

**Statement of Steve Chabot,  
Chairman, Committee on Small Business  
Before the Committee on Armed Services of the House of Representatives  
On the FY 2019 National Defense Authorization Act  
April 11, 2019**

Good morning, Chairman Thornberry, Ranking Member Smith, and Members of the Committee. I appreciate the opportunity to testify before you on the National Defense Authorization Act for Fiscal Year 2019 (FY19 NDAA). Let me begin by thanking this Committee for its longstanding collaboration with the Small Business Committee. I have been privileged to serve on the Small Business Committee for over 20 years and I've enjoyed seeing this relationship grow. My testimony today will address a wide range of bipartisan issues that are critical to the success of our national security and the health of our industrial base.

**I. Small Business Research and Development Programs: H.R. 2763**

Congressional support for the Small Business Innovation Research (SBIR) initiative was predicated upon the belief that, while technology-based companies under 500 employees tended to be highly innovative, and while innovation is essential to the economic well-being of the United States, these businesses were underrepresented in the awarding of government research and development (R&D) contracts. In order to increase participation of such entities in federal R&D efforts, Congress passed the Small Business Innovation Development Act in 1982, which established the SBIR program. The purpose of the Act was to increase government funding of small businesses that conduct R&D with a particular focus on technology that has high commercial potential. The SBIR program has been reauthorized and extended several times, each reauthorization making significant improvements to the SBIR program.

Among other things, HR 2763, the bipartisan Small Business Innovation Research and Small Business Technology Transfer Improvements Act of 2017, sponsored by Representatives Steve Knight and Stephanie Murphy, improves agency accountability, including several hard reporting deadlines for participating agencies and for the Small Business Administration (SBA) to provide future Congresses with better information and a greater understanding of the programs' strengths and weaknesses.

Second, the legislation clarifies congressional intent of the previous reauthorization to ensure that taxpayers reap the benefits of the SBIR and Small Business Technology Transfer (STTR) programs by tying them to long term projects at the Department of Defense (DOD). The legislation also statutorily requires the Secretary of Defense to set a goal to increase the number of Phase II contracts that lead to technology insertion into programs of record or fielded systems and to use incentives to encourage agency program managers and prime contractors to meet that goal.

Third, in an effort to maintain the focus on the commercialization aspect of the SBIR and STTR programs, the legislation makes the Commercialization Readiness Program (established as a pilot program by Public Law 112-81) at all civilian agencies a permanent part of the SBIR program.

Finally, the legislation extends three popular pilot programs also established by Public Law 112-81 through FY 2022, when the full program will need a full reauthorization. One pilot provides authority for participating agencies to utilize 3 percent of the SBIR program for costs relating to

administrative, oversight, and contract processing activities. Another pilot allows participating agencies to offer a “straight to Phase II” option for small firms that have established they have completed the work traditionally done in Phase I of the program. The last pilot allocates a small portion of the STTR funding to establish Phase “Proof of Concept” grants to universities engaged in entrepreneurship building to create new small firms spun out of university research.

H.R. 2763 was marked up, passed favorably, and reported by the House Small Business Committee and Science, Space and Technology Committee on September 14, 2017. The legislation passed the House of Representatives on October 11, 2017.

Recognizing the importance of the SBIR and STTR programs to the health of the defense industrial base, the Section 809 Panel recently released a report advocating for greater utilization of these programs across the DOD. The Panel recognized that the innovation small businesses can bring to the Department, through programs like SBIR and STTR, can be harnessed to meet the mission goals and objectives of the Department better, faster, and at a potentially lower cost to the taxpayer. I believe that HR 2763 makes valuable changes to the SBIR/STTR programs to the benefit of the DOD, and I hope you will consider this important legislation.

## **II. Cybersecurity: H.R. 4668 and H.R. 3170**

Small businesses are becoming increasingly targeted by cyber criminals due to their lack of resources or technical knowledge to prevent cyber attacks. Small businesses may not be able to obtain the information they need to properly assess and mitigate the costs of protecting their companies. It is also difficult for small businesses to take such precautions due to the high costs of hiring specialized employees or cybersecurity experts. Thus, it is important for the federal government and private sector to work together to combat cyber threats by providing information technology education for small businesses, equipping them with the necessary tools to be competitive in the global economy. I respectfully ask the Committee to consider the following cybersecurity bills, which will protect our national security.

