



# Small Business Mentor-Protégé Programs

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## Summary

Mentor-protégé programs typically seek to pair new businesses with more experienced businesses in mutually beneficial relationships. Protégés may receive financial, technical, or management assistance from mentors in obtaining and performing federal contracts or subcontracts, or serving as suppliers under such contracts or subcontracts. Mentors may receive credit toward subcontracting goals, reimbursement of certain expenses, or other incentives.

The federal government currently has several mentor-protégé programs that seek to aid small businesses in various ways. For example, the 8(a) Mentor-Protégé Program is a government-wide program designed to assist small businesses “owned and controlled by socially and economically disadvantaged individuals” that are participating in the Small Business Administration’s (SBA’s) Minority Small Business and Capital Ownership Development Program (commonly known as the 8(a) program) in obtaining and performing federal contracts. Toward that end, mentors may (1) form joint ventures with protégés that are eligible to perform federal contracts set aside for small businesses; (2) make certain equity investments in protégé firms; (3) lend or subcontract to protégé firms; and (4) provide technical or management assistance to their protégés. The Department of Defense (DOD) Mentor-Protégé Program, in contrast, is agency-specific. It is designed to assist various types of small businesses and other entities in obtaining and performing DOD subcontracts and serving as suppliers on DOD contracts. Mentors may (1) make advance or progress payments to their protégés that DOD reimburses; (2) award subcontracts to their protégés on a noncompetitive basis when they would not otherwise be able to do so; (3) lend money to or make investments in protégé firms; and (4) provide or arrange for other assistance.

Other agencies also have agency-specific mentor-protégé programs designed to assist various types of small businesses or other entities in obtaining and performing subcontracts under agency prime contracts. The Department of Homeland Security (DHS), for example, has a mentor-protégé program wherein mentors may provide protégés with rent-free use of facilities or equipment, temporary personnel for training, property, loans, or other assistance. Because these programs are not based in statute, unlike the SBA and DOD programs, they generally rely upon preexisting authorities (e.g., authorizing use of evaluation factors) or publicity to incentivize mentor participation. See **Table A-1** for a summary comparison. Although there are some issues with the accuracy and thoroughness of some federal agency records, there are currently more than 1,100 mentor-protégé agreements in place.

Congressional interest in small business mentor-protégé programs has increased in recent years, in part because of reports that large businesses serving as mentors have improperly received federal contracting assistance intended for small businesses. The first session of the 112<sup>th</sup> Congress enacted legislation (P.L. 112-81) extending the DOD Mentor-Protégé Program through FY2015 for the formation of new agreements, and FY2018 for the reimbursement of incurred costs under existing agreements. Also, H.R. 3985, the Building Better Business Partnerships Act of 2012, and H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013, would require the SBA to oversee and establish standards for most federal mentor-protégé programs and establish a mentor-protégé program for all small business concerns. The 111<sup>th</sup> Congress had previously enacted legislation (P.L. 111-240) authorizing the SBA to establish mentor-protégé programs for small businesses owned and controlled by service-disabled veterans, owned and controlled by women, and small businesses located in a HUBZone, which the SBA is in the process of doing. The programs are to be modeled on the mentor-protégé program for small businesses participating in the SBA’s 8(a) program.

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## Introduction

Mentor-protégé programs typically seek to pair new businesses and more experienced businesses in mutually beneficial relationships. Protégés may receive financial, technical, or management assistance from mentors in obtaining and performing federal contracts or subcontracts, or serving as suppliers under such contracts or subcontracts, while mentors may receive credit toward subcontracting goals, reimbursement of certain expenses, or other incentives for assisting protégés.

Currently, the federal government has several mentor-protégé programs that seek to assist small businesses<sup>1</sup> in various ways, including

- the 8(a) Mentor-Protégé Program, which assists “small businesses owned and controlled by socially and economically disadvantaged individuals” participating in the Small Business Administration’s (SBA’s) Minority Small Business and Capital Ownership Development Program (commonly known as the 8(a) program) in obtaining and performing contracts with executive-branch agencies;
- the Department of Defense (DOD) Mentor-Protégé Program, which assists various types of small businesses and other entities in performing as subcontractors or suppliers on DOD contracts;
- other agency-specific mentor-protégé programs, such as that of the Department of Homeland Security (DHS), which provide mentor firms incentives to subcontract agency prime contracts with small businesses; and
- mentor-protégé programs established by recipients of certain Department of Transportation (DOT) funding, which assist “disadvantaged business enterprises” in obtaining and performing federally funded contracts and subcontracts.

Congressional interest in small business mentor-protégé programs has increased in recent years, in part because of reports that large businesses serving as mentors have improperly received federal contracting assistance intended for small businesses.<sup>2</sup> The SBA’s suspension (and later

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<sup>1</sup> For purposes of federal procurement law, a business is “small” if it is independently owned and operated; is not dominant in its field of operations; and meets any definitions or standards established by the SBA. 15 U.S.C. §632(a)(1)-(2)(A). These standards focus primarily upon the size of the business as measured by the number of employees or its gross income, but they also take into account the size of other businesses within the same industry. 13 C.F.R. §§121.101-121.108.

<sup>2</sup> For example, in one notable instance, in October 2010, the SBA suspended a mentor participating in the 8(a) Mentor-Protégé Program from government contracting because of allegations that the firm used “front companies” to obtain the majority of the work and revenue under contracts set aside for small businesses. See, e.g., U.S. Small Business Administration, “Statement from Administrator Mills on the Suspension of GTSI from Federal Contracting Program,” Washington, DC, October 1, 2010, available at <http://www.sba.gov/about-sba-services/7367/5533>; U.S. Small Business Administration, “Administrative Agreement, between GTSI Corp. (“GTSI”) and the United States Small Business Administration (“SBA”),” Washington, DC, October 19, 2010, available at [http://www.sba.gov/sites/default/files/gtsi\\_admin\\_agreement\\_0.pdf](http://www.sba.gov/sites/default/files/gtsi_admin_agreement_0.pdf). Although this suspension was lifted after changes were made in the firm’s management, the incident highlighted broader concerns about fraud in small business programs, which can include noncompliance by large or small businesses with the rules governing mentor-protégé programs. See, e.g., U.S. Small Business Administration, Office of the Inspector General, “Audit of Two 8(a) Sole-Source Contracts Awarded to Contractors in SBA’s Mentor-Protégé Program,” Report No. 07-19, Washington, DC, March 30, 2007, available at [http://archive.sba.gov/idc/groups/public/documents/sba/oig\\_gcxbd\\_7-19.pdf](http://archive.sba.gov/idc/groups/public/documents/sba/oig_gcxbd_7-19.pdf); U.S. Government Accountability Office, *Small Business Administration: Undercover Tests Show HUBZone Program Remains Vulnerable to Fraud and Abuse*, (continued...)

reinstatement) of a mentor in the 8(a) Mentor-Protégé Program for possible fraud, as well as reports of other fraud in several of the SBA's contracting programs, has also contributed to congressional interest.

The first session of the 112<sup>th</sup> Congress enacted legislation (P.L. 112-81, the National Defense Authorization Act for Fiscal Year 2012) extending the DOD Mentor-Protégé Program through FY2015 for the formation of new agreements, and FY2018 for the reimbursement of incurred costs under existing agreements. In addition, H.R. 3985, the Building Better Business Partnerships Act of 2012, was introduced on February 8, 2012. It would authorize the SBA to oversee and establish standards for most federal mentor-protégé programs and establish a mentor-protégé program for all small business concerns. H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013, introduced on March 29, 2012, and passed by the House on May 18, 2012, includes these same provisions. The 111<sup>th</sup> Congress had previously enacted legislation (P.L. 111-240, the Small Business Jobs Act) authorizing the SBA to establish mentor-protégé programs for small businesses owned and controlled by service-disabled veterans, owned and controlled by women, and small businesses located in a HUBZone, which the SBA is in the process of doing.<sup>3</sup> The programs are to be modeled on the mentor-protégé program for small businesses participating in the SBA's 8(a) program. The Small Business Jobs Act also required the Government Accountability Office (GAO) to assess the effectiveness of mentor-protégé programs generally.<sup>4</sup> GAO's findings were reported on June 15, 2011.<sup>5</sup>

This report provides an overview of the various small business mentor-protégé programs of the federal government. As is discussed below, while all these programs are intended to assist small businesses in performing as contractors, subcontractors, or suppliers on federal or federally funded contracts, the programs differ significantly in their scope and operations. **Table A-1** in the **Appendix** provides an overview of key differences among the programs.

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GAO-10-920T, July 28, 2010, pp. 2-4, available at <http://www.gao.gov/new.items/d10920t.pdf>; U.S. Government Accountability Office, *8(a) Program: Fourteen Ineligible Firms Received \$325 Million in Sole-Source and Set-Aside Contracts*, GAO-10-425, March 30, 2010, pp. 7-22, 29, available at <http://www.gao.gov/new.items/d10425.pdf>; U.S. Government Accountability Office, *Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts*, GAO-10-108, October 23, 2009, pp. 4-13, available at <http://www.gao.gov/new.items/d10108.pdf>.

<sup>3</sup> U.S. Small Business Administration, "Small Business Jobs Act: Small Business Mentor-Protégé Programs," 75 *Federal Register* 79869, December 20, 2010; and U.S. Small Business Administration, "Semiannual Regulatory Agenda, Small Business Jobs Act: Small Business Mentor-Protégé Programs," 76 *Federal Register* 40140, July 7, 2011.

