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2d Session

HOUSE OF REPRESENTATIVES

{ REPORT
108-800

SUMMARY OF ACTIVITIES

A REPORT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS



DECEMBER 29, 2004.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, December 29, 2004.

Hon. JEFF TRANDAHL,
Clerk, House of Representatives,
Washington, DC.

DEAR MR. TRANDAHL: On behalf of the Committee on Small Business of the U.S. House of Representatives, I am pleased to transmit the attached Summary of Activities of the Committee on Small Business for the 108th Congress.

This report is submitted in compliance with the requirements of Rule XI, clause 1(d), of the Rules of the House of Representatives with respect to the activities of the Committee, and in carrying out its duties as stated in the Rules of the House of Representatives.

The purpose of this report is to provide a reference document for Members of the Committee, the Congress and the public which can serve as a research tool and historic reference outlining the Committee's legislative and oversight activities conducted pursuant to Rule X, clause 1(o), 2(b)(1) and 3(g), of the Rules of the House of Representatives. This document is intended to serve as a general reference tool, and not as a substitute for the hearing records, reports and other Committee files.

Sincerely,

DONALD A. MANZULLO,
Chairman.

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DECEMBER 29, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MANZULLO of Illinois, from the Committee on Small Business, submitted the following

R E P O R T

SUMMARY OF ACTIVITIES

CHAPTER ONE

INTRODUCTION

This is the fifteenth summary report of the standing Committee on Small Business. The action by the House of Representatives in adopting the House Resolution 988 on October 8, 1974, provided that the committee be established as a standing committee, and upgraded the Permanent Select Committee on Small Business by giving the Committee legislative jurisdiction over small business matters in addition to the oversight jurisdiction it had historically exercised.

The adoption of the House rules in the 94th through 108th Congress confirmed this action and continued the process begun on August 12, 1941, when, by virtue of House Resolution 294 (77th Congress, 1st session), the Select Committee on Small Business was created. In January 1971, the House designated the Select Committee as a permanent Select Committee; and, on October 8, 1974, the 93rd Congress, recognizing the importance of the work performed on behalf of this nation's small businesses, provided that the Committee should thereafter be established as a standing committee.

1.1 HISTORICAL BACKGROUND

The history of the Select Committee on Small Business from its inception in 1941 during the 77th Congress through 1972, the end of the 92nd Congress, may be found in House Document 93-197

(93rd Congress, 2nd session), entitled “A History and Accomplishments of the Permanent Select Committee on Small Business.”

The Committee is bipartisan in recognition that the nation’s small business people represent a major segment of our business population and our nation’s economic strength. This committee, continuing its vital oversight responsibilities, serves as the advocate and voice for small business as well as the focal point for small business legislation.

In recognition of the importance of the Committee, the House of Representatives has established the Committee’s membership at 36 Members. The following Members were named to constitute the Committee in the 108th Congress:

Republicans included:

Donald A. Manzullo (IL), Chairman; Roscoe G. Bartlett (MD) Vice Chairman; Sue W. Kelly (NY); Steve Chabot (OH); Patrick J. Toomey (PA); Jim DeMint (SC); Sam Graves (MO); Edward L. Schrock (VA); W. Todd Akin (MO); Shelley Moore Capito (WV); Bill Shuster (PA); Marilyn N. Musgrave (CO); Trent Franks (AZ); Jim Gerlach (PA); Jeb Bradley (NH); Bob Beauprez (CO); Chris Chocola (IN); Steve King (IA); Thaddeus G. McCotter (MI).

Democrats included:

Nydia M. Velazquez (NY), Ranking Minority Member; Juanita Millender-McDonald (CA); Tom Udall (NM); G.K. Butterfield (NC); Eni F. H. Faleomavaega (AS); Donna M. Christensen (VI); Danny K. Davis (IL); Grace F. Napolitano (CA); Anibal Acevedo-Vila (PR); Ed Case (HI); Madeleine Z. Bordallo (GU); Denise L. Majette (GA); Jim Marshall (GA); Michael H. Michaud (GA); Linda T. Sánchez (CA); Brad Miller (NC); (Vacancy).

1.2 EXTRACTS FROM THE RULES OF THE HOUSE OF REPRESENTATIVES

RULE X

ORGANIZATION OF COMMITTEES

COMMITTEES AND THEIR LEGISLATIVE JURISDICTIONS

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

* * * * *

(o) Committee on Small Business.

(1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction.

(2) Participation of small-business enterprises in Federal procurement and Government contracts.

GENERAL OVERSIGHT RESPONSIBILITIES

2. (b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) The application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) The organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

(2) Each committee to which subparagraph (1) applies having more than 20 members shall establish an oversight subcommittee, or require its subcommittees to conduct oversight in their respective jurisdictions, to assist in carrying out its responsibilities under this clause. The establishment of an oversight subcommittee does not limit the responsibility of a subcommittee with legislative jurisdiction in carrying out its oversight responsibilities.

(c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

SPECIAL OVERSIGHT FUNCTIONS

* * * * *
3. (k) The Committee on Small Business shall study and investigate on a continuing basis the problems of all types of small business.

1.3 NUMBER AND JURISDICTION OF SUBCOMMITTEES

There will be four subcommittees as follows:

—Workforce, Empowerment and Government Programs (seven Republicans and six Democrats)

—Regulatory Reform and Oversight (seven Republicans and six Democrats)

—Tax, Finance and Exports (eight Republicans and seven Democrats)

—Rural Enterprises, Agriculture and Technology (six Republicans and five Democrats)

During the 108th Congress, the Chairman and ranking minority member shall be ex officio members of all subcommittees, without vote, and the full committee shall have the authority to conduct oversight of all areas of the committee's jurisdiction.

In addition to conducting oversight in the area of their respective jurisdiction, each subcommittee shall have the following jurisdiction:

WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS

Oversight and investigative authority over problems faced by small businesses in attracting and retaining a high quality workforce, including but not limited to wages and benefits such as health care.

Promotion of business growth and opportunities in economically depressed areas. Oversight and investigative authority over regulations and other government policies that impact small businesses located in high risk communities.

Opportunities for minority, women, veteran and disabled-owned small businesses, including the SBA's 8(a) program.

General oversight of programs targeted toward urban relief.

Small Business Act, Small Business Investment Act, and related legislation.

Federal Government programs that are designed to assist small business generally.

Participation of small business in Federal procurement and Government contracts.

REGULATORY REFORM AND OVERSIGHT

Oversight and investigative authority over the regulatory and paperwork policies of all Federal departments and agencies.

Regulatory Flexibility Act.

Paperwork Reduction Act.

Competition policy generally.

Oversight and investigative authority generally, including novel issues of special concern to small business.

TAX, FINANCE AND EXPORTS

Tax policy and its impact on small business.

Access to capital and finance issues generally.

Export opportunities and oversight over Federal trade policy and promotion programs.

RURAL ENTERPRISES, AGRICULTURE AND TECHNOLOGY

Promotion of business growth and opportunities in rural areas.

Oversight and investigative authority over agricultural issues that impact small businesses.

General oversight of programs targeted toward farm relief.

Oversight and investigative authority for small business technology issues.

The adoption of the House Rules in the 94th through the 108th Congresses confirmed this action and continued the process begun on August 12, 1941, when, by virtue of House Resolution 294 (77th Congress, 1st session), the Select Committee on Small Business was created. In January 1971, the House designated the Select Committee as a Permanent Select Committee; and, on October 8, 1974, the 93rd Congress, recognizing the importance of the work performed on behalf of this nation's small businesses, provided that the Committee should thereafter be established as a standing committee.

1.4 DISPOSITION OF LEGISLATION REFERRED TO THE COMMITTEE

A total of 47 House bills and five Senate bills were referred to the Committee on Small Business during the 108th Congress. The Committee acted on 19 bills in some fashion, of which three reports were filed. Eleven bills on which the Committee acted upon were signed into law either individually or as part of broader legislation. The House of Representatives also passed one Committee-drafted resolution to commemorate the 50th anniversary of the Small Business Administration (SBA) that did not require Senate passage or presidential signature. For a more detailed summary of the Committee's legislative activities, please refer to Chapter Three of this report.

The Committee expended most of its legislative time and effort in attempting to reach an accommodation to pass a historic and comprehensive SBA reauthorization bill (H.R. 2802). Unfortunately, despite unanimous passage in the Committee on July 24,

2003, this normally non-controversial legislation could not be brought to the House floor for a vote due to several contentious provisions within H.R. 2802 that were insisted upon by the minority. The Senate passed their version of SBA reauthorization on September 26, 2003 (S. 1375) but it was also not able to pass the House despite being held at the desk (not formally referred to the Committee). Thus, some of the legislative record of the Committee for the 108th Congress consists of a series of temporary extensions of SBA programs (Public Law 108-172, Public Law 108-205, part of Public Law 108-217, and Public Law 108-306) during 2003 and 2004. SBA programs were again extended on September 30, 2004 and on November 20, 2004 in the overall continuing resolution authored by the Appropriations Committee for all the non-defense programs of the federal government (Public Law 108-309 and Public Law 108-416, respectively).

To provide a greater degree of certainty in the long-term future of SBA programs, the Committee negotiated with the Senate Small Business and Entrepreneurship Committee a common SBA reauthorization bill. Both Chairman Donald Manzullo and Senate Small Business & Entrepreneurship Committee Chair Olympia Snowe introduced companion bills (H.R. 5108/S. 2821) on September 21, 2004. This new compromise SBA reauthorization bill contained key provisions of H.R. 2802, S. 1375, S. 2724 (declaring that the National Veterans Business Development Corporation is a private, not governmental, entity), Section 6 of H.R. 205 (protecting the privacy rights of Small Business Development Center clients) H.R. 4119 (reauthorization of the Paul D. Coverdell Drug-Free Workplace Program), and H.R. 5260 (reauthorization of the Advisory Committee on Veterans Business Affairs). About 80 percent of the provisions of H.R. 5108/S. 2821 were added to the Consolidated Appropriations Act, 2005 (H.R. 4818) as Division K with some further additions requested by the Administration and the Senate. H.R. 4818 became Public Law 108-447 when the President signed the bill on December 8, 2004. Also, the SBA appropriations section of Division B, Title V of H.R. 4818 effectuated the core of H.R. 4853 into law by allowing up to 48 percent of the funds in the Women Business Center program to be reserved for sustainability grants in Fiscal Year 2005.

The Committee is also proud of its legislative record in twice rescuing the SBA's 7(a) loan program in the 108th Congress, which had the practical effect of freeing up an additional \$3.8 billion in 2003 (Public Law 108-8) and \$3 billion in 2004 (Public Law 108-217) for small business lending. In addition, the Committee was able to work through the technicalities of allowing qualified Certified Development Companies (CDCs) under the Premier Certified Lender Program (PCLP) within the 504 loan program to elect to use a risk-based approach, as found in the private sector, to calculate their loan loss reserve requirements (Public Law 108-232). Passage of this legislation also had the practical effect of freeing up more capital to lend to expanding small businesses while still protecting the interests of the taxpayer. Finally, the Committee was able to work with the Veterans Affairs Committee to pass the Veterans Entrepreneurship Act (Public Law 108-183) that provides discretionary authority to federal procurement officials to set-aside contracts to service-disabled veteran-owned small businesses. Fur-

ther, Public Law 108–183 permits the use of G.I. bill educational benefits for self-employment training and allows states the right to approve various entrepreneurial courses run by Small Business Development Centers (SBDCs) and the National Veterans Business Development Corporation.

The Committee also passed four bills that did not see timely action by the Senate (H.R. 205, H.R. 1166, H.R. 1772, and H.R. 4478). However, one key component of H.R. 205, (Section 6) dealing with protecting the privacy rights of SBDC clients, was incorporated into H.R. 5108/S. 2821, which was subsequently folded into H.R. 4818 (Public Law 108–447). The Committee also worked with the Government Reform Committee and did not assert its jurisdiction in order to insure expeditious passage of the Paperwork and Regulatory Improvements Act (H.R. 2432). However, H.R. 2432, now appended to H.R. 2728, also did not see timely action in the Senate.

The Committee held one hearing on the Regulatory Flexibility Improvements Act (H.R. 2345) but no further legislative action was taken. The Committee was also very active in gaining broad bi-partisan support and endorsements for the Equal Access to Justice Reform Act (H.R. 2282) but no formal legislative action was taken in time before the 108th Congress adjourned.

Finally, the Committee was very active on other legislation that was not directly referred to the Committee but had a large impact upon small business. This included the Jobs and Growth Reconciliation Act (Public Law 108–27), which accelerated the 2001 tax cuts to small businesses; the American Jobs Creation Act of 2004 (Public Law 108–357), which provided nine percent tax relief to manufacturers, regardless of size or incorporation status; the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173), which included Health Savings Accounts (HSAs); the Death Tax Repeal Permanency Act (H.R. 8); the Small Business Health Fairness Act, which creates Association Health Plans (H.R. 660); the HEALTH Act (H.R. 5) to reform our medical liability system; the Federal Prison Industries Competition in Contracting Act (H.R. 1829), which removed the mandatory sourcing preference for FPI; the U.S. Patent & Trademark Fee Modernization Act (H.R. 1561), which provided a lower fee structure for small entities filing patents; and the Junk Fax Prevention Act of 2004 (H.R. 4600) to reverse the Federal Communications Commission (FCC) proposed rule that required written consent prior to a business sending a fax to a recipient. The key element of H.R. 1829 (permanently removing FPI's mandatory source requirement) and almost all of H.R. 1561 were incorporated into the Consolidated Appropriations Act, 2005 (Public Law 108–447)

CHAPTER TWO

THE SMALL BUSINESS ADMINISTRATION

The Committee has both legislative and oversight jurisdiction over the Small Business Administration (SBA), which was created in 1953, inter alia, to provide opportunities for entrepreneurship, inventiveness, and the creation and growth of small businesses; to provide procurement assistance to small businesses seeking to contract with the federal government; to help assure the availability of capital to small businesses; and to provide assistance to victims of disasters.

During the 108th Congress, the Committee held a number of hearings and passed several bills that focused on the mission and performance of the SBA. A review of the legislative activities of the Committee appears in Chapter Five and a synopsis of the hearings held by the Committee may be found in Chapter Seven of this report.

The major programs of the SBA are briefly described below.

2.1 SBA PROGRAMS IN GENERAL

SBA has approximately 5,310 employees in the field (including 2,378 temporary disaster employees) with 721 at the headquarters in Washington, D.C. There are currently 10 regional offices, 68 district and nine staffed branch offices, two commercial loan servicing centers, one liquidation center, one liquidation and guaranty purchase center, four disaster home loan servicing centers, four disaster area offices and one disaster operations center, six Government Contracting Area Offices, and three loan processing centers. The SBA provides small business loan guarantees, direct loans for physical damage and economic injury to disaster victims, assistance to small businesses who are seeking to compete in the federal procurement arena and to obtain contracts, as well as management, marketing and technical assistance provided by Small Business Development Centers (SBDCs) and the Senior Corps of Retired Executives (SCORE). The SBA also administers a surety bond program for small businesses that are not able to obtain bonding elsewhere.

An independent entity within SBA, the Office of Advocacy, headed by the Chief Counsel for Advocacy appointed by the President and confirmed with the advice and consent of the Senate, serves as an advocate for small businesses both in the Legislative and Executive branches of government primarily in the area of insuring that proposed rules and regulations do not unduly harm small business. The SBA also oversees the implementation of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs that provide research and development opportunities for small businesses.

2.2 SBA BUSINESS LOANS

One of the major purposes for SBA is to help assure that capital is available to small businesses who cannot obtain credit elsewhere and that demonstrate the ability to repay. Subject to appropriations, loans are made for a wide variety of purposes, e.g., plant acquisition, construction, conversion or expansion, including acquisition of land, material, supplies, equipment, and working capital. SBA administers three major loan programs known as the 7(a), 504, and Microloan programs.

SBA's largest business loan guarantee program is the 7(a) program. In Fiscal Year (FY) 2003, 67,306 7(a) loans were made in the amount of approximately \$10.49 billion and in FY 2004 there were 81,133 such loans made in the amount of \$12.7 billion. Banks and other lending institutions make loans and the SBA guarantees up to \$1,000,000¹ of a private sector loan of up to \$2,000,000. Generally, the SBA guarantees up to 85 percent of loans of \$150,000 or less and 75 percent of loans greater than \$150,000.

The Small Business Reauthorization and Manufacturing Assistance Act of 2004 (H.R. 5108/S. 2821), most of which was added to the Consolidated Appropriations Act, 2005 (Division K of P.L. 108-447) and signed into law on December 8, 2004, stabilized and strengthened the popular 7(a) loan guarantee program by maintaining current fee structure, thus eliminating the need for federal subsidies, saving taxpayers between \$70 million and \$80 million. In addition, Public Law 108-447 raised the maximum 7(a) loan guarantee level from \$1 million to \$1.5 million (with an accompanying 0.25 percent upfront front borrower fee surcharge on the amount of the guarantee above \$1 million) and raises the maximum loan amount from \$250,000 to \$350,000 for paperwork-friendly SBA Express loans.

The 504 loan program was established to encourage economic development, create and preserve job opportunities, and foster growth and modernization of small businesses. A small business may apply to a Certified Development Company (CDC), licensed by SBA, to finance part of a proposed 504 project. The SBA guarantees debentures of up to \$1,000,000 (\$1,300,000 where certain economic redevelopment objectives are met). The guarantees are for 100 percent of the debenture that represents 40 percent of the total project costs. The balance of the costs is provided by a 10 percent or more contribution by the borrower, and a private sector loan to finance the remaining 50 percent. There are currently 269 licensed CDCs. In FY 2003, CDCs made 6,863 504 loans totaling \$3.14 billion and in FY 2004, CDCs made 8,357 504 loans totaling \$3.86 billion.

The Small Business Reauthorization and Manufacturing Assistance Act of 2004—(H.R. 5108/S. 2821), that was added to the Consolidated Appropriations Act, 2005 (Division K of P.L. 108-447) also expanded the 504 loan program at no additional expense to the taxpayer. Public Law 108-447 increased the maximum loan debenture size in the 504 program to \$1.5 million; \$2 million for projects

¹ Between April 5, 2004 and September 30, 2004, the 7(a) loan guarantee limit was temporarily raised to \$1.5 million as part of the rescue package that saved the 7(a) program in FY 2004 (Public Law 108-217). A surcharge of 0.25 percent was added to the upfront borrower fee on the amount of the guaranteed-portion of the loan above \$1 million, on top of the 3.5 percent upfront fee the borrower was already paying.

where certain economic redevelopment objectives are met; and \$4 million for small manufacturers. It also increased the job requirement test to \$50,000 of guarantee for every one job created or retains (up from \$35,000); \$100,000 in the case of a project of a small manufacturer; and \$75,000 for areas generally considered to need greater economic development.

The Microloan program is designed to provide capital to very small enterprises that cannot be served even by the other access to capital programs of the SBA. The program has two types of loans: (1) direct and (2) guaranteed. SBA directly provides loans to 169 intermediaries who in turn make loans of up to \$35,000 to small businesses. Also, SBA guarantees 100 percent of loans to the intermediaries by banks. SBA funds grants to intermediaries and other qualified organizations to provide marketing, management, and technical assistance to borrowers. In FY 2003, intermediary lenders made 2,442 loans in the amount of \$29,000,000. In FY 2004, intermediary lenders made 2,399 loans in the amount of \$23,000,000.

2.3 DISASTER ASSISTANCE LOANS

Under the Disaster Assistance Program, SBA makes direct loans rather than loan guarantees. There are three kinds of disaster loans: (1) home disaster loans, (2) physical disaster business loans, and (3) economic injury business loans. The owner of a home may apply for a home disaster loan to cover physical damage to his or her primary residence and personal property, and those not owning their primary residence may apply for a loan with respect to physical loss of their personal property. Almost any business, non-profit entity, or charity (big or small) whose real or personal property was damaged in a declared disaster may apply for a physical disaster business loan.

A small business located in a declared disaster area may apply for an economic injury disaster loan, if the small business has suffered a substantial economic loss as a direct result of the disaster that has caused it to be unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses. A small business whose owner or an essential employee is a Military Reservist or a member of the National Guard may apply for an economic injury disaster loan, if the small business has suffered or is likely to suffer substantial economic injury as a result of the individual's absence while on active duty during a period of a military conflict.

After a series of devastating hurricanes struck Florida and other states east of the Mississippi in the summer of 2004, the 108th Congress passed two emergency supplemental appropriations statutes that provide a total of \$16.475 billion to areas stricken by the hurricanes and other natural disasters. As part of the recovery effort, SBA received \$929 million to cover the cost and administration of SBA disaster loans.

In FY 2003, SBA approved 25,856 disaster loans totaling \$885,211,500. In FY 2004, SBA approved 28,510 disaster loans totaling \$883,490,400.

2.4 SMALL BUSINESS INVESTMENT COMPANIES

SBA licenses and regulates venture capital companies that specialize in investing in small businesses. These Small Business Investment Companies (SBICs) provide equity capital or long-term financing and may assist those small companies invested in with technical and managerial advice.

Capital for investment has been raised traditionally by investors in a SBIC and by debentures guaranteed as to both principal and interest by SBA (which usually are equal to two or three times the SBICs private capital). SBICs relying upon debenture leverage primarily invest in debt securities of small businesses that have cash flows sufficient to service the outstanding debentures. SBA guaranteed \$305.5 million in debentures in FY2003, and \$440.3 million in FY2004.

In 1992, legislation was enacted creating a new SBIC participating securities program. SBA guarantees the principal and pays the purchasers of participating securities the interest as it comes due on behalf of a SBIC. When the SBIC becomes profitable, the SBIC repays SBA the interest advanced and a share of the profits. The participating securities program permits investment in new enterprises that do not have established records of profitability. Three hundred and seventy-seven (377) new financings totaling \$1.12 billion in equity investments were made in FY 2003. Three hundred and seven (307) new financings totaling \$1.45 billion in equity investments were made in FY 2004.

The New Markets Venture Capital (NMVC) program, enacted into law in 2000, provides capital to small enterprises located in low-income areas. SBA can enter into participation agreements with newly formed venture capital companies and guarantees securities to allow them to make equity investments in small businesses located in low-income areas. In addition, SBA can make grants to NMVC SBICs so that they can provide managerial assistance to small businesses in which they have invested. In FY2003, six NMVC companies received final approval for a total of \$2,694,164.

2.5 PROCUREMENT ASSISTANCE

SBA is tasked with the responsibility of helping small businesses get their fair share of the total prime contract and subcontracting dollars spent by federal agencies for goods, services, property, and construction. By statute, small business are required to receive at least 23 percent of the total value of all prime contracts awarded for each fiscal year. Other Government-wide minimum goals are established by statute for small business concerns owned and controlled by service-disabled veterans, three percent; qualified HUBZone small business concerns, three percent; small business concerns owned and controlled by socially and economically disadvantaged (SDB) individuals, five percent; and, small business concerns owned and controlled by women, five percent.

In FY 2003 (the latest data for this information), the federal government exceeded its goals for small businesses overall and SDBs (23.61 percent and 7.01 percent respectfully). However, the goals for women-owned small businesses, Historically Underutilized Businesses (HUB)Zones, and service-disabled veterans were not

met (2.98 percent, 1.23 percent, and 0.20 percent respectively). Nevertheless, even though the goals were not achieved, record amounts of prime contract dollars went to these small businesses (\$8.3 billion for women, \$3.4 billion for HUBZones, and \$459 million for service-disabled veterans).

SBA Procurement Center Representatives (PCRs), generally located at federal agencies that have major procurement activities, are tasked with the responsibilities of identifying contacting opportunities for small businesses, attempting to break up large requirements so that small businesses can participate as prime contractors, and assisting small businesses in competing for government contracts. SBA Commercial Market Representatives (CMRs) are responsible for assisting small businesses obtain subcontracts with prime contractors who have signed subcontracting plans with federal agencies. SBA certifies small businesses as eligible for the 8(a), SDB, and HUBZone programs. Also, SBA is authorized to certify to a contracting officer that a small business is competent to perform a particular government procurement (or sale) contract.

In January 2004, the Procurement Marketing and Access Network (PRONET) was integrated with the Department of Defense's Central Contractor Registration (CCR) database. CCR permits small businesses to list their capabilities on the Internet and is the official database of firms certified under the 8(a), SDB, and HUBZone programs. However, CCR does not provide contracting opportunities directly to small businesses listed. SBA sets size standards that define whether a business entity is small and eligible under federal programs and preferences reserved for small businesses. Size standards are established for types of business activities, generally, under the North American Industry Classification System (NAICS). Business development assistance is provided under 7(j) of the Small Business Act to small businesses owned and controlled by economically and socially disadvantaged individuals.

2.6 ENTREPRENEURIAL DEVELOPMENT

The SBA's economic assistance programs support those seeking to start a business and those desiring to grow and expand an existing small business by providing individual counseling, management training, procurement and marketing assistance with guidance materials and workshops. Assistance is provided at service locations throughout the United States, Puerto Rico, and the U.S. Virgin Islands, and electronically by means of various Internet sites. The facilities that deliver entrepreneurial development assistance include: approximately 1,100 SBDCs, 10,844 SCORE volunteers, 86 Business Information Centers (BICs), nine Tribal Business Information Centers (TBICs), four Veterans Business Outreach Centers, and 86 Women's Business Centers (WBCs).

SBDCs are funded by both federal and state appropriations. SBA administers the program through grants generally to state governments and agencies. Most SBDCs are affiliated with state college and university systems. They assist small businesses and aspiring entrepreneurs with business problems concerning personnel, administration, marketing, sales, merchandizing, finance, accounting, business management, and participation in international markets. SBDCs may not charge a fee for counseling services. Modest fees

are charged for workshops and business related training and courses. In FY 2003, SBDCs served 687,535 clients. In FY2004 SBDCs served an estimated 730,176 clients.

SCORE has 389 chapter locations (at least one in every state) where volunteer counselors provide practical business advice and training services to over 331,000 clients annually. All counseling is provided free of charge to clients. Annual congressional appropriations are used to reimburse counselors for mileage and incidental expenses. E-mail counseling is provided over the Internet.

The network of BICs is established through partnerships between the SBA and for-profit entities, other agencies, and non-profit organizations. BICs provide up-to-date computer technology, hardware and software, and a large library of business related publication and videos. On-site counseling in many BICs are provided by SCORE volunteers and SBDC counselors. In FY2004, BICs served 168,640 clients.

WBCs provide assistance and one-on-one counseling to women entrepreneurs with respect to technology, financial and management planning, problem-solving, access to capital, marketing, business administration, and selling to the federal government. The on-line Women's Business Center provides around-the-clock Internet access to business information to help start a business, resolve business problems, or grow an existing enterprise through federal contracting or exporting opportunities. In FY2004, WBCs counseled and trained 122,712 clients.

The National Women's Business Council is a source of independent advice to the President, federal agencies, and Congress with regard to entrepreneurship and the impact of federal policies and programs upon women who want to start and grow business enterprises. The council has focused on issues involving the award of federal prime contracts and subcontracts to women-owned small businesses and barriers to women entrepreneurs obtaining access to credit and investment capital.

Veterans Business Outreach Centers helped 10,811 veterans from February 2004 through August 2004 with assistance in gaining access to capital, resolving business and management problems, and starting and growing small businesses. In addition, SBA has entered into agreements with the Association of Small Business Development Centers, the Department of Labor, and works with the Department of Veterans Affairs to provide outreach and needed business administration and entrepreneurial services to veterans and service-disabled veterans.

The current Native American Initiative is not a replacement for the TBIC Program. Rather, it is an initiative developed because of an appropriation from Congress in FY 2003 and FY 2004. The SBA Entrepreneurial Development, Office of Native American Affairs, implemented the new initiative in FY 2003 in which SBA worked closely with American Indian tribal governments, tribal colleges, Indian organizations, other federal agencies and the private sector to supplement and support the Indian nations' plan for economic stimulus in Indian country. In FY04, SBA's resource partners assisted 18,438 Native American entrepreneurs through the SBDC, SCORE, BIC, and WBC programs.

2.7 SURETY BOND GUARANTEES

Small business contractors and subcontractors who seek public and private construction contracts are often required to furnish surety bonds guaranteeing the completion of the contracted work. The SBA provides assistance to such contractors by extending guarantees of up to 90 percent to surety insurance companies. These guarantees enable small contractors to obtain bonding more easily. The SBA's bonding assistance is accomplished through the Prior Approval Program or the Preferred Surety Bond Program. Bid bonds as well as performance and/or payment bonds may be guaranteed on contracts up to \$2,000,000.

The SBA will pay a surety participating in the Prior Approval Program 90 percent guarantee for SDBs and HUBZones regardless of contract size up to \$2 million, and 90 percent guarantee for all contractors with contracts \$100,000 or less. Otherwise, SBA will pay a surety in an amount not to exceed an administrative ceiling of 80 percent guarantee for all contracts over \$100,000 for small businesses other than SDBs and HUBZones. Under the Preferred Surety Bond program, the SBA's guarantee is limited to 70 percent of the bond for all small businesses for all contracts and contractors regardless of contract size. In FY 2003, SBA provided 8,974 bid and final bond guarantees on contracts valued at \$594 million. In FY 2004, SBA provided 7,803 bid and final bond guarantees on contracts valued at \$598 million.

The Small Business Reauthorization and Manufacturing Assistance Act of 2004 (H.R. 5108/S. 2821), most of which was added to the Consolidated Appropriations Act, 2005 (Division K of P.L. 108-447) and signed into law on December 8, 2004, also amended the SBA's surety bond program. First, Public Law 108-447 clarifies that the \$2 million limit on surety bonds applies to the bond guarantee and not to the contract size. It also made the Preferred Surety Bond program permanent.

2.8 TECHNOLOGY AND INNOVATION

It is the free enterprise system, and not government programs, that make the United States the world leader in innovation and technology. Small businesses are at the forefront of research and development and have been more prolific in creating new jobs through innovation and technology.

However, there are two government programs, the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs, which have successfully provided innovative research and developed products for government and commercial use.

SBA's Office of Technology provides oversight, monitoring, evaluation, and reporting for these programs. In FY 2004, SBA awarded approximately 21 cooperative agreements in the amount of \$1,978,950 pursuant to the Federal and State Technology Partnership (FAST) program. The grants are to provide technical assistance to high-tech small businesses to enhance their market competitiveness. In addition in FY 2004, SBA awarded five cooperative agreements in the amount of \$247,350 to provide statewide outreach to small businesses in rural states that have received few SBIR and STTR awards.

The SBIR program has been in existence since 1982. Unlike the STTR program, the SBIR program does not require, but permits, a cooperative venture between a for-profit small business and a researcher from a university, federal laboratory or a nonprofit research institution for the purpose of developing commercially viable products. However, the project's principal investigator must be employed by the small business.

A small business to be eligible must be: (1) independently owned and operated and other than the dominant firm in the field which it is proposing to carry out SBIR projects, (2) organized and operated for profit, with 500 employees or less, (3) the primary source of employment for the project's principal investigator at the time of award and during the period when the research is conducted, and (4) at least 51-percent owned by U.S. citizens or lawfully admitted permanent resident aliens.

Agencies that spend more than \$100 million for external research, and research and development must set aside 2.5 percent of their R&D budget for awards under SBIR. There are no additional moneys appropriated to support this program. At present, there are ten agencies that qualify for the program. The agencies are: Department of Defense, Department of Energy, National Aeronautics and Space Administration, National Science Foundation, Department of Agriculture, Department of Commerce, Department of Education, Environmental Protection Agency, Department of Health and Human Services, and Department of Transportation.

The ten agencies listed above designate research and development topics for which small businesses may submit proposals for project funding. The proposals are evaluated by the agency based on (1) the qualifications of the small business, (2) the value of the project to the agency and the degree of innovation, and (3) the market potential of the product to be developed. Once funded, a project goes through three phases. Each phase is funded separately.

Phase I is the start-up portion of the project and may be funded up to \$100,000. This phase lasts approximately six months and is for the purpose of exploring the scientific, and technical aspects of the project. Phase II may last up to two years and may be funded in an amount up to \$750,000. During this period, research and development continues and the commercial potential explored. Only projects that successfully complete Phase I can be considered for funding in Phase II. Phase III is the point in the project that the idea moves from the laboratory to the production facility to the market place. No SBIR funds may be used to pay for Phase III. The funding must come from the private sector or non-SBIR federal funding. In FY2003, 4,465 Phase I funding agreements were awarded totaling \$455,386,000 and 1,759 Phase II funding agreements were awarded totaling \$1,214,714,000.

The STTR program is independent of the SBIR program with which it is frequently confused. The STTR program requires a cooperative venture between a for-profit small business and a researcher from a university, federal laboratory, or a non-profit research institution for the purpose of developing commercially viable products from ideas spawned in a laboratory environment. For a federal agency to participate in the program, it must have an extramural budget for research or research and development that ex-

ceeds \$1 billion for any fiscal year. Presently, there are five federal agencies that meet the funding requirement. They are: Department of Defense, Department of Energy, Department of Health and Human Services, National Aeronautics and Space Administration, and National Science Foundation.

To be eligible for an STTR award a small business must have no more than 500 employees, and be independently owned and operated with its principal place of business in the United States. In addition, the small business may not be the dominant entity in the field in which the project is contained and must be primarily owned by U.S. citizens. To be eligible to participate in the program, a research entity must be a non-profit institution as defined by the Stevenson-Wyler Act of 1980 or a federally funded research and development center as determined by the National Science Foundation under the provisions of section 35(c)(1) of the Office of Federal Procurement Policy Act.

The program requires that the research and development project be conducted jointly by a small business and a research institution in which not less than 40 percent of the work is performed by the small business, and that not less than 30 percent of the work is performed by the research institution. Though the venture is cooperative in nature, the small business is responsible for the overall management and control of each project.

The statute mandates that each award go through three phases. Phase I is the start-up part of a particular project and entails, as may be possible, a determination of the scientific, technical, and commercial merits of the concepts underlying a particular award. Phase II provides an opportunity to further develop the concepts to meet the objectives of the particular award. Only projects that successfully complete Phase I can be considered for funding under Phase II. Phase III is the point at which the project moves from the laboratory to commercial application or further cooperative research and development. No STTR funds may be used to pay for Phase III. The funding must come from the private sector or non-STTR federal funding. In FY 2003, 379 Phase I funding agreements were awarded in the amount of \$41,135,227 and Phase II funding agreements were awarded totaling \$50,676,227.

2.9 EXPORT ASSISTANCE

SBA is authorized to promote increased participation of small businesses in international trade. To assist small businesses in exporting abroad, SBA works with the Department of Commerce and other federal agencies to identify business opportunities and to assist in financing the sale of U.S. made products to foreign buyers. SBA works with the Department of Commerce, the Export-Import Bank, Department of Agriculture, as well as SBDCs and SCORE, in maintaining a network of 16 U.S. Export Assistance Centers (USEACs) that provide information and counseling with respect to export marketing and financing. USEACs are SBA's primary outlet for delivering export services to small businesses. Small businesses may obtain free consultation through the Export Legal Assistance Network (ELAN) program, which enables those interested in starting export operations to consult with international trade attorneys

from the Federal Bar Association, and access to publications on international trade and export marketing.

The SBA's financial assistance has several loan programs, depending upon the purpose for which the funds are to be used. Exporters can obtain funds for fixed asset acquisitions during startup or expansion and for general working capital needs through the 7(a) loan program. Export Trading Companies can qualify for SBA's business loan guarantee program, provided that they are for profit entities and have no bank equity participation. The Export Working Capital program authorizes SBA to guarantee 90 percent of a private sector loan of up to \$750,000 for working capital. Loans made under this program generally have a 12-month maturity but two one-year extensions may be obtained.

The loans can be for single or multiple export sales and can be expended for pre-shipment working capital and post-shipment exposure coverage, but the proceeds cannot be used to obtain fixed assets. Through the 7(a) loan program, the SBA can provide export assistance by guaranteeing international trade loans, that provide long-term financing to small businesses engaged in international trade, as well as those businesses adversely impacted by import competition. In FY 2003, SBA guaranteed 1,679 export loans worth an estimated \$398,109,334. In FY 2004, SBA guaranteed 2,316 export loans in the total amount of \$562,191,362.

The Small Business Reauthorization and Manufacturing Assistance Act of 2004 (H.R. 5108/S. 2821), most of which was added to the Consolidated Appropriations Act, 2005 (Division K of P.L. 108-447) and signed into law on December 8, 2004, also expanded the scope of the international trade loan programs at the SBA. Public Law 108-447 authorizes the use of International Trade (IT) Loans to refinance existing debt to make it consistent with all other 7(a) loans. The provisions also allow the findings by the International Trade Commission (ITC) or a Trade Adjustment Assistance Center (TAAC) as proof that a small business has been adversely affected by foreign imports. Finally, Public Law 108-447 raises IT loan guarantee limit from \$1,250,000 to \$1,750,000 and the Export Working Capital guarantee limit from \$750,000 to \$1,250,000.

2.10 OFFICE OF ADVOCACY

The Office of Advocacy was created in 1976, pursuant to Title II of Public Law 94-305, with various stated "primary functions" and other "continuing" duties. The law provides for the President to appoint a Chief Counsel of Advocacy, subject to the advice and consent of the Senate. The mandated mission of the Office of Advocacy is to represent and advance small business interests before the Congress and federal agencies for the purpose of enhancing small business competitiveness.

The statutorily prescribed "primary functions" of the Office of Advocacy include: (1) examining the role of small business in the American economy; (2) assessing the effectiveness of all federal subsidy and assistance programs available to small business; (3) measuring the cost and impact of government regulations on small business and making legislative and non-legislative recommendations for the elimination of unnecessary or excessive regulations; (4) determining the impact of the tax structure on small business

and making legislative and other proposals for reform of the tax system; (5) studying the ability of the financial markets to meet the credit needs of small business; (6) determining availability and delivery methods of financial and other assistance to minority enterprises; (7) evaluating the efforts of federal departments and agencies, business and industry to assist minority enterprises; (8) recommending ways to assist the development and strengthening of minority and other small businesses; (9) recommending ways for small business to compete effectively and to expand, while identifying common causes for small business failures; (10) developing criteria to define small business; and, (11) evaluating federal and private industry efforts to assist veterans and service-disabled veterans.

In addition, there are a number of “continuing” duties of the Office of Advocacy, which include: (1) serving as a focal point for receiving complaints and suggestions regarding federal agency policies and activities that affect small business; (2) counseling small businesses on problems in their relationships with the federal government; (3) proposing changes in policies and activities of all federal departments and agencies to better fulfill the purposes of the Small Business Act; (4) representing small business before other federal departments and agencies whose policies and activities may affect small business; and (5) enlisting the cooperation of others in the dissemination of information about federal programs that benefit small business.

In 1980, the Regulatory Flexibility Act (Public Law 96–354) enlarged the responsibilities of the Office of Advocacy to include the monitoring of federal agencies’ compliance with the Act’s requirements, performing regulatory impact analyses, and making annual reports to Congress. Also in 1980, Public Law 96–302 required the SBA Administrator to establish and maintain a small business economic database to provide Congress and the Executive with information on the economic condition of the small business sector.

The statute prescribed 12 categories of data and required an annual report on trends. Although none of these database functions were expressly delegated to the Office of Advocacy by statute, the SBA Administrator has historically assigned these functions to the Office of Advocacy. The Office of Advocacy also has regional advocates who monitor small business and regulatory activities at the State level and disseminate relevant information about small business issues.

The Office of Advocacy estimates that in 2003 (the latest date for this information), their efforts saved small businesses \$6 billion in compliance costs by stopping or changing potentially damaging regulations.

CHAPTER THREE

HEARINGS AND MEETINGS HELD BY THE COMMITTEE ON SMALL BUSINESS AND ITS SUBCOMMITTEES, 108th CON- GRESS

3.1 FULL COMMITTEE

Date	Subject
February 4, 2003	Roundtable: President's Economic Stimulus Proposal.
February 25, 2003	Roundtable: The Burden of Regulations on the Small Business Community.
February 26, 2003	Meeting to consider and adopt Committee Rules and Oversight Plan for the 108th Congress; Washington, D.C.
February 26, 2003	U.S. Small Business Administration's Budget FY 2004.
March 4, 2003	Roundtable: Federal Regulatory Burden.
March 5, 2003	Small Business Access and Alternatives to Health Care.
March 11, 2003	RESPA Reform and Economic Effects on Small Business.
March 20, 2003	Changes to SBA Financing Programs Needed for Revitalization of Small Manufacturers.
April 9, 2003	Will We Have an Economic Recovery Without a Strong U.S. Manufacturing Base?
May 1, 2003	IRS Compliance with the Regulatory Flexibility Act.
May 7, 2003	Are Big Businesses Being Awarded Contracts Intended for Small Businesses?
May 14, 2003	The WTO's Challenge to the FSC/ETI Rules and the Effects on America's Small Businesses.
June 4, 2003	The Visa Approval Backlog and its Impact on American Small Business.
June 11, 2003	Revitalizing America's Manufacturers: SBA Business and Enterprise Development Programs.
June 18, 2003	The Globalization of White-Collar Jobs: Can America Lose These Jobs and Still Prosper?
June 25, 2003	Foreign Currency Manipulation and its Effect on Small Manufacturers and Exporters.
July 9, 2003	Saving the Defense Industrial Base.
July 14, 2003	Doctors as Small Businesses, field hearing, Frederick, MD.
July 23, 2003	Assisting Small Businesses Through the Tax Code, Recent Gains and What Remains to be Done.
August 25, 2003	Small Business Access to Health Care.
September 2, 2003	Roundtable: Opportunities for Economic Growth and Job Creation.
September 4, 2003	Attracting Economic Growth for Rural Economies.
September 10, 2003	The WTO's Challenge to the FSC/ETI Rules and the Effect on America's Small Businesses.
September 17, 2003	National Small Business Week: Small Business Success Stories.
October 16, 2003	Is America Losing its Lead in High Tech: Implications for the US Defense Industrial Base.
October 20, 2003	The Offshoring of High Skilled Jobs.
October 29, 2003	Roundtable: End of Session Review on the State of U.S. Manufacturing.
November 20, 2003	Lowering the Cost of Doing Business in the United States: How to Keep Our Companies Here.
December 1, 2003	Increasing the Competitiveness of U.S. Manufacturers.
January 6, 2004	Real Estate Settlement Procedure Act Regulations: Working Behind Closed Doors to Hurt Small Businesses and Consumers.
January 21, 2004	Can U.S. Companies Compete Globally Using American Workers?
February 4, 2004	Roundtable: Are We Making as Much Progress as We Think?
February 11, 2004	How Does the President's FY '05 Budget Request Affect Small Business?
February 17, 2004	Availability of Capital and Federal Procurement Opportunities to Minority-Owned Small Businesses, field hearing, Chicago, IL.
February 25, 2004	Business Meeting to approve the Committee's Budget Views and Estimates on the President's FY '05 Budget Request.
March 10, 2004	Spike in Metal Prices—What Does it Mean for Small Manufacturers?
March 25, 2004	Spike in Metal Prices—Part II.

Date	Subject
May 5, 2004	Improving the Regulatory Flexibility Act (H.R. 2345).
May 12, 2004	Women Entrepreneurship: Successes and Challenges.
May 19, 2004	Red Tape Reduction: Improving the Competitiveness of America's Small Manufacturers.
June 2, 2004	Careers for the 21st Century: How Education and Worker Training Can Help Small Business.
July 7, 2004	The Rebate of Value Added Taxes at the Border and the Competitive Disadvantage for U.S. Small Businesses.
July 14, 2004	Trade Fairness: How to Make Our Trade Laws Work for America's Small Businesses.

3.2 SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS

Date	Subject
April 1, 2003	Joint Subcommittee hearing with the Subcommittee on Regulatory Reform and Oversight, Improving and Strengthening the SBA Office of Advocacy.
April 28, 2003	Status of Small Manufacturing in the Midwest, field hearing, St. Peters, MO.
May 6, 2003	Current and Future States of the SBIR, FAST and MEP Programs.
July 22, 2003	Federal Procurement Policy: Is the Federal Government Failing Certain Industrial Sectors?
August 25, 2003	The Rising Cost of Health Care for Small Business Owners.
September 2, 2003	Opportunities for Economic Growth and Job Creation, field hearing, Newnan, GA.
October 1, 2003	Joint Subcommittee hearing with the Subcommittee on Tax, Finance and Exports, Federal Prison Industry's Effects on the U.S. Economy and the Small Business Environment.
February 26, 2004	Union "Salting" of Small Businesses.
March 18, 2004	Benefits of Health Savings Accounts.
April 29, 2004	Would an Increase in the Federal Minimum Wage Help or Hinder Small Business?
May 20, 2004	Department of Labor's Overtime Regulations Effect on Small Business.
July 15, 2004	Joint Subcommittee hearing with the House Veteran's Affairs Committee's Subcommittee on Benefits, Excellence in Action: Government Support of Disabled Veteran-Owned Businesses.

3.3 SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

Date	Subject
April 1, 2003	Joint Subcommittee hearing with the Subcommittee on Workforce, Empowerment and Government Programs, Improving and Strengthening the SBA Office of Advocacy.
May 15, 2003	The Cost of Regulations to the Small Business Community.
June 26, 2003	CRS Regulations and Small Business in the Travel Industry.
July 15, 2003	Contract Bundling and Small Business Procurement.
July 18, 2003	Joint Subcommittee hearing with House Government Reform's Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, What is OMB's Record in Small Business Paperwork Relief?
October 30, 2003	Spam and its Effects on Small Business.
November 17, 2003	Increasing the Competitiveness of U.S. Manufacturers, field hearing, Spartanburg, SC.
January 28, 2004	Joint Subcommittee hearing with House Government Reform's Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, The Administration's Record in Relieving Burden on Small Business.
March 1, 2004	Challenges to Small Business Growth, field hearing, Augusta, GA.
April 22, 2004	Small Businesses Creating Jobs and Protecting the Environment.
May 20, 2004	Keep America's Small Businesses Competitive.
June 17, 2004	Department of Labor's Enforcement Actions Against Small Business.
July 20, 2004	Joint Subcommittee hearing with House Government Reform's Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, Small Business Paperwork Relief Act Implementation.
July 22, 2004	Small Business Liability Reform.

3.4 SUBCOMMITTEE ON TAX, FINANCE AND EXPORTS

Date	Subject
April 3, 2003	President's Proposal to Increase Expensing for Small Businesses.

Date	Subject
May 8, 2003	Overcoming Obstacles Facing the Uninsured: How the Use of Medical Savings Accounts, Flexible Spending Accounts and Tax Credits Can Help.
June 12, 2003	The Chilean Free Trade Agreement: Opening Doors to South American Markets.
August 27, 2003	Removing the Roadblocks to Success: How Can the Federal Government Help Small Businesses Revitalize the Economy?
August 28, 2003	Small Business Exporting and the Southern California Economy, field hearing, Long Beach, CA.
October 1, 2003	Joint Subcommittee hearing with the Subcommittee on Workforce, Empowerment and Government Programs, Federal Prison Industry's Effects on the U.S. Economy and the Small Business Environment.
October 8, 2003	August 2003 Blackout on Small Businesses and Possible Solutions.
July 8, 2004	H.R. 1818, the Workforce Health Improvement Program Act: Healthy Employees-Healthy Bottom Line.

3.5 SUBCOMMITTEE ON RURAL ENTERPRISES, AGRICULTURE AND TECHNOLOGY

Date	Subject
April 8, 2003	Litigating the Americans with Disabilities Act.
May 15, 2003	The Impact of the Highway Beautification Act on Small Businesses Across America.
July 17, 2003	Endangered Farmers and Ranchers: The Unintended Consequences of the Endangered Species Act.
September 25, 2003	The Future of Rural Telecommunications: Is the Universal Service Fund Sustainable?
October 21, 2003	Challenges that Small Businesses Face Accessing Homeland Security Contracts.
January 15, 2004	A Small Business Component to the Federal Flight Deck Officer Program: A Win-Win Scenario, field hearing, Paulden, AZ.
February 23, 2004	The Endangered Species Act, field hearing, St. Joseph, MO.
May 6, 2004	The Benefits of Tax Incentives for Producers of Renewable Fuels and its Impact on Small Businesses and Farmers.
July 21, 2004	Tax Incentives for Homeland Security Related Expenses (H.R. 3562).
September 22, 2004	Impact of High Natural Gas Prices on Small Manufacturers and Farmers.

CHAPTER FOUR

PUBLICATIONS OF THE COMMITTEE ON SMALL BUSINESS AND ITS SUBCOMMITTEES, 108TH CONGRESS

4.1 REPORTS

House Report Number	Title and date
108-153	Report to accompany H.R. 923, To amend the Small Business Investment Act of 1958 to allow certain premier certified lenders to elect to maintain an alternative loss reserve; June 12, 2003.
108-162	Report to accompany H.R. 1772, To improve small business advocacy; June 18, 2003.
108-325-Part I	Report to accompany H.R. 2802, To reauthorize the Small Business Act and the Small Business Investment Act of 1958; October 21, 2003.

