

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 to assist small businesses in various ways. For example, the Small Business Administration's (SBA) Mentor-Protégé Program is a government-wide program designed to assist small businesses 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 (installment) 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.

The SBA's Mentor-Protégé Program is the most used federal mentor-protégé program. It currently has 1,138 active mentor-protégé agreements.

This report provides an overview of the federal government's various small business mentor-protégé programs. All of these programs are intended to assist small businesses in performing as contractors, subcontractors, or suppliers on federal or federally funded contracts, but the programs differ in their scope and operations.

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Introduction

Mentor-protégé programs are designed to assist small business development, focusing on enhancing the protégé's capacity to serve as either a prime contractor or a subcontractor in federal contracts. These 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, whereas mentors may receive credit toward subcontracting goals, reimbursement of certain expenses,¹ or other incentives for assisting protégés.

Five federal agencies have SBA-approved mentor-protégé programs:

- Department of Energy,
- Department of Homeland Security (DHS),
- National Aeronautics and Space Administration,
- U.S. Small Business Administration (SBA), and
- Department of Transportation.²

Two federal agencies have mentor-protégé programs that do not require SBA's approval because their programs are not covered by the Small Business Act:

- Department of Defense (DOD) and
- Federal Aviation Administration.

Mentor-protégé programs seek to assist small businesses in various ways.³ For example,

- the SBA's Mentor-Protégé Program is a government-wide mentor-protégé program for all small business concerns that provides benefits to both mentors

¹ Three federal departments and agencies provide mentors reimbursement for certain expenses related to providing assistance to protégés: the Department of Defense (DOD), Department of Energy, and Federal Aviation Administration.

² U.S. Small Business Administration (SBA), "Report to Congress on Mentor-Protégé Programs for Fiscal Year 2019," August 11, 2020, at <https://www.sba.gov/sites/default/files/2021-01/Final%20FY19%20MPP%20Report%20to%20Congress%20with%20Agency%20Reports-508.pdf>.

There were 13 active Mentor-Protégé programs during FY2017. The Departments of Health and Human Services and Treasury, and the U.S. Agency for International Development ended their mentor-protégé programs during FY2017. The 10 active mentor-protégé programs at the end of FY2017 were at the Departments of Defense, Energy, Homeland Security, and Transportation, the Environmental Protection Agency, General Services Administration, National Aeronautics and Space Administration, and Small Business Administration (three programs—8(a), All Small, and FAST). The Environmental Protection Agency retired its program on September 19, 2018, and the General Services Administration retired its program on April 3, 2019. SBA, "Report to Congress on Mentor-Protégé Programs for Fiscal Year 2017," June 2019, at http://www.sba.gov/sites/default/files/resources_articles/Final_FY_17_Mentor-Protége_Report_to_Congress_6-14-2019.pdf; Environmental Protection Agency, "Acquisition Regulation: Removal of EPA Mentor Protégé Program," 83 *Federal Register* 28772-28774, June 21, 2018; and General Services Administration, "General Services Administration Acquisition Regulation (GSAR); Transition to SBA Mentor-Protégé," 84 *Federal Register* 1410-1411, February 4, 2019.

³ 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.

- and protégés. For example, mentors can form joint ventures with protégés which are eligible for small business contracting preferences. Protégés can receive financial assistance from their mentor in the form of equity investments, loans, and bonding and guidance on internal business management issues, the federal procurement process, strategic planning, and general and administrative assistance, including human resource sharing or security clearance support;⁴
- the DOD Mentor-Protégé Program provides incentives to mentors to assist various types of small businesses and other entities in performing as subcontractors or suppliers on DOD contracts. Protégés benefit by gaining access to DOD contracts and the business development guidance provided by their mentor;⁵ and
 - other agency-specific mentor-protégé programs, such as that of the DHS, provide mentor firms incentives to subcontract agency prime contracts with small businesses.⁶

Congressional interest in small business mentor-protégé programs has increased in recent years, primarily because these programs are designed to help small businesses become competitive federal contractors, which, in turn, helps small businesses create and retain jobs.

During the 111th Congress, 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, small businesses owned and controlled by women, and small businesses located in a HUBZone “modeled” on the now-retired 8(a) Mentor-Protégé Program.⁷ That program had been operational since July 30, 1998, and was limited to participants in the SBA’s 8(a) Business Development program.⁸ P.L. 111-240 also required the Government Accountability Office (GAO) to assess the effectiveness of mentor-protégé programs generally.⁹ GAO’s findings were reported on June 15, 2011.¹⁰

During the 112th Congress, P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013, authorized the SBA to establish a mentor-protégé program for “all” small businesses that is generally “identical” to the 8(a) Mentor-Protégé Program. In an effort to promote uniformity, the

⁴ SBA, “SBA Mentor-Protégé Program,” at <https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protége-program#section-header-2>.

⁵ DOD, “Mentor-Protégé Program (MPP),” at <https://business.defense.gov/Programs/Mentor-Protége-Program/>.

⁶ Department of Homeland Security, “Mentor-Protégé Program,” at <https://www.dhs.gov/mentor-protége-program>.

⁷ SBA, “Small Business Jobs Act: Small Business Mentor-Protégé Programs,” 75 *Federal Register* 79869, December 20, 2010; SBA, “Semiannual Regulatory Agenda, Small Business Jobs Act: Small Business Mentor-Protégé Programs,” 76 *Federal Register* 40140, July 7, 2011; SBA, “Small Business Jobs Act: Small Business Mentor-Protégé Programs,” 78 *Federal Register* 1492, January 8, 2013; SBA, “Small Business Mentor-Protégé Programs,” 78 *Federal Register* 44334, July 23, 2013; and SBA, “Small Business Mentor-Protégé Programs,” 79 *Federal Register* 1089, January 7, 2014.

For additional information and analysis of the SBA’s 8(a) Business Development Program, see CRS Report R44844, *SBA’s “8(a) Program”: Overview, History, and Current Issues*, by Robert Jay Dilger.

⁸ SBA, “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.

⁹ Small Business Jobs Act of 2010, P.L. 111-240, §§1345 & 1347, 124 Stat. 2546-47 (September 27, 2010).