<sup>4</sup> Small Business Jobs Act of 2010, P.L. 111-240, §§1345 & 1347, 124 Stat. 2546-47 (September 27, 2010).

<sup>5</sup> U.S. Government Accountability Office, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 1, available at <http://www.gao.gov/new.items/d11548r.pdf>. The statute required that the report be submitted by March 26, 2011—180 days after the act's date of enactment, which was September 27, 2010. P.L. 111-240, §1345(c), 124 Stat. 2546.

## 8(a) Mentor-Protégé Program and Other Mentor-Protégé Programs Administered by the SBA

The SBA currently administers two mentor-protégé programs, one for firms participating in the 8(a) program<sup>6</sup> and the other for firms in its Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.<sup>7</sup> In addition, Section 1347 of the Small Business Jobs Act of 2010 authorizes the SBA to establish additional mentor-protégé programs for “small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by women, and HUBZone small business concerns modeled on the [8(a)] mentor-protégé program.”<sup>8</sup> The SBA initially announced on December 20, 2010, that it intended to issue a notice of proposed regulations regarding the establishment of mentor-protégé programs for these three groups sometime in January 2011.<sup>9</sup> Then, the SBA announced on July 7, 2011, that it intended to issue the proposed rules for these groups in August 2011.<sup>10</sup> The SBA later indicated that it planned to issue the proposed rules for these groups in either March or April 2012.<sup>11</sup> In addition, as mentioned previously, H.R. 3985, the Building Better Business Partnerships Act of 2012, and H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013, would, among other things, authorize the SBA to establish a mentor-protégé program for all small business concerns that is modeled on the SBA’s 8(a) Mentor-Protégé Program.

### 8(a) Mentor-Protégé Program

Amendments made to the Small Business Act in 1978 directed the SBA to develop a program to “assist” small businesses owned and controlled by socially and economically disadvantaged individuals that are eligible to receive contracts under Section 8(a) of the act (“8(a) small businesses”) in performing these contracts.<sup>12</sup> The SBA implemented this direction, in part, by establishing a mentor-protégé program on July 30, 1998,<sup>13</sup> wherein mentors “enhance the capabilities” of 8(a) firms and “improve [their] ability to successfully compete for contracts”<sup>14</sup> by providing various forms of assistance. Such assistance may include

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<sup>6</sup> For more on the 8(a) program, see generally CRS Report R40744, *The “8(a) Program” for Small Businesses Owned and Controlled by the Socially and Economically Disadvantaged: Legal Requirements and Issues*, by Kate M. Manuel and John R. Luckey.

<sup>7</sup> For more on the SBIR and STTR programs, see generally CRS Report 96-402, *Small Business Innovation Research (SBIR) Program*, by Wendy H. Schacht.

<sup>8</sup> P.L. 111-240, §1347(b)(3), 124 Stat. 2547.

<sup>9</sup> U.S. Small Business Administration, “Small Business Jobs Act: Small Business Mentor-Protégé Programs,” 75 *Federal Register* 79869, December 20, 2010.

<sup>10</sup> U.S. Small Business Administration, “Semiannual Regulatory Agenda, Small Business Jobs Act: Small Business Mentor-Protégé Programs,” 76 *Federal Register* 40140, July 7, 2011.

<sup>11</sup> U.S. Small Business Administration, Office of Congressional and Legislative Affairs, correspondence with Robert Jay Dilger, Washington, DC, December 19, 2011.

<sup>12</sup> An Act to Amend the Small Business Act and the Small Business Investment Act of 1958, P.L. 95-507, §204, 92 Stat. 1766 (codified, as amended, at 15 U.S.C. §636(j)(10)).

<sup>13</sup> U.S. Small Business Administration, “Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals: Final Rule,” 63 *Federal Register* 35739, June 30, 1998.

<sup>14</sup> 13 C.F.R. §124.520(a). See also U.S. General Accounting Office, *Small Business: SBA Could Better Focus Its 8(a) Program to Help Firms Obtain Contracts*, GAO/RCED-00-196, July 20, 2000, p. 14, available at <http://www.gao.gov/> (continued...)

technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts; and/or assistance in performing prime contracts with the Government in the form of joint venture agreements.<sup>15</sup>

Although the SBA was directed to establish this mentor-protégé program, and SBA rules govern participation in the program, as discussed below, the 8(a) Mentor-Protégé Program is government-wide in the sense that firms in the program may enjoy the benefits of participation in it while performing the contracts of any federal agency.<sup>16</sup> In fact, when agencies that do not have their own mentor-protégé programs, like those discussed below, are involved, the 8(a) Mentor-Protégé Program may be referred to as if it were that agency's program.<sup>17</sup>

In general, the Office of Small and Disadvantaged Business Utilization (OSDBU) at each federal agency is responsible for administering and overseeing the agency's mentor-protégé program, and some agencies also coordinate the program with their contracting offices. The one exception is the SBA's 8(a) Mentor-Protégé Program, which is administered by the SBA's Office of Business Development and does not involve an OSDBU.<sup>18</sup>

As of December 16, 2011, there were 515 active mentor-protégé agreements in place.<sup>19</sup> Also, in FY2010, there were 469 mentor-protégé joint ventures in existence, and 187 of them won federal contracts totaling \$739.4 million.<sup>20</sup>

## **Regulations Governing the 8(a) Mentor-Protégé Program**

SBA regulations govern various aspects of the 8(a) Mentor-Protégé Program, including who may qualify as a mentor or protégé, the content of written agreements between mentors and protégés, and the SBA's evaluation of the mentor-protégé relationship. Under these regulations, “[a]ny

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<sup>15</sup> 13 C.F.R. §124.520(a).

<sup>16</sup> For example, mentor-protégé joint ventures may qualify as “small” for purposes of contracts set aside for small businesses by any executive branch agency, not just by the SBA. The same is not necessarily true for joint ventures involving mentors and protégés in agency-specific programs. See, e.g., U.S. Small Business Administration, “Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations,” 74 *Federal Register* 55694, October 28, 2009 (“[A]n exception to affiliation for protégés in other Federal mentor/protégé programs will be recognized by SBA only where specifically authorized by statute (e.g., the Department of Defense mentor/protégé program) or where SBA has authorized an exception to affiliation for a mentor/protégé program of another Federal agency under the procedures set forth in §121.903.”). This requirement was incorporated in the final rule. U.S. Small Business Administration, “Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations,” 76 *Federal Register* 8222-8223, February 11, 2011.

<sup>17</sup> See, e.g., Listing of Mentor Protégé Programs, available at <http://www.eds.gov.com/mentorprotege/links.asp> (characterizing the Department of Agriculture as having a “mentor-protégé office”). This is a reference to the Department of Agriculture's Office of Small and Disadvantaged Business Utilization, which provides information about the 8(a) Mentor-Protégé Program and other federal mentor-protégé programs. The department does not have its own mentor-protégé program.

<sup>18</sup> U.S. Government Accountability Office, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 3, available at <http://www.gao.gov/new.items/d11548r.pdf>.

<sup>19</sup> U.S. Small Business Administration, Office of Congressional and Legislative Affairs, “Correspondence with Robert Jay Dilger,” Washington, DC, December 19, 2011.

<sup>20</sup> U.S. Small Business Administration, Office of Congressional and Legislative Affairs, “Correspondence with Robert Jay Dilger,” Washington, DC, March 9, 2011.

concern that demonstrates a commitment and ability to assist developing 8(a) Participants may act as a mentor,” including large firms, small firms, firms that have graduated from the 8(a) program, and other 8(a) firms that are in the “transitional stage,” or final five years of the 8(a) Program.<sup>21</sup> Only firms approved by the SBA may serve as mentors, and SBA regulations require that mentors (1) possess “favorable financial health”;<sup>22</sup> (2) possess “good character”;<sup>23</sup> (3) not be debarred or suspended from government contracting; and (4) be able to “impart value to a protégé firm due to lessons learned and practical experienced gained because of the [8(a) program], or through ... general knowledge of government contracting.”<sup>24</sup> Protégés, in turn, are required by SBA regulations to be small businesses “owned and controlled by socially and economically disadvantaged individuals” that are in good standing in the 8(a) Program.

In addition, under these regulations, protégés must (1) be in the “developmental stage,” or the first four years of the program; (2) have never received an 8(a) contract; or (3) have a size that is less than half the size standard corresponding to their primary North American Industry mentor at a time, and a mentor generally could not have more than one protégé.<sup>25</sup> However, these restrictions were removed effective March 14, 2011.<sup>26</sup>

The SBA requires that mentors and protégés enter a written agreement, approved by the SBA’s Associate Administrator for Business Development, that assesses the protégé’s needs and describes the assistance the mentor will provide.<sup>27</sup> This agreement generally obligates the mentor

**“Socially and economically disadvantaged individuals,” for purposes of the 8(a) Program**

Individuals who belong to one of the following racial or ethnic groups, or who can prove that they are personally socially disadvantaged, and who have a personal net worth of \$250,000 or less at the time of application to the program (\$750,000 for continuing eligibility) may be approved by the SBA to participate in the 8(a) Program for up to nine years:

Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal); and members of other groups designated from time to time by SBA.

**Source:** 13 C.F.R. §§124.103-124.104

<sup>21</sup> 13 C.F.R. §124.520(b).

