

Congress of the United States  
U.S. House of Representatives  
Committee on Small Business  
2361 Rayburn House Office Building  
Washington, DC 20515-6515

To: Subcommittee on Contracting and Workforce  
From: Committee Staff  
Date: October 26, 2015  
Re: Hearing: “Maximizing Mentoring: How are the SBA and DoD Mentor-Protégé Programs Serving Small Businesses?”

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The Committee on Small Business Subcommittee on Contracting and the Workforce will meet for a hearing titled, “Maximizing Mentoring: How are the SBA and DoD Mentor-Protégé Programs Serving Small Businesses?” The hearing is scheduled to begin at 10:00 A.M. on Tuesday, October 27, 2015, in Room 2360 of the Rayburn House Office Building.

Mentor-Protégé programs are intended to partner small businesses with established mentors in order to improve the protégé’s ability to win and successfully perform on contracts and subcontracts. The hearing will examine: (1) how the Small Business Administration (SBA) is implementing changes made to its mentor-protégé and the mentor-protégé programs of civilian agencies by the Small Business Jobs Act of 2010 (Jobs Act)<sup>1</sup> and the National Defense Authorization Act for Fiscal Year 2013 (FY 13 NDAA);<sup>2</sup> (2) how the SBA and the Department of Defense (DoD) measure the effectiveness of mentor-protégé relationships; and (3) whether there are opportunities for increased collaboration between the SBA and DoD programs. The hearing will also review prior findings of the Government Accountability Office (GAO) report GAO-11-548R, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants but Do Not Require Postagreement Tracking*.

## I. Overview of Mentor-Protégé Programs

The Small Business Jobs Act of 2010 (Jobs Act) defines mentor-protégé relationships as “relationships and strategic alliances pairing a larger business and a small business concern partner to gain access to Federal Government contracts.”<sup>3</sup> Within the realm of federal procurement, thirteen departments or agencies<sup>4</sup> sponsor mentor-protégé programs,<sup>5</sup> which are arrangements by which experienced prime contractors, including small businesses, serve as mentors to eligible small businesses, or protégés. Pursuant to the agreements, the mentors provide technical, managerial, and other business development

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<sup>1</sup> Pub. Law No.111-240 § 1347, 124 Stat. 2504, 2546 (2010).

<sup>2</sup> Pub. Law No.112-239 § 1641, 126 Stat. 1632, 2076 (2013).

<sup>3</sup> Small Business Jobs Act of 2010, Pub. Law No. 111-240, §1245, 124 Stat. § 2504, 2546 (2010) [hereinafter Jobs Act].

<sup>4</sup> The thirteen, and their program guidance, are: the Department of Homeland Security (DHS); Department of Defense (DoD); Department of Energy (DOE); Department of State (DOS); Environmental Protection Agency (EPA); Federal Aviation Administration (FAA); General Services Administration (GSA); Department of Health and Human Services (HHS); National Aeronautics and Space Administration (NASA); Small Business Administration (SBA); Department of the Treasury (Treasury); United States Agency for International Development (USAID); and the Department of Veterans Affairs (VA).

<sup>5</sup> A chart briefly summarizing the programs is provided as Appendix A.

assistance to their protégés. Agencies, through the Offices of Small and Disadvantaged Business Utilization (OSDBUs),<sup>6</sup> encourage mentor participation by providing the mentor with credit toward subcontracting goals, additional evaluation points toward the awarding of contracts, an annual award to the mentor providing the most effective developmental support to a protégé, and in three cases, cost reimbursement.<sup>7</sup> The programs tend to fall into three categories: programs where mentors are eligible for cost reimbursement; the Small Business Administration’s 8(a) Mentor-Protégé programs, and general mentor-protégé programs.

Cost reimbursement agreements provide mentor firms with reimbursement for reasonable, allocable, and allowable expenses related to providing technical assistance that are reimbursed to the mentor through a contract line item. These programs include the DoD, DOE and FAA Mentor-Protégé programs. While DoD has the distinction of being both the oldest program and the only statutorily authorized program,<sup>8</sup> and FAA’s is the only program not subject to the Federal Acquisition Regulation (FAR), it is the ability to receive payments that makes these programs distinctive.

