

SMALL BUSINESS RUNWAY EXTENSION ACT OF 2018

SEPTEMBER 12, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHABOT, from the Committee on Small Business,  
 submitted the following

R E P O R T

[To accompany H.R. 6330]

The Committee on Small Business, to whom was referred the bill (H.R. 6330) to amend the Small Business Act to modify the method for prescribing size standards for business concerns, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. PURPOSE AND BILL SUMMARY

The purpose of H.R. 6330, the “Small Business Runway Extension Act of 2018,” is to help advanced-small contractors successfully navigate the middle market as they reach the upper limits of their small size standard.

H.R. 6330 lengthens the time in which the Small Business Administration (SBA) measures size through revenue, from the average of the past 3 years to the average of the past 5 years. This modest modification of SBA's size formula is designed to reduce the impact of rapid-growth years which result in spikes in revenue that may prematurely eject a small business out of their small size standard. This legislation will allow small businesses at every level more time to grow and develop their competitiveness and infrastructure, before entering the open marketplace. The bill will also protect federal investment in SBA's small business programs by promoting greater chances of success in the middle market for newly-graduated firms, resulting in enhanced competition against large prime contractors.

## II. BACKGROUND AND NEED FOR LEGISLATION

H.R. 6330 was introduced by Rep. Steve Knight (R-CA) and Rep. Yvette Clarke (D-NY) on July 11, 2018. Background on each of these provisions will be provided along with an explanation of the need for legislation.

### A. DEFINING A SMALL BUSINESS—WHY IS THIS IMPORTANT?

Key to understanding the mid-size issue is to first understand the definition of a small business and the relevance of this definition to federal procurement. Section 3(a)(1) of the Small Business Act, 15 U.S.C. 632(a)(1), provides, in pertinent part: “[a] small business concern . . . shall be deemed to be one that is independently owned and operated and which is not dominant in its field of operation.”<sup>1</sup> To calculate the size of a small business, the SBA is authorized to consider number of employees, dollar volume of business,<sup>2</sup> net worth,<sup>3</sup> net income, other factors, or any combination of those factors. In sum, Congress has granted the Administrator substantial discretion in calculating the size of a small business, provided that the business is independently owned and operated and not dominant in its field.

The SBA size standards are important because they establish eligibility for a variety of small business assistance programs, including a panoply of government contracting programs designed to assist small businesses in obtaining federal government contracts. The federal government spends trillions of dollars per year,<sup>4</sup> which includes hundreds of billions of dollars spent on products and services.<sup>5</sup> The volume of dollars involved in federal contracting means that every firm is looking for a competitive advantage, and the small business contracting programs are one way to obtain that ad-

<sup>1</sup> Furthermore, 15 U.S.C. § 632(a)(2)(A) states that the Small Business Administration (SBA) is authorized to “specify detailed definitions or standards by which a business concern may be determined to be small for purposes of this Act or any other Act”.

<sup>2</sup> Current SBA size standards use gross revenue as a measure of dollar volume. Nothing in the Act requires reliance on dollar volume and other measures could be used.

<sup>3</sup> The net worth standard is used, for among other purposes, to determine eligibility for investments made by small business investment companies, loans made pursuant to Title V of the Small Business Investment Act of 1958, and for participation in the program established by § 8(a) of the Small Business Act.

<sup>4</sup> The federal government spent \$3.98 trillion in fiscal year 2017. USASPENDING.GOV, <https://www.usaspending.gov/#/>.

<sup>5</sup> The report states that federal agencies procured approximately \$438 billion in products and services in fiscal year 2015. GAO, CONTRACTING DATA ANALYSIS: ASSESSMENT OF GOVERNMENT-WIDE TRENDS 5 (GAO-17-244SP) (2017).

vantage. In order to diversify the industrial base, create jobs, and increase competition, contracting preferences have been extended to small business participants in the 8(a) Business Development program, the HUBZone program, the Service Disabled Veteran-Owned Small Business program, and the Woman-Owned Small Business Program.<sup>6</sup>

#### B. THE “OTHER-THAN-SMALL” CONUNDRUM

The federal government recognizes two categories of businesses—“small” and “other-than small.” While the SBA defines what a “small” business is, there is no federal definition for “other-than-small.” Therefore, this category can encompass firms that barely exceed the SBA’s small business size standards up to the multi-billion dollar household names. For example, the upper limit of the SBA’s small business size standard for information technology (IT) companies<sup>7</sup> is \$27.5 million. An IT company that barely surpasses that amount, for example at \$28 million, or even significantly surpassing that amount at \$200 million, are considered “other-than-small” and therefore required to compete against each other and the dominant IT contractors. Leidos and Lockheed Martin Corp. are among the largest IT government contractors and boast an average of \$6.8 billion in annual revenue each.<sup>8</sup>

This creates a dilemma for newly-graduated firms—they no longer qualify for small business contracts and no longer eligible for SBA assistance, yet must compete in the open market against these titans of industry. In many cases, firms caught in this circumstance face difficult choices. They may choose to sell, often at a devalued rate than they had previously held as a small company due to the loss of that small size status.<sup>9</sup> If these businesses are not acquired and subsumed into the supply chain of larger companies, they may choose to modify their business model, focusing on subcontracting opportunities with other small or large companies.<sup>10</sup> This path negates the firm’s ability to gain critical project management skills needed to continue growth.<sup>11</sup> Finally, they may fail or deliberately choose to impede their own success so that they may remain small and eligible for small business set-aside contracts.<sup>12</sup>

#### C. CHALLENGES FACING MID-SIZE BUSINESSES

While there are businesses that have successfully maintained their mid-size status, many firms venturing into the middle market face a heavily uncertain future and many threats to success. The Committee on Small Business examined a number of these chal-

<sup>6</sup> 15 U.S.C. § 631(a), 644(a).