<sup>22</sup> This includes demonstrating profitability for at least the past two years. 13 C.F.R. §124.520(b)(1)(i). Until recently, SBA regulations required that prospective mentors submit their federal tax returns for the past two years to the SBA for review in order to demonstrate their “favorable financial health.” 13 C.F.R. §124.520(b)(3) (2010). However, this requirement changed effective March 14, 2011. See U.S. Small Business Administration, “Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations,” 76 *Federal Register* 8243, February 11, 2011, and discussion under recent developments. Approved mentors must also certify annually that they continue to possess favorable financial health and good character. 13 C.F.R. §124.520(b)(4).

<sup>23</sup> “Good character” is not defined for purposes of this provision, although SBA regulations otherwise address what it means for individuals applying to the 8(a) program to possess “good character.” See 13 C.F.R. §124.108(a).

<sup>24</sup> 13 C.F.R. §124.520(b)(1)(i)-(iv).

<sup>25</sup> 13 C.F.R. §124.520(b)(2) & (c)(3) (2010).

<sup>26</sup> See U.S. Small Business Administration, “Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations,” 76 *Federal Register* 8243, February 11, 2011, and discussion under recent developments.

<sup>27</sup> 13 C.F.R. §124.520(e)(1). The SBA will not approve the agreement if it determines that the assistance to be provided is insufficient to promote any developmental gains by the protégé, or if the SBA determines that the agreement is (continued...)



to furnish assistance to the protégé for at least one year,<sup>28</sup> although it does allow either mentor or protégé to terminate the agreement with 30 days' advance notice to the other party and the SBA.<sup>29</sup> In addition, the agreement provides that the SBA will review the mentor-protégé agreement annually to determine whether to approve its continuation.<sup>30</sup> The SBA's evaluation is based, in part, on the protégé's annual reports regarding its contacts with its mentor and the benefits it has received from the mentor-protégé relationship, including (1) all technical or management assistance the mentor has provided to the protégé; (2) all loans to or equity investments made by the mentor in the protégé; (3) all subcontracts awarded to the protégé by the mentor; and (4) all federal contracts awarded to a joint venture of the mentor and protégé.<sup>31</sup>

## Participant Benefits

Participation in the 8(a) Mentor-Protégé Program is intended to benefit both mentors and protégés. Serving as a mentor to an 8(a) firm counts toward any subcontracting requirements to which the mentor firm may be subject under Section 8(d) of the Small Business Act.<sup>32</sup> Section 8(d) requires that all federal contractors awarded a contract valued in excess of \$650,000 (\$1.5 million for construction contracts) that offers subcontracting possibilities agree to a "subcontracting plan" which ensures that small businesses have "the maximum practicable opportunity to participate in [contract] performance."<sup>33</sup> In addition, in certain circumstances, mentors may form joint ventures with their protégés that are eligible to be awarded an 8(a) contract or another contract set aside for small businesses.<sup>34</sup> Mentor firms and joint ventures involving mentor firms would otherwise generally be ineligible for such contracts because they would not qualify as "small" under the SBA regulations.<sup>35</sup> Mentor firms may also acquire an equity interest of up to 40% in the protégé firm in order to help the protégé firm raise capital.<sup>36</sup> Because mentor firms are not 8(a) participants, they would generally be prohibited from owning more than 10%-20% of an 8(a) firm.<sup>37</sup> However, their participation in the 8(a) program permits them to acquire a larger ownership share.

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merely a vehicle to enable a non-8(a) firm to receive 8(a) contracts. 13 C.F.R. §124.520(e)(2). The SBA must also approve all changes to the agreement in advance. 13 C.F.R. §124.520(e)(5).

<sup>28</sup> 13 C.F.R. §124.520(e)(1).

<sup>29</sup> 13 C.F.R. §124.520(e)(3).

<sup>30</sup> 13 C.F.R. §124.520(e)(4).

<sup>31</sup> 13 C.F.R. §124.112(b)(6); 13 C.F.R. §124.520(f)(1)-(3).

<sup>32</sup> 13 C.F.R. §125.3(b)(3)(ix).

<sup>33</sup> 15 U.S.C. §637(d)(3)(A).

<sup>34</sup> 13 C.F.R. §124.513(b)(3); 13 C.F.R. §124.520(d)(1). For the joint venture to be eligible for the award, the protégé must qualify as small for the size standard corresponding to the NAICS code assigned to the procurement, and must not have "reached the dollar limit set forth in §124.519." *Id.* §124.519 generally prohibits 8(a) firms from receiving additional sole-source awards once they have received a combined total of competitive and sole-source awards in excess of \$100 million, in the case of firms whose size is based on their number of employees, or in excess of an amount equivalent to the lesser of (1) \$100 million or (2) five times the size standard for the industry, in the case of firms whose size is based on their revenues.

<sup>35</sup> See 13 C.F.R. §124.520(d)(3); 13 C.F.R. §§121.101-121.108; and generally 13 C.F.R. §121.103.

<sup>36</sup> 13 C.F.R. §124.520(d)(2).

<sup>37</sup> 13 C.F.R. §124.105(h)(1). Ownership is limited to 10% when the 8(a) firm is in the "developmental stage" of the 8(a) program and 20% when it is in the "transitional stage." *Id.* The developmental stage consists of the first four years of the 8(a) program, while the transitional stage consists of the last five years.

Protégés not only receive various forms of assistance from their mentors, but also may generally retain their status as “small businesses” while doing so.<sup>38</sup> If they received similar assistance from entities other than their mentors, they could risk being found to be other than “small” because of how the SBA determines size. The SBA combines the gross income of the firm, or the number of its employees, with those of its “affiliates” when determining whether the firm is small,<sup>39</sup> and the SBA could potentially find that firms are affiliates because of assistance such as that which mentors provide to protégés.<sup>40</sup> However, SBA regulations provide that “[n]o determination of affiliation or control may be found between a protégé firm and its mentor based on the mentor-protégé agreement or any assistance provided pursuant to the agreement.”<sup>41</sup>

## Recent Developments

The 8(a) Mentor-Protégé Program has recently been the subject of congressional and agency attention for a number of reasons, including reports of fraud in the program.<sup>42</sup> In addition, in 2010, the Government Accountability Office (GAO) reported that the “SBA did not maintain an accurate inventory of 8(a) Mentor-Protégé Program participant data, which limited the agency’s ability to monitor these firms,”<sup>43</sup> and concluded that the “SBA has not been able to properly oversee this program.”<sup>44</sup>

Legislation enacted in the 111<sup>th</sup> Congress required GAO to conduct a study of the 8(a) program and “other relationships and strategic alliances pairing a larger business and a small business concern” to gain access to federal contracts.<sup>45</sup> The purpose of this study was “to determine whether the programs and relationships are effectively supporting the goal of increasing the participation of small business concerns in government contracting,”<sup>46</sup> and GAO’s report was submitted to the House and Senate Committees on Small Business on June 15, 2011.<sup>47</sup>

In this report, GAO examined mentor-protégé programs in 13 federal agencies it identified as having a mentor-protégé program, including the SBA. It reported that “similar policies and procedures exist in most federal mentor-protégé programs,” but that some differences exist.<sup>48</sup> For

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<sup>38</sup> 13 C.F.R. §124.520(d)(3). But see 13 C.F.R. §121.103(b)(6) (noting that, while a protégé is not an affiliate of its mentor because it receives assistance from its mentor under the mentor-protégé program, “[a]ffiliation may be found for other reasons”).

<sup>39</sup> 13 C.F.R. §§121.101-121.108. Firms are “affiliates” when “one controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. §121.103(a)(1).

<sup>40</sup> See generally 13 C.F.R. §121.103.

<sup>41</sup> 13 C.F.R. §124.520(d)(4).

<sup>42</sup> For more on the 8(a) Program, see generally CRS Report R40744, *The “8(a) Program” for Small Businesses Owned and Controlled by the Socially and Economically Disadvantaged: Legal Requirements and Issues*, by Kate M. Manuel and John R. Luckey.

<sup>43</sup> U.S. Government Accountability Office, *Small Business Administration: Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening*, GAO-10-353, March 30, 2010, preface, available at <http://www.gao.gov/new.items/d10353.pdf>.

<sup>44</sup> *Id.* at 24.

<sup>45</sup> P.L. 111-240, §1345(a), 124 Stat. 2546.

<sup>46</sup> *Id.*

<sup>47</sup> See U.S. Government Accountability Office, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 1, available at <http://www.gao.gov/new.items/d11548r.pdf>.