4.2 HEARING RECORDS

Serial No.	Date, title and committee
108-1	February 26, 2003, U.S. Small Business Administration's Budget FY 2004, Full Committee.
108-2	March 5, 2003, Small Business Access and Alternatives to Health Care, Full Committee.
108-3	March 11, 2003, RESPA Reform and Economic Effects on Small Business, Full Committee.
108-4	March 20, 2003, Changes to SBA Financing Programs Needed for Revitalization of Small Manufacturers, Full Committee.
108-5	April 1, 2003, Improving and Strengthening the SBA Office of Advocacy, Joint Subcommittee hearing with the Subcommittee on Regulatory Reform and Oversight and Subcommittee on Workforce, Empowerment and Government Programs.
108-6	April 3, 2003, President's Proposal to Increase Expensing for Small Businesses, Subcommittee on Tax, Finance and Exports.
108-7	April 8, 2003, Litigating the Americans with Disabilities Act, Subcommittee on Rural Enterprises, Agriculture and Technology.
108-8	April 9, 2003, Will We Have an Economic Recovery Without a Strong U.S. Manufacturing Base?, Full Committee.
108-9	April 28, 2003, Status of Small Manufacturing in the Midwest, field hearing by the Subcommittee on Workforce, Empowerment and Government Programs, St. Peters, MO.
108-10	May 1, 2003, IRS Compliance with the Regulatory Flexibility Act, Full Committee.
108-11	May 6, 2003, Current and Future States of the SBIR, FAST and MEP Programs, Subcommittee on Workforce, Empowerment and Government Programs.
108-12	May 7, 2003, Are Big Businesses Being Awarded Contracts Intended for Small Businesses?, Full Committee.
108-13	May 8, 2003, Overcoming Obstacles Facing the Uninsured: How the Use of Medical Savings Accounts, Flexible Spending Accounts and Tax Credits Can Help, Subcommittee on Tax, Finance and Exports.
108-14	May 14, 2003, The WTO's Challenge to the FSC/ETI Rules and the Effects on America's Small Businesses, Full Committee.
108-15	May 15, 2003, The Cost of Regulations to the Small Business Community, Subcommittee on Regulatory Reform and Oversight.
108-16	May 15, 2003, The Impact of the Highway Beautification Act on Small Businesses Across America, Subcommittee on Rural Enterprises, Agriculture and Technology.
108-17	June 4, 2003, The Visa Approval Backlog and its Impact on American Small Business, Full Committee.
108-18	June 11, 2003, Revitalizing America's Manufacturers: SBA Business and Enterprise Development Programs, Full Committee.

Serial No.	Date, title and committee
108-19	June 12, 2003, The Chilean Free Trade Agreement: Opening Doors to South American Markets, Subcommittee on Tax, Finance and Exports.
108-20	June 18, 2003, The Globalization of White-Collar Jobs: Can America Lose These Jobs and Still Prosper?, Full Committee.
108-21	June 25, 2003, The Effect of Foreign Currency Manipulation on Small Manufacturers and Exporters, Full Committee.
108-22	June 26, 2003, CRS Regulations and Small Business in the Travel Industry, Subcommittee on Regulatory Reform and Oversight.
108-23	July 9, 2003, Saving the Defense Industrial Base, Full Committee.
108-24	July 14, 2003, Field Hearing, Doctors as Small Businesses, Frederick, MD.
108-25	July 15, 2003, Contract Bundling and Small Business Procurement, Subcommittee on Regulatory Reform and Oversight.
108-26	July 17, 2003, Endangered Farmers and Ranchers: The Unintended Consequences of the Endangered Species Act, Subcommittee on Rural Enterprises, Agriculture and Technology.
108-27	July 18, 2003, What is OMB's Record in Small Business Paperwork Relief?, Joint Subcommittee hearing with Subcommittee on Regulatory Reform and Oversight and House Government Reform's Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs.
108-28	July 22, 2003, Federal Procurement Policy: Is the Federal Government Failing Certain Industrial Sectors?, Subcommittee on Workforce, Empowerment and Government Programs.
108-29	July 23, 2003, Assisting Small Businesses Through the Tax Code, Recent Gains and What Remains to be Done, Full Committee.
108-30	August 25, 2003, Small Business Access to Health Care, Full Committee.
108-31	August 25, 2003, The Rising Cost of Health Care for Small Business Owners, Subcommittee on Workforce, Empowerment and Government Programs.
108-32	August 27, 2003, Removing the Roadblocks to Success: How Can the Federal Government Help Small Businesses Revitalize the Economy?, Subcommittee on Tax, Finance and Exports.
108-33	August 28, 2003, field hearing, Small Business Exporting and the Southern California Economy, Long Beach, CA, Subcommittee on Tax, Finance and Exports.
108-34	September 2, 2003, Field hearing, Opportunities for Economic Growth and Job Creation, Newnan, GA, Subcommittee on Workforce, Empowerment and Government Programs.
108-35	September 4, 2003, Attracting Economic Growth for Rural Economies, Full Committee.
108-36	September 10, 2003, The WTO's Challenge to the FSC/ETI Rules and the Effect on America's Small Businesses, Full Committee.
108-37	September 17, 2003, National Small Business Week: Small Business Success Stories, Full Committee.
108-38	September 25, 2003, The Future of Rural Telecommunications: Is the Universal Service Fund Sustainable?, Subcommittee on Rural Enterprises, Agriculture and Technology.
108-39	October 1, 2003, Federal Prison Industry's Effects on the U.S. Economy and the Small Business Environment, Joint Subcommittee hearing with the Subcommittee on Workforce, Empowerment and Government Programs and the Subcommittee on Tax, Finance and Exports.
108-40	October 8, 2003, August 2003 Blackout on Small Businesses and Possible Solutions, Subcommittee on Tax, Finance and Exports.
108-41	October 16, 2003, Is America Losing its Lead in High Tech: Implications for the US Defense Industrial Base, Full Committee.
108-42	October 20, 2003, The Offshoring of High Skilled Jobs, Full Committee.
108-43	October 21, 2003, Challenges that Small Businesses Face Accessing Homeland Security Contracts, Subcommittee on Rural Enterprises, Agriculture and Technology.
108-44	October 30, 2003, Spam and its Effects on Small Business, Subcommittee on Regulatory Reform and Oversight.
108-45	November 17, 2003, field hearing, Increasing the Competitiveness of U.S. Manufacturers, Spartanburg, SC, Subcommittee on Regulatory Reform and Oversight.
108-46	November 20, 2003, Lowering the Cost of Doing Business in the United States: How to Keep Our Companies Here, Full Committee.
108-47	December 1, 2003, Increasing the Competitiveness of U.S. Manufacturers, Full Committee.
108-48	January 6, 2004, Real Estate Settlement Procedure Act Regulations: Working Behind Closed Doors to Hurt Small Businesses and Consumers, Full Committee.
108-49	January 15, 2004, field hearing, A Small Business Component to the Federal Flight Deck Officer Program: A Win-Win Scenario, Paulden, AZ, Subcommittee on Rural Enterprises, Agriculture and Technology.

Serial No.	Date, title and committee
108-50	January 21, 2004, Can US Companies Compete Globally Using American Workers?, Full Committee.
108-51	January 28, 2004, What is the Administration's Record in Relieving Burden on Small Businesses?, Joint Subcommittee hearing with Subcommittee on Regulatory Reform and Oversight and House Government Reform Committee's Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs.
108-52	February 11, 2004, How Does the President's FY '05 Budget Request Affect Small Business?, Full Committee.
108-53	February 17, 2004, Field Hearing on the Availability of Capital and Federal Procurement Opportunities to Minority-Owned Small Businesses, Chicago, IL, Full Committee.
108-54	February 23, 2004, field hearing, The Endangered Species Act, St. Joseph, MO, Subcommittee on Rural Enterprises, Agriculture and Technology.
108-55	February 26, 2004, Union "Salting" of Small Businesses, Subcommittee on Rural Enterprises, Agriculture and Technology.
108-56	March 1, 2004, field hearing, Challenges to Small Business Growth, Augusta, GA, Subcommittee on Regulatory Reform and Oversight.
108-57	March 10, 2004, Spike in Metal Prices-What Does it Mean for Small Manufacturers?, Full Committee.
108-58	March 18, 2004, Benefits of Health Savings Accounts, Subcommittee on Workforce, Empowerment and Government Programs.
108-59	March 25, 2004, Spike in Metal Prices-Part II, Full Committee.
108-60	April 22, 2004, Small Businesses Creating Jobs and Protecting the Environment, Subcommittee on Regulatory Reform and Oversight.
108-61	April 29, 2004, Would an Increase in the Federal Minimum Wage Help or Hinder Small Business?, Subcommittee on Workforce, Empowerment and Government Programs.
108-62	May 5, 2004, Improving the Regulatory Flexibility Act (HR 2345), Full Committee.
108-63	May 6, 2004, The Benefits of Tax Incentives for Producers of Renewable Fuels and its Impact on Small Businesses and Farmers, Subcommittee on Rural Enterprises, Agriculture and Technology.
108-64	May 12, 2004, Women Entrepreneurship: Successes and Challenges, Full Committee.
108-65	May 19, 2004 Red Tape Reduction: Improving the Competitiveness of America's Small Manufacturers, Full Committee.
108-66	May 20, 2004, Keep America's Small Businesses Competitive, Subcommittee on Regulatory Reform and Oversight.
108-67	May 20, 2004, Department of Labor's Overtime Regulations Effect on Small Business, Subcommittee on Workforce, Empowerment and Government Programs.
108-68	June 2, 2004, Careers for the 21st Century: How Education and Worker Training Can Help Small Business, Full Committee.
108-69	June 17, 2004, Department of Labor's Enforcement Actions Against Small Business, Subcommittee on Regulatory Reform and Oversight.
108-70	July 7, 2004, The Rebate of Value Added Taxes at the Border and the Competitive Disadvantage for U.S. Small Businesses, Full Committee.
108-71	July 8, 2004, H.R. 1818, the Workforce Health Improvement Program Act: Healthy Employees-Healthy Bottom Line, Subcommittee on Tax, Finance and Exports.
108-72	July 14, 2004, Trade Fairness: How to Make Our Trade Laws Work for America's Small Businesses, Full Committee.
108-73	July 15, 2004, Excellence in Action: Government Support of Disabled Veteran-Owned Businesses, Joint Subcommittee hearing with the Subcommittee on Workforce, Empowerment and Government Programs and the House Veteran's Affairs Committee's Subcommittee on Benefits.
108-74	July 20, 2004, Small Business Paperwork Relief Act Implementation, Joint Subcommittee hearing with House Government Reform's Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs.
108-75	July 21, 2004, Tax Incentives for Homeland Security Related Expenses (H.R. 3562), Subcommittee on Rural Enterprises, Agriculture and Technology.
108-76	July 22, 2004, Small Business Liability Reform, Subcommittee on Regulatory Reform and Oversight.
108-77	September 22, 2004, Impact of High Natural Gas Prices on Small Manufacturers and Farmers, Subcommittee on Rural Enterprises, Agriculture and Technology.
108-A	October 29, 2003, Roundtable: End of Session Review on the State of U.S. Manufacturing.
108-B	September 2, 2003, Roundtable: Opportunities for Economic Growth and Job Creation, Newnan, GA.
108-C	March 4, 2003, Roundtable: Federal Regulatory Burden.
108-D	February 4, 2003, Roundtable: President's Economic Stimulus Proposal.

Serial No.	Date, title and committee
108-E	February 25, 2003, Roundtable: The Burden of Regulations on the Small Business Community.
108-F	February 4, 2004, Roundtable: Are We Making as Much Progress as We Think?

CHAPTER FIVE

SUMMARY OF LEGISLATIVE ACTIVITIES OF THE COMMITTEE ON SMALL BUSINESS, 108TH CONGRESS

5.1 H.R. 205—NATIONAL SMALL BUSINESS REGULATORY ASSIST- ANCE ACT OF 2003

LEGISLATIVE HISTORY

1/7/2003: Referred to the House Committee on Small Business.

4/8/2003 1:46pm: Mr. Manzullo moved to suspend the rules and pass the bill.

4/8/2003 1:47pm: Considered under suspension of the rules.

4/8/2003 2:08pm: At the conclusion of debate, the Yeas and Nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed.

4/8/2003 5:22pm: Considered as unfinished business.

4/8/2003 5:29pm: On motion to suspend the rules and pass the bill Agreed to by the Yeas and Nays: (2/3 required): 417–4 (Roll no. 116)

4/8/2003 5:29pm: Motion to reconsider laid on the table Agreed to without objection.

4/9/2003: Received in the Senate and Read twice and referred to the Committee on Small Business and Entrepreneurship.

NEED FOR LEGISLATION

During the past 20 years, the Federal Register—the compendium of federal regulatory initiatives and changes—almost doubled in size from 42,000 pages to a record 83,289 pages in 2000. This crush of federal dictates is particularly troubling to small businesses that find it increasingly difficult to meet these burgeoning regulatory requirements while at the same time trying to successfully operate their businesses in an expanding competitive global environment. Often, small business owners do not learn about their failure to comply with a regulation or that a new regulatory requirement has been imposed until an inspector or auditor walks through the door.

The result is neither beneficial to the small business owner nor the federal government. Federal regulations exist to achieve some statutory objective; noncompliance hinders the reaching of these statutory goals. Small business owners certainly would be more interested in complying with federal regulations than paying penalties and fines. However, the amount of information, including regulations and concomitant guidance, simply overwhelms small firms.

In 1996, Congress took action in an effort to alleviate this problem. The Small Business Regulatory Enforcement Fairness Act pro-

vided that federal agencies are required to produce plain-English compliance guides for any regulation that would have a significant economic impact on a substantial number of small businesses. Of course, if small business owners do not know about the regulatory changes, the existence of such compliance guides does little to assist them. Some mechanism must exist to make small businesses more aware of their regulatory obligations.

Even more important than making small businesses aware of the regulations is providing them with assistance needed to understand and comply with the regulations. A regulation may only take up 10 or 11 pages of text, but the explanation for what those 10 or 11 pages mean may encompass as much as 300 hundred pages of dense, triple-columned, single-spaced pages in the Federal Register. Most small business owners do not have the time to go through this dense prolixity. And even if they did, they would not understand it unless they were knowledgeable in the field. The Committee believes that greater assistance must be provided to small business owners in helping them comply with complex regulatory issuances. Otherwise, a divide could develop between those businesses, usually large, with the resources to comply and those, usually small, without such resources. The small businesses will be at risk for penalties, fines, and audits while large businesses will not. A regulatory compliance assistance program operated through the small business development centers could provide substantial assistance in ensuring such a divide does not occur.

The Small Business Administration oversees a number of mechanisms for delivering advice to small business owners. One of the most effective is the Small Business Development Center (SBDC) program. Operated in conjunction with colleges and universities, the SBDCs assist small businesses in solving problems concerning the operations, manufacturing, engineering, technology, exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, and business strategy development. The SBDCs utilize the resources and the expertise of colleges and universities. In addition, the SBDCs, like the Agricultural Extension Service, also provide a focal point for information retrieval, coordination of federal and state government services, and referral to experts. Historically, SBDCs have focused on financial, management, and marketing activities of small businesses despite the requirement that they also provide regulatory compliance assistance.

SBDCs can provide an effective mechanism for dispensing regulatory compliance information and advice. However, regulatory compliance, unlike many of the other activities undertaken by the small business development centers, has significant legal consequences. Therefore, a program to examine how the regulatory compliance assistance will operate in selected SBDCs is a preferred strategy to simply providing an authorization of additional funding so that SBDCs can provide regulatory compliance assistance.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designates the bill as the “National Small Business Regulatory Assistance Act of 2001.”

Section 2. Purpose

This section expresses the purpose of the legislation—to establish a pilot project within certain SBDCs to provide and coordinate regulatory compliance assistance to small businesses.

Section 3. Definitions

The definitions of the Small Business Act shall apply to this pilot program unless a different definition is utilized in the new §36 created by this Act. In those cases in which the definition is different, the definitions in new §36 shall apply to the pilot program created by this Act.

Section 4. Small Business Regulatory Assistance Program

This section establishes the pilot program by creating a new Section 36 of the Small Business Act.

Section 36(a)(1) defines the term “Administrator” as the Administrator of the Small Business Administration.

Section 36(a)(2) defines the term “Association” to be the association established pursuant to Section 21 of the Small Business Act, which represents the majority of SBDCs. That organization is the Association of Small Business Development Centers.

Section 36(a)(3) defines the term “Participating Small Business Development Center” as a SBDC selected to participate in the pilot program established under this section.

Section 36(a)(4) defines the term “Program” as the regulatory assistance program established under this section.

Section 36(a)(5) defines the term “Regulatory Compliance Assistance” as assistance provided by a participating SBDC to a small business concerning compliance with federal regulations.

Section 36(a)(6) defines the term “Small Business Development Center” means a small business development center described in section 21 of the Small Business Act.

Section 36(a)(7) defines the term “State” to include all fifty states and the District of Columbia, the Virgin Islands, and Guam.

Section 36(b) authorizes the Administrator of the Small Business Administration to establish a pilot program for selected small business development centers to provide small businesses with regulatory compliance assistance.

Section 36(c)(1) authorizes the Administrator to enter into arrangements with SBDCs selected under this section for the provision of regulatory compliance assistance.

The participating SBDCs are required to provide access to information and resources on regulatory compliance, including contact information for federal and state compliance and technical assistance similar to those established under section 507 of the Clean Air Act Amendments of 1990. Numerous other federal and state agencies have non-punitive compliance assistance programs (such as the federal Occupational Safety and Health Administration) and the Committee expects that the participating SBDCs will maintain all necessary contact information with those federal and state agencies. Furthermore, the Committee expects that the quality of coordination of these assistance resources will be a significant factor in selecting the SBDCs for the pilot project.

Section 36(c)(1) also requires that the selected SBDCs establish various training and educational activities. The Committee expects that selected centers will utilize their contacts with federal and state agencies to obtain compliance pamphlets, videos, books, and any compliance guides issued pursuant to the Small Business Regulatory Enforcement Fairness Act. In addition, the Committee expects that participating centers will hold lectures and seminars on regulatory compliance including updates on compliance based on regulatory changes. The Committee expects that the Administrator will consider the quality of proposed educational programs in determining which centers are selected to participate in the pilot program.

Section 36(c)(1)(C) also mandates that the selected SBDCs provide confidential counseling on a one-on-one basis at no charge to small businesses seeking regulatory compliance assistance. The Committee recognizes that compliance with regulations inculcates legal rights and responsibilities of small business owners. Therefore, section 36(c) prohibits any regulatory compliance counseling that would be considered the practice of law in the jurisdiction in which the SBDC is located or in which such counseling is conducted. Furthermore, the Committee supports efforts in which the participating development centers establish contacts with lawyers in the community willing to provide seminars and other consultative service on regulatory compliance matters.

Section 36(c)(1) also requires the provision of technical assistance. Such counseling may include the arrangement of meetings with technical experts known to the participating small business development centers as long as such counseling again is done on a one-on-one basis at no charge to the small business.

Section 36(c)(1)(E) makes explicit the Committee's concern that small businesses are directed to those individuals who have appropriate credentials and certifications to provide regulatory compliance assistance. While the Committee fully understands that many very successful businesses, including Microsoft, Apple, and Dell Computer, started in garages and those businessmen are quite capable of providing advice on starting, financing, and marketing a business, they are not necessarily qualified to provide guidance on compliance with OSHA, EPA, or IRS regulations. In fact, due to the potential legal consequences resulting from a small business owner following incorrect guidance, the Committee determined that it is necessary to make explicit the requirement that the participating centers only refer businesses to individuals with appropriate expertise in the regulatory compliance matter for which advice is sought.

Section 36(c)(2) requires each participating center to file a quarterly report with the Administrator. The report shall provide a summary of the compliance assistance provided under the pilot program. The report also must contain any data and information obtained by the participating SBDC from a federal agency concerning compliance that the federal agency intends to be disseminated to small business concerns. The Committee believes that this latter requirement will enable the Administrator or the Chief Counsel for Advocacy to raise issues of agency inconsistencies, to the extent that they exist, to the appropriate decisionmakers.

Section 36(c)(2) requires that reports be filed with the Administrator in an electronic format. The Committee expects the Administrator to promulgate regulations that will provide for a consistent format of the report. The Committee believes that such consistency is necessary for the accurate compilation of data and proper assessment of the effectiveness of the pilot program.

Section 36(c)(2) also permits, but does not require, participating SBDCs to make interim reports if such reports are necessary or useful. For example, a participating SBDC may receive inconsistent compliance information from a federal agency. By alerting the Administrator prior to the issuance of the quarterly report, the federal agency may be able to issue a clarification that may eliminate confusion, save compliance costs, and improve small business compliance.

One of the critical concerns to small businesses is that discussions of compliance assistance could be revealed to federal agencies, which would lead to fines and penalties. Furthermore, the Committee is concerned that SBDCs have been revealing the names of businesses, which seek their advice to the Administrator for functions unrelated to the financial auditing of SBDCs. The Committee believes that such behavior is simply intolerable. Without any assurances of privacy, small businesses will be less likely to use small business development centers. And this would be especially true for regulatory compliance assistance efforts. The Committee recognizes the concern about revealing the names of businesses that utilize the resources of SBDCs. Therefore, section 36(c)(1)(D) prohibits the disclosure of the names or addresses of any concern receiving compliance assistance under this pilot program unless the Administrator is ordered to make such disclosure pursuant to a court order or civil or criminal enforcement action commenced by a federal or state agency. The Committee expects that participating SBDCs will only respond to formal agency requests such as civil investigative demands, subpoenas, requests from Administrator's Associate Administrator for Small Business Development Centers when performing a financial audit of the SBDC, or requests from the Inspector General of the Small Business Administration. The Committee expects the SBDCs will not provide information concerning the identity of businesses simply upon the verbal request of a federal or state agency.

Section 36(d) requires the Administrator to act as repository of data and information submitted by the participating SBDCs. Given the oversight role and importance of the Associate Administrator for Small Business Development Centers, section 36(d) requires that the functions of maintaining the database be housed with the Associate Administrator. The Committee believes that a central repository is necessary in order to determine whether federal agencies are providing consistent compliance information on a national basis. However, the Committee expects that the information received under this subsection be made available to other offices within the Small Business Administration, particularly the Chief Counsel for Advocacy and the Small Business and Agriculture Regulatory Ombudsman so those offices can more effectively carry out their mission of representing the interests of small businesses before federal agencies.

Section 36(d) also requires that the Administrator to issue an annual report to the President and the Committees on Small Business of the Senate and the House Representatives. The report will contain: (a) data on the types of information provided by the participating SBDCs; (b) the number of small businesses that contacted the participating SBDCs; (c) the number of small businesses assisted by participating SBDCs; (d) information on the outreach activities of the participating SBDCs; (e) information regarding each case known to the Administrator in which participating SBDCs provided conflicting advice regarding compliance with federal regulation to one or more small businesses; (f) and any recommendations for improving the regulatory environment of small businesses. The Committee believes that this information is necessary to properly evaluate the utility of the pilot program. More importantly, the report will reveal whether similarly situated small businesses are receiving consistent regulatory compliance assistance. In preparing the report, the Committee recognizes that the Administrator may wish to consult with the Chief Counsel for Advocacy and the Small Business and Agriculture Regulatory Ombudsman. The Committee supports such consultative efforts but notes that the Administrator may not delegate the responsibility of preparing the report required by this subsection to any office within the Small Business Administration except the Associate Administrator for Small Business Development Centers.

Section 36(e) limits participation in the pilot program only to those SBDCs certified under § 21(k)(2) of the Small Business Act. The Committee is limiting participation in the pilot program to those SBDCs selected are of the highest quality. Some SBDCs have not completed their certification programs. Nevertheless, some of these centers may be developing or already have exceptional regulatory compliance assistance programs. The Committee does not believe that such centers should be prohibited from participating in the pilot program. Therefore, § 36(e)(2) authorizes the Administrator to waive the requirement for certification if the center is making a good faith effort to obtain such certification.

Section 36(f) requires the Administrator to select two participating state programs from each of the Small Business Administration's ten federal regions as those regions exist on the date of enactment of this Act. The Administrator shall consult with the Association and give the Association's recommendations substantial weight. The Administrator is required to complete the selection of the participating centers within 60 days after the regulations to implement the pilot program have been promulgated.

Section 36(g) ensures that no matching funds currently allocated to the operation of the SBDCs will be utilized to fund the pilot program. In order to ensure proper funding, the Committee is authorizing a separate funding authorization for the program.

Section 36(h) establishes the procedures for distributing grants among the selected state programs. The formula is based on the principle that a state that has a smaller population also will have, in absolute terms, fewer small businesses than a larger state. The formula therefore allocates funds according to the relative size of each state. The Committee believes that the minimum funds needed to initiate a state program will be \$200,000. Because the Com-

mittee has authorized \$5,000,000, it is making extra resources available to the larger states that will require more resources to initiate the pilot project.

Section 36(i) requires the Comptroller General of the United States to provide a report three years after the establishment of the pilot program evaluating the effectiveness of the program. The report also should contain any suggested modifications to the pilot program. Finally, the Comptroller General should provide its opinion concerning whether the program should be continued and expanded to include more SBDCs. The report shall be transmitted to the Committees on Small Business of the Senate and House of Representatives. The Committee expects that the pilot program will be sufficiently successful to expand the program to other SBDCs.

Section 36(j) limits the operation of the pilot program only to the funds appropriated in advance for the program. Section 36(j) provides an authorization of appropriations of \$5,000,000 for fiscal year 2002 and each year thereafter. Section 36(j) also prohibits the Administrator from using other funds, including other funds made available for the operation of SBDCs, to operate this pilot project. The Committee authorized the additional appropriations because it determined that funding of the regulatory compliance program should not detract from the available funding for the delivery of other SBDC programs.

Section 5. Promulgation of regulations

Section 5 authorizes the Administrator to promulgate regulations to implement this pilot program no later than 180 days after the enactment of the Act. Such regulations only shall be promulgated after the public has been given an opportunity for notice and comment. The Committee believes that the Administrator can and should accomplish the issuance of regulations within the deadline set by statute. The Committee considers this Act to be some other law for purposes of section 603 of Title 5 of the United States Code.

The regulations shall include the priorities for the type of assistance to be provided, standards relating to the educational, technical, and support services to be provided by the Association to the participating centers, and standards for work plans that the participating centers will provide to the Administrator. The Committee believes that given the potential interest in the program by SBDCs, it is appropriate for the Administrator to have a set of standards by which it can determine which state programs shall be chosen. More importantly, the standards will provide an appropriate baseline for the Comptroller General's evaluation of the pilot project.

Section 5 also requires the Administrator to develop appropriate standards for ensuring the technical qualifications of experts to whom small businesses will be referred. The Committee does not intend that someone must have a college or advance degree to qualify. For example, a contractor licensed in a state with 20 years experience (who is a high-school graduate) may be as well equipped to provide advice on compliance with OSHA construction standards as a professor of civil engineering. On the other hand, that same contractor might not be an appropriate individual to provide tax compliance advice. The Committee does not expect that this aspect of the Administrator's regulations shall be all encompassing, i.e.,

delineate every profession and the appropriate qualifications. However, the Committee does expect that the Administrator will recognize, as qualified, those individuals certified by nationally-recognized accrediting bodies (whose members must demonstrate substantial educational and practical experience), meet educational and work standards established by a federal agency, or are licensed to practice a particular profession or job pursuant to state law. The Committee expects that the regulations will provide participating centers with enough information that the centers can determine whether the person providing the advice is competent in the field of regulation.

Section 6. Privacy requirements applicable to Small Business Development Centers

Section 6 amends section 21 of the Small Business Act. The Committee has been contacted on a number of occasions by SBDCs that employees of the Small Business Administration have attempted to obtain the names and addresses of businesses that sought the services of SBDCs. The Committee believes that any attempts by the Administrator or the employees of the Small Business Administration to obtain the names and addresses of persons seeking SBDC assistance is inappropriate because it would act as a disincentive for small businesses to utilize the centers.

Section 6 prohibits the Administrator, any other employee of the Small Business Administration, or any agent of the Administrator (including contractors) from obtaining the names and addresses of businesses that sought assistance. The Committee's bill provides for two exceptions: (1) if the Administrator is ordered by a court in any civil or criminal action initiated by federal or state agency; or (2) the Administrator requires the information while undertaking a financial audit of the SBDC.

To ensure that the Administrator does not unduly abuse the second exception for disclosure, section 6 requires the Administrator to promulgate regulations specifying when such disclosures in an audit shall be made. The Committee expects that the regulations will strictly limit disclosure during the audit process and severely circumscribe those individuals who will have access to the audit information during the audit. The Committee recognizes that the information collected during the audit may have to be retained for a variety of purposes, such as management reviews by the Inspector General or Congressional oversight. The Committee expects the Administrator's regulations to cover who, if anyone, shall have access to the raw data, including the names and addresses of the SBDCs' users, after the audit is complete. The Committee does not intend that information obtained during the audit concerning identifiable individuals or businesses that are retained by the Administrator shall be releasable pursuant to the Freedom of Information Act.

5.2 H. RES. 368—HONORING THE 50TH ANNIVERSARY OF THE SMALL BUSINESS ADMINISTRATION

LEGISLATIVE HISTORY

9/16/2003: Referred to the House Committee on Small Business.

9/16/2003 3:59pm: Mr. Manzullo moved to suspend the rules and agree to the resolution.

9/16/2003 3:59pm: Considered under suspension of the rules.

9/16/2003 4:21pm: On motion to suspend the rules and agree to the resolution Agreed to by voice vote.

9/16/2003 4:21pm: Motion to reconsider laid on the table Agreed to without objection.

NEED FOR LEGISLATION

H. Res. 368 supports the goals and ideals of National Small Business Week, which began on September 15, 2003, and the events surrounding the 50th anniversary of the founding of the Small Business Administration (SBA). The resolution also commends the SBA's Administrator and employees and reaffirms that the SBA plays an important role in assisting small businesses.

SECTION-BY-SECTION ANALYSIS

Whereas the Nation's economy is built on and draws its strength from the creativity and entrepreneurship of its people;

Whereas the Nation's 25 million small businesses employ more than half of all private sector employees, pay 44.5 percent of the total United States private payroll, and generate 60 to 80 percent of all net new jobs annually;

Whereas the men and women who own and operate the Nation's small businesses make a vital contribution to the Nation's prosperity through their ongoing work to create new technologies, products, and services;

Whereas small businesses produce 13 to 14 times more patents per employee than large patenting firms, and these patents are twice as likely as large firm patents to be among the 1 percent most cited;

Whereas the Small Business Administration was officially established in 1953 and for the past 50 years has played a vital role in ensuring that the door to the American Dream is truly open to all entrepreneurs;

Whereas the mission and high calling of the Small Business Administration is to champion the interests of the Nation's entrepreneurs for the benefit of all Americans;

Whereas the Small Business Administration is marking its 50th anniversary by celebrating the accomplishments of small-business owners across the country throughout the year; and

Whereas the President has designated the week beginning on Monday, September 15, 2003, as "National Small Business Week":
Now, therefore, be it

Resolved, That the House of Representatives—

(1) supports the goals and ideals of National Small Business Week, and the events surrounding the 50th anniversary of the founding of the Small Business Administration;

(2) commends the Administrator and the employees of the Small Business Administration for their work on behalf of the Nation's small businesses; and

(3) reaffirms that the Small Business Administration, through its loan, technical assistance, and entrepreneurial development pro-

grams, plays an important role in assisting small businesses to ensure a brighter, stronger future for this Nation.

5.3 H.R. 923—PREMIER CERTIFIED LENDERS PROGRAM IMPROVEMENT ACT OF 2003, PUBLIC LAW 108–232

LEGISLATIVE HISTORY

2/26/2003: Referred to the House Committee on Small Business.
 5/22/2003: Committee Consideration and Mark-up Session Held.
 5/22/2003: Ordered to be Reported (Amended) by Voice Vote.
 6/12/2003 3:35pm: Reported (Amended) by the Committee on Small Business. H. Rept. 108–153.
 6/12/2003 3:36pm: Placed on the Union Calendar, Calendar No. 75.
 6/24/2003 10:35am: Mr. Manzullo moved to suspend the rules and pass the bill, as amended.
 6/24/2003 10:36am: Considered under suspension of the rules.
 6/24/2003 10:48am: At the conclusion of debate, the Yeas and Nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed.
 6/24/2003 1:11pm: Considered as unfinished business.
 6/24/2003 1:18pm: On motion to suspend the rules and pass the bill, as amended Agreed to by the Yeas and Nays: (2/3 required): 416–3 (Roll no. 303).
 6/24/2003 1:18pm: Motion to reconsider laid on the table Agreed to without objection.
 6/25/2003: Received in the Senate and Read twice and referred to the Committee on Small Business and Entrepreneurship.
 5/18/2004: Senate Committee on Small Business and Entrepreneurship discharged by Unanimous Consent.
 5/18/2004: Passed Senate without amendment by Unanimous Consent.
 5/18/2004: Cleared for White House.
 5/19/2004: Message on Senate action sent to the House.
 5/20/2004: Presented to President.
 5/28/2004: Signed by President.
 5/28/2004: Became Public Law No: 108–232.

NEED FOR LEGISLATION

The purpose of this legislation is to amend the Small Business Investment Act of 1958 to allow certain Premier Certified Lenders (PCL) under the Small Business Administration's (SBA) 504 Certified Development Company (CDC) Program, to elect to maintain an alternative loss reserve. In the 1990's, Congress made a variety of changes to SBA's 504 CDC Program to lower the default rate and eliminate its annual appropriation so that it operates solely on user-fees. The 504 CDC Program provides small businesses with long-term, fixed-rate financing for the purchase of fixed assets such as land, buildings, and equipment generally for business expansion purposes. The loans are made by CDCs, usually non-profit corporations organized to contribute to the economic development of a particular community or region.

Unlike the SBA's other main flagship access to credit program, the 7(a) general business loan guarantee program, there is a job-creation component to every CDC project before it is approved (usually, for every \$35,000 guaranteed, one job has to be created or retained). The SBA guarantees debentures issued by a CDC for 40 percent of a project cost, up to \$1 million (or up to \$1.3 million in certain cases if the project serves one of nine public policy goals). The debentures are sold on the market to private investors.

To model a similar effort in the 7(a) program, Congress also established a Premier Certified Lender Program (PCLP) that gives discretion to certain qualified CDCs to approve 504 loans subject to the borrower being eligible and available loan authority. In return for this lower regulatory oversight, these PCLP CDCs must maintain a higher loss reserve (the amount of money set aside to cover bad loans) than regular CDCs.

Some PCLP CDCs believe that this amount of reserves is well beyond what is prudently required because their vast experience in making 504 loans has caused them to become sophisticated in weeding out bad risks. Requiring PCLP CDCs to maintain unnecessarily large loss reserve accounts reduces their ability to serve additional small businesses and to attract new lenders to join the program.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title is the "Premier Certified Lenders Program Improvement Act of 2003."

Section 2. Loss reserves of premier certified lenders temporarily determined on the basis of outstanding balance of debentures

Paragraph (6) of section 508(c) of the Small Business Investment Act of 1958 is amended by adding a new subparagraph (B) that permits the Administrator of the SBA to allow PCLP CDCs to withdraw from loss reserves amounts that are in excess of 1 percent of the total outstanding balance of all the debentures to which the loss reserve is applicable. However, such withdrawal may not be made with respect to a debenture before 100 percent of the contributions (in cash or letters of credit) are made to the loss reserve attributable to that debenture. The reduction based on outstanding balance is temporary and is effective for a 2-year period beginning 90 days after enactment of the bill.

Section 3. Alternative Loss Reserve Pilot Program for Certain Premier Certified Lenders

Subsection (c) of Section 508 of the Small Business Investment Act of 1958 is amended by adding a new paragraph (7) that creates a new alternative loss reserve which a qualified high loss reserve PCL may elect to implement with respect to any eligible calendar quarter. A qualified high loss reserve PCL that makes an election with respect to any calendar quarter, shall before the last day of such quarter, ensure that its loss reserve is no less than the greater of \$100,000 or the loss reserve amount determined by an inde-

pendent auditor to be sufficient to protect the Federal Government from risk of loss.

Before the end of a calendar quarter for which an election is in effect, the head of the PCL and the auditor must certify to SBA that the loss reserve is sufficient to protect the Federal Government from risk of loss. The form and content of the certificate is to be established by the Administrator of the SBA. At the end of each calendar quarter for which an election is in effect, the Administrator may permit the qualified high loss reserve PCL to withdraw from the loss reserve any amounts in excess of the greater of \$100,000 or the auditor certified loss reserve.

In any subsequent quarter that the alternative loss reserve does not apply, the qualified high loss reserve PCL must make a contribution to its loss reserve as the Administrator shall determine, but not in excess of the loss reserve that would have been applicable had no election been made. The contributions may be in one lump sum or a series of payments, as the Administrator shall determine.

To be designated by the Administrator as a "qualified high loss reserve PCL," as defined in the Act, the PCL CDC must: (1) have a loss reserve that is not less than \$100,000; (2) employ an established risk management system that analyses the risk of loss associated with its portfolio of loans and grades the risk of loss of each loan; and (3) meet or exceed 4 out of the 5 "specified risk management benchmarks," as defined in the Act, i.e., currency rate, delinquency rate, default rate, liquidation rate, and loss rate. If the qualified high loss reserve PLC does not meet or exceed 4 out of 5 of the management benchmarks, and noncompliance lasts for 180 days, the PLC must make such payment(s) into the loss reserve to meet the usual loss reserve requirements. The Administrator may waive the requirement with respect to meeting the benchmarks.

Also defined for purposes of the Alternative Loss Reserve Pilot Program are the terms "qualified independent auditor," "PCLP loan," "eligible calendar quarter," and "calendar quarter." A "qualified independent auditor" means an auditor that is paid by the qualified high loss reserve PCL; is independent of such PCL; and has been approved by the Administrator during the preceding year. "PCLP loan" means any guaranteed 504 loan. "Eligible calendar quarter" means the first calendar quarter that begins after the end of the 90-day period beginning with the date of enactment of the Act and ending 7 succeeding calendar quarters thereafter. The term "calendar quarter" means; (1) the period which begins on January 1 and ends on March 31 of each year; (2) the period that begins on April 1 and ends on June 30 of each year; (3) the period which begins on July 1 and ends on September 30 of each year; and (4) the period which begins on October 1 and ends on December 31 of each year.

The Administrator has 45 days to issue and implement final regulations required to administer and perform oversight of the Alternative Loss Reserve Pilot Program. The regulations shall be published in the Federal Register and transmitted to Congress. The regulations shall provide for, but not be limited to, the requirements that auditors must meet to be approved and the terms upon

which a PCL may qualify for admittance to the Program, including the effectiveness of the PCL's risk management system.

The Act would create a bureau within SBA dedicated to oversight of the Alternative Loss Reserve Pilot Program. The "Bureau of PCLP Oversight" is to be staffed by persons presently employed by SBA. The Committee intends that the persons assigned to the Bureau would have expertise in oversight of 504 lending and be properly trained to perform the functions required. No additional amounts are authorized to be appropriated for this purpose. The Bureau is to be fully operative 90 days after enactment. The SBA Office of Inspector General is required to report to Congress on the preparedness of the Bureau.

A qualified high loss reserve PCL must reimburse the Federal Government for 15 percent (an increase from 10 percent) of any loss attributable to a debenture issued by the company during any period for which an election is in effect. A study of the Alternative Loss Reserve Pilot Program is to be performed by a Federal agency experienced in community development lending and financial regulation or with a member of the Federal Financial Institutions Examinations Council. Members of the Council include: the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. The study is to examine the extent to which statutory requirements have caused overcapitalization in the loss reserves maintained by CDCs participating in the PCLP. Also to be studied are the alternatives for establishing and maintaining loss reserves sufficient to protect the Federal Government from losses associated with guaranteeing securities issued under the PCLP. The study and report are to be completed and transmitted to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate within 90 days of enactment of this Act. An amount not to exceed \$75,000 is authorized for the study and report.

5.4 H.R. 1166—TO AMEND THE SMALL BUSINESS ACT TO EXPAND AND IMPROVE THE ASSISTANCE PROVIDED BY SMALL BUSINESS DEVELOPMENT CENTERS TO INDIAN TRIBE MEMBERS, NATIVE ALASKANS, AND NATIVE HAWAIIANS

LEGISLATIVE HISTORY

3/6/2003: Referred to the House Committee on Small Business.

3/31/2003 3:35pm: Mr. Shuster moved to suspend the rules and pass the bill.

3/31/2003 3:36pm: Considered under suspension of the rules.

3/31/2003 3:54pm: At the conclusion of debate, the Yeas and Nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed.

3/31/2003 6:58pm: Considered as unfinished business.

3/31/2003 7:04pm: On motion to suspend the rules and pass the bill Agreed to by the Yeas and Nays: ($\frac{2}{3}$ required): 378–14 (Roll no. 94).

3/31/2003 7:04pm: Motion to reconsider laid on the table Agreed to without objection.

4/1/2003: Received in the Senate and referred to the Committee on Small Business and Entrepreneurship.

NEED FOR LEGISLATION

Approximately 60 percent of Indian tribe members and Native Alaskans live on or in the immediate vicinity of Indian lands and suffer from an average unemployment rate of 45 percent. Presently, Indian tribe members and Native Alaskans own more than 197,000 business enterprises and generate revenues in excess of \$34 billion.

The service industry, the largest sector, accounts for 17 percent of the Native American businesses, and 15.7 percent of the total revenues. The second largest sector is construction, which accounts for 13.9 percent of the businesses and 15.7 percent of the total revenues. The third largest sector, the retail trades, accounts for 7.5 percent of the businesses and 13.4 percent of the total revenues.

The number of businesses owned by Indian tribe members and Native Alaskans grew by 84 percent during the period from 1992 to 1997, while businesses, generally, grew by only seven percent. During the same period, the gross receipts for Indian tribe members and Native Alaskan business owners increased by 179 percent, in comparison with the business community, as a whole, where the gross receipts for the same period grew only by 40 percent.

In the past, the SBDC program with more than 1000 offices throughout the United States has provided cost-effective business counseling and technical assistance to small businesses. For example, clients receiving long-term counseling under the program in 1998 generated additional tax revenues of \$468 million, which was approximately six times the cost of the program to the Federal government.

By using the existing infrastructure of the SBDC program, it is anticipated that small businesses owned by Indian tribe members, Native Alaskans, and Native Hawaiians, who receive services under the Act, will have a higher survival rate than the average small businesses not receiving such services. Further, increased assistance through SBDC counseling has in the past been able to reduce defaults under Small Business Administration (SBA) lending programs.

The business counseling and technical assistance, provided for under this Act, is critical on Indian land where, without such assistance, similar services are scarce and expensive. Past and current efforts by SBDCs to assist Native American populations located on or along reservation lands have proven difficult. In addition, the lack of resources makes it difficult to raise an equal amount of matching funds to specifically assist Native Americans.

SECTION-BY-SECTION ANALYSIS

Section 1. Findings and purposes

Subsection (a) states the findings of Congress that include the fact that (1) the average unemployment rate for Indian tribe members and Native Alaskans who live on or adjacent to Indian lands

is 45 percent, (2) Indian tribe members and Native Alaskans own more than 197,000 businesses that generate more than \$34 billion in revenues, (3) for the period 1992–1997, the number of businesses owned by Indian tribe members and Native Alaskans grew by 84 percent and gross receipts grew by 179 percent, as compared with seven percent and 40 percent, respectively, for businesses generally, (4) the SBDC program is cost effective in that additional tax revenues generated by businesses counseled under the program in 1998 were approximately six times the cost of the program, (5) using the existing SBDC infrastructure it is anticipated that those receiving services under the Act will have a higher survival rate than those not receiving such services, (6) business counseling and technical assistance provided on Indian lands is critical because such services are presently scarce and where available are expensive, and (7) SBDC business counseling has proven to be effective in reducing the default rate of businesses who have received counseling and who participated in one or more SBA loan program. The Committee believes that because of the SBDC program's success and proven track record, utilizing the existing SBDC network will enhance the success of H.R. 2538.

Subsection (b) states the purpose of the Act which includes assisting Indian tribe members, Native Alaskans, and Native Hawaiians by: increasing jobs and enhancing economic development on Indian lands; creating new small businesses and expanding existing ones; providing management, technical, and research assistance; seeking the advice of Tribal Councils on where business development assistance is most needed; and, ensuring full access under the Act to existing business counseling and technical assistance available through the SBDC program.

Section 2. Small Business Development Center Assistance to Indian tribe members, Native Alaskans, and Native Hawaiians

Adding a new subsection providing for an additional grant program to assist Indian tribe members, Native Alaskans, and Native Hawaiians amends the Small Business Act. An SBDC, located in an eligible State and funded by SBA, may apply for an additional grant to be used solely for providing services, as set forth in the Small Business Act with respect to the SBDC program, to assist with outreach, development, and enhancement on Indian lands of small business startups and expansions owned by Indian tribe members, Native Alaskans, and Native Hawaiians.

Because the majority of Native Americans live on or adjacent to Indian lands, where economic opportunities are limited, the Committee expects the SBDCs to be located on or in close proximity to Indian lands. Although Native Americans who do not live on Indian lands may seek the assistance of these centers, the Committee believes that assistance should go to aid with outreach, development, and enhancement on Indian lands of small business startups and expansions owned by Indian tribe members, Native Alaskans, and Native Hawaiians. Native Americans located near existing centers or sub-centers are encouraged to continue to utilize those existing resources.

An eligible State is defined as a State that has a combined population of Indian tribe members, Native Alaskans, and Native Ha-

waiians that comprises at least one percent of the State's total population, as shown by the most recent census. Each applicant is required to complete a grant application that shall include information as to: (1) the applicants ability to provide training and services to a representative number of Indian tribe members, Native Alaskans, and Native Hawaiians, (2) the proposed location of the SBDC site, (3) the amount of grant funds needed, and (4) the extent of prior consultation with local Tribal Councils.

No applicant may receive more than \$300,000 in any one fiscal year, but no matching funds are required. Within 180 days after the Act is enacted, the Administrator is required to issue final regulations with respect to the grant program established by the Act. In promulgating the regulations, the Administrator must provide notice of the proposed regulations and an opportunity for public comment. In addition, the Administrator must consult with the Association of Small Business Development Centers. The regulation must establish standards relating to (1) educational, technical, and support services to be provided by SBDCs receiving grants, and (2) any work plan that is required to be submitted by an applicant.

The Committee believes that setting standards will help ensure that the grants will be awarded to the most qualified State programs and provide a mechanism by which the Administrator can evaluate the success of the program.

The section defines the following terms: "Associate Administrator," "Indian Lands," "Indian Tribe," "Indian Tribe Member," "Native Alaskan," and "Native Hawaiian."

The section authorizes \$7 million to be appropriated for each of fiscal years 2002 through 2004. Funds appropriated for the program created by the Act are in addition to funds appropriated for the SBDC program generally and for other particular SBDC programs. Monies specifically appropriated for that purpose might only fund the program created under the Act.

Section 3. State consultation with Local Tribal Councils

This section amends section 21(c) of the Small Business Act by adding a new subsection (9) that requires that a State receiving grants under the program created by the Act shall request the advice of local Tribal Councils on how best to provide assistance to Indian tribe members, Native Alaskans, and Native Hawaiians and where to locate satellite centers to provide such assistance.

5.5 H.R. 1460—VETERANS ENTREPRENEURSHIP ACT OF 2003—KEY ELEMENTS OF H.R. 1460 WERE INCORPORATED INTO H.R. 2297, PUBLIC LAW 108-183

LEGISLATIVE HISTORY

3/27/2003: Introductory remarks on measure.

3/27/2003: Referred to the Committee on Veterans' Affairs, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

3/27/2003: Referred to House Veterans' Affairs.

4/24/2003: Referred to the Subcommittee on Benefits.

4/30/2003: Subcommittee Hearings Held.
 5/7/2003: Subcommittee Consideration and Mark-up Session Held.
 5/7/2003: Forwarded by Subcommittee to Full Committee (Amended) by Unanimous Consent.
 5/15/2003: Committee Consideration and Mark-up Session Held.
 5/15/2003: Ordered to be Reported (Amended) by Voice Vote.
 3/27/2003: Referred to House Small Business.
 6/5/2003 2:54pm: Reported (Amended) by the Committee on Veterans' Affairs. H. Rept. 108-142, Part I.
 6/5/2003 2:56pm: House Committee on Small Business Granted an extension for further consideration ending not later than July 7, 2003.
 6/23/2003 2:44pm: Mr. Smith (NJ) moved to suspend the rules and pass the bill, as amended.
 6/23/2003 2:44pm: Considered under suspension of the rules.
 6/23/2003 3:04pm: At the conclusion of debate, the Yeas and Nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed.
 6/24/2003 1:18pm: Considered as unfinished business.
 6/24/2003 1:30pm: On motion to suspend the rules and pass the bill, as amended Agreed to by the Yeas and Nays: (2/3 required): 421-0 (Roll no. 304).
 6/24/2003 1:30pm: Motion to reconsider laid on the table Agreed to without objection.
 6/24/2003 1:30pm: The title of the measure was amended. Agreed to without objection.
 6/25/2003: Received in the Senate and Read twice and referred to the Committee on Veterans' Affairs.
 11/19/2003: H.R. 2297, which passed the House of Representatives on October 8, 2003 by a vote of 399-0, laid before Senate by unanimous consent.
 11/19/2003: Passed Senate with an amendment, which included Sections 2 and 3 of H.R. 1460 now Sections 305 and 308 of H.R. 2297, by Unanimous Consent.
 11/19/2003: Message on Senate action sent to the House.
 11/20/2003 2:57pm: Mr. Smith (NJ) moved that the House suspend the rules and agree to the Senate amendment.
 11/20/2003 3:22pm: On motion that the House suspend the rules and agree to the Senate amendment Agreed to by voice vote (text as House agreed to Senate amendment).
 11/20/2003 3:22pm: Motion to reconsider laid on the table Agreed to without objection.
 11/20/2003: Cleared for White House.
 12/5/2003: Presented to President.
 12/16/2003: Signed by President.
 12/16/2003: Became Public Law No. 108-183.