<sup>7</sup> NAICS code 541519, “Other Computer Related Services” is an often used industry code for IT services. SMALL BUS. ADMIN., <https://www.sba.gov/sites/default/files/files/Size—Standards—Table.pdf>.

<sup>8</sup> WASHINGTON TECH., <https://washingtontechnology.com/toplists/top-100-lists/2017.aspx>.

<sup>9</sup> *Leaving the Nest: Challenges Facing Advanced Small Businesses: Roundtable Before the H. Comm. on Small Bus.*, 115th Cong. (2018) (statement of multiple roundtable participants), on file with the Committee.

<sup>10</sup> Tonya Saunders, The mid-tier paradox: too small to compete, too large to survive, BLOOMBERG GOV. (May 13, 2016), <https://about.bgov.com/blog/the-mid-tier-paradox-too-small-to-compete-too-large-to-survive/>.

<sup>11</sup> *Id.*

<sup>12</sup> *Supra* note 9.

lenges during a roundtable held on November 14, 2018<sup>13</sup> which are discussed, in brief, in this memorandum.

*a. Lack of empirical data examining the failure or success rate of small businesses exceeding their small size*

Because there is no federally-recognized definition of “mid-size,” there is a lack of empirical data tracking the trajectory of small firms as they exceed their size standard.<sup>14</sup> As such, potentially critical economic indicators remain uncaptured, such as: the success or failure rate of small businesses that grow out of their small status, the number of jobs created by growing small firms, industries that promote or inhibit middle-market growth, and many other factors.

Ultimately, this lack of data limits Congressional insight into how effective SBA’s contracting programs are in meeting national economic policies geared towards encouraging small business growth and job creation.<sup>15</sup> Certain metrics that may be helpful to track, specifically regarding evaluating the impact of SBA’s contracting programs, may include: the success rate of newly-graduated firms competing in the open market, firms that deliberately scale back down to the small size standard, firms that merge or become acquired, and other metrics.

*b. Newly-graduated small businesses are less able to compete against dominate large companies*

The “other-than-small” category includes firms that have just graduated out of their small business size by mere dollars, through the entire middle-market spectrum, to also include the large, billion-dollar companies. These large companies have several competitive advantages over small and mid-size firms, making true competition illusory. For instance, large companies have vast past performance qualifications, strong brand-name recognition and agency ties, as well as a multitude of professional certifications, clearances, and greater financial resources.<sup>16</sup> Small and mid-size businesses cannot afford to maintain these resources, leaving them at a considerable disadvantage. These advantages by large firms can have a chilling effect, potentially freezing out emerging advanced-small companies.<sup>17</sup> While larger mid-size firms have a stronger foothold in the middle market, they still have limited bid and proposal budgets and many do not have specialized teams dedicated to business development or communications and marketing.<sup>18</sup> Large companies have a solid infrastructure and can afford teams of personnel dedicated to proposal development, graphic design, protests, pipeline development, legal teams, and other specializations.<sup>19</sup>

Additionally, large businesses, which once competed primarily for large, high-dollar contracts, are now increasingly competing for contracts across the spectrum, including those contracts that are

<sup>13</sup> *Supra* TIK note 9.

<sup>14</sup> David J. Berteau, Challenges Facing Advanced Small Businesses, PROF. SERVICES COUNCIL (Dec. 14, 2017), [https://www.pscouncil.org/a/Content/2017/Challenges\\_Facing\\_Advanced\\_Small\\_Businesses.aspx](https://www.pscouncil.org/a/Content/2017/Challenges_Facing_Advanced_Small_Businesses.aspx).

<sup>15</sup> *Id.*

<sup>16</sup> *Supra* note 10.

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

<sup>18</sup> BLOOMBERG GOV., THE MID-TIER PARADOX: TOO SMALL TO COMPETE, TOO LARGE TO SURVIVE? 4 (2016).

<sup>19</sup> *Id.*

most suitable for mid-sized and advanced-small businesses.<sup>20</sup> This puts additional pressure on mid-size firms, particularly those emergent, advanced-small businesses.

*c. Going from small to other-than-small triggers certain requirements*

As contracts grow in scope and size, one large contract (i.e., a high-dollar value set-aside contract) won by a small company could catapult that firm out of its small size status. This growth out of the small size triggers certain requirements that other-than-small firms must comply with, that small firms are exempt from. For example, other-than-small firms must develop detailed subcontracting plans;<sup>21</sup> however, small businesses are exempt from this requirement. Thus, a small firm that saw a spike in revenue due to winning a large contract may not have the infrastructure and business processes prepared and in place to take on a whole host of new requirements. This may result in small business struggling to stay viable in the open market and may be one of the contributing factors to the constant shuffling between small/other-than-small status that is evident between the upper levels of the small size bracket, and the lower levels of the mid-tier bracket.<sup>22</sup>