<sup>48</sup> *Id.* at 4.

example, GAO noted that “different agencies have varying guidance regarding the length of mentor-protégé agreements and whether protégés are allowed to have more than one mentor,” and the “DOD mentor-protégé program is the only mentor-protégé program mandated by law and receiving appropriated funding.”<sup>49</sup>

GAO also reported that “most agencies have policies and reporting requirements to help ensure that protégés are benefiting from participation in their mentor-protégé programs.”<sup>50</sup> However, it found that only the Department of Defense, the National Aeronautics and Space Administration, and the U.S. Agency for International Development “have policies in place to collect information on protégé progress after the mentor-protégé agreements have terminated.”<sup>51</sup> GAO recommended that all of the agencies it examined “consider collecting and maintaining protégé post-completion information” because that information “could be used to help [the agencies] further assess the success of their programs and help ensure that small businesses are benefiting from participation in the programs as intended.”<sup>52</sup>

H.R. 3985, the Building Better Business Partnerships Act of 2012, proposes to reduce the variation that GAO found among federal mentor-protégé programs by requiring the SBA administrator to issue regulations with respect to mentor-protégé programs not later than 270 days after the bill’s enactment. The bill would require that these regulations address, at a minimum, 10 items, including the eligibility criteria for program participants, the types of developmental assistance to be provided by mentors, the length of mentor-protégé relationships, the effect of mentor-protégé relationships on contracting, the benefits that accrue to a mentor as a result of their program participation, reporting requirements, and post-participation reporting requirements. The bill would also prohibit federal agencies from implementing a mentor-protégé program unless the agency submits a plan for the program to the SBA for approval, and the SBA administrator approves the plan. DOD’s Mentor-Protégé Program and mentoring assistance under the Small Business Innovation Research Program and the Small Business Technology Transfer Program would be exempt from the approval process.<sup>53</sup> The bill would also authorize the SBA to establish a mentor-protégé program for all small business concerns that is modeled on the SBA’s 8(a) Mentor-Protégé Program. H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013, also includes these provisions.

As mentioned previously, P.L. 111-240, the Small Business Jobs Act of 2010, authorized the SBA to establish mentor-protégé programs for small businesses owned and controlled by service-disabled veterans, owned and controlled by women, and small businesses located in a HUBZone, which the SBA is in the process of doing.<sup>54</sup> The programs are to be modeled on the mentor-protégé program for small businesses participating in the SBA’s 8(a) program.

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<sup>49</sup> *Id.* at 4 and 5.

<sup>50</sup> *Id.* at 9.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Any federal mentor-protégé program in effect at the date of the bill’s enactment would be provided a year to submit and receive SBA approval to carry out a mentor-protégé program.

<sup>54</sup> U.S. Small Business Administration, “Small Business Jobs Act: Small Business Mentor-Protégé Programs,” 75 *Federal Register* 79869, December 20, 2010; and U.S. Small Business Administration, “Semiannual Regulatory Agenda, Small Business Jobs Act: Small Business Mentor-Protégé Programs,” 76 *Federal Register* 40140, July 7, 2011. The Small Business Jobs Act of 2010 did not provide a deadline for the SBA to establish the mentor-protégé programs for small businesses owned and controlled by service-disabled veterans, owned and controlled by women, and small businesses located in a HUBZone.

The SBA has also revised its regulations pertaining to the 8(a) program.<sup>55</sup> Among the changes, which took effect on March 14, 2011, are some pertaining to the 8(a) Mentor-Protégé Program. These changes

- require that assistance provided through the mentor-protégé relationship be tied to the protégé's SBA-approved business plan;
- allow mentors to have up to three protégés;
- allow firms seeking to become mentors to submit audited financial statements or other evidence to demonstrate their "favorable financial health";
- explicitly recognize non-profits as potential mentors;
- permit protégés to have a second mentor in certain circumstances;<sup>56</sup>
- prohibit SBA from approving a mentor-protégé agreement if the proposed protégé has less than six months remaining in its term in the 8(a) program;
- permit firms to request reconsideration of SBA's denial of a proposed mentor-protégé agreement;
- require firms whose proposed mentor-protégé agreement is rejected to wait at least 60 calendar days before submitting a new mentor-protégé agreement with the same proposed mentor;
- authorize SBA to recommend the issuance of a "stop work" order on any executive branch contract performed by a mentor-protégé joint venture when it determines that the mentor has not provided the protégé with the development assistance set forth in the mentor-protégé agreement; and
- prohibit mentors who are terminated for failure to provide assistance under their mentor-protégé agreement from serving as a mentor for two years.<sup>57</sup>

In addition, the SBA made several changes to the regulations governing joint ventures between 8(a) mentors and protégés to ensure that "non-sophisticated 8(a) firms" are not "taken advantage of by certain non-8(a) joint venture partners."<sup>58</sup> Specifically, the SBA now requires that (1) the 8(a) firm receive profits from the joint venture commensurate with the work it performs; (2) the 8(a) firm perform at least 40% of the work done by the joint venture; and (3) each 8(a) firm that performs an 8(a) contract through a joint venture report to the SBA how it performed the required percentages of the work (i.e., how the joint venture performed at least 50% of the work of the contract, as well as how the 8(a) participant to the joint venture performed at least 40% of the work done by the joint venture).<sup>59</sup> Further, under the amended regulations, non-8(a) firms that

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<sup>55</sup> U.S. Small Business Administration, "Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations," 76 *Federal Register* 8222-8223, February 11, 2011.

<sup>56</sup> To obtain a second mentor, a protégé would have to demonstrate that (1) the second relationship pertains to an unrelated secondary NAICS code; (2) the first mentor does not possess the specific expertise that is the subject of the mentor-protégé agreement with the second mentor; and (3) the two relationships will not compete or otherwise conflict with each other.

<sup>57</sup> 76 *Federal Register* at 8244-47.

<sup>58</sup> *Id.* at 8243.

<sup>59</sup> *Id.* at 8242-43. Under the revised regulations, joint ventures established and approved by SBA would also be eligible to receive additional contracts if an addendum to the joint venture agreement setting forth the performance requirements on such contracts is provided to and approved by the SBA prior to the contract award.

form joint ventures with 8(a) firms to perform sole-source contracts in excess of \$4 million (\$6.5 million for manufacturing contracts) are generally prohibited from serving as subcontractors (at any tier) on the contract.<sup>60</sup> However, this latter provision is arguably most relevant to joint ventures involving 8(a) firms owned by Alaska Native Corporations or other entities which, until recently, were eligible for sole-source awards of any amount without any justifications or approvals required from the procuring agency.<sup>61</sup>

## Mentoring Networks Under the Federal and State Technology Partnership Program

In 2000, Congress amended the Small Business Act by directing the SBA Administrator to establish the Federal and State Technology (FAST) Partnership Program in order to “strengthen the technological competitiveness of small business concerns in the States”<sup>62</sup> by providing a wide range of assistance, including mentoring. Congress further authorized SBA to make grants and enter cooperative agreements with states and state-endorsed non-profit organizations as part of the FAST program so as to enhance

outreach, financial support, and technical assistance to technology-based small business concerns participating in or interested in participating in an SBIR program, including initiatives ... to establish or operate a Mentoring Network within the FAST program to provide business advice and counseling that will assist small business concerns that have been identified by FAST program participants, program managers of participating SBIR agencies, the [SBA], or other entities that are knowledgeable about the SBIR and STTR program as good candidates for the SBIR and STTR programs, and that would benefit from mentoring.<sup>63</sup>

Such mentoring networks are to (1) provide business advice and counseling; (2) identify volunteer mentors to guide small businesses in proposal writing, marketing, etc.; (3) have experience working with small businesses participating in the SBIR and STTR programs; and (4) agree to reimburse volunteer mentors for out-of-pocket expenses related to service as a mentor.<sup>64</sup>

In FY2010, the SBA made FAST partnership awards of \$100,000 to 20 states, for a total of \$2 million.<sup>65</sup> The program received an appropriation of \$2 million in FY2011 and FY2012.<sup>66</sup>

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<sup>60</sup> *Id.* at 8241. The non-8(a) firm may serve as a subcontractor only if the SBA’s Associate Administrator for Business Development determines that other potential subcontractors are not available. *Id.*

<sup>61</sup> See generally CRS Report R40855, *Contracting Programs for Alaska Native Corporations: Historical Development and Legal Authorities*, by Kate M. Manuel, John R. Luckey, and Jane M. Smith.

<sup>62</sup> Consolidated Appropriations Act, 2001, P.L. 106-554, §111, 114 Stat. 2764A-674 to 2764A-680 (December 21, 2000) (codified at 15 U.S.C. §657d(b)). The program expired on September 30, 2005, and was reauthorized under the Consolidated Appropriations Act, 2010, P.L. 111-117, “Small Business Administration”—“Salaries and Expenses,” 123 Stat. 3198 (December 16, 2009) (codified at 15 U.S.C. §657d(b)).

<sup>63</sup> 15 U.S.C. §657d(c)(1)(E)(ii).

<sup>64</sup> 15 U.S.C. §657e(c)(1)-(5).

<sup>65</sup> U.S. Small Business Administration, “Office of Technology - SBIR/STTR: 2010 FAST Award Recipients,” Washington, DC, available at [http://archive.sba.gov/aboutsba/sbaprograms/sbir/SBIR\\_2010-FAST-AWARD\\_RECIP.html](http://archive.sba.gov/aboutsba/sbaprograms/sbir/SBIR_2010-FAST-AWARD_RECIP.html).

<sup>66</sup> P.L. 112-8; and P.L. 112-74, “Small Business Administration”—“Salaries and Expenses.”

## Recent Developments

During its consideration of the National Defense Authorization Act for FY2012 (P.L. 112-81), the Senate adopted a provision to increase funding for the FAST program, including Mentoring Networks, to \$15 million “for each of FYs 2011 through 2016.”<sup>67</sup> The Senate also adopted a provision that would have required the SBA administrator to report annually to the Senate Committee on Small Business and Entrepreneurship, the House Committee on Science and Technology, and the House Committee on Small Business regarding (1) the number and amount of awards provided and cooperative agreements entered into under the FAST program during the prior year; (2) a list of funding recipients, including their locations and the activities performed with the awards made, or under the cooperative agreements entered into; and (3) the Mentoring Networks and mentoring database, including the status of the inclusion of mentoring information in the database.<sup>68</sup> These provisions were not included in the final version of the bill that became law.

