

## **May 2nd-Updated Section-by-Section: Giving Disadvantaged Business Opportunities for Success Act of 2022**

### **Section 1-Short Title**

This section establishes the title of this Act as the “Giving Disadvantaged Business Opportunities for Success” Act.

### **Section 2-Table of Contents**

This section contains a table of contents outlining the different sections contained in the legislation and their order.

### **Section 3-Congressional Findings on the Importance of Disadvantaged Businesses**

This section details Congressional findings that support the need for the continuation of the USDOT disadvantaged business enterprise (DBE) program, the USDOT airport concessionaire disadvantaged business enterprise (ACDBE) program, and the Small Business Administration 8(a) disadvantaged business development program to address race and gender discrimination in federal transportation-related businesses and federal government contracting.

### **Section 4-Definitions**

This section defines several key terms used in the Act including “Administrator”, “Secretary”, “Disadvantaged Business Enterprise”, “Airport Concession Disadvantaged Business Enterprise (ACDBE)”, “Concerned Operating Administration”, “Recipient”, “Prime Contractor”, “Small Business Development Center”, and “Disadvantaged Business Enterprise Advisory Committee”, and “Small Business Transportation Resource Center”.

### **Section 5-Severability**

This section contains a severability clause to keep the rest of the legislation intact in case any of the legislation’s provisions get struck down in a federal court.

## **Title I-Department of Transportation**

### **Section 101-Update to USDOT DBE and ACDBE Net Worth Caps**

This section requires the USDOT Secretary within one year to adjust the existing DBE and ACDBE net worth caps of \$1.32 million for the inflation that has occurred since the cap was last adjusted in 2011.

This selection further requires additional adjustments for inflation every year. The first additional adjustment would take place at the same time as when the SBA Administrator makes its first additional adjustment to the SBA net worth cap for inflation.

Going forward, the USDOT Secretary would be required to update the DBE and ACDBE net worth caps for inflation at the same annual interval that the SBA Administrator updates the SBA disadvantaged business net worth caps.

This section further requires the USDOT Secretary to use the inflation metric that the SBA Administrator chooses in making the adjustments to the DBE and ACDBE net worth caps to ensure that the two agencies use the same inflation metric.

### **Section 102-Update to USDOT Disadvantaged Business Enterprises Size Standards & ACDBE Size Standards**

This section amends the USDOT definition for a “small business concern” for highway, public transit, and ACDBEs to be fully consistent with the definition used by the Small Business Administration under the Small Business Act.

### **Section 103-Annual Gross Receipts Timeline For DOT DBEs**

This section amends the Infrastructure Investment and Jobs Act to increase the gross receipts look-back timeline that a business can use to qualify as a “small business” for the USDOT DBE program from 3 years to 7 years.

This section also amends the ACDBE federal regulations (Part 23, Title 49 of the Code of Federal Regulations) to adjust the gross receipts timeline to qualify as an ACDBE from 3 to 7 years to match the amendment to the surface transportation gross receipts timeline.

### **Section 104-Definition of Assets Under Department of Transportation Personal Net Worth Test**

This section requires the USDOT Secretary to update the assets excluded from the personal net worth test for both DBEs and ACDBEs to match the assets excluded under the Small Business Administration’s personal net worth test under the Small Business Act.

This update incorporates the additional assets excluded in Section 204 of this legislation dealing with the personal net worth test under the Small Business Act (owners retirement savings accounts, owners investments in real-estate other than

primary personal residences; and owners equity in businesses that are not certified as Section 8(a) businesses.)

### **Section 105-Additional Funding for Department of Transportation Minority Resource Center**

This section authorizes \$25 million a year for the Department of Transportation minority resource center (Section 332, Title 49 United States Code). The minority resource center is the entity through which DOT funds its Small Business Transportation Resource Centers (SBTRC).

Directs the Secretary to use any additional money that's authorized to establish new Small Business Transportation Resource Centers and plus up the funding amounts of existing Small Business Transportation Resource Centers.

Further establishes a goal that the minority resource center establish a Small Business Transportation Resource Center in every State.