*d. The federal procurement landscape creates inherent challenges to growth*

Due to evolving federal procurement practices, small and mid-tier companies are facing a more uncertain climate. One of the challenges small and mid-size firms face is a shrinking federal market. As budgets have shrunk,<sup>23</sup> the use of contract consolidation and bundling has risen—this is a procurement strategy that combines several separate, smaller contracts into one unnecessarily large and complex contract, increasing the size and scope of the contract.<sup>24</sup> These contracts become prohibitive to small or mid-size businesses, and are suitable mostly for larger companies. This disadvantages emergent, newly graduated firms and smaller mid-size firms from competing on these contracts which are now too complex to suit their internal capabilities. The Federal Strategic Sourcing Initiative (FSSI), Category Management, and other executive branch initiatives continue to promote bundling and consolidation.<sup>25</sup>

Additionally, large, government-wide contract vehicles and indefinite-delivery, indefinite-quantity contracts have experienced significant growth in utilization the past several years.<sup>26</sup> Those small and mid-size businesses fortunate enough to have been

<sup>20</sup> Mark Amtower, Be prepared: GWACS, IDIQs will grow in this age of uncertainty, WASH. TECHNOLOGY (Mar. 16, 2017), <https://washingtontechnology.com/articles/2017/03/16/insights-amtower-gwac-idiq-advice.aspx>.

<sup>21</sup> 15 USC § 637(d)(4) and (6).

<sup>22</sup> *Supra* note 9.

<sup>23</sup> The federal government has reported decreased spending yearly from fiscal year 2011 to fiscal year 2016. NATIONAL CONTRACT MANAGEMENT ASSOCIATION & DELTEK, ANNUAL REVIEW OF GOVERNMENT CONTRACTING 2016 7 (2017).

<sup>24</sup> The Committee has a long history of oversight with respect to contract bundling and consolidation, as well as the initiatives used to employ these strategies, e.g., FSSI and Category Management. Further explanation is outside of the scope of this report. *Contracting and the Industrial Base II: Bundling, Goaling, and the Office of Hearings and Appeals: Hearing Before the Subcomm. on Contracting and Workforce of the H. Comm. on Small Bus.*, 114th Cong. (2015).

<sup>25</sup> *Id.*

<sup>26</sup> *Supra* note 20.

awarded a spot on these highly-competitive, long-term contracts may still be locked out of key markets or forced to subcontract by large multiple-award contracts that require overly extensive past performance requirements, such as Alliant and OASIS.<sup>27</sup> The increasing use of strict past performance quantification as an evaluation tool hinders small mid-tier companies from competing as prime vendors, essentially blocking them out of critical growth markets for years.<sup>28</sup>

Furthermore, due to budget constraints and other interagency pressures, contracting officers are increasingly expecting vendors to be able to do more with less, and in the face of uncertainty, the government tends to be risk-averse, preferring to contract with large, established contractors over small and mid-tier companies. Because of these and other changes in the procurement landscape, the diversity of contractors has drastically declined,<sup>29</sup> further limiting the choices contracting officers have. In sum, the shrinking federal market, increased use of large, government-wide contracting vehicles, and increasing use of strict past performance qualifications on these contracting vehicles limits the government's opportunity to realize a return on its investment in emergent small firms and mid-size businesses.

#### D. POTENTIAL LEGISLATION EXTENDING DEFINITION OF A SMALL BUSINESS: PROS AND CONS

The Committee engaged stakeholders in identifying potential legislation that may assist advanced-small businesses transitioning into the middle market. Proponents believe that the size standards the SBA sets for certain industries may fail to encompass many firms that are small according to statute, i.e., independently owned and not dominant in its field. Thus, the suggestion was raised to amend the Small Business Act to provide a longer time period for which a business may be qualified as small, arguing that this will improve the health of the industrial base, increase competition resulting in lower prices, and create and preserve jobs.

##### *a. Industrial base*

Proponents argue that mid-size firms are failing, as small firms that outgrow the size standards either go out of business or are acquired by large firms. An earlier study by Bloomberg Government, examining data from fiscal years 2012–16, predicted a dire outlook with weaker mid-size prospects, finding that “average annual prime contract revenue for this segment of the federal market has declined substantially . . . midsize contractors are losing market share year after year . . . pressures from both large and small companies have squeezed the mid-tier market share, and this trend doesn't show signs of slowing down in the long-term future.”<sup>30</sup>

<sup>27</sup> Description of these MACs and IDIQs such as Alliant are beyond the scope of this memorandum. BLOOMBERG GOV., THE MID-TIER PARADOX: 2018 COMPANY REPORT 6 (2018).

<sup>28</sup> *Id.* at 6, 11.

<sup>29</sup> SECTION 809 PANEL, REPORT OF THE ADVISORY PANEL ON STREAMLINING AND CODIFYING ACQUISITION REGULATIONS 171 (1 vol. 2018).

<sup>30</sup> BLOOMBERG GOV., THE MID-TIER CHALLENGE 2 (2017).

*b. Competition and price*

Proponents further argue that an increase in mid-size business presence in the market will increase competition against the larger competitors, thereby decreasing price. Given the trend towards increased use of larger, consolidated, multi-award contracts and the decline of small businesses willing to work with the federal government as described earlier in this memorandum, there is a concern that contracts will become increasingly available for the largest contractors and less so for smaller contractors. A strong middle market consisting of emergent, newly-graduated firms up to larger mid-size companies might increase competition against the biggest federal contractors and could indeed bring down prices.