## DOD Mentor-Protégé Program

Congress authorized a pilot mentor-protégé program for DOD in 1990

to provide incentives for major [DOD] contractors to furnish disadvantaged small business concerns with assistance designed to enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under [DOD] contracts and other contracts and subcontracts in order to increase the participation of such business concerns as subcontractors and suppliers under [DOD] contracts, other Federal Government contracts, and commercial contracts.<sup>69</sup>

This program, which began on October 1, 1991, was the first federal mentor-protégé program to become operational. Originally scheduled to expire in 1994,<sup>70</sup> it has been repeatedly extended, most recently through FY2015 for the formation of new agreements, and FY2018 for the reimbursement of incurred costs under existing agreements.<sup>71</sup> It differs from the SBA’s 8(a) Mentor-Protégé Program in that its primary focus is upon small businesses performing subcontracts and as suppliers on federal contracts, not upon small businesses performing federal contracts. In addition, mentors in the DOD program may provide assistance to their protégés that is somewhat different than that which mentors may provide to protégés in the 8(a) program. Notably, such assistance may include advance payments, which federal agencies are generally

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<sup>67</sup> Engrossed Amendment Senate, H.R. 1540, §5201 (December 1, 2011).

<sup>68</sup> *Id.*

<sup>69</sup> An Act to Authorize Appropriations for Fiscal Year 1991 for Military Activities of the Department of Defense, for Military Construction, and for Defense Activities of the Department of Energy, to Prescribe Personnel Strengths for the Armed Forces and for Other Purposes, P.L. 101-510, §831, 104 Stat. 1607-08 (November 5, 1990) (codified, as amended, at 10 U.S.C. §2302 note).

<sup>70</sup> *Id.* at §831(j)(1), 104 Stat. 1610 (providing that firms eligible to participate in the program may enter mentor-protégé agreements during the period commencing on October 1, 1991, and ending on September 30, 1994). Under this provision, firms could incur costs for reimbursement through September 30, 1996, and could receive credit for unreimbursed costs through September 30, 1999. *Id.* at §831(j)(2)-(3). See also U.S. General Accounting Office, *Defense Contracting: Interim Report on Mentor-Protégé Program for Small Disadvantaged Firms*, GAO/NSIAD-92-135, March 30, 1992, pp. 1-3, available at <http://archive.gao.gov/d32t10/146376.pdf>.

<sup>71</sup> See, e.g., National Defense Authorization Act for FY2012, P.L. 112-81, §867,—Stat.—.

prohibited from making, and progress payments, which are generally discouraged under federal procurement law.<sup>72</sup> Mentors may also (1) award subcontracts on a noncompetitive basis to their protégés even if they are otherwise subject to “competition in subcontracting” requirements;<sup>73</sup> (2) make investments in protégé firms in exchange for an ownership interest in the firm (not to exceed 10% of the total ownership interest); (3) lend money; (4) provide assistance in general business management, engineering and technical matters, etc.; and (5) arrange for Small Business Development Centers, Procurement Technical Assistance Centers, Historically Black colleges and universities, and minority institutions of higher education to provide assistance to their protégés.<sup>74</sup>

## **Regulations Governing the DOD Mentor-Protégé Program**

Mentor firms are prime contractors with at least one active subcontracting plan negotiated as required under Section 8(d) of the Small Business Act, or under the DOD Comprehensive Subcontracting Test Program.<sup>75</sup> Initially, only small businesses owned and controlled by socially and economically disadvantaged individuals could qualify as protégés.<sup>76</sup> However, the listing of eligible protégés was later expanded<sup>77</sup> to include (1) businesses owned and controlled by Indian tribes or Alaska Native Corporations; (2) businesses owned and controlled by Native Hawaiian Organizations; (3) qualified organizations employing the “severely disabled”; (4) women-owned small businesses; (5) service-disabled veteran-owned small businesses; and (6) Historically Underutilized Business Zone (HUBZone) small businesses.<sup>78</sup> Mentors may generally rely in good faith on their protégés’ written representations that they are eligible.<sup>79</sup>

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<sup>72</sup> Advance payments are payments made to a contractor before any costs have been incurred on a contract, while progress payments are payments made during the performance of work, but before completion of the contract, on the basis of either a percentage of completion of the work or the incurrence of costs. Advance payments are generally only authorized when (1) the contractor gives adequate security; (2) the payments do not exceed the contract price; and (3) the agency head or a designee determines that advance payment is in the public interest or facilitates the national defense. See, e.g., 48 C.F.R. §32.402(b). Progress payments made on the basis of percentage of completion under construction or architect-engineer contracts are considered invoice payments and are permissible. 48 C.F.R. §32.903. Progress payments made on the basis of performance milestones are considered financing payments and are likewise permissible. 48 C.F.R. Subpart 32.5. Any other progress payments based on costs are considered “unusual progress payments” and may be used only when authorized in “exceptional cases.” See 48 C.F.R. §§501-1-501.2.

<sup>73</sup> 48 C.F.R. §52.244-5(a)-(b). Some contracts provide that the contractor “shall select subcontractors (including suppliers) on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of the contract.” See generally 48 C.F.R. §44.204(c).

<sup>74</sup> 48 C.F.R. Ch. 2, Appendix I, I-106(d)(1)-(7).

<sup>75</sup> 48 C.F.R. §219.7102(a). Mentors may generally not be small businesses. See 48 C.F.R. Ch. 2, Appendix I, I-102(a)(1).

<sup>76</sup> See P.L. 101-510, §831(m)(2), 104 Stat. 1611.

<sup>77</sup> See, e.g., An Act to Authorize Appropriations for Fiscal Year 2001 for Military Activities of the Department of Defense, for Military Construction, and for Defense Activities of the Department of Energy, to Prescribe Personnel Strengths for Such Fiscal Year for the Armed Forces, and for Other Purposes, P.L. 106-398, §807, 114 Stat. 1654A-208 (October 30, 2000).

<sup>78</sup> 48 C.F.R. §219.7102(b)(1)(i)-(vii).

<sup>79</sup> 48 C.F.R. Ch. 2, Appendix I, I-102(c).

Under DOD regulations, mentors' participation in the program must be approved by DOD.<sup>80</sup> While protégés are selected by the mentor,<sup>81</sup> the SBA or DOD may, at any time, determine that a protégé is ineligible.<sup>82</sup> Each mentor is allowed to have multiple protégés, but each protégé may have only one mentor at any time.<sup>83</sup> There were 74 active mentor-protégé agreements involving 43 mentors and 72 protégés as of April 30, 2012.<sup>84</sup> Two mentors had five protégés (one mentor had five protégés each with a single agreement and one mentor had four protégés each with a single agreement and one protégé with two agreements), five mentors had three protégés, 11 mentors had two protégés (10 mentors had two protégés each with a single agreement and one mentor had one protégé with two agreements), and 25 mentors had one protégé each with a single agreement.<sup>85</sup>

Mentors and protégés are required, by regulation, to enter into an agreement establishing a developmental assistance program for the protégé.<sup>86</sup> The agreement is to include (1) the type(s) of assistance the mentor will provide and how the protégé will benefit; (2) factors for assessing the protégé's progress; (3) an estimate of the dollar value and types of subcontracts to be awarded to the protégé; (4) a program participation term that does not exceed three years; (5) procedures whereby the mentor or protégé may withdraw from the program on 30 days' advance notice; and (6) procedures for the mentor firm to terminate the mentor-protégé agreement for cause.<sup>87</sup> DOD generally requires that this agreement be approved before the mentor incurs any costs.<sup>88</sup> The mentor firm is responsible for making semiannual reports on progress during the term of the agreement, while the protégé is required to provide data on its progress at the end of each fiscal year during the term of the agreement, and for each of the two fiscal years

**“Socially and economically disadvantaged individuals,” for purposes of the DOD Mentor-Protégé Program**

Individuals who belong to one of the following racial or ethnic groups, or who can prove that they are personally socially disadvantaged, *and* who have a personal net worth of \$750,000 or less may qualify as socially and economically disadvantaged without being certified as such by SBA:

Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China [including Hong Kong], Taiwan, Laos, Cambodia [Kampuchea], Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands [Republic of Palau], Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal); and members of other groups designated from time to time by SBA.

**Source:** 13 C.F.R. §124.1002

<sup>80</sup> New mentor applications may be submitted to the Office of Small Business Programs (OSBP) of the cognizant military service or defense agency (if concurrently submitting a reimbursable agreement), or to the DOD OSBP office (prior to the submission of an agreement).

<sup>81</sup> 48 C.F.R. §219.7102(b)(3). Selection of protégé firms by mentor firms may not be protested other than as to the size or disadvantaged status of the protégé. See 48 C.F.R. Ch. 2, Appendix I, I-104(b)-(c).

<sup>82</sup> 48 C.F.R. Ch. 2, Appendix I, I-102(d). When the protégé is determined to be ineligible, any assistance provided to the protégé after the date of that determination may not be considered assistance furnished under the program.

<sup>83</sup> 48 C.F.R. Ch. 2, Appendix I, I-104(e).