1. *H.R. 4668*: The Small Business Advanced Cybersecurity Enhancements Act of 2017, sponsored by myself and Ranking Member Velázquez, encourages small businesses to work with the federal government by providing them additional resources. In order to combat small businesses’ reluctance to engage with the federal government, this legislation encourages their collaboration by establishing Small Business Development Centers (SBDCs) as the primary interface for federal information sharing for small businesses. It ensures small businesses that share cyber indicators through SBDCs receive the same protections and exemptions provided in the Cybersecurity Information Sharing Act of 2015, so any policies or rulemaking adopted by any federal agency as a result of small business cyber information sharing does not unfairly burden small businesses. It also expands liability protections for small businesses that engage with the federal government in good faith.
2. *H.R. 3170*: The bipartisan Small Business Development Center Cyber Training Act of 2017, sponsored by myself and Representative Dwight Evans, would help SBDCs become better trained to assist small businesses with their cyber security and cyber

strategy needs. Specifically, it would establish a cyber counseling certification program in lead SBDCs to better assist small businesses with planning and implementing cybersecurity measures to defend against cyber attacks. The SBA would be authorized to reimburse SBDCs for employee certification costs up to \$350,000 per fiscal year. This bill utilizes existing federal resources to cover the reimbursement costs.

H.R. 4668 and H.R. 3170 were marked up and reported by the House Small Business Committee with bipartisan support on March 14, 2018.

### **III. Contracting: H.R. 5337, H.R. 4754, and H.R. 5144**

In addition to the cybersecurity and research and development bills, I ask the Committee to continue including small business federal contracting provisions in the FY19 NDAA as it has done in past NDAs. Over the past several years, the Small Business Committee and its subcommittees have held dozens of hearings on issues impacting small federal contractors. These hearings have focused on the alarming fact that the number of small firms registered to do business with the federal government continues to decline. The Section 809 Panel's most recent report highlights the alarming nature of this decline, stating that the DOD saw a 70 percent reduction in small business prime contract actions between 2011-2016 and a decline of approximately 100,000 small business companies registered to do business with the federal government since 2012. To reverse this decline and ensure that the defense industrial base remains robust, I ask the Committee to consider the following three bipartisan, common sense small business contracting bills.

1. *H.R. 5337*: The Accelerated Payments for Small Businesses Act of 2018 was sponsored by Representatives Steve Knight and Adriano Espaillat, and was cosponsored by myself and Ranking Member Velázquez. Reliance on a steady cash flow is critical to all small businesses. Faster, consistent payment allows small businesses access to working capital at reduced costs and promotes a small business's ability to invest and grow their business. Recognizing this, the Office of Management and Budget (OMB) policy directive in M-11-32 established a goal that small business subcontractors would be paid on an accelerated timetable, within 15 days or less of receipt of a proper invoice. OMB policy directive in M-12-16 extended this accelerated payment directive to other-than-small prime contractors that subcontract with small businesses and also encouraged prime contractors to pay their small business subcontractors on an accelerated timetable. *H.R. 5337* utilizes language found in OMB memorandums M-11-32 and M-12-16, directing agencies to accelerate payment to small business prime and subcontractors to the fullest extent possible. This bill has received the support of the Professional Services Council and the National Defense Industrial Association, which includes both small and large contractors such as Northrup Grumman.
2. *H.R. 4754*: The Change Order Transparency for Federal Contractors Act was sponsored by Representatives Don Bacon and Al Lawson, Jr., and cosponsored by Representatives Steve Knight, Stephanie Murphy, and Mike Coffman. Small contractors and subcontractors in the construction industry are challenged daily with the complexities of the bidding process and receiving payment in a timely manner for work performed.

Equitable changes to the contract, or change orders, are ubiquitous in construction projects and slow approval of change orders can result in delayed payment. While change orders wait to be definitized, a process involving negotiating the cost of the changed work between the contractor and agency, contractors and subcontractors must pay their own bills—employees, suppliers and even taxes – while payments from their federal customers are delayed. Small businesses typically do not have enough capital and resources to sustain long periods of nonpayment and are dependent on a stable cash flow in order to stay afloat. Thus, small businesses are particularly vulnerable to any changes to the scope of work on a contract and corresponding delays in payments.