*c. Creation/preservation of jobs*

When mid-size businesses are acquired by large firms, the large firm normally sheds the administrative side of the businesses—the human resources, accounting, marketing, legal, and other functions which are often duplicated at the acquiring company’s office. Thus, these jobs are lost. Proponents argue that maintaining and growing these businesses would preserve these jobs. Further, they argue that if the mid-size business continues to grow, it will also continue to add jobs, pointing out that these firms are credited with high job creation.<sup>31</sup>

*d. Inhibiting growth of small businesses*

Proponents of legislation extending the period of time a business can be considered small argue that a longer transitional period would benefit small firms who experience sudden, rapid growth in revenue, typically by winning a large contract or task order. A change in the calculation of size would help these firms sustain revenue levels under the small size threshold, allowing them the ability to develop their business plan and infrastructure to transition to mid-size more successfully, because of the increased lead-time.

### III. HEARINGS

In the 115th Congress, the Committee held one hearing examining the issues covered in H.R. 6330. On April 26, 2018, the Committee on Small Business Subcommittee on Contracting and Workforce met for a hearing titled “No Man’s Land: Middle-Market Challenges for Small Business Graduates.” This hearing examined the challenges to growth and success for businesses as they approach the upper limits of their small size standard. Witnesses included a subject matter expert representing the Montgomery County Chamber of Commerce, two advanced-small business owners, and a representative of the Federal Procurement Information Technology Alliance for Public Sector (ITAPS) Information Technology Industry Council.

<sup>31</sup>For example, the National Center for the Middle Market found that five years of middle-market data show that the middle market produces jobs 1.5 to 2 times faster than either big or small businesses, producing 3 out of 5 net new private-sector jobs. Michael Evans, Job Creation in the New Political Economy: Small Companies, Not Big Companies, Create Jobs, FORBES (Feb. 8, 2017), <https://www.forbes.com/sites/allbusiness/2017/02/08/job-creation-in-the-new-political-economy-small-companies-not-big-companies-create-jobs/#82a24949e6ec>.

## IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on July 18, 2018 and ordered H.R. 6330 favorably reported to the House. During the markup, no amendments were offered.

## V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted by voice vote to favorably report H.R. 6330 to the House at 11:31 am.



**COMMITTEE ON SMALL BUSINESS  
TALLY SHEET**

DATE: 7/18  
 BILL NUMBER: 6330  
 ROLL CALL:  
 AMENDMENT NUMBER:  
 VOTE: (AYE) (NO)

QUORUM:  
 PRESENT:

11:31 W

MEMBER	AYE	NO	NOT VOTING
Mr. Chabot, Chairman			
Mr. King			
Mr. Luetkemeyer			
Mr. Brat			
Ms. Radewagen			
Mr. Knight			
Mr. Kelly			
Mr. Blum			
Mr. Comer			
Ms. González-Colón			
Mr. Fitzpatrick			
Dr. Marshall			
Mr. Norman			
Mr. Curtis			
Ms. Velázquez, Ranking Member			
Mr. Evans			
Ms. Murphy			
Mr. Lawson, Jr.			
Ms. Clarke			
Ms. Chu			
Ms. Adams			
Mr. Espaillat			
Mr. Schneider			
VACANT			
TOTALS			

On this vote there were \_\_\_\_\_ ayes and \_\_\_\_\_ nos.

## VI. SECTION-BY-SECTION ANALYSIS OF H.R. 6330

*Section 1. Short title*

This section designates the bill as the “Small Business Runway Extension Act of 2018.”

*Section 2. Modification to method for prescribing size standards for business concerns*

This section amends Section 15 of the Small Business Act by changing the size determination of a small business concern based on the annual average gross receipts of the small business concern over the past 3 years, to the past 5 years.

## VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

At the time H.R. 6330 was reported to the House, the Congressional Budget Office had not provided a cost estimate.

## VIII. UNFUNDED MANDATES

H.R. 6330 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Public Law No. 104–4, and would impose no costs on state, local, or tribal governments.

## IX. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 6330 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

## X. OVERSIGHT FINDINGS

In accordance with clause 2(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 6330 are incorporated into the descriptive portions of this report.

## XI. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 7 of rule XII of the Rules of the House, the Committee finds that the authority for this legislation in Art. I, 8, cl.1.

## XII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 6330 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of 102(b)(3) of Public Law No. 104–1.

## XIII. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 6330 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App.2.

## XIV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 6330 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in subsections (d), (e), or (f) of clause 9 of Rule XXI of the Rules of the House.

## XV. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3 of the rule XIII of the Rules of the House, no provision of H.R. 6330 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the United States Government Accountability Office pursuant to 21 of Pub. L. No. 111-139, or a program related to a program identified in the most recent catalog of federal domestic assistance.

## XVI. DISCLOSURE OF DIRECTED RULEMAKINGS

Pursuant to clause 3 of the rule XIII of the Rules of the House, H.R. 6330 does not direct any rulemaking.

## XVII. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House, the Committee establishes the following performance-related goals and objectives for this legislation:

H.R. 6330 extends the time in which a business can be considered small as measured by SBA's size standard by modifying the calculation used to determine size. The objective is to allow the small firm additional time to build its competitiveness in order to succeed once it exceeds its small size and must enter the open marketplace, competing against much larger firms.

## XVIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause (E) of rule XIII of the rules of the House, changes in existing law made by the bill, as reported, are shown as follows: existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

## SMALL BUSINESS ACT

\* \* \* \* \*

### SEC. 3. DEFINITIONS.

#### (a) SMALL BUSINESS CONCERNS.—

(1) **IN GENERAL.**—For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.

#### (2) ESTABLISHMENT OF SIZE STANDARDS.—

(A) **IN GENERAL.**—In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act or any other Act.