<sup>84</sup> U.S. Department of Defense, “Mentor-Protégé Program (MPP): Participants,” available at [http://www.acq.osd.mil/osbp/mentor\\_protege/](http://www.acq.osd.mil/osbp/mentor_protege/).

<sup>85</sup> *Id.*

<sup>86</sup> 48 C.F.R. Ch. 2, Appendix I, I-106.

<sup>87</sup> 48 C.F.R. Ch. 2, Appendix I, I-107.

<sup>88</sup> 48 C.F.R. Ch. 2, Appendix I, I-108.



following the agreement's expiration.<sup>89</sup> In addition, the Defense Contract Management Agency (DCMA) is to conduct annual performance reviews of all mentor-protégé agreements, and determinations made in these reviews "should" be a major factor in determining the amount, if any, of reimbursement the mentor firm is eligible to receive in the remaining years of the program participation term under the agreement.<sup>90</sup>

## Incentives for Mentors

Among the incentives that the DOD program provides for mentors are (1) reimbursement of developmental assistance costs and (2) crediting of unreimbursed costs toward applicable subcontracting goals.<sup>91</sup> DOD and the mentor firm may agree that DOD will reimburse the mentor for certain advance payments or progress payments made to assist protégé firms in performing a subcontract or supplying goods or services under a contract.<sup>92</sup> Alternatively, DOD may credit toward the mentor's subcontracting plan an amount equivalent to the amount of unreimbursed assistance that the mentor provides to its protégé(s).<sup>93</sup> For example, if a contractor provides \$10,000 in developmental assistance to its protégé, this \$10,000 could count as if it were a \$10,000 subcontract awarded to a small business.

## Recent Developments

The 112<sup>th</sup> Congress extended the DOD Mentor-Protégé Program through FY2015 for the formation of new agreements, and FY2018 for the reimbursement of incurred costs under existing agreements.<sup>94</sup> Previously, in 2007, GAO conducted an analysis of this program. As part of its

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<sup>89</sup> 48 C.F.R. Ch. 2, Appendix I, I-112.2(a) & (e).

<sup>90</sup> 48 C.F.R. §219.7106; 48 C.F.R. Ch. 2, Appendix I, I-113. The DCMA is an independent organization within DOD that performs contract administration functions for DOD and other agencies.

<sup>91</sup> 48 C.F.R. §219.7102(d)(1)-(2); 48 C.F.R. §19.702(d). When a mentor receives credit toward its subcontracting goals because of developmental assistance provided to its protégé, it is ineligible for monetary incentives for subcontracting with small disadvantaged businesses. 48 C.F.R. §219.1203. Otherwise, under Subpart 19.12 of the Federal Acquisition Regulation, agencies have authority to incorporate in their prime contracts "monetary incentives" for subcontracting with small businesses owned and controlled by socially and economically disadvantaged individuals. Such incentives reward prime contractors by paying them up to 10% of the amount by which their performance in subcontracting with such businesses exceeds their targets for subcontracting with them. See 48 C.F.R. §§19.1201-19.1202-4. The Obama Administration recently proposed relocating the regulations governing monetary incentives to Subpart 19.17 of the Federal Acquisition Regulation. See Department of Defense, General Services Administration, and National Aeronautics and Space Administration, "Federal Acquisition Regulation: Constitutionality of Federal Contracting Programs for Minority-Owned and Other Small Businesses," 76 *Federal Register* 55849, September 9, 2011.

<sup>92</sup> 48 C.F.R. §219.7103-2(b) & (f); 48 C.F.R. §252.232-7005. The amount of such payments generally may not exceed \$1 million per year. But see 48 C.F.R. Ch. 2, Appendix I, I-108(a)(6) (permitting developmental costs in excess of \$1 million when a specific justification for such costs has been presented). When the mentor will be reimbursed for developmental assistance provided to the protégé, the mentor must establish the accounting treatment of developmental assistance costs before incurring such costs. 48 C.F.R. §218.7104(b). Additionally, under DOD regulations, the subcontract between the mentor and protégé must include provisions substantially the same as the provisions in the Federal Acquisition Regulation (FAR) regarding advance payments; the contractor must have administered the advance payments in accordance with FAR Subpart 32.4; and the contractor must agree that any financial loss resulting from the protégé's failure or inability to repay any unliquidated advance payments is the sole financial responsibility of the contractor. 48 C.F.R. §252.232-7005.

<sup>93</sup> 48 C.F.R. Ch. 2, Appendix I, I-110. Subcontracts awarded to certain current or former protégés also count toward these goals. See 48 C.F.R. §252.219-7003(e)(1)-(2).

<sup>94</sup> See National Defense Authorization Act for FY2012, P.L. 112-81, §867,—Stat.—.

analysis, GAO administered a web-based survey of former DOD protégé firms and received responses from 48 of the 76 protégé firms that completed or left the program during FY2004 and FY2005. GAO concluded that most former protégé firms valued their experience in the DOD program, with 93% of respondents reporting that their participation enhanced, at least to some degree, their firm's overall capabilities; 87% of respondents reporting that support from their mentors helped their business development; and about 84% of respondents reporting that mentor support helped their engineering or technical expertise.<sup>95</sup> In addition, 71% of protégés responding to the survey reported that they "were at least generally satisfied with their experience with the program, with their reasons ranging from enhanced capabilities and heightened exposure in the marketplace, to quantifiable business growth."<sup>96</sup> However, about 15% of protégés reported dissatisfaction with their participation in the program, and about 21% reported that they did not receive the level of mentoring that they had anticipated.<sup>97</sup>

DOD provided \$237 million to mentor firms in FY2011 and anticipates providing \$28 million to mentor firms in FY2012.<sup>98</sup>

## Other Agency-Specific Mentor-Protégé Programs

Other agencies, like the Department of Homeland Security (DHS), have established independent mentor-protégé programs to encourage their large prime contractors to work with small business subcontractors when performing agency contracts. Because these programs are not based in statute, unlike the SBA and DOD programs discussed above, they generally rely upon existing authorities (e.g., authorizing use of evaluation factors) or publicity to incentivize mentor participation. Such programs generally supplement the 8(a) Mentor-Protégé Program, in that firms in the 8(a) program may also participate in agency-specific programs.<sup>99</sup> However, small businesses that are not 8(a) firms and other entities may also be eligible to participate.<sup>100</sup>

DHS's Mentor-Protégé Program is discussed here as a representative example of such programs. Several other agencies have similar programs, which are described in **Table 1**.

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<sup>95</sup> U.S. Government Accountability Office, *Contract Management: Protégés Value DOD's Mentor-Protégé Program, but Annual Reporting to Congress Needs Improvement*, GAO-07-151, January 31, 2007, p. 6, available at <http://www.gao.gov/new.items/d07151.pdf>.

<sup>96</sup> *Id.* at 7.

<sup>97</sup> *Id.*

<sup>98</sup> U.S. Department of Defense, Office of the Secretary of Defense, "Fiscal Year (FY) 2012 Budget Estimates," Washington, DC, February 2011, Exhibit P-40, Budget Item Justification Sheet, available at [http://comptroller.defense.gov/defbudget/fy2012/budget\\_justification/pdfs/02\\_Procurement/OSD\\_PB12\\_PDW\\_Final.pdf](http://comptroller.defense.gov/defbudget/fy2012/budget_justification/pdfs/02_Procurement/OSD_PB12_PDW_Final.pdf).

<sup>99</sup> See, e.g., 48 C.F.R. §519.7007(c) ("A protégé firm [in GSA's Mentor-Protégé Program] must not have another formal, active mentor-protégé relationship under GSA's Mentor-Protégé Program but may have an active mentor-protégé relationship under another agency's program.").

<sup>100</sup> See, e.g., 48 C.F.R. §619.202-70 (small disadvantaged businesses; women-owned small businesses; Historically Underutilized Business Zone small businesses; veteran-owned small businesses; and service-disabled veteran-owned small businesses eligible for the Department of State Mentor-Protégé Program); 48 C.F.R. §919.7007 (8(a) firms and other small disadvantaged businesses; Historically Black Colleges and Universities and other minority institutions of higher education; women-owned small businesses; and service-disabled veteran-owned small businesses eligible for the Department of Energy Mentor-Protégé Program).

## DHS Mentor-Protégé Program

DHS established its mentor-protégé program in 2003 to “motivate and encourage large business prime contractor firms to provide mutually beneficial developmental assistance” to small businesses.<sup>101</sup> Mentor firms may provide various types of assistance to their protégés, including temporary assignment of personnel to the protégé firm for the purpose of training, rent-free use of facilities or equipment, overall business management/planning, financial and organizational management, business development, technical assistance, property, loans, and other types of assistance.<sup>102</sup>

There were 246 active DHS mentor-protégé agreements as of March 13, 2012, involving 192 mentors and 239 protégés.<sup>103</sup> One mentor had five protégés, three mentors had four protégés, six mentors had three protégés, 29 mentors had two protégés, and 153 mentors each had one protégé.<sup>104</sup> The DHS program does not receive a separate funding appropriation.