NEED FOR LEGISLATION

This legislation makes a variety of changes to veteran's benefits, including promoting veteran small business development. Key portions of H.R. 1460 were incorporated into a more comprehensive veterans bill (H.R. 2297) to permit the use of G.I. bill educational

benefits for self-employment training; allow states the right to approve various entrepreneurial courses run by Small Business Development Centers (SBDCs) and the National Veterans Business Development Corporation (NVBDC); and grant discretion to federal contracting officers to set-aside contracts up to \$3 million (\$5 million for manufacturers) to service-disabled veteran-owned small businesses. The government-wide three percent small business procurement goal for service-disabled veterans passed into law in 1999 has never been met (in 2003, only 0.20 percent of the value of government contracts went to service-disabled veteran small business owners). The purpose of Public Law 108–183 (as it relates to the jurisdiction of the Small Business Committee) is to give another tool to government contracting officers to reach the three percent contracting goal for small businesses owned by service-disabled veterans. On May 5, 2004, the Small Business Administration (SBA) and the Federal Acquisition Regulatory (FAR) Council issued an interim rule to immediately implement the discretionary set-aside contract authority for service-disabled veteran business owners. On October 21, 2004, the President signed an Executive Order to require heads of federal agencies to provide increased contracting and subcontracting opportunities for service-disabled veteran small business owners.

RELEVANT SECTION-BY-SECTION ANALYSIS

Section 1 would provide that this Act may be cited as the “Veterans Entrepreneurship and Benefits Improvement Act of 2003.”

Section 2(a) (Section 305 in H.R. 2297) would amend section 3675 of title 38, United States Code, by adding a new subsection authorizing a State Approving Agency to approve entrepreneurship courses offered by a qualified provider of entrepreneurship courses. This section would also define “entrepreneurship course” as a non-degree, non-credit course of business education that enables or assists a person to start or enhance a small business enterprise. Current law sections 3675(a) and 3675(b)(1) and (2) regarding approval of accredited courses do not apply to an entrepreneurship course offered by a qualified provider of entrepreneurship courses and a qualified provider of entrepreneurship courses by reason of such provider offering one or more entrepreneurship courses.

Section 2(b) would amend section 3471 of title 38, United States Code, to provide that the Secretary shall not treat a person as already qualified for the objective of a program of education offered by a qualified provider of entrepreneurship courses solely because such person is the owner or operator of a business.

Section 2(c) would amend subsection (b) of section 3452 of title 38, United States Code, by including entrepreneurship courses offered by a qualified provider in the definition of program of education.

Section 2(d) would amend subsection (c) of section 3452 of title 38, United States Code, to include any qualified provider of entrepreneurship courses in the definition of educational institution.

Section 2(e) would further amend section 3452 by defining the term “qualified provider of entrepreneurship courses” as (1) a small business development center described in section 21 of the Small Business Act (15 U.S.C. 648) and (2) the National Veterans Busi-

ness Development Corporation (established under section 33 of 15 U.S.C. 657(c)), insofar as the Corporation offers or sponsors an entrepreneurship course (as defined in section 3675(c)(2) of title 38, United States Code).

Section 2(f) would provide that the changes made by this section shall apply to courses approved by State Approving Agencies after the date of the enactment of this Act.

Section 3 (Section 308 in H.R. 2297) would amend the Small Business Act (15 U.S.C. 631 et seq.) by redesignating section 36 as section 37 and by inserting after section 35 a new section 36 establishing a procurement program for small business concerns owned and controlled by service-disabled veterans.

New section 36(a) would furnish contracting officers with discretionary authority to award a sole source contract to any small business concern owned and controlled by service-disabled veterans if the following three criteria are met: (1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that two or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity; (2) the anticipated award price of the contract (including options) will not exceed (A) \$5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or (B) \$3,000,000, in the case of any other contract opportunity; and (3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

New section 36(b) would furnish contracting officers the discretionary authority to make contract awards on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than two small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.

New section 36(c) would require that not later than five days after the date on which the Administrator is notified of a contracting officer's decision not to award a contract opportunity under this section to a small business concern owned and controlled by service-disabled veterans, the Administrator may notify the contracting officer of the intent to appeal the contracting officer's decision, and within 15 days of such date the Administrator may file a written request for reconsideration of the contracting officer's decision with the Secretary of the department or agency head.

New section 36(d) would require that a procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

New section 36(e) would require that with respect to matters of enforcement and penalties, rules similar to the rules of paragraphs (5) and (6) of section 8(m) shall apply for purposes of this new section.

New section 36(f) would require that for purposes of this section, the term “contracting officer” has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

5.6 H.R. 1772—SMALL BUSINESS ADVOCACY IMPROVEMENT ACT OF 2003

LEGISLATIVE HISTORY

4/1/2003: Workforce Empowerment and Government Programs and Regulatory Reform and Oversight joint subcommittee hearing on “Improving and Strengthening the SBA Office of Advocacy.”

4/11/2003: Referred to the House Committee on Small Business.

6/4/2003: Committee Consideration and Mark-up Session Held.

6/4/2003: Ordered to be Reported (Amended) by Voice Vote.

6/18/2003 5:19pm: Reported (Amended) by the Committee on Small Business. H. Rept. 108–162.

6/18/2003 5:20pm: Placed on the Union Calendar, Calendar No. 79.

6/24/2003 10:18am: Mr. Manzullo moved to suspend the rules and pass the bill, as amended.

6/24/2003 10:19am: Considered under suspension of the rules.

6/24/2003 10:35am: On motion to suspend the rules and pass the bill, as amended Agreed to by voice vote.

6/24/2003 10:35am: Motion to reconsider laid on the table Agreed to without objection.

6/25/2003: Received in the Senate and Read twice and referred to the Committee on Small Business and Entrepreneurship.

NEED FOR LEGISLATION

The purpose of this legislation is to amend the Small Business Act to strengthen and improve the Office of Advocacy within the Small Business Administration and to ensure that there exists an entity in the executive branch that has the statutory independence and adequate financial resources to effectively advocate for and on behalf of small businesses. There is abundant evidence, which has been the recurring focus of hearings of this Committee, that the nation’s small businesses continue to be burdened by excessive regulations and that this burden falls disproportionately upon small businesses. In his speech to the Women’s Entrepreneurship Summit, held in Washington, D.C., March 19, 2002, President George W. Bush underscored the complications encountered by small businesses in doing business and the excessive costs that needless regulations can place on small business concerns. In this respect the President stated:

“There are a lot of federal regulations that complicate the lives of small business people all across the country. The SBA [Small Business Administration] has calculated that the hidden costs of regulations to businesses with fewer than 20 workers . . . comes down to \$7000 per worker. That’s a lot of money, particularly if you are trying to figure out ways to expand the employment base. And this is a drag on our economy. Hidden costs are a drag upon our economy.”

The President has pledged to reduce the regulatory burden on small businesses. In line with this objective, an independent office of small business advocacy will help to ensure that federal agencies properly assess the impact of proposed regulations on the small business community and comply with the statutory obligations with respect to small business.

It is essential to Congress in performing its constitutional duties and to the President in carrying out his small business objectives that there is an office that acts as an independent advocate for small businesses and can provide unbiased views of present and proposed regulations, without being restricted by the views or policies of the Small Business Administration or any other federal executive branch agency.

To be effective, an office that acts as an advocate for small businesses requires sufficient resources to conduct creditable economic studies and research essential to an accurate evaluation of the impact of regulations on small businesses, the role of small business in the nation's economy, and the barriers to the growth of small businesses. In the past, the Office of Advocacy has not had the necessary resources. This legislation helps to ensure that resources are available to support the independence of the office and to assure that the research, information, and expertise provided by an independent office of advocacy is a valid source of information and advice for Congress and the federal agencies with which the office will advocate for small businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title is the "Small Business Advocacy Improvement Act of 2003."

Section 2. Findings and purpose

Expresses the findings of Congress with respect to the Office of Advocacy and the purposes for the legislation.

Section 3. Appointment of Chief Counsel for Advocacy

The Chief Counsel for Advocacy is to be appointed by the President, with the advice and consent of the Senate, without regard to political affiliation and solely on the grounds of fitness to perform the duties of the office. An individual may not be appointed who was employed by the Small Business Administration during the 5-year period preceding the date of such individual's appointment. A Chief Counsel may remain in office, at the pleasure of the President, until a successor is nominated, but in no instance longer than one year from the end of the President's term.

Section 4. Primary functions of the Office of Advocacy

This section adds assistance to small business concerns owned and controlled by women and small business concerns owned and controlled by veterans as primary functions of the Office of Advocacy. Assistance to small business concerns owned and controlled by socially and economically disadvantaged individuals, or minority enterprises, is already a primary function of the Office of Advocacy.

As a new primary function, the Office of Advocacy is required to make recommendations to Congress with respect to issues and regulations affecting small businesses and the necessity for corrective action by any federal agency or by Congress.

Section 5. Additional functions

This section adds three additional functions to be performed by the Office of Advocacy which are: (1) maintain economic database and make information available to the Administrator of the Small Business Administration and to Congress; (2) carry out the responsibilities of the Chief Counsel under the Regulatory Flexibility Act; and, (3) maintain a memorandum of understanding with the Small Business and Agriculture Regulatory Enforcement Ombudsman concerning cooperation between the Ombudsman and the Office of Advocacy in assisting small businesses resolve issues involving federal agencies. All too often, people are confused between the two roles of these offices. Generally, the Office of Advocacy intervenes on behalf of small business prior to the adoption of a final regulation. The SBA Ombudsman intervenes on behalf of small businesses after a regulation has been adopted to insure the application and enforcement of a regulation is fair and reasonable to all parties. This MOU clarifies the two roles and establishes procedures by which to refer small business complaints that would be better handled by the other office.

The Chief Counsel is required to transmit to the Office of Management and Budget (OMB), the Committee on Small Business of the U.S. House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, and the Committees on Appropriations of the House and Senate the estimated expenditures and proposed appropriations for the Office of Advocacy. Further, each budget of the United States Government shall include a separate statement of the amount of appropriations requested for the Office of Advocacy. Each budget will also include a statement of proportionality between increases or decreases in the overall Small Business Administration budget versus the Office of Advocacy line item.

Section 6. Principal Deputy Chief Counsel and regional advocates

The Chief Counsel may appoint one person to serve as Principal Deputy Chief Counsel. The Chief Counsel may also appoint 10 regional advocates, one in each of the Standard Federal Regions, as appropriate. The duties of the regional advocates shall include: (1) furthering the research efforts concerning small businesses; (2) interfacing with federal agencies that regulate or do business with small businesses; (3) in coordination with the Small Business and Regulatory Enforcement Ombudsman, assisting the functioning of regional small business fairness boards, including, where requested, helping small businesses helping to resolve matters that are the subjects of complaints made to such boards with respect to adverse federal agency action; (4) assisting and disseminating information about programs and services that help small business concerns; and, (5) performing such other duties as the Chief Counsel may assign.

Section 7. Overhead and administrative support

The Administrator of the Small Business Administration is required to provide the Office of Advocacy with all the necessary office space, together with such equipment, office supplies, communications facilities, and personnel and maintenance services, as may be needed.

Section 8. Reports

The Chief Counsel is required, not less than annually, to advise Congress and the Administrator of the Small Business Administration on whether Federal agencies are complying with the Regulatory Flexibility Act. The Chief Counsel may prepare and publish other reports as deemed necessary.

Section 9. Authorization for appropriations

The amounts authorized to be appropriated are \$10,000,000 for fiscal year 2003 and 2004, \$12,000,000 for fiscal year 2005, and \$14,000,000 for fiscal year 2006.

Section 10. Conforming amendments

This section makes conforming amendments as required by changes in this Act to strengthen and improve the Office of Advocacy. First, this section moves the Rural Tourism Training Program from the Office of Advocacy to the SBA so the mission of the office is not encumbered by this initiative more properly housed within the SBA.

Second, this section codifies the requirement for the Office of Advocacy and the SBA's Ombudsman to maintain a Memorandum of Understanding between each office.

5.7 H.R. 2345—REGULATORY FLEXIBILITY IMPROVEMENTS ACT OF 2003

LEGISLATIVE HISTORY

6/5/2003: Referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

6/5/2003: Referred to House Judiciary.

6/25/2003: Referred to the Subcommittee on Commercial and Administrative Law.

6/5/2003: Referred to House Small Business.

5/5/2004: Committee Hearings Held.

NEED FOR LEGISLATION

H.R. 2345 strengthens and enhances the Regulatory Flexibility Act (RFA) to further protect the interests of small entities (small for-profit businesses; small non-profits; and small municipalities) in the federal administrative process. Federal agencies continue to interpret the RFA in a way to avoid compliance. The President also has made it a goal, as per his small business plan announced in 2002, to make sure that agencies care that the RFA is on the

books. H.R. 2345 also gives the independent Chief Counsel at the Office of Advocacy of the SBA more authority and tools to challenge ill-conceived rules that would have a detrimental effect on small business.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Provides that the short title of the bill shall be the “Regulatory Flexibility Improvements Act of 2003.”

Section 2. Findings

Provides the findings of the Committees that the legislation is needed because agencies continue to interpret the Regulatory Flexibility Act (RFA) in a way to avoid compliance.

Section 3. Clarification and expansion of rules covered by RFA

Extends coverage of the RFA to both direct and indirect economic effects thereby overturning court interpretations limiting the applicability of the RFA; requires agencies to provide a detailed description of alternatives that will minimize adverse economic impacts or maximize beneficial economic impacts; adds tribal organizations to the list of small governmental jurisdictions covered by the RFA; requires Forest Service and Bureau of Land Management to comply with the RFA when making modifications to land management plans for which the agencies would prepare an environmental impact statement; regulations concerning the internal revenue laws of the United States must comply with the RFA if they are to be codified in the Code of Federal Regulations and there is an imposition of a record-keeping or reporting requirement without regard to whether that requirement was imposed by statute; amends the definition of small organization to comport with the definition adopted in the Equal Access to Justice Act, i.e., has fewer than 500 employees and a net worth of less than \$7 million; ensures that small labor organizations (such as local unions) will not be considered affiliated with their national union for purposes of Department of Labor compliance with the RFA.

Section 4. Requirements for providing more detailed analyses

Mandates that regulatory flexibility analyses contain not just a statement but a detailed statement of quantified effects (unless quantification is not possible); adds a new requirement to assess cumulative economic effects of the proposed and final regulation, and requires agency to place analyses on their website; requires agencies to specifically respond to comments by the Chief Counsel (codifying an existing Presidential Executive Order) and to comments on the certification.

Section 5. Repeal of procedure for waiver and delay

Repeals section 608 because agency can avoid compliance by finding good cause to forgo notice and comment rulemaking.

Section 6. Procedures for gathering comments

Modifies the procedures for obtaining input from small businesses prior to publication of proposed rule to give greater control to the Office of Advocacy; adds the Internal Revenue Service (IRS), Centers for Medicare and Medicaid Services (CMS), and Federal Communications Commission (FCC) to agencies covered by the pre-publication input; and modifies the trigger for prepublication input to incorporate the standards determining a significant rule under the Congressional Review Act.

Section 7. Periodic review of rules

Completely revises periodic review of rules by requiring new plans for conducting such reviews and mandating that the agency report on their reviews to Congress and the President.

Section 8. Judicial review of compliance with the RFA

Makes it easier to obtain judicial review of RFA compliance when a statute mandates that the head of the agency revisit the regulation in an administrative proceeding before small entities can challenge the regulation in court.

Section 9. Establishment and approval of size standards by Chief Counsel

Transfers authority to Chief Counsel from the Administrator of the SBA to approve agency size standard of small entities for purposes other than Small Business and Small Business Investment Acts.

Section 10. Additional powers of the Chief Counsel

Chief Counsel must promulgate regulations that govern all agencies' compliance with the RFA; authorize the Chief Counsel to intervene in agency adjudications when a significant policy issue is being decided.

5.8 H.R. 2802—SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING REVITALIZATION ACT OF 2003

LEGISLATIVE HISTORY

7/21/2003: Referred to the House Committee on Small Business.

7/24/2003: Committee Consideration and Mark-up Session Held.

7/24/2003: Ordered to be Reported by Voice Vote.

10/21/2003 10:09am: Reported (Amended) by the Committee on Small Business. H. Rept. 108-325, Part I.

10/21/2003: Referred sequentially to the House Committee on Government Reform for a period ending not later than Oct. 31, 2003 for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(h), rule X.

10/31/2003 3:25pm: House Committee on Government Reform Granted an extension for further consideration ending not later than Nov. 7, 2003.

11/7/2003 3:37pm: House Committee on Government Reform Granted an extension for further consideration ending not later than Nov. 21, 2003.

11/21/2003 3:01pm: House Committee on Government Reform Granted an extension for further consideration ending not later than Jan. 31, 2004.

1/31/2004 11:10am: House Committee on Government Reform Granted an extension for further consideration ending not later than March 2, 2004.

3/2/2004 10:01pm: House Committee on Government Reform Granted an extension for further consideration ending not later than March 8, 2004.

3/8/2004 5:33pm: Committee on Government Reform discharged.

3/8/2004 5:33 pm: Placed on the Union Calendar, Calendar No. 249.

10/5/2004: A motion was filed to discharge the Rules Committee from consideration of H. Res. 800. H. Res. 800 provides for the consideration of H.R. 2802.

NEED FOR LEGISLATION

The purpose of H.R. 2802, the “Small Business Reauthorization and Manufacturing Revitalization Act of 2003” (hereinafter the “Act”) is to amend the Small Business Investment Act of 1958 (SBIA) and the Small Business Act (SBA) in order to provide greater efficiencies in the management of various programs by the Small Business Administration (“Administration”) and reorient programs authorized by the SBIA and SBA to assist small manufacturers.

The SBA was enacted in 1953 to ensure a viable small business sector of the economy. The SBIA was passed in 1958 to authorize greater financial assistance to small businesses through equity and debt securities backed by federal guarantees. Both statutes have been amended many times creating a jumbled statutory mass with program requirements that are nearly indecipherable. As the SBA and SBIA were amended, their underlying original purpose—to support America’s small business industrial base—became muddled.

The primary emphasis of H.R. 2802 is the streamlining of Administration operations while increasing the support provided to small manufacturers. H.R. 2802 accomplishes this goal in a number of ways: (a) it provides for increasing financial resources available to small manufacturers through amendments in the SBIA; (b) streamlines operations of Administration programs by transferring employees and requiring greater accountability for achieving goals for raising the level of financial assistance, counseling, and federal procurement dollars for small business concerns; (c) modifies existing Administration grant programs to provide greater oversight by the Administrator; and (d) mandates improvements in government contracting procedures to help small business concerns and small manufacturers, in particular.

As the Committee began its intensive examination of programs authorized by the SBA, the Committee came to the realization that modification of the SBA alone would not achieve the goal of providing greater assistance to small manufacturers. The SBA was written 50 years ago and has never been completely revised. Accretions have been made to the SBA that creates internal inconsistencies. Even the Administration, the agency implementing the

SBA, does not fully understand it. The Committee determined that a complete overhaul was necessary.

For all of the foregoing reasons, the Committee determined that simply accreting more requirements to the SBA would continue the trend of bad drafting leads to worse government. The Committee determined that it was appropriate to overhaul the SBA.

SECTION-BY-SECTION ANALYSIS

TITLE I

Section 101. State defined

This section makes the definitions used in the SBA and SBIA consistent.

Section 102. Small manufacturer defined

Adds a definition of small manufacturer to the SBIA.

Section 103. Maximum participating securities rate

Raises the participating security rate to 1.7 percent as a result of changes in the 10-year Treasury bond rate.

Section 104. Maximum leverage for buying operations

Eliminates the indexing of maximum leverage available to Small Business Investment Companies (SBICs) by increasing the limits for single SBICs and those that are owned jointly. Increases available leverage even further for SBICs that invest primarily in manufacturers.

Section 105. Maximum aggregate amount of leverage

Makes technical changes necessitated by elimination of existing indexed limits on leverage.

Section 106. Investments in smaller enterprises

Requires that SBICs invest 25 percent of their capital in smaller enterprises.

Section 107. Actions of Administrator with respect to capital impairment

Prevents the Administrator from seizing uninvested private capital when a SBIC is declared to be capitally impaired.

Section 108. Conditions for distributions

Modifies the conditions for distributions in the participating security program by requiring SBICs to distribute income to its investors if there are outstanding priority payments and mandates that the Administrator allocate payments to reduction in principal before allocating distributions to the profit payments.

Section 109. Modification of aggregate limits

Eliminates loans made pursuant to §7(a) of the Small Business Act from the computation of maximum leverage.

Section 110. Notice and comment rulemaking

Codifies existing Administration regulations requiring the use of the Administrative Procedure Act's § 553 notice and comment rulemaking for any regulations issued to implement the SBIA.

Section 111. Low-Income geographic area definition

Amends the definition of low-income area in the New Market Venture Capital Company (NMVCC) program (currently at 50 percent of median family income) to comport with the definition of low-income area in the Internal Revenue Code (currently at 80 percent of median family income).

Section 112. Unmet equity investment needs of certain small manufacturers

Adds small manufacturers to those small businesses eligible for investment by NMVCCs.

Section 113. Participation agreement requirements

Requires that the Administrator approve a NMVCC that will have at least 50 percent of its investments devoted to small manufacturers.

Section 114. Final approval requirement

Lengthens to two years the time authorized by NMVCCs to obtain final approval from the Administrator.

Section 115. Conditionally approved companies

Authorizes the Administrator to make operational assistance grants of not more than \$50,000 to NMVCCs that are in the conditional stage of the program.

Section 116. Applications for new markets venture capital companies

Mandates that the Administrator reduce the amount of paperwork required by a NMVCC applicant.

Section 117. Authorization of appropriations

Provides for an authorization of appropriations for the NMVCC program including an extension of existing authorizations through fiscal years 2004 and 2005.

Section 118. Repeal of lease guarantee authority

Eliminates the provisions authorizing the Administrator to make lease guarantees under Title IV of the SBIA for installation of pollution control equipment.

Section 119. Amendment of congressional findings relating to state development companies

Adds the requirement that state and local development companies (CDCs) must provide assistance to small manufacturers.

Section 120. Qualification of state development companies

Modifies the definition of a rural area for purposes of Title V of the SBIA to make it consistent with the definition of a rural area

elsewhere in the United States Code. This necessitates expanding the definition in the SBIA to populations of 50,000 or less. The section also authorizes that loans to small manufacturers constitutes a public policy goal under Title V.

Section 121. Job requirements

Raises the job requirement standard for CDC loans from one job for every \$35,000 in lending to one job for every \$50,000 in lending except that for small manufacturers the job requirement is one job for every \$100,000 in lending. The section also excludes from the portfolio requirement lending to small manufacturers. Finally, the section authorizes the Administrator to waive these requirements except as it relates to small manufacturers.

Section 122. Small business concern loan limitations

Increases the loan limits for CDC loans to \$2 million for all projects, \$2.5 million for projects that meet specified public policy goals, and \$4 million for the projects of small manufacturers.

Section 123. Approval requirements

Mandates centralized processing of CDC loans. Prohibits the Administrator from requiring that a CDC borrower owned by a SBIC obtain the guarantee of the SBIC prior to the issuance of a CDC loan.

Section 124. Effective date for termination of certain fees

Extends the authority of the Administrator to charge fees to operate the CDC program for two years.

Section 125. Accredited lenders program

Revises the accredited lenders program by authorizing them to make their own lending decisions if the Administration has not done so within five business days. The provision also alters the requirements for becoming an accredited lender based on loan default rates. Finally, the Bureau of Premier Certified Lenders will oversee compliance with the provisions of the Accredited Lenders Program.

Section 126. Premier certified lenders program

Rewrites existing § 508 of the SBIA through the incorporation of H.R. 923. H.R. 923 alters the loan loss reserve requirements for premier certified lenders and establishes a Bureau of Premier Certified Lenders to oversee the actions of premier certified lenders. The section alters the provisions of H.R. 923 by making the program permanent and makes the alternative loan loss provisions self-executing rather than having to wait for the Administrator to establish the Bureau of Premier Certified Lenders.

Section 127. Foreclosure and liquidation of loan losses

Authorizes CDCs to conduct their own foreclosures and loan loss liquidations. Mandates that CDCs select every year whether they are interested in conducting their own loss liquidations for that year and requires them to submit plans on loan loss liquidation to the Administrator. Prohibits the CDC from committing the Administrator to purchase additional indebtedness.

Section 127 also modifies the way the Administrator conducts foreclosures of CDC loans by requiring that the Administrator award contracts to outside parties. Payment would be cost contract with certain bonus incentives.

Section 128. Additions to Title V

This provision adds three new sections to Title V of the SBIA. New § 511 requires the Administrator to develop a short-form application for CDC loans. Section 512 creates a centralized processing system in two loan processing centers for handling CDC loans. Section 513 requires the Administrator to report at least twice a year on the loans made under Title V.

Section 129. Regulations to carry out amendments to the Loan Program

Sets forth the notice and comment requirements for promulgating rules to implement the changes in Title V of the SBIA.

Section 130. Conforming amendments

This section eliminates the statutorily undefined term “certified” from Title V and inserts in lieu the statutorily defined term “qualified State or local” wherever the term “certified” appears in Title V.

Section 131. Development company affiliates

CDCs that are part of a larger holding company would not be required to assign an individual to manage the CDC if the management of the holding company is integrally involved in the operations of the CDC.

TITLE II

Section 202. Findings, statements of policy

Revises the purposes of the SBA to include provision of assistance to small manufacturers.

Section 203. Definitions

Added definitions of the following terms: “contracting officer” (moved from existing section 31 of the SBA); “small business development center”; “small manufacturer”; “small business lending company”; “non-federally registered lenders”; “procurement center representative”; “commercial marketing representative”; and “team.”

Requires that small businesses recertify their status once every five years and permits a small business to expand beyond established size standards in certain circumstances.

Makes technical changes to the definition of the term “qualified Indian tribe.”

Eliminates all definitions of the term “state” found elsewhere in the SBA and collects them in §3 of the Act.

Added the term “acts of terrorism” to the definition of a disaster for purposes of loans made pursuant to § 7(b) of the SBA.

Modified the definition of “contract bundling” to include any procurement performed under two or more separate contracts com-

bined into one contract in which the costs of the separate contracts are lower than the costs of the proposed combination.

Significantly modified the definition of HUBZone to ensure that economically disadvantaged businesses are eligible for the preference. Section 203 also imposes new administrative requirements to ensure that HUBZone qualifications are met by businesses before they bid on contracts.

Section 204. Small Business Administration

Modifies and modernizes the power and structure of the Small Business Administration. Eliminates out-dated provisions such as the Loan Policy Board. Makes consistent references to the Administrator rather than Administration.

Section 205. Financial management

Collects all of the Administrator's financial functions into one section. Modernizes the terminology to make it consistent with the rest of the SBA, SBIA, and the Federal Credit Reform Act of 1990.

Imposes limits on the resale of disaster loans until three years after the disaster loan was issued.

Authorizes the Administrator to pay its fiscal transfer agent using the float from interest payments the agent controls until they are turned over to the Treasury.

Section 206. Organization and staff

Section 206(a) amends existing § 6 of the SBA to incorporate provisions concerning the organizational structure of the SBA and requirements to be met by various subsidiary officials appointed by the Administrator. Subsection (a) creates the general appointment and management authority of the Administrator; subsection (b) establishes various associate administrators; subsection (c) creates certain subsidiary offices; subsection (d) grants subsidiary officials the power to manage their respective offices subject to limitations in the SBA; subsection (e) requires the Administrator to appoint a general counsel; subsection (f) establishes various regional offices; subsection (g) creates district offices and grants the Administrator the power to appoint officials to perform functions in the district offices; and subsection (h) grants the Administrator significant powers to move personnel among offices if they fail to meet specified statutory performance benchmarks.

Section 207. Loan programs

Subsection 207 (a) makes changes to the business loan program: (1) modifies the sound and secure requirement to deemphasize adequate collateral; (2) increases the maximum loan amount for international trade loans; (3) substitutes the term "disabled" for "handicapped"; (4) adds service-disabled veterans to those qualified to obtain loans at three percent; (5) authorizes use of international trade loans for refinancing debt and makes it easier to demonstrate economic injury; (6) mandates that criteria for certified lenders be set forth in the Code of Federal Regulations; (7) extends the reduction in annual fee for two years; (8) requires the Administrator to notify Congress when new pilot programs are created; (9) imposes significant limits on the Administrator's discretion to conduct pilot

programs; (10) makes the low-documentation loan program permanent; (11) amends existing statutory requirements for designation as a preferred lender, including the creation of a new national preferred lender; (12) mandates the development of simplified forms for small guarantees; and (13) establishes a new rule on affiliation solely for purposes of making business loans to franchisees.

Subsections 207(b)–(c) amend the disaster loan program: (1) outdated statutory rules governing disaster loans made during the 1970s were deleted; (2) clarifies that losses should be covered 100 percent (except to the extent reimbursable by insurance); authorizes the Administrator to, when necessary, extend the economic injury disaster loan beyond the declared disaster area; (3) adopts a size standard of 500 employees for disaster loans; (4) eliminates a statutory maximum for disaster loans and imbues the Administrator with the discretion to establish an appropriate amount; and (5) requires that borrowers be notified when their disaster loans are sold.

Subsection (d) modifies the microloan program: (1) renamed the welfare-to-work program as the welfare-to-entrepreneurship program; (2) modifies the qualifications for serving as an intermediary; (3) authorizes intermediaries to provide technical assistance prior to the issuance of a loan; (4) increases the size of the loans from \$35,000 to \$50,000; and (5) makes minor changes in the Administrator’s conduct of the program.

Subsection (e) repeals portions of § 7 that are no longer operational including subsections 7(d), (h), (j) (moved to § 8), and (k). Subsection 207(f) extends the pre-disaster mitigation program through the end of FY 2004. Subsection 207 (g) is a savings clause ensuring that the provisions only effect loans made after the date of enactment.

Section 208. Government contracting and business development assistance

Subsection 208(a) amends subsections (a), (b), and (c) of § 8 of the SBA by making significant programmatic changes in the contracting assistance provided to businesses eligible to participate in the program established by § 8. Those changes include: (1) prohibits the Administrator from delegating contracting responsibility to other federal agencies; (2) mandates consultation between the Administrator and subcontractors when responding to a federal procuring agency solicitation; (3) modifies the definition of “economically disadvantaged” to increase the survival rate of participants; (4) alters the place where annual certifications of eligibility must be sent; (5) authorizes change of ownership and control of participants without loss of eligibility if the purchaser also is eligible for the program; (6) eliminates the prohibitions on removal of capital by owners; (7) enables expansion into similar North American Industrial Classification System (NAICS) codes when appropriate; (8) imposes the Administrative Procedure Act standards for the conduct of hearings on removal from the program; (9) mandates increased outreach efforts by the Administrator and subsidiary officials to expand enrollment in the program; (10) imposes additional requirements on the Administrator’s utilization and dissemination of participant capability statements; (11) restricts the ability of par-

ticipants subject to a termination to obtain new subcontracts; (12) alters and expands the type of managerial assistance available to participants; and (13) establishes a new contract-based technical assistance program for businesses in the program.

Subsection 208(b) expands the range of activities performed by a commercial marketing representative.

Subsection 208(c) amends the women's procurement program by authorizing contracting officers to determine eligibility for participation until the Administrator completes a study on industries in which women-owned businesses are historically underrepresented. In addition, the Office of Hearings and Appeals is required to hear cases on challenges to eligibility under the program.

Section 209. Training and assistance

Section 209 creates a new §12 in the SBA by collecting the authority to provide technical and training assistance to small businesses scattered elsewhere through the Act. In particular, §209 improves the ability of the Service Corps of Retired Executives and BusinessLINC programs to serve small manufacturers.

Section 210. Contracting assistance

Section 210 amends §15 of the SBA to implement the Committee's efforts to enhance the ability of all small businesses, especially small manufacturers, to obtain federal government contracts. In particular, section 210: (1) mandates the Office of Management and Budget (OMB) decide contract bundling disputes that arise between the Administrator and federal procuring agencies; (2) creates an advocacy role for the Administrator with respect to procurements under the Javits-Wagner-O'Day Act; (3) expands the solicitation period for bundled contracts; (4) modifies the way small business procurement goals are calculated; (5) alters the annual federal procurement reports issued by the Administrator; (6) increases restricted competition limits from \$100,000 to \$1,000,000; (7) alters the responsibilities and assignments of procurement center representatives to make them more effective advocates of small businesses; (8) requires that the Administrator and the General Services Administration (GSA) create a data element that captures the number of contracts awarded under the social and disadvantaged small business program; (9) codifies Administrator's regulations on the order of contracting preferences; and (10) makes the very small business procurement program permanent.

Section 211. Authorization of appropriations

Provides for authorization of appropriations for two years and establishes levels for financing programs authorized by the SBA and SBIA.

Section 212. Small Business Development Centers

Section 212 completely revises §21 of the SBA that establishes the Small Business Development Center (SBDC) program. The primary objective of the rewrite was to make the statutory language internally consistent and more readable. In particular, the section establishes that the Administrator will select grantees who will operate a series of small business development centers. The Admin-

istrator also is authorized to negotiate the terms of service with the grantee and empowers the Administrator to remove a grantee (after a hearing under the provisions of the Administrative Procedure Act) if the grantee has not met its obligations under the grant agreement. The revisions also require that the Administrator actually select (on advice of staff) and approve grantees. Finally, §212 makes numerous technical and administrative changes in the grantee's conduct under the grant agreements.

Section 213. Assignment of employees of the office of international trade

Requires the Administrator to maintain the number of Administration employees in the Office of International Trade at January 1, 2003 levels.

Section 214. Supervisory and enforcement authority for Small Business Lending Companies

Creates a new §23 in the SBA granting the Administrator specific enforcement and supervisory authority (such as the establishment of capital standards and the power to remove directors) over Small Business Lending Companies and other lenders not subject to regulation by a federal banking overseer.

Section 215. Reauthorization of the Paul Coverdell Drug-Free Workplace Program

Extends at reduced levels the authorization of the Drug-Free Workplace Program.

Section 216. Women's Business Center Program

Section 216 amends the Women's Business Center Program by: (1) extending its authorization; (2) modifying the program so that it operates in a fashion similar to that of the SBDC program (Administrator selects grantees that will operate centers); (3) imposes more stringent performance standards on grantees; and (4) eliminates sustainability and substitutes applications for continued federal funding (up to five years after initial grant ceases).

Section 217. HUBZone Program

Section 217 made changes the HUBZone price preference contracting program: (1) eliminating the mandatory set-aside requirement; (2) granting contracting officers the flexibility to restrict competition among HUBZone firms; and (3) terminating the special price preferences for Department of Agriculture purchases of agricultural commodities.

Section 218. Other repeals and reorganizations

Makes technical and conforming changes necessitated by the significant rewrite to the SBA. Revises the severability provision to reflect the reenacted SBA. Repeals and reserves for later use sections 19, 24, 25, 26, and 28 of the SBA.

Section 219. Rules of construction

Provides a catchall to ensure that the meaning of references within the SBA do not change given the significant rewrite.

Continues the effectiveness of existing Administrator regulations until such time as they are changed.

Prohibits the Administrator from interpreting the rewrite to include repeals by implication.

TITLE III

Section 301. Report regarding national database of small manufacturers

Requires SBDC grantees and the Administrator to determine the cost of establishing a database that universities can use to procure goods from small manufacturers.

Section 302. Workforce Transformation Plan

Empowers the Administrator (within the confines of the changes made in Title II) to reorganize the operations of the Administration. Requires any such transformation to demonstrate that it will increase federal procurement dollars to small businesses while reducing the overall cost of operating the agency.

Section 303. Repeal of certain provisions of the Disaster Relief Act of 1970

Repeals §237 of the Disaster Relief Act because the amendments made to §7(b) of the SBA provide the Administrator with the authority set forth in the 1970 Act.

Section 304. Regulations on size standard on franchisees

Requires the Administrator to develop new affiliation standards for franchisees so that franchisees will not be considered large businesses due to interpretations of their franchise agreements.

Section 305. Temporary Small Business Development Center assistance to Indian Tribes

Creates pilot program for SBDC grantees from selected states with substantial Native American populations to assist Native American small business owners.

Section 306. Temporary Small Business Development Center assistance for vocational and technical entrepreneurship development

Establishes a pilot program for SBDC grantees to teach entrepreneurship education to students in secondary education and post-secondary vocational and technical schools.

Section 307. Very small business concern contract data collection

Requires that the Administrator and the General Services Administration create a new data element to capture contracts awarded to very small businesses.

Section 308. Very Small Business Concern Pilot Program for home-based businesses

Establishes a pilot program requiring that within the Very Small Business program, at least one award per year be made to a home-based business.

Section 309. Socially and economically disadvantaged business

Extends the price preference for socially and economically disadvantaged businesses for two years.

Section 310. Study and report on effectiveness of aggregate limitations on amount of assistance to any single enterprise

Requires the Administrator to study the impact on the availability of capital to small manufacturers as a result of SBICs being limited to investing 20 percent of their private capital in one business.

Section 311. Study and report on coordination of New Market Venture Capital Program with New Markets Tax Credit Program

Administrator is required to develop suggestions for bolstering the utility of the NMVCC program based on the changes to the definition of low-income area.

Section 312. Study and report on Premier Certified Lenders Program

Requires the Administrator to contract out a study on whether premier certified CDC lenders are overcapitalized.

Section 313. Data collection

Requires the establishment of a data element to track awards made to socially and economically disadvantaged businesses.

Section 314. Resubmission of disaster loan applications for businesses affected by September 11, 2001 terrorist attacks

Requires the Administrator to reopen the disaster loan application process for businesses within the declared disaster areas that were unable to operate as result of a government order to remain closed.

Section 315. National Small Business Incubator Program

Creates a pilot program for the establishment of small business incubators in abandoned factories and warehouses. Incubators eligible for participation would have to provide services only to high-technology businesses or small manufacturers.

Section 316. Report regarding sale of disaster loans on borrowers

Mandates that the Office of Advocacy examine the economic consequences of the Administrator's sale of disaster loans.

Section 317. Suspension and extension of certain disaster loans related to the terrorist attacks of September 11, 2001

Requires the Administrator, after a finding of severe economic injury, to suspend on a temporary basis, payment of principal and interest on disaster loans issued to businesses in the declared disaster areas and the adjacent counties of Orange and Rockland in New York.

For more information on H.R. 2802, please refer to House Committee Report No. 108-325, Part I.

5.9 H.R. 3915—TO PROVIDE FOR AN ADDITIONAL TEMPORARY EXTENSION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958 THROUGH APRIL 2, 2004, PUBLIC LAW 108–205

LEGISLATIVE HISTORY

3/9/2004: Referred to the House Committee on Small Business.
 3/10/2004 7:43pm: Mr. Manzullo moved to suspend the rules and pass the bill, as amended.
 3/10/2004 7:43pm: Considered under suspension of the rules.
 3/10/2004 7:51pm: On motion to suspend the rules and pass the bill, as amended Agreed to by voice vote.
 3/10/2004 7:51pm: Motion to reconsider laid on the table Agreed to without objection.
 3/10/2004 7:51pm: The title of the measure was amended. Agreed to without objection.
 3/11/2004: Received in the Senate, read twice.
 3/12/2004: Passed Senate without amendment by Unanimous Consent.
 3/12/2004: Message on Senate action sent to the House.
 3/12/2004: Cleared for White House.
 3/12/2004: Presented to President.
 3/15/2004: Signed by President.
 3/15/2004: Became Public Law No: 108–205.

NEED FOR LEGISLATION

The purpose of the legislation was to extend the authorization of the programs of the SBA, which expired on March 15, 2004, until April 2, 2004 while Congress still attempted to work out a long-term, more comprehensive SBA reauthorization bill. This legislation reauthorizes SBA programs not covered by regular appropriations such as the ability of the SBA to charge fees in the Certified Development Company (CDC) or the 504 loan program; the Preferred Surety Bond program; the price preference in the Small Disadvantaged Business (SDB) program; SBA's co-sponsorship authority, which enables the SBA to accept private donations to put on events or print publications; the Women's Business Center Sustainability pilot program; grants to SBDCs to implement part of the Paul D. Coverdell Drug-Free Workplace program; the Very Small Business Concerns pilot program; and the Pre-Disaster Mitigation pilot program.

SECTION-BY-SECTION ANALYSIS

Section 1.—The authorization for any program, authority, or provision, including any pilot program, which was extended through March 15, 2004 by the previous extension (Public Law 108–172), is further extended through April 2, 2004, under the same terms and conditions.

Section 2.—The ability of the SBA to charges fees in the 504 loan program was extended until May 21, 2004.

5.10 H.R. 4062—TO PROVIDE FOR AN ADDITIONAL TEMPORARY EXTENSION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958 THROUGH JUNE 4, 2004, AND FOR OTHER PURPOSES, PUBLIC LAW 108–217

LEGISLATIVE HISTORY

3/30/2004: Referred to the House Committee on Small Business.
 3/31/2004 10:22am: Mr. Manzullo moved to suspend the rules and pass the bill.
 3/31/2004 10:23am: Considered under suspension of the rules.
 3/31/2004 10:37am: On motion to suspend the rules and pass the bill. Agreed to by voice vote
 3/31/2004 10:37am: Motion to reconsider laid on the table. Agreed to without objection.
 3/31/2004: Received in the Senate, read twice.
 4/1/2004: Passed Senate without amendment by Unanimous Consent.
 4/2/2004: Message on Senate action sent to the House.
 4/2/2004: Cleared for White House.
 4/2/2004: Presented to President.
 4/5/2004: Signed by President.
 4/5/2004: Became Public Law No: 108–217.

NEED FOR LEGISLATION

The purpose of the legislation was three-fold. First, the authorization for the programs of the SBA was generally extended from April 2, 2004 until June 4, 2004. These are SBA programs not covered by regular appropriations such the Preferred Surety Bond program; the price preference in the Small Disadvantaged Business (SDB) program; SBA's co-sponsorship authority, which enables the SBA to accept private donations to put on events or print publications; the Women's Business Center Sustainability pilot program; grants to SBDCs to implement part of the Paul D. Coverdell Drug-Free Workplace program; the Very Small Business Concerns pilot program; and the Pre-Disaster Mitigation pilot program.

Second, the ability of the SBA to charge fees in the Certified Development Company or 504 program was extended until September 30, 2004. This provision allows the 504 program to operate at a zero subsidy or at no cost to the taxpayer for a relatively extended period of time.

Third, H.R. 4062 contained a short-term fix to the temporary crisis in the SBA's 7(a) loan guarantee program by increasing fees mainly upon the lenders that enabled the SBA to immediately lift the restrictions imposed on the program in January 2004, including a \$750,000 loan cap and a ban on "piggyback" loans (combining commercial loans with government-backed loans into one package). Specifically, these fees:

1. Raised the annual on-going lender fee from 0.25 percent to 0.36 percent;
2. Allowed "piggyback" loans but charges an additional fee on lenders of 0.70 percent to use them;

3. For loans under \$150,000, the SBA will retain the 0.25 percent on-going lender fee (previously, banks who serviced these smaller loans kept the fee);

4. Allowed lenders to make loans up to \$2 million (an increase from \$250,000) under the SBAExpress program, which has a lower 50 percent government guarantee rate but banks can use their own paperwork; and

5. Raised the 7(a) guarantee limit from \$1 million to \$1.5 million with an additional risk premium fee charged to borrowers of 0.25 percent (over and above the 3.5 percent that is currently charged for loans above \$700,000) on the loan amount over \$1 million.

H.R. 4062 freed up \$3 billion in extra 7(a) loan authority for the rest of FY 2004 for a total program level of \$12.5 billion, which allowed the SBA to guarantee an additional 30,000 7(a) loans to small employers that created or retained as many as a half a million jobs.

SECTION-BY-SECTION ANALYSIS

Section 1. Additional temporary extension of authorization

Temporary authorizations are needed to ensure continued operation of certain programs authorized by the Small Business Act and Small Business Investment Act of 1958. This section extends those programs until June 4, 2004 while the House and Senate work out their differences on a broader reauthorization package.

Section 2. Extension of certain fee authorizations

The qualified state and local development company (otherwise known as “certified development company” or “CDC”) program authorized by Title V of the Small Business Investment Act of 1958 operates on fees charged by the Administrator to lenders. Those fees need to be reauthorized to prevent the program from ceasing operation. Given the complexity of the financing arrangements loans made pursuant to Title V, CDCs and small businesses need sufficient time to develop the appropriate financing packages and submit applications to the Administrator. To accommodate the needs of lenders and borrowers under Title V, H.R. 4062 extended the fee authorization through the end of the fiscal year (September 30, 2004). Furthermore, the sponsors of H.R. 4062 believe that if the recent problems in the 7(a) loan program were resolved through the end of this fiscal year, equity demands that CDCs be able to operate unencumbered for the same period.

Section 3. Fiscal year 2004 purchase and guarantee authority under Title III of the Small Business Investment Act of 1958

The Small Business Investment Company (“SBIC”) program operates without the use of appropriated funds. Fees and profits are used to cover the cost of the program, including coverage of losses in investment portfolios. While the sponsors of H.R. 4062 believe that the fees authorized for the purchase of securities and debentures would allow the program to continue full operation without modification to the authorization levels, clarification to ensure that the program could continue operations was an appropriate course

of action. To avoid any possible confusion or action by the Administrator to curtail the operation of the program, the sponsors extended the authorizations for both the purchase of participating securities and guarantees of debentures at FY 2003 levels for the rest of the fiscal year.

Section 4. Combination financing

For a number of years, the SBA authorized the use of so-called piggyback financing when using the 7(a) loan program. The SBA defines “piggyback financing” as a situation in which “one or more lender(s) provides more than one loan(s) to a single borrower at or about the same time, financing the same or similar purpose, and where the SBA guarantees the loan secured with a junior lien position.” Small Business Administration, Standard Operating Procedure 50–10(4)(E), at 20. Furthermore, the Administrator notes that the determination of “piggyback financing” requires an assessment of both the lien position and the commonality of purpose. *Id.*

Earlier in the year, the Administrator, presumably pursuant to the authority set forth in Section 7(a)(24) of the Small Business Act, made certain policy changes to the operation of the guaranteed loan program. In particular, the Administrator prohibited the use of piggyback financing.

The sponsors of H.R. 4062 believe that “piggyback financing” plays a valuable role in the provision of capital to small businesses. This is particularly the case for small businesses requiring larger loans in cyclical sectors of the economy. The financing technique is quite similar to that statutorily authorized in Title V of the Small Business Investment Act of 1958.

Section 4 creates, for the rest of fiscal year 2004, a temporary combination-financing program by adding a new paragraph (31) to Section 7 of the Small Business Act. The provisions sunset at the end of the fiscal year (at the end of the day on September 30, 2004).

The sponsors of H.R. 4062 adopted the more formal language “combination financing” rather than the term “piggyback financing.” The sponsors define “combination financing” as a loan consisting of both a commercial loan and a guaranteed loan. A commercial loan is defined as one that has no portion guaranteed by the government. The sponsors intend the term “combination financing” to have the same characteristics as “piggyback financing” as that term is used in the SBA’s Standard Operating Procedure already cited in this statement.

The authorization of combination financing is limited to those situations in which the small business concern (borrower) obtains both a guaranteed loan pursuant to Section 7(a) of the Small Business Act and a commercial loan. Again the sponsors intend that the provision should operate in a manner similar to the SBA’s determination that the commercial and guaranteed loans are obtained for the same or similar purposes and the loans are originated and disbursed (in whole or in part) at about the same time.

To ensure that the public fisc is protected even when the Administrator’s lien is subordinate to the commercial loan, H.R. 4062 restricts the size of the combination loan to that of the guaranteed loan. In other words, there is a one-to-one ratio between the com-

mercial and guaranteed loans. While the commercial loan cannot exceed the size of the guaranteed loan, the sponsors do not intend to prevent a commercial loan from being smaller than the guaranteed loan.

H.R. 4062 authorizes the commercial loan may be made by the lender that is making the guaranteed loan. However, the sponsors also permit the commercial loan to be made by a different lender as long as the loans meet the simultaneity of time and purpose already limned. In addition, the sponsors also authorize lenders designated as "Preferred Lenders" by the Administrator to make the commercial loan in such combination financings.