(B) **ADDITIONAL CRITERIA.**—The standards described in paragraph (1) may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors.

(C) **REQUIREMENTS.**—Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

(i) is proposed after an opportunity for public notice and comment;

(ii) provides for determining—

(I) the size of a manufacturing concern as measured by the manufacturing concern's average employment based upon employment during each of the manufacturing concern's pay periods for the preceding 12 months;

(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than **[3 years]** *5 years*;

(III) the size of other business concerns on the basis of data over a period of not less than 3 years; or

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

(3) **VARIATION BY INDUSTRY AND CONSIDERATION OF OTHER FACTORS.**—When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

(4) **EXCLUSION OF CERTAIN SECURITY EXPENSES FROM CONSIDERATION FOR PURPOSE OF SMALL BUSINESS SIZE STANDARDS.**—

(A) **DETERMINATION REQUIRED.**—Not later than 30 days after the date of enactment of this paragraph, the Admin-

istrator shall review the application of size standards established pursuant to paragraph (2) to small business concerns that are performing contracts in qualified areas and determine whether it would be fair and appropriate to exclude from consideration in the average annual gross receipts of such small business concerns any payments made to such small business concerns by Federal agencies to reimburse such small business concerns for the cost of subcontracts entered for the sole purpose of providing security services in a qualified area.

(B) ACTION REQUIRED.—Not later than 60 days after the date of enactment of this paragraph, the Administrator shall either—

(i) initiate an adjustment to the size standards, as described in subparagraph (A), if the Administrator determines that such an adjustment would be fair and appropriate; or

(ii) provide a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives explaining in detail the basis for the determination by the Administrator that such an adjustment would not be fair and appropriate.

(C) QUALIFIED AREAS.—In this paragraph, the term “qualified area” means—

(i) Iraq,

(ii) Afghanistan, and

(iii) any foreign country which included a combat zone, as that term is defined in section 112(c)(2) of the Internal Revenue Code of 1986, at the time of performance of the relevant Federal contract or subcontract.

(5) ALTERNATIVE SIZE STANDARD.—

(A) IN GENERAL.—The Administrator shall establish an alternative size standard for applicants for business loans under section 7(a) and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

(B) INTERIM RULE.—Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 7(a) or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

(i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and

(ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.

(6) PROPOSED RULEMAKING.—In conducting rulemaking to revise, modify or establish size standards pursuant to this section, the Administrator shall consider, and address, and make

publicly available as part of the notice of proposed rulemaking and notice of final rule each of the following:

(A) a detailed description of the industry for which the new size standard is proposed;

(B) an analysis of the competitive environment for that industry;

(C) the approach the Administrator used to develop the proposed standard including the source of all data used to develop the proposed rule making; and

(D) the anticipated effect of the proposed rulemaking on the industry, including the number of concerns not currently considered small that would be considered small under the proposed rule making and the number of concerns currently considered small that would be deemed other than small under the proposed rulemaking.

(7) COMMON SIZE STANDARDS.—In carrying out this subsection, the Administrator may establish or approve a single size standard for a grouping of 4-digit North American Industry Classification System codes only if the Administrator makes publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

(8) NUMBER OF SIZE STANDARDS.—The Administrator shall not limit the number of size standards established pursuant to paragraph (2), and shall assign the appropriate size standard to each North American Industry Classification System Code.

(9) PETITIONS FOR RECONSIDERATION OF SIZE STANDARDS.—

(A) IN GENERAL.—A person may file a petition for reconsideration with the Office of Hearings and Appeals (as established under section 5(i)) of a size standard revised, modified, or established by the Administrator pursuant to this subsection.

(B) TIME LIMIT.—A person filing a petition for reconsideration described in subparagraph (A) shall file such petition not later than 30 days after the publication in the Federal Register of the notice of final rule to revise, modify, or establish size standards described in paragraph (6).

(C) PROCESS FOR AGENCY REVIEW.—The Office of Hearings and Appeals shall use the same process it uses to decide challenges to the size of a small business concern to decide a petition for review pursuant to this paragraph.

(D) JUDICIAL REVIEW.—The publication of a final rule in the Federal Register described in subparagraph (B) shall be considered final agency action for purposes of seeking judicial review. Filing a petition for reconsideration under subparagraph (A) shall not be a condition precedent to judicial review of any such size standard.

(E) RULES OR GUIDANCE.—The Office of Hearings and Appeals shall begin accepting petitions for reconsideration described in subparagraph (A) after the date on which the Administration issues a rule or other guidance implementing this paragraph. Notwithstanding the provisions of subparagraph (B), petitions for reconsideration of size standards revised, modified, or established in a Federal

Register final rule published between November 25, 2015, and the effective date of such rule or other guidance shall be considered timely if filed within 30 days of such effective date.

(b) For purposes of this Act, any reference to an agency or department of the United States, and the term “Federal agency,” shall have the meaning given the term “agency” by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office.

(c)(1) For purposes of this Act, a qualified employee trust shall be eligible for any loan guarantee under section 7(a) with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

(2) For purposes of this Act, the term “qualified employee trust” means, with respect to a small business concern, a trust—

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1954)—

(i) which is maintained by such concern, and

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of such Code) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

(B) in the case of any loan guarantee under section 7(a), the trustee of which enters into an agreement with the Administrator of which enters into an agreement with the Administrator which is binding on the trust and no such small business concern and which provides that—

(i) the loan guaranteed under section 7(a) shall be used solely for the purchase of qualifying employer securities of such concern.