Contractors and subcontractors currently lack visibility into agencies' change order processes prior to submitting a bid. This lack of transparency makes it difficult for federal contractors to prepare for the inevitable burden of change orders during the life cycle of the construction project. Agencies across the federal government have different change order procedures; some agencies are more effective than others, and some employ procedures which are disastrous to small contractors. For instance, some federal agencies may routinely bundle all change orders for resolution at the end of a project.

H.R. 4754 would provide prospective federal construction contractors and subcontractors with the agency-specific change order information needed to plan their operations prior to submitting a bid on a contract. Contractors will also be able to better formulate their bid and prepare for delays in payment during the performance of the contract. Transparency in change order definitization processes will ultimately promote greater financial health for companies that work on government projects. Additionally, this measure of transparency may encourage agencies to improve their change order processes in order to attract the highest-quality contractors at competitive rates. Agencies that improve their internal change order processes as a result of this transparency measure may ultimately receive higher quality products (i.e., buildings) while saving critical taxpayer dollars. This bill has received support from the American Council of Engineering Companies, American Institute of Architects, American Society of Civil Engineers, American Subcontractors Association, Associated General Contractors, Association of the Wall and Ceiling Industry, Construction Management Association of America, Council on Federal Procurement of Architectural and Engineering Services, Independent Electrical Contractors, MAPPS, National Association of Surety Bond Producers, National Electrical Contractors Association, National Society of Professional Surveyors, Sheet Metal & Air Conditioning Contractors National Association, and the Surety & Fidelity Association of America.

3. *H.R. 5144*: The Contracting Compliance Act was sponsored by Representatives Rod Blum and Brad Schneider. Federal laws and regulations both require federal contractors to maintain an acceptable subcontracting plan if the estimated contract value exceeds a certain dollar threshold. These subcontracting plans include percentage goals for subcontracting with small business concerns, service-disabled veteran-owned small businesses, veteran-owned small businesses, HUBZone small businesses, socially and economically disadvantaged small businesses (commonly referred to as part of the 8(a) program), and women-owned small businesses. Failure of a business to comply in good

faith with its subcontracting plan constitutes a material breach of the contract and can result in the government assessing liquidated damages against the prime contractor. 15 U.S.C. 647(d)(7) requires federal agencies to ensure that they take action to ensure prime contractors are complying in good faith with the requirements of their subcontracting plans. However, the problem arises when federal agencies take little to no action in this regard, essentially rendering the subcontracting plan requirement and the liquidated damages clause functionally useless.

In March 2018, the DOD Inspector General found two Army contracting offices did not take steps to adequately monitor prime contractors compliance with their subcontracting plans. This resulted in small businesses potentially being barred from substantial subcontracting opportunities, and the loss of liquidated damages recoverable by the federal government. This bill takes the first step in assessing how widespread this problem is by requiring the Government Accountability Office (GAO) examine whether federal agencies, both military and civilian, are overseeing prime contractors' compliance with their subcontracting plans.

I would urge this Committee to consider these important small business contracting provisions in order to rebuild and sustain a robust small business workforce, which is critical to maintaining a healthy defense industrial base.

#### **IV. Entrepreneurial Development: H.R. 1774**

The Small Business Committee is working to reauthorize the entrepreneurial development programs within the SBA through H.R. 1774, which Ranking Member Velázquez sponsored and I cosponsored. The entrepreneurial development programs further the important work done by the House Armed Services Committee by ensuring that the SBA is effectively introducing the next generation of entrepreneurs to the opportunities afforded by federal procurement contracts. Contained within H.R. 1774, which strengthens and modernizes SBA's entrepreneurial resources, are three Titles.

Title I strengthens the data collection efforts of SBDCs. Title II reauthorizes the Women's Business Centers program for four years at \$21.75 million per year and contains accreditation process language to ensure uniformity among the Centers across the country. Title III reauthorizes the SCORE program for two years at \$10.5 million per year and also requires an enhanced online utilization effort by the program and a requirement for a strategic plan before future funding increases are considered. This bill was marked up and reported by the Small Business Committee with bipartisan support in 2016. This measure will help to prepare small businesses for the opportunities available in the competitive federal marketplace and ensure a strong industrial base.