The SBA 8(a) Mentor-Protégé Program is by far the largest – it has over twice as many participants as the next largest program. Established in 1998 by regulation, it is intimately tied to the 8(a) Business Development Program, which regards contracts as a tool for business development for small firms owned and controlled by socially and economically disadvantaged individuals. While the managerial and technical assistance offered by mentors to protégés under this program generally mimics that of other programs, there are several notable exceptions. First, the program allows the mentor to own a greater percentage of the protégé firm – up to 40 percent.<sup>9</sup> Second, the program permits mentor-protégé joint ventures to compete as either small or 8(a) firms.<sup>10</sup> Third, the program permits the protégé to receive any assistance pursuant to the mentor-protégé agreement without a finding of affiliation.<sup>11</sup> Finally, the SBA program allows participants to contract at any agency.

Any contract valued at over \$650,000 that is awarded to an other-than-small business is required to have a subcontracting plan that demonstrates how small businesses will be used as subcontractors, and this plan is frequently used as an evaluation factor to decide which company will receive the award.<sup>12</sup> These remaining mentor-protégé programs allow prime contractors to receive additional credit towards their subcontracting goals or towards the evaluation of their subcontracting plans. In some cases, mentors are also allowed to incorporate program costs into their indirect rates, although such inclusion would not lead to their inclusion in the cost-reimbursement category of mentor-protégé programs.

## II. GAO Review

In the Jobs Act, Congress required that GAO study both the SBA’s 8(a) Mentor-Protégé program and the other mentor-protégé programs “to determine whether the programs and relationships are effectively supporting the goal of increasing the participation of small business concerns in Government

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<sup>6</sup> Some agencies refer to the statutorily defined OSDBU position by different titles. For example, GSA refers to their office as the Office of Small Business Utilization. However, for simplicity’s sake, all such offices and positions shall be referred to as OSDBUs in this document.

<sup>7</sup> GAO, MENTOR-PROTÉGÉ PROGRAMS HAVE POLICIES THAT AIM TO BENEFIT PARTICIPANTS BUT DO NOT REQUIRE POSTAGREEMENT TRACKING 1 (2011) (GAO-11-548R) [hereinafter MENTOR PROTÉGÉ PROGRAMS].

<sup>8</sup> The DoD program came into existence in 1991 via the National Defense Authorization Act for Fiscal Year 1991, 10 U.S.C. § 2302 note.

<sup>9</sup> 13 C.F.R. § 124.520(d)(2).

<sup>10</sup> *Id.* at § 124.520(d)(1).

<sup>11</sup> *Id.* at § 124.520(d)(4).

<sup>12</sup> 48 C.F.R. § 19.7.

contracting.”<sup>13</sup> Specifically, the report was to address a broad cross section of industries and evaluate how the procurement agencies were administering the programs, what types of controls were in place, and how agencies were ensuring that the protégés were deriving benefit from the programs which prepared them to better compete for federal contracts.<sup>14</sup>

As part of their study of the mentor-protégé programs, GAO reviewed the policies and procedures for the thirteen programs and then focused on the controls used “to help ensure that mentor-protégé programs are beneficial to program participants and eligibility requirements are being met”<sup>15</sup> and then finally looked at the data to see whether the programs met the goal of helping firms ultimately compete for federal contracts. While GAO found that the agencies had different levels of controls, each had defined policies and procedures, enforced eligibility requirements, and required reporting on what assistance was being provided. Although greater consistency in the types of metrics being used would have better enabled comparisons, GAO was more concerned that only three of the programs – DoD, NASA and USAID – follow up with protégés after the conclusion of the program to see if the programs help the protégé ultimately compete independently for federal contracts.<sup>16</sup> These three agencies require that for the 2 years following completion of the program, protégé firms report on the prime contract and subcontract awards, both with the mentor and independent of the mentor.

GAO’s sole recommendation was that the OSDBUs at DHS, DOE, DOS, EPA, FAA, GSA, HHS, SBA and Treasury collect and maintain protégé information after completion of the program. DHS, DOE, GSA, HHS, SBA and Treasury generally concurred with the recommendations. DOS stated that it would implement post-program reporting if such reporting were required, but that was concerned that reporting would “increase the burden on all parties without adding significant value to the existing program.”<sup>17</sup>

### **III. Recent Congressional Action**

As a result of the GAO report, this Subcommittee held a hearing on September 15, 2011 to further examine agency mentor-protégé programs.<sup>18</sup> During the hearing, the Subcommittee identified four issues with mentor-protégé programs. These dealt with affiliation, the number of programs, reporting on the outcomes of the programs, and the availability of the programs. As a result of these findings, Congress enacted legislative reforms as part of the FY 13 NDAA.