¹⁰ Government Accountability Office (GAO), *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 1, 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.

act, with some exceptions, prohibits agencies from carrying out mentor-protégé programs that have not been approved by the SBA.¹¹

Based on the authority provided by these two laws, the SBA published a proposed rule in the *Federal Register* on February 5, 2015, “to establish a government-wide mentor-protégé program for all small business concerns, consistent with SBA’s mentor-protégé program for participants in the SBA’s 8(a) Business Development program in order to make the mentor-protégé rules for each of the programs as consistent as possible.”¹² The SBA decided not to implement additional mentor-protégé programs for service-disabled veteran-owned and -controlled small businesses, women-owned and -controlled small businesses, and HUBZone small businesses because they “would be necessarily included within any mentor-protégé program targeting all small business concerns.”¹³ The SBA also determined that “having five separate small business mentor-protégé programs could become confusing to the public and procuring agencies and hard to implement by the SBA.”¹⁴ The SBA estimated that approximately 2,000 small businesses could become active in the proposed mentor-protégé program for small businesses.¹⁵

On July 25, 2016, the SBA published a final rule in the *Federal Register* establishing, effective August 24, 2016, the new, government-wide mentor-protégé program for all small businesses. The final rule also modified the SBA’s 8(a) Mentor-Protégé Program in an effort to make the two programs as consistent as possible.¹⁶ As a result, 8(a) small businesses were allowed to participate in either program. The SBA began to accept applications for the All Small Mentor-Protégé Program on October 1, 2016.

The SBA noted in the final rule that because its new small business mentor-protégé program will apply to all federal small business contracts and federal agencies, “conceivably other agency-specific mentor-protégé programs would not be needed.”¹⁷ In recognition that one or more agency-specific mentor-protégé programs may be discontinued and that several of these programs provide incentives in the contract evaluation process to mentor firms that provide significant subcontracting work to their protégés, the SBA allows procuring agencies, in appropriate

¹¹ The Senate version of the bill (S. 3254) did not include these provisions, but the conference report to H.R. 4310, which was agreed to by the House on December 20, 2012, and by the Senate on December 21, 2012, included them. The program under P.L. 112-239 need not be identical to the 8(a) Mentor-Protégé Program insofar as differences may be “necessary” given the types of small businesses included in the program as protégés.

¹² SBA, “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 *Federal Register* 6618, February 5, 2015.

¹³ SBA, “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,” pp. 6618-6619.

¹⁴ SBA, “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,” p. 6619.

¹⁵ SBA, “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,” p. 6628; and SBA, “Small Business Mentor Protégé Program,” 81 *Federal Register* 48574, July 25, 2016.

¹⁶ SBA, “Small Business Mentor Protégé Program,” 81 *Federal Register* 48558-48595, July 25, 2016.

¹⁷ SBA, “Small Business Mentor Protégé Program,” 81 *Federal Register* 48565, July 25, 2016.

circumstances, to provide subcontracting incentives to mentor firms participating in its mentor-protégé programs as well.¹⁸

Since 2016, several federal agencies have ended their mentor-protégé programs and encouraged interested parties to consider the SBA's program. In addition, the SBA merged the 8(a) Mentor-Protégé Program and the All Small Mentor-Protégé Program in an effort to "eliminate confusion regarding perceived differences between the two Programs, remove unnecessary duplication of functions within SBA, and establish one, unified staff to better coordinate and process mentor-protégé applications."¹⁹ The merger was effective on November 16, 2020, and the merged program was retitled as the SBA Mentor-Protégé Program.

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

Mentor-Protégé Programs Administered by the SBA

The SBA administers two mentor-protégé programs, one for firms in its Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs²⁰ and one for all small businesses.

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"²¹ 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 nonprofit 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

¹⁸ SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48566, July 25, 2016.

¹⁹ SBA, "Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments," 84 *Federal Register* 60846, November 8, 2019; and SBA, "Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments," 85 *Federal Register* 66146-66199, October 16, 2020.

²⁰ For additional information and analysis concerning the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, see CRS Report R43695, *Small Business Research Programs: SBIR and STTR*, by Marcy E. Gallo

²¹ 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)).

program as good candidates for the SBIR and STTR programs, and that would benefit from mentoring.²²

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.²³

In FY2020, the SBA awarded 24 FAST partnership awards of \$125,000 each to state and local economic development entities, small business technology development centers, women's business centers, procurement technical assistance centers, incubators, accelerators, colleges, and universities.²⁴ The program received an appropriation of \$2 million each year from FY2010 to FY2015, and \$3 million each year from FY2016 to FY2021.²⁵

Recent Developments

During the 114th Congress, P.L. 114-88, the Recovery Improvements for Small Entities After Disaster Act of 2015 (RISE After Disaster Act), directed the SBA Administrator to provide special consideration to a FAST applicant that is located in an area affected by a catastrophic incident.

SBA's Mentor-Protégé Program

As mentioned, the SBA's Mentor-Protégé Program, which is administrated by the SBA's Office of Business Development, became operational on November 16, 2020, following the merger of the SBA's All Small Mentor-Protégé Program and 8(a) Mentor-Protégé Program. As of March 1, 2021, there were 1,138 active SBA Mentor-Protégé Program participants.²⁶

SBA regulations govern various aspects of the 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.

Mentor Requirements

Mentors must

1. be organized for profit or as an agricultural cooperative;²⁷
2. demonstrate a commitment and the ability to assist small businesses;²⁸

²² 15 U.S.C. §657d(c)(1)(E)(ii).

²³ 15 U.S.C. §657e(c)(1)-(5).

²⁴ SBA, "SBA Awards Grants to 24 Organizations to Support Small Business Innovation and R&D Commercialization," September 18, 2020, at <https://www.sba.gov/article/2020/sep/18/sba-awards-3-million-grants-organizations-supporting-small-business-innovation-rd-commercialization>.

²⁵ P.L. 111-117; P.L. 112-8; P.L. 112-74; P.L. 112-175; P.L. 113-76; P.L. 113-235, P.L. 114-113, P.L. 115-31, P.L. 115-141; P.L. 116-6; P.L. 116-93; and P.L. 116-260.

