

# United States Senate

WASHINGTON, DC 20510

September 22, 2008

The Honorable Santanu K. Baruah  
Acting Administrator  
U.S. Small Business Administration  
409 Third Street, SW  
Washington, D.C. 20416

Dear Acting Administrator Baruah:

As female Senators, we oppose the current Small Business Administration's (SBA) proposed rule (72 Fed. Reg. 73,295) to implement the women's procurement program. This rule undermines seven-plus years of bipartisan Congressional efforts to help women-owned businesses compete on a level playing field for Federal contracts. We are deeply concerned that the proposed rule fails to adequately and effectively address the needs of women-owned businesses, as Congress initially intended years ago.

Congressional intent is clear on this issue and the proposed rule will hurt, not help, women-owned businesses across our nation. The Senate Appropriations Committee recently unanimously approved language in the Fiscal Year 2009 Financial Services and General Government Appropriations bill which would prohibit the SBA from utilizing funds in the bill to implement the proposed rule. That provision reiterates Senate support for having the SBA develop a rule that adheres to Congressional intent.

Women own almost a third of all United States businesses. These business owners are mothers, wives, sisters and hardworking entrepreneurs who contribute to the vital growth of our nation's economy. These women deserve a fair opportunity to participate in Federal contracts. In Fiscal Year 2006, women-owned businesses were only awarded 3.4 percent of Federal contracting dollars, resulting in our nation failing to meet the 5 percent government-wide contracting goal by nearly thirty-three percent. To help address the underrepresentation of women entrepreneurs in the government marketplace in 2000 Congress included a provision in Public Law 106-554 which established the women's procurement program. Now, over seven years later, the SBA produced a fundamentally flawed proposed rule in its insufficient attempt to implement the women's program.

The SBA's proposed rule has two pivotal flaws which hinder it from functioning as Congress originally intended. First, the proposed rule identifies merely four business industries, out of roughly 140, in which women-owned small businesses are under-represented and eligible for set-asides. According to the Central Contractor Registration, this gross disparity means roughly a mere 1,238 businesses across the entire nation - or only two percent of all women-owned small business contractors - would be eligible to participate in the Women's Procurement Program.

Second, for the SBA's proposed rule to be implemented, individual Federal agencies must first publicly admit to a history of gender discrimination. We find it difficult, if not impossible, to envision a scenario where a Federal agency would make such an admission. Neither the women's procurement statute, nor the constitution requires either the SBA's cramped

interpretation of the statistical data or its requirement for individual agency findings of discrimination.

In closing, it is our understanding that the SBA has recently sent a final draft of the women's procurement rule to the Office of Management and Budget (OMB). It is our hope and expectation that a meaningful rule was created; one which greatly expands the categories of industry covered by the program and removes the requirement for agency findings of past discrimination. However, if the final rule is not improved to completely address these concerns, we would respectfully request that your agency withdraw the rule from OMB and refrain from promulgating a final rule this year. Given the numerous problems and concerns with the published rule, a delay would allow the next Administration, regardless of political affiliation, to have the opportunity to review and evaluate the rule before it becomes final. This would ensure that a meaningful and effective procurement program is implemented - one which follows Congressional intent and, satisfies our obligation to assist women-owned small businesses.

Sincerely,

Olympia J. Snowe

Mary Landrieu

Elizabeth Dole

Blanche L. Lincoln

Susan M Collins

Mario Cantwell

Kay Bailey Hutchison

Robert C. Meacham

Lisa Murkowski

Dianne Feinstein

Barbara Boxer

Patty Murray

Hillary Rodham Clinton

Rebecca Stabenow

Angie Klobuchar

Dan McCard