#### **a. Affiliation**

The Subcommittee learned that the mentor-protégé programs at many of the agencies were structured in such a way that small businesses participating as either mentors or as protégés could lose their small business size status due to the principle of affiliation.<sup>19</sup> Clearly, the potential loss of size status would be a significant disincentive to participation in any mentor-protégé program. Unfortunately, many of the programs claim that that affiliation is waived for the participants, even though the agencies may not have

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<sup>13</sup> Pub. L. No. 111-240, § 1345, 124 Stat. § 2504, 2546 (2010).

<sup>14</sup> *Id.*

<sup>15</sup> MENTOR PROTÉGÉ PROGRAMS at 2.

<sup>16</sup> *Id.* at 43.

<sup>17</sup> *Id.* at 53.

<sup>18</sup> *Helping Small Businesses Compete: Challenges Within Programs Designed to Assist Small Contractors: Hearing before the Ctte on Small Bus. Subctte on Contracting and Workforce*, 112 Cong. 71-281 (2011).

<sup>19</sup> 13 C.F.R. § 121.103(a). Pursuant to SBA regulations, two firms may be considered affiliated if SBA finds that one firm is controlled by the other *Id.* To determine affiliation, SBA’s Office of Hearings and Appeals considers factors such as “ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.” *Id.* at § 121.103(a)(2).

the authority to do so. Further, the technical assistance provided by mentors to protégés frequently risks triggering a finding of affiliation.

Affiliation is the name given to the series of rules SBA uses to determine whether two entities will be considered under common management or control, and thus considered one company, for the purposes of determining whether a firm is small.<sup>20</sup> SBA looks at the totality of factors when considering affiliation, and “may find affiliation even though no single factor is sufficient to constitute affiliation.” Affiliation can be found based on “identity of interest” which includes firms that are “economically dependent through contractual or other relationships.”<sup>21</sup> Affiliation can be found based on shared space and employees,<sup>22</sup> joint ventures,<sup>23</sup> undue use by the protégé of the mentor as a subcontractor,<sup>24</sup> and license agreements.<sup>25</sup> Each of these affiliation triggers can be found in the non-DoD and non-SBA programs.

These types of development assistance provided under the typical mentor-protégé agreement risk triggering a finding of affiliation. For example, DHS – the second largest of the mentor-protégé programs – encourages mentors to provide the following types of assistance:

- (a) Management guidance related to—
  - (1) Financial management
  - (2) Organizational management
  - (3) Overall business management/planning
  - (4) Business development
- (b) Technical assistance;
- (c) Rent-free use of facilities and/or equipment;
- (d) Temporary assignment of personnel to the protégé firm for the purpose of training;
- (e) Property;
- (f) Loans; and
- (g) Any other types of mutually beneficial assistance.<sup>26</sup>

This type of assistance is fairly typical of all programs except the SBA Mentor-Protégé Program. Other programs suggest that a mentor could purchase up to 10% of the protégé,<sup>27</sup> or may award subcontracts to a protégé without competition.<sup>28</sup> Despite the fact that participation in a program is not cause to find affiliation, the Subcommittee is concerned that by encouraging well-intentioned mentors and protégés to engage in activities, the programs put the small businesses’ size at risk.

Of the thirteen mentor-protégé programs, nine claim to waive affiliation.<sup>29</sup> However, pursuant to the Small Business Act, only the SBA has this power.<sup>30</sup> SBA has simply stated that a protégé firm is not an affiliate of a mentor firm “solely because the protege (sic) firm receives assistance from the mentor firm

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<sup>20</sup> 13 C.F.R. § 121.103(a).

<sup>21</sup> *Id.* at § 121.103(f).

<sup>22</sup> *Id.* at § 121.103(g).

<sup>23</sup> *Id.* at § 121.103(h).

<sup>24</sup> *Id.* at § 121.103(h)(4).

<sup>25</sup> *Id.* at § 121.103(i).

<sup>26</sup> 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) at 1.12.

<sup>27</sup> 48 C.F.R. § 1819.7201.

<sup>28</sup> *Id.* at § 552.219-76(g)

<sup>29</sup> SBA, DoD, DHS, DOS, Treasury, VA, NASA, FAA, and HHS.

