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SENATE

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### SMALL BUSINESS RUNWAY EXTENSION ACT OF 2018

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DECEMBER 11, 2018.—Ordered to be printed

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Mr. RISCH, from the Committee on Small Business and Entrepreneurship, submitted the following

### R E P O R T

[To accompany S. 3562]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 3562) to amend the Small Business Act to modify the method for prescribing size standards for business concerns, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### I. INTRODUCTION

S. 3562, the Small Business Runway Extension Act, was introduced by the Committee's Ranking Member, Benjamin L. Cardin, for himself on October 9, 2018. The bill would amend the Small Business Act to modify the method for prescribing size standards, using the preceding five years of annual average gross receipts, rather than three, to determine a business's size. The bill was approved unanimously in a roll call vote as part of a manager's package.

#### II. HISTORY (PURPOSE & NEED FOR LEGISLATION)

The Small Business Act of 1953 (P.L. 83-163), as amended, authorized the Small Business Administration (SBA) to establish size standards for determining eligibility for federal small business assistance.<sup>1</sup> SBA has primarily measured the number of employees and the average annual receipts in the previous three years to de-

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<sup>1</sup> 15 U.S.C. § 631.

termine a business's eligibility.<sup>2</sup> These size standards vary from industry to industry to account for differences in the marketplace.

The SBA size standards represent the largest size that a business (including its subsidiaries and affiliates) may be to remain classified as a small business concern.<sup>3</sup> This classification is then used to determine eligibility for SBA's financial assistance and other federal programs, including government procurement programs designed to assist small businesses.

Each year, the federal government awards approximately \$400 billion in contracts, and the SBA works with agencies to ensure that at least 23 percent of all prime government contracts are awarded to small businesses. Between Fiscal Year (FY) 2006 and FY 2017, the federal government awarded an average of more than \$90 billion in contracts to small businesses annually, with FY 2017 marking the first year that small business contracts exceeded \$100 billion.<sup>4</sup>

The SBA also has programs to help socially and economically disadvantaged small businesses gain preferential access to federal contracting and subcontracting opportunities. These programs are particularly beneficial to women-, minority-, and veteran-owned small businesses. Not only do they help small businesses become acquainted with the federal marketplace but they also level the playing field so small businesses can better compete.<sup>5</sup>

Since their inception, SBA contracting programs have proven to be a powerful tool for helping small businesses compete and win federal contracts. In addition, they spur innovation and inject diversity into the federal marketplace, guarding against supplier consolidation, and non-competitive pricing. Without this competition, the federal contracting sector would stagnate and jobs could potentially be lost.<sup>6</sup>

With these federal contracting goals firmly in place, more contracts are flowing to small businesses. The increase in the number of awards to small businesses has resulted in more small businesses growing out of their size standards.<sup>7</sup> Moreover, the value of these contracts are becoming larger, meaning small firms that win one large contract could potentially outgrow their size standards.

After firms outgrow their size standard, they are no longer eligible for SBA programs and small business set-asides. At this juncture, they enter the open marketplace and are forced to compete against large, multi-billion dollar companies.

Large firms have several competitive advantages over small and mid-size businesses. They have extensive past performance qualifications, strong brand name recognition, a broad array of profes-

<sup>2</sup>Small Business Size Standards: Revised Size Methodology, 83 Fed. Reg. 81 (April 26, 2018). Federal Register: The Daily Journal of the United States. Code of Federal Regulations, <https://www.federalregister.gov/d/2018-08418>.

<sup>3</sup>Small Business Administration, <https://www.sba.gov/partners/contracting-officials/small-business-procurement/small-business-size-standards>.

<sup>4</sup>Small Business Administration, <https://www.sba.gov/document/support--small-business-procurement-scorecard-overview>.

<sup>5</sup>Small Business Administration, <https://www.sba.gov/partners/contracting-officials/contracting-program-administration>.

<sup>6</sup>*No Man's Land: Middle-Market Challenges for Small Business Graduates*, Hearing before the House Committee on Small Business Subcommittee on Contracting and Workforce, 115th Congress (2018), testimony of Stephen Ramaley on behalf of the Montgomery County Chamber of Commerce, on file with the Committee.

<sup>7</sup>Supra note 6, testimony of Eminence N. Griffin on behalf of Information Technology Alliance for Public Sector, on file with the Committee.

sional certifications, and security clearances.<sup>8</sup> Competing against these larger firms for a share of federal contracting dollars is inherently difficult for mid-size businesses.

Moreover, large companies have teams of specialists, including lawyers, graphic designers, and communications experts to help them comply with the additional federal requirements of competing in an open marketplace.<sup>9</sup> One such requisite is the development of subcontracting plans, which small firms are not required to prepare. Mid-size companies often lack the financial resources needed to prepare these detailed plans, placing them at a disadvantage in the open marketplace.