## Regulations Governing the DHS Mentor-Protégé Program

Mentors are “large prime contractors capable of providing developmental assistance.”<sup>105</sup> Protégé firms can be small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, “small disadvantaged businesses,”<sup>106</sup> and women-owned small businesses.<sup>107</sup> Although mentors and protégés apparently do not need to be approved by DHS, they are required, by regulation, to have their mentor-protégé agreement approved by the DHS Office of Small and Disadvantaged Business Utilization (OSDBU).<sup>108</sup> This mentor-protégé agreement is evaluated on the extent to which the mentor plans to provide developmental assistance. If accepted into the program, the mentor-protégé relationship generally lasts for 36 months. The mentor and protégé are required to submit a jointly written mid-term progress report at 18 months, and, at the end of the 36 months, the mentor and protégé are required to submit a final report and complete a “lessons learned” evaluation separately. Protégés are also required to submit a post-award report annually for two years.<sup>109</sup>

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<sup>101</sup> U.S. Department of Homeland Security, “Mentor-Protégé Program,” available at [http://www.dhs.gov/xopnbiz/smallbusiness/editorial\\_0716.shtm](http://www.dhs.gov/xopnbiz/smallbusiness/editorial_0716.shtm); U.S. Department of Homeland Security, “Department of Homeland Security Acquisition Regulation,” 68 *Federal Register* 67868-67870, December 4, 2003.

<sup>102</sup> U.S. Department of Homeland Security, “Mentor-Protégé Program,” available at [http://www.dhs.gov/xopnbiz/smallbusiness/editorial\\_0716.shtm](http://www.dhs.gov/xopnbiz/smallbusiness/editorial_0716.shtm).

<sup>103</sup> U.S. Department of Homeland Security, “Mentor-Protégé Companies,” available at [http://www.dhs.gov/xopnbiz/smallbusiness/gc\\_1198248049694.shtm](http://www.dhs.gov/xopnbiz/smallbusiness/gc_1198248049694.shtm).

<sup>104</sup> *Id.* Seven protégés had two mentors and 232 protégés had one mentor.

<sup>105</sup> 48 C.F.R. §3052.219-71(b)(1).

<sup>106</sup> “Small disadvantaged businesses” (SDBs) are those owned and controlled by socially and economically disadvantaged individuals. All 8(a) firms are SDBs. However, firms that are not participating in the 8(a) program may, depending upon the program, also be certified or self-certify as SDBs. See generally CRS Report R40987, “Disadvantaged” Small Businesses: Definitions and Designations for Purposes of Federal and Federally Funded Contracting Programs, by Kate M. Manuel.

<sup>107</sup> 48 C.F.R. §3052.219-71(b)(2).

<sup>108</sup> 48 C.F.R. §3052.219-71(b)(3).

<sup>109</sup> U.S. Department of Homeland Security, “Mentor-Protégé Program Details,” available at <http://www.dhs.gov/xlibrary/assets/opnbiz/osdbu-mentor-protege-details.pdf>.

## Incentives for Mentors

Participation as a mentor in the DHS Mentor-Protégé Program may serve as a source selection factor or subfactor in certain negotiated procurements,<sup>110</sup> potentially giving mentor firms an advantage over non-mentors and, thereby, encouraging firms to become mentors. In addition, mentors may credit costs incurred in providing assistance to their protégés toward their goals for subcontracting with small businesses.<sup>111</sup> Mentors are also eligible for an annual award presented by DHS to the firm providing the most effective developmental support to a protégé.<sup>112</sup>

**Table I. Other Agencies with Agency-Specific Mentor-Protégé Programs**

Agency	Eligible Protégés	Incentives for Mentors
Department of Energy 48 C.F.R. Subpart 919.70	8(a) firms and other small disadvantaged businesses; Historically Black Colleges and Universities and other minority institutions of higher learning; women-owned small businesses; service-disabled veteran-owned small businesses	Eligibility for award fees based on their performance as mentors  Subcontracts awarded to protégés count toward subcontracting goals
Department of Health and Human Services 48 C.F.R. §352.219-70	Small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; Historically Underutilized Business Zone (HUBZone) small businesses; woman-owned small businesses	Certain assistance provided to protégés credited toward subcontracting plans
Department of State 48 C.F.R. §619.202-70	Small disadvantaged businesses; women-owned small businesses; HUBZone small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses	Mentor-protégé agreement may be considered in evaluating adequacy of proposed subcontracting plan and in responsibility determinations  Agency mentoring award (non-monetary)
Department of the Treasury 48 C.F.R. Subpart 1019.202-70	Small businesses; women-owned small businesses; small disadvantaged businesses; service-disabled veteran-owned small businesses; HUBZone small businesses	Bonus (not to exceed 5% of the relative importance assigned to technical/ management factors) credited to mentor in negotiated procurements  Mentor-protégé agreement may be considered in evaluating adequacy of proposed subcontracting plan and in responsibility determinations

<sup>110</sup> 48 C.F.R. §3052.219-72.

<sup>111</sup> 48 C.F.R. §3052.219-71(d). (“For example, a mentor/large business prime contractor would report a \$10,000 subcontract to the protégé/small business subcontractor and \$5,000 of developmental assistance to the protégé/small business subcontractor as \$15,000.”)

<sup>112</sup> U.S. Department of Homeland Security, “Mentor-Protégé Program Details,” available at [http://www.dhs.gov/xlibrary/assets/opnbiz/OSDBU\\_MentorProtegeDetails.pdf](http://www.dhs.gov/xlibrary/assets/opnbiz/OSDBU_MentorProtegeDetails.pdf).

Agency	Eligible Protégés	Incentives for Mentors
Department of Veterans Affairs 48 C.F.R. Subpart 819.71	Veteran-owned small businesses; service-disabled veteran-owned small businesses	Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement  Evaluation credits during source selection  Factor in evaluating past performance and determining contractor responsibility  Agency mentoring award (non-monetary)  Invitation to mentor-protégé annual conference
Environmental Protection Agency 48 C.F.R. §§1552.219-70 to 1552.219-71	Small disadvantaged businesses (women deemed to be socially disadvantaged)	Subcontracts of \$1 million or less awarded to protégés are exempt from the competition requirements in 48 C.F.R. §44.202-2(a)(5), 52.244-2(b)(2)(iii), and 52.244-5  Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement
Federal Aviation Administration FAA Mentor-Protégé Program available at <a href="http://www.sbo.faa.gov/MentorProtege.cfm">http://www.sbo.faa.gov/MentorProtege.cfm</a>	Small businesses; small socially and economically disadvantaged businesses; small disadvantaged businesses; service-disabled veteran-owned small businesses; Historically Black Colleges and Universities; Minority Institutions; women-owned small businesses	Evaluation credits during source selection  Subcontracts awarded to protégés count toward subcontracting goals  Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement  Procurements set aside for firms that are “participants in the FAA Mentor-Protégé Program” <sup>a</sup>
General Services Administration 48 C.F.R. Subpart 519.70	Small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; Historically Underutilized Business Zone (HUBZone) small businesses; woman-owned small businesses	Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement  Evaluation credits during source selection  Factor in evaluating past performance and determining contractor responsibility  Agency mentoring award (non-monetary)  Invitation to mentor-protégé annual conference
National Aeronautics and Space Administration 48 C.F.R. Subpart 1819.72	Small disadvantaged businesses; Historically Black Colleges and Universities; Minority Institutions	NASA contractor who is an approved DOD mentor can transfer credits to their NASA contracts  Subcontracts to protégés may be awarded noncompetitively  May count costs of development assistance provided to protégés toward subcontracting plan

Agency	Eligible Protégés	Incentives for Mentors
U.S. Agency for International Development 48 C.F.R. Subpart 719.273	Small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; Historically Underutilized Business Zone (HUBZone) small businesses; woman-owned small businesses	Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement  Evaluation credits during source selection  Factor in evaluating past performance and determining contractor responsibility  Agency mentoring award (non-monetary)  Invitation to mentor-protégé annual conference

**Source:** Congressional Research Service, based on various sources cited in Table I.

- a. It is unclear whether “participant” here refers to mentors, protégés, or joint ventures involving mentors and protégés. Because agencies generally may not restrict competition absent express statutory authorization, such set-asides may be limited to small business protégés, as opposed to mentor firms. See generally CRS Report R40516, *Competition in Federal Contracting: An Overview of the Legal Requirements*, by Kate M. Manuel.

## Mentor-Protégé Programs of DOT Funding Recipients

Under Department of Transportation regulations, recipients of certain federal transportation funding are authorized to establish mentor-protégé programs “in which another [disadvantaged business enterprise (DBE)] or non-DBE firm is the principal source of business development assistance to a DBE firm.”<sup>113</sup> These programs are designed “to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance.”<sup>114</sup> For example, mentors in the Ohio Department of Transportation Mentor/Protégé Program may assist protégés by (1) setting targets for improvement; (2) setting time tables for meeting those targets; (3) assisting with the protégé’s business strategies; (4) assisting in evaluating outcomes; (5) assisting in developing protégés’ business plans; (6) regularly reviewing protégés’ business and action plans; and (7) monitoring protégés’ key business indicators, including their cash flow, work in progress, and recent bids.<sup>115</sup> Those in the Illinois Department of Transportation Mentor-Protégé Program may similarly provide training and development, technical and management assistance, personnel, financial assistance, and equipment to their protégés.<sup>116</sup>

<sup>113</sup> 49 C.F.R. §26.35(b).

<sup>114</sup> U.S. Department of Transportation, “DBE Final Rule, Appendix D to Part 26 - Mentor-Protégé Program Guidelines,” available at <http://www.osdbu.dot.gov/DBEProgram/final/final60.cfm>. Recipients of DOT funding are particularly encouraged to use mentor-protégé programs to assist DBEs in performing work outside of specific fields in which DBEs are “overconcentrated.” 49 C.F.R. §26.33.