H.R. 4062 also authorizes lenders designated as "Preferred Lenders" by the Administrator to make the commercial loan in combination financings. In order to expedite the processing of combination financings in these circumstances, it is the sponsors' intent that the Administrator process applications for combination financings submitted by such "Preferred Lenders" through the Preferred Lenders Program Processing Center.

H.R. 4062 explicitly authorizes the commercial loan to be secured by a lien senior to that of the guaranteed loan. Nothing in this provision prevents the Administrator from continuing or discontinuing this practice after September 30, 2004 unless directed otherwise by statute.

In normal commercial transactions, lenders that take a subordinated lien position on an asset are compensated for the additional risk through additional upfront fees or by a higher interest rate. The Administrator did not require any additional payments or modification of applicable interest rates for taking a junior position in its "piggyback financing." Section 4 requires the Administrator to charge an upfront fee equal to 0.7 percent of the amount of the commercial loan as reimbursement for the risk associated with taking a subordinate lien position. The sponsors of H.R. 4062 expect that the lender that is benefiting from senior lien position to pay the fee.

While lenders pay all fees charged pursuant to Section 7(a) of the Small Business Act, some fees are recoverable from borrowers. Lenders may obtain reimbursement of the upfront fees mandated by Section 7(a)(18) of the Small Business Act from borrowers but are prohibited from recovering from borrowers the annual ongoing fee mandated by Section 7(a)(23) of the Small Business Act. Since the ultimate beneficiary of the combination financing as authorized by this section is the bank making the commercial loan, the sponsors determined that the lender should be prohibited from recovering that fee and imposed the restriction set forth in Section 7(a)(23)(B) of the Small Business Act on the payment of the commercial loan fee. The cross-reference to the provision in Section 7(a)(23) ensures that the lender will be unable to recoup the 0.7 percent from the borrower.

The Administrator had procedures in place for combination financing (styled in the Standard Operating Procedures as "piggyback financing") on October 1, 2003, and the Administrator processed combination loan financings in the normal course of business on October 1, 2003. To ensure that the Administrator accept and process combination financing loan applications, H.R. 4062 imposes

a requirement that the Administrator must process those loan applications as those loans were processed under the “piggyback financing” procedures in effect on October 1, 2003.

The sponsors of H.R. 4062 did not believe that it would be prudent to mandate the issuance of regulations to implement a temporary program, which will sunset in about six months. In fact, the sponsors were concerned that the promulgation process would be sufficiently lengthy and the program would sunset before any regulations were in place. The sponsors recognized that the Administrator would be approving combination financings under the rubric of “piggyback financings” in accordance with already extant standard operating procedures. The sponsors believe that these provisions are adequate for immediate issuance of combination financing loans. H.R. 4062 therefore authorizes the Administrator to use the standards already in existence upon enactment without the necessity of formal rulemaking. The provision has the additional benefit that industry is well aware of the procedures and standards for business eligibility in the standard operating procedures.

H.R. 4062 recognizes that additional standards may be necessary to determine business loan eligibility under this section. H.R. 4062 authorizes the Administrator to adopt such additional standards as may be necessary (in order to reduce risk to the government and increase transparency to the private sector) so long as those standards do not unreasonably restrict the availability of combination financing as was available prior to the issuance of any additional standards. Thus, the sponsors of H.R. 4062 expect that the Administrator will make reasonable decisions that may in some ways restrict the availability of combination financing. However, standards that prohibit or reduce by a significant number the combination financings made after the adoption of additional standards would not be within the intention of the sponsors of H.R. 4062. The sponsors do not expect any new standards adopted by the Administrator to impose significant restrictions on combination financings. The 0.7 percent fee sufficiently compensates the Administrator for the additional risk. Any additional standards should focus on the procedures for processing combination financings or resolving situations that are not adequately addressed under current procedures for “piggyback financing.”

Section 5. Loan guarantee fees

In late December of 2003 and early January of 2004, the Administrator, in part pursuant to the Anti-Deficiency Act, temporarily ceased lending under the loan program established pursuant to Section 7(a) of the Small Business Act. Shortly after the Administrator halted lending, funds were reallocated enabling the program, but with a mandatory loan cap of \$750,000.

This restriction continues to impede the ability of small businesses to obtain capital, expand their businesses, and create jobs. The sponsors of H.R. 4062 recognized the need to reopen the program to its fully authorized levels (\$2 million loan maximum with a guarantee up to \$1 million). Two options were available for doing this. The first would require additional appropriations. The second would be to raise fees associated with the lending program authorized by Section 7(a) of the Small Business Act. Since the sponsors

of H.R. 4062 were not sanguine about the prospect of obtaining additional appropriations for fiscal year 2004, they reluctantly turned to the second option.

The approach adopted by H.R. 4062 raise, through the end of fiscal year 2004, the annual ongoing fee charged to lenders. The reduction was reauthorized in Public Law No. 107-100. The statutory fee is currently set at a 0.5 percent but was reduced temporarily, to encourage the creation of new jobs, in the last SBA reauthorization bill to 0.25 percent. Section 5 raises that level from 0.25 percent to 0.36 percent. The sponsors also eliminate the authority of lenders to retain 0.25 percent of the ongoing fee for loans of less than \$150,000. According to the SBA Administrator and the Office of Management and Budget (OMB), these fee changes, along with other temporary modifications, raise sufficient funds to operate a guaranteed loan program at a \$12.55 billion level without any restrictions on combination financing or caps on loan size.

Section 6. Express loan provisions

Section 7(a)(25)(B) authorizes the SBA Administrator to create pilot loan programs. In exercising that authority, the Administrator created an "Express Loan Pilot Program." The program authorizes lenders to use their own forms in submitting requests to the Administrator for the issuance of guarantees. Two significant restrictions are imposed by the "Express Loan Pilot Program:" (1) the guarantee cannot exceed 50 percent of the loan and (2) the maximum loan amount is \$250,000.

According to the Administrator and OMB, expansion of the "Express Loan Pilot Program" to authorize lenders to make loans up to the statutory maximum of \$2 million would contribute to a significant reduction in the 7(a) subsidy rate. H.R. 4062 adopts this concept to ensure that sufficient funds were made available to reopen the program at expected loan volumes.

Section 6 defines the term express lender as a lender authorized to participate in the "Express Loan Pilot Program." The sponsors do not intend that the Administrator need change any of the requirements for designation as an express lender but is authorized to do so.

Section 6 defines an "Express Loan" as one in which the lender utilizes, to the maximum extent practicable, its own analyses of credit and forms. The sponsors of H.R. 4062 fully expect that the conditions under which express loans are made will not vary significantly from those conditions that currently exist under the "Express Loan Pilot Program." However, the sponsors recognize that the Administrator may want to impose some additional conditions on the use of forms or analyses for larger express loans. Nothing in H.R. 4062 prohibits the Administrator from imposing these additional requirements.

Section 6 codifies the existing concept of the Administrator's "Express Loan Pilot Program." In other words, the pilot program is one in which lenders utilize their own forms and get a guarantee of no more than 50 percent.

Subsection 6(b) restricts the program, including the increased loan amount, to those lenders designated as express lenders by the Administrator. Designation as an express lender does not limit the

lender to making express loans if the lender has been authorized to make other types of loans pursuant to Section 7(a) of the Small Business Act. Although a lender may only seek status as an express lender, this subsection was included to ensure that the Administrator not limit the ability of an express lender to seek other lending authority from the Administrator. Nor is the Administrator permitted to change its standards for designating an express lender in a manner that only authorizes the lender to make express loans. To the extent that the lending institution wishes to offer a full range of loan products authorized by Section 7(a) and is otherwise qualified to do so, the Administrator shall not restrict that ability on the lender's status as an express lender.

Subsection 6(c) prohibits the Administrator from revoking the designation of any lender as an express lender that was so designated at the time of enactment. This prohibition does not apply if the Administrator finds the express lender to have violated laws or regulations or the Administrator modifies the requirements for designation in a way that the express lender cannot meet those standards. The sponsors of H.R. 4062 do not expect that the Administrator will impose new requirements for express lenders that prohibit them from making loans under other loan programs authorized by the Small Business Act for which they have approval from the Administrator.

Subsection 6(d) temporarily expands the Express Loan Pilot Program to \$2 million. After September 30, 2004, the sponsors expect the Administrator to operate the Express Loan Pilot Program according to the standards that were in effect prior to the enactment. Since the Administrator had the authority to modify or alter the pilot program prior to the enactment of this Act, nothing in the Act restricts the Administrator from taking appropriate regulatory action with respect to the program after the authority vested in this Act terminates.

The President's FY 2005 budget request for the Small Business Administration did not include any funding for the loan programs authorized by Section 7(a) of the Small Business Act. Administrator Barreto testified at a full Committee hearing that the loan programs should be self-funding with a subsidy rate of zero and, as a result, the Section 7(a) lending programs would be on the same footing as the CDC and SBIC programs. Administrator Barreto's suggested the mechanism for achieving a zero subsidy rate was through a mandatory expansion of the Express Loan Pilot Program to incorporate almost all smaller loans (initially all loans under \$250,000 but in subsequent years could increase if needed to maintain a zero subsidy rate). The mandatory nature of the proposal did not garner much acceptance among members of the House or Senate Small Business Committees.

Given Administrator Barreto's stated preference for resolving the funding crisis associated with the Section 7(a) lending programs through an expansion of express loans, the sponsors are concerned that the Administrator will take regulatory actions that unduly favor express lending over other types of lending authorized by Section 7(a) of the Small Business Act. As such, the sponsors determined that it was appropriate to impose certain restrictions on the Administrator's operation of the expanded Express Loan Pilot Pro-

gram in order to prevent actions that unnecessarily and unduly favor express lending.

Any significant policy change in the operation of the lending programs authorized by Section 7(a) of the Small Business Act requires notification to the House and Senate Small Business Committees. Subsection 6(e) does not limit the restrictions imposed on the Administrator's regulatory discretion to those matters that would require notification pursuant to Section 7(a)(24) of the Small Business Act.

The most significant restriction is that the Administrator cannot take any action that directly forces a lender to make an express loan for any level. Thus, if a lender wishes to make an express loan for \$1.5 million dollars and is a designated express lender, the lender may do so. If the same lender is qualified to make other types of loans and wants to make a \$1.5 million dollar loan at a 75 percent guarantee, the Administrator may take no action that forces the lender to select the 50 percent guarantee over the 75 percent guarantee.

One mechanism for demonstrating favoritism is to impose conditions on loan programs other than express loans that have the effect of coercing lenders to make express loans. Paragraph (2) of subsection 6(e) ensures that the Administrator imposes like terms and conditions on both express and other lending programs authorized by Section 7(a) of the Small Business Act. The sponsors intend that this requirement apply to all of the terms and conditions of loans made pursuant to Section 7(a) of the Small Business Act, including collateral and the likelihood of repayment standards.

Even if the terms and conditions on the loans are identical, the Administrator has other mechanisms for demonstrating favoritism of express lenders over other types of Administrator-designated lenders. For example, the Administrator could delay processing of 75 percent guarantee loans, i.e., loans other than express loans, such that lenders would, for all practical terms, be required to do express loans. Thus, paragraph (3) of subsection 6(e) prevents the Administrator from making any personnel changes or altering the application of resources (be it personnel, equipment, or funding) that increases the loan processing and disbursement times for all loans authorized by Section 7(a) of the Small Business Act as those were in effect on October 1, 2003. For example, if the time for disbursement of an express loan was five days and the time for disbursement of a 75 percent guaranteed loan was seven days, the Administrator may take no action that increases the relative disparity between the express loan and the 75 percent guarantee loan. Nothing in this subsection shall be interpreted to prevent the Administrator from improving the overall processing, approval, or disbursement rates of all loans except that any such improvements must affect all lenders and all lending programs operating pursuant to Section 7(a) of the Small Business Act in an identical manner.

To ensure that the sponsors' intent is clear that the expansion of the express loan is optional and the Administrator shall take no action that has the practical effect of making it mandatory, H.R. 4062 incorporates a catchall requirement that the Administrator not take action to create incentives that would favor express loans over other types of loans. The sponsors of H.R. 4062 believe that

the determination of the appropriate nature of a loan should not be made by regulatory fiat but by the sound judgment of lenders, borrowers, and the Administrator's commercial loan officers.

The dramatic expansion of the express loan program, even on a temporary basis, may shed dramatic light on the purposes for which such loans are made. That information will be critical in resolving, on a long-term basis, the funding issues associated with the §7(a) lending programs. Therefore, H.R. 4062 requests, to the extent practicable, monthly reports on the types and purposes for express loans made in excess of the current pilot program cap of \$250,000.

Subsection 6(g) terminates the effectiveness of various subsections after September 30, 2004. Subsection (d) has its own internal sunset provision. No sunset is made on subsection (a), as it simply codifies existing practice of the Administrator with respect to definitions related to express loans. Nothing in subsection (g) is intended to constitute a permanent change in any program authorized pursuant to Section 7(a) of the Small Business Act.

Section 7. FY 2004 deferred participation standards

As already noted, the sponsors of H.R. 4062 are concerned that regulatory or other administrative changes in loan programs could have the practical implication of forcing lenders to make express loans. H.R. 4062 freezes all terms and conditions of loans as they existed on October 1, 2003 as a way to deter favoritism for express lending. The sponsors of H.R. 4062 intend this provision to require, upon enactment, the lifting of the cap on loans made pursuant to Section 7(a) of the Small Business Act that are currently in place. Section (7) does permit the Administrator to modify those terms and conditions if needed to ensure continued operation of the program within the amounts appropriated. Although the sponsors of H.R. 4062, based on assertions by the OMB, believe that the Administrator will have sufficient funds through the end of the fiscal year to operate without any regulatory restraints, the sponsors do not want to prevent the Administrator from taking actions needed to prevent violations of the Anti-Deficiency Act. In other words, the sponsors of H.R. 4062 fully expect the terms and conditions of October 1, 2003 to apply unless unusual and very unexpected consequences occur. Should such changes be necessary, nothing in H.R. 4062 repeals, either implicitly or explicitly, the notification requirements set forth in Section 7(a)(24).

Section 8. Temporary increase in loan limit

Access to capital is vital to the growth of small businesses. Particularly for manufacturers and high technology research and development businesses, typical amounts of capital available under the loan programs authorized by Section 7(a) of the Small Business Act often are inadequate. If these manufacturers and high technology companies are investing to increase their productivity, the job creation requirements of Title V of the Small Business Investment Act may make it difficult, if not impossible, to obtain that type of financing. Therefore, the sponsors determined that it would be appropriate to temporarily increase the amount of the loan guarantee from \$1 million to \$1.5 million. No additional changes

were made in the overall statutory cap of a gross \$2 million loan. The sponsors of H.R. 4062 did not believe that was necessary because any additional gaps in financing can be addressed using combination financing, under the terms of this Act. Given the fact that borrowers get an additional increment in loan guarantees, H.R. 4062 requires an additional 0.25 percent fee for the amount of guarantee in excess of \$1 million. Thus, on the amount of the guarantee between \$1 million and \$1.5 million, the upfront fee authorized pursuant to Section 7(a)(18) of the Small Business Act increases from 3.5 percent to 3.75 percent. This is consistent with typical commercial lending practices of charging fees that are commensurate with the lenders' exposure to risk.

5.11 H.R. 4478—TO PROVIDE FOR AN ADDITIONAL TEMPORARY EXTENSION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958 THROUGH JULY 23, 2004, AND FOR OTHER PURPOSES

LEGISLATIVE HISTORY

6/2/2004: Referred to the House Committee on Small Business.
 6/3/2004 2:31pm: Committee on Small Business discharged.
 6/3/2004 2:31pm: Mr. Manzullo asked unanimous consent to discharge from committee and consider.
 6/3/2004 2:31pm: Considered by unanimous consent.
 6/3/2004 2:32pm: On passage Passed without objection.
 6/3/2004 2:32pm: Motion to reconsider laid on the table Agreed to without objection.
 6/3/2004: Received in the Senate.
 6/25/2004: Read twice and referred to the Committee on Small Business and Entrepreneurship.

NEED FOR LEGISLATION

H.R. 4478 extends the general authorization for SBA programs from June 4, 2004 until July 23, 2004 while Congress continued to work on a more comprehensive SBA reauthorization bill. This legislation reauthorizes SBA programs not covered by regular appropriations such as the Preferred Surety Bond program; the price preference in the Small Disadvantaged Business (SDB) program; SBA's co-sponsorship authority, which enables the SBA to accept private donations to put on events or print publications; the Women's Business Center Sustainability pilot program; grants to SBDCs to implement part of the Paul D. Coverdell Drug-Free Workplace program; the Very Small Business Concerns pilot program; and the Pre-Disaster Mitigation pilot program. Without this bill, these programs, which are not covered by a direct appropriation, would not be able to function.

SECTION-BY-SECTION ANALYSIS

Section 1.—Additional temporary extension of authorization of programs under the Small Business Act and the Small Business Investment Act of 1958. The authorization for any program, authority, or provision, including any pilot program, which was extended through June 4, 2004 as per Public Law 108–217, is further ex-

tended through July 23, 2004, under the same terms and conditions.

Section 2.—Contains a technical amendment to insure that the 504 Certified Development Company (CDC) program operates under the same terms and conditions as it was at the beginning of the fiscal year.

5.12 H.R. 5008—TO PROVIDE AN ADDITIONAL TEMPORARY EXTENSION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958 THROUGH SEPTEMBER 30, 2004, AND FOR OTHER PURPOSES. PUBLIC LAW 108–306

LEGISLATIVE HISTORY

9/7/2004: Referred to the House Committee on Small Business.

9/13/2004 5:05pm: Mrs. Capito moved to suspend the rules and pass the bill.

9/13/2004 5:05pm: Considered under suspension of the rules.

9/13/2004 5:27pm: On motion to suspend the rules and pass the bill Agreed to by voice vote.

9/13/2004 5:27pm: Motion to reconsider laid on the table Agreed to without objection.

9/14/2004: Received in the Senate, read twice, considered, read the third time, and passed without amendment by Unanimous Consent.

9/15/2004: Message on Senate action sent to the House.

9/16/2004: Cleared for White House.

9/16/2004: Presented to President.

9/24/2004: Signed by President.

9/24/2004: Became Public Law No: 108–306.

NEED FOR LEGISLATION

H.R. 5008 extends the general authorization for SBA program until September 30, 2004 while Congress continued to work on a more comprehensive SBA reauthorization bill. This legislation reauthorizes SBA programs not covered by regular appropriations such as the Preferred Surety Bond program; the price preference in the Small Disadvantaged Business (SDB) program; SBA's co-sponsorship authority, which enables the SBA to accept private donations to put on events or print publications; the Women's Business Center (WBC) Sustainability pilot program; grants to SBDCs to implement part of the Paul D. Coverdell Drug-Free Workplace program; the Very Small Business Concerns pilot program; and the Pre-Disaster Mitigation pilot program. Because the previous extension had not been able to pass the Senate (H.R. 4478), these programs were not allowed to operate from June 4 (the previous expiration date) until the day the President signed this bill into law.

This temporary gap of authorization was particularly burdensome to the WBC sustainability pilot program, which allows the SBA to provide grants to established WBCs beyond their five-year limit of eligibility. Grants in the WBC program are generally awarded on July 1 and there could have been some centers that closed because of a lack of funds due to the tough economic climate that makes it hard for many of these centers to raise sufficient

funds from the private sector. The appropriations were there for these WBCs but they had only until the end of the fiscal year—or September 30, 2004—to be able to take advantage of “sustainability” grants. Passage of H.R. 5008 into law was particularly fortuitous at that point in time for the WBC program, particularly since the Senate did not take up the previous SBA temporary extension bill (H.R. 4478) and there was a hiatus in SBA authorization from June 4, 2004 until September 24, 2004.

In addition, H.R. 5008 corrected a legal problem regarding how the SBA pays fiscal transfer agents who provide a vital role in the secondary market. For nearly 10 years, the SBA’s fiscal transfer agent has been paid by a float on interest on the pools of securitized 7(a) guaranteed loans. In July, there has been some confusion within the Administration as to whether or not this practice violates the Anti-Deficiency Act. The SBA proposed a fix to this problem and that solution is incorporated in Section 3 of H.R. 5008, which essentially codifies the existing practice. Passage of H.R. 5008 was needed in order to prevent the crippling of the SBA’s 7(a) loan program because without the liquidity of the secondary market, banks will not make as many 7(a) loans as in the past.

SECTION-BY-SECTION ANALYSIS

Section 1—Additional temporary extension of authorization of programs under the Small Business Act and the Small Business Investment Act of 1958. The authorization for any program, authority, or provision, including any pilot program, which was extended through June 4, 2004 as per Public Law 108–217, is further extended through September 30, 2004, under the same terms and conditions.

Section 2—Contains a technical amendment to insure that the 504 Certified Development Company (CDC) program operates under the same terms and conditions as it was at the beginning of the fiscal year.

Section 3—Fixes the compensation of fiscal transfer agents in the SBA’s 7(a) general business loan guarantee program by codifying into law existing practice—permitting a float on interest while the fee is in the control of the fiscal agent prior to when the fiscal agent is required to remit the fee to the SBA.

5.13 H.R. 5108—SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING ASSISTANCE ACT OF 2004 KEY ELEMENTS OF H.R. 5108 WERE INCORPORATED INTO DIVISION K OF THE CONSOLIDATED APPROPRIATIONS ACT, 2005 (H.R. 4818—PUBLIC LAW 108–447)

LEGISLATIVE HISTORY

Related Bills: S.2821

9/21/2004: Referred to the House Committee on Small Business.

11/20/04: Revised Section 102; revised Section 103; Section 104; Section 105; Section 106; Section 107; Section 108; Section 109; Section 201; Section 202; Section 211; Section 212; Section 213; Section 214; Section 215; Section 401; revised Section 402; Section 431; Section 432; Section 433; Section 434; (Section 501 was no longer needed since SBA committed to completing the women’s pro-

curement study by the end of December 2004); Section 601; Section 603; and Section 604 of H.R. 5108 incorporated into Division K of H.R. 4818.

11/20/2004 12:18am: Conference report to accompany H.R. 4818 H. Rept. 108–792 filed.

11/20/2004: Conferees agreed to file conference report.

11/20/2004 2:31pm: Mr. Young (FL) brought up conference report H. Rept. 108–792 for consideration under the provisions of H. Res. 866.

11/20/2004 3:32pm: The previous question was ordered without objection.

11/20/2004 4:01pm: On agreeing to the conference report Agreed to by the Yeas and Nays: 344–51, 1 Present (Roll no. 542).

11/20/2004 4:01pm: Motions to reconsider laid on the table Agreed to without objection.

11/20/2004: Conference papers: Senate report and manager's statement and message on House action held at the desk in Senate.

11/20/2004: Senate agreed to conference report by Yea-Nay Vote. 65–30. Record Vote Number: 215.

11/20/2004: Held at desk. pending adoption of H.Con.Res. 528, as amended, by the House.

11/20/2004: Message on Senate action sent to the House.

12/6/2004 6:55pm: Pursuant to the provisions of H. Con. Res. 528, enrollment corrections on H.R. 4818 have been made.

12/6/2004: Cleared for White House.

12/7/2004: Presented to President.

12/8/2004: Signed by President.

12/8/2004: Became Public Law No: 108–447.

NEED FOR LEGISLATION

The programs and the authorities for the Small Business Administration (SBA) expired on September 30, 2003. The Committee passed a comprehensive SBA reauthorization bill on July 24, 2003 (H.R. 2802—H.Rept. 108–325 Part I) but was unable to bring the bill up for floor consideration by the full House of Representatives. The Senate passed their version of SBA reauthorization on September 26, 2003 (S. 1375) but it was also not able to pass the House. Since October 1, 2003, the SBA functioned under a series of different short-term extensions, continuing resolutions, and, for a time, without any ability to offer programs not covered by appropriations. In the meantime, the House and Senate Small Business Committees negotiated a joint SBA reauthorization bill, which is reflected in the compromise as contained in H.R. 5108/S. 2821. About 80 percent of the provisions of H.R. 5108/S. 2821 were subsequently folded into the Consolidated Appropriations Act, 2005 with a few other provisions that were either Administration requests or further additions from the Senate. This action was necessary in order to insure continuation of operations of SBA programs and authorities without interruption over the next two years and to finally update and reform certain SBA programs.

SECTION-BY-SECTION ANALYSIS

DIVISION K OF H.R. 4818

TITLE I—SMALL BUSINESS REAUTHORIZATION AND
MANUFACTURING ASSISTANCE*Section 1. Short title; table of contents*

Subtitle A—Small Manufacturers Assistance

Sections 101 through 103 implements the 7(a) compromise with the Administration and the lending community that allows the 7(a) loan guarantee program to go to zero subsidy rate (requiring no appropriations).

Section 101. Express loans

Loan limit size is raised in SBAExpress, in which in return for allowing banks to use their own paperwork the guarantee rate is lowered to 50 percent (not 75 percent for loans over \$150,000 or 80 percent for loans under \$150,000), from \$250,000 to \$350,000 and insures that SBAExpress continues to be truly an option, not a requirement, for banks.

Section 102. Loan guarantee fees

Section 102 sets the maximum fee levels for borrowers and lenders and gives flexibility to the SBA to administratively reduce fees. The fee structure is: 2 percent upfront borrower fee for loans under \$150,000; 3 percent upfront borrower fee for loans between \$150,000 and \$700,000; 3.5 percent upfront borrower fee for loans over \$700,000; and for loans above \$1 million to the new maximum guarantee limit of \$1.5 million, an extra risk premium of 0.25 percent upfront borrower fee is added (on top of the 3.5 percent fee they already pay). The maximum annual fee level for lenders at 0.55 percent (currently it is 0.50 percent and is not expected to increase) but this gives a small cushion to the SBA in order to keep the 7(a) program operating at no cost to the taxpayer without requiring legislation.

Section 103. Increase in guarantee amount and institution of associated fee

Increases the maximum 7(a) loan guarantee limit from \$1 million to \$1.5 million (similar to how the 7(a) program operated between April and September 2004).

Section 104. Debenture size

Increases the maximum loan debenture size to \$1.5 million; \$2 million for projects involved in one or more of the Small Business Investment Act public policy goals; and \$4 million for small manufacturers.

Section 105. Job requirements

Increases the job requirement test to \$50,000 of guarantee for every one job created or retains (up from \$35,000); \$100,000 in the

case of a project of a small manufacturer; and \$75,000 for areas generally considered to need greater economic development.

Section 106. Report regarding national database of small manufacturers

The SBA shall conduct a study, in conjunction with the association of small business development centers, to examine the feasibility of creating a database of small manufacturers for use by American higher education institutions in satisfying their procurement needs.

Section 107. International trade

Authorizes the use of International Trade (IT) Loans to refinance existing debt to make it consistent with all other 7(a) loans. Also authorizes that findings by the International Trade Commission (ITC) or a Trade Adjustment Assistance Center (TAAC) are proof that a small business has been adversely affected by foreign imports. Raises IT loan guarantee limit from \$1,250,000 to \$1,750,000, consistent with past practice to have the IT guarantee loan limit \$250,000 above the regular 7(a) guarantee loan limit, which, in Section 103, is scheduled to be raised again to \$1.5 million.

Subtitle B—Authorizations

Chapter 1—Program Authorization Levels and Additional Reauthorizations

Section 121. Program authorization levels

- Disaster Mitigation Pilot Program—\$15 million for FY 05; \$15 million for FY 06.
- 7(m) program—\$75 million in technical assistance grants and \$105 million in direct loans for FY 05; \$80 million in technical assistant grants and \$110 million in direct loans for FY 06.
- 7(a) program—\$16.5 billion for FY 05; \$17 billion for FY 06.
- 504 program—\$6 billion for FY 05; \$7.5 billion for FY 06.
- Small Business Investment Company (SBIC) program—\$4.25 billion in participating securities and \$3.25 billion in debentures for FY 05; \$4.5 billion in participating securities and \$3.5 billion in debentures for FY 06.
- SCORE program—\$7 million for FY 05; \$7 million for FY 06.
- Reauthorizes all other SBA programs for two years at such sums as necessary unless specific authorization exists elsewhere.

Section 122. Additional reauthorizations

- Extends Drug-Free Workplace program assistance until October 1, 2006.
- Small Business Development Centers (SBDCs)—\$130 million for FY 05; \$135 million for FY 06. At least \$1 million of this authorization shall be reserved for eligible SBDCs in economically challenged communities as a result of business or government downsizing or closing.

Chapter 2—Paul D. Coverdell Drug-Free Workplace Program

Section 123. Paul D. Coverdell Drug-Free Workplace Program authorization provisions

Provides a \$1.5 million authorization level for FY 05 and FY 06;

Section 124. Grant provisions

Reauthorizes grants to SBDCs under this program to provide technical assistance to small businesses seeking to establish a drug-free workplace.

Section 125. Drug-free communities coalitions as eligible intermediaries

Permits drug-free communities coalitions to receive grants.

Section 126. Promotion of effective practices of eligible intermediaries

Requires grantees to standardize their data in order to have a better evaluation of the program.

Section 127. Report to Congress

Requires a study by the SBA to determine the effectiveness of the program within 18 months.

Subtitle C—Administration Management

Section 131. Lender examination and review fees

Requires any 7(a) lender to pay the examination and review fees of the SBA.

Section 132. Gifts and co-sponsorship authority

Extends the authorization and clarifies SBA's gift receipt policy and co-sponsorship authority, which allows the SBA to partner with the private sector to put on conferences or print publications, until October 1, 2006.

Subtitle D—Entrepreneurial Development Programs

Chapter 1—Office of Entrepreneurial Development

Section 141. Service Corps of Retired Executives (SCORE) technical corrections

Makes technical corrections to continue SBA payment and housing of SCORE officers.

Section 142. Small Business Development Center Program

Protects the privacy rights of small business clients that use Small Business Development Centers (SBDCs).

Chapter 2—Office of Veterans Business Development

Section 143. Advisory Committee on Veterans Business Affairs

Provides for authorization of the Advisory Committee on Veterans Business Affairs extends until September 30, 2006.

Section 144. Outreach grants for veterans

Permits members of the Armed Forces Reserves to be eligible for outreach grants for veterans.

Section 145. Authorization of appropriations

Provides authorization levels of \$1.5 million for FY 05; \$2 million for FY 06.

Section 146. National Veterans Business Development Corporation

Clarifies that the National Veterans Business Development Corporation is a private entity and is not part of the U.S. government.

Chapter 3—Manufacturing and Entrepreneurial Development

Section 147. Small Business Manufacturing Task Force

Creates a Small Business Manufacturing Task Force at the SBA to examine what SBA can do better to meet the needs of small manufacturers.

Subtitle E—HUBZone Program

Section 151. Streamlining and revision of HUBZone eligibility requirements

Allows agricultural cooperatives to participate in the HUBZone program.

Section 152. Expansion of qualified areas

Former military bases that were closed as part of the Base Realignment and Closure process are automatically qualified as HUBZones. Slightly lowers the unemployment rate necessary for an area to be designated a HUBZone and also permits firms to remain in the HUBZone program if the unemployment rate improves slightly. Requires a study by the Office of Advocacy at the SBA on the HUBZone program.

Section 153. Price evaluation preference

Price evaluation preference for purchases of agricultural commodities by the United States Department of Agriculture shall be 5 percent on the first portion of the contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single bidding opportunity.

Section 154. HUBZone authorizations

HUBZone program is authorized through 2006.

Section 155. Participation in federally funded projects

Clarifies that any small business that is certified or meets the criteria of the 8(a) program shall not be required to meet any additional criteria to participate in federal government procurement opportunities as a small disadvantaged business.

Subtitle F—Small Business Lending Companies

Section 161. Supervisory and enforcement authority for small business lending companies

Grants SBA the regulatory authority to regulate 7(a) lenders that are not already regulated by state or federal banking authorities and are defined in section 162.

Section 162. Definitions relating to small business lending companies

Defines the terms “small business lending company” and “non-federally regulated bank.”

TITLE II—MISCELLANEOUS AMENDMENTS

Section 201. Amendment to definition of equity capital with respect to issuers of participating securities

Gives SBA the flexibility to define an “equity security” in the participating securities portion of the Small Business Investment Company (SBIC) program.

Section 202. Investment of excess funds

Makes an investment of “idle” funds (funds temporarily not used by an SBIC for investment in small business) more reasonable while still mandating that the funds be insured.

Section 203. Surety bond amendments

Clarifies that the maximum surety bond guarantee to cover the total work order (not just the contract limit). Changes the audit frequency of surety bond companies from once a year to once every three years. Makes the surety bond program permanent.

Section 204. Effective date for certain fees

Grants permanent authority to the SBA to charge fees in the 504 CDC loan program.

5.14 S. 141—TO IMPROVE THE CALCULATION OF THE FEDERAL SUBSIDY RATE WITH RESPECT TO CERTAIN SMALL BUSINESS LOANS, PUBLIC LAW 108–8

LEGISLATIVE HISTORY

1/10/2003: Introduced in the Senate, read twice, considered, read the third time, and passed without amendment by Unanimous Consent.

1/27/2003 2:01pm: Received in the House.

1/27/2003: Message on Senate action sent to the House.

1/27/2003: Referred to the Committee on the Budget, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

1/27/2003: Referred to House Budget.

1/27/2003: Referred to House Small Business.

2/11/2003 4:36pm: Mr. Nussle moved to suspend the rules and pass the bill.
 2/11/2003 4:36pm: Considered under suspension of the rules.
 2/11/2003 5:10pm: On motion to suspend the rules and pass the bill Agreed to by voice vote.
 2/11/2003 5:10pm: Motion to reconsider laid on the table Agreed to without objection.
 2/11/2003: Cleared for White House.
 2/14/2003: Presented to President.
 2/25/2003: Signed by President.
 2/25/2003: Became Public Law No: 108–8.

NEED FOR LEGISLATION

S. 141 solved the subsidy rate calculation problem in the Small Business Administration's (SBA) 7(a) general business loan guarantee program by allowing the Office of Management and Budget (OMB) to retroactively apply a more sophisticated econometric model that SBA and OMB developed and approved for application in the President's FY '04 budget request. OMB cannot do this internally. There needed to be a change in the law to allow OMB to "open" up the assumptions in the President's FY '03 request that was already submitted to Congress in February 2002. This new econometric model finally corrected the subsidy rate calculation error in the 7(a) program by dropping it 41 percent using this new formula—from 1.76 percent to 1.04 percent. This freed up \$3.4 billion in new lending authority for the SBA. Passage of S. 141, combined with re-programming excess Supplemental Terrorist Activity Relief (STAR) loan funds to the regular 7(a) program in the FY '03 Omnibus Appropriations bill, allowed SBA to rescind its October 1, 2002 policy notice, which prohibited guaranteeing 7(a) loans above \$500,000, on the day the President signed S. 141 into law.

SECTION-BY-SECTION ANALYSIS

Section 1. Subsidy rate for small business loans

Notwithstanding the applicable provisions of the Federal Credit Reform Act of 1990 and the Balanced Budget and Emergency Deficit Control Act of 1985, the Director of the Office of Management and Budget, in calculating the Federal cost for guaranteeing 7(a) loans during fiscal year 2003, may use the most recently approved subsidy cost model and methodology in conjunction with the program and economic assumptions, and historical data which were included in the fiscal year 2003 budget. After written notification to Congress, the Small Business Administration shall implement the validated, OMB-approved subsidy rate for fiscal year 2003, using this model and methodology. Such rate shall be deemed to have been effective on October 1, 2002.

5.15 S. 1895—A BILL TO TEMPORARILY EXTEND THE PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958 THROUGH MARCH 15, 2004, AND FOR OTHER PURPOSES, PUBLIC LAW 108–172

LEGISLATIVE HISTORY

11/19/2003: Introduced in the Senate, read twice, considered, read the third time, and passed without amendment by Unanimous Consent.

11/20/2003: Message on Senate action sent to the House.

11/20/2003 10:05am: Received in the House.

11/20/2003 1:47pm: Held at the desk.

11/20/2003 6:55pm: Mr. Schrock asked unanimous consent to take from the Speaker's table and consider.

11/20/2003 6:55pm: Considered by unanimous consent.

11/20/2003 6:56pm: On passage Passed without objection.

11/20/2003 6:56pm: Motion to reconsider laid on the table Agreed to without objection.

11/20/2003: Cleared for White House.

11/25/2003: Presented to President.

12/6/2003: Signed by President.

12/6/2003: Became Public Law No: 108–172.

NEED FOR LEGISLATION

S. 1895 extends the general authorization for SBA programs until March 15, 2004 while Congress continues to work on a more comprehensive SBA reauthorization bill. This legislation reauthorizes SBA programs not covered by regular appropriations such as the Preferred Surety Bond program; the price preference in the Small Disadvantaged Business (SDB) program; SBA's co-sponsorship authority, which enables the SBA to accept private donations to put on events or print publications; the Women's Business Center (WBC) Sustainability pilot program; grants to SBDCs to implement part of the Paul D. Coverdell Drug-Free Workplace program; the Very Small Business Concerns pilot program; and the Pre-Disaster Mitigation pilot program. Without passage of S. 1895, these programs, which are not directly covered by appropriations, would not be able to operate.

In addition, S. 1895 raised the fee range slightly in the Small Business Investment Company (SBIC) program for the entire Fiscal Year 2004 from 1.38 percent to 1.46 percent in order to keep the SBIC program open for business and fully operating without the need for any federal appropriation.

SECTION-BY-SECTION ANALYSIS

Section 1.—The authorization for any program, authority, or provision, including any pilot program, under the Small Business Act and the Small Business Investment Act of 1958 that is set to expire on or after September 30, 2003 is extended through March 15, 2004, under the same terms and conditions in effect on September 30, 2003. The fees in the SBIC program are changed from 1.38 percent to 1.46 percent.

CHAPTER SIX

SUMMARY OF OTHER LEGISLATIVE ACTIVITIES OF THE COMMITTEE ON SMALL BUSINESS

6.1 COMMITTEE MEETINGS

6.1.1 ORGANIZATIONAL MEETINGS

On February 26, 2003 the Committee on Small Business held an organization meeting. The purpose of this meeting was threefold: (1) to consider and adopt the Committee rules for the 108th Congress, (2) to consider and adopt the Committee's oversight plan for the 108th Congress, and (3) approve the subcommittee assignments for Members of the Committee. The Committee rules, oversight plan, and organization of subcommittees were adopted by voice vote. The text of the Committee's oversight plan follows:

6.1.2 OVERSIGHT PLAN FOR THE COMMITTEE ON SMALL BUSINESS 108TH CONGRESS

U.S. HOUSE OF REPRESENTATIVES

DONALD A. MANZULLO, CHAIRMAN

Rule X, clause 2(d)(1), of the Rules of the House requires each standing Committee to adopt an oversight plan for the two-year period of the Congress and to submit the plan to the Committees on Government Reform and House Administration not later than February 15 of the first session of the Congress.

The Oversight Plan of the Committee on Small Business includes areas in which the Committee expects to conduct oversight activity during the 108th Congress. However, this plan does not preclude oversight or investigation of additional matters as the need arises.

OVERSIGHT OF THE SMALL BUSINESS ADMINISTRATION

The Committee will conduct hearings on all the major programs of the Small Business Administration (SBA) to determine their effectiveness and possible options for improvements, as a prelude to reauthorization of the entire SBA to be completed by September 30, 2003.

FINANCIAL AND MANAGEMENT/TECHNICAL ASSISTANCE PROGRAMS

The Committee will conduct hearings on the effectiveness and efficiency of the SBA's major programs. These include: 7(a) General Business Loan Program, the Certified Development Company Program, the Small Business Investment Company (SBIC) Program, the Microloan Program, the Disaster Loan Program, Small Business Development Centers (SBDCs), and New Markets Venture Capital Program. In particular, the Committee will closely monitor the subsidy rate calculations for the loan guarantee programs and take the necessary steps to ensure that the programs are able to operate during this economic downturn in the most fiscally-prudent manner possible. In addition, the Committee will oversee the Office of Government Contracting to ensure that other Federal agencies meet the minimum threshold of various small business goals in Federal government procurement.

The Committee will also examine on the ability of small businesses to gain access to capital, focusing particularly on interest rates and bank regulations.

ADVOCACY

The Office of Advocacy was created to provide small business with an effective voice inside the Federal government. The Committee will conduct hearings on how to strengthen this voice and make sure that the Office of Advocacy continues to effectively represent the interests of small business. As part of this process, the Committee will also monitor the implementation of Executive Order 13272 regarding the "Proper Consideration of Small Entities in Agency Rulemaking." (Spring 2003)

VETERANS

In the 106th Congress, Congress created a new office of Veterans Business Development and the National Veterans Business Development Corporation to enhance and improve small business services to our nation's veterans. The Committee will continue to conduct hearings on the implementation of the Veterans Entrepreneurship and Small Business Development Act, including a review of the progress on achieving the service-disabled veterans goal in procurement. (Summer, 2003)

TECHNOLOGY AND RESEARCH ASSISTANCE

Small Business Innovation Research program

The Small Business Innovation Research (SBIR) program aids small businesses in obtaining federal research and development funding for new technologies. In 2000, Congress reauthorized the SBIR program for eight years. The Committee will investigate the implementation of the changes to the SBIR program and, more particularly, the outreach effort of the SBIR program to make sure that all areas of the country benefit from the program.

Small Business Technology Transfer (STTR) program

Committee oversight will focus on the program's success at helping small business access technologies developed at federal laboratories and put that knowledge to work. In 2001, Congress reauthorized the STTR program for eight years. The Committee will monitor agency implementation of PL 107-50 particularly as the funding formula changes in FY 2004. (Fall 2003)

FEDERAL PROCUREMENT

The Committee will examine needed changes in federal procurement. The Committee will continue to monitor and highlight the practice of creating bundled or consolidated mega-contracts that are too large for small business participation. Additionally, the implementation of Administration's strategy for increasing Federal contracting opportunities for small business as released by the Office of Federal Procurement Policy at the Office of Management and Budget in October 2002 will be closely scrutinized.

Because there is a direct correlation between the ability of an agency to achieve its goals and contract bundling, the success of Federal agencies in meeting all their small business goals will also be assessed.

With the continued practice of contract bundling, more small businesses will become subcontractors. In light of this, the Committee will work to ensure fair treatment for subcontractors on Federal contracts.

The Committee will also investigate the women's contracting program to make sure the program is serving the needs of women-owned businesses. (On-going)

GOVERNMENT COMPETITION

The Committee will examine the extent to which the Federal government itself directly or indirectly competes with small business. Our focus will include activities in both government practices and in certain status given by the Federal government to non-governmental entities. (On-going)

REGULATORY FLEXIBILITY

The Committee will continue its oversight of agency compliance with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. (Ongoing)

The Committee will oversee the implementation of the Truth in Regulating Act. (Winter, 2003)

SBREFA

The Committee will be conducting oversight hearings on agency implementation of the Small Business Regulatory Enforcement Fairness Act (SBREFA), which was enacted during the 104th Congress. The Committee will also examine the need to further amend and strengthen SBREFA. (Ongoing)

PAPERWORK REDUCTION

The Committee will hold hearings and work to reauthorize the Paperwork Reduction Act. (2003)

GOVERNMENT REGULATION

The Committee will continue to examine the regulatory activities of various Federal agencies and assess the impact of regulations on the small business community. (Ongoing)

TAXATION

The Committee will continue to conduct oversight hearings into ways to reduce the tax burden on small business. These hearings will include not only the monetary but also the paperwork burden of the Federal tax system and Federal enforcement efforts on small business. (Ongoing)

ENERGY

The Committee will conduct oversight hearings on the potential effects of any legislative changes in energy policy, including examining the possible effects of deregulation of electricity on small business. (Summer, 2003)

GOVERNMENT PERFORMANCE AND RESULTS ACT

The Committee will continue consultations with the SBA regarding the preparation and implementation of strategic plans and performance plans as required by the Government Performance and Results Act. (Summer, 2003)

EMPOWERMENT

The Committee will conduct oversight hearings on regulations and licensing policies that impact small businesses located in high risk communities. The Committee will also examine the promotion of business growth and opportunities in economically depressed areas, and will examine programs targeted towards relief for low-income communities. The challenges facing minority-owned businesses will continue to be evaluated. (Ongoing)

The Committee will specifically look at agency implementation of the New Markets Initiative Act and the Program for Investment in Microentrepreneurs (PRIME) program. (Spring, 2003)

WORKFORCE

The Committee will examine issues related to the problems faced by small businesses in attracting and retaining a high quality workforce. Specifically, the Committee will investigate vocational education programs, worker retraining programs, and wage and benefit issues. (Ongoing)

HEALTH CARE

The Committee will examine ways on how to improve access and increase affordability of high quality medical care for small business owners and their employees. (Ongoing)

PENSION REFORM

The Committee will examine ways on how to enhance retirement security for small business owners and their employees. (Ongoing)

E-COMMERCE AND TECHNOLOGY

The Committee will continue to conduct oversight hearings into ways to reduce the "digital divide" in order to promote business growth and opportunities in eco-

nomically depressed areas. These hearings will also examine ways to help the average small businessperson exploit the vast potential of Internet commerce. (Ongoing)

TELECOMMUNICATIONS

The Committee will examine the impact of Telecommunications Act of 1996 on small business. First, the Committee will investigate whether or not the broadest range of small businesses have benefited from more competition in the telecommunications market through lower prices and better service. Second, the Committee will investigate whether or not small business telecommunication companies have benefited from the Act. The Committee will explore alternatives to enhance the benefits of the changes in telecommunications technology for small business. (Ongoing)

INTERNATIONAL TRADE

The Committee will continue to examine ways to expand export opportunities for small business. The Committee will conduct oversight hearings on Federal trade policy and export promotion programs to insure that they serve the needs of small business exporters. (Ongoing)

SELF-EMPLOYED

The Committee will hold oversight hearings on how to reduce the regulatory and tax burden on the self-employed, particularly those in home-based businesses. (Ongoing)

MANUFACTURING

The Committee is gravely concerned that over 2 million jobs have been lost in manufacturing over the past two years, much of which were in small manufacturing businesses. The Committee will hold a series of hearings to examine the causes of these problems and propose a series of recommendations for both legislative and administrative changes. (Spring, Summer 2003)

AGRICULTURAL/RURAL/FARM ISSUES

The Committee will examine ways to promote business growth and opportunities in rural areas. The Committee will hold oversight hearings on agricultural issues that impact small business. (Ongoing)

The Committee will hold oversight hearings on the impact of Federal lands policy on small business. (Ongoing)

REVIEW OF SPECIFIC REGULATIONS

Pursuant to Rule X, cl. 2(d)(1), the Committee on Small Business is required to submit to the Committee on Government Reform and the Committee on House Administration an oversight plan that "reviews specific problems with Federal rules, regulations, statutes, and court decisions that are ambiguous, arbitrary, or nonsensical, or that impose severe financial burdens on individuals. . . ." The following is a summary of regulations that the Committee has so far identified for review but should not be interpreted as limiting the Committee's review of regulations issued by federal agencies that continue to impose unnecessary burdens on small business. In part, this review is based on the Committee's legislative jurisdiction to provide continuing oversight of the Regulatory Flexibility Act pursuant to Rule X, cl. 1(o)(1).

1. Pathogen Reduction and Hazard Analysis of Critical Control Points, 9 C.F.R. Parts 417 and 500: Federally inspected meat and poultry processors are required to initiate a plan to control food safety hazards. Rather than adopting procedures to assist small businesses in developing these plans, USDA has imposed onerous prescriptive regulatory requirements in contravention of the principles elucidated by HACCP. This has imposed substantial costs on small businesses without any concomitant benefit to consumers of meat and poultry products.

2. Certificates of Medical Necessity, 42 U.S.C. §1395m(j)(2) and Implementing Rules and Guidance: Suppliers of durable medical equipment cannot obtain reimbursement unless they have a CMN from a physician authorizing the use of the equipment. Carriers processing such claims for the federal government often require much greater detail imposing substantial record keeping and reporting burdens on small equipment suppliers.

3. National Landscape Conservation System, proposed rule to implement Antiquities Act: Department of Interior is developing rules for creating land management plans for national monuments designated under the Antiquities Act. Small busi-

nesses and nearby rural communities are concerned that these plans will not properly assess the economic impact of management decisions pursuant to the Regulatory Flexibility Act.

4. Birth and Adoption Unemployment Compensation, 20 C.F.R. Part 604: Authorizes states to utilize unemployment compensation for funding parental leave to care for newborns or newly adopted children. Forcing small businesses to subsidize leave of employees from larger companies when they are exempt under the Family and Medical Leave Act. This imposes substantial economic burdens on small businesses without providing any of them any benefits whatsoever.

5. Lead in Construction Standard, 29 C.F.R. § 1926.62: Establishes requirements to reduce exposures to lead in the construction industry. For home remodelers working on homes constructed after 1977, there is no possibility of exposure to lead-based paints because they were banned for home use. Therefore, small businesses face additional costs even though they face no hazard from exposure to lead.

6. Sling Standard, 29 C.F.R. § 1910.184: Regulations establish requirements for using slings to lift heavy loads. The regulations do not conform to current industry practices, which are much safer and impose disproportionate burdens on small businesses.