(ii) all funds acquired by the concern in such purchase shall be used by such concern solely for the purposes for which such loan was guaranteed,

(iii) such concern will provide such funds as may be necessary for the timely repayment of such loan, and the property of such concern shall be available as security for repayment of such loan, and

(iv) all qualifying employer securities acquired by such trust in such purchase shall be allocated to the accounts of participants in such plan who are entitled to share in such allocation, and each participant has a nonforfeitable right, not later than the date such loan is repaid, to all such qualifying employer securities which are so allocated to the participant’s account.

(3) Under regulations which may be prescribed by the Administrator, a trust may be treated as a qualified employee trust with respect to a small business concern if—

(A) the trust is maintained by an employee organization which represents at least 51 percent of the employee of such concern, and

(B) such concern maintains a plan—

(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1954).

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,

(iii) which provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities which are not readily tradable on an established market, to require that the concern repurchase such securities under a fair valuation formula, and

(iv) which meets such other requirements (similar to requirements applicable to employee ownership plans as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Administrator may prescribe, and

(C) in the case of a loan guarantee under section 7(a), such organization enters into an agreement with the Administration which is described in paragraph (2)(B).

(d) For purposes of section 7 of this Act, the term “qualified Indian tribe” means an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act, which owns and controls 100 per centum of a small business concern.

(e) For purposes of section 7 of this Act, the term “public or private organization for the handicapped” means one—

(1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not insure in whole or in part to the benefit of any shareholder or other individual;

(2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(f) For purposes of section 7 of this Act, the term “handicapped individual” means an individual—

(1) who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable; or

(2) who is a service-disabled veteran.

(g) For purposes of section 7 of this Act, the term “energy measures” includes—

(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of



the passive type based on convective, conductive, or radiant energy transfer or some combination equipment;

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy;

(5) equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste;

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

(h) The term “credit elsewhere” means—

(1) for the purposes of this Act (except as used in section 7(b)), the availability of credit on reasonable terms and conditions to the individual loan applicant from non-Federal, non-State, or non-local government sources, considering factors associated with conventional lending practices, including—

(A) the business industry in which the loan applicant operates;

(B) whether the loan applicant is an enterprise that has been in operation for a period of not more than 2 years;

(C) the adequacy of the collateral available to secure the requested loan;

(D) the loan term necessary to reasonably assure the ability of the loan applicant to repay the debt from the actual or projected cash flow of the business; and

(E) any other factor relating to the particular credit application, as documented in detail by the lender, that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards; and

(2) for the purposes of section 7(b), the availability of credit on reasonable terms and conditions from non-Federal sources taking into consideration the prevailing rates and terms in the community in or near where the applicant business concern transacts business, or the applicant homeowner resides, for similar purposes and periods of time.

(i) For purposes of section 7 of this Act, the term “homeowners” includes owners and lessees of residential property and also includes personal property.

(j) For the purposes of this Act, the term “small agricultural cooperative” means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard estab-

lished by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(k)(1) For the purposes of this Act, the term “disaster” means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 308(b) of the Interjurisdictional Fisheries Act of 1986), ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

(2) For purposes of section 7(b)(2), the term “disaster” includes—

(A) drought;

(B) below average water levels in the Great Lakes, or on any body of water in the United States that supports commerce by small business concerns; and

(C) ice storms and blizzards.

(l) For purposes of this Act—

(1) the term “computer crime” means—

(A) any crime committed against a small business concern by means of the use of a computer; and

(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.

(m) DEFINITIONS RELATING TO CONTRACTING.—In this Act:

(1) PRIME CONTRACT.—The term “prime contract” has the meaning given such term in section 8701(4) of title 41, United States Code.

(2) PRIME CONTRACTOR.—The term “prime contractor” has the meaning given such term in section 8701(5) of title 41, United States Code.

(3) SIMPLIFIED ACQUISITION THRESHOLD.—The term “simplified acquisition threshold” has the meaning given such term in section 134 of title 41, United States Code.

(4) MICRO-PURCHASE THRESHOLD.—The term “micro-purchase threshold” has the meaning given such term in section 1902 of title 41, United States Code.

(5) TOTAL PURCHASES AND CONTRACTS FOR PROPERTY AND SERVICES.—The term “total purchases and contracts for property and services” shall mean total number and total dollar amount of contracts and orders for property and services.

(n) For the purposes of this Act, a small business concern is a small business concern owned and controlled by women if—

(1) at least 51 percent of small business concern is owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) the management and daily business operations of the business are controlled by one or more women.

(o) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.—In this Act:

(1) BUNDLED CONTRACT.—The term “bundled contract” means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

(2) BUNDLING OF CONTRACT REQUIREMENTS.—The term “bundling of contract requirements” means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to—

- (A) the diversity, size, or specialized nature of the elements of the performance specified;
- (B) the aggregate dollar value of the anticipated award;
- (C) the geographical dispersion of the contract performance sites; or
- (D) any combination of the factors described in subparagraphs (A), (B), and (C).

(3) SEPARATE SMALLER CONTRACT.—The term “separate smaller contract”, with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

(p) DEFINITIONS RELATING TO HUBZONES.—In this Act:

(1) HISTORICALLY UNDERUTILIZED BUSINESS ZONE.—The term “historically underutilized business zone” means any area located within 1 or more—

- (A) qualified census tracts;
- (B) qualified nonmetropolitan counties;
- (C) lands within the external boundaries of an Indian reservation;
- (D) redesignated areas;
- (E) base closure areas; or
- (F) qualified disaster areas.