<sup>30</sup> *See, e.g., Associated Refuse & Compactions Services, Inc., B-189,740 at 1-2 (Comp. Gen. 1977).*

under Federal Mentor-Protege programs” but that “[a]ffiliation may be found for other reasons.”<sup>31</sup> The DoD program has a statutory exemption from affiliation,<sup>32</sup> but seven of the remaining programs claim this exemption without a basis in law or a waiver from SBA.

A purported waiver is particularly dangerous, as it may lead small firms to believe that they have safe harbor from the affiliation rules when they provide or accept assistance pursuant to a mentor-protégé agreement. However, even the programs that do not claim to waive affiliation inadvertently put small businesses in danger, since the underlying technical assistance itself may trigger a loss of small business status.

Since SBA is the only entity with the authority to waive affiliation for mentor-protégé participants, as part of the FY 13 NDAA Congress created a new section 45 of the Small Business Act (the Act), subsection (b) of which provided that, “a [f]ederal department or agency may not carry out a mentor-protégé program for small business concerns unless” the plan approved by the SBA.<sup>33</sup> The change exempted the DoD program from this requirement. For all other programs, it required that SBA promulgate rules to address affiliation under approved mentor-protégé programs.<sup>34</sup> The proposed rule states that SBA will not find affiliation between mentors and protégés in a federally-approved mentor-protégé relationship on the basis of the mentor-protégé agreement or the assistance provided to the protégé’ firm under the agreement.<sup>35</sup>

## **b. Duplication**

As previously noted, with the exception of the SBA, DoD, DOE and FAA mentor-protégé programs, the programs reviewed by GAO provide the same benefits to mentors, provide very similar assistance to small businesses, and have similar reporting requirements. Despite the similarities and the SBA’s overarching role in determining the size of firms in federal procurement, a firm that wants to participate in more than one program must be vetted by each agency. At the time of the GAO report, one of the strengths of the SBA program was that it allowed a mentor and protégé to contract at any federal agency, but the SBA program was limited to participants in the 8(a) and HUBZone programs.

During the 2011 subcommittee hearing, it was suggested that given the diversity of the programs and the limitations of the SBA programs, there should be a civilian agency mentor-protégé program. The program anticipated that SBA could define the parameters for such a program, and each OSDDBU could then be responsible for implementation and reporting to SBA. Benefits would include greater participation, less paperwork burden on businesses, and greater access to contracts. The changes implemented by the FY 13 NDAA were intended to facilitate the transition to such a program. However, the Proposed Rule suggests that there may not “be a continuing need for other small business mentor-protégé programs once SBA’s various mentor- protégé programs are implemented.”<sup>36</sup> During the

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<sup>31</sup> 13 C.F.R. § 121.103(b)(6).

<sup>32</sup> 10 U.S.C. § 2302 note.

<sup>33</sup> The Act at § 45(b)(2).

<sup>34</sup> *Id.* at (b)(3). The regulations are also required to address common standards on eligibility, the types of assistance provided, the length of the mentor-protégé relationship, the effect of program on contracting, any benefits to the mentors, post-participation reporting requirements, actions taken to protect protégés from exploitation, and the ability to use the program at other agencies. *Id.*

<sup>35</sup> *Proposed Rule: Small Business Mentor-Protégé Program; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/ Small Disadvantaged Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals* 80 Fed. Reg. 6618, (2015) [*hereinafter* Proposed Rule].

<sup>36</sup> Proposed Rule at 6622.

hearing, the Subcommittee will seek to understand what factors may contribute to this analysis, and what it will mean for small contractors.

### **c. Accountability**

While nine of the agencies agreed to implement GAO's recommendation on post-program success, to date only DHS, Treasury, VA, FAA have made the recommended changes.<sup>37</sup> The agencies making changes extended began collecting post-program information for one or two years.<sup>38</sup> The EPA instead decided to suspend its mentor-protégé program.<sup>39</sup> Thus, as part of the FY 13 NDAA, Congress required that all civilian agencies begin capturing data on the success of the program, and that the data be reported to SBA as part of a uniform program.<sup>40</sup>

If mentor-protégé programs are intended to develop the capacity of small firms to compete for contracts, measuring post-program performance is crucial. Therefore, the Act makes collection of such data a requirement for approval of federal agency plans, and requires that within two years SBA begin reporting to Congress on the success of the SBA and civilian agency programs. Unfortunately, the Proposed Regulations do not reflect that SBA will itself be tracking the success of businesses after they exit the mentor-protégé program, or collecting data on the success rates of protégé graduating from other programs. The Subcommittee wishes to inquire into why these performance measures are missing.