#### **V. Access to Capital: H.R. 2333, H.R. 2364, and H.R. 2056**

As the United States continues to see signs of an improved economy, the nation's small businesses are still confronted with a challenging lending environment that prohibits job creation and expansion. To address some of the access to capital issues, the Small Business Committee

worked in a bipartisan manner to develop three bills that would further create an environment for small businesses to flourish and grow. All three bills were marked up in Committee, reported with bipartisan support on July 12, 2017, and agreed to by voice vote on the House floor on July 24, 2017.

1. *H.R. 2333*: The Small Business Investment Opportunity Act of 2017 was sponsored by Representative Steve Knight and cosponsored by Representatives Judy Chu and Carlos Curbelo. To help address the many lending roadblocks that exist for small businesses, the SBA offers the Small Business Investment Company (SBIC) program, which focuses on increasing the accessibility of venture and private equity capital available to small businesses.

With the goal of growing the amount of equity capital available to small businesses, H.R. 2333 amends the Small Business Investment Act of 1958 by increasing the Individual Leverage Limit from \$150 million to \$175 million. The Individual Leverage Limit stipulates how much capital can be deployed to a small business by an SBIC that has only one fund under management. Similar to legislation that was signed into law in 2015 that increased the leverage limit for an SBIC that manages multiple funds, H.R. 2333 would enhance the ability of a small business to expand and create jobs.

2. *H.R. 2364*: The Investing in Main Street Act of 2017 was sponsored by Rep. Judy Chu and cosponsored by Representatives Steve Knight and Grace Meng. To assist small businesses in obtaining venture capital and private equity, the SBA administers the Small Business Investment Company (SBIC) program. Currently, the Small Business Investment Act of 1958 limits the amount of capital and surplus that a financial institution or federal savings association may invest in an SBIC to 5 percent.

H.R. 2364 would increase the amount of capital and surplus that a financial institution and federal savings association can invest in an SBIC from 5 percent to 15 percent. Further, H.R. 2364 would also require financial institutions and federal savings associations to be approved by their federal regulator prior to investing more than 5 percent. Beyond increasing the percentage of an investment a bank can make into an SBIC, H.R. 2364 would bring into parity the Small Business Investment Act with the Office of the Comptroller of the Currency's national bank charter percentage requirements.

3. *H.R. 2056*: The Microloan Modernization Act of 2017 was sponsored by Representative Stephanie Murphy and cosponsored by a number of Small Business Committee members. Through the Microloan Program, the SBA works with nonprofit lending intermediaries to make small dollar microloans of \$50,000 or less. With an average loan in the program of approximately \$13,500, the Microloan Program enhances a small dollar borrower's access to capital.

While the Microloan Program has been in operation since 1992, the full utilization of the program has always been questioned. Along with a few structural improvements to the program, H.R. 2056 would determine an accurate utilization of the program.

Specifically, H.R. 2056 would raise the maximum lending volume a microloan intermediary has at any given time from \$5 million to \$6 million. Next, the legislation would provide flexibility to the 25/75 Rule, which limits a microloan intermediary to using 25 percent of their SBA technical assistance grants on pre-loan assistance. By giving intermediaries more latitude with pre-loan assistance, small business startups will receive more comprehensive assistance during their infancy. To delve into the question of program utilization, H.R. 2056 would direct the SBA to conduct a study on the usage of the program. Further, the legislation would require a Government Accountability Office study to examine the oversight of the program.

## **VI. Other Considerations**

In addition to the above, I'd ask the Committee to include H.R. 5178, H.R. 2655, and H.R. 4486. H.R. 5178, the Puerto Rico Contracting Assistance Act of 2018, would provide solutions for assisting Puerto Rico with its distressed economy by promoting the use of federal contracting opportunities with Puerto Rican small businesses. H.R. 2655, the Small Business Innovation Protection Act, would help educate small businesses on domestic and international patent protection, and H.R. 4486 would afford payment protections to small construction contractors by exempting construction contracts that must be bonded under the Miller Act from periodic inflation.

## **VII. Conclusion**

I know that we agree that our nation deserves a vibrant small business industrial base: it is fundamental to the health of our nation as a whole. I look forward to working with this Committee to ensure that small businesses remain continue to provide the Department of Defense and the federal government with competitive solutions to support key programs. I would be happy to answer any questions.