²⁶ SBA, "Active Mentor-Protégé Agreements," at <https://www.sba.gov/document/support-active-mentor-protege-agreements>.

²⁷ SBA, "SBA Mentor-Protégé Program," at <https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protege-program#section-header-2>.

²⁸ 13 C.F.R. §125.9(b). Previously, nonprofit entities were eligible to serve as mentors. For discussion concerning restricting eligibility to for profit entities, see SBA, "Small Business Mentor Protégé Program," 81 *Federal Register*

3. be approved by the SBA;²⁹
4. demonstrate that it “is capable of carrying out its responsibilities to assist the protégé firm under the proposed mentor-protégé agreement”;³⁰
5. possess “good character”;³¹
6. not be debarred or suspended from government contracting;³² and
7. be able to “impart value to a protégé firm due to lessons learned and practical experienced gained through its knowledge of general business operations and government contracting.”³³

Generally, a mentor will have no more than one protégé at a time, but the SBA may authorize mentors to have more than one protégé at a time “where it can demonstrate that additional mentor-protégé relationship will not adversely affect the development of either protégé firm.”³⁴ Mentors cannot, under any circumstances, have more than three protégés at a time.

Protégé Requirements

Protégés must

1. be organized for profit or as an agricultural cooperative;³⁵
2. “qualify as small for the size standard corresponding to its primary NAICS code or identify that it is seeking business development assistance with respect to a secondary NAICS code and qualify as small for ... that NAICS code”;³⁶ and
3. have a proposed mentor prior to applying for the program.³⁷

Protégés are generally expected to have no more than one mentor at a time. However, under specified conditions, the SBA may approve a second mentor for the protégé.³⁸

Written Agreements

The SBA requires mentors and protégés to enter a written agreement, approved by the SBA’s Associate Administrator for Business Development or designee, which sets forth the protégé’s

48562, 48563, July 25, 2016.

²⁹ 13 C.F.R. §125.9(a).

³⁰ 13 C.F.R. §125.9(b)(1)(i).

³¹ 13 C.F.R. §125.9(b)(1)(ii).

³² 13 C.F.R. §125.9(b)(1)(iii).

³³ 13 C.F.R. §125.9(b)(1)(iv).

³⁴ 13 C.F.R. §125.9(b)(4).

³⁵ SBA, “SBA Mentor-Protégé Program,” at <https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protege-program#section-header-2>.

³⁶ 13 C.F.R. §125.9(c)(1). Protégés may self-certify its status as a small business. See 13 C.F.R. §125.9(c)(1)(i).

³⁷ SBA, “SBA Mentor-Protégé Program,” at <https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protege-program#section-header-2>; and 13 C.F.R. §125.9(e)(2)(i).

³⁸ 13 C.F.R. §125.9(c)(2). The specified circumstances are that the “second relationship will not compete or otherwise conflict with the assistance set forth in the first mentor-protégé relationship and (i) the second relationship pertains to a secondary NAICS code; or (2) the protégé firm is seeking to acquire a specific expertise that the first mentor does not possess.” Also, “the SBA may authorize a participant to be both a protégé and a mentor at the same time where the participant can demonstrate that the second relationship will not compete or otherwise conflict with the first mentor-protégé relationship.” See 13 C.F.R. §125.9(c)(3).

needs and describes the assistance the mentor will provide.³⁹ This agreement generally obligates the mentor to furnish assistance to the protégé for at least one year,⁴⁰ although it does allow either mentor or protégé to terminate the agreement with 30 days' advance notice to the other party and the SBA.⁴¹ In addition, the agreement provides that the SBA will review the mentor-protégé agreement annually to determine whether to approve its continuation.⁴² The agreement may not exceed three years, but may be extended for a second three years.⁴³ Any changes made to the agreement must be approved by the SBA. Also, an SBA determination of affiliation or control must not exist between the mentor and the protégé based solely on the mentor-protégé agreement or any assistance provided pursuant to the agreement.⁴⁴

The SBA's annual 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; (4) all federal contracts awarded to a joint venture of the mentor and protégé; and (5) a narrative describing the success the assistance had had in meeting the protégé's developmental needs and any problems encountered.⁴⁵

The SBA may terminate the mentor-protégé agreement at any time if it determines that the protégé is not adequately benefiting from the relationship or that the parties are not complying with any of the agreement's terms or conditions.⁴⁶

Participant Benefits

Participation in the SBA Mentor-Protégé Program is intended to benefit both mentors and protégés. For example, mentors may form joint ventures with their protégés who are eligible for contracts set aside for small businesses, provided that the protégé qualifies as small for the contract.⁴⁷ 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. 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.⁴⁸

As mentioned, in addition to receiving financial assistance from their mentors, protégés may also receive guidance on internal business management issues, the federal procurement process, strategic planning, and general and administrative assistance, including human resource sharing or security clearance support.⁴⁹

³⁹ 13 C.F.R. §125.9(e)(1).

⁴⁰ 13 C.F.R. §125.9(e)(1)(iii).

⁴¹ 13 C.F.R. §125.9(e)(4).

⁴² 13 C.F.R. §125.9(e)(5).

⁴³ 13 C.F.R. §125.9(e)(5).

⁴⁴ 13 C.F.R. §125.9(d)(5).

⁴⁵ 13 C.F.R. §125.9(g)(1)(i)-(v).

⁴⁶ 13 C.F.R. §125.9(e)(8).

⁴⁷ 13 C.F.R. §125.9(d)(1).

⁴⁸ 13 C.F.R. §125.9(d)(2).

⁴⁹ SBA, "SBA Mentor-Protégé Program," at <https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protége-program#section-header-2>.

Protégés not only receive various forms of assistance from their mentors, but also may generally retain their status as “small businesses” while doing so.⁵⁰ 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,⁵¹ and the SBA could potentially find that firms are affiliates because of assistance such as that which mentors provide to protégés.⁵² 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.”⁵³

GAO’s Reports and Legislative Action

As mentioned, during the 111th Congress, P.L. 111-240, the Small Business Jobs Act of 2010, required GAO to study federal 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 contracting.”⁵⁴ GAO’s report was submitted to the House and Senate Committees on Small Business on June 15, 2011.⁵⁵

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 most federal mentor-protégé programs had “similar policies and procedures,” but that some differences exist.⁵⁶ For 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.”⁵⁷ 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.”⁵⁸ However, it found that only DOD, 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.”⁵⁹ GAO recommended that all of the agencies it examined “consider collecting and maintaining protégé post-completion information” because that information “could be used to

⁵⁰ 13 C.F.R. §125.9(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”).