### **d. Accessibility**

Of the thirteen programs GAO reviewed, only eight accepted small businesses that do not qualify for one of the other socio-economic contracting or business development programs. Some of the restrictions are logical. For example, the SBA only admitted 8(a) firms into its mentor-protégé program because the program is intended to be a business development tool, and the VA only admits veteran or service disabled veteran firms in keeping with the agency's mission. In other cases, the restriction is statutory – DoD is statutorily barred from allowing small businesses or veteran-owned small businesses from participating as protégés, accepting only small disadvantaged business, women-owned small businesses, HUBZone firms and service-disabled veteran-owned small businesses as protégés. Other restrictions are harder to fathom – the EPA only allows protégés that are small disadvantaged, woman-owned, or historically black colleges and minority institutions, excluding small, HUBZone, veteran or service-disabled veteran-owned firms.

In the Jobs Act, Congress authorized the creation of SBA Mentor-Protégé programs for service-disabled veterans, women and HUBZone small businesses.<sup>41</sup> In the FY 13 NDAA, this program was further

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<sup>37</sup> See Recommendations at <http://www.gao.gov/products/GAO-11-548R>.

<sup>38</sup> *Id.* In November 2011, DHS updated its mentor-protégé program guidance to require protégé firms to report on their progress annually for two years after exiting the program. In September 2011, Treasury implemented a mentor-protégé post completion reporting requirement that is designed to assess the progress of protégé firms 24 months after exiting the program. In July 2011, VA issued mentor-protégé program guidance that required the protégé to submit a report on their ability to compete on federal procurements without the assistance of a mentor one year after completing the program. In September 2015, FAA revised its mentor-protégé program guidance to include a requirement that the protégé submit a post-completion report annually for two years after the completion of their agreement that indicates lessons learned concerning the material benefits of the program to the protégé as well as any successes attributed to the program.

<sup>39</sup> *Id.*

<sup>40</sup> The Act at § 45(b)(3)(G)-(H), § 45(c).

<sup>41</sup> Jobs Act, § 1347, 124 Stat. at 2547.

expanded to include all small businesses.<sup>42</sup> The Subcommittee is interested in SBA's intentions in this regard. Further, the Subcommittee is interested in whether restricted access to mentor-protégé programs should be addressed, or whether it should be broadened to include all small businesses.

#### **IV. The DoD Mentor-Protégé Program**

##### **a. The National Defense Authorization Act for FY 2016 (FY16 NDAA)**

While changes to the mentor-protégé programs in recent years have focused on civilian agencies and the SBA, the FY16 NDAA attempted to address DoD mentor-protégé program.<sup>43</sup> The FY 16 NDAA was vetoed by President Obama on October 22, 2015, but the changes advanced by the bill pose areas for discussion.<sup>44</sup> Specifically, the bill proposed changing the purpose of the DoD program, eligibility and affiliation requirements, the contents of the agreement, forms of assistance eligible for credit or reimbursement, and by adding reporting requirements. Each will now be addressed.

###### **i. Purpose**

The current statutory purpose of the DoD program is “to provide incentives for major Department of Defense 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 Department of Defense contracts and other contracts and subcontracts in order to increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.”<sup>45</sup> The FY 16 NDAA proposed adding altering the purpose to add a requirement that the assistance “increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.”<sup>46</sup> This change would have altered the program purpose to better reflect the goals of the SBA and civilian mentor-protégé programs.

###### **ii. Eligibility and Affiliation**

As previously discussed, the DoD program allows small disadvantaged businesses, HUBZone business concerns, service-disabled veteran-owned small business concerns and women-owned small business concerns to participate as protégés.<sup>47</sup> These entities may participate as protégés at any time.<sup>48</sup> The FY 16 NDAA proposed to alter eligibility so that firms could only participate as protégés for five years after they enter their first mentor protégé agreement.<sup>49</sup> It also states that protégé firms must be less than half the SBA size standard assigned to the corresponding NAICS code, and that the small business either be a nontraditional defense contractor or be currently provide goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key Department of Defense needs.

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<sup>42</sup> The Act at § 45(a).

<sup>43</sup> H.R. 1481 at § 861.