### **Section 106-Improvements to Department of Transportation Disadvantaged Business Enterprise and ACDBE Mentor-Protege Programs**

This section requires certain large entities (State Departments of Transportation, large transit agencies and regional transportation entities, and entities that oversee large hub airports) with DBE programs to have a mentor-protégé program.

Further requires the USDOT Secretary to issue quality control standards for those programs. Lays out specific criteria that these quality control standards should cover.

Requires the Secretary to periodically audit mentor-protégé programs and use those findings to inform the quality control standards.

Lastly, requires the USDOT Secretary to make clear that a DBE program is not in compliance unless the recipient's DBE program has the required mentor-protégé program and it meets the quality control standards set by the Secretary.

### **Section 107-Department of Transportation Disadvantaged Business Enterprise and ACDBE Certification Universal Recognition.**

This section directs the USDOT Secretary to require States and recipients to recognize DBE and ACDBE certification granted by other States to businesses seeking such certification as part of their DBE & ACDBE programs without additional procedures.

Requires States in granting certification to comply with the criteria laid out in the Infrastructure Investment and Jobs Act (IIJA) regarding DBE certification.

Allows the USDOT Secretary to regulate certain criteria for States and recipients' DBE programs in order to ensure equitable access for out of State DBEs and ACDBEs whose certification is recognized pursuant to this new requirement.

Requires the USDOT Secretary to periodically audit States and recipients to ensure they are complying with this universal certification recognition requirement.

Lastly, requires the USDOT Secretary to make clear that a DBE or ACDBE program is not in compliance with federal regulations unless the recipient's DBE or ACDBE program recognizes DBE or ACDBE certification granted by another State without additional procedures.

#### **Section 108-Incentives for Excellence in Disadvantaged Business Enterprise programs and ACDBE programs.**

This section requires the USDOT Secretary to annually recognize the entities with the best DBE and ACDBE programs through awards.

Lays out criteria the Secretary shall use in making such awards and allows the Secretary to adjust the criteria based on demographic and geographic characteristics.

Requires the USDOT Secretary to give discretionary grant preferences to those entities that the Secretary recognizes as having the best DBE and ACDBE programs.

Requires the USDOT Secretary to include such discretionary grant preferences in federal notice of funding opportunities or availability (NOFO's and NOFA's).

Applies these discretionary grant preferences to any NOFO or NOFA issued by the USDOT Secretary after the date that this legislation is enacted.

Requires the USDOT Secretary to post on its website the list of entities that got recognized with awards and provide information and links to their DBE programs.

#### **Section 109-Reporting Requirements and Standards for Waivers and Exemptions.**

This section requires the USDOT Secretary to require entities (official term is “concerned operating administration” and federal model agencies that grant waivers or exemptions for/from DBE requirements to a federal funding recipient to report the waiver or exemption to the Secretary.

This report shall include certain information like the name of the recipient that got the waiver or exemption, the duration of the waiver or exemption, why the waiver or exemption was granted, and the public participation that was conducted by the recipient before the waiver or exemption was granted.

Requires the USDOT Secretary to post all these waivers and exemptions on a publicly accessible database within 90 days of receiving the information.

Requires the USDOT Secretary within two years to set tighter standards for concerned operating administration and federal model agencies when they are considering waiver or exemption requests from recipients from DBE requirements in order to minimize the improper granting of waivers and exemptions.

Requires the USDOT Secretary to audit concerned operating administration and federal model agencies to ensure they are complying with these new requirements.

### **Section 110-Advisory Committee on Disadvantaged Business Enterprises & ACDBEs.**

This section directs the Secretary to establish a Disadvantaged Business Enterprise & ACDBE Advisory Committee to provide a forum for stakeholders, including DBEs and their advocates, to discuss and make policy recommendations to Congress with respect to advancing Disadvantage Businesses’ success in the transportation infrastructure construction and building industries.

This section also requires the Advisory Committee to submit a report to Congress within two years with policy recommendations on policy changes that would advance DBEs. This section also allows the Advisory Committee to make further recommendations and issue reports at the appropriate time, as determined by the Advisory Committee.