7. Record keeping for Work-Related Injuries, Illnesses and Fatalities, 29 C.F.R. Part 1904: Regulations require employers to record and report work-related injuries, illnesses, and fatalities. The biggest problem with these regulations is the ambiguous definition of work-related injuries and the problems that small entities face in determining whether to record a particular injury. This imposes substantial costs on small entities with little or no benefit to worker protection.

8. Hours of Service for Commercial Motor Vehicles, 49 C.F.R. Parts 350, 390, 394-95, 398: The proposed rule would impose stringent standards on the hours-of-service of operators of CMVs. Small businesses, from soft drink distributors to tour bus companies, will face substantial costs even though the recommended changes may not improve road safety. In particular, the Committee is concerned that the original proposal did not comply with the Regulatory Flexibility Act.

9. Hazardous Materials Training Requirements, 49 C.F.R. § 172.704 and 29 C.F.R. § 1910.120: Both OSHA and the DOT require training for employees handling hazardous materials. For small businesses that transport hazardous materials, this is the type of duplicative regulation that the Regulatory Flexibility Act was designed to eliminate. Compliance with the RFA would have reduced regulation on small businesses while still ensuring that workers understood how to handle hazardous materials.

10. Monthly Tax Deposits, 26 C.F.R. § 31.6302(g): Business with more than \$50,000 in aggregate employment taxes must make those deposits by the 3d day after payment. Given inflation and the overall rise in salaries, many small businesses are faced with making the three-day payment whereas very small businesses have 15 days to make payments. The universe of "very small businesses" to reduce burdens on small businesses.

11. Definition of Solid Waste, 40 C.F.R. § 261.2: Given the current definition of waste under RCRA, recycled materials that are used as feedstock in industrial processes still are considered waste. This prevents manufacturers from using recycled materials as a substitute for raw material feedstock thereby raising the cost of production. The impact of this regulation falls unduly on small businesses that do not have the margins of profits or the market share that large firms have to absorb higher feedstock costs.

12. TRI Alternate Reporting Threshold (Form A), 40 C.F.R. Part 372: Releases of toxic chemicals must be made to EPA pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA). Form A is a short form for small dischargers and EPA prevents small dischargers of persistent bioaccumulative toxic chemicals from using Form A even though there is no evidence that many metals are bioaccumulative. This imposes unnecessary costs on small businesses.

13. TRI Lead, 40 C.F.R. Part 372: Rule lowered burdens for releases of lead under EPCRA to 100 pounds even though science does not support the lowering. This imposes substantial burdens on small businesses, especially for thousands of businesses that have never even filed a TRI report.

14. Concentrated Animal Feedlot Operations, Proposed Rule, 66 Fed. Reg. 2959 (Jan. 12, 2001): Proposed rule would impose discharge standards on thousands of new feeding operations (many of which are small businesses) that were not previously considered subject to the Clean Water Act's National Pollution Discharge Elimination permit system. EPA's assessment of impacts under the RFA were substantially inadequate.

15. Stormwater Construction General Permit, 40 C.F.R. § 122.26: Oil and gas exploration facilities are exempt from stormwater pollution permitting requirements.

Nevertheless, EPA is planning to issue a general permit that would require oil and gas exploration facilities to file a permit. Many small oil and gas exploration companies will face significant costs in compliance.

16. Effluent Guidelines for Metal Products and Machinery, Proposed Rule, 66 Fed. Reg. 424 (Jan. 3, 2001): Proposed rule would combine numerous metal products into one classification for purposes of the NPDES permit system. The RFA analysis did not adequately assess the costs on small businesses and, in fact, assumes benefits based on technology that is not achievable—a violation of the Clean Water Act.

17. Regulations Implementing the Real Estate Settlement Procedures Act: HUD has proposed changes to the regulations governing the Real Estate Settlement Procedures Act. Many small businesses are concerned that the packaging of settlement costs by a single lender could force many small businesses involved in the real estate settlement process out of the business. Furthermore, many small businesses believe that the regulatory flexibility analysis prepared by HUD was inadequate.

18. Commercial Mail Receiving Agencies, 39 C.F.R. Part 111: Final rule requires all Commercial Mail Receiving Agencies to use the designation PMB or # in their address. Small businesses use CMRAs to give a sense that they are actually larger or more sophisticated than they appear because many businesses do not want to utilize home office businesses. The evidence does not support the USPS rationale for the rule—prevention of fraud—.

19. Policy Guidance on the Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency: Guidance document requires physicians to provide translation services to patients whose first language is not English. In many cases, the reimbursement for Medicare/Medicaid patients may not cover the cost of these translation services. And in certain rural areas, translators may not be available. This is the type of guidance document that should have been assessed under E.O. 12,866 and the RFA.

20. Excise Taxes and Definition of Highway Vehicles, Proposed Rule, 67 Fed. Reg. 38,913: IRS proposed rule would eliminate the exemption for special mobile machinery from highway trust fund excise taxes. IRS failed to comply with the RFA by not examining the impact of this regulatory change on small businesses.

21. Triennial Review under the Telecommunications Act of 1996: FCC could implement changes to existing regulatory requirements that would affect the ability of competitors to challenge incumbents, particularly in the small business market. Given the past history of FCC rulemaking, it is conceivable that the FCC will not properly assess the impact of the changes on small businesses.

6.2 BUDGET VIEWS AND ESTIMATES

Pursuant to Section 301(c) of the Congressional Budget Act of 1974, the Committee prepared and submitted to the Committee on the Budget its views and estimates on the fiscal year 2004 and 2005 budgets with respect to matters under the Committee's jurisdiction.

6.2.1 FISCAL YEAR 2004 BUDGET

The Committee on Small Business submits these views and estimates on the FY 2004 budget submission on matters within our jurisdiction in compliance with Rule X, clause (4)(f), of the Rules of the House of Representatives. These views and estimates are based on the outline supplied by the President's Office of Management and Budget (OMB) for FY 2004 as well as the Small Business Administration's (SBA) budget submission. The President's proposed budget for FY 2004 emphasizes national defense, homeland security, and economic vitality. A key part of economic revitalization is creating jobs. Small businesses, as job creators, have always led this nation out of economic downturns and they will do so again.

The Committee believes that most of the provisions of the President's budget request are sound and reasonable, particularly as it applies to the SBA.

These views and estimates will be divided between two areas: the impact of the proposed tax relief on small business and SBA pro-

grams. Within the SBA, the views and estimates will be further divided into five areas: (1) Financial Programs, (2) Assistance Programs, (3) Disaster Assistance, (4) Salaries and Expenses, and (5) Office of Inspector General.

(1) Small Business Tax Relief

The Committee again applauds the President for endorsing further tax relief proposals, which will help revitalize the economy. Key elements of the President's plan, as it impacts small business, include:

- Accelerating the bipartisan tax reductions passed by Congress in 2001, including the individual rate reductions, which help 85 percent of small businesses that pay taxes on an individual, not corporate, basis;
- Making permanent these same tax cuts, including the all-important estate or "death" tax repeal scheduled to take full effect in 2010;
- Dramatically increase small business expensing—what small businesses can deduct immediately off their taxes—from \$25,000 to \$75,000;
- Abolish the double tax on dividends benefiting many small "C" corporations that retain corporate earnings because they will not face capital gains taxes on the increase in the value of the firm from retained earnings that could have been distributed as dividends; and
- Health care tax policies that will facilitate individuals' purchases of health insurance and health care, including long-term care, which would provide further assistance to help the self-employed purchase health insurance.

While welcoming the President's initiative, the Committee believes the President's tax package could have contained more small business tax relief including:

1. Accelerating depreciation schedules;
2. Increasing the business meal deduction; and
3. Setting a standard home office deduction.

These tax relief priorities would also boost long-term growth that would help small businesses increase cash flow and allow them to add jobs. The Committee will be working on these and other common-sense small business tax relief and simplification initiatives throughout the coming year.

(2) Small Business Administration Programs

The Committee supports the overall general spending level at the SBA. The President's budget request proposes essentially the same funding levels for the SBA as in last year's request—\$797.9 million. However, the Consolidated Appropriations Resolution for FY 2003 (H.J. Res. 2) provided a total of \$736.46 million for the SBA. While many other domestic agencies suffered budgetary cutbacks, keeping spending at the SBA at the same level as in last year's request is an acknowledgment by the Administration of the importance of small business in leading the way in the economic recovery. However, there are still several problems with the budget request, which are discussed in further detail below.

*(A) SBA financial programs**7(a) LOANS*

SBA guarantee-backed lending is the largest single source of long-term loans (those with maturities of three years or longer) to small businesses. The 7(a) loan guarantee program accounts for approximately 40 to 50 percent of all long-term loans to small businesses. The President's budget submission for FY 2004 lowers the subsidy rate for the 7(a) program from 1.76 percent to 1.02 percent thanks to the development of an econometric model that more accurately predicts the future performance of the loan portfolio, a long-standing goal of both of our Committees. The President's budget proposes to spend \$94.86 million for the 7(a) loan program to support a \$9.3 billion program level all without increasing fees on small business borrowers or lenders.

While the Committee has concerns that the proposed \$9.3 billion program level may not be sufficient to meet expected demand as other outlets for capital have dried up for small business during this economic downturn, as evidenced by the heavy use of the 7(a) and the Supplemental Terrorist Activity Relief (STAR) loan program during the last fiscal year, the Committee recognizes the proposed funding level matches average historical use of the 7(a) program due mainly to a more accurate subsidy rate calculation. This achievement could not have been achieved without the active support of the Budget Committee, which this Committee is extremely grateful.

504 CERTIFIED DEVELOPMENT COMPANY (CDC) LOANS

Ever since 1996, the 504 loan program has operated at a zero subsidy rate, which means that the program requires no appropriations. This was accomplished through heavy fees that were placed on borrowers and lenders—fees needed to offset a severe increase in the subsidy rate. The Administration proposes a \$4.5 billion program authorization for the 504 program and the Committee concurs. The Committee is also grateful that the President's FY 2004 budget request proposes to decrease the annual fee charged each small business 504 loan borrower from 0.425 percent to 0.393 percent.

While the Committee agrees that no appropriation should be required for this program, the Committee is very concerned that the subsidy estimates for the 504 program are overly conservative and consequently keeps fees to borrowers artificially high. Similar to the problem that faced the 7(a) loan guarantee program, the subsidy rates for the 504 program have not accurately reflected the actual performance of these loan portfolios over the past several years. Instead of being a prudent sinking fund, principally to purchase defaulted loans, the subsidy rate has been continually overstated so as to be a tax and not a responsible user fee. The average 504 loan borrower overpays \$10,000 in fees to keep the program operating at no cost to the taxpayer. Budgetary re-estimates calculate that the 504 program has returned more than \$400 million to the Treasury since 1997. High fees in the 504 program is one of the main reasons why the 504 program has been underutilized at a

\$2.5 billion program level each year even though it is authorized at \$4.5 billion.

In the progress report mandated by Public Law 107-77, the SBA Administrator pledged to work on an interim calculation method for the 504 program in FY 2004 with a final resolution of the problem in FY 2005. However, in the President's FY '04 budget request, there is no interim model for the 504 program, which could have reduced fees even lower than 0.393 percent, and the econometric model for 504 is delayed yet another year until FY 2006. In response, report language was added to the Consolidated Appropriations Resolution for FY 2003 (H.J. Res. 2) directing the SBA to develop an econometric model for the 504 program this year to be ready for the next budget cycle, as originally promised. Again, the Committee would welcome a partnership with the Budget Committee in an effort to obtain a more accurate cost-subsidy rate model for the 504 program.

SMALL BUSINESS INVESTMENT COMPANY PROGRAM

The Administration proposes the same program level for both parts of the SBIC program, which is welcomed by the Committee. The Administration requests a \$3 billion program level for the debenture program and a \$4 billion program level for the participating securities program. When added to the minimum required private capital, this would make \$10 billion in new capital available for SBIC investments in small businesses. Venture capital from SBICs fill a critical gap as other private sector sources dries up during this economic downturn. In fact, over 60 percent of all venture capital investments in FY 2002 came from SBICs.

The Administration requests no appropriations to fund either the debenture or the participating securities program in accordance with Public Law 107-100, which placed the entire SBIC program on a zero subsidy or no cost to the taxpayer basis. The Committee concurs with this aspect of the President's budget request. The debenture fees are reduced from 0.887 percent to 0.855 percent while the participating security fees increase from 1.311 percent to 1.454 percent. The participating security fee increase will require a change in the Small Business Investment Act by raising the prioritized payment rate a minimum of 0.074 percent to keep the SBIC program at a zero subsidy rate (currently, the rate is capped at 1.38 percent).

NEW MARKET VENTURE CAPITAL COMPANIES

The Committee supports the New Markets Venture Capital Companies (NMVCC) program, which make SBIC-type loans in Low and Moderate Income (LMI) areas. The Committee strongly supports the goal of increased lending in LMI areas. While recognizing that NMVCCs received a one-time appropriation for technical assistance, the Committee remains concerned about the zeroing out the remaining funding for the program, which happened in both H.J. Res. 2 and in the President's FY '04 budget request, that would have allowed SBA to identify an additional seven New Market Venture Capital Companies to target small business investments in low-income communities.

MICROLOAN PROGRAM

The President's FY 04 budget requests \$1.63 million to support a \$19 million program level. The subsidy rate decreased from 13.05 percent to 9.55 percent, which explains most of the decrease from last year's level of \$3.6 million. However, the overall Microloan program level was cut too, which concerns the Committee.

*(B) Assistance Programs**Summary*

The FY 2004 SBA budget submission essentially proposes the same request on most its non-credit business assistance programs as last year with a few exceptions. The Consolidated Appropriations Resolution for FY 2003 (H.J. Res. 2) provided for \$137.58 million for the non-credit programs at the SBA while the President's FY 04 request proposes a spending level of \$141 million. This request is welcome during this tight budgetary environment where many other domestic programs in other agencies are being cut, the SBA assistance programs are kept at a slightly higher rate of funding than last year.

DRUG-FREE WORKPLACE

The Administration requests an appropriation of \$3 million in funding for this program, keeping it at last year's request level. However, H.J. Res. 2 provided only \$2 million for this program. The Committee strongly supports the President's level of funding for this initiative, which recognizes concrete and significant efforts to improve the small business climate and workplace conditions.

MICROLOAN TECHNICAL ASSISTANCE

The Administration is requesting this time \$15 million in technical assistance funds for the Microloan program, which is the same level as provided for in H.J. Res. 2. However, this represents a \$2.5 million reduction from the President's FY '03 request. The Committee has concerns about this funding level, noting that the number of firms helped and jobs created or retained through the Microloan program is projected to decrease to pre-2000 levels.

OFFICE OF ADVOCACY

Even though the Office of Advocacy does not receive a direct line-item appropriation, the Committee strongly supports a vigorous Office of Advocacy. The Office of Advocacy serves as an independent voice for the interests of small business through the federal regulatory process and through research projects focused on the role small businesses play in the economy. The President's budget request specifically contains \$1.1 million for the Office of Advocacy to support research and economic analysis. All totaled, the cost of the Office of Advocacy is approximately \$7.7 million. Over the last few years, the Office of Advocacy has lost staff through attrition. Despite this handicap, the Office of Advocacy saved small businesses \$4.4 billion in regulatory costs in FY 2001 and \$3.1 billion in regulatory costs in FY 2002 (not counting \$18 billion in savings due to revising one Environmental Protection Agency rule), which rep-

resents a handsome return on the very modest investment. The Committee doubts that any other government program can match this level of success. The budget request proposes to fund the Office of Advocacy to support a 50 staff, which is the level prior to attrition loss. The Committee strongly supports going beyond this proposal by encouraging a higher spending level and a separate line item for this function.

WOMEN'S BUSINESS PROGRAMS

The Administration proposes funding the Women's Business Council at \$750,000, which is the same level as last year's request and in H.J. Res. 2. The Administration also proposes level funding the Women's Business Centers at \$12 million, which is the same as last year's request but \$500,000 less than provided for in H.J. Res. 2. The Committee, at a minimum, supports level funding for these programs.

BUSINESS INFORMATION CENTERS/U.S. EXPORT ASSISTANCE CENTERS

The Administration proposes level funding for BICs at \$475,000, which was the amount provided for in H.J. Res. 2. However, no funding was provided for USEACs in H.J. Res. 2, which is of great concern to the Committee. The Committee supports the President's FY '04 budget request of \$3.1 million to pay for the SBA share of the USEAC program to help small business exporters, a key concern of this Committee.

SMALL BUSINESS DEVELOPMENT CENTERS (SBDCS)

The Administration proposes the same request as last year for the SBDC program at \$88 million. However, H.J. Res. 2 provided an additional \$1 million over the President's request for a regulatory compliance simplification program to increase coordination of environmental, Occupational Health and Safety Administration (OSHA), and Internal Revenue Service (IRS) compliance requirements and to avoid duplication among programs for compliance assistance to small businesses. This initiative is a down payment on a very similar idea to what the Committee has been trying to do for many years in setting up pilot programs around the country where selected SBDCs could provide regulatory compliance counseling to small businesses. Currently, this idea has been reintroduced as the National Small Business Regulatory Assistance Act of 2003 (HR 205), which the Committee strongly supports. Thus, at a minimum, the Committee supports the same \$89 million level of funding for SBDCs as contained in H.J. Res. 2.

The Committee is once again pleased that this budget request does not contain the proposal to require SBDCs to charge counseling fees. The Committee has held numerous hearings and has voted against this proposal in the past. The Committee believes this budget request is the minimum level of support that is needed for the SBDC program.

BUSINESS-LINC

This is a relatively new authorized program designed to encourage large business to small business mentoring. The Administra-

tion once again proposes to eliminate this program. H.J. Res. 2 provides \$2 million for this program in FY '03. There are several Members of the Committee who take a personal interest in this program because they believe the mentoring received in this program is qualitatively different from other SBA mentoring programs that are more focused around government procurement opportunities. However, there are many companies that already engage in this type of mentoring on their own. Perhaps if the SBA made more of an effort to link up existing private sector efforts with interested small businesses, particularly from low- and moderate-income areas of our nation, the Administration's proposal would be more acceptable to the Committee.

PRIME

The Administration's budget proposes elimination of this program. H.J. Res. 2 provides \$5 million for PRIME Technical Assistance. In previous views, the Committee expressed strong reservations regarding this program and its potential for duplication of existing SBA efforts. The legislation authorizing this program was not the language approved by this Committee to prevent such duplication; consequently the Committee supports its elimination.

SERVICE CORPS OF RETIRED EXECUTIVES

The Committee welcomes the Administration proposal to fund the SCORE program at \$5 million, which was the same level as requested in the President's FY 03 budget and as provided for in H.J. Res. 2.

VETERANS BUSINESS DEVELOPMENT ASSISTANCE

The Committee supports this request for \$750,000 to fund implementation of the provisions of Public Law 106-50 that still fall within the SBA, which is the same level as requested in the President's FY '03 budget request and as provided for in H.J. Res. 2. Even though the National Veterans Business Development Corporation is formally out of the SBA's annual budget request and is funded under a separate line item as an independent agency, the Committee is still very much interested in its work, particularly on monitoring its path towards financial self-sufficiency. In keeping with the path outlined in Public Law 106-50, the Administration has requested \$2 million for the Corporation in 2004, which the Committee supports, keeping the NVBDC on a glide-path towards not needing any more federal appropriations.

NATIVE AMERICAN OUTREACH

The Committee remains concerned that a proposed \$1 million outreach to Native Americans, which was contained in the President's FY 03 budget request, has now been rescinded, particularly after Congress built on this proposal by including \$2 million for this initiative in H.J. Res. 2. This initiative is expected to assist small business and economic development only in the most disadvantaged tribal areas, particularly in remote areas. In 2001, the House passed H.R. 2538, the Native American Small Business Development Act, authored by a Committee Member and will hope-

fully will soon be reintroduced, which would funnel grants to existing state Small Business Development Centers (SBDCs) to establish training programs and services unique to Native Americans. The Committee believes this is a better and more comprehensive approach to help Native American small business development, working through an established network of experts in the field to help advance the goal of assisting only the most disadvantaged tribes as envisioned by H.J. Res. 2.

GOVERNMENT CONTRACTING

For FY 2004, the President's budget request proposes the same level as in the previous FY 2003 request. However, H.J. Res. 2 made several changes to the President's FY '03 funding proposal—7(j) Technical Assistance was cut by more than half to \$1.5 million; and funding for some other programs such as Small Business Innovation Research (SBIR) Technical Assistance and HUBZones were eliminated altogether. The Committee supports the President's FY '04 requests for these programs, particularly the \$2 million for the HUBZone program.

WHITE HOUSE AND STATE CONFERENCES

Last year, the Administration's budget request contained a new proposal to spend \$1.5 million to fund a series of state and federal conferences to celebrate the success of small business over the past 50 years and to highlight the emerging issues that face small business owners in anticipation of passage of legislation to authorize these conferences. Congress did not pass this legislation last year and no funds were appropriated for such a purpose in H.J. Res. 2, thus, there is no request for funding this year. The Committee supports this change.

(C) Disaster Assistance

With the various supplemental appropriations added to the regular appropriation for the SBA disaster loan in response to the terrorist attacks of September 11, 2001, the President's FY 2004 budget request for disaster loans is reasonable. The budget proposes \$89 million (with \$10 million in carry-over from prior years) to support funding \$760.3 million in disaster loans, based on a five-year average at a 11.72 percent subsidy rate, which is a decrease from 13.98 percent. Unlike previous requests, there is no proposal to raise interest rates on disaster loans for anyone. It continues to remain the view of the Committee that during a time of natural disaster, our government should not compound an already difficult recovery period by imposing higher interest rates on small business borrowers. Also, the Administration plans to develop a more accurate subsidy-rate cost model for the disaster loan program, which could produce an even lower subsidy rate. The Committee supports this endeavor.

(D) Salaries and Expenses

For FY 2004, the Administration requests essentially the same level as last year—\$362 million for SBA's operating budget. Also, the President's budget request anticipates no change in the total employment levels at the SBA from this fiscal year to the next. However, the Consolidated Appropriations Resolution for FY 2003

(H.J. Res. 2) included \$314.46 million for the salaries and expenses account of the SBA. In addition, there is some confusion between the Full Time Equivalent (FTE) numbers provided in the SBA budget submission (3,927) versus the FTE numbers provided in the budget documents provided by the Office of Management and Budget (3,802).

Included in SBA's operation budget proposal is \$21 million for initiatives designed to improve the operational efficiency and service to its customers; \$11 million to support Electronic-SBA initiatives (E-SBA); \$4 million to modernize and streamline SBA internal processes; and \$500,000 for "outsourcing" analyses. While many of these objectives of these initiatives are commendable, they are similar to requests proposed last year that were rejected in H.J. Res. 2. The Committee remains skeptical as the need for all these initiatives yet the employment levels will still remain the same at SBA.

The Committee also encourages the SBA to begin to focus on the problem of reversing "institutional memory loss" at the agency, as it will soon lose a significant portion of its senior career FTEs over the next decade because of retirements.

(E) Office of Inspector General

The President FY 2004 budget request proposes \$14.5 million for the Office of Inspector General and \$500,000 transferred from the administrative expenses of the disaster loan program for a total of \$15 million. The Consolidated Appropriations Resolution for FY 2003 (H.J. Res. 2) provided \$12.4 million for the Inspector General of the SBA to be supplemented by an additional \$500,000 from the disaster loan account. The Committee supports the President's budget request for the Inspector General to protect the interests of the taxpayer and the integrity of the programs of the SBA.

Conclusion

Overall, the President's budget request for small business can be supported, with modest exceptions, both in terms of his tax relief proposals and the SBA budget. In particular, the SBA's FY 2004 budget does not repeat most of the mistakes from previous budget requests. The Committee acknowledges the Administration for changing these prior contentious proposals on behalf of all small businesses. There is only one major item of contention, and the Committee on Small Business looks forward to working with you again, Chairman Nussle, to help resolve the subsidy rate calculation problem in the 504 loan program at its relationship to the Federal Credit Reform Act of 1990.

6.2.2 FISCAL YEAR 2005 BUDGET

The Committee on Small Business submits these views and estimates on the Fiscal Year 2005 budget submission on matters within our jurisdiction in compliance with Rule X, clause (4)(f), of the Rules of the House of Representatives. These views and estimates are based on the outline supplied by the President's Office of Management and Budget (OMB) for FY 2005 as well the Small Business Administration's (SBA) budget submission. The President's proposed budget for FY 2005 emphasizes winning the war on ter-

rorism, securing our homeland, and strengthening our economy. A key part of strengthening our economy is to continue the strong pro-growth policies that create jobs and opportunities for the American people. Small businesses, as job creators, have always led this nation out of economic downturns and they will do so again. Over the past 10 years or so, small businesses have provided between two-thirds to three-quarters of the *net* new jobs in this country; account for just over half of our Gross Domestic Product (GDP); and contribute roughly 42 percent of tax receipts to the U.S. Treasury. Helping small businesses start, grow, and thrive is critical to strengthening the economy and bringing down the budget deficit.

The Committee believes generally that the President's proposed FY 2005 budget request is helpful to small business owners. Given the budgetary constraints, with a few exceptions, small businesses should be pleased. The Committee is troubled by the deficit and wishes that the rest of the federal government emulated the example of the SBA, which has experienced more than a 20 percent reduction in its real funding level since FY 01. However, at the same time, the SBA serves more small businesses than ever before. If the Budget Committee accepts the President's FY 2005 budget request for the SBA without change when determining the overall 370 budgetary account level, it would represent another five percent real reduction in funding from FY 04 levels (not counting carryovers from previous fiscal years). It should be clear to the Budget Committee that the SBA is not contributing to the problem of the growing deficit; in fact, it has demonstrated how to do more with less. From the Committee's perspective, it would have been better if the President's FY 2005 budget request for the SBA mirrored the general average spending growth of 0.5 percent for the rest of non-defense, non-homeland security federal spending. Nevertheless, if small businesses through the SBA are asked to do their part to contribute to deficit reduction, then other constituencies through their agencies should bear a similar load.

These views and estimates will be divided between two areas: the impact of the overall budget proposal on small business and, then, separately, on SBA programs. Within the SBA, the views and estimates will be further divided into five areas: (A) Financial Programs, (B) Assistance Programs, (C) Disaster Assistance, (D) Salaries and Expenses, and (E) Office of Inspector General.

(1) Effect of Overall Budget Proposal on Small Business

The Committee again applauds the President for endorsing small business tax relief proposals; regulatory relief for small business; increased access to affordable and quality health care for small businesses and their employees; and continued access to the federal government procurement marketplace for small businesses. All these actions will help strengthen the small business sector of our economy, which, in turn, helps provides the receipts to the government.

Already, the bipartisan tax reductions passed by Congress in 2001 and accelerated in 2003 provided the roughly 23 million small business owners with tax relief averaging more than \$2,850 through individual rate reductions (85 percent of small businesses pay taxes on an individual, not corporate, basis); quadrupling the

expensing provision to \$100,000; raising the expensing phase-out threshold to \$400,000; and augmenting the first year “bonus” depreciation deduction from 30 to 50 percent. In fact, small business owners receive 79 percent—about \$9.7 billion—of the benefit of the tax relief from accelerating the individual rate reduction, from 2006 to 2003, in the top income bracket to 35 percent. The passage of Health Savings Accounts (HSAs) last year will also enable more small businesses to cover workers for major medical problems.

Key elements of the President’s FY 05 budget plan (outside of the SBA) of interest to the committee, as it affects small business, include:

- Making permanent these same tax cuts, including the confiscatory and punitive estate or “death” tax repeal scheduled to take full effect in 2010;
- Establishing an on-line single-point-of-access to help small businesses comply with federal regulations and access information (*www.businesslaw.gov*);
- Health care policies that will further increase access to affordable and quality health care for small businesses and their employees, including the creation of Association Health Plans that allow multiple small businesses to pool together to purchase health insurance at lower rates charged to large companies and labor unions and popularizing HSAs through a tax deduction of the premiums.

While welcoming the President’s initiatives, the Committee believes the President’s budget package could have contained more small business tax relief including:

4. Accelerating depreciation schedules;
5. Allowing the deduction of health insurance costs of self-employed individuals be used in determining the self-employment tax;
6. Increasing the business meal deduction; and
7. Setting a standard home office deduction.

These tax relief priorities also would boost long-term growth that will help small businesses increase cash flow and allow them to add jobs. The Committee will be working on these and other common-sense small business tax relief and simplification initiatives throughout the coming year.

(2) Small Business Administration Programs

The Committee supports the overall general spending level at the SBA. The President’s FY 05 budget request proposes to spend \$678.4 million on the SBA, a decrease of \$39.9 million from the \$718.3 million level appropriated for in the Consolidated Appropriations Act, 2004 (not counting carry-over spending from previous fiscal years). The President’s FY 05 request is a departure from the two previous requests, which generally kept the overall funding level for the SBA frozen at the previous year’s level. The difference in this request is that most of the decrease can be attributed to the Administration’s proposal to have a zero subsidy rate for the SBA’s flagship 7(a) program, which the Committee supports in concept (but not in the specifics by which to achieve that goal). While the Committee supports the overall spending level, there are still several problem areas within the budget request for the SBA, which

are discussed in further detail below. Many of these problem areas could have been averted if the President's FY 05 funding request for the SBA was 0.5 percent over the FY 04 level.

(B) SBA Financial Programs

7(A) LOANS

SBA guarantee-backed lending is the largest single source of long-term loans (those with maturities of three years or longer) to small businesses. The 7(a) loan guarantee program accounts for approximately 40 to 50 percent of all long-term loans to small businesses. However, as the Committee and industry predicted, the 7(a) program experienced a "cash flow" crunch in January 2004 and is currently hobbling along with restrictions that do not live up to the full expectations of the use of the program as contained in the law.

While the Committee is grateful that the Administration recognizes the value of the 7(a) program by proposing a 30 percent increase in its program level, the Committee has two concerns: first, the \$12.5 billion program level may still not be enough, particularly after the reforms contained in the SBA reauthorization bill (HR 2802) aimed at helping small manufacturers become law, and second, the practical effect of the 7(a) proposal will increase fees on small businesses seeking to borrow less than \$700,000.

The Committee supports in concept the goal of a zero subsidy rate for the 7(a) program, which means that no appropriations will be required, saving the taxpayer about \$100 million from FY 04 levels. The new econometric model that this Committee and your Committee fought so hard to get into place has proved to be a much more accurate predictor of the future performance of the 7(a) program. As evidence, the budget re-estimates for SBA business loans made in 2002 and 2003 are near to zero as statistically possible, as compared with past high re-estimates. Having a zero subsidy will produce much more predictability and stability into the 7(a) program in order to avoid pitfalls like what happened in January 2004.

However, the Committee believes there is a better way to achieve a zero subsidy rate without having to raise fees by as much as 50 percent on the smallest loan borrower, which translates into an average of \$1,500 for a \$100,000 loan. Congress passed this temporary fee reduction in 2001 precisely because the nation was in the midst of a recession and small businesses were being denied access to capital. The SBA reauthorization bill extends the 7(a) fee reductions targeted at smaller borrowers for another two years because jobs are still not being created at an acceptable rate. Raising 7(a) fees as high as proposed, particularly as the President's FY 05 budget request also proposes to eliminate the Microloan program, is counterproductive. Thus, the Committee opposes the fee-raising proposal as contained in the President's FY 05 budget request. The Committee will continue to explore ways in which to achieve a zero subsidy rate without undue restrictions in the program to meet expected program demand in both FY 04 and FY 05.

504 CERTIFIED DEVELOPMENT COMPANY (CDC) LOANS

Ever since 1996, the 504 loan program has operated at a zero subsidy rate, which means that the program requires no appropriations. This was accomplished through heavy fees that were placed on borrowers and lenders—fees needed to offset a severe increase in the subsidy rate. The Administration proposes a \$4.5 billion program authorization for the 504 program and the Committee concurs. The Committee is also grateful that the President's FY 2005 budget request again decreases the annual fee charged each small business 504 loan borrower from 0.39 percent to 0.29 percent, reflecting the new econometric model developed by the SBA.

High fees in the 504 program is one of the main reasons why the 504 program has been underutilized at \$2.5 billion even though it is authorized at \$4.5 billion. A more accurate cost-subsidy rate model hopefully will lead to greater use of the program as fees are reduced as is evidenced in 7(a) lending.

SMALL BUSINESS INVESTMENT COMPANY PROGRAM

The Administration proposes the same program level for both parts of the SBIC program, which is welcomed by the Committee. The Administration requests a \$3 billion program level for the debenture program and a \$4 billion program level for the participating securities program. When added to the minimum required private capital, this would make \$10 billion in new capital available for SBIC investments in small businesses. Venture capital from SBICs fill a critical gap as other private sector sources have dried up. In fact, over 59 percent of all venture capital investments in 2003 came from SBICs.

The Administration requests no appropriations to fund either the debenture or the participating securities program in accordance with Public Law 107-100, which placed the entire SBIC program on a zero subsidy or no cost to the taxpayer basis. The Committee concurs with this aspect of the President's budget request. The debenture fees are increased by just 16 basis points but the practical effect of this increase is negligible—it will raise the likely interest paid for FY 2005 leverage from approximately 5.73 percent per year to approximately 5.746 per year.

However, the President's FY 05 budget request proposes a variety of structural changes to the participating security part of the SBIC program that could severely damage the long-term operation of the SBIC program in the future. The Committee understands the current financial problems with the participating securities component of the SBIC program and recognizes that changes need to be made. But a compromise has to be reached between industry and the Administration in order to protect the interests of the taxpayer and also to keep a viable participating securities program. This issue will be addressed as the Committee proceeds with the SBA reauthorization process.

NEW MARKET VENTURE CAPITAL COMPANIES

The President's FY 05 budget request again does not include funding for the New Markets Venture Capital Companies (NMVCC) program, which makes SBIC-type loans in Low and Mod-

erate Income (LMI) areas. The Committee strongly supports the goal of increased lending in LMI areas. In 2003, about 43 percent of small businesses assisted by the regular SBIC program were located in LMI areas and 23 percent of the dollar amount in the regular SBIC program went to LMI areas. While recognizing that NMVCCs received a one-time appropriation for technical assistance in 2000, the Committee still has concerns about how the funding for the NMVCC program was abruptly rescinded mid-stream in early 2003 even before an evaluation of the program could be started. Through the end of FY 03, only six NMVCC funds have been created that have disbursed a total of \$2.1 million in investments and \$1.3 million in technical assistance to smaller businesses in LMI areas all east of the Mississippi. If the program lived up to its full potential, at least seven additional New Market Venture Capital Companies in more communities throughout the entire United States would have been created to target further small business investments in low-income communities and create additional jobs.

MICROLOAN PROGRAM

The President's FY 05 budget requests proposed to end funding for the Microloan program, which would save \$20.98 million in direct subsidies and \$14.84 million in technical assistance costs. The Microloan program provides loans of up to \$35,000. SBA claims that every dollar lent in the Microloan program cost the taxpayers 97 cents. SBA's cost-benefit analysis shows that these loans could be made through the 7(a) program with the help of the various technical assistance programs that already exist (such as Small Business Development Centers (SBDCs), Women Business Centers (WBCs), or SCORE). While this may be accurate in the abstract, the analysis does not recognize that the Microloan program has a special niche and serves a unique marketplace, which is very different from the typical 7(a) marketplace. Most Microloan borrowers would probably not qualify for a 7(a) loan. On top of this, as mentioned earlier, the President's FY 05 budget request proposes to double fees on 7(a) borrowers seeking \$150,000 or less in capital and, as will be mentioned later, the other technical assistance programs at the SBA are basically kept frozen at FY 04 levels. So, it is difficult for the Committee to understand how the typical Microloan borrower will be better served by this proposal if (1) the Microloan program is abolished; (2) fees in the 7(a) program are doubled; and (3) technical assistance spending in the SBDC, WBC, and SCORE is not even increased by \$1 to accommodate these new clients. Unless the Administration can better explain its rationale and develop a transition plan, the Committee opposes terminating the Microloan program at this present juncture. Perhaps if further thought was given to addressing the concerns raised here, the Committee could better understand the rationale for this request.

(B) Assistance Programs

Overview

The FY 2005 SBA budget submission essentially proposes to cut \$30.4 million from the non-credit business assistance programs

from FY 04 levels. The cuts come from primarily eliminating or reducing funding in 12 specific program areas—7(j) Technical Assistance; Business Information Centers (BICs); HUBZones; Microloan Technical Assistance; Native American Outreach; New Market Venture Capital; PRIME Technical Assistance; SBDCs grants; the Small Business Innovative Research (SBIR) Federal and State Technology (FAST) partnership program; SBIR Technical Assistance; the SBA contribution to its share of participating in the U.S. Export Assistance Center (USEAC) network; and WBCs grants. Also, the President's FY 05 budget proposal contained no request for programs that were funded in FY 03 but were not funded in FY 04, such as BusinessLinc. Very few of the other non-credit programs at SBA received any additional funding and most of those increases were extremely modest.

SBA believes it can provide a full range of technical assistance more effectively by using its core national delivery programs to meet the needs of all small businesses. However, even some of these core programs received cuts under the President's FY 05 budget proposal, such as the SBDC and the WBC network. The Committee understands the frustration of the SBA when Congress has been inconsistent in funding many of these programs over the years and that many of these individual programs require a specific infrastructure and delivery mechanism. Many on this Committee have valiantly fought to have these programs fully funded and work collaboratively with other SBA programs. However, the Committee might be more sympathetic to the rationale of the Administration if it shifted resources from these line-items to the core programs rather than keep them at last year's level or, in some cases, slightly reduced funding, before asking these core programs to pick up the slack that will be left behind if many of these non-credit programs have their funding eliminated.

Specifically, the Committee has several concerns in the non-credit area. First, the Native American Outreach program was unveiled with great fanfare by the SBA in their FY 03 request, mainly in response to the Committee's effort to target additional grants to existing state SBDCs to establish training programs and services unique to Native Americans through House passage of the Native American Small Business Development Act (HR 1166 in the 108th Congress). The Committee still believes this is a better and more comprehensive approach to help Native American small business development, working through an established network of experts in the field, rather than creating a separate infrastructure and delivery mechanism. It also fits in line with current rationale of the SBA in justifying many of their proposed cuts in the non-credit programs. Nevertheless, Congress supported this Native American Outreach initiative with nearly \$2 million in funding in both FY 03 and FY 04. However, now the President's FY 05 budget request proposes to eliminate funding for this program. It would be better if the SBA supported HR 1166 and also transferred the \$2 million to the SBDC program in order to carry out the objectives of this initiative.

The Committee also is concerned about the fate of SBA's \$3.1 million annual contribution to the U.S. Export Assistance Center (USEAC) network. In the early 1990's Congress uncovered many

unmet needs in export promotion programs plus waste and duplication of existing services. Congress then created the Trade Promotion Coordinating Committee (TPCC) to expand and streamline the delivery of export promotion of services. Key to this concept was co-locating several export promotion agencies together across the nation in order to provide a local one-stop shop for taxpayers. Pulling SBA out of the USEAC network essentially will make the vast majority of these centers adjuncts of the Department of Commerce and could lead to the repetition of the mistakes that led to the creation of the TPCC in the first place. SBA offers some unique programs, particularly to those small businesses new to exporting, which might not be replicated in a Commerce-run USEAC system. In addition, many of the core non-credit programs within the SBA do not have the level of expertise to deal with the unique needs of small business exporters. This is a function that is not easily transferred and, again, none of the other core SBA programs have received any increase to deal with these new specialized clients. Plus, each \$1 appropriated to SBA's export finance specialists in the USEACs since 1999 has supported loans generating over \$200 in export sales—a sound return on any investment. The Committee encourages the Budget Committee to allocate more resources to enable the SBA to continue to participate in the USEAC network.

Finally, the Committee is concerned about the level of spending on the HUBZone program. The Committee understands and supports the rationale for absorbing the \$2 million line-item for HUBZones within the overall Government Contracting and Business Development budget. However, it appears from the FY 2005 budget request, overall HUBZone funding will be reduced from \$7.1 million in FY 04 to \$6.6 million in FY 05 even though every other SBA program designed to help small businesses access federal procurement opportunities (except the 7(j) program) receives an increase. There was no accompanying explanation for this discrepancy even though the SBA claims to treat every small business procurement goal equally.

If the President's FY 05 budget request for the SBA equaled the average given to other non-defense, non-homeland security federal agencies (receiving a 0.5 percent increase over FY 04 levels), many of these non-credit programs probably could have been funded, thus ameliorating the Committee's concerns.

OFFICE OF ADVOCACY

For the first time, a line-item of \$7 million was included in the President's budget request for the Office of Advocacy, which the Committee supports. The Office of Advocacy serves as an independent voice for the interests of small business through the federal regulatory process and through research projects focused on the role small businesses play in the economy. The President's FY 05 budget request also contains \$1.1 million for the Office of Advocacy to support research and economic analysis. In FY 2003, the Office of Advocacy saved small businesses \$6.3 billion in regulatory costs, which represents a handsome return on the very modest investment. The Committee doubts that any other government program can match this level of success. The Committee strongly supports going beyond this proposal by encouraging a higher spending

level and a separate line item in the annual appropriations bill for this function.

VETERANS BUSINESS DEVELOPMENT ASSISTANCE

The Committee supports this request for \$750,000 to fund implementation of the provisions of Public Law 106–50 that still fall within the SBA, which is the same level as requested in the President's FY 04 budget request and as provided for in FY 04. Even though the National Veterans Business Development Corporation is formally out of the SBA's annual budget request and is funded under a separate line item as an independent agency, the Committee is still very much interested in its work, particularly on monitoring its path towards financial self-sufficiency. The President's FY 05 budget request also includes \$2 million for the Corporation, which the Committee supports, keeping the NVBDC on a glide-path towards not needing any more federal appropriations.

GOVERNMENT CONTRACTING

While the Committee observes that the budget for contracting assistance by the SBA has a slight overall increase of nearly \$2.5 million, the Committee has concerns that there is not sufficient funding to implement the President's contracting plan. In particular, the Committee has concerns about how these increases are allocated, particularly with the Prime Contract Program. The SBA reauthorization bill (HR 2802) places a strong emphasis on increasing Procurement Center Representatives (PCRs) in order for them to advocate on behalf of small businesses throughout major federal buying centers in the United States. However, the FY 05 budget request actually decreases funding for PCRs by \$517,000 from the previous year's level. The Committee opposes this decrease and encourages the Administration to achieve a better allocation of resources to meet the anticipated demand for the Prime Contract Program.

(C) Disaster Assistance

The President's FY 05 budget request for disaster loans is reasonable. The budget proposes \$78.9 million (with \$13 million in carry-over from prior years) to support funding \$792.3 million in disaster loans, based on a five-year average at a 12.86 percent subsidy rate, which is an increase from 11.72 percent. The Committee is again grateful that the Administration has not proposed to raise interest rates on disaster loans for anyone. It continues to remain the view of the Committee that during a time of natural disaster, our government should not compound an already difficult recovery period by imposing higher interest rates on small business borrowers. Also, the Administration is working on a more accurate subsidy-rate cost model for the disaster loan program, which could produce an even lower subsidy rate and greater savings for the taxpayer. The Committee supports this endeavor.

(D) Salaries and Expenses

For FY 2005, the President's budget request proposes \$326.26 million for salaries and expenses at the SBA. The S & E levels for the SBA contained in the Consolidated Appropriations Act, 2004

(H.R. 2673) is \$325.75 million. The President's FY 05 budget request anticipates no change in the total employment levels at the SBA from this fiscal year to the next. The number of full-time equivalents (FTEs) at the SBA total 3,786 in both FY 04 and FY 05.

Included in SBA's operation budget proposal is \$3 million to continue implementation of the SBA's ongoing efforts to modernize the delivery of its products and services. The SBA also requests a total of \$1.1 million for e-government initiatives and \$2 million for program evaluations. The Committee applauds many of these initiatives, particularly on e-government, to streamline delivery of services to small businesses yet remains concerned that employment levels will still remain the same at SBA, particularly after SBA increased employment by 124 FTEs between FY 03 and FY 04.

(E) Office of Inspector General

The President's FY 05 budget request proposes \$14.5 million for the Office of Inspector General and \$500,000 transferred from the administrative expenses of the disaster loan program for a total of \$15 million, an increase of \$1.5 million from FY 04 levels. The Committee supports the President's budget request for the Inspector General to protect the interests of the taxpayer and the integrity of the programs of the SBA.

Conclusion

While the Committee does not have strenuous objections to the President's FY 05 budget request, it would have been better if the President's FY 05 budget request for the SBA mirrored the general average spending growth of 0.5 percent for the rest of non-defense, non-homeland security federal spending. Then, many of the concerns about SBA programs that were cut or terminated could have been more properly funded, thus ameliorating the Committee's concerns in trying to stretch the limited federal dollars to help the maximum number of small businesses.

CHAPTER SEVEN

SUMMARY OF OVERSIGHT, INVESTIGATIONS AND OTHER ACTIVITIES OF THE COMMITTEE ON SMALL BUSINESS AND ITS SUBCOMMITTEES

7.1 SUMMARY OF COMMITTEE OVERSIGHT PLAN AND IMPLEMENTATION

Pursuant to Rule X, clause 2(d)(1), of the Rules of the House of Representatives, the Committee on Small Business adopted, on February 26, 2003, an oversight agenda for the 108th Congress. (For a discussion of the Committee's consideration of the oversight agenda refer to section 6.1.1 of this report.) The House rule also requires that each Committee summarize its activities undertaken in furtherance of the oversight agenda as well as any additional oversight actions taken by the Committee.

In the following portions of Chapter Seven, the provisions of the oversight agenda are addressed in the hearing summaries of the Committee and its subcommittees. A summary of each hearing conducted by the full Committee appears in section 7.2 of this report and summaries of each subcommittee hearing appear in sections 7.3 through 7.7 of this report. An overview of the Committee's legislative activities appears in Chapter Five of this report.

7.2 SUMMARIES OF THE HEARINGS HELD BY THE FULL COMMITTEE ON SMALL BUSINESS

7.2.1 THE SBA FY 2004 BUDGET

Background

On Wednesday, February 26, 2003, the Committee on Small Business held a hearing that focused on the Administration's proposed FY 2004 budget for the U.S. Small Business Administration (SBA). As brief background, the SBA provides a variety of services for small businesses—financial assistance, technical assistance, federal government contracting assistance, and disaster relief. The budget request was designed to help the SBA achieve the goals of improving the delivery of its services to small business owners and prospective entrepreneurs.

Summary

The panelists were the Hon. Hector Barreto, Administrator, United States Small Business Administration, Washington, DC; Anthony R. Wilkinson, President, National Association of Government Guaranteed Lenders, Stillwater, OK; Mr. Donald Wilson, President and Chief Executive Officer, Association of Small Business Development Companies, Burke, VA; Mr. Zach Gast, Policy and Research Manager, Association for Enterprise Opportunity, Ar-

lington, VA; Mr. Lee Mercer, President, National Association of Small Business Development Companies, Washington, DC; and Christopher Crawford, Executive Director, National Association of Development Companies, McLean, VA.

Administrator Barreto requested the Committee's support for the President's FY 2004 budget. The President's plan proposed a total fiscal year appropriation of \$797.9 million or level funding with FY 2003 budget. According to the Administrator, it would provide adequate levels of credit, capital, procurement, and entrepreneurial development assistance to small businesses. In addition, the budget request also incorporated \$16.5 million for transformation of the agency in order to satisfy the President's management agenda for all federal agencies.

Mr. Wilkinson first thanked the Committee for efforts to resolve certain administrative issues with the 7(a) loan guarantee program. Mr. Wilkinson then attacked the inadequacy of the FY 2004 budget that only would provide approximately \$9.3 billion in guaranteed loans. According to bankers involved in the program, that level is about 25 percent below the previous fiscal year's levels and below the pace of lending expected throughout the 2004 fiscal year.

Mr. Wilson noted that small businesses are the key cogs in economic growth. Despite this significance, the budgets needed to provide technical assistance to these entrepreneurs continues to deteriorate. Adequate funds are needed to support small business development centers because they provide assistance to 1.5 million small business owners and prospective entrepreneurs. Mr. Wilson noted that level funding of the small business development center program would actually constitute a cut in their ability to provide service. Mr. Wilson concluded that being pennywise could be pound foolish in the case of the small business development center program.

Mr. Gast echoed the concerns of Mr. Wilson. Microenterprise development provides assistance to the smallest entrepreneurs—ones who often are unable to obtain even conventional SBA-guaranteed loans. The average loan size is \$15,000 or enough to create one new job according to SBA estimates. Mr. Gast noted that the funding levels for microloans are integrally tied to the ability of intermediaries to provide technical assistance. The proposed FY 2004 budget cuts technical assistance and thus limits the number of loans that the intermediaries can make to the smallest entrepreneurs.

Mr. Mercer supported the President's budget request. The budget would make \$4 billion available in participating security leverage and \$3 billion in debenture leverage available to small business investment companies (SBICs). Mr. Mercer then noted that the provision of leverage requires no funding from the government but is paid for by fees collected by the federal government and profits earned by the individual SBIC.