<sup>44</sup> [http://www.washingtonpost.com/business/economy/president-to-use-veto-for-only-fifth-time-to-reject-defense-authorization-bill/2015/10/22/58a455a6-78d4-11e5-bc80-9091021aeb69\\_story.html](http://www.washingtonpost.com/business/economy/president-to-use-veto-for-only-fifth-time-to-reject-defense-authorization-bill/2015/10/22/58a455a6-78d4-11e5-bc80-9091021aeb69_story.html).

<sup>45</sup> 10 U.S.C. § 2302 note; Pub. Law No. 101–510 § 831(a), as amended.

<sup>46</sup> H.R. 1481 at § 861(a).

<sup>47</sup> It is worth noting that DoD considers organizations employing the severely disabled, tribal businesses, historically black colleges and universities and minority institutions of higher learning to be small disadvantaged businesses for purposes of this program. Pub. Law No. 101–510 § 831(l).

<sup>48</sup> *Id.* at (c)(2).

<sup>49</sup> H.R. 1481 at § 861(a).

Likewise, current law allows firms with more than \$100 million in receipts to act as mentors if the “mentor firm demonstrates the capability to assist in the development of protégé firms.”<sup>50</sup> The proposed changes would also require that the mentor not be affiliated with the protégé, and that the mentor demonstrate that it: (1) is qualified to provide assistance in keeping with the purposes of the program; (2) is in good financial health and has not been suspended or debarred; and (3) “can impart value to a protégé firm because of experience gained as a Department of Defense contractor or through knowledge of general business operations and government contracting.”<sup>51</sup> The legislation continues to define affiliation using the principles delineated by the SBA in regulation. Each of these would lead to greater alignment with the SBA program, but does raise questions about having DoD determine affiliation.

### iii. Contents of the Mentor-Protégé Agreement.

Each current DoD mentor-protégé agreement must detail the assistance to be provided to the protégé.<sup>52</sup> This must include a developmental plan, a program participation term, and termination procedures. The FY 16 NDAA sought to provide greater specificity for the contents of the developmental plan. It would have required that the plan provide: (1) “factors to assess the protégé firm’s developmental progress;” (2) qualitative and quantitative benefits” to DoD, if any; and (3) “goals for additional awards that the protégé firm can compete for” outside of the DoD program.<sup>53</sup> These measures create higher expectations for program performance.

### iv. Forms of Assistance Eligible for Reimbursement or Credit

To incentivize mentors, DoD offers reimbursements and credits. DoD will reimburse mentors for progress payment or advance payment made to protégés under the program if the protégé is acting as a subcontractors on a DoD contract held by the mentor. Additionally, DoD may reimburse costs associated with seven types of eligible assistance provided by the mentor.

First, DoD allows the protégé to use mentor personnel to aid with, general business management, engineering and technical matters, and other areas detailed in the developmental plan.<sup>54</sup> The statute explicitly allows business development assistance. Second, it allows the protégé to receive noncompetitive subcontracts from its mentor. Third, it allows mentors to pay progress payments for the protégé. Fourth, it allows advance payments. Fifth, it allows loans. Sixth, it allows the mentor to purchase up to ten percent of the protégé. Finally, it allows the mentor to refer the protégé to a small business development center (SBDC), procurement technical assistance center (PTAC), or a historically Black college or university or a minority institution of higher education (HBCU/MI). A mentor may not receive more than \$1 million in reimbursement per protégé per year.

If DoD does not reimburse these costs, then the mentor is allowed to receive credit towards its subcontracting plan. For assistance provided by a SBDC, PTAC, or HBCU/MI, the mentor may receive up to “four times the total amount of such costs attributable to assistance provided by [these] entities.”<sup>55</sup> If the assistance is provided by the mentor’s own employees, the mentor may receive three times the cost of providing that assistance as credit. For all other assistance provided, the mentor receives two times the costs as credit. Further, the mentor is allowed to receive subcontracting credit for subcontracting with a former protégé, even if that protégé is no longer small.

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<sup>50</sup> Pub. Law No. 101-510 § 831(d).

<sup>51</sup> H.R. 1481 at § 861(a).

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

<sup>53</sup> *Id.*

<sup>54</sup> Pub. Law No. 101-510 § 831(f).

<sup>55</sup> Pub. Law No. 101-510 § 831(g).