⁵¹ 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.” See 13 C.F.R. §121.103(a)(1).

⁵² See generally 13 C.F.R. §121.103.

⁵³ 13 C.F.R. §125.9(d)(4).

⁵⁴ P.L. 111-240, §1345(a), 124 Stat. 2546.

⁵⁵ GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, GAO-11-548R, June 15, 2011, p. 1, at <http://www.gao.gov/new.items/d11548r.pdf>.

⁵⁶ GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, p. 4.

⁵⁷ GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, pp. 4-5.

⁵⁸ GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, p. 9.

⁵⁹ GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, p. 9.

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.”⁶⁰

During the 112th Congress, P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013, sought to reduce the variation that GAO found among agency-specific mentor-protégé programs by requiring that any such programs be approved by the SBA pursuant to regulations, “which shall ensure that such programs improve the ability of protégés to compete for Federal prime contracts and subcontracts.”⁶¹ The SBA administrator was required to issue regulations with respect to mentor-protégé programs not later than 270 days after the bill’s enactment, which was January 2, 2013 (the regulations were issued on July 25, 2016). At a minimum, these regulations must address 10 criteria, including (1) eligibility for program participants, (2) the types of developmental assistance provided to protégés, (3) the length of mentor-protégé relationships, (4) the benefits that may accrue to the mentor as a result of program participation, and (5) the reporting requirements during and following program participation.⁶² DOD’s Mentor-Protégé Program and mentoring assistance under the Small Business Innovation Research Program and the Small Business Technology Transfer Program are exempt from the approval process.

Effective August 24, 2016, federal agencies (other than DOD and the two exempt programs) were provided a year to submit a plan to the SBA Administrator for approval to continue a previously existing mentor-protégé program. Approval is contingent on whether the proposed program will assist protégés to compete for federal prime contracts and subcontracts and whether it complies with the rules and regulations of the SBA’s mentor-protégé programs (as set forth in 13 C.F.R. §§125.9).⁶³

As mentioned, five federal agencies currently have SBA-approved mentor-protégé programs (Department of Energy, Department of Homeland Security, Department of Transportation, National Aeronautics and Space Administration, and the SBA) and two federal agencies have mentor-protégé programs that do not require SBA’s approval because their programs are not covered by the Small Business Act (DOD and the Federal Aviation Administration).⁶⁴

⁶⁰ GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants But Do Not Require Postagreement Tracking*, p. 9.

⁶¹ Any federal mentor-protégé program in effect at the date of the bill’s enactment must submit plans to the SBA for approval within 6 months of the SBA’s promulgation of rules with respect to mentor-protégé programs and receive final approval or denial within 180 days after receipt. In addition, DOD’s Mentor-Protégé Program and mentoring assistance under the Small Business Innovation Research Program and the Small Business Technology Transfer Program were made exempt from the approval process.

⁶² These provisions originated with H.R. 3985, the Building Better Business Partnerships Act of 2012. The Senate version of the bill (S. 3254) did not include these provisions, but they were included in the bill’s conference report, which was agreed to by the House on December 20, 2012, and by the Senate on December 21, 2012. The bill was signed by President Obama on January 2, 2013.

⁶³ SBA, “Small Business Mentor Protégé Program,” 81 *Federal Register* 48589, July 25, 2016.

⁶⁴ SBA approved the Department of Energy and the National Aeronautics and Space Administration (NASA) mentor-protégé programs on February 20, 2018, for five years. See John R. Bashista and S. Keith Hamilton, P.E., “Class Deviation: Determination and Findings, Department of Energy Acquisition Regulation (DEAR) Mentor Protégé Participation, DEAR 919.7001-919.7003, DEAR 919.7006-919.7007, and 952.219-70,” at <https://www.energy.gov/sites/prod/files/2019/02/f60/PF%202019-15%20Class%20Deviation.pdf>; and NASA, Office of Small Business Programs, “NASA Mentor-Protégé Program: Fostering Successful Partnerships the Possibilities are Endless,” power point presentation, p. 4, at https://osbp.nasa.gov/docs/event-presentations/2018_05/08/1130_Mentor-Protege-Program_TKalisa.pdf.

The SBA approved the Department of Transportation (DOT) mentor-protégé program on March 13, 2019, for five years. DOT, Office of the Secretary of Transportation, Office of Public Affairs, correspondence with the author, March

In addition, before starting a new mentor-protégé program, agency heads must submit a plan and receive the SBA Administrator's approval.⁶⁵ Agencies sponsoring an agency-specific mentor-protégé program must report annually to the SBA specific information, such as the number and type of small business participants, the assistance provided, and the protégés' progress in competing for federal contracts.⁶⁶

DOD Mentor-Protégé Program

Congress authorized a pilot mentor-protégé program for DOD in 1990. The program's purposes are to

- (1) enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts; and (2) increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.⁶⁷

DOD's Mentor-Protégé Program began on October 1, 1991, and was the first federal mentor-protégé program to become operational. Originally scheduled to expire in 1994,⁶⁸ it has been repeatedly extended, most recently through FY2024 for the formation of new agreements, and FY2026 for the reimbursement of incurred costs under existing agreements.⁶⁹

DOD's Mentor-Protégé Program differs from the SBA's 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 SBA's Mentor-Protégé Program. Notably, such assistance may include advance payments, which federal agencies are generally prohibited from making, and progress (installment) payments, which are generally discouraged under federal procurement law.⁷⁰

31, 2021.

⁶⁵ SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48589, July 25, 2016.

⁶⁶ SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48590, July 25, 2016.

⁶⁷ P.L. 114-92, the National Defense Authorization Act for Fiscal Year 2016, §861 (codified, as amended, at 10 U.S.C. §2302 note). See P.L. 101-510, 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, §831, 104 Stat. 1607-08 (November 5, 1990) for earlier language. The wording of the program's purpose was modified somewhat by P.L. 114-92 in an effort to better reflect the goals of the mentor-protégé programs sponsored by the SBA and other civilian agencies.