(2) HUBZONE.—The term “HUBZone” means a historically underutilized business zone.

(3) HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone small business concern” means—

- (A) a small business concern that is at least 51 percent owned and controlled by United States citizens;
- (B) a small business concern that is—

- (i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or

- (ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2)) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(2));

- (C) a small business concern—

- (i) that is wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or

(ii) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns;

(D) a small business concern—

(i) that is wholly owned by one or more Native Hawaiian Organizations (as defined in section 8(a)(15)), or by a corporation that is wholly owned by one or more Native Hawaiian Organizations; or

(ii) that is owned in part by one or more Native Hawaiian Organizations, or by a corporation that is wholly owned by one or more Native Hawaiian Organizations, if all other owners are either United States citizens or small business concerns;

(E) a small business concern that is—

(i) wholly owned by a community development corporation that has received financial assistance under part 1 of subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

(ii) owned in part by one or more community development corporations, if all other owners are either United States citizens or small business concerns; or

(F) a small business concern that is—

(i) a small agricultural cooperative organized or incorporated in the United States;

(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.

(4) QUALIFIED AREAS.—

(A) QUALIFIED CENSUS TRACT.—

(i) IN GENERAL.—The term “qualified census tract” has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986.

(ii) EXCEPTION.—For any metropolitan statistical area in the Commonwealth of Puerto Rico, the term “qualified census tract” has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986 as applied without regard to subclause (II) of such section, except that this clause shall only apply—

(I) 10 years after the date that the Administrator implements this clause, or

(II) the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act ceases to exist,

whichever event occurs first.

(B) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified nonmetropolitan county” means any county—

(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986; and

(ii) in which—

(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce;

(II) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor; or

(III) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code of 1986, within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.

(C) REDESIGNATED AREA.—The term “redesignated area” means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a “redesignated area” only until the later of—

(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

(ii) 3 years after the date on which the census tract or nonmetropolitan county ceased to be so qualified.

(D) BASE CLOSURE AREA.—

(i) IN GENERAL.—Subject to clause (ii), the term “base closure area” means—

(I) lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

(aa) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

(bb) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

(cc) section 2687 of title 10, United States Code; or

(dd) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose

of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use;

(II) the census tract or nonmetropolitan county in which the lands described in subclause (I) are wholly contained;

(III) a census tract or nonmetropolitan county the boundaries of which intersect the area described in subclause (I); and

(IV) a census tract or nonmetropolitan county the boundaries of which are contiguous to the area described in subclause (II) or subclause (III).

(ii) LIMITATION.—A base closure area shall be treated as a HUBZone—

(I) with respect to a census tract or nonmetropolitan county described in clause (i), for a period of not less than 8 years, beginning on the date the military installation undergoes final closure and ending on the date the Administrator makes a final determination as to whether or not to implement the applicable designation described in subparagraph (A) or (B) in accordance with the results of the decennial census conducted after the area was initially designated as a base closure area; and

(II) if such area was treated as a HUBZone at any time after 2010, until such time as the Administrator makes a final determination as to whether or not to implement the applicable designation described in subparagraph (A) or (B), after the 2020 decennial census.

(iii) DEFINITIONS.—In this subparagraph:

(I) CENSUS TRACT.—The term “census tract” means a census tract delineated by the United States Bureau of the Census in the most recent decennial census that is not located in a nonmetropolitan county and does not otherwise qualify as a qualified census tract.

(II) NONMETROPOLITAN COUNTY.—The term “nonmetropolitan county” means a county that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts and does not otherwise qualify as a qualified nonmetropolitan county.

(E) QUALIFIED DISASTER AREA.—

(i) IN GENERAL.—Subject to clause (ii), the term “qualified disaster area” means any census tract or nonmetropolitan county located in an area for which the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or located

in an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be qualified under subparagraph (A) or (B), as applicable, during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred and ending 2 years after such date, except that such census tract or nonmetropolitan county may be a “qualified disaster area” only—

(I) in the case of a major disaster declared by the President, during the 5-year period beginning on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; and

(II) in the case of a catastrophic incident, during the 10-year period beginning on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

(ii) LIMITATION.—A qualified disaster area described in clause (i) shall be treated as a HUBZone for a period of not less than 8 years, beginning on the date the Administrator makes a final determination as to whether or not to implement the designations described in subparagraphs (A) and (B) in accordance with the results of the decennial census conducted after the area was initially designated as a qualified disaster area.

(5) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—A HUBZone small business concern is “qualified”, if—

(i) the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by the Administration by regulation) that—

(I) it is a HUBZone small business concern—

(aa) pursuant to subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (3), and that its principal office is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone;

(bb) pursuant to subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (3), that its principal office is located within a base closure area and that not fewer than 35 percent of its employees reside in such base closure area or in another HUBZone; or

(cc) pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 31(b) reside

within any Indian reservation governed by one or more of the tribal government owners, or reside within any HUBZone adjoining any such Indian reservation;

(II) the small business concern will attempt to maintain the applicable employment percentage under subclause (I) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 31(b); and

(III) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 31, the small business concern will ensure that the requirements of section 46 are satisfied; and

(ii) no certification made or information provided by the small business concern under clause (i) has been, in accordance with the procedures established under section 31(c)(1)—

(I) successfully challenged by an interested party; or

(II) otherwise determined by the Administrator to be materially false.