Mr. Crawford expressed frustration with the SBA's failure to expend money to revise the subsidy model used to calculate fees paid by certified development companies (CDCs). Such delay will force CDCs to pay an additional \$100 million in fees over the life of loans made during FY 2004. Mr. Crawford then noted that the budget only provides for \$4.5 billion in lending authority even

though demand was running higher. He suggested that, at a minimum, CDC lending authority should be set at \$5 billion. Mr. Crawford also testified that the economic assumptions underlying the subsidy model were not correct and, despite ongoing discussions with the SBA, changes have not been made in the program that would provide greater assistance to CDCs.

In sum, the committee concluded that the President's FY 04 budget request for the SBA was adequate but could be improved upon the margins. For further information, please refer to Committee publication #108-1

7.2.2 SMALL BUSINESS ACCESS AND ALTERNATIVES TO HEALTH CARE

Background

On Wednesday, March 5, 2003, the Committee held a hearing to address the concerns of small business owners as they struggle to provide health insurance to their families and employees. As Congress has discussed the issue of how to provide coverage to the uninsured, small business concerns have been notably absent from the debate. Yet roughly 60 percent of the uninsured are small business owners, their employees and their families. This hearing served as a forum to discuss and promote innovative solutions to help small businesses meet their health care needs.

This hearing also focused on HR 660, the Small Business Health Fairness Act of 2003, introduced by the Hon. Ernie Fletcher (R-KY) and the Hon. Cal Dooley (D-CA). This legislation is designed to make association health plans a viable alternative for small businesses. In addition, Medical Savings Accounts and other tax credits were discussed.

Summary

The hearing consisted of two panels of witnesses. The first panel consisted of: the Hon. Ernie Fletcher (R-KY) and the Hon. Sen. Jim Talent (R-MO), former Chairman of the House Small Business Committee. The second panel consisted of: the Hon. Elaine Chao, Secretary, United States Department of Labor, Washington, DC; the Hon. Hector Barreto, Jr., Administrator, United States Small Business Administration, Washington, DC. The third panel included: Skip Trotter, Trotter Machine Inc., Rockford, IL; Robert Hughes, President of the National Association of the Self-Employed, Washington, DC; Steven Appel, Vice President, American Farm Bureau Federation, Washington, DC; John Hartnedy, Chief Deputy Commissioner, Arkansas Department of Insurance, Little Rock, AR; Karen Kerrigan, Chairwoman, Small Business Survival Committee, Washington, DC; and Harry C. Alford, President of the National Black Chamber of Commerce, Washington, DC.

Representative Fletcher spoke about HR 660, the Small Business Health Fairness Act of 2003, that he has introduced along with Representative Dooley that will allow small businesses to band together and pool their resources in order to access health insurance through their membership with trade or professional associations.

Senator Talent spoke of his long support for AHP legislation when he chaired the House Committee on Small Business and now

in the Senate where he will be a sponsor of this legislation introduced by Senator Olympia Snowe (ME), Chair of the Senate Small Business Committee. During questions, he stated that he believed the opposition of Blue Cross and Blue Shield stemmed from not wanting to compete for business since they dominate the current insurance industry within many states.

Labor Secretary Chao testified of the Bush Administration's support for AHPs, tax credits to purchase healthcare, and Medical Savings Accounts. She also stated that the Department of Labor stood ready to administer, certify and provide oversight necessary for implementation of this legislation. Already, the Department of Labor administers the Employee Retirement Income Security Act (ERISA), protecting approximately 2.5 million private, job-based health plans and 131 million workers, retirees and their families. Administrator Barretto testified to a study commissioned by SBA that found that small businesses face significantly higher administrative costs on their health care costs. Across the board all businesses have experienced rises in health care premiums, but small businesses have faced disproportionate spikes in their costs. Lack of affordable healthcare has forced many small businesses to stop offering healthcare altogether to their employees.

All of the witnesses in the third panel unanimously voiced their support for Association Health Plans as well as tax cuts because they believed that it would allow many more small businesses to provide healthcare for their employees. While supporting AHPs, John Hartnedy, Chief Deputy Commissioner for Arkansas did state that he felt the solvency provisions of the legislation should be more stringent.

Karen Kerrigan also spoke to the need for MSAs, which are simply savings account controlled by the insured individual to be used to pay for routine health care expenses and a high-deductible (catastrophic) insurance policy to cover more substantial health care needs. Robert Hughes also raised the issue of the need for our nation's 16 million self-employed business owners to deduct their health insurance expenses when calculating their payroll taxes, which consists of payments to Social Security and Medicare.

AHPs passed the House of Representatives on June 19, 2003 and the new version of MSAs—called Health Savings Accounts (HSAs)—passed Congress as part of the Medicare Prescription Drug bill and became law on December 8, 2003.

For more information on this hearing please refer to Committee publication 108-2.

7.2.3 RESPA REFORM AND THE ECONOMIC EFFECTS ON SMALL BUSINESS

Background

On Wednesday, March 11, 2003, the Committee on Small Business held a hearing to examine the Department of Housing and Urban Development's (HUD) compliance with the Regulatory Flexibility Act (RFA) in the development of proposed rules modifying the implementation of the Real Estate Settlement Procedures Act (RESPA). RESPA was enacted in 1974 with the intention of providing purchasers of residential estate greater clarity in the settle-

ment process. Six years later, Congress enacted the RFA that requires federal agencies to examine the impact of their proposed rules on small businesses.

After many years of controversy and significant litigation, HUD determined that it was appropriate to modify the regulations implementing RESPA. The primary points of the proposal were the requirement to provide a good faith estimate of the closing costs that the purchaser will face and the option to offer a guaranteed mortgage package (including a fixed interest rate) that would be protected under the “safe harbor” provisions of section 8 of RESPA.

Summary

The first panel consisted of the Honorable Mel Martinez, Secretary, Department of Housing and Urban Development, Washington, DC. He was accompanied by a number of HUD staff, including the Honorable John Weicher, Assistant Secretary for Housing, Department of Housing and Urban Development and John Kennedy, Esq., Associate General Counsel.

The members of the second panel were: Mr. Gregory Kosin, Secretary, H.S. Wilkinson Land Title Company, Galena, Illinois; Mr. Eugene Hummel, SRA, Chief Executive Officer, Iowa Residential Appraisal Co., West Des Moines, Iowa; Mr. Peter Birnbaum, President, Attorney’s Title Guaranty Fund, Inc., Chicago, Illinois; Mr. Gary Acosta, President, SDF Realty, San Diego, California; Mr. Neill Fendly, Government Affairs Chair and Past President, National Association of Mortgage Brokers, McLean, Virginia; Ms. Catherine Whatley, Buck & Buck Realty, Jacksonville, Florida; and Terry Clemans, Executive Director, National Credit Reporting Association, Bloomington, Illinois.

Secretary Martinez commenced his testimony by summarizing the need for changes in the rules governing RESPA. He then outlined the steps that HUD took to obtain input including the meetings with affected entities and the preparation of 30 specific questions in the proposed rule. Secretary Martinez then gave the Committee his commitment to ensure full compliance with the RFA. The Secretary went on to note that he fully recognizes the importance that small businesses play in the real estate settlement process. However, that significance should not override, in his view, the primary goal of RESPA—reduction in settlement costs to consumers.

Mr. Kosin, on behalf of the American Land Title Association, noted that the proposal would affect title insurers and abstractors—the vast majority of which are very small businesses. Mr. Kosin went on to testify that the guaranteed mortgage packaging proposal would limit consumer access to and choice of settlement service providers. He then explained that a guaranteed mortgage package incorporating a guaranteed interest rate only could be packaged by lending institutions that have the financial wherewithal to undertake protective hedge transactions in the commodity markets. He concluded that the losses estimated by HUD would drive suppliers out of business thereby creating an oligopolistic national market of big businesses for a service that typically was performed by a local small business.

Mr. Hummel testified that the HUD proposal works against its own intentions. According to Mr. Hummel, allowing the lenders to select the appraiser could result in the retention of appraisers that provide the result sought by the lender rather than an objective result of an unbiased third party. Mr. Hummel concluded his testimony by suggesting that the appraisal not be made part of any guaranteed mortgage package.

Mr. Birnbaum testified on behalf of the National Association of Bar-Related Title Insurers. The organization consists of 20,000 law firms, almost all of which are small businesses. Mr. Birnbaum asserted that HUD failed to examine the impact that the regulation would have on these firms. He emphasized that his reading of the proposal would enable banks to receive kickbacks (something RESPA was enacted to prevent) but no other players in the settlement process. By allowing kickbacks, Mr. Birnbaum testified that the proposal would not lower costs to consumers. He concluded by noting that thousands of small businesses would close if the rule was adopted as proposed.

Mr. Acosta testified on behalf of the National Association of Hispanic Real Estate Professionals. Mr. Acosta thanked Secretary Martinez for his efforts to increase home ownership among the Hispanic community. His organization's primary view is that consumers should have access to the lowest rate possible and be given the maximum choice of mortgage products and services. The proposal rule undercuts that principle because it requires an individual mortgage broker to disclose costs while hiding those costs in a package created by a bank. He concluded his testimony by noting that more revisions were needed to ensure continued participation by Hispanics in the real estate business.

Mr. Fendly first explained the operation of the proposal and the adverse consequences it would have on mortgage brokers. He then claimed that HUD did not comply with the RFA because it: (1) underestimated the impact on small business; (2) failed to consider alternatives would reduce adverse impact on mortgage brokers; and (3) miscalculated the recordkeeping and reporting costs associated with the proposed rule. Mr. Fendly concluded his testimony by requesting that HUD delay further implementation until it has prepared an accurate initial regulatory flexibility analysis as required by the RFA.

Ms. Whatley, testifying on behalf of the National Association of Realtors, noted that they support reformation of the RESPA rules to simplify the process for home purchasers. She then laid out the position of the Realtors that the proposed guaranteed mortgage package would hurt small businesses. As others already had noted, packages only would be available from lenders because of the fixed interest rate requirement. Lenders also would not be required to disclose the contents of the package—just the final price. And without knowing what is in the package, consumers would be unable to shop services to other small businesses thereby potentially putting them out of business if packaging became the mainstay of the settlement industry. She concluded her testimony by requesting that HUD delay issuance of the final rule until it examined the unintended consequences of the proposed rule.

Mr. Clemans testified that there are about 300 firms in the United States that specialize in mortgage credit reporting. These businesses provide millions of credit reports to lenders and almost all of them would be considered small under any measure. Mr. Clemans concurred with other witnesses that Secretary Martinez was correct in tackling the problems associated with RESPA. However, that is where Mr. Clemans parted company with HUD. Specifically, Mr. Clemans complained about the failure to assess the impact of the proposal on small mortgage credit reporting agencies. Secondly, Mr. Clemans believes that it is inappropriate to include the credit report in the guaranteed mortgage package because without a credit report showing the adequacy of the consumer's ability to repay, no settlement occurs. By finding the cheapest solution, the lenders may not get the most accurate credit report or the most unbiased. Mr. Clemans concluded his statement by noting that a delayed credit report could result in banks putting in higher interest rates as part of the guaranteed mortgage package.

In sum, the Committee concluded that HUD's proposed rule to change RESPA would have a devastating negative effect upon thousands of small businesses involved in the real estate settlement process. For further information, please refer to Committee publication #108-3.

7.2.4 CHANGES TO SBA FINANCING PROGRAMS NEEDED FOR REVITALIZATION OF SMALL MANUFACTURERS

Background

On Wednesday, March 20, 2003, the Committee on Small Business held a hearing that focused on the Small Business Administration (SBA) financing programs and any changes needed to help small manufacturers obtain necessary capital to stay competitive in a global marketplace. The SBA provides over \$22 billion in financial assistance to small businesses. SBA's large financial program is the 7(a) general business loan guarantee program. The program offers guarantees of up to 80 percent of commercial loans made through local banks and other lending institutions. The 504 lending program provides construction, renovation, and capital investment financing to small businesses through qualified state and local development companies, better known as certified development companies (CDCs). The Microloan program provides small loans of up to \$35,000 to borrowers in low-income areas. Intermediaries that make loans also must provide managerial and business expertise to borrowers. Small business investment companies (SBICs) provide long term and venture capital financing to small businesses. SBICs are venture capital firms that leverage private investment dollars with SBA guaranteed debentures or participating securities. The program, like the 504 program, operates at a zero subsidy requiring no appropriation to provide funds.

Summary

The panelists were Mr. Ronald Bew, Associate Deputy Administrator for Capital Access, Small Business Administration, Washington, DC; Mr. John Phelps, Executive Director, Rockford Local Development Company, Rockford, IL; Mr. David Bartram, Presi-

dent, SBA Division, U.S. Bank, San Diego, CA; Mr. L. Ray Moncrief, Chief Operating Officer, Kentucky Highlands Investment Corp., London, KY; and Mr. Robert Finkel, President, Prism Capital, Chicago, IL.

Mr. Bew testified that the primary objective of the SBA was to maximize the economic impact of its financial assistance programs. He noted that achieving this goal led to the utilization of smaller loans because they were economically more productive in creating jobs. Nevertheless, SBA provided over \$2.7 billion in financial assistance (primarily through the 504 and SBIC programs) to small manufacturers. Mr. Bew expressed a willingness to work with the Chairman and other members of the committee to develop creative solutions for small manufacturers.

Mr. Phelps first noted that the subsidy rate model for the CDC program was outdated and needed revision. He then cited a National Association of Manufacturers (NAM) study, which found that 43 percent of small manufacturers faced increased capital cost despite record low interest rates. His specific recommendations to assist small manufacturers included: update the definition of rural area; permit CDCs to lend money for refinancing; enable CDCs to combine 504 loans with those issued under the 7(a) loan program; provide a special debenture for small manufacturers; and permit small manufacturing debentures to be issued on the basis of one job for every \$100,000 dollars in financing.

Mr. Bartram testified that loan demand was running significantly ahead of the proposed \$9.3 billion set forth in the SBA's FY 2004 budget. He then noted that small manufacturers could obtain loans for plant and equipment, working capital, and to fund exports. If loan caps were to be imposed because the SBA ran out of money to fund the program, it would act to the detriment of small manufacturers.

Mr. Moncrief urged reauthorization of the new market venture capital company program (NMVCC). The NMVCC program was created, according to Mr. Moncrief, because venture capital was not distributed to low-income communities throughout rural America. Mr. Moncrief's company, Kentucky Highlands, invested over \$100 million in businesses in the Appalachian region of Kentucky creating 8,000 jobs. As the only program targeting low-income rural communities, the NMVCC program should be fully and adequately funded.

Mr. Gast testified that microloans could not be replaced with conventional bank financing because borrowers often are not bankable clients. For example, some borrowers do not even have bank accounts. Mr. Gast then requested that legislation be enacted enabling intermediaries to make long-term loans which would empower borrowers to more easily start home-based manufacturing enterprises. In fact, a small manufacturer that started with a microloan by working out of his home and now had enough work for five employees accompanied Mr. Gast to the hearing.

Mr. Finkel provided data showing that SBICs invested \$737 million in 434 small manufacturing companies in 41 states. This constituted about 28 percent of available SBIC funds and supported 60,000 jobs. Mr. Finkel suggested that the SBIC program be modified to permit individual companies to exceed the existing leverage

cap if they invest in manufacturing. Large SBICs would be able to redirect more of their funds to small manufacturers if they were not required to invest a portion of their funds in smaller enterprises. Finally, Mr. Finkel requested clarification of the rules on capital impairment in order to prevent the SBA from accessing uninvested private capital as collateral.

In sum, the committee concluded that many of the programs of the SBA can be redirected to help struggling small manufacturers. For further information, please refer to Committee publication #108-4.

7.2.5 WILL WE HAVE AN ECONOMIC RECOVERY WITHOUT A STRONG U.S. MANUFACTURING BASE?

Background

On April 9, 2003, the Committee on Small Business held a hearing on whether the U.S. will have an economic recovery without a strong domestic manufacturing base. The purpose of the hearing is to explore the problems facing U.S. manufacturers (95 percent of all manufacturers are small- and medium-sized enterprises) and demonstrate that the economy will not recover unless its manufacturing base is firmly reestablished. The hearing addressed the following: (1) what effect the loss of over 2 million manufacturing jobs in the last two years has had on the economy and the potential for recovery; (2) how such job loss will affect the ability of Americans to purchase because of the loss of well paying jobs; and (3) what caused such devastating losses.

Summary

The witnesses were: the Hon. Tim Ryan (D-OH); the Hon. Grant Aldonas, Undersecretary of Commerce for International Trade, United States Department of Commerce, Washington, DC; Mr. Jerry Jasinowski, President, National Association of Manufacturers, Washington, DC; Mr. Richard Trumka, Secretary-Treasurer, AFL-CIO, Washington, DC; Mr. Michael Czinkota, Ph.D., Professor, McDonough School of Business, Georgetown University, Washington, DC; Mr. Ronald Harbour, President, Harbour and Associates, Troy, MI; Mr. Paul Freedenberg, Vice President, The Association for Manufacturing Technology, McLean, VA; Mr. David Sandy, Vice President, MS Willett, Inc., Cockeysville, MD; and Mr. Eric Anderberg, General Manager, Dial Machine, Inc., Rockford, IL.

The participants all testified to the fact that domestic manufacturing is in a downward spiral. The Chairman's opening statement outlined a number of facts regarding the impact the loss of manufacturing jobs and orders is having on the economy. All panel members identified similar issues that are hurting a manufacturing recovery. Those issues included overvaluation of the dollar in China, unhelpful regulations regarding export/import of goods, the rising cost of health care, and an inability to compete on labor rates with foreign imports.

Each panelist was asked for recommendations they believe the government could implement that would assist in aiding this sector. The recommendations are as follows:

- Export trade policies—takes too long for foreign customers to get visas to come to U.S. to inspect potential purchases;
- Access to capital—too many banks are withdrawing working-capital loans. Asset-backed loans are getting harder to obtain due to the devalued market for used equipment;
- China has undervalued its currency by 40% compared to the U.S. dollar;
- Pass a manufacturing tax credit to replace FSC;
- Strengthen Buy American provisions for Dept. of Defense;
- Focus on nontariff barriers in trade with China, Japan, and EU; and
- Export promotion activities.

For further information on this hearing, refer to Committee publication 108–8.

7.2.6 IRS COMPLIANCE WITH THE REGULATORY FLEXIBILITY ACT

Background

On Wednesday, May 1, 2003, the Committee on Small Business held a hearing to examine the Internal Revenue Service's (IRS) compliance with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). The RFA requires federal agencies to examine the economic impact of their proposed and final rules on small entities. If the impact is significant on a substantial number of such businesses, the agency is required to assess less burdensome alternatives. From its enactment in 1980 until the passage of SBREFA in 1996, the IRS asserted that its regulations were interpretative and thus not subject to the strictures of the RFA. SBREFA eliminated that rationale when it made the RFA applicable to interpretative rules implementing the internal revenue laws of the United States. One would not be surprised to then learn that the IRS developed a new interpretation that it only was required to examine proposed and final rules if they resulted in a new collection of information requirement not attributable to some requirement in the Internal Revenue Code. Significant regulations of the IRS, ones that cost small businesses hundreds of millions of dollars a year, are not examined under the RFA.

Summary

The panelists were the Hon. Pamela Olson, Assistant Secretary for Tax Policy, Department of Treasury, Washington, DC; the Hon. John Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC; the Hon. Thomas Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC; the Hon. Andy Ireland (Ret.), Zeliff, Ireland & Associates, Washington, DC; Frank Swain, Esq., Partner, Baker & Daniels, Washington, DC; and Daniel Mastromarco, Esq., President, The Argus Group, Arlington, VA.

Assistant Secretary Olson testified that the Service was restructured to serve specific constituencies. One such group was established to serve small businesses and the self-employed. The divi-

sion, according to the Assistant Secretary, plays a critical role in reviewing the impact of regulations on small businesses. The Assistant Secretary then testified that the Service does not make law but rather uses tax regulations to make compliance with the laws Congress passes more understandable to small businesses. She concluded her testimony by noting that the IRS fully complies with the RFA by closely examining the impact of information collections that it (as opposed to the ones Congress) imposes on small businesses.

Administrator Graham testified on the role that his office plays in ensuring compliance with the RFA and the Paperwork Reduction Act (PRA). In particular, Dr. Graham provided substantial detail on the definition of a "collection of information" requirement under the PRA. As Dr. Graham testified, compliance with the "collection of information" requirement in the PRA is the linchpin on which rests IRS compliance with the RFA. Dr. Graham expatiated on the procedures that his office utilizes in ensuring agency compliance with the PRA.

Chief Counsel Sullivan first explained that his office is tasked with monitoring agency compliance with the RFA. He then praised the accessibility of Assistant Secretary Olson and Dr. Graham. The Chief Counsel went on to question the IRS interpretation of the RFA because it limits the scope of the analysis rather than acting as a trigger for performing the analysis. In support of this thesis, the Chief Counsel cited the statements of the Judiciary Committee Chairman when SBREFA was passed. The Chief Counsel then cited examples of regulatory matters in which the IRS was not constrained by the Internal Revenue Code to structure a regulation in a certain manner.

As one of the original authors of the RFA, former Congressman Ireland noted that the RFA has been in effect for nearly a quarter of a century. Despite this, the one major issue that remains is IRS compliance with the RFA. The Congressman then testified about regulations on reporting of interest income by banks was cited as another example of a change in IRS regulations that was not mandated by any change in the Internal Revenue Code for which no analysis was done under the RFA.

The former Chief Counsel for Advocacy, Frank Swain, testified on yet another regulatory change that would have a significant impact on small business that was not necessitated by any change in the law. The IRS was modifying the definition of highway vehicle without conducting an analysis under the RFA. Most galling to Mr. Swain was the fact that the IRS requested a study of the economic impact of the change from the Department of Transportation but did not either cite the availability of such study in the proposed rule or recognize that it should have complied with the RFA.

Mr. Mastromarco testified on his more than 15 years experience with the IRS failure to comply with the RFA. He noted that the Department of Treasury continues to issue parsimonious interpretations of the RFA in an effort to avoid examining the impact of its regulations on small businesses. Mr. Mastromarco used the proposed modification to the interest income reporting requirements to explain the IRS decision-making process and how those procedures are used to avoid compliance with the RFA. Mr. Mastromarco con-

cluded his testimony by asking the Committee to close the existing loopholes that permits the IRS to avoid compliance with the RFA. Such compliance, according to Mr. Mastromarco, will result in less controversy for the IRS and better compliance by taxpayers.

In sum, the committee concluded that the IRS could do much more to comply with the letter and the spirit of the RFA. For further information, please refer to Committee publication #108-10

7.2.7 ARE BIG BUSINESSES RECEIVING CONTRACTS THAT WERE INTENDED FOR SMALL BUSINESSES

Background

On Wednesday, May 7, 2003, the Committee on Small Business held a hearing concerning the serious allegation that big businesses are receiving contracts that were intended for small businesses.

On January 15, 2003, an article appeared in the Los Angeles Times that stated: "Large companies are improperly getting billions of dollars in government contracts meant for small businesses." The article attributed part of the problem to federal agencies in making contract awards relying upon faulty databases maintained by the Small Business Administration (SBA) and the General Services Administration (GSA). Apparently, these databases had not been routinely updated to reflect a change in a business' size and have improperly listed entities as small businesses that were in fact large businesses. The article cited went on to state: "Small businesses have long complained that loopholes in federal law, sloppy government record-keeping, and, in some cases, outright fraud can result in large corporations getting federal contracts that Congress meant to go to small businesses." There may be other causes. The Committee was concerned that, if the allegations were true, federal small business contracting programs were at risk and achievement of federal socioeconomic goals would be undermined.

Summary

The hearing was comprised of the following witnesses: the Hon. Angela Styles, Administrator, Office of Federal Procurement Policy, Office of Management and Budget, Washington, DC; Lloyd Chapman, Microcomputer Industry Suppliers Association, Novato, CA; Fred C. Armendariz, Associate Deputy Administrator for Government Contracting, United States Small Business Administration, Washington, DC; Felipe, Mendoza, Associate Administrator, Office of Small Business Utilization, General Services Administration, Washington, DC; Kenneth W. Robinson, President and CEO, Kenrob and Associates, Inc., Leesburg, VA; Steven L. Schooner, Professor of Law, George Washington University, Washington, DC; and, David E. Cooper, Director, Acquisition Sourcing Management, General Accounting Office, Washington, DC.

An Executive Branch official expressed the view that the federal government should take the steps necessary to ensure that contracts intended for small businesses were not obtained by large businesses and that business opportunities for small businesses are increased. Instances were found where agencies were acting on inaccurate or misleading data in making contract awards. One cor-

rective step taken by OFPP was to notify the four executive agencies offering government-wide acquisition contracts (GWACs) for information technology of OFPP's intention to require annual certification of size status by businesses listed as small on each GWAC. Without such annual certification a business could be identified as small well after it became a large business. The gravity of bundling contract requirements as an issue was emphasized as well as the importance to small businesses of agencies being required to unbundle contracting opportunities.

Mr. Armendariz reported that SBA had removed from PRO-Net over 600 companies that had initially been listed as small businesses, but that were in fact large businesses. The accuracy of reports concerning the size of prime contractors as well as subcontractors as small or large businesses was questioned. Also, Mr. Armendariz reported that in FY2002 there were 383 size determination protests filed with SBA, that 110 were dismissed on procedural grounds, and that 85 resulted in finding that the business was other than small.

Mr. Armendariz expressed the view that the major source of complaints that large businesses are getting contracts intended for small businesses stemmed from the GSA Multiple Award Schedule program, including Federal Supply Schedule or other multiple award and GWACs contracts. A rule was proposed by SBA for comment to require annual certification of small business status for multiple award and GWACs contracts. The rule would change the present practice of permitting an initial certification to last the life of the contract. This could be as long as 20 years even though the size of a business had changed from small to large. Mr. Mendoza reported that GSA was requiring for multiple-award schedule contracts and other multiple-award contracts that re-certification occur prior to exercising an option period.

Lax enforcement of laws and regulation intended to help small businesses has deterred small businesses from competing in the federal marketplace. Professor Schooner reported that the 23 percent goal of contract dollars going to small business was not met in the past two fiscal years, however, the share going to small businesses was above the 20 percent level during this period. GAO found that the major cause of misreporting small business participation in federal procurement was regulations permitting a company to be considered small over the life of a contract even though during that period its size had changed. Another important cause of misreporting was the use of bad or confusing data. Efforts were underway by SBA, OFPP and GSA to resolve some of the issues presented.

For further information on this hearing, refer to committee publication 108-12.

7.2.8 THE WTO'S CHALLENGE TO THE FSC/ETI RULES AND THE EFFECT ON AMERICA'S SMALL BUSINESSES

Background

On May 14, 2003, the Committee on Small Business held a hearing to examine the World Trade Organization's challenge to the Foreign Sales Corporation ("FSC") and Extraterritorial Income Ex-

clusion (“ETI”) rules of the Internal Revenue Code and the effect this challenge will have on America’s small business owners.

Like many other countries, the United States has long provided export-related benefits under its tax laws. For most of the last two decades in the United States, these benefits were provided under the FSC tax rules. In 2000, the European Union (“EU”) succeeded in having the FSC regime declared a prohibited export subsidy by the WTO. In response to this ruling, the United States repealed the FSC rules and enacted the ETI tax rules. The EU immediately challenged the ETI regime in the WTO and, on January 14, 2002, a WTO appellate body held that the ETI regime constituted a prohibited export subsidy under the relevant trade agreements. During August of 2002, a WTO arbitration panel determined that the EU was entitled to over \$4 billion of annual countermeasures against the United States for failure to repeal its ETI rules. At the time of the hearing, the EU had not yet imposed sanctions against U.S. exports but strongly suggested it would if the ETI regime was not repealed before the end of 2003.

In order to bring the U.S. into compliance with the WTO ruling, Chairman Manzullo, together with Rep. Crane (R-IL) and Rep. Rangel (D-NY), introduced on April 11, 2003, H.R. 1769, the Job Protection Act of 2003. In summary, the Crane-Rangel-Manzullo bill would replace the current-law ETI benefit with an exclusion from tax of up to 10 percent of the income attributable to domestic production.

Summary

The first panel consisted of the Hon. Philip M. Crane (R-IL) and the Hon. Charles B. Rangel (D-NY). Representatives Crane and Rangel outlined the provisions included in H.R. 1769, the Job Protection Act of 2003, including the repeal of ETI benefits, transition rules for current ETI recipients and the phase-in of a new permanent tax deduction for U.S. companies based on their domestic manufacturing and production activities.

The second panel consisted of Dr. Clyde C. Hufbauer, the Reginald Jones Senior Fellow at the Institute for International Economics, Washington, DC; Ms. Thea Lee, Assistant Director for International Economics, AFL-CIO, Washington, DC; Mr. Doug Parsons, President and CEO of Excel Foundry and Machine, Pekin, IL; and Mr. Wayne Fortun, President and CEO of Hutchinson Technology, Inc, Hutchinson, MN.

Dr. Hufbauer reviewed the tortured history of the WTO challenge to the FSC/ETI rules. He also reviewed some of the competing solution advanced to address this challenge. He concluded that among the exiting ETI reform proposals, H.R. 1769 “best serves the American economy.” Ms. Lee testified that U.S. manufacturing is in crisis and pointed out that for the past 33 months, manufacturing jobs in the U.S. had declined, the longest such stretch since the Great Depression. She also praised the approach embodied in H.R. 1769 and stated that the AFL-CIO has publicly endorsed the bill.

Mr. Parsons and Mr. Lee emphasized the impact the repeal of the ETI rules would have on domestic manufacturing, absent an adequate replacement. Mr. Lee pointed out that H.R. 1769 would

provide an effective corporate rate reduction of 3.5 percent, thereby allowing his company to recoup a portion of the loss resulting from a repeal of ETI benefits.

For further information on this hearing, refer to committee publication 108–14.

7.2.9 THE VISA APPROVAL BACKLOG AND ITS IMPACT ON AMERICAN SMALL BUSINESS

Background

On June 4, 2003, the Committee on Small Business held a hearing at to investigate the impact that significant delay in the issuance of business visas is having on the ability of American exporters to reach their customers. Many small business and manufacturers in particular have lost sales opportunities because their potential customers have found it difficult to obtain a visa to visit the United States.

Summary

The hearing was comprised of one panel made up of: Janice L. Jacobs, the Deputy Assistant Secretary for Visa Services, United States Department of State, Washington, DC; Robert J. Garrity, Deputy Assistant Director, Federal Bureau of Investigation, Washington, DC; Mr. Gary Shapiro, President & CEO, Consumer Electronics Association, Arlington, VA; Mr. Chip Storie, Vice President, Aerospace Sales, Cincinnati Machine Inc., Cincinnati, Ohio; Mr. William J. McHale, Vice President, Sales for Kanawha Scales & Systems, Inc., Poca, WV; Ms. Palma R. Yanni, the President-elect, America Immigration Lawyers Association, Washington, DC; and Mr. William A. Reinsch, President of the National Foreign Trade Council, Inc, Washington, DC.

The hearing testimony and questions focused particularly on the State Department's efforts to adapt to the new security requirements and the impact of ongoing procedural delays on the business climate. Ms. Jacobs testified that while in certain respects and for some applicants, obtaining a US visa has become a lengthier process, it is also true that in virtually all of these cases delays have been the result of our efforts and those of other federal agencies to increase the security of our borders and of our homeland. So too, Jacobs stated that the Department is making changes to increase automation with the creation of an interagency network known as OSIS, i.e. Open Source Information System. The DOS pledged to spend close to \$1 million over the next year to eliminate telegrams from overseas posts as the vehicle for disseminating cases to other federal agencies in the security advisory opinion process. The hope is that the State Department will use real-time data-share and eliminate virtually all manual manipulation of routine data.

Mr. Garrity testified that the FBI is working diligently with the Department of State toward the common goal of improving the expediency and efficiency of the visa clearance process. Since September 11, 2001 the number of name checks submitted to the FBI has grown by more than 300 percent. This has proved to be a big challenge for the bureau.

Mr. Reinsch argued that the federal agencies appear to have lowered the bar of what qualifies as a security threat, with the result that applications for individuals who were never previously considered threats have become subject to lengthy delays, compromising the ability of the interagency process to provide a speedy and thorough response.

Ms. Yanni focused her testimony on the existing backlog and stated that many applications that not long ago were considered easily approvable are now denied, invoking an appeal process that in itself can take one year or more. Further, she maintained that many of the applications now being denied are similar, on the exact same facts and law, as requests that had approved a couple of years ago. These denials seem to happen most often to small businesses. Mr. McHale testified about the problems with his foreign employees, existing clients, and prospective future customers face when trying to obtain travel visas to the U.S for the purpose of business discussions, design liaison meetings, employee training, plant and equipment inspections. He was especially concerned about delays for customers in China.

Mr. Storie claimed that the visa delays certainly do not help promote trade and may in fact be driving potential customers to our European and Japanese competitors.

Mr. Shapiro, testifying for the CEA and the International Association for Exhibition Management, expressed serious concerns that the delay in the issuance of business visas and the resulting injury to America's reputation as the leading location for industry trade fairs. He argued that this climate is forcing many events to consider moving their exhibitions overseas.

In summary, the committee concluded that improvements need to be made to streamline the process of processing applications and that special efforts may be needed immediately to allow bona fide business travelers to receive expedited processing of their applications. This might include providing special times for face-to-face interviews or other accommodations. For further information on this hearing, refer to Committee publication #108-17.

7.2.10 REVITALIZING AMERICA'S MANUFACTURERS: SBA BUSINESS AND ENTERPRISE DEVELOPMENT PROGRAMS

Background

On Wednesday, June 11, 2003, the Committee on Small Business held a hearing to evaluate what changes might be made in the Small Business Administration's (SBA) non-financial programs to assist small manufacturers. The SBA provides government procurement, technical, and managerial assistance to small businesses and would-be entrepreneurs.

Procurement assistance is provided through a number of avenues. Foremost, the SBA acts as an advocate of small business capabilities during major government procurements. Second, the SBA oversees the operation of a number of programs designed to ensure maximum contract opportunities to small businesses, small businesses located in low-income areas, and small businesses owned and controlled by women or minorities.

Technical and managerial assistance is provided through four primary programs. Small business development centers (SBDCs) are located primarily at colleges and universities and provide marketing, financing, start-up, and other assistance at more than 1,000 sites. The Service Corps of Retired Executives or SCORE provides small business assistance through the volunteer efforts of its members, the vast majority of whom are retired businessmen and women who offer their expertise and experience to small business owners. The 7(j) technical assistance program provides financing for technical assistance to the minority contracting community primarily through courses taught at universities and direct assistance from management consultants contracted by the SBA. The Women's Business Center (WBC) program provides business training for women by teaching women the principles of finance, management, and marketing. There are about 93 centers scattered throughout the United States.

Summary

The hearing consisted of two panels. The first panel examined the SBA's procurement assistance programs and the second examined the technical assistance programs.

The members of the first panel were: Mr. Daryl Hairston, Deputy Associate Deputy Administrator, Office of Government Contracting and Business Development, Small Business Administration, Washington, DC; Mr. Anthony Robinson, President, Minority Business Enterprise Legal Defense and Education Fund, Lanham, MD; Mr. Lonnie Sanders, President, C&S Trading, LLC, Washington, DC; and Ms. Alba Aleman, President, Cairo Corp., Manassas, VA.

The members of the second panel were: Ms. Kaaren J. Street, Associate Deputy Administrator, Office of Entrepreneurial Development, Small Business Administration, Washington, DC; Ms. Kersten Hostetter, Executive Director, Microbusiness Development Corp., Denver, CO; Ms. Susan R. Whitfield, Director, McHenry County College Small Business Development Center, Crystal Lake, IL; Ms. Hedy Ratner, Co-President, Women's Business Development Center, Chicago, IL; and Mr. Lee Smith, Director, Southern Arizona BusinessLINC, Tucson, AZ.

Mr. Hairston testified about the operations of the individual government contracting assistance programs. He cited a number of changes in those programs including: the launch of a series of nationwide procurement matching conferences; implementation of the President's anti-bundling strategy; automation of applications to participate in the 8(a) government contracting assistance program; simplification of SBA size standards; and development of a procurement academy under the 7(j) technical assistance program. Finally, Mr. Hairston testified about the integration of the SBA's government contracting database with that run by the Department of Defense.

Mr. Robinson testified that there were major disconnects between the manufacturing sector and the minority procurement programs operated by the federal government. The first disconnect is that if a business owner exceeds a net worth of \$250,000, they must exit the 8(a) program. For small manufacturers with a significant investment in plant and equipment, participation simply is

not possible. Second, the support programs for small manufacturers, in particular the Manufacturing Extension Partnership (MEP) program, have done little outreach to small manufacturers in the minority community. Finally, Mr. Robinson testified about the delegation of the SBA's responsibilities under the 8(a) program to other federal agencies.

Mr. Sanders testified about his experiences as a HUBZone contractor with the Department of Agriculture. He criticized the Department for not recognizing that he was ineligible to participate until after he made a significant commitment of time and resources. Second, he requested that the Committee modify the requirements in the HUBZone program to permit the Department of Agriculture to purchase commodities from wholesalers.

Ms. Aleman first noted that the procedures for obtaining certification under the 8(a) program are extremely burdensome, invasive, and time-consuming. She then testified that it took over two years to obtain her first 8(a) contract. Since her company is relatively new and without a strong track record, she cannot rely on large prime contractors providing her with subcontracts. Thus, in order to grow her business, Ms. Aleman opined that she needed prime contracts and the 8(a) program is a vitally significant route in obtaining those contracts. She testified about the disparities between the 8(a) and HUBZone and requested that the Committee examine ways to remove the disparities to enable 8(a) contractors to operate on a level playing field with HUBZone firms.

Ms. Street testified about the SBA's commitment to serving America's entrepreneurs. She noted that the SBA was reforming its entrepreneurial development programs to ensure better coordination among them. In particular, the SBA wanted to transform those programs into a more client-based system without regard to the center from which the business seeks assistance. She then went on detail changes that are being made in each of the programs to enhance their attractiveness to small business owners.

Ms. Hostetter noted that the vital role that microenterprise development can play in economic growth. For example, in Colorado, there are 412,000 microenterprises generating nearly 20 percent of the state's employment. But that role is hindered by a lack of capital and technical assistance. She testified that the PRIME program provides important technical advice to microenterprises and should receive an increase in funding by at least \$5 million.

Mrs. Whitfield testified about the typical day faced by a SBDC. Such a day might include a breakfast meeting with the local chamber of commerce and a discussion with prospective business owners about their plans for construction of a building. Then it was to answering hundreds of e-mails. Small businesses would then show up for free counseling. In addition, the staff at a SBDC must maintain active surveillance on dozens of federal programs and changes in regulations. For manufacturers, the SBDC staff would visit facilities to better understand the manufacturing processes and help them with any questions they might have. She ended her testimony by noting that SBDCs generate \$2.09 for every dollar invested by the taxpayer.

Ms. Ratner noted that her WBC provides bilingual advice to both men and women in metropolitan Chicago. She then noted the im-

portance of women entrepreneurs in today's economy. Women business owners, according to Ms. Ratner, continue to need information, guidance, and training that often are only available from WBCs. Her center alone counseled over 35,000 women during its existence. She concluded her testimony with a plea for continued and expanded funding of WBCs.

Mr. Smith testified about the operation of the BusinessLINC program in expanding opportunities for America's manufacturers. He noted that the Southern Arizona BusinessLINC program created a database of large manufacturing facilities in Sonora, Mexico that could be supplied by small American manufacturers. Furthermore, the Southern Arizona BusinessLINC program found small American suppliers for a Bombardier plant in Ireland. He concluded his testimony by noting that the governor of Arizona is making supply chain development a top initiative.

In sum, the committee took away many positive suggestions on how to reform the non-finance programs at the SBA to further help struggling small manufacturers. For further information, please refer to Committee publication #108-18.

7.2.11 GLOBALIZATION OF WHITE-COLLAR JOBS

Background

A recent Business Week article highlighted what it called, "The New Global Job Shift." The cover read, "IS YOUR JOB NEXT? A new round of GLOBALIZATION is sending upscale jobs offshore. They include chip design, engineering, basic research—even financial analysis. Can America lose these jobs and still prosper?" That is the question.

With more and more manufacturing being done overseas, we continue to see the erosion of a domestic manufacturing base. Prevailing economic theory suggests that it is good for America and good for the world for blue-collar jobs to be done elsewhere while we concentrate on keeping and developing highly-skilled, white-collar jobs here. In theory it sounds fine, but we are now seeing these very same highly-skilled jobs (i.e. architecture, engineering, software development) being done offshore.

Since July 2000 the manufacturing sector has lost 2.6 million jobs. What most people do not understand is how closely the service sector is tied to the manufacturing sector. Every \$1 million in manufacturing sales equates to fourteen jobs, six of which are in the service sector. According to Forrester Research, 3.3 million white-collar jobs and nearly \$140 billion in white-collar wages will shift from the U.S. to other countries in the next 12 years.

On June 18, 2003, the Committee on Small Business held a hearing to discuss the impact of outsourcing of white-collar jobs to the American economy and what role, if any, should the federal government play in helping to improve the global competitiveness for white-collar jobs.

Summary

The witnesses for the hearing were: the Hon. Nancy Johnson (R-CT); the Hon. Bruce Mehlman, Assistant Secretary for Technology Policy, United States Department of Commerce, Washington, DC;

Mr. Pete Engardio, Business Week Magazine, New York, NY; Mr. Ron Hira, Ph.D., P.E., Chair, Research and Development Policy Committee, Institute of Electrical and Electronics Engineers, Washington, DC; Mr. John Challenger, CEO, Challenger, Gray & Christmas, Inc., Chicago, IL; Mr. John Palatiello, Administrator, Council on Federal Procurement of Architectural & Engineer Services, Reston, VA; Mr. Christopher Kenton, Cymbic, Inc., San Francisco, CA; and Mr. Paul Almeida, President, Department of Professional Employees, AFL-CIO, Washington, DC.

Rep. Johnson said Congress needs to reevaluate guest worker visa programs. H1B visas were increased in 1999 for Y2K preparation. Currently, however, the shortage has vanished, and it is no longer necessary or prudent to allow companies to funnel foreign workers into the United States with no annual limits. Further, L1 Visa rules should also be examined. Non-dependency companies are given much more leeway than dependant companies.

Assistant Secretary Bruce P. Mehlman testified that America's future lies in education and "sustained innovation." Ever advancing technologies continue to accelerate the process of "creative job destruction," making former tasks and procedures obsolete. In an effort to employ more Americans, we must focus on improving math and science education. Also, tax and trade regulations, in addition to infrastructure protection should remain central to government efforts to remedy developing outsourcing problems. He warned, however, that the United States continues to export approximately 7.9 billion dollars of IT services each year, and it would be unwise to stop buying from elsewhere and begin a process that might harm our economy further.

Pete Engardio, a senior editor from Business Week, believes the outsourcing problem is in part caused by a mismatch between the skills being taught at various schools and the skills required on the job. On the other hand, the problem is complex, and may, in part, be due to a painful transition caused not merely by skill shortages. Nevertheless, government should continue to focus on education.

Ron Hira, representing IEEE-USA, stated that further research and timely information regarding current outsourcing is necessary (i.e. information about which jobs are being lost). Because of stricter immigration regulations following the September 11th tragedy, companies are finding it easier to outsource jobs than move employees to the United States. He recommended that the World Trade Organization's agencies on trade and services should be followed closely.

John Challenger, CEO of Challenger, Gray, and Christmas, Inc., said the education system in the United States must be improved to meet current workforce needs and the changing job paradigm. Lifelong education continues to remain essential in the United States where individuals may very well find themselves working for six or more companies in the course of a lifetime. The government should pursue tuition reimbursement and skills training programs to help individuals focus on effective job transitions. Tax credits for re-education is a possible suggestion, along with awarding contracts to small companies with local workforces.

John Palatiello, Administrator for the Council on Federal Procurement of Architectural and Engineering Services, identified sev-

eral issues of national interest. First, for security purposes, the United States' Government cannot continue to allow outsourcing of sensitive intelligence related projects (for example, blueprints for state of the art nuclear power plant facilities and the like should not be drawn by architects in foreign countries). Second, the Prevailing Wage Act and the Service Contract act should also be investigated because they only apply to work performed within the United States. Third, Federal Prisons ability to compete for lucrative contracts is problematic. Finally, taxes, litigation, and healthcare costs make it ever difficult to hire in the United States.

Christopher Kenton, CEO of Cymbic, Inc., testified that the Federal government should continue promoting innovation and investigating regulatory policies to level the playing field among nations.

Paul Almeida, President of the Department for Professional Employees, AFL-CIO, indicated that tax policy should be consistent at national, state, and local levels, and companies should not be given relief if they do not provide local jobs. He recommended that more research should be done regarding the role our trade policies play in global outsourcing.

The hearing concluded with the Chairman's call for action on several of these issues. For further information on this hearing, refer to Committee publication 108-20.

7.2.12 FOREIGN CURRENCY MANIPULATION AND ITS EFFECT ON SMALL MANUFACTURERS AND EXPORTERS

Background

On June 25, 2003, the Small Business Committee held a hearing to discuss the impact of foreign currency manipulation and its effect on small manufacturers and exporters across the country. The U.S. has lost over two million manufacturing jobs during the recession. Our biggest Asian trading partners have implemented a strategy of currency under-valuation in order to gain a competitive advantage for their exports by making them cheaper. It is estimated that the actions by China, Taiwan, South Korea, and Japan have essentially given their exporters a 15 to 40 percent reduction, which in turn acts as a tax by the same percentage on U.S. manufacturers and exporters. Japan has systematically intervened in the currency markets to reduce the value of the yen. Manipulation of exchange rates for the purpose of achieving an unfair competitive advantage is illegal under international protocols.

Since 1994, the Chinese government has kept its currency pegged at 8.2 yuan to the dollar. China has experienced economic growth, gains in productivity, a large export sector, and increased foreign investment, all factors that would cause its currency to appreciate if it were allowed to freely move. It is estimated by many economists that the yuan is undervalued by as much as 40 percent.

Summary

There was one panel consisting of Dr. C. Fred Bergsten, Director, Institute for International Economics, Washington, DC; Robert A. Blecker, Professor of Economics, American University and Research Associate, Economic Policy Institute, Washington, DC; Steve Yagle, President Reliable Machine, Rockford, IL; Jay Bender, Presi-

dent, Falcon Plastics Inc., Brookings, SD; George Jones, President, Seaman Paper Company of Massachusetts, Inc., Otter River, MA; Edward M. Tashjian, Vice President, Marketing, Century Furniture, Hickory, NC; Paul Freedenberg, Director of Government Relations, Association for Manufacturing Technology, McLean, VA; and Cass Johnson, Senior Vice President, American Textile Manufacturers Institute, Washington, DC.

Dr. Bergsten testified that to date, the dollar has fallen by about 30 percent against the euro but only about 15 percent against the yen and not at all against the Chinese renminbi. He explained that it is imperative for China to let its currency start to rise in the exchange markets in order to contribute directly to the needed U.S. adjustment and to permit other East Asian currencies (including the yen) to rise more extensively as well.

Dr. Blecker testified that East Asian countries have amassed reserves of well over \$1 trillion U.S. dollars as a result of their efforts to keep their own currencies undervalued and maintain their artificial competitive advantages in the U.S. market. The tangible effects of this are: (1) a loss of three-quarters of a million U.S. manufacturing jobs; (2) a decline in profits on U.S. manufacturing operations of about \$100 billion per year; and (3) a reduction in capital expenditures at U.S. manufacturing plants of over \$40 billion annually.

Steve Yagle testified that the Chinese government manipulates the value of its currency, which artificially lowers the prices of Chinese goods in the U.S. while making his products more expensive in China. An Illinois Manufacturing Extension Center Survey reported that over 60 percent of the manufacturers surveyed reported that they are experiencing severe competition from China and have lost market share. Moreover, 46 percent of all respondents said they expected competition from China to reduce their sales by an average of about 16 percent in 2003 with more losses expected in the next few years.

Jay Bender testified that for the past several years, American manufacturing lost almost 2.5 million jobs and industrial production has stagnated. During this same period, Falcon Plastics, owned by Mr. Bender, has gone from employing over 300 people to just 200. American manufacturers compete against Chinese companies that have access to a vast low-wage labor pool. These Chinese companies have minimal health, environmental and safety standards that are far below that of the United States, in addition to an undervalued Chinese currency that makes its products even cheaper to buy.

George Jones testified that U.S. manufactured paper and wood products are being disadvantaged in the U.S. and global marketplaces due to Chinese currency manipulation and government subsidization of new manufacturing capacity. The Chinese government has intentionally kept the value of its currency abnormally low to create a competitive advantage for their products at the expense of U.S. produced goods.

Edward Tashjian testified to the negative effect of the undervalued Chinese currency on his industry by saying that a Chinese furniture manufacturer can sell identical furniture for significantly less because of cheap labor costs, few regulations on labor and the

environment, and the currency issue. He went on to say that because furniture is a “big ticket” item, when a U.S. furniture manufacturer loses a sale to his Chinese competition, it is many years before that company gets another shot at the customer.