⁶⁸ P.L. 101-510, 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, 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. 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, at <http://www.gao.gov/assets/220/215849.pdf>.

⁶⁹ See, e.g., P.L. 112-81, the National Defense Authorization Act for FY2012, §867, 125 Stat. 1526; P.L. 114-92, the National Defense Authorization Act for FY2016, §861; and P.L. 116-92, the National Defense Authorization Act for FY2020, §872.

⁷⁰ 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

As of January 1, 2018, there were 63 active mentor-protégé agreements involving 39 mentors and 63 protégés.⁷¹ One mentor had seven protégés, 1 mentor had 6 protégés, 1 mentor had 5 protégés, 2 mentors had 3 protégés, 5 mentors had 2 protégés, and 29 mentors had one protégé.⁷²

DOD regulations govern various aspects of the DOD Mentor-Protégé Program, including who may qualify as a mentor or protégé, the content of written agreements between mentors and protégés, and the DOD's evaluation of the mentor-protégé relationship.

Mentor Requirements

A mentor must

1. be eligible for the award of federal contracts;
2. demonstrate that it is qualified to provide assistance that contributes to the program;
3. be of good financial health and character;
4. not be debarred or suspended from government contracting; and
5. be capable of “imparting value to a protégé firm because of experience gained as a DOD contractor through knowledge of general business operations and government contracting,” as demonstrated by
 - a. having received DOD contracts totaling at least \$100 million during the previous fiscal year;
 - b. being an other-than-small business, unless a waiver to the small business exception has been obtained from the SBA;
 - c. being a prime contractor with an active subcontracting plan; or
 - d. having graduated from the 8(a) Business Development Program with documentation of its ability to serve as a mentor.⁷³

Mentors and protégés are solely responsible for finding their counterpart.⁷⁴ Mentors can have several protégés.

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)-(c). Progress payments made on the basis of percentage of completion under construction or certain other contracts are considered invoice payments and are permissible. See 48 C.F.R. §32.500(b). Progress payments made on the basis of performance milestones are considered financing payments and are likewise permissible. Other progress payments based on costs are generally considered “unusual progress payments” and may be used only when authorized in “exceptional cases.” See 48 C.F.R. §§32.501, 32.501-2.

⁷¹ DOD, “Active MPP [Mentor-Protégé Program] Agreements,” January 1, 2018.

⁷² DOD, “Active MPP [Mentor-Protégé Program] Agreements,” January 1, 2018.

⁷³ 48 C.F.R. Ch. 2, Appendix I, I-102(a)(1)-(3). Initially, only small businesses owned and controlled by socially and economically disadvantaged individuals could qualify as protégés. See P.L. 101-510, §831(m)(2), 104 Stat. 1611. The list of eligible protégés was later expanded. 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).

⁷⁴ DOD, Office of Small Business Programs, “Mentor-Protégé Program: How to Participate,” at <https://business.defense.gov/Programs/Mentor-Protége-Program/How-to-Participate/>.

Protégé Requirements

A protégé must

1. be a small business;
2. be eligible for the award of federal contracts;
3. qualify as small for the size standard corresponding to its primary NAICS code;
4. be not owned or managed by individuals or entities that directly or indirectly have stock options or convertible securities in the mentor firm; and
5. be at least one of the following:
 - a. a qualified HUBZone small business;
 - b. a women-owned small business;
 - c. a service-disabled veteran-owned small business;
 - d. an entity owned and controlled by an Indian tribe or Native Hawaiian organization;
 - e. an entity owned and controlled by socially and economically disadvantaged individuals;⁷⁵
 - f. a qualified organization employing severely disabled individuals;
 - g. a nontraditional defense contractor; or
 - h. an “entity that currently provides goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key DOD needs.”⁷⁶

Protégés cannot have more than one mentor at a time and may only participate in the program during the 5-year period beginning on the date the protégé enters into its first mentor-protégé agreement.⁷⁷

Written Agreements

DOD requires mentors and protégés to enter a written agreement, approved by DOD, which sets forth the mentor and protégé’s program eligibility, describes the assistance the mentor will provide, and contracting goals.⁷⁸ The agreement generally has a term that does not exceed three years, but can be extended up to two additional years with DOD approval.⁷⁹ Mentors and protégés may terminate the agreement with 30 days’ advance notice to the other party and DOD.⁸⁰

There are three types of DOD Mentor-Protégé Program written agreements:

⁷⁵ Socially and economically disadvantaged individuals are defined by section 8(d)(3)(C) of the Small Business Act (15 U.S.C. §637(D)(3)(C)).

⁷⁶ 48 C.F.R. Ch. 2, Appendix I, I-102(b). See P.L. 101-510, §831(m)(2), 104 Stat. 1611.

⁷⁷ 48 C.F.R. Ch. 2, Appendix I, I-104(e).

⁷⁸ 48 C.F.R. Ch. 2, Appendix I, I-107(a)-(j).

⁷⁹ 48 C.F.R. Ch. 2, Appendix I, I-107(k).

⁸⁰ 48 C.F.R. Ch. 2, Appendix I, I-107(l)-(m); and 48 C.F.R. Ch. 2, Appendix I, I-111(a).