Many small businesses have to decide whether to compete against their larger competitors, scale back to avoid the challenges of competing in an open marketplace, or consider becoming acquired. On April 26, 2018, the House Small Business Committee Subcommittee on Contracting and Workforce held a hearing entitled, “No Man’s Land: Middle-Market Challenges for Small Business Graduates.” Mr. Stephen Ramaley, testified on behalf of Montgomery County (Maryland) Chamber of Commerce, in his testimony he remarked that “more and more firms” are opting to “stay small, sell, or go out of business.”<sup>10</sup> Ms. Lisa Firestone, MHSA, President and CEO of Managed Care in Bethesda, Maryland stated during the same hearing that, “The federal government on one hand encourages us to grow, emphasizing the need for access to capital and entrepreneurial assistance. Many SBA programs emphasize, educate and support growth. But on the other hand, it structures policies that discourage growth such as its size standard structure and limitation on small business program participation. . . . Let’s work together to make sure we reward growth, not stifle it.”<sup>11</sup>

In sum, these mid-size companies occupy a unique position in the federal marketplace—they are too big to qualify for small business preferences and often lack the resources to compete with larger contractors. As small companies become larger, more successful, and transition to mid-size companies, many contracts become out of reach. Allowing a longer transition to the open marketplace for advanced small and mid-size businesses would protect SBA’s initial investment in these small companies, promote competition in the federal marketplace, and preserve jobs.

The Committee believes that it is important to give advanced small and mid-size businesses the tools they need to succeed and grow in the federal marketplace once they graduate from the small business size standards.

### III. DESCRIPTION OF BILL

Under current law, a business must report its annual average gross receipts over the preceding three years to determine its eligibility for access to Federal programs. The Small Business Runway

<sup>8</sup>Tonya Saunders, *The Mid-Tier Paradox: Too Small to Compete, Too Large to Survive*, Bloomberg Government (May 13, 2016) <http://aboutgov.com/blog/the-mid-tier-paradox-too-small-to-compete-too-large-to-survive/>.

<sup>9</sup>Mark Amtower, *Be Prepared: GWACS, IDIQs will grow in this age of uncertainty*, Washington Technology (March 16, 2017) <http://washingtontechnology.com/articles/2017/03/16/insights-amtower-gwac-idiq-advice.aspx>.

<sup>10</sup>Supra note 6, testimony of Stephen P. Ramaley on behalf of Montgomery County Chamber of Commerce, on file with the Committee.

<sup>11</sup>Supra note 6, testimony of Lisa Firestone on behalf of Women Impacting Public Policy, on file with the Committee.

Extension Act of 2018 (S. 3562) amends the Small Business Act by lengthening the time the SBA measures size through revenue, using the average of the preceding five years instead of the preceding three years.

#### IV. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following vote was recorded on October 11, 2018.

A motion to adopt, S. 3562, the Small Business Runway Extension Act of 2018, a bill to modify the method for prescribing size standards for business concerns, was approved unanimously by a roll call vote as part of a manager's package. Senators Risch, Cardin, Rubio, Paul, Scott, Ernst, Inhofe, Young, Enzi, Rounds, Kennedy, Cantwell, Shaheen, Heitkamp, Markey, Booker, Coons, Hirono, and Duckworth voted for the bill.

#### V. COST ESTIMATE

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts discussed in the following letter from the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC,*

Hon. JAMES E. RISCH,  
*Chairman, Committee on Small Business and Entrepreneurship,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3562, the Small Business Runway Extension Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

#### *S. 3562 Small—Business Runway Extension Act of 2018*

Under current law, a business must report its average gross receipts over the prior three years to determine their eligibility for access to certain resources, programs, and assistance offered to small businesses by the Small Business Administration (SBA) and other federal agencies. S. 3562 would extend that reporting period to five years.

The new reporting period under S. 3562 could affect the number of businesses eligible for certain SBA assistance programs or loan programs and thus raise or lower both the number of participants in those program and the SBA's administrative costs. However, CBO has no basis for estimating the number of entities that either would newly qualify or would no longer qualify as small businesses under S. 3562 for such programs nor whether the costs of making loans or loan guarantees to those entities would be higher or lower. Furthermore, because S. 3562 does not authorize any change in appropriations for small business assistance programs or contract

awards for small businesses, CBO expects that the net effect on spending on those programs and contracts would be negligible.

Using information from the SBA on the costs of similar activities, CBO estimates that updating the rules to reflect the revised reporting period would cost less than \$500,000; such spending would be subject to the availability of appropriated funds.

Enacting S. 3562 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 3562 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 3562 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On September 13, 2018, CBO transmitted a cost estimate for H.R. 6330, the Small Business Runway Extension Act of 2018, as reported by the House Committee on Small Business on September 12, 2018. The two pieces of legislation are similar and CBO's estimates of their budgetary effects is the same.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### VI. EVALUATIONS OF REGULATORY IMPACT

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

#### VII. SECTION-BY-SECTION ANALYSIS

##### *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 three of the Small Business Act by modifying the method for prescribing size standards, using the previous five years of annual average gross receipts, rather than three, to determine a business's size.