<sup>115</sup> Ohio Department of Transportation Mentor/Protégé Program, p. 5 (copy on file with Kate M. Manuel).

<sup>116</sup> Illinois Department of Transportation, Mentor-Protégé Program Sample Development Plan, available at <http://www.dot.state.il.us/obwd/Mentor%20Protege%20Sample%20Development%20Plan.pdf>.

According to DOT, data concerning the number and performance of DBE mentor-protégé agreements are retained at the state level and are not reported to the DOT.<sup>117</sup> The DOT program does not receive a separate funding appropriation.

## Regulations Governing DOT Mentor-Protégé Programs

DBEs may participate in DOT mentor-protégé programs as either mentors or protégés. However, under DOT regulations, all DBEs involved in a mentor-protégé agreement must be independent business entities that meet the requirements for certification as a DBE. These regulations also require that firms be certified before participating in a mentor-protégé arrangement.<sup>118</sup>

The relationship between mentor and protégé is based on a written development plan, approved by the recipient of the DOT funding, “which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé.”<sup>119</sup> The formal mentor-protégé agreement may establish a fee schedule to cover the direct and indirect cost of services provided by the mentor to the protégé.<sup>120</sup> Services provided by the mentor may be reimbursable if these services and any associated costs are “directly attributable and properly allowable.”<sup>121</sup>

### Participant Benefits

Mentor firms may generally count the amount of assistance they provide to their protégés toward their goals for contracting or subcontracting with DBEs. However, under DOT regulations, a non-DBE mentor firm cannot receive credit for meeting more than half of its goal on any contract by using its own protégé.<sup>122</sup> These regulations also prohibit a

#### **“Disadvantaged business enterprises,” for purposes of DOT funding programs**

Individuals who belong to one of the following racial or ethnic groups, or who can prove that they are personally socially disadvantaged, and who have a personal net worth of \$1.32 million may qualify as “disadvantaged business enterprises” upon certification by a state funding recipient:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa; (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, [T]uvalu, Nauru, Federated States of Micronesia, or Hong Kong; (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; (vi) Women; (vii) [a]ny additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**Source:** 49 C.F.R. §26.5; 49 C.F.R. §26.67.

<sup>117</sup> U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, telephone consultation, March 1, 2011.

<sup>118</sup> 49 C.F.R. §26.35(b)(1).

<sup>119</sup> 49 C.F.R. Part 26, Appendix D, at (b)(1).

<sup>120</sup> *Id.*

<sup>121</sup> 49 C.F.R. Part 26, Appendix D, at (b)(2).

<sup>122</sup> 49 C.F.R. §26.35(b)(2)(i).

non-DBE mentor firm from receiving DBE credit for using its own protégé on more than every other contract performed by the protégé.<sup>123</sup> For example, if Mentor Firm X uses Protégé Firm Y to perform a subcontract, Mentor Firm X cannot get DBE credit for using Protégé Firm Y on another subcontract until Protégé Firm Y first works on an intervening prime contract or subcontract with a different prime contractor.<sup>124</sup> There are no comparable restrictions for other mentor-protégé programs.

## Concluding Observations

Congressional interest in small business mentor-protégé programs has increased in recent years for a variety of reasons, including reports that these programs are being used by large businesses to perform federal contracts, in violation of small business procurement laws and regulations and contrary to the intent of the mentor-protégé programs.<sup>125</sup> The SBA's suspension (and later reinstatement) of a mentor in the 8(a) Mentor-Protégé Program for fraud,<sup>126</sup> as well as reports of fraud in several of the SBA's contracting programs, has also contributed to congressional interest.<sup>127</sup> In addition, GAO has found that the SBA "has not been able to properly oversee [the 8(a) mentor-protégé] program,"<sup>128</sup> and the SBA recently issued new regulations for the 8(a) program generally, and for the 8(a) Mentor-Protégé Program in particular, to better ensure that its benefits "flow to the intended recipients" and "help prevent waste, fraud and abuse."<sup>129</sup> GAO has also recommended that federal agencies collect and maintain protégé post-completion information "to help ensure that small businesses are benefiting from participation in the programs as intended."<sup>130</sup> Given all these developments, it seems likely that the 8(a) Mentor-Protégé Program, along with other federal mentor-protégé programs, will remain subject to congressional oversight or proposed legislation during the 112<sup>th</sup> Congress.

One option available to Congress as it carries out its oversight of these programs is to require federal agencies to maintain and report annually to Congress outcome-based program performance data, such as those that DOD has historically been required to report regarding its mentor-protégé program. This includes (1) the number of mentor-protégé agreements that were entered into during the fiscal year; (2) the number of mentor-protégé agreements that were in effect during the fiscal year; (3) the total amount reimbursed to mentor firms during the fiscal year; (4) each mentor-protégé agreement, if any, that was approved during the fiscal year that

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<sup>123</sup> 49 C.F.R. §26.35(b)(2)(ii).

<sup>124</sup> U.S. Department of Transportation, "DBE Final Rule, Section 26.35 - What Role do Business Development and Mentor-Protégé Programs Have in the DBE Program?" *available at* <http://www.osdbu.dot.gov/DBEProgram/final/final19.cfm>.

<sup>125</sup> For more on the 8(a) Program, see generally CRS Report R40744, *The "8(a) Program" for Small Businesses Owned and Controlled by the Socially and Economically Disadvantaged: Legal Requirements and Issues*, by Kate M. Manuel and John R. Luckey.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 24.

<sup>129</sup> U.S. Small Business Administration, "Final Regulations Will Strengthen 8(a) Business Development Program for Small Businesses," Washington, DC, February 11, 2011, *available at* <http://www.sba.gov/content/final-regulations-will-strengthen-8a-business-development-program-small-businesses>.

<sup>130</sup> U.S. Government Accountability Office, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 9, *available at* <http://www.gao.gov/new.items/d11548r.pdf>.



provided a program participation term in excess of three years, together with the justification for the approval; (5) each reimbursement of a mentor firm in excess of the program's limits that was made during the fiscal year, together with the justification for the approval; and (6) trends in the progress made in employment, revenues, and participation in agency contracts by protégé firms participating in the program during the fiscal year and protégé firms that completed or otherwise terminated participation in the program during the preceding two fiscal years.<sup>131</sup> Data of a similar nature could potentially assist Congress in its assessment of federal agency small business mentor-protégé programs.

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<sup>131</sup> See, e.g., National Defense Authorization Act for Fiscal Year 2000, P.L. 106-65, §811, 113 Stat. 706-10 (October 5, 1999).

# Appendix. Comparison of Selected Agencies' Mentor-Protégé Programs

**Table A-1. Tabular Comparison of Selected Agencies' Mentor-Protégé Programs**

	<b>SBA 8(a)</b>	<b>DOD</b>	<b>DHS</b>	<b>DOT</b>
Primary focus	Contracts	Subcontracts; suppliers	Subcontracts	Federally funded contracts
Eligible mentors	Large firms; small firms; 8(a) graduates; other 8(a) firms in the transitional stage	Prime contractors with at least one active subcontracting plan (small businesses generally ineligible)	Large prime contractors	Another disadvantaged business enterprise (DBE) or a non-DBE firm
Eligible protégés	Small disadvantaged businesses participating in the 8(a) Program	Small disadvantaged businesses; businesses owned and controlled by Indian tribes, Alaska Native Corporations or Native Hawaiian Organizations; qualified organizations employing the “severely disabled;” women-owned small businesses; service-disabled veteran-owned small businesses; HUBZone small businesses	Small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; HUBZone small businesses, small disadvantaged businesses; women-owned small businesses	Small disadvantaged businesses; women-owned small businesses
Notable types of assistance	<p>Assistance in performing prime contracts with the government in the form of joint ventures</p> <p>Financial assistance in the form of equity investments or loans</p> <p>Subcontracts</p> <p>Technical or management assistance</p>	<p>Advance and progress payments</p> <p>Award of subcontracts on a noncompetitive basis</p> <p>Investments in protégé firm in exchange for ownership interests</p> <p>Loans</p> <p>Assistance in general business management, engineering and technical matters, etc.</p>	<p>Rent-free use of facilities or equipment; property</p> <p>Temporary assignment of personnel to protégé for training</p> <p>Financial and organizational management</p> <p>Overall business management, planning, and development</p> <p>Technical assistance</p>	Varies by program, but can include: training and development; technical and management assistance; personnel; financial assistance; and equipment
Incentives for mentor firms	<p>Assistance counts toward subcontracting goals</p> <p>Can form joint venture with protégé that may be eligible to receive 8(a) and other small business contracts</p> <p>May acquire ownership interest of up to 40% in protégé firm</p>	<p>Reimbursement of certain developmental assistance costs</p> <p>Unreimbursed development costs credited toward subcontracting goals</p> <p>Can award subcontracts on a noncompetitive basis to the protégé</p>	<p>Participation in mentor-protégé program can serve as an evaluation factor in negotiated procurements</p> <p>Costs incurred in providing assistance to protégé count toward subcontracting goals</p> <p>Agency award for best mentor</p>	<p>Can generally count the amount of assistance provided to protégés toward goals for contracting or subcontracting with DBEs</p> <p>Certain assistance costs may be reimbursed</p>

**Source:** Congressional Research Service, based on various sources cited in this report.

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