The proposed changes in the FY 16 NDAA would have disallowed reimbursement for business development activities, and explicitly stated that DoD could not “reimburse any fee assessed by the mentor firm for services provided to the protégé firm . . . for business development expenses incurred by the mentor firm under a contract awarded to the mentor firm while participating in a joint venture with the protégé firm.”<sup>56</sup> Further, it removes the provision allowing mentors to be credited for referring a protégé to a SBDC, PTAC or HBCU/MI. The intention of these changes was to ensure that DoD was not paying mentors to help the protégés bid on contracts the protégé would have bid on in any case, especially if the mentor would profit from the contract, and to stop reimbursing mentors for sending their protégés to obtain assistance from other federal funded resources. It does leave open the question of whether the credit formula is appropriate.

#### v. Reporting and Review Requirements

The changes in the FY 16 NDAA would have added reporting requirements for mentor firms and review requirements for the DoD Office of Small Business Programs (OSBP).<sup>57</sup> First, it required that mentors annual report on the assistance provided to protégé firms. Second, it required OSBP to review the reports and program participants, and terminate those not furthering the purpose of the program.

#### b. The Future of the DoD Mentor-Protégé Program.

Authorization for the DoD Mentor-Protégé program has lapsed, meaning that DoD may not accept new mentor-protégé agreements without Congressional action, and that the current agreements may only operate through September 30, 2018.<sup>58</sup> The current program has 49 mentors and 64 protégés operating under 18 agreements providing subcontracting credit, 44 agreements providing reimbursement, and two agreements providing both credit and reimbursement. The veto of the FY 16 NDAA raises questions about the future of the program, including how success should be defined in the DoD program and whether exempting DoD from the changes made by the FY 13 NDAA is appropriate.

Currently, DoD measures success in its program by looking at three factors which it tracks for up to two years after completion of the mentor-protégé agreement.<sup>59</sup> First, it examines whether the dollar value of contracts, subcontracts and revenue received by the protégé has increased. Second, DoD tracks increases in number and dollar value of subcontracts awarded to protégé firms and former protégé firms by the mentor firm. Third, it looks for an increase in the employment levels of the protégé firm. As of July 31, 2015, DoD had published the following performance results for program.

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<sup>56</sup> H.R. 1481 at § 861(a).

<sup>57</sup> *Id.*

<sup>58</sup> 10 U.S.C. § 2302 note.

<sup>59</sup> OSBP, DoD Mentor- Protégé Program 9 (2015) *available at* <http://www.acq.osd.mil/osbp/docs/DoD%20MPP%20Briefing-v07%20-%2031%20JUL%2015.pdf>.

FY 10-FY 14 DoD Mentor-Protégé Results<sup>60</sup>

FY	Program Budget	Net Revenue Gains	Net Employee Gains	Net Revenue Gains/Company	Net Employee Gains/Company
14	\$20.1 M	\$396 M	808	\$6.6 M	13.5
13	\$25.4 M	\$238 M	743	\$3.6 M	11.4
12	\$28.0 M	\$700 M	660	\$11.3 M	10.6
11	\$27.6 M	\$633 M	1,531	\$7.6 M	18.4
10	\$26.3 M	\$660 M	1,223	\$6.7 M	12

While this chart demonstrates growth in each category, it fails to control for the involvement of the DoD. Specifically, if DoD is paying companies to subcontract with specific small businesses, it cannot come as a surprise that those small businesses hire employees and increase their revenues. As the mentor firm was required to subcontract with small businesses in any case, would the companies receiving the subcontracts have received similar benefits without a mentor-protégé agreement? Further, since DoD continues to reward mentors for subcontracting with protégés after the protégés leave the program, tracking two years post program completion does not capture whether the benefits are sustainable.<sup>61</sup>

**V. Issues Before the Subcommittee**

During the hearing, the Subcommittee expects to hear from SBA and DoD on the issues raised in this memorandum. Specifically, SBA will be asked to address its implementation of Jobs Act and the FY 13 NDAA. Both SBA and DoD will be asked to address the use of incentives for mentors outside of the SBA program, and each will be asked to address what performance measures are appropriate for gauging the success of a program. Finally, each will be asked if further legislative changes are necessary or desirable.

**VI. Conclusion**

The Subcommittee hearing should provide Members with the opportunity to explore the issues and lines of questions raised in this memorandum. The resulting information should help Congress and the Administration better develop policies and procedures that protect small businesses opportunity to compete for contracts, thereby promoting small business job creation.

<sup>60</sup> *Id.* at 14.

<sup>61</sup> While DoD agreed to provide additional information on measures of success for the program, as of 6:40 p.m. on October 23, 2015, no data had been provided.