Paul Freedenberg testified that for the machine tooling industry that orders are off more than 60 percent since their peak in 1997. Import penetration has increased more than 40 percent in the past four years, due, in large part, to an overvalued U.S. dollar, which has only recently receded from its heights in relation to European currency. But these same countries continue to allow anti-competitive subsidies, which further add to our competitive problems. More than 30 machine tool companies have closed their doors in the past 18 months, representing nearly 10 percent of the companies in the entire industry.

Cass Johnson testified to the state of the textile industry, reminding the Committee that when China cut the value of its currency by about 40 percent in 1994, it was followed three years later by a similar collapse in the currency values of China’s more direct Asian competitors. So, it should not be a surprise that the U.S. manufacturing sector suffers from its worst recession since the Great Depression. As Chinese and other Asian currencies have been devalued, prices for textile and apparel products from these countries have fallen by as much as 38 percent, further compounding the problem.

In sum, the Committee concluded that Congress and the Bush Administration needed to act quickly and decisively to stop foreign governments, particularly those in East Asia, from undermining the value of their currency at the expense of the U.S. dollar if we are to have a small manufacturing base in this country. For further information on this hearing, refer to Committee publication #108–21.

7.2.13 SAVING THE DEFENSE INDUSTRIAL BASE

Background

On Wednesday, July 9, 2003, the Committee on Small Business held a hearing that focused on preserving America’s defense industrial base.

On May 22, 2003, the Office of Management and Budget released its Statement of Administration Policy (SAP) raising concerns about various sections of the House version of the National Defense Authorization Act for FY 2004 (HR 1588). Specifically, the Administration objected “strongly” to the enhanced “Buy American” provisions of HR 1588 (Title VIII Subtitle B) because they were “burdensome, counterproductive, and have the potential to degrade U.S. military capabilities.” In addition, the SAP readily admitted that the U.S. is no longer on the leading edge of some critical technologies crucial to our defense needs by claiming that the “Buy American” provisions of HR 1588 “will unnecessarily restrict the Department of Defense’s ability to access non-U.S. state-of-the-art technologies and industrial capabilities.” The purpose of the hearing was to have the Administration explain in more detail the rationale for their position on the “Buy American” provisions in HR 1588 and to discuss what can be done to recover America’s lost

edge in certain high technology products, many of which are produced by small businesses.

Summary

The panelists were: the Honorable Suzanne D. Patrick, Deputy Undersecretary, for Industrial Policy, Department of Defense; the Honorable Mathew S. Borman, Deputy Assistant Secretary for Export Administration, Department of Commerce; Timothy G. Rupert, President and Chief Executive Officer, RTI International Metals, Inc., representing the Specialty Metals Coalition; Matthew B. Coffey, President, National Tooling and Machining Association (NTMA); Chip Storie, Vice President for Aerospace Sales, Cincinnati Machine, representing the Association for Manufacturing Technology (AMT); Olav Bradley, Tooling Division, PM Mold Company, representing the American Mold Builders Association (AMBA).

It was the view of Ms. Patrick of the Pentagon that the downturn in the U.S. economy had no significant impact on the defense industrial base since the defense aerospace industries return on invested capital was higher than the average for the S&P 500. In her opinion, there is no need to revitalize the defense industrial base nor is vulnerability caused by dependence upon foreign products or technology.

Mr. Borman stated that the Department of Commerce believed that there was a crisis in manufacturing: however, the Department of Defense was of the view that the defense industrial base is secure. The Pentagon was also of the view that the "Buy American" provisions of HR 1588 severely restricted the ability of the military to develop new weapon systems because of the need for foreign participation and technologies.

However, the small manufacturing representatives on the panel had a different perspective. Over 2.7 million of jobs have been lost in the U.S. manufacturing sector since July 2000. In the 1950s, 48 percent of the U.S. Gross Domestic Product (GDP) was attributable to manufacturing. This figure has now dropped to 14 percent. The multinational corporations that dominate the defense industry seek the lowest costs for items with little concern for the defense industrial base and the survival of sectors essential to manufacturing, e.g., the machine tool industry which is presently in crisis. Though the machine tool industry has been an important part of the defense industrial base for over a century, a number of innovative machine tool companies, including tool & die and industrial mold makers, have gone out of business in recent years. This situation weakens the industrial base and creates dependency upon foreign sources.

The private sector panelists believed that steps must be taken to create a level playing field to keep basic manufacturing skills in this country. Correcting the currency imbalance issue with China is one such step as are the elimination of offsets in defense trade (as an informal condition of purchasing a U.S. weapon system, the foreign country requires that a large U.S. defense contractor buy or market a certain amount of goods made in the particular foreign country in the U.S., usually at a higher value than the cost of the weapon system) and the establishment of fair trading rules. The

small manufacturers concluded that when we give away our ability to make things by losing the machine tool industry, this nation is also losing the innovation and creativity that goes with manufacturing.

For further information about this hearing, please refer to hearing report #108–23.

7.2.14 DOCTORS AS SMALL BUSINESSES, FIELD HEARING,
FREDERICK, MARYLAND

Background

On Monday, July 14, 2003, the Small Business Committee held a field hearing to examine America’s approaching a national doctor crisis—a shortage of qualified private practice doctors who will spend the quality time to care for our nation’s sick. Burdensome regulations and delays in payment both from the private and public sectors make it very difficult for doctors and other medical professionals to operate as a business. Doctors are caught in the middle of fee for service schedules set by government and private health insurance carriers and rapidly increasing malpractice insurance premiums.

Summary

There were two panels that testified during this hearing. The first panel consisted of: Dr. and Mrs. Camilo Toro, Frederick Neurology, LLC, Frederick, MD; Elizabeth Chong, Practice Administrator, Frederick, MD; Dr. Michelle Thomas, Mitchellville, MD; and Dr. James Pendleton of Bryan Athyn, PA. The second panel included Greg Scandlen, Galen Institute, Alexandria, VA; Dr. Chris Unger of Bethesda, MD; Linwood Rayford, Assistant Chief Counsel, Office of Advocacy, United States Small Business Administration, Washington, DC; and William A. Sarraille, Esq., Sidley Austin Brown & Wood LLP, Washington, DC.

Dr. and Mrs. Camilo Toro testified that they increasingly spend less time caring for patients because of the overwhelming nature of insurance reimbursement and Medicare reimbursement paperwork. Dr. Toro’s wife, who is the office manager of her husband’s practice, stated that insurance and Medicare only reimburse 20 percent to 50 percent of the claims that are submitted.

Elizabeth Chong testified that her husband’s practice has absorbed \$28,570 in losses due to worker compensation claims that weren’t reimbursable (not including insurance or Medicare). Increasingly, greater blocks of time are spent on diminishing returns.

Dr. Michelle Thomas testified that curbing frivolous lawsuits is necessary to preserve the economic viability of physician practice. She further stated that in 1995 there were 14 companies underwriting medical malpractice insurance. Today, in Maryland, there are now just three companies providing insurance. She stated that the time spent on administrative paperwork is approaching 40 percent to 50 percent of the workday for small practices.

Dr. James Pendleton spoke of the many burdens small practices face saying that it is very difficult for small practices to survive. He stated that some hospitals have closed trauma and emergency centers because of spikes in medical liability insurance. Dr. Pen-

dleton expressed his strong support for medical liability reform to curb these costs. He also spoke of his strong support for Medical Savings Accounts, but feels that currently they are too hamstrung by government regulation.

Greg Scandlen spoke of the four main obstacles small physicians face with their practice: (1) inadequate reimbursement; (2) excessive regulations; (3) burdensome administrative requirements; and (4) an out of control tort system. He strongly advocated a consumer driven health care system.

Christopher Unger spoke of the growing shortages in the medical field from nurses and primary care givers; from surgeons and hospitals due to the increasingly regulated nature of healthcare, which constrains healthcare providers from their primary duty, patients. Additionally, more regulations will drive up the cost of healthcare even further.

Linford Rayford spoke of the increased regulations that medical professionals must operate under, particularly from the Department of Health and Human Services (DHS) and the Centers for Medicare and Medicaid Services (CMS), as well as from legislation including the Health Insurance Portability and Privacy Act (HIPPA) and Privacy Rule. SBA's Office of Advocacy has challenged several mandates by DHS and CMS, hoping that changes will reduce the burdens small doctor practices face.

William Sarreille testified that compliance with payment structures and government regulation produce a great hardship on individual or small doctor practices. Financial threats, regulatory burdens, and other challenges overwhelm physicians to the point that many practicing doctors are looking at early retirement and fewer students are encouraged into medicine. A decline of doctors is happening and it will lead to a shortage of physicians in the future.

In sum, the Committee concluded that the federal government needs to remember that most medical professionals are small businesses and that too much regulation, no matter how well intentioned, could cause a shortage of health care in the very near future as physician practices close because of basic economics. For more information, please refer to Committee publication, #108-24.

7.2.15 ASSISTING SMALL BUSINESSES THROUGH THE TAX CODE: RECENT GAINS AND WHAT REMAINS TO BE DONE

Background

On July 23, 2003, the Committee on Small Business held a hearing to highlight recent changes to the U.S. tax code benefiting small business owners and to solicit from small business advocacy groups additional tax reform proposals for further assisting small businesses.

On May 28, 2003, President Bush signed into law H.R. 2, the Jobs and Growth Reconciliation Act of 2003 (Pub. Law 108-27). This bill provides \$320 billion in net tax relief to American taxpayers over 10 years. Relief granted in the bill that particularly benefits small businesses included the lowering of individual income tax rates and an increase in small business expensing to \$100,000 annually.

Summary

The hearing consisted of one panel: the Hon. Thomas M. Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC; the Hon. Nina E. Olson, Taxpayer Advocate, Internal Revenue Service, Washington, DC; Daniel R. Mastromarco, Esq., Principal, Argus Group, Arlington, VA; Ms. Dena Battle, Manager, Legislative Affairs, National Federation of Independent Business, Washington, DC; Mr. Thomas C. Pitrone, CFP, Principal, Integrity Group, Cleveland, OH; Mr. Roy Quick, Jr., Principal, Quick Tax & Accounting Service, St. Louis, MO; and Ms. Janet K. Poppen, CPA, Poppen & Associates, P.C., St. Louis, MO.

The Honorable Thomas M. Sullivan reviewed the tax benefits for small businesses contained in H.R. 2, the Jobs and Growth Tax Relief Reconciliation Act of 2003. He highlights three provisions: (1) the increase in small business expensing from \$25,000 to \$100,000 (effective through 2005), (2) bonus depreciation permitting taxpayers to expense 50 percent of qualified investments (generally effective through 2004), and (3) acceleration of the scheduled reduction in individual income tax rates (effective the beginning of 2003). Mr. Sullivan also emphasizes the need for tax simplification and the danger of too much change in the tax code. Lastly, he urged Congress to make permanent (1) small business expensing and (2) death tax repeal and recommended the repeal of the alternative minimum tax for individuals.

The Honorable Nina E. Olson testified in behalf of a number of recommendations gleaned from past National Taxpayer Advocate Reports including permitting self-employed taxpayers to deduct the cost of health insurance in calculating payroll taxes (H.R. 1873), liberalizing the election of S-corporation status, and providing a de minimus exception to the passive loss rules, among others.

Mr. Mastromarco summarizes the findings of a report he prepared for the National Small Business Association entitled, "The Internal Revenue Code—Unequal Treatment Between Large and Small Firms." The report concluded that the tax code is replete with provisions that either expressly discriminates, or have the economic effect of discriminating, against small businesses in both intended and unintended ways.

During April 2003, the National Federation of Independent Business released its annual report entitled, "Top 10 Ways Congress Can Help Overtaxed Small Businesses." Ms. Dena Battle included a copy of this release in her testimony for the record and highlighted three recommendations in particular: (1) permitting the deductibility of health insurance premiums in calculating payroll taxes by passing H.R. 1873, the Self-Employed Health Care Affordability Act; (2) providing an annual standard home office deduction of \$2,500 (indexed for inflation); and (3) liberalizing the rules governing the depreciation of automobiles by allowing automobiles to be expenses.

On behalf of the U.S. Chamber of Commerce, Mr. Roy M. Quick testified in favor of a number of tax reform proposals to assist small businesses including permitting self-employed taxpayers to deduct health insurance premiums in calculating payroll taxes, per-

mitting the full deductibility of business meals, and making small business expensing permanent.

On behalf of Women Impacting Public Policy, Ms. Janet Poppen highlighted the need to permit self-employed taxpayers to deduct health insurance premiums in calculating payroll taxes. Her testimony also advocated additional relief by permitting a 100 percent deduction for medical expenses of individuals (not just limited to health insurance premiums). She also advocated other changes such as increasing the contribution limit to SIMPLE 401(k) plans, providing graduated corporate tax rates for Professional Corporations, and permitting the full deductibility of business meals.

For further information about this hearing, please refer to hearing report #108-29.

7.2.16 SMALL BUSINESS ACCESS TO HEALTH CARE

Background

On August 25, 2003, the Committee on Small Business held a hearing to examine small business access to health care in the state of West Virginia. The field hearing was held in Buckhannon, West Virginia along with Representative Shelley Moore Capito who also serves on the Small Business Committee. The hearing addressed the rising cost of health care to small businesses. Of the 43 million Americans without health insurance, 62 percent are either small business owners and their families or small business employees and their families. The problem of the uninsured is very clearly an issue of small business access to health care at reasonable prices. Well intentioned reformers in the states and in Congress, over the last decade, have managed to dramatically increase the cost of health care and have practically destroyed the small group market. This has led many companies to drop out of the small group market in states including West Virginia. In states where there is no competition for the small business dollar, prices will continue to rise. The National Association for the Self-Employed reported in a survey that seven out of ten small businesses do not provide health coverage to their employees mainly because of high costs.

Summary

The hearing consisted of the following witnesses: Cynthia B. Jones, Esq., West Virginia State Chamber of Commerce, Charleston, WV; Mr. Brian Elliot, Vice President, McGraw-Elliot Media Group, Elkins, WV; Ms. Jean Hawks, Owner, Fort Hill Child Development Center, Charleston, WV; Mr. Robert L. Williams, Executive Secretary, West Virginia Farm Bureau, Buckhannon, WV; and Mr. James N. Butch, President, Eagle Research Corp., Scott Depot, WV.

Ms. Jones related the state's history of premium increases for small businesses and projected that a small business providing health insurance to an employee with a family in 2007 would have to pay \$16,272 on average, compared to half that cost in 2001. She urged Congress to enact legislation to make health care more affordable to small business. Mr. Williams described the plight of the family farm and the difficulty of getting insurance for a small fam-

ily. Attempts by the state farm bureau to purchase group policies for their members were all ended by the insurance carriers because of profitability. Ms. Hawks, Mr. Elliot, and Mr. Butch all shared their experiences in securing health insurance for their small business' employees and the fact that their premiums had doubled over the past few years. All called for federal intervention to improve the small business health market in West Virginia. During questions the witnesses agreed that Health Savings Accounts, Association Health Plans, and tax credits for the uninsured would improve their options and the cost of health insurance in West Virginia.

For further information on this hearing, refer to the Committee publication #108-30.

7.2.17 ATTRACTING ECONOMIC GROWTH IN RURAL AMERICA

Background

On September 4, 2003, the Committee on Small Business held a hearing to hear testimony on attracting economic growth for the rural economy and whether the federal government is adequately supporting a policy of growth in rural portions of the country.

Census reports confirm that the slowest population growth in the country is occurring in rural states and in some areas population is even declining. A large part of this loss is the lack of opportunities available. As a key jobs producer, small business needs a good business climate in order to thrive and provide job opportunities to those living in rural areas. Without a healthy employment market workers and their families will continue to leave rural areas and settle in metropolitan areas. The transportation infrastructure of roads and airports built to serve the rural areas will be largely wasted, and the transportation modes in metropolitan areas will be strained beyond capacity.

The areas they leave behind deteriorate in many ways. Schools close down and consolidate; resulting in larger districts and longer commutes for children. Housing prices fall, affecting the wealth of homeowners. The property tax base is reduced that produces a cycle of cutbacks in social services, which results in the exodus of working age adults and their children from rural areas. This in turn stimulates still more of those able to move to do so, and the cycle is reinforced.

Summary

The panel of witnesses were: the Hon. Thomas Dorr, Undersecretary for Rural Development, United States Department of Agriculture, Washington, DC; the Hon. David Sampson, Assistant Secretary for Economic Development, United States Department of Commerce, Washington, DC; Mr. Gernard Ungar, Director of Government Business Operations Issues, General Accounting Office, Washington, DC; Mark Drabenstott, Vice President, Federal Reserve Bank of Kansas City, Kansas City, MO; and Mr. David Freshwater, Ph.D., Professor of Agricultural Economics, University of Kentucky, Lexington, KY.

Mr. Dorr testified that he is in charge of administering over 40 programs designed to increase economic opportunity and improve the quality of life for people living in rural areas. The RDA has a

portfolio of \$86 billion in outstanding loans. He estimated that in 2003 the RDA's programs created or saved 350,000 rural jobs. In his view, the rural economy is beginning to head in the right direction. President Bush's initiatives on tax cuts, business growth and energy are all vital parts of this equation.

Mr. Sampson spoke on the background of his agency, the EDA, since its founding in 1965. Since that time the EDA has invested over \$12 billion to help distressed rural areas create environments conducive to job growth and economic opportunity. There are no inherently low-tech industries, only low-tech companies that have not yet fully and effectively applied technologies. Deployment of modern technology, even in old-line industries, can open new doors of economic opportunity in rural America.

Mr. Ungar testified about the update to a study he prepared in 2001 regarding agency compliance with the Rural Development Act (RDA). Since its inception in 1972 the RDA has not resulted in many federal facilities being built in rural areas. His agency has found very little evidence that personnel involved in decision-making even considered rural areas in citing their facilities. However, all GAO recommendations contained in their 2001 report have been incorporated by the agencies with one minor exception. In 1989, 12 percent of federal employees were located in rural areas. In 2000, this figure was still 12 percent—meaning the RDA had no bottom line impact in percentage of federal jobs relocating to rural areas.

Mr. Drabenstott testified that the 30 years since the passage of the RDA have redrawn the rural landscape. The role of agriculture has diminished. Services have become a much bigger part of the rural economy, although rural areas have struggled to capture high-skill, high-wage service jobs. In the past, rural America relied heavily on manufacturing. Factories are the single biggest source of income to rural families, and often offer the highest wages in the area. Many of these factories moved to rural areas in the past in search of inexpensive land, labor and taxes. However these advantages are now being challenged by foreign locations that are still less expensive. Nearly 200 factories closed down in rural areas in 2002. Many of these opened up again in foreign countries.

Professor Freshwater spoke on rural manufacturing. He stated that manufacturing is crucial to most non-metropolitan counties east of the Mississippi, but these counties are facing limited success with their old development model. The Internet has had both positive and negative influences on rural America by allowing work to flow out as well as in. Internet booksellers for example have eliminated many small bookstores in rural areas but provided a way for users of high technology to relocate to more pastoral settings. Rural America is at the same time the least developed part of the industrialized world and the most developed part of the developing portion of the global economy. Federal policy cuts both ways. For example, electricity deregulation promises to equalize electricity rates across the nation, but low electricity rates were a critical factor in economic development in rural areas. Without that advantage attracting business will be more difficult.

For further information on this hearing, refer to Committee publication 108-35.

7.2.18 THE WTO'S CHALLENGE TO THE FSC/ETI RULES AND
THE EFFECT ON AMERICA'S SMALL BUSINESSES

Background

On September 10, 2003, the Committee on Small Business held a hearing to examine the World Trade Organization's (WTO) challenge to the Foreign Sales Corporation ("FSC") and Extraterritorial Income Exclusion ("ETI") rules of the Internal Revenue Code and the effect of this challenge on America's small business owners. This hearing followed an earlier hearing by the Committee on the same subject on May 14, 2003.

Like many other countries, the United States has long provided export-related benefits under its tax laws. For most of the last two decades in the United States, these benefits were provided under the FSC tax rules. In 2000, the European Union ("EU") succeeded in having the FSC regime declared a prohibited export subsidy by the WTO. In response to this ruling, the United States repealed the FSC rules and enacted the ETI tax rules. The EU immediately challenged the ETI regime in the WTO and, on January 14, 2002, a WTO appellate body held that the ETI regime constituted a prohibited export subsidy under the relevant trade agreements. During August of 2002, a WTO arbitration panel determined that the EU was entitled to over \$4 billion of annual countermeasures against the United States for failure to repeal its ETI rules. At the time of the hearing, the EU had not imposed sanctions against U.S. exports but strongly suggested it would if the ETI regime was not repealed before the end of 2003.

In order to bring the U.S. into compliance with the WTO ruling, Chairman Manzullo, together with Representatives Crane (R-IL) and Rep. Rangel (D-NY), introduced on April 11, 2003, H.R. 1769, the Job Protection Act of 2003. In brief summary, the Crane-Rangel-Manzullo bill would replace the current-law ETI benefit with an exclusion from tax of up to 10 percent of the income attributable to domestic production.

Summary

The first panel consisted of: the Hon. Philip M. Crane (R-IL) and the Hon. Sander M. Levin (D-MI). Representatives Crane and Levin contrasted H.R. 1769, the Job Protection Act of 2003, with H.R. 2896, the American Jobs Creation Act (introduced by the Hon. William M. Thomas (R-CA) on July 25, 2003). The witnesses praised H.R. 1769 as the appropriate response to the WTO challenge.

The second and final panel consisted of Ms. Kathryn Kobe, Chief Economist, Joel Popkin and Co., Washington, DC; E. Leon Trammell, Chairman, Tramco, Inc., Wichita, KS; Mr. Brian Doolittle, Vice President, Morton Metalcraft Co., Morton, IL; Mr. Owen Herrnsstadt, Director of Trade and Globalization, International Association of Machinists and Aerospace Workers, Washington, DC; and Mr. Lloyd Falconer, Secretary, Seward Screw Products, Seward, IL.

Ms. Kobe summarized the state of U.S. manufacturing as a sector struggling for survival. The number of manufacturing jobs de-

clined by 2.4 million between March 2001 and August 2003 (over 70 percent of the 3.3 million jobs lost in the private sector during that time period).

Mr. Trammel characterized U.S. manufacturing as “on life support.” He quantified the loss of FSC/ETI benefits to his company and urged the Congress to enact legislation similar to H.R. 1769. Mr. Doolittle stated that his company, Morton Metalcraft, is not a significant recipient of FSC/ETI benefits. Nevertheless, as a supplier to larger companies that utilize FSC/ETI such as Caterpillar Inc., he emphasized that what is good for the health of his customers is good for his company. He decried the loss of U.S. manufacturing jobs and praised H.R. 1769.

As with other witnesses on the panel, Mr. Herrnstadt spoke of the crisis in U.S. manufacturing. He described H.R. 1769 as “making a great deal of sense” and criticized a rival bill, H.R. 2896, as containing “a myriad of corporate tax cuts that will encourage U.S. jobs to move overseas.” Mr. Falconer opined that public policy should promote the export of products—not jobs. H.R. 1769 is a step in the right direction because it attempts to maintain the U.S. manufacturing base.

For further information on this hearing, refer to Committee publication #108–36.

7.2.19 NATIONAL SMALL BUSINESS WEEK: SMALL BUSINESS SUCCESS STORIES

Background

On September 17, 2003, the Committee on Small Business held a hearing to examine small business success stories. Each year for the past 40 years, the President of the United States has issued a proclamation calling for the celebration of Small Business Week. The celebration honors the estimated 25 million small businesses in America that employ more than half the country’s private work force, create three of every four new jobs, and generate a majority of American innovations. In recognition of National Small Business Week and the 50th Anniversary of the U.S. Small Business Administration, the Committee conducted a hearing focusing on several small businesses that embody the spirit of entrepreneurship.

Summary

The hearing was comprised of one panel of witnesses including: Maria Thompson President & CEO, T/J Technologies Inc., Ann Arbor, MI; Lurita Doan, President & CEO, New Technology Management, Reston, VA; Jordan Glazier, General Manager, Ebay Business, San Jose, CA; John Collins, CEO, Fortel, Inc., Washington, DC; Erica Kalick, President, Erica’s Rugelach & Baking Co., Brooklyn, NY; Dave Nenna, Administrator, Tule River Tribe, Porterville, CA; Randall D. Evans, President, AccounTeks Business Services, Silver Spring, MD; and Brendan Walsh, Co-Founder and Vice President, FedBid.com, Fairfax, VA.

Witnesses, in addition to sharing information about their businesses, discussed the importance of the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs to fostering innovation, the importance of Small

Business Administration (SBA) 7(a) lending and the Microloan program to providing the capital necessary for small business formation and growth, small business contributions to homeland security through new technologies and creativity, and the power of federal procurement when small businesses are allowed to compete fairly.

For further information on this hearing, refer to the Committee publication #108-37.

7.2.20 IS AMERICA LOSING ITS LEAD IN HIGH-TECH: IMPLICATIONS FOR THE U.S. DEFENSE INDUSTRIAL BASE

Background

The Advisory Group on Electron Devices (AGED) was constituted in 1945 to advise the Director of the Defense Research and Engineering (DDR&E) of the Department of Defense on investment strategy and analysis of selected issues. AGED is comprised of Army, Navy, Air Force, Defense Advanced Research Projects Agency (DARPA), National Aeronautics and Space Administration (NASA) and other agency representatives as well as Office of Secretary of Defense appointed industry and academic consultants.

On September 24, 2002, AGED held a forum with top Department of Defense (DOD) officials to inspect the loss of U.S. leadership in manufacturing and technology. Microelectronics was used as a case study to impute the more serious general findings on the state of manufacturing and technology in the United States. The forum revealed two key findings that nucleated wide spread consensus: (1) U.S. technology leadership is in decline, and (2) over the last decade, profound changes in the R&D base are adversely affecting cutting edge electronics for warfighter superiority and may potentially slow the engine for economic growth.

Summary

The hearing, held on October 16, 2003, had one panel comprised of three witnesses: Mr. Thomas Hartwick, Ph.D., Chairman, Advisory Group on Electron Devices, Snohomish, WA; Thomas R. Howell, Esq., DeweyBallatine, LLP, Washington, DC; and Mr. Ronald Sega, Director, Defense Research and Engineering, United States Department of Defense, Washington, DC.

Dr. Sega told the Committee that “[a]dvanced electronics are critical to the Department. In fact, it is one of the 12 major elements of the Defense technology area plan and one of the ten major research areas of the basic research plan.”

Dr. Hartwick testified that offshore movement of intellectual capital and industrial capability, particularly in microelectronics, has impacted the ability of the U.S. to research and produce the best technologies and products for the nation and the warfighter. Further, the movement of manufacturing plants offshore breaks up enterprise clusters and destroys the infrastructure for new business and new products.

Mr. Howell elaborated on extensive research he conducted on what governments outside the United States are doing to promote their high technology industries, with a particular focus on the semiconductor industry, and the challenges these government measures pose for us. One example is the shift of global shipped

consumption. By 2005, the U.S. share of semiconductor devices being put into high-tech systems is going to shrink to 18 percent (from 33 percent in 1997) and Asia Pacific's share will grow to 40 percent and is accelerating.

The hearing concluded with the Chairman's request of the parties to help the Committee develop a leadership strategy on several of these issues. For further information on this hearing, refer to Committee publication 108-41.

7.2.21 THE OFFSHORING OF HIGH-SKILLED JOBS: PART II

Background

The purpose of this hearing, held on October 20, 2003, was to highlight the fact that although the U.S. economy has recovered from the most recent recession, it has largely been a jobless recovery. Even when jobs are created, they tend to be low-paying service sector jobs. Concurrently, we have a sharp rise in productivity, but behind the veil we find that much of it can be attributed to a sharp rise in offshoring of both manufacturing and high-tech service jobs. The discussion focused on the types of jobs being offshored, as well as the degree to which companies will go to replace high-skilled U.S. workers with foreign workers. Further, according to a recent report by the Federal Reserve Bank of New York, what we are experiencing are permanent structural shifts in the distribution of workers throughout the economy, which has contributed significantly to the sluggishness in the job market.

Summary

There were four witnesses on the panel: Mr. Harris Miller, President, Information Technology Association of America, Arlington, VA; Mr. Ron Hira, Ph.D., P.E., Chair, Research and Development Policy Committee, Institute of Electrical and Electronics Engineers, Washington, DC; Ms. Natasha Humphries, Santa Clara, CA; and Mr. Robert Dupree, Vice President, American Textile Manufacturers Institute, Washington, DC.

All members of the panel agreed that the U.S. faces unprecedented challenge regarding the types of jobs open to global competition. The advent of high-speed Internet has changed the nature of competition for talent. One panelist, Natasha Humphries, went further. She testified that as a senior technology professional for a major high tech firm she was forced to train less qualified technicians in India to do her job. Shortly after the training was complete, the company fired her. Additional discussion focused on the fact that U.S. workers in manufacturing and high tech are finding that no matter how well they hone their skills, additional education and training are no competition for the significantly lower-costs of cheap foreign labor. Panelists agreed that more support for displaced workers was needed, along with more government support for collaboration between industry, academia, workers, and governments to identify policies to meet these global challenges.

For further information about this hearing, please refer to committee publication #108-42.

7.2.22 LOWERING THE COST OF DOING BUSINESS IN THE
UNITED STATES: HOW TO KEEP OUR COMPANIES HERE

Background

The purpose of this hearing, held on November 20, 2003, was to consider the strains placed on U.S. businesses that rely on domestic visa policies to aid their ability to export goods and services. Generally, the visa restrictions implemented since 9/11 could be changed administratively in a very short period of time, without legislation, so as to ease the way for foreign nationals to do business with and spend money in the United States without threatening our national security. Currently, the United States is needlessly losing tens of millions of dollars in lost business due to burdensome visa requirements and significant backlogs in applicant processing.

Summary

There were four witnesses for the panel: Mr. Robert Kapp, President, U.S.-China Business Council, Washington, DC; William Norman, President and CEO, Travel Industry Association of America, Washington, DC; Randel Johnson, Vice President, United States Chamber of Commerce, Washington, DC; and Palma Yanni, President, American Immigration Lawyers Association, Washington, DC.

All members of the panel expressed frustration with the slowness and difficulties of working with the various executive agencies responsible for reviewing and approving visa applications. Each member stated that there are approximately 21 different agencies involved in the process and not one knows what the other is doing. They also complained that this cloud of confusion makes it impossible to identify any one person or agency that can resolve these issues. With numerous meetings between the organizations represented by the panelists and the various agencies since 9/11, the testimony was unanimous that very little improvement has been made in the speed of processing visas or the transparency of the process within executive agencies. They urged Congress to appropriate more money for additional resources to the State Department to handle the increased responsibilities. They also requested that Congress relieve the State Department of several deadlines that will be extremely difficult to meet and only cause even greater delays.

Finally, the Chairman proposed the creation of a multi-entry business class visa for Chinese visitors. This would alleviate the hassle of forcing previously approved business visitors from China to reapply and re-interview every time they want or need to come here to buy or inspect American-made goods.

For further information about this hearing, please refer to committee publication #108-46.

7.2.23 INCREASING THE COMPETITIVENESS OF U.S. MANUFACTURERS IN PENNSYLVANIA

Background

On December 1, 2003, the Committee on Small Business held a hearing to examine ways to increase the competitiveness of domestic manufacturers in Pennsylvania. The field hearing was held in Altoona, Pennsylvania, along with Rep. Bill Shuster, a member of the Committee. Issues that impact the competitiveness of manufacturers include producing a skilled workforce; identifying and mitigating harmful regulations; reforming the tax code to encourage retention, fostering innovation; and enforcing trade agreements. By December 2003, 2.8 million manufacturing jobs had been lost in the previous 38 months. Efforts to try to encourage domestic manufacturing included additional government procurement of American made goods through "Buy America" provisions in legislation; enactment of tax relief to domestic manufacturers; stopping foreign governments from manipulating their currencies, and reducing the cost of health care and regulatory compliance to employers.

Summary

The hearing was comprised of one panel of witnesses: Mr. William Yankovich, Plant Manager, General Cable Corp., Altoona, PA; Mr. Edward Silveti, Executive Director, Southern Alleghenies Planning and Development Commission, Altoona, PA; Mr. Michael McLanahan, President, McLanahan Corp., Hollidaysburg, PA; Mr. Ben Stapelfeld, Chairman of the Board, New Pig Corp., Tipton, PA; Mr. John Showalter, Mill Manager, Appleton Papers Corp., Roaring Spring, PA; and Mr. Timothy, President, Reliance Savings Bank, Altoona, PA.

Mr. Showalter discussed the difficulties in the paper industry and the effects of foreign competition. Competitors in Asia for the same business do not have the billions in added cost to the industry of environmental, health, and safety regulations. Foreign governments also aid their domestic industries with land seizures, forgiveness of defaulted loans, and low wages. To assist the U.S. paper industry and manufacturing in general he outlined several recommendations: enacting a lower tax rate for manufacturers; allowing for full and immediate depreciation for capital investments; providing tax credits for incremental hiring; providing tax credits for training and retraining workers; instituting higher health, environment, and safety tariffs for developing countries; and strengthening "Buy America" provisions in federal procurement.

Mr. Sissler described the changing environment in Blair County. Manufacturing in the county has gone from representing half of the local economy to just fewer than 18 percent of all economic activity. He discussed the stigma attached to traditional "blue collar" work and the transformation in manufacturing to high-skilled now dubbed "gold collar" jobs. Addressing the rising costs of health care, and ensuring a level playing field in the international arena top his list of recommendations.

Mr. Yankovich explained the challenges to manufacturers of wire and cable. Issues critical to his business include the passage of an

energy bill to ensure stable energy prices; making permanent the tax cuts to provide certainty in planning; and removing the steel tariffs that dramatically increase the cost of raw material inputs for his products. Mr. Stapelfeld and Mr. Silvetti both described challenges unique to their areas of expertise and called on Congress to reduce the cost of doing business in the United States.

For further information on this hearing, refer to the Committee publication #108-47.

7.2.24 REAL ESTATE SETTLEMENT PROCEDURE ACT REGULATIONS: WORKING BEHIND CLOSED DOORS TO HURT SMALL BUSINESSES AND CONSUMERS

Background

On Tuesday, January 6, 2004, the Committee on Small Business held a hearing to examine the Department of Housing and Urban Development's (HUD) compliance with the Regulatory Flexibility Act (RFA) in the development of proposed rules modifying the implementation of the Real Estate Settlement Procedures Act (RESPA). RESPA was enacted in 1974 with the intention of providing purchasers of residential estate greater clarity in the settlement process. Six years later, Congress enacted the RFA, which requires federal agencies to examine the impact of their proposed rules on small businesses.

After many years of controversy and significant litigation, HUD determined that it was appropriate to modify the regulations implementing RESPA. The primary points of the proposal were the requirement to provide a good faith estimate of the closing costs that the purchaser will face and the option to offer a guaranteed mortgage package (including a fixed interest rate) that would be protected under the "safe harbor" provisions of RESPA.

Since the Committee's last hearing on this topic, HUD transmitted for review by the Office of Management and Budget (OMB) a draft final regulation on December 18, 2003 adopting modifications to its RESPA rules despite promises to Congress that HUD would not finalize the RESPA rule while Congress was out of session. Thus, a second hearing was called to bring attention to this matter once again.

Summary

The hearing consisted of one panel. The Hon. Alphonso Jackson, Acting Secretary, Department of Housing and Urban Development, Washington, DC was invited to testify. He declined but a place at the table was left open for him if he decided to appear. The other members of the panel were: the Hon. John Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC; Mr. Marc Savitt, Eastern Regional Vice President, National Association of Mortgage Brokers, McLean, VA; Mr. Stanley Friedlander, President, Continental Title Agency, Cleveland, OH; Mr. Walter McDonald, Owner, Walter McDonald Real Estate, Riverside, CA; Mr. R. Michael Menzies, Sr., President and CEO, Easton Bancorp, Easton, MD; and Ms. Regina Lowrie, President and CEO, Gateway Funding Diversified Mortgage Services, Fort Washington, PA.

Dr. Graham testified about the procedures that the Office of Information and Regulatory Affairs (OIRA) used to implement Executive Order 12,866. He explained that OIRA has up to 90 days to review the regulation but does not necessarily utilize the entire time period. Dr. Graham also noted that he was willing to meet with interested parties concerning OIRA's review of the regulation as authorized by the Executive Order. Dr. Graham also testified that, in reviewing the final package, his office would pay close attention to compliance with a letter his office sent to HUD after release of the proposed rule concerning modifications to the initial regulatory flexibility analysis and the underlying economic analysis.

Mr. Savitt first qualified his testimony (as did all the other witnesses) by noting that no one had seen the final draft submitted to OIRA. Thus, his testimony (as was all other witnesses) based on his assessment of the proposed rule. Mr. Savitt explained the operation of the proposal and the adverse consequences it would have on mortgage brokers. He then claimed that HUD did not comply with the RFA because it: (1) underestimated the impact on small business; (2) failed to consider alternatives would reduce adverse impact on mortgage brokers; and (3) miscalculated the record-keeping and reporting costs associated with the proposed rule. Mr. Savitt concluded his testimony by hoping that the OIRA review process will protect small businesses such as mortgage brokers

Mr. Friedlander, on behalf of the American Land Title Association (ALTA), noted that the proposal would affect title insurers and abstractors—the vast majority of which are very small businesses. Mr. Friedlander went on to testify that the guaranteed mortgage packaging proposal would limit consumer access to and choice of settlement service providers. He then explained that a guaranteed mortgage package incorporating a guaranteed interest rate only could be packaged by lending institutions that have the financial wherewithal to undertake protective hedge transactions in the commodity markets. He concluded that the board of ALTA authorized litigation if the final rule was sufficiently similar to the proposed rule that none of the deficiencies were cured.

Mr. McDonald, testifying on behalf of the National Association of Realtors, noted that they support reformation of the RESPA rules to simplify the process for home purchasers. He then laid out the position of the Realtors that the proposed guaranteed mortgage package would hurt small businesses. Packages only would be available from lenders because of the fixed interest rate requirement. Lenders also would not be required to disclose the contents of the package just the final price. And without knowing what is in the package, consumers would be unable to shop services to other small businesses thereby potentially putting them out of business if packaging became the mainstay of the settlement industry. Mr. McDonald also noted that marketplace changes occurred resulting in the offering of settlement packages with fixed interest rates. Given the significance of the proposal and the changes in the marketplace, Mr. McDonald concluded that HUD should table the draft final rule and issue a new proposed rule.

Mr. Menzies, testifying on behalf of the Independent Community Bankers Association, suggested that a significant change between

the proposed and final rule should result in the reissuance of the draft final rule as a new proposed rule so that HUD has the benefit of industry input. Mr. Menzies does not believe a small bank has the resources to provide a guaranteed mortgage package with a fixed interest rate. He noted that HUD did not accurately assess the impact of the proposal on small banks such as Easton Bancorp. Mr. Menzies suggested that Congress take appropriate action, if necessary, as permitted under the Congressional Review Act to overturn a final rule that is similar to the proposed rule.

Ms. Lowrie, testifying on behalf of the Mortgage Bankers Association, noted that the draft final rule represented the most fundamental change ever to occur in the mortgage finance industry. While the association supports reform, the proposal issued by HUD is flawed and a new proposal should be published rather than rushing to judgment on a bad final regulation. In particular, Ms. Lowrie raised concerns that the final rule may contain exemptions and “safe harbors” under section 8 of RESPA that would create serious loopholes; the most problematic of these are kickback payments and referral fees. Ms. Lowrie concluded her testimony by reiterating her request for a new proposed rule rather than ill-thought actions may damage consumers, small businesses, and undermine the vitality of the residential real estate market.

In sum, the Committee concluded that the proposed RESPA rule should not have been transmitted for review by OMB as the next to last step in the regulatory finalization process but instead should either be reworked and reissued as a new proposed rule or be abandoned altogether because of the rules’ negative effect upon small real estate settlement providers. On March 22, 2004, HUD voluntarily withdrew their RESPA proposal from further consideration by OMB. For further information, please refer to Committee publication #108–48.

7.2.25 CAN U.S. COMPANIES COMPETE GLOBALLY USING AMERICAN WORKERS?

Background

Although the U.S. has seen growth in the economy with signs of an improving manufacturing sector, there is still something missing: high-value jobs. In search of ever cheaper yet equally qualified foreign labor, corporations leave behind the very American workers that built them. The argument cited most often is that these companies must compete globally; but cannot do so with expensive American labor.

As a result of increasing pressure from Wall Street to meet or beat quarterly earnings estimates, corporations continually find themselves focused on short-term costs versus long-term value. The end result has been a slew of corporate accounting scandals, all to artificially boost stock value. More pressing, however, is how this myopic style of management has negatively impacted small business, particularly manufacturers. Small manufacturers are being cut out of the supply chain of large companies, which are going overseas in droves. With the loss of 2.8 million jobs, almost all in manufacturing, the purpose of the hearing was to demonstrate that

companies must think differently about using American workers to win business globally.

Summary

This hearing, held on January 21, 2004, brought together top minds on the subjects of shareholder value, corporate governance, and long-term strategic thinking to bring into focus the negative impact of short-term decision-making. The topics discussed included what it means to the American economy and what role, if any, should the federal government play in helping to improve global competitiveness.

The hearing consisted of two panels. Panel one was comprised of Mr. Allan Kennedy, Management Consultant, Boston, MA; Ms. Constance Bagley, Esq., Associate Professor of Business, Harvard Business School, Cambridge, MA; and Ms. Laurie Bassi, Ph.D., CEO and Managing Partner, McBassi and Co., Washington, DC. The second panel had one witness, Mr. Anthony Wilkinson, President and CEO, National Association of Government Guaranteed Lenders, Inc. of Stillwater, OK.

Mr. Kennedy briefly chronicled the history of business, evolving from small family-owned shops run by family leadership into larger ones, while professional managers more beholden to increasing the value of the company than the long-term survival of the family business. They are financially oriented, because it is easy to measure finances short-term, because most managers have a fairly short-term perspective, unlike family members or family run firms. This short-term pressure leads managers to adopt techniques such as downsizing, re-engineering, outsourcing techniques to increase the short-term earnings of the business, often at the expense of the long-term viability of the business.

Ms. Bagley began her testimony by stating that we have been assailed with the mantra that corporate directors must maximize value for the shareholders, even if that means laying off long time employees and shutting down company towns. Ms. Bagley also touched on the actions of the Delaware Supreme Court regarding shareholder value. In short, the Court decided that businesses directors may choose to do anything in the name of the shareholders even if it imposes costs on others without their consent, but they are not legally required to do so.

Dr. Bassi concluded the first panel by discussing the difference between the pursuit of the highest quarterly earnings and investing in the education and training of their employees. Despite the assumption that investing on training can sometimes reduce quarterly earnings, Dr. Bassi showed evidence that investing heavily in employee training showed better stock results than not doing so. Dr. Bassi also suggested that Congress should follow the lead of other industrialized nations and require the appropriate federal agencies to begin to systematically study what it will take to transform our industrial-era accounting system, which recognizes people only as costs, into a knowledge-era accounting system that recognizes people as investments.

Mr. Wilkinson was the lone witness on the second panel. Mr. Wilkinson focused his testimony on the vibrancy of the Small Business Administration's (SBA) 7(a) program, which was off the topic

of the hearing. He focused particularly on the caps imposed by the SBA on loan amounts to keep the 7(a) program functional until the beginning of the new fiscal year.

In sum, the Committee learned that businesses can and will thrive by adopting long-term plans versus a myopic fixation on meeting or beating quarterly estimates. For further information about this hearing, please refer to Committee publication #108-50.

7.2.26 THE PRESIDENT'S PROPOSED BUDGET FOR THE SMALL BUSINESS ADMINISTRATION FY 2005

Background

On February 11, 2004, the Committee on Small Business held a hearing on the President's proposed FY 2005 budget as it affected small business. The Congressional Budget Act of 1974 requires the Committee to recommend budget levels and report legislative plans within the Committee's jurisdiction to the Committee on Budget.

The hearing focused on whether the proposed budget adequately addressed the needs of the small businesses of this nation. The Committee was interested in determining if the Administration's proposed budget adequately addressed the needs of the small business community, while taking into account real budgetary constraints. In addition, the Committee was particularly interested in a solution proposed by the Administrator of the Small Business Administration (SBA), Hector Barreto, to restore the 7(a) business loan guarantee program to its full statutory level such that it does not involve raising borrower fees, requiring more appropriations, or reprogramming accounts within the SBA. Overall the Committee was seeking views concerning SBA's past performance and how the delivery of services by SBA, to this nation's small businesses, could be improved in the future.

Summary

The hearing was comprised of two panels. The first panel had one witness, the Hon. Hector Barreto, Administrator, United States Small Business Administration, Washington, DC. On the second panel was Mr. Lee Mercer, President, National Association of Small Business Investment Companies, Washington, DC; Mr. Donald Wilson, President and CEO, Association of Small Business Development Centers, Burke, VA; Mr. Chris Crawford, Executive Director, National Association of Development Companies, McLean, VA; Anthony Wilkinson, President, National Association of Government Guaranteed Lenders, Stillwater, OK; Phil Pegg, Jr., CEO, 4D Solutions, Inc., Boyertown, PA; David Pilcher, CFO, Ted R. Sanders Moving and Storage, Nashville, TN; John Sprague, Managing Partner, Everglades Adventures, Pahokee City, FL; and Elliot Moses, CEO, Daco Enterprises, Inc, Sandy, UT.

SBA announced that their plan to restructure the 7(a) lending program to a zero subsidy rate could effectively return the program to its statutory levels and adds additional lending capacity. Administrator Barreto asserted that if the SBA fix were to be implemented, it would constitute a tremendous savings to the American taxpayers by avoiding the need for increased budgetary authority in order to ensure the solvency of this crucial loan program. More-

over, SBA plans to strengthen core service delivery systems to better serve the growing needs of the small business community. The proposal includes investing \$88 million for small business development centers, \$5 million for the Service Corps of Retired Executives, \$12 million for women's business centers, \$750,000 for National Women's Business Council, \$750,000 for Veteran's outreach, and \$1.5 million for 7(j) technical assistance.

Donald Wilson testified that the SBA budget, proposed by the Administration, is too small compared to the growing needs of the small business community. Similarly, Anthony Wilkinson, David Pilcher, and Phil Pegg Jr., all expressed strong support for the 7(a) loan program, and added that there exists a desperate need for the program to receive adequate funding. Moreover, caps on loan sizes could prove detrimental to many small businesses that utilize the program productively. Lee Mercer stated in his testimony that the Small Business Investment Company (SBIC) initiative badly needs restructuring, and that the SBA ought to consult with small businesses before making changes to ensure negative consequences are mitigated. Mr. Mercer also pointed out that the proposed SBA fix would not solve the problems currently plaguing the program. Chris Crawford stressed the need for the SBA Reauthorization Bill (HR 2802) to pass in order for the 504 program to maintain solvency since the fee structure, which funds the program, must be reauthorized in the bill for it to continue.

For further information on this hearing refer to Committee Publication 108-52.

7.2.27 AVAILABILITY OF CAPITAL AND FEDERAL PROCUREMENT
OPPORTUNITIES TO MINORITY-OWNED SMALL BUSINESSES,
FIELD HEARING, CHICAGO, IL

Background

On Tuesday, February 17, 2004, the Committee on Small Business held a field hearing in Chicago, Illinois to learn from small business owners, especially minority-owned firms, about problems that they were facing in obtaining access to capital and in finding contracting opportunities in the federal government.

This oversight hearing provided an opportunity for small businesses to express their views as to the success or failure of the private and public sectors to meet the capital needs of small businesses in the Chicago area, especially the needs of African-American and other minority-owned small businesses. The hearing also provided oversight of SBA's and other federal agencies' efforts to assist small businesses in finding real federal procurement opportunities.

Summary

The hearing was comprised of two panels. The first panel was: Mr. Obie Wordlaw, Chairman & CEO, JERO Medical Equipment & Supplies, Chicago, IL; Ms. Neli Vazquez-Rowland, M.Y.S. Interiors, Mt. Prospect, IL; Ms. Charlotte Harrison, President and CEO, Millennium Data Systems, Chicago, IL; Mr. Frankie Redditt, President and CEO, Ashley's Quality Care, Inc., Chicago, IL; Mr. Bruce Montgomery, President, Montgomery & Company, Chicago,

IL; and Mr. Emmett Vaughn, Chief, National Diversity Sourcing Relations, Albertsons, Inc., Boise, ID. The second panel was comprised of: Ms. Judith Roussel, District Director, United States Small Business Administration, Chicago, IL; Ms. Linda Oliver, Deputy Director, Small and Disadvantaged Business Utilization, Department of Defense, Washington, DC; Mr. Sean Moss, Director, Small and Disadvantaged Business Utilization, United States Department of Transportation, Washington, DC; Ms. Patricia Bamford, Chief of the Acquisition and Assistance Branch, Resource Management Division, United States Environmental Protection Agency, Washington, DC; Mr. Scott Denniston, Director, Small and Disadvantaged Business Utilization, United States Department of Veterans Affairs, Washington, DC; Ms. Tracye Smith, Executive Director, Chicago Minority Business Development Council, Chicago, IL; Mr. Eric Dobyne, Regional Director, Minority Business Development Agency, United States Department of Commerce, Chicago, IL; Mr. James Handley, Regional Administrator, General Services Administration, Chicago, IL; and Mr. William Leggett, President, Collectors Training Institute, Chicago, IL.