(B) LIST OF QUALIFIED SMALL BUSINESS CONCERNS.—The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list shall, to the extent practicable—

(i) once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern, include the name, address, and type of business with respect to each such small business concern;

(ii) be updated by the Administrator not less than annually; and

(iii) be provided upon request to any Federal agency or other entity.

(6) NATIVE AMERICAN SMALL BUSINESS CONCERNS.—

(A) ALASKA NATIVE CORPORATION.—The term “Alaska Native Corporation” has the same meaning as the term “Native Corporation” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(B) ALASKA NATIVE VILLAGE.—The term “Alaska Native Village” has the same meaning as the term “Native village” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(C) INDIAN RESERVATION.—The term “Indian reservation”—

(i) has the same meaning as the term “Indian country” in section 1151 of title 18, United States Code, except that such term does not include—

(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on the date of the enactment of this para-



graph, unless that tribe is recognized after that date of the enactment by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); and

(II) lands taken into trust or acquired by an Indian tribe after the date of the enactment of this paragraph if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of the enactment; and

(ii) in the State of Oklahoma, means lands that—

(I) are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(7) AGRICULTURAL COMMODITY.—The term “agricultural commodity” has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(q) DEFINITIONS RELATING TO VETERANS.—In this Act, the following definitions apply:

(1) SERVICE-DISABLED VETERAN.—The term “service-disabled veteran” means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38, United States Code).

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term “small business concern owned and controlled by service-disabled veterans” means a small business concern—

(A) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.—The term “small business concern owned and controlled by veterans” means a small business concern—

(A) not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(B) the management and daily business operations of which are controlled by one or more veterans.

(4) VETERAN.—The term “veteran” has the meaning given the term in section 101(2) of title 38, United States Code.

(5) RELIEF FROM TIME LIMITATIONS.—

(A) IN GENERAL.—Any time limitation on any qualification, certification, or period of participation imposed under this Act on any program that is available to small business concerns shall be extended for a small business concern that—

(i) is owned and controlled by—

(I) a veteran who was called or ordered to active duty under a provision of law specified in section 101(a)(13)(B) of title 10, United States Code, on or after September 11, 2001; or

(II) a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military, naval, or air service during a period of active duty pursuant to a call or order to active duty under a provision of law referred to in subclause (I) on or after September 11, 2001; and

(ii) was subject to the time limitation during such period of active duty.

(B) DURATION.—Upon submission of proper documentation to the Administrator, the extension of a time limitation under subparagraph (A) shall be equal to the period of time that such veteran who owned or controlled such a concern was on active duty as described in that subparagraph.

(C) EXCEPTION FOR PROGRAMS SUBJECT TO FEDERAL CREDIT REFORM ACT OF 1990.—The provisions of subparagraphs (A) and (B) shall not apply to any programs subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(r) DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.—As used in section 23 of this Act:

(1) SMALL BUSINESS LENDING COMPANY.—The term “small business lending company” means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

(2) NON-FEDERALLY REGULATED LENDER.—The term “non-Federally regulated lender” means a business concern if—

(A) such concern is authorized by the Administrator to make loans under section 7;

(B) such concern is subject to regulation by a State; and

(C) the lending activities of such concern are not regulated by any Federal banking authority.

(s) MAJOR DISASTER.—In this Act, the term “major disaster” has the meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(t) SMALL BUSINESS DEVELOPMENT CENTER.—In this Act, the term “small business development center” means a small business development center described in section 21.

(u) REGION OF THE ADMINISTRATION.—In this Act, the term “region of the Administration” means the geographic area served by a regional office of the Administration established under section 4(a).

(v) MULTIPLE AWARD CONTRACT.—In this Act, the term “multiple award contract” means—

(1) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

(2) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.

(w) PRESUMPTION.—

(1) IN GENERAL.—In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(2) DEEMED CERTIFICATIONS.—The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

(3) CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFICIAL.—

(A) IN GENERAL.—Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

(B) CONTENT OF CERTIFICATIONS.—A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of an authorized official on the same page on which the certification is contained.

(4) REGULATIONS.—The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.

(x) ANNUAL CERTIFICATION.—

(1) IN GENERAL.—Each business certified as a small business concern under this Act shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

(2) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that—

(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.

(y) POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND STATUS FRAUD.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Attorney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.

(z) AQUACULTURE BUSINESS DISASTER ASSISTANCE.—Subject to section 18(a) and notwithstanding section 18(b)(1), the Administrator may provide disaster assistance under section 7(b)(2) to aquaculture enterprises that are small businesses.

(aa) VENTURE CAPITAL OPERATING COMPANY.—In this Act, the term “venture capital operating company” means an entity described in clause (i), (v), or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations (or any successor thereto).

(bb) HEDGE FUND.—In this Act, the term “hedge fund” has the meaning given that term in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(cc) PRIVATE EQUITY FIRM.—In this Act, the term “private equity firm” has the meaning given the term “private equity fund” in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

(dd) DEFINITIONS PERTAINING TO SUBCONTRACTING.—In this Act:

(1) SUBCONTRACT.—The term “subcontract” means a legally binding agreement between a contractor that is already under contract to another party to perform work, and a third party, hereinafter referred to as the subcontractor, for the subcontractor to perform a part, or all, of the work that the contractor has undertaken.

(2) FIRST TIER SUBCONTRACTOR.—The term “first tier subcontractor” means a subcontractor who has a subcontract directly with the prime contractor.

(3) AT ANY TIER.—The term “at any tier” means any subcontractor other than a subcontractor who is a first tier subcontractor.

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