- directly reimbursable agreements, which provide mentors monetary reimbursements only for the cost of developmental assistance incurred by the mentor and provided to the protégé according to the approved agreement;⁸¹
- credit agreements, which allow mentors to receive credit toward subcontracting goals for developmental costs incurred by the mentor according to the agreement;⁸² and
- hybrid agreements, which provide credits for the first year of the agreement and then can be modified to include monetary reimbursements in the remaining years.⁸³

Mentors must report to DOD on the progress made under their mentor-protégé agreements semiannually for the periods ending on March 31st and September 30th throughout the agreement's term. The September 30th report must address the entire fiscal year.⁸⁴

Protégés must report to DOD on the progress made under their mentor-protégé agreements annually by October 31st. The report must include data on employment, revenues, and participation in DOD contracts during each fiscal year of program participation and in each of the two fiscal years following its participation in the program.⁸⁵ The protégé's report may be provided as part of the mentor's September 30th report.⁸⁶

Participant Benefits

As mentioned, mentors can receive reimbursement of specified assistance costs and credit for unreimbursed costs toward applicable subcontracting goals. DOD and the mentor may agree that DOD will reimburse the mentor for certain advance payments or progress (installment) payments made to assist protégé firms in performing a subcontract or supplying goods or services under a contract.⁸⁷ Alternatively, DOD may credit toward the mentor's subcontracting plan costs incurred

⁸¹ 48 C.F.R. Ch. 2, Appendix I, I-109. Mentors may not receive more than \$1 million in reimbursements per fiscal year without DOD written approval that unusual circumstances justify a higher amount. See 48 C.F.R. Ch. 2, Appendix I, I-109(d).

⁸² 48 C.F.R. Ch. 2, Appendix I, I-110.1(a). All credit agreements are sponsored by the DOD, Defense Contract Management Agency, Office of Small Business Programs. Other agreements are sponsored by the DOD cognizant component Director (e.g., Director, Department of the Navy, Office of Small Business Program, etc.). Mentors receive credit for four times the costs attributable to assistance provided by small business development centers, historically Black colleges and universities, minority institutions, and procurement technical assistance centers; three times the amount of such costs attributable to assistance furnished by the mentor's employees; and two times the amount of other such costs incurred by the mentor in carrying out the developmental assistance program. See 48 C.F.R. Ch. 2, Appendix I, I-110.1(d)(1)-(3).

⁸³ DOD, Department of the Navy, Office of Small Business Program, Small Business Development: Industrial Solutions for the Warfighter: Mentor-Protégé Guidebook for Industry and Acquisition Professional, June 2020, p. 2, at [https://www.secnv.navy.mil/smallbusiness/Documents/DON%20MPP%20Guidebook%20\(June%202020\).pdf](https://www.secnv.navy.mil/smallbusiness/Documents/DON%20MPP%20Guidebook%20(June%202020).pdf).

⁸⁴ 48 C.F.R. Ch. 2, Appendix I, I-112(a). The reports are due 30 days after the close of each reporting period.

⁸⁵ 48 C.F.R. Ch. 2, Appendix I, I-112(b).

⁸⁶ 48 C.F.R. Ch. 2, Appendix I, I-112(c).

⁸⁷ 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. §219.7104(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

under the credit agreement in the following multiples: four times the costs attributable to assistance provided by small business development centers, historically Black colleges and universities, minority institutions, and procurement technical assistance centers; three times the costs attributable to assistance furnished by the mentor's employees; and two times the amount of other such costs (such as travel or training) incurred by the mentor in carrying out the developmental assistance program.⁸⁸

Protégés benefit from the program by increasing their ability to participate in DOD, federal, and commercial contracts by teaming with the mentor. Protégés can also receive technical and business development assistance from their mentor. In addition, as mentioned, if specified in the subcontract terms and conditions, protégés can receive advance payments and progress (installment) payments from their mentor prior to the project's completion.⁸⁹

Recent Developments

As mentioned, P.L. 116-92, the National Defense Authorization Act for FY2020, extended the DOD Mentor-Protégé Program's authorization through FY2024 for the formation of new agreements, and FY2026 for the reimbursement of incurred costs under existing agreements.⁹⁰ The act also increased the size standard for determining eligibility for DOD's Mentor-Protégé Program from less than half of the SBA size standard assigned to its corresponding NAICS code to not more than the SBA's size standard assigned to its corresponding NAICS code. This change was designed to better align DOD's Mentor-Protégé Program's eligibility requirements with those of the now-retired SBA 8(a) Mentor-Protégé Program (which increased its size standard for determining eligibility from less than half to not more than the SBA's size standard assigned to its corresponding NAICS code in 2016).⁹¹

DOD provided the program \$23.2 million in FY2017, \$19.6 million in FY2018, \$29.8 million in FY2019, and \$31.7 million in FY2020.⁹² DOD announced in its FY2021 congressional budget justification document that it intended to zero out the Mentor-Protégé Program's \$29.7 million in funding (i.e., transfer the funds to other uses) in FY2021, and "shift from a cost reimbursable program to an allowable cost program to attract and expand participation in the MPP."⁹³ However,

contractor. 48 C.F.R. §252.232-7005.

⁸⁸ 48 C.F.R. Ch. 2, Appendix I, I-110.1(d)(1)-(3). Subcontracts awarded to certain current or former protégés also count toward these goals. See 48 C.F.R. §252.219-7003(c).

⁸⁹ 48 C.F.R. Ch. 2, Appendix I, I-108(a)(4); and 48 C.F.R. Ch. 2, Appendix I, I-109(a)&(b).

⁹⁰ Previously, P.L. 114-92, the National Defense Authorization Act for Fiscal Year 2016, had extended the DOD Mentor-Protégé Program's authorization through FY2018 for the formation of new agreements, and FY2021 for the reimbursement of incurred costs under existing agreements.

⁹¹ SBA, "Small Business Mentor Protégé Program," 81 *Federal Register* 48564, 48565, July 25, 2016

⁹² DOD, Office of the Secretary of Defense, "Fiscal Year (FY) 2018 Budget Submission: Defense Wide Justification Book Volume 1 of 2," February 2017, Exhibit P-40, Budget Line Item Justification: PB 2017 Office of the Secretary of Defense, at http://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2018/budget_justification/pdfs/02_Procurement/OSD_0300D_FY18_PB_FINAL.pdf; DOD, Office of the Secretary of Defense, "Fiscal Year (FY) 2019 Budget Submission: Defense Wide Justification Book Volume 1 of 2," February 2018, Exhibit P-40, Budget Line Item Justification: PB 2019 Office of the Secretary of Defense, at http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2019/budget_justification/pdfs/02_Procurement/U_PROcUREMENT_MasterJustificationBook_Defense-Wide_PB_2019.pdf; and DOD, Office of the Secretary of Defense, "Fiscal Year (FY) 2020 Budget Submission: Defense Wide Justification Book; Procurement: Office of the Secretary of Defense," March 2019, Exhibit P-40, Budget Line Item Justification: PB 2020 Office of the Secretary of Defense, at https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/budget_justification/pdfs/02_Procurement/13_0300_OSD_PB2020.pdf.

