

- In early August, the HUBZone Map was updated to add 452 new Qualified Non-Metropolitan Counties (QNMCs).
- This update is in response to a statutory change to the definition of the term “Qualified Non-Metropolitan County” that went into effect in 2020.
- SBA conducted an analysis using the amended definition to identify additional non-metropolitan counties that would qualify as QNMCs and have added them to the HUBZone map.

SBA Proposed Rule: Past Performance Ratings for JV members and Subcontractors

86 FR 64410

- Proposes to let small business use past performance from a joint venture, provided it worked on the joint venture's contracts
- Proposes to let a small business use past performance from a first-tier subcontract to go after a prime contract
 - Requires a change to subcontracting plans to direct primes to provide a rating to the small business within 15 days
 - Requested comment on whether to require a time frame within which the small business must make the request (e.g., during the prime's period of performance)

Nonmanufacturer Rule Class Waivers: Terminations

87 FR 29424 (radiology equipment)

- SBA terminated the class waiver of the nonmanufacturer rule that applied to radiology equipment, NAICS code 334517.
- Small businesses will need to provide the product of a small-business manufacturer for set-aside contracts, unless the agency obtains an individual waiver.

Nonmanufacturer Rule Class Waivers: Proposed termination

87 FR 8628 (furniture)

- SBA issued notices of intent to terminate class waivers of the nonmanufacturer rule for :
 - Certain furniture products (factory, hospital, and laboratory, plus specified frames and parts)
- If finalized, the nonmanufacturer rule will apply to these products
 - For set-aside contracts—except small-business set-asides below the SAT—awardees must provide their own product or the product of a small-business manufacturer
 - SBA also is able to grant individual waivers for specific contracts

Notice of new WOSB Program NAICS Codes

[87 FR 15468](#) (March 18, 2022)

- SBA identified new NAICS codes for the WOSB program
- Underrepresented industries are qualified for EDWOSB set-asides/sole-source procurements
 - 113 underrepresented NAICS codes
- Substantially underrepresented industries are qualified for WOSB set-asides/sole-source procurements
 - 646 substantially underrepresented NAICS codes

FAR Final Rule: Small Business Programs Overseas

[87 FR 24836](#)

- Amends FAR 19.000 to specify that agencies “may apply” Part 19 (Small Business Programs) outside the United states and its outlying areas.
 - If applied, participants must meet definition of small business concern
 - And must submit representations
 - **Note:** SBA definition of “Small business concern” at 13 CFR 121.105:
“place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.”
- Applies bundling definition to contracts performed entirely outside the U.S. (they previously were exempted)

FAR Final Rule: Limitations on Subcontracting

[86 FR 44233](#)

- Applies across all small business programs
- Calculated as a percentage of the overall contract amount to be spent by the prime contractor on subcontractors.
- “Similarly situated entity”—a small business subcontractor that has the same small business program status as that which qualified the prime contractor for the prime contract
- Nonmanufacturer rule does not apply to small business set-asides at or below the simplified acquisition threshold
- Waivers of the nonmanufacturer rule allowed for procurements under the HUBZone Program

FAR Final Rule: Scope of PCR Review

86 FR 44247

- COs must provide the PCR a copy of any proposed acquisition package, at the PCR's discretion
- PCRs may recommend the set-aside or sole-source award to a small business; the breakout of discrete components, items, and requirements for competition; and ways to improve competition

FAR Final Rule: Good Faith in Small Business Subcontracting

86 FR 44249

- Provides examples of activities that contracting officers may consider when evaluating whether the prime contractor made a good faith effort to comply with its small business subcontracting plan.
- Requires prime contractors with commercial subcontracting plans to include indirect costs, with certain exceptions, in their subcontracting goals

FAR Final Rule: Consolidation and Bundling

86 FR 61038

- Requires the publication on SAM.gov of a notice, no later than 7 days before the solicitation, for
 - Substantial bundling, and for
 - Consolidation
- Requires the publication on SAM.gov of a determination, with the publication of the solicitation of
 - The rationale for substantial bundling, or that
 - Consolidation of contract requirements is necessary and justified

FAR Proposed Rule: Small Business Program Amendments

87 FR 10327

- Size changes
 - Size determined at offer on a multiple-award contract, even if price not evaluated (e.g., two-step eval)
 - IT value-added reseller size standard of 150 employees
 - Allow status protests based on ostensible subcontractor
- Allow set-asides for socioeconomic programs where multiple-award contract was set aside for small business
- Cannot exercise an option past 5th year on an 8(a) contract if firm is no longer an 8(a) participant

FAR Proposed Rule: Update of HUBZone Program

[86 FR 31468](#)

- Published June 14, 2021
- Implements SBA's comprehensive revision (84 FR 65222)
 - Removes requirement for firm to be HUBZone qualified at both offer and award for HUBZone set-asides—instead just offer
- Authorizes sole source awards under SAT

FAR Proposed Rule: WOSB Certification

[86 FR 55769](#)

- Would require agencies to check SBA's DSBS for WOSB/EDWOSB designation for WOSB/EDWOSB set-asides and sole-source awards
- Firms may submit offers on WOSB/EDWOSB set-asides if certification is pending
- Would remove mentions of the WOSB repository, which no longer exists

Upcoming SBA proposed rules

1. NDAA 2020, Credit for Lower Tier Subcontracting and Other Amendments
2. HUBZone Program Updates and Clarifications
3. Small Business Size Standards: Adoption of 2022 North American Industry Classification System for Size Standards
4. Small Businesses in US Territories; Eligibility of the Commonwealth of the Northern Mariana Islands
5. Adjustment of Monetary Based Size Standards for Inflation

Upcoming FAR proposed rules

1. Proposed 2022-002, Exemption of Certain Contracts from the Periodic Inflation Adjustments to the Acquisition-Related Thresholds
2. Proposed 2021-020, Limitations on Subcontracting Revisions
3. Proposed 2021-012, 8(a) program
4. Proposed 2021-011, Past Performance of First-Tier Subcontractors
5. Proposed 2021-010, Subcontracting to Puerto Rican and Other Small Businesses
6. Proposed 2021-009, Protests of Orders Set Aside for Small Business

Upcoming FAR proposed rules (cont.)

7. Proposed 2020-016, Representation of Size and Socioeconomic Status
8. Proposed 2020-010, SBIR/STTR
9. Proposed 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns

Upcoming FAR final rules

1. Final 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns
2. Final 2018-020, Construction Contract Administration
3. Final 2017-019, Policy on Joint Ventures



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