Sunsets the Advisory Committee after five years after the date of the Advisory Committee is established, but leaves open the option to reauthorize the Advisory Committee.

## **Title II-Small Business Administration**

### **Section 201-Update to Small Business Administration Disadvantaged Business Net Worth Caps**

This section updates the U.S. Code of Federal Regulations to increase the Small Business Administration economically disadvantaged individual net worth cap to the initial level that the USDOT Secretary adjusts the DOT DBE net worth cap too.

This section also requires the Administrator of the Small Business Administration (“Administrator”) to update that net worth cap amount for inflation going forward every year after the initial adjustment.

Requires the Administrator to determine, after seeking public input, the appropriate inflation metric to use in updating the net worth cap amount of inflation. Requires the Administrator to consult with the USDOT Secretary on the appropriate inflation metric. Further requires that the Administrator consider using the consumer price index as an inflation metric.

This section also requires the Administrator to conduct a study on making the net worth evaluation done on a regional basis to account for regional disparities of wealth and report back to Congress with the Administrator’s recommendations. The Administrator would have to consult with relevant stakeholders, including socially and economically disadvantaged small business owners and organizations that advocate for these business owners.

### **Section 202-Update to Disadvantaged Business Size Standard**

This section requires the Administrator to review the current size standards under the Small Business Act for Sector 23 of the North American Industry System Classification Codes (Construction); and Sector 48 of the North American Industry System Classification Codes (Transportation and Warehousing).

The Administrator would be required to update its current size standard methodology for these two classifications after taking public comment on the existing methodology.

Further requires the Administrator to make adjustments to the current small business size standards for Sector 23 and Sector 48 and assume that the increased infrastructure investment from the IIJA has changed things and that therefore the

size standards should be increased to at least 150% of the current small business size standard for these two classifications, unless that increase would jeopardize the current 8(a) Small Business Development program.

### **Section 203-Annual Gross Receipts Timeline Under the Small Business Act**

This section amends the Small Business Act to increase the gross receipts look-back timeline that a business can use to qualify as a “small business” under the Small Business Act from 5 years to 7 years.

### **Section 204-Definition of Assets Under the Small Business Act**

This section amends the Small Business Act to add the following items to the definition of assets excluded from the net-worth calculation done for the purposes of qualifying as a disadvantaged business under the Small Business Administrator’s 8(a) program:

- owners retirement savings accounts;
- owners investments in real-estate other than primary personal residences; and
- owners equity in businesses that are not certified as Section 8(a) businesses.

### **Section 205-Small Business Development Centers Partnership with the United States Department of Transportation**

This section requires the Administrator and USDOT Secretary to enter into a cooperative agreement allowing DBEs or ACDBEs to have access to the current small business development centers run by the Small Business Administration in the home state of the DBE or ACDBEs for purposes of getting expertise and additional resources to grow their DBEs or ACDBEs.

Directs each small business development center to partner with USDOT’s small business transportation resource centers under the cooperative agreement to carry out a program helping small businesses either enter into or expand in the transportation construction industry by obtaining the necessary capital, and financial and business expertise.

Requires the cooperative agreement to encourage collaborations between small business development centers and nonprofit organizations with relevant transportation construction or DBE or ACDBE expertise.

Directs the USDOT Secretary to update requirements for recipients that have DBE or ACDBE programs to make sure that a recipient’s DBE or ACDBE program lets

DBEs or ACDBEs know about the technical assistance they can get at small business development centers.

### **Section 206-Small Business Development Centers Partnerships With Nonprofits**

This section clarifies that small business development centers can partner with nonprofits as part of their existing authorization to enter into public-private partnerships to carry out their mission.

Requires each small business development center to establish a process whereby nonprofits can apply at least once every two years to partner with the small business development center in ways that would further the mission or expertise of the small business development center.

Allows a small business development center to transfer or award funds to a nonprofit for which it has a partnership with as long as those funds are used for activities consistent with an official agreement the small business development center has with that nonprofit.