⁹³ DOD, Office of the Secretary of Defense, "Department of Defense Fiscal Year (FY) 2021 Budget Estimates: Defense Wide Justification Book Volume 1 of 2," February 2020, Exhibit P-40, Budget Line Item Justification: PB 2021 Office

P.L. 116-260, the Consolidated Appropriations Act, 2021, included a provision that prevents DOD from zeroing out the program by requiring DOD to use the program's appropriated funds "solely for the purpose of implementing a Mentor-Protégé Program developmental assistance agreement pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991."

Other Agency-Specific Mentor-Protégé Programs

Other agencies, like 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 SBA's Mentor-Protégé Program.

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**. Note that while this report describes these programs as they presently exist, certain changes may be made to these programs in light of the requirements of the National Defense Authorization Act for FY2013 (P.L. 112-239). This legislation generally requires that agency-specific mentor-protégé programs be approved by the SBA pursuant to regulations that would require such programs to address, among other things, (1) eligibility for program participants, (2) the types of developmental assistance provided to protégés, (3) the length of mentor-protégé relationships, (4) the benefits that may accrue to the mentor as a result of program participation, and (5) the reporting requirements during and following program participation.

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.⁹⁴ 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.⁹⁵

As of September 15, 2020, DHS had 39 active mentor-protégé agreements involving 32 mentors and 39 protégés.⁹⁶ Seven mentors each had 2 protégés, and 25 mentors each had 1 protégé.⁹⁷ The DHS program does not receive a separate funding appropriation.

of the Secretary of Defense, at https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/budget_justification/pdfs/02_Procurement/PROC_Vol1_DW_PROC_PB21_Justification_Book_Final.pdf.

⁹⁴ DHS, "Mentor-Protégé Program," at <https://www.dhs.gov/mentor-protege-program>; and DHS, "Department of Homeland Security Acquisition Regulation," 68 *Federal Register* 67868-67870, December 4, 2003.

⁹⁵ DHS, "Mentor-Protégé Program," at <https://www.dhs.gov/mentor-protege-program>.

⁹⁶ DHS, "Mentor-Protégé Companies," at <https://www.dhs.gov/mentor-protege-companies> (hereinafter DHS, "Mentor-Protégé Companies").

⁹⁷ DHS, "Mentor-Protégé Companies."

Regulations Governing the DHS Mentor-Protégé Program

Mentors are “large prime contractors capable of providing developmental assistance.”⁹⁸ Protégé firms can be small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, “small disadvantaged businesses,”⁹⁹ and women-owned small businesses.¹⁰⁰ 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).¹⁰¹ 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.¹⁰²

Participant Benefits

Participation as a mentor in the DHS Mentor-Protégé Program may serve as a source selection factor or subfactor in certain negotiated procurements,¹⁰³ potentially giving mentor firms an advantage over nonmentors 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.¹⁰⁴ Mentors are also eligible for an annual award presented by DHS to the firm providing the most effective developmental support to a protégé.¹⁰⁵

Recent Developments

During the 116th Congress, H.R. 4727, the Department of Homeland Security Mentor-Protégé Program Act of 2019, was passed by the House by voice vote on December 9, 2019. The bill would have, among other provisions, provided statutory authorization for DHS’ Mentor-Protégé Program, allow historically black colleges and universities and minority institutions of higher education to participate in the program, and establish an annual reporting requirement concerning the program’s activities and outcomes to the House Committees on Homeland Security and Small Business.¹⁰⁶

⁹⁸ 48 C.F.R. §3052.219-71(b)(1).

⁹⁹ “Small disadvantaged businesses” (SDBs) are those owned and controlled by socially and economically disadvantaged individuals. All SBA 8(a) Business Development Program participating 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.

¹⁰⁰ 48 C.F.R. §3052.219-71(b)(2).

¹⁰¹ 48 C.F.R. §3052.219-71(b)(3).

¹⁰² DHS, “Mentor-Protégé Program Details,” at <http://www.dhs.gov/xlibrary/assets/opnbiz/osdbu-mentor-protege-details.pdf>.

¹⁰³ 48 C.F.R. §3052.219-72.

¹⁰⁴ 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.”)

¹⁰⁵ DHS, “Mentor-Protégé Program Details,” at https://www.dhs.gov/sites/default/files/publications/Mentor-Prot%C3%A9g%C3%A9%20Program%20Details_0.pdf.

¹⁰⁶ A companion bill, S. 4251, the Department of Homeland Security Mentor-Protégé Program Act of 2020, was introduced in the Senate on July 21, 2020.

The bill was reintroduced during the 117th Congress on January 1, 2021 (H.R. 408, the Department of Homeland Security Mentor-Protégé Program Act of 2021) and referred to the House Committee on Homeland Security.

Table 1. Other Agencies with Agency-Specific Mentor-Protégé Programs

Agency	Eligible Protégés	Incentives for Mentors
Department of Energy 48 C.F.R. Subpart 919.70 (active, SBA approved)	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 (not active)	Small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; small disadvantaged 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 (not active)	Small businesses; 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 (nonmonetary)
Department of the Treasury 48 C.F.R. Subpart 1019.202-70 (not active)	Small businesses; women-owned small businesses; 8(a) firms and other small disadvantaged businesses; veteran-owned small 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 Agency mentoring award (nonmonetary)
Department of Veterans Affairs 48 C.F.R. Subpart 819.71 (not active)	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 (nonmonetary) Invitation to mentor-protégé annual conference

Agency	Eligible Protégés	Incentives for Mentors
Federal Aviation Administration FAA Mentor-Protégé Program <i>available at</i> http://www.sbo.faa.gov/MentorProtege.cfm (active, SBA approval not required)	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” ^a
National Aeronautics and Space Administration 48 C.F.R. Subpart 1819.72 (active, SBA approved)	Small disadvantaged businesses; women-owned small businesses; HUBZone small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; historically black colleges and universities; minority institutions; nonprofit agencies employing persons who are “blind or severely disabled”	May count costs of development assistance provided to protégés toward subcontracting plan Costs incurred in providing developmental assistance to protégés may be considered in determining indirect costs rates for reimbursement Eligible to earn separate award fees associated with the provision of developmental assistance to NASA SBIR Phase II protégés
U.S. Agency for International Development 48 C.F.R. Subpart 719.273 (not active)	Small businesses; small disadvantaged small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses; 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 (nonmonetary) 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.

DOT Funding Recipients’ Mentor-Protégé Programs

Department of Transportation (DOT) regulations authorize recipients of certain federal transportation funding 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.”¹⁰⁷ These programs are designed “to further the development of DBEs, including but not limited to assisting them to move into nontraditional areas of work or compete in the marketplace outside the DBE program, via the provision of training and assistance.”¹⁰⁸

¹⁰⁷ 49 C.F.R. §26.35(b).

¹⁰⁸ U.S. Department of Transportation, “DBE Final Rule, Appendix D to Part 26 - Mentor-Protégé Program Guidelines,” at <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/appendix-d-to-part-26-mentor-protege-program-guidelines>. Recipients of DOT funding are particularly encouraged to use mentor-protégé

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.¹⁰⁹ Those in the Illinois Department of Transportation Mentor-Protégé Program similarly may provide training and development, technical and management assistance, personnel, financial assistance, and equipment to their protégés.¹¹⁰

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.¹¹¹ The DOT program does not receive a separate funding appropriation.

“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; and 49 C.F.R. §26.67.

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 as a protégé in a mentor-protégé arrangement.¹¹²

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

programs to assist DBEs in performing work outside of specific fields in which DBEs are “overconcentrated.” 49 C.F.R. §26.33(b).

¹⁰⁹ Ohio Department of Transportation Mentor/Protégé Program, p. 5, at https://www.fhwa.dot.gov/resourcecenter/teams/civilrights/odot_mentor.pdf.

¹¹⁰ Illinois Department of Transportation, Mentor-Protégé Program Guidelines, at <https://idot.illinois.gov/Assets/uploads/files/Doing-Business/Manuals-Guides-&-Handbooks/OBWD/Mentor-Protege/Mentor%20Protege%20Guidelines%20Revised%202014.pdf>.

¹¹¹ DOT, Office of Small and Disadvantaged Business Utilization, telephone consultation, March 1, 2011.

¹¹² 49 C.F.R. Part 26, App'x D, at C.

provided by the mentor to the protégé.”¹¹³ 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. Services provided by the mentor may be reimbursable if these services and any associated costs are “directly attributable and properly allowable.”¹¹⁴

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.¹¹⁵ These regulations also prohibit a non-DBE mentor firm from receiving DBE credit for using its own protégé on more than every other contract performed by the protégé.¹¹⁶ 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.¹¹⁷ 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, but primarily because these programs help small businesses become competitive federal contractors which, in turn, creates and retains jobs. Given the Coronavirus Disease 2019 (COVID-19) pandemic’s widespread adverse economic impact on the national economy and SBA’s recent merger of the 8(a) Mentor-Protégé Program and All Small Mentor-Protégé Program, it seems likely that mentor-protégé programs will remain subject to congressional oversight or proposed legislation during the 117th Congress.

Also, since August 24, 2016, federal agencies sponsoring an agency-specific mentor-protégé program have been required to report annually to the SBA specific information, such as the number and type of small business participants, the assistance provided, and the protégés’ progress in competing for federal contracts.¹¹⁸ This information could prove useful to Congress as it conducts oversight of these programs.

In addition, Congress could specify additional information that the SBA, and other federal agencies, must maintain and report annually to Congress concerning their mentor-protégé programs. For example, DOD has historically been required to report the following information regarding its mentor-protégé program: (1) the number of mentor-protégé agreements entered into during the fiscal year; (2) the number of mentor-protégé agreements 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, approved during the fiscal year that 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 made during the fiscal year,

¹¹³ 49 C.F.R. Part 26, App’x D, at (B)(1).

¹¹⁴ 49 C.F.R. Part 26, App’x D, at (B)(2).

¹¹⁵ 49 C.F.R. §26.35(b)(2)(i).

¹¹⁶ 49 C.F.R. §26.35(b)(2)(ii).

¹¹⁷ DOT, “DBE Final Rule, Section 26.35 - What Role do Business Development and Mentor-Protégé Programs Have in the DBE Program?” at <http://www.osdbu.dot.gov/DBEProgram/final/final19.cfm>.

¹¹⁸ SBA, “Small Business Mentor Protégé Program,” 81 *Federal Register* 48590, July 25, 2016.

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.¹¹⁹

¹¹⁹ 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

	SBA	DOD	DHS	DOT
Primary focus	Contracts	Subcontracts; suppliers	Subcontracts	Federally funded contracts
Eligible mentors	Large and small firms; agricultural cooperatives	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 firms; agricultural cooperatives	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 and 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	Assistance in performing prime contracts with the government in the form of joint ventures Financial assistance in the form of equity investments or loans Subcontracts Technical or management assistance	Advance and progress payments Award of subcontracts on a noncompetitive basis Investments in protégé firm in exchange for ownership interests Loans Assistance in general business management, engineering and technical matters, etc.	Rent-free use of facilities or equipment; property Temporary assignment of personnel to protégé for training Financial and organizational management Overall business management, planning, and development Technical assistance	Varies by program, but can include: training and development; technical and management assistance; personnel; financial assistance; and equipment

Incentives for mentor firms	Assistance counts toward subcontracting goals Can form joint venture with protégé that may be eligible for other small business contracts May acquire ownership of up to 40% in protégé firm Can receive incentives in contract evaluations	Reimbursement of certain developmental assistance costs Unreimbursed development costs credited toward subcontracting goals Can award subcontracts on a noncompetitive basis to the protégé	Participation in mentor-protégé program can serve as an evaluation factor in negotiated procurements Costs incurred in providing assistance to protégé count toward subcontracting goals Agency award for best mentor	Can generally count the amount of assistance provided to protégés toward goals for contracting or subcontracting with DBEs Certain assistance costs may be reimbursed
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Source: Congressional Research Service, based on various sources cited in this report.

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