Mr. Wordlaw expressed the view that private and public agencies had failed to provide procurement opportunities and meet the capital needs of African-American small businesses. It was suggested, as one remedy, that the Small Business Administration (SBA) initiate a new program of direct loans rather than relying on the present 7(a) loan program where the local banks loan the money and the SBA guarantees repayment of a portion of the amount borrowed. Ms. Rowland, representing the Greater Illinois 8(a) Procurement Association, disagreed with the policy to delegate out to other agencies the 8(a) program functions that used to be preformed by the SBA. She recommended that the SBA be a party to the agreement with the contracting agency and should assist 8(a) businesses with preparing proposals, as well as negotiating and administering contracts.

Ms. Harrison felt that the employees of the SBA did care about creating a fair and level playing field in the federal procurement arena, but that SBA lacked the enforcement authority to see that small businesses are in fact fairly treated. Ms. Redditt expressed the view that slow payment by government agencies inhibits the growth of small businesses and their ability to access capital, even with the assistance and backing of SBA. Mr. Montgomery cited the fact that African-Americans have started businesses at a faster pace in the past ten years, despite the fact that they were unable to gain ready access to equity capital or capital markets. It was suggested that more thought be given to opening the capital markets and sources of venture capital to African-Americans aspiring to start or grow small businesses. Mr. Vaughn attributed a significant portion of the investment in the African-American small business community to the SBA.

Ms. Roussel underscored the recent announcement that "SBA guaranteed a record number of loans last year, with double digit increases in the percentage of loans to women, Hispanics, African Americans and Asian Americans." Ms. Oliver pointed to the fact that DOD had not met the procurement goal for service-disabled veterans but that a new law had provided the needed tool for turn-

ing the number around by permitting agencies to set-aside contracts for service-disabled veterans. Sean Moss stated that over the past three years DOT had awarded \$3.476 billion to small businesses, including women-owned and disadvantaged small businesses, which represented 42 percent of DOT's total prime contract dollars. In addition, last year, almost 20 percent of the DOT small business dollars went to women and minority owned small businesses. Ms. Bamford reported that in FY2003 EPA awarded over 31 percent of its net obligations to small businesses and in the same fiscal year, EPA Region 5, which includes Chicago, awarded over 34 percent of its net obligations to small businesses.

Mr. Denniston reported that the VA consistently exceeds the statutory small business and small disadvantaged business goals, and that it is one of the few agencies that meets the 3 percent goal set for HUBZone small businesses. Further, he stated that last year the VA spent \$2.6 billion with small business and that accounted for about 30 percent of VA's purchases. Ms. Smith observed that the "SBA 7[a] and 504 loan programs are working fine." It was suggested that what was needed was working capital for small businesses already established. Mr. Dobyne stated that the MBDA, an agency within the Department of Commerce, had shifted its emphasis with respect to its strategic growth initiative to minority business enterprises that were growing rapidly or were in high growth industries. MBDA had set a goal of securing \$36 million in financial and procurement opportunities for minority businesses within the region that includes the city of Chicago. Mr. Handley reported that a top priority of the Bush Administration was to maintain the prosperity of the small business community and that in FY2003 GSA spent \$6 billion for goods and services purchased from small businesses out of the \$15 billion it had to spend. Mr. Leggett was concerned that small businesses were not obtaining the access to capital necessary for sustained growth.

In sum, the Committee concluded that while much progress has been made in increasing access to capital and federal procurement markets for minority entrepreneurs, much work remains to be done. For further information about this hearing, please refer to Committee publication #108-53.

7.2.28 SPIKE IN METAL PRICES: WHAT DOES IT MEAN FOR SMALL MANUFACTURERS?

Background

The lifting of the steel tariffs in December of 2003 should have triggered a drop in steel prices for U.S. manufacturers that had experienced up to 50 percent cost increases during the 18-month tariff period. Instead, steel prices surged following the end of the tariffs. According to one industry source, scrap steel was selling for \$100 to \$120 a ton at the end of 2003. In January, it spiked to \$210 a ton and increased another \$50 to \$60 by the end of February.

Many in the industry attribute the spikes to intense demand from the People's Republic of China (PRC). Some estimate that exports of scrap are up more than 60 percent from two years ago. The

massive industrialization of China has also increased demand, and thus the prices, for other metals.

The goal of the hearing, held on March 10, 2004, was to discover what caused various metals prices to rise so high and so fast, and also what affect it has had on U.S. small manufacturers. In the case of steel, domestic prices were expected to decrease or at least remain the same, as the U.S. marketplace was open again to full competition from abroad after the tariffs were lifted. In fact, the opposite happened.

Summary

The hearing consisted of one panel: Mr. Wilbur Ross, Chairman of International Steel Group, Inc., New York, NY; Mr. Emanuel Bodner, President, Bodner Metal and Iron Corporation, Houston, TX; Mr. Wayne Atwell, Managing Director, Morgan Stanley, New York, NY; Ms. Barbara Hemme, Corporate Secretary and Comptroller, Youngberg Industries, Belvidere, IL; Mr. William Hickey, Jr., President, Lapham-Hickey Steel Corporation, Chicago, IL; Mr. Kyle Martinson, Director of Purchasing, Revcor, Inc., Carpentersville, IL; Mr. Robert Stevens, CEO, Impact Forge, Inc, Columbus, IN; Mr. Les Trilla, President, Trilla Steel Drum Corp., Chicago, IL.; and Mr. William J. Klinefelter, Legislative and Political Director, United Steelworkers of America, Washington, DC.

Mr. Ross began the testimony by explaining that steel prices have gone up due, in large part, to the bankruptcy shutdown of the LTV and Acme facilities, roughly 10 percent of the American industry. Mr. Ross also cited the President's imposition of temporary tariffs as a secondary (albeit less crucial) cause of the spike. Despite the increased price for their product, Mr. Ross explained that steel companies are not reaping the benefits, as shown through the large number of bankruptcies and the fact that most steel companies had been unprofitable in nearly each quarter since 2000.

Scrap, the primary raw material used in mini-mills to produce steel, has also seen a significant run up in price. Mr. Bodner, owner of a scrap metal yard in Houston, Texas, testified that scrap is an internationally traded commodity. Because of this status, wide variations in the price of scrap are commonplace. He also pointed out that many experts, including some steel producers, blame the additional costs of energy, coking coal, and transportation as major contributors to the recent rise in price.

Mr. Atwell also provided other factors causing the price spike. Primary among them is the sharp economic growth in China and corresponding weak U.S. dollar. The weak U.S. dollar has driven up the cost of imports, which has provided a pricing umbrella over the domestic steel industry, surmised Mr. Atwell. Additionally, Mr. Atwell testified that China's steel consumption has grown much faster than anticipated and has put a strain on the global raw-material industry.

Mr. Stevens pointed out the strong correlation between rising steel prices and rising scrap prices. He suggests that steel scrap exports from the U.S. increased due to surging foreign demand and, at the same time, other countries limit or prohibit their own scrap exports. To correct this fundamental market imbalance, Mr. Stevens advocates the temporary imposition of export restrictions by

the U.S. Secretary of Commerce on domestic scrap steel. To date, Mr. Stevens' group, the Emergency Steel Scrap Coalition, has yet to file the necessary paperwork with the Department of Commerce to initiate such actions.

Messrs. Hickey, Trilla, and Martinson, as well as Ms. Hemme all testified as to how these spikes are affecting each of their businesses. Each offering varying degrees of prices, all of which were significantly higher than the same period a year earlier, as well as shortages in material. Each stated that lay-offs or worse could occur at each of their businesses if prices do not fall back to normal in short order.

Mr. Klinefelter testified that these price increases would be, in all likelihood, temporary, due to a number of factors including rising input costs, reduced inventories, reduced steel-making capacity, and the decline of the U.S. dollar. He also testified that after the events of the last six years, the recovery in steel prices is necessary if the industry is to provide a return for shareholders and workers, attract capital investment, and continue to grow so that it may remain a reliable low-cost supplier for the manufacturing sector.

In sum, the Committee concluded that the federal government must pay closer attention to this growing problem or risk losing the small metal-bending manufacturing base in this country. For further information about this hearing, please refer to Committee publication #108-57.

7.2.29 SPIKE IN METAL PRICES—PART II

Background

On March 10, 2004, the Committee held a hearing examining the sudden and unexpected rise in the price of steel. Unfortunately, this phenomenon is not limited to steel alone, as other metals such as copper, nickel, and aluminum are also seeing severe price increases. For example, the price of copper soared to an eight-year high of nearly \$3,000 a metric ton during the third week in February and the price of nickel has more than doubled in the last year.

The goal of the hearing, held on March 25, 2004, was to discover what caused non-ferrous metal prices to rise so high and so fast, and also what affect it has had on U.S. small manufacturers. The hearing also discussed possible remedies to help alleviate the crisis in the rapid increase in the price of all metals for small manufacturers.

Summary

The hearing consisted of one panel: Ms. Constance Holmes, Senior Economist and Director of International Policy, National Mining Association, Washington, DC; Mr. Ed Cowan, Vice President for Manufacturing, Beck Aluminum Corp., Cleveland, OH; Mr. Joseph Rupp, President and CEO, Olin Corp., Norwalk, CT; Mr. John Lindstedt, President, Artistic Plating, Inc., Milwaukee, WI; Ms. Charlotte Vincer, Owner and Sales Manager, Riverside Spring Co., Rockford, IL; and Mr. Patrick Loftus, President, High Steel Structures, Inc., Lancaster, PA.

Ms. Holmes began the discussion explaining the need for a national policy on mining and the need to streamline the process in which mining companies apply for and obtain the necessary permits to explore, develop, and operate mining related facilities. Ms. Holmes testified that world production of metals and raw materials has not increased appreciably over the last five years as price levels, reacting to a surplus, have been low enough to discourage investment in exploration and development activities that must precede an increase in metals and minerals production.

Mr. Cowan focused his testimony on the aluminum market, where prices had risen approximately 22 cents per pound over the previous two years. Mr. Cowan suggested that the most glaring reason for the price increase was the Chinese duty on imported primary metal, which makes the cost of primary aluminum in China artificially high and allows Chinese customers to substitute scrap in some applications at higher prices than can be afforded by other world consumers.

Mr. Rupp centered his testimony on the copper industry. China, Mr. Rupp surmised, has an insatiable demand for copper scrap, copper-alloy scrap, and copper cathode that it cannot satisfy from its indigenous reserves. This intensity is seen in the high prices and immediate cash payment offered by Chinese agents to U.S. scrap dealers. Mr. Rupp testified that the Chinese government's manipulation of their currency, the Value Added Tax (VAT) rebate Chinese importers receive from their government and various other subsidies make it next to impossible for American firms to compete.

Mr. Rupp testified on behalf of the Copper and Brass Fabricators Council, which following this hearing, filed a short supply petition with the Department of Commerce which requested that the government exercise its legal authority by temporarily monitoring and restricting U.S. exports of copper scrap and copper-alloy scrap. The petition was denied because the Commerce Department found no adverse affect on the American economy as the rapid price increases reached a plateau during the spring.

Mr. Lindstedt's testimony focused on the nickel industry, which Mr. Lindstedt has seen a 300 percent increase from 2002 through March 2004. Mr. Lindstedt suggested a regulatory change that would be beneficial to his industry. Under the current regulatory framework for managing the nation's industrial waste, Mr. Lindstedt estimates that the average metal finishing facility throws away and estimated \$40,000 to \$50,000 annually in metals. The U.S. Environmental Protection Agency (EPA) is working on a rule to address this issue for several years and Mr. Lindstedt requested Congressional help in moving this rule along.

Ms. Vincer and Mr. Loftus were invited to the hearing to provide additional information on the price of steel. Unfortunately, no relief had occurred prior in the few weeks between the Committee's two hearings, and Ms. Vincer and Mr. Loftus re-hashed several on the problems facing her company that were brought to light during the Committee's March 10, 2004 hearing.

In sum, the Committee concluded that the Bush Administration should explore the viability of the following possible solutions:

- (1) Continue to fight unfair trade practices, including illegal government currency manipulation;

(2) Pass H.R. 3716, authored by Representative Phil English of Pennsylvania, to allow U.S. petitioners to file countervailing duty trade cases against non-market economies like China to combat illegal government subsidies of private industry;

(3) Consider export controls on scrap steel or, if the Administration decides against this initiative, draft a plan on how to negotiate lifting the current export restrictions on scrap steel and coking coal exports from Russia, the Ukraine, China, and Venezuela;

(4) Review all existing anti-dumping and countervailing duty orders placed on foreign imports of steel into the U.S. to see if they are warranted considering the tightened markets in America;

(5) Lower energy costs for U.S. steel and metal producers by urging the Senate to pass the comprehensive energy bill (H.R. 6);

(6) Have the Department of Defense and the Bureau of Industry and Security at the Department of Commerce examine whether the steel and metal shortages in America will have an adverse affect on our Defense Industrial Base and our national security; and

(7) Have the Department of Commerce or the U.S. International Trade Commission (ITC) through a Section 332 investigation examine the shortages of scrap steel and coking coal to determine the effects they have had on production problems and the overall competitiveness of U.S. industry.

For further information about this hearing, please refer to Committee publication #108-59.

7.2.30 IMPROVING THE REGULATORY FLEXIBILITY ACT—H.R. 2345

Background

On Wednesday, May 5, 2004, the Committee on Small Business held a hearing to examine H.R. 2345, the Regulatory Flexibility Improvements Act. The Regulatory Flexibility Act (RFA) requires federal agencies to examine the economic impact of their proposed and final rules on small entities. If they impact is significant on a substantial number of such businesses, the agency is required to assess less burdensome alternatives. When it was first enacted in 1980, the RFA had a number of pitfalls that detracted from full agency compliance. The RFA was amended in 1996 to address some of those pitfalls. While some problems were eliminated, such as boilerplate certification statements, agencies found new interpretations of the RFA to reduce its effectiveness. H.R. 2345 was introduced to eliminate, to the extent possible in legislation, all of the interpretive legerdemain practiced by federal agencies in order to avoid their obligations under the RFA.

Summary

The first panel consisted of two cosponsors of H.R. 2345—the Hon. Lee Terry (R-NE) and the Hon. Mike Pence (R-IN). The second panel members were: the Hon. Thomas Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Wash-

ington, DC; Frank Swain, Esq., Partner, Baker & Daniels, Washington, DC; Jere Glover, Esq., Of Counsel, Brand & Frulla, Washington, DC; and Mr. Jim Morrison, Ph.D., President, Small Business Exporters Association, Washington, DC.

Representatives Terry and Pence both expressed strong support for H.R. 2345. Representative Terry, as a member of the Committee on Energy and Commerce, has seen significant regulatory actions taken by federal agencies that have deleterious effects on small businesses and could be easily remedied if the agencies first thought through their regulatory actions. Representative Pence noted that he chaired the Regulatory Reform Subcommittee of the Small Business Committee in the 107th Congress and saw first hand how federal agencies failed to comply with the RFA. Both concurred that H.R. 2345 would go a long way toward bringing rationality back into the agency rulemaking process and thus remained strong proponents of passage.

All of the witnesses on the second panel also strongly endorsed H.R. 2345. Three of the panelists are or were Chief Counsels for Advocacy so they had first hand experience monitoring agency compliance with the RFA. From that vantage point, Messrs. Sullivan, Swain, and Glover knew of the loopholes in the RFA and agreed that H.R. 2345 closed many of the loopholes that agencies used to avoid compliance. Chief Counsel Sullivan strongly endorsed the position that his office should write government-wide regulations on the RFA. He recommended that the panel procedures be extended to all agencies and the Office of Advocacy be given concurring authority in the setting of other agency regulatory size standards rather than primary responsibility. Mr. Glover, in addition to supporting H.R. 2345, strongly urged Congress to give the Office of Advocacy independent budget authority. Mr. Swain focused his remarks on the importance of analyzing indirect effects. Finally, Dr. Morrison, although not a Chief Counsel for Advocacy, was a staffer on Capitol Hill during the development of the RFA in 1979 and 1980. He strongly supported H.R. 2345's emphasis on paralleling the National Environmental Policy Act (NEPA) because the original author of the legislation, Senator Culver (D-IA), intended the RFA to be the equivalent of an economic equivalent of the environmental impact statements mandated by NEPA.

In sum, the Committee concluded that H.R. 2345 should be passed into law to help small businesses deal with the growing federal regulatory burden.

For further information about this hearing, please refer to Committee publication #108-62.

7.2.31 RED TAPE REDUCTION: IMPROVING THE COMPETITIVENESS OF AMERICA'S SMALL MANUFACTURERS

Background

On Wednesday, May 19, 2004, the Committee on Small Business held a hearing to examine the Office of Information and Regulatory Affairs (OIRA) review of regulations affecting manufacturers. Regulatory compliance costs impose a burden on manufacturers that has the potential to lower the viability and competitiveness of American manufacturers. According to at least one study, manufacturing

bears the highest total regulatory burden of any sector in the American economy. The same study pointed out that environmental regulations created the most significant monetary impact on manufacturers. OIRA instituted a process to obtain suggestions on regulations affecting manufacturers that should be reviewed because the benefits of the rules do not exceed the costs of compliance. Once it obtained the recommendations from the public, OIRA planned to assess those recommendations for possible rescission based on an analysis of those rules under the framework of Executive Order 12,866 (the mandate under which OIRA reviews all proposed and final rules before publication in the Federal Register).

Summary

The panelists were: the Hon. John Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC; Mr. B.J. Mason, President, Mid-Atlantic Finishing, Capitol Heights, MD; Mr. Andrew Bopp, Director of Public Affairs, Society of Glass and Ceramic Decorators, Alexandria, VA; and Mr. John Arnett, Government Affairs Counsel, Copper & Brass Fabricators Council, Inc., Washington, DC.

Administrator Graham briefly reviewed the genesis of OIRA's manufacturing reform initiative. Dr. Graham, in particular, noted that the cumulative effect of regulation on small manufacturers was significant. He then explained the process that would be used in obtaining recommendations on manufacturing regulations that need to be reviewed. The Administrator concluded his testimony with a peroration on the procedures that would be used in determining which regulations should be reviewed in greater detail.

Mr. Mason, as did all the other industry witnesses, commenced his testimony with an explanation of his business. As did the other members of industry, Mr. Mason made recommendations on specific rules that should be examined by OIRA. In particular, he suggested that OIRA examine: the metals product and machinery rule; the wastewater pretreatment rule; granting exemptions from federal permitting requirements if state requirements are more stringent; and find ways to encourage recycling of treatment sludge. Mr. Mason concluded with concerns about the Occupational Safety and Health Administration's (OSHA) proposed rule requiring reductions in exposures to chromium.

Mr. Bopp strongly urged Administrator Graham to reexamine the reporting requirements imposed on ceramic and glass decorators by amendments to the toxic release inventory forms. Mr. Bopp argued that the costs associated with compliance outweighed the negligible amounts of lead that ceramic and glass decorators emit into the atmosphere.

Mr. Arnett recommended that OIRA consider: elimination of unnecessary testing for pollutants in water discharges when the probability of a release is zero; remove from a list of volatile organic compounds those chemicals that are not volatile; focus enforcement of oil spill prevention and control on facilities that represent significant risk of spills both from an amount and a probability of a spill; incorporate cost effective practices for controlling storm-water runoff; permit the concentration of hazardous wastes through evaporative dryers; and permit the use of ship or spiral stairs instead

of rung ladders in certain manufacturing situations. Mr. Arnett also recommended increased transparency in the review process to ensure that parties involved in making suggestions to OIRA knew the outcome of the review.

In sum, the Committee concluded that there were many federal regulations on the books that could be amended or eliminated that would further help to revitalize the U.S. small manufacturing while still protecting workplace safety and the environment. For further information about this hearing, please refer to Committee publication #108-64.

7.2.32 CAREERS FOR THE 21ST CENTURY: THE IMPORTANCE OF EDUCATION AND WORKER TRAINING FOR SMALL BUSINESS

Background

On Wednesday, June 2, 2004 the full Committee held a hearing on the importance of worker training and retraining to maintain this nation's leadership in science and technology. Also, the hearing explored the role of education in keeping industry in this country, especially small manufacturers, competitive in a global economy. There are many training and educational programs in existence that must be tailored to meet the present and future industrial needs of this nation.

To maintain this country's competitiveness in world markets requires a workforce trained and available in those skills needed in an increasingly technology-centered and computer-based industrial environment. Equally important to playing a leadership role in the world economy is the education and foresight of those who manage and direct U.S. businesses, especially small manufacturers. The education and training that was good enough for yesterday will surely not be sufficient to sustain job growth in an increasingly competitive and global economy. Job training, retraining, and education at all levels must be a national priority, if this Nation is to sustain worldwide competitiveness and domestic job growth. In the past few years, technological innovation has changed the way business is done throughout the world, a continuing challenge that this nation's industry must successfully respond to in the 21st Century. A dynamic world economy requires businesses here in the United States to stay on the cutting edge of technology and to create abundant and challenging job opportunities.

Summary

The hearing was comprised of two panels. On the first panel were: the Hon. Emily Stover DeRocco, Assistant Secretary of Labor for Employment and Training, United States Department of Labor, Washington, DC and the Hon. Edward G. Lewis, Chairman of the Board of Directors, National Veterans Business Development Corp., Washington, DC. The second panel was comprised of: Ms. Beth B. Buehlmann, Ph.D., Vice President and Executive Director of the Center for Workforce Preparation, United States Chamber of Commerce, Washington, DC; Mr. Brian A. McCarthy, Chief Operating Officer, Computer Technology Industry Association, Oakbrook Terrace, IL; Mr. Roger Joyce, Vice President of Engineering, National Association of Manufacturers, Washington, DC; Mr. Ernest

Volgenau, Ph.D., Chairman and CEO, SRA International, Fairfax, VA; Mr. Matthew Coffey, President and Chief Operating Officer, National Machining and Tooling Association, Fort Washington, MD; Mr. Randolph Peers, Vice President for Economic Development, Brooklyn Chamber of Commerce, Brooklyn, NY; and Mr. Michael Caslin, Executive Director and CEO, National Foundation for Teaching Entrepreneurship, New York, NY.

Assistant Secretary DeRocco pointed out that the Department of Labor provided a broad range of employment and training programs through a network of approximately 2,000 one-stop centers and 1600 affiliated entities. The object is to bring together high quality, well-trained workers and industries in need of these workers. The Assistant Secretary of Labor identified education and skills development as important factors in maintaining this Nation's ability to compete in international markets. The Department of Labor was tasked by the President to identify those industries producing the most jobs and to concentrate on providing persons with skill levels necessary to fill those jobs. Assistant Secretary DeRocco identified American manufacturing as an economic sector in need of skilled workers to operate high-tech manufacturing plants.

Chairman Lewis advocated life-long education and training. As Chairman of the Veterans Corporation, he was of the view that veterans should be provided with the resources necessary to build and grow small businesses. The Veterans Corporation is presently working on providing entrepreneurial education courses that a veteran can pay for with Montgomery G I Bill benefits. Chairman Lewis was of the opinion that to be successful the Veterans Corporation must provide effective services and programs. As a comment with respect to education in the United States generally, Chairman Lewis was of the opinion that emphasis should be placed on basic subjects, i.e., reading, writing and arithmetic.

Ms. Buehlmann reported that a survey of small and medium sized businesses conducted over a three-year period found that there was a shortage of needed workers with requisite skills. Also, a number of businesses were concerned that the skills of their workforce kept pace with innovation. In 1950, the overwhelming majority of the jobs (80 percent) were classified as unskilled and presently most of the jobs are in the skilled category. Mr. McCarthy was of the view that fundamental changes were taking place with respect to the workforce due to the advances in the field of information technology. He cited data from the Department of Labor that 92 percent of those who were classified as companies that did not specialize in information technology employed information technology professionals and of that number 80 percent were employed by small businesses. Computing Technology Industry Association, the organization Mr. McCarthy represented, had developed specialized initiatives and public/private partnerships to assist small businesses in training and certifying employees as information technology professionals.

Mr. Joyce, an executive of a family-owned small business and representing the National Association of Manufacturers, reported that skill shortages still existed in the manufacturing sector, despite the fact that approximately 2 million manufacturing jobs had

been lost in recent years. New technologies were raising skill requirements for manufacturers, but there was a perception, which needed to be changed, among younger people that employment in manufacturing was not an attractive career. Mr. Volgenau, Chairman and CEO of SRA International, appearing on behalf of the Information Technology Association of America, was of the view that the workforce needs have changed as the nation has gone from domestic to a global information economy. Small businesses played a vital role in the new global economy, providing innovation, entrepreneurial dynamics, and employment opportunities.

Mr. Coffey was of the view that there were an abundant number of federal training programs, but there was no significant improvement in the quality of job applicants for employment in the tool, die, precision machining, and special machine-building industries. He was of the opinion that federal training programs were in need of overall coordination and should be geared to specific industries. Mr. Peers reported that 42 percent of Brooklyn businesses indicated a willingness to hire additional workers this year, but that there was difficulty in finding skilled and professional workers. Businesses were not inclined to look to public funded training and recruitment assistance, and small businesses were least likely to do so. Mr. Caslin expressed the opinion that youth are not being effectively told about the opportunities to participate in the economy as entrepreneurs. He reported that the organization he represents, the National Foundation for Teaching Entrepreneurship, had as its mission bringing the code of business and wealth creation to the youth of this nation, especially those from low income families.

For further information concerning this hearing, refer to Committee publication 108-68.

7.2.33 THE REBATE OF VALUE-ADDED TAXES AT THE BORDER AND THE COMPETITIVE DISADVANTAGE FOR U.S. SMALL BUSINESSES

Background

On July 7, 2004, the Committee on Small Business held a hearing to examine the effect on U.S. small businesses of international trade rules administered by the World Trade Organization (WTO) that permit the rebate of value-added taxes at the border while denying comparable treatment for other types of taxes such as income taxes.

European countries impose value-added taxes (VAT) as high as 25 percent depending on the specific country. These taxes are imposed whether the goods are manufactured in Europe or imported from abroad. However, the VAT is rebated at the border when goods are exported from Europe. In contrast, current trade rules administered by the WTO do not properly recognize the ability to rebate other types of taxes, such as income taxes, at the border. Because the United States does not impose value-added taxes, goods exported from the United States to Europe bear the full brunt of U.S. income taxes and the VAT in Europe while goods exported from Europe to the United States enjoy a full rebate of VAT at the border.

Summary

The hearing consisted of one panel with the following four witnesses: Mr. Gary Hufbauer, the Reginald Jones Senior Fellow at the Institute for International Economics, Washington, DC; Mr. Claude Barfield, Resident Scholar and Director of Science and Technology Policy Studies, American Enterprise Institute, Washington, DC; Mr. Bill Jones, Chairman, Cummins-Allison Corp., Mt. Prospect, IL; and Ms. Maya MacGuineas, Director of the Fiscal Policy Program, New America Foundation, Washington, DC.

Mr. Hufbauer rejected the classical economic theory that exchange rates will adjust to eliminate any advantage from VAT rebates. He proposed a joint Congressional resolution calling upon the WTO to abolish the preferential border tax adjustment rules for VAT rebates. If this fails, he advocates scraping the corporate income tax and replacing it with a border adjustable business tax (such as a VAT).

Mr. Barfield reviewed the WTO decisions that held FSC/ETI to be an illegal export subsidy and the tortured trade law history leading up to those decisions. He concluded that WTO trade law is flawed in four respects: (1) WTO rules reach inappropriately into national sovereignty and domestic policy, (2) the WTO functions as an incompetent world tax court, (3) WTO trade penalty measurements need to be reformed, and (4) WTO settlement system needs to be reformed.

Mr. Jones explained to the Committee what the border adjustability of VAT taxes means for his business. He views the rebate of value-added taxes by foreign countries to his overseas competitors as an unfair advantage. The playing field needs to be leveled by revising the trade laws.

The final panelist, Ms. MacGuineas, agreed with the other witnesses that VAT border adjustability provides inappropriate benefits to overseas firms. She pointed out that the current FSC/ETI legislation before the House and Senate (H.R. 4510 and S. 1637) does little to assist small businesses, is full of special interest provisions, and is detrimental to the country's fiscal picture. She further advocated using the money from FSC/ETI repeal for financing tax reform along the lines of the 1986 Tax Reform Act (which lowered individual and corporate tax rates and eliminated tax loopholes and subsidies). Alternatively, she advocated adopting a progressive consumption tax.

For further information concerning this hearing, refer to Committee publication 108-70.

7.2.34 HOW WE CAN MAKE OUR TRADE LAWS WORK FOR
AMERICA'S SMALL BUSINESS

Background

On July 14, 2004, the Committee on Small Business held a hearing to examine possible improvements to trade laws to help businesses faced with foreign competition that may be due to unfair foreign government practices.

Witnesses in two panels discussed problems faced by small businesses from import competition and what can be done to "level the

playing field.” They offered ideas on how to ensure the full benefits of our trade agreements and to lower barriers by improving and enforcing US trade laws.

Summary

The hearing consisted of two panels. On the first panel were: the Hon. Phil English (R-PA) and the Hon. Artur Davis (D-AL). The second panel’s witnesses were: Mr. Frank Vargo, Vice President for International Economic Affairs, National Association of Manufacturers, Washington, DC; Mr. John Bassett, III, President and CEO, Vaughn-Bassett Furniture, Galax, VA; Mr. F. Tom Hopson, President and CEO, Five Rivers Electric Innovations, Greenville, TN; Mr. Wallace Smith, President, E&E Manufacturing Co., Inc., Plymouth, MI; Mr. Douglas Bartlett, Owner, Bartlett Manufacturing Co., Inc., Cary, IL; and Mr. William J. Klinefelter, Legislative and Policy Director, United Steel Workers of America, Washington, DC.

Representatives English and Davis testified on their legislation (H.R. 3716) to allow sanctions on China for keeping a fixed exchange rate policy (as doing so offers a competitive advantage for its exports) under current trade remedy law to offset foreign government subsidies. HR 3716 would allow countervailing duty (CVD) law to also apply to non-market economies such as China—just as present antidumping trade remedy law already allows.

In the second panel, six private-sector witnesses, who all supported HR 3716, mostly discussed shortcomings in U.S. trade law remedies and gave a wide range of recommendations.

Mr. Frank Vargo was most optimistic. He concluded that trade laws are “pretty complete, with one exception addressed by English’s bill” and that “the Executive Branch has constructed a significant set of mechanisms designed to help smaller companies understand and utilize their trade rights. These have recently been improved with added funding that the Congress has provided.”

The other witnesses however cited their difficulties with utilizing U.S. trade law remedies, such as in getting information and other government assistance, and especially bemoaned the expense and the long times it takes for action.

Mr. Bassett discussed his industry’s recent successful anti-dumping case on Chinese wooden furniture and recommended that Commerce needs to better inform petitioners, beef up its investigative staff, let petitioners have a say in who is investigated, shorten the time to address the issue, and require cash deposits, rather than bonds, to be posted during a review.

Mr. Hopson’s company is the only U.S.-owned television (mainly projection TVs) manufacturing company left in America, discussed how his industry was decimated by foreign (primarily Chinese) competition and the recent successful anti-dumping case on Chinese television imports.

Mr. Smith, owner of a metal-die stamping and fastener family business, testified that as a steel consumer, he is still suffering from the unintended consequences of higher steel prices due to the steel tariffs imposed in 2002 and then lifted in late 2003. He recommends some consideration of the total, especially “downstream,” effects of trade decisions, that consumers should have equal standing with petitioners, that non-U.S. items or items in short supply

should be exempt from trade remedies and complains that trade remedies review takes too long.

Mr. Bartlett, head of a printed circuit manufacturer, testified that the United States electronics manufacturing industry is rapidly being destroyed, and that there are vital national defense consequences at stake. Contrary to most analysts, he blames not the bust of the telecom bubble, but predatory trade practices (mostly government subsidies) in China along with “Washington’s indifference and sometimes encouragement” for why he cannot be competitive with Chinese products priced at half of his. He stated he is not aware of any U.S. trade laws (with minor exceptions) that has or could actually benefit his industry, and that he, like other small companies, cannot afford to litigate trade cases, and does not know his options. His main recommendations are that safeguard law be made simpler and expedited, that all taxpayer funded circuit board purchases be made here, that trade action on this situation be taken soon regardless of World Trade Organization (WTO) considerations, and that bilateral United States-China trade should be balanced.

Mr. Klinefelter stated that current trade laws need dramatic reform because massive trade deficits (especially with China) and outsourcing show that there are barriers to exports. He proposed that the United States Trade Representative not discuss changing trade remedy laws at the WTO, that trade help be expanded as trade laws are very expensive to use, that there be assurances that trade actions won’t be reversed as in steel, and that the export subsidy provided by the European Value-Added Tax be eliminated.

In sum, the Committee concluded that there should be additional changes to our trade remedy laws in order to level the playing field for our nation’s small manufacturers against global competitors to insure true free trade, particularly in the passage of H.R. 3716. For further information about this hearing, please refer to Committee publication #108–72.

7.3 SUMMARIES OF THE HEARINGS HELD BY THE SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS

7.3.1 IMPROVING AND STRENGTHENING THE SBA OFFICE OF ADVOCACY

Background

On April 1, 2003, the Subcommittee on Workforce, Empowerment and Government Programs held a joint hearing with the Subcommittee on Regulatory Reform and Oversight on the topic of strengthening the Office of Advocacy at the Small Business Administration (SBA) mainly through the creation of a separate line item in the federal budget for the office (H.R. 1772). This idea originally proposed in “Small Business Advocacy Improvement Act of 2002” later passed the House unanimously on May 21, 2002 during the 107th Congress but unfortunately did not pass the Senate.

Summary

The hearing consisted of two panels. The first panel consisted solely of the Hon. Thomas Sullivan, Chief Counsel for Advocacy,

United States Small Business Administration, Washington, DC. The second panel consisted of Mr. Giovanni Coratolo, Director, Small Business Programs, United States Chamber of Commerce, Washington, DC; Mr. Allen Neece, Small Business Legislative Counsel, Washington, DC; and Mr. Andrew Langer, Manager, Regulatory Policy, National Federation of Independent Business, Washington, DC.

The Chief Counsel explained that the two bedrock principles that underlie the Office of Advocacy's ability to represent small businesses effectively are independence and flexibility. The office is able to present the views of small entities to lawmakers and policy-makers irrespective of the views of the U.S. Small Business Administration (SBA) and the rest of the Executive Branch. The office has broad statutory authority that gives it the flexibility to be both reactive and proactive on matters of concern to small entities. The legislation brought to light in the hearing would make the Office of Advocacy more autonomous thus allowing it to more effectively agitate for small business independent of agency or administration influence and hold government accountable without fear of reprisal.

The non-governmental witnesses which followed, in the second panel, conveyed the common theme that a budget line-item for the entire office would give the Office of Advocacy most of the tools it needs to carry out its mission of keeping the federal government's regulatory tendencies in check. It was felt, though, that ultimately, the office would need more funds, as well, for the staff to keep up with its increased abilities once more autonomous. Also, the "sneak-peak" provision of H.R. 1772, in which the relevant committees of Congress would receive a copy of the Chief Counsel's budget submission to the Office of Management and Budget (OMB) prior the finalization of the President's formal budget request submitted to Congress every February, would protect the Office of Advocacy from budget meddling by OMB.

Following this hearing, H.R. 1772 (Small Business Advocacy Improvement Act of 2003) unanimously passed committee on June 4, 2003 and unanimously passed the House on June 24, 2003.

For further information on this hearing, refer to Committee publication 108-5.

7.3.2 STATUS OF SMALL BUSINESS MANUFACTURING IN THE MIDWEST, FIELD HEARING, ST. PETERS, MO

Background

On April 28, 2003, the Subcommittee on Workforce, Empowerment and Government Programs held a field hearing in St. Peters, Missouri, presided over by Subcommittee Chairman, the Hon. W. Todd Akin (R-MO) and the Hon. Kenny Hulshof (R-MO) to address the status of the small business industrial base throughout the Midwest.

Summary

The hearing consisted of one panel made up of four witnesses. The Subcommittee heard from Mr. Daniel P. Mehan, President & CEO, Missouri Chamber of Commerce and Industry, Jefferson City, MO; Ms. Sheelah R. Yawitz, President, Missouri Merchants &

Manufacturers Association, Chesterfield, MO; Mr. Mike Mittler, President, Mittler Brothers Machinery, Foristell, MO; and Mr. Dan Wainwright, President and CEO, Wainwright Industries, St. Peters, MO.

The panel sent a consistent message that Missouri needs assistance, arguably more so than any other state in the union. The state lost more than 77,700 jobs in 2002 and Missouri led the nation in job loss according to the U.S. Department of Labor. Missouri lost 15,000 more jobs as compared to the next state that experienced the greatest job loss, Ohio. However, Ohio's population, 11.3 million, is twice that of Missouri's population, which is 5.5 million.

The Subcommittee also heard more first-hand examples of the need for increased Congressional attention by the two local small businesses in attendance. They explained the integral role of the tooling and machining industry. These witnesses demonstrated the tool and die industry is the basic building blocks of manufacturing. All mass manufactured objects begin at the hands of a tool and die maker.

Mr. Mittler voiced the position of the witnesses when he stated, "Nearly every manufacturing company in the country, in the world, does business with our industry. The U.S. tooling and machining industry employs close to 450,000 people nationwide and accounted for shipments in excess of \$43 billion. The metalworking industry includes precision machinists, die makers, and mold makers, as well as tool and die designers. Without them, the mass production of manufactured goods would not be possible."

As a result of this and other hearings, the tool and die industry has remained one of the foremost priorities for Small Business Committee. After the hearing, Chairman Donald Manzullo, in partnership with the Hon. Tim Ryan (D-OH), founded the Manufacturing Caucus, which has unified members in an effort to promote the tool and die industry as well as related industries in the manufacturing sector.

For further information on this hearing, refer to Committee publication 108-9.

7.3.3 HEARING ON THE CURRENT AND FUTURE STATES OF THE SBIR, FAST AND MEP PROGRAMS

Background

On Tuesday, May 6, 2003, the Subcommittee on Workforce, Empowerment and Government Programs of the Committee on Small Business held a hearing to examine the current state and future of the Small Business Innovation Research program (SBIR), Federal and State Technology (FAST) partnership program, and the Manufacturing Extension Partnership (MEP) program.

Under the SBIR program, a percentage of federal research dollars from certain qualifying agencies (not all agencies with research budgets are included in the SBIR program) are reserved for award to small businesses (those with less than 500 employees). The program is specifically aimed at the start-up, developmental, and early commercialization phase of innovative research conducted by small businesses.

The FAST program works in conjunction with the SBIR program. States are awarded competitive grants to supply various support services to SBIR recipients. Grantees are selected based on a variety of criteria but primarily on the ability of the grantee to meet the unmet needs of small business innovators in the state.

The Small Business Administration oversees the operation of the SBIR and FAST programs. The MEP operates out of the Department of Commerce's National Institute of Standards and Technology. Approximately 350 centers located throughout the United States provide expertise and services to meet the needs of America's manufacturers.

Summary

The hearing consisted of two panels. The first panel's sole witness was Mr. Darryl Hairston, Deputy Associate Administrator for Government Contracting and Business Development, United States Small Business Administration, Washington, DC. The witnesses for the second panel were: Michael Nichols, Ph.D., Director, Missouri Federal and State Partnership Program, Columbia, MO; Mr. Rolf Albers, Chairman and CEO, Albers Manufacturing Co., O'Fallon, MO; and Ms. Barbara Stoller, Director, SBIR Outreach, Technology Ventures Corp., Albuquerque, NM.

Deputy Associate Administrator Hairston first noted that the SBIR, FAST, and MEP programs have the resources that would be useful for strengthening America's small manufacturers. Mr. Hairston noted that the SBIR and FAST programs are particularly beneficial to small businesses during the critical commercialization phase. Mr. Hairston concluded his testimony by noting that Administrator was committed to improving coordination with federal agencies to ensure the future success of the SBIR and FAST programs.

Dr. Nichols first introduced an invention of a Missouri physician that kills ticks and mosquitoes. But, according to Dr. Nichols, that physician had no business plan and no way to commercialize the invention. The inventor contacted the University of Missouri which operates the Missouri FAST program. The program assisted the inventor in filing an application for a SBIR grant and provided other technical assistance. Dr. Nichols concluded that the FAST program is needed because, in its absence, new technology from America's entrepreneurs would stay locked behind closed doors.

Mr. Albers first noted that his business employs 35 people in the manufacture of electrical equipment. He then noted that his business relied on the MEP program to obtain an enterprise resource planning software package designed for small businesses. MEP consultants also assisted in the implementation of ISO 9000 for his company. Modifications to factory layouts also were accomplished through MEP assistance. Mr. Albers concluded his testimony by expressing support for full funding of the MEP program.

Ms. Stoller testified that many in the scientific and technical community do not know about the SBIR program and many that do are leery of interacting with the federal government. Ms. Stoller noted that the FAST program is designed to remedy those problems. She then highlighted four businesses that received SBIR assistance as a result of intervention by the New Mexico FAST pro-

gram. She then testified that the FAST program was rapidly expanding knowledge about the SBIR program throughout the state of New Mexico. She ended her testimony with the rhetorical question of how many businesses would not receive assistance if FAST program monies were excised from the budget.

For further information on this hearing, refer to Committee publication 108-5.

7.3.4 FEDERAL PROCUREMENT POLICY: IS THE FEDERAL GOVERNMENT FAILING CERTAIN INDUSTRIAL SECTORS?

Background

On July 22, 2003, the Subcommittee on Workforce, Empowerment and Government Programs held a hearing to discuss the plight of American small technology businesses that are collapsing because the federal government has gone overseas to meet its procurement needs. The hearing sought ways to strengthen these American businesses, explore ways to provide more incentives for the Federal Government to contract with American businesses and highlight the security risk that is entailed by not having these American businesses involved in crucial sectors of the technology industry.

Summary

The hearing consisted of two panels, with a total of six witnesses. The first panel consisted of two representatives of the Executive Branch. Ms. Deirdre Lee, Director, Defense Procurement and Acquisition Policy, Department of Defense, Washington, DC and Ms. Jody Falvey, Director, Office of Small Business Development, United States Department of Treasury, Washington, DC. The second panel consisted of Mr. Sivalingam Sivananthan, Ph.D., President EPIR Technologies Ltd., Bolingbrook, IL; Mr. William Jones, Chairman, Cummins-Allison Corp., Mt. Prospect, IL; Mr. Alan Tonelson, Research Fellow, United States Business and Industry Council, Washington, DC; and Mr. John Pallatiello, Executive Director, Management Association for Private Photogrammetric Surveyors, Reston, VA.

The governmental representatives of the first panel did not recognize the need to address the gross imbalance of federal dollars being spent overseas as opposed to domestically on sensitive material. It was not felt that there was a threat being formed economically or strategically.

The four members of the second panel testified with the overwhelming consensus that, as Dr. Sivananthan stated, "the practice of outsourcing [sensitive technology] manufacturing has resulted in there being no US suppliers. Moreover, there is no domestic source of [sensitive technology]. Everyone must buy substrates from Japan and put them in reactors made in France. In addition, we find ourselves in a situation that we must look offshore for trained scientists to operate these reactors."

The second panel pushed for stricter enforcement of enhanced Buy America laws, a tightening of technology sharing and much better monitoring & enforcement of international trade agreements covering government procurement practices.

For further information on this hearing, refer to Committee publication 108–28.

7.3.5 THE RISING COST OF HEALTH CARE FOR SMALL BUSINESS OWNERS, FIELD HEARING, CHARLESTON, SC

Background

On August 25, 2003, the Subcommittee held this hearing to focus on obstacles to healthcare coverage for small businesses and their employees. Of the 43 million Americans without health insurance, 62% are either small business owners and their families or small business employees and their families. The problem of the uninsured is very clearly a problem of small business access to health care at reasonable prices. The hearing explored the following points: problems of access to small group coverage as well as solutions, consumer-driven health care solutions and high costs of medical liability insurance.

Summary

The hearing consisted of six witnesses: Mr. Ernest Csiszar, Director of Insurance, State of South Carolina, Columbia, SC; Mr. Larry C. Marchant, Jr., Executive Director, South Carolina Managed Care Alliance, Columbia, SC; Ms. Evelyn Perry, President, Carolina Sound Communications, Inc., Charleston, SC; Mr. John Kulze, MD, Charleston, SC; and Mr. Vincent Degenhart, M.D., Columbia, SC; and Mr. Doug Moreland, Founder, BenefitFocus.com Inc, Mt. Pleasant, SC.

The witnesses explained that the typical American wage earner brings home a salary of roughly \$25,000/year, less than that in South Carolina, closer to \$20,000/year. The average monthly charge for health insurance is about \$220/month (prior to rate increases this year). This is more than 10% of the take home salary. Yet premiums continue to go up 15–20% per year. Pretty soon the average worker can no longer afford health insurance for himself or his family. There are 41 million uninsured, roughly one in seven Americans. Across the nation doctors are facing a similar crisis with runaway costs for their malpractice insurance. Only the numbers are much higher and the increases are staggering. Obstetricians/Gynecologists in Florida average \$143,000 to 203,000/year for malpractice premiums.

They went on to explain that approximately half of the people without insurance work for small businesses with up to 99 employees (restaurants, retail stores, auto repair shops, beauty salons). Small businesses often operate on tighter budgets and are therefore more vulnerable to premium changes resulting in coverage being dropped altogether or increase in the share of insurance premium workers must pay.

For further information on this hearing, refer to Committee publication 108–31.

7.3.6 OPPORTUNITIES FOR ECONOMIC GROWTH AND JOB CREATION, FIELD HEARING, NEWNAN, GA

Background

On September 2, 2003, the House Small Business Committee's Subcommittee on Workforce, Empowerment and Government Programs held a field hearing entitled "Opportunities for Economic Growth and Job Creation" in Newnan, Georgia. The hearing was chaired by Subcommittee Chairman, the Hon. Todd Akin (R-MO) and the Hon. Phil Gingrey (R-GA) was in attendance.

The purpose of this hearing was to discuss the prospect of economic growth and job creation in the southern part of Georgia's 11th district. With the recent plant closings in the area, the subcommittee investigated the needs of the area's small business owners.

Summary

Chairman Akin opened by expressing the subcommittee's concern for the local economy and pointed out Congressman Gingrey's commitment to the economic stability and success of Georgia as illustrated in his constant efforts to: support tax reduction, reform medical malpractice and do away with the "death tax." Chairman Akin also pointed out how Mr. Gingrey had also worked hard for the passage of Association Health Plans and fought the government when it wanted to raise overtime pay for its bureaucrats.

This hearing consisted of one seven-witness panel: the Hon. Keith Brady, Mayor, Newnan, GA; Mr. Kip Purvis, President, Meriwether County Development Authority, Meriwether County, GA; the Hon. Nancy Jones, Chairperson, Meriwether County Board of Commissioners, Meriwether County, GA; the Hon. Rubye Byrd, Mayor, Greenville, GA; Mr. Mike Gaymon, President, Chamber of Commerce, Columbus, GA; Ms. Betsy Hueber, President, Chamber of Commerce, Thomaston-Upton County, Thomaston, GA; and Mr. Ed Bell, Councilman, Thomaston, GA.

The witnesses spoke on the economic hardships of the area and told of the continued need for federal government reform and involvement. Mr. Purvis pointed out that his county has been suffering from a consistent decline in the number of small businesses that can remain open in the area, pointing out that Mead Westvaco, which operated a sawmill employing approximately 150, had recently closed its doors. Chairperson Jones also mentioned the impact of Mead Westvaco's departure and pointed out restaurateurs, tradesmen, gas stations, and corner grocery's feel a negative impact when such a significant employer folds. Chairperson Jones pointed out that an added factor for Meriwether County's "stagnant and declining economy" was the fact that a mere seven percent of its residents have a bachelors degree.

Mr. Gaymon of the Columbus Chamber of Commerce pointed out that even his corner of the globe feels the harsh effects of imbalanced trade. His area had most recently lost a sawmill due to a lack of tariffs or taxes on competing foreign goods. He went on to express that area has enough challenges to work through without the added hurdle of preferred competition from abroad.

Mr. Purvis and Mayor Byrd refused to dwell on the negatives. Mayor Byrd pointed out that her city had annexed “approximately 150 acres of land for developers to build new housing ranging from \$85,000 to \$150,000. We assisted an outside entity in securing a \$500,000 grant to build a gated multi-family community, which will include a swimming pool, computer lab, and a clubhouse.” She also pointed out that due to Greenville’s location, approximately 75 miles from downtown Atlanta and 65 miles from the Atlanta Airport, the city is poised for growth. Greenville has the added benefit of a constant increase in population because of migration from Coweta, Troup, and Muscogee counties. President Purvis explained that Meriwether County had, “recently raised over \$225,000 to assist in the construction of a work force development center. The workforce development center will be located in Greenville and will help our citizens develop better job skills and hopefully make our community more competitive for quality economic growth.”

After the member’s questions were sufficiently answered, Chairman Akin adjourned the hearing. In sum, the Subcommittee concluded that while this region of Georgia has its share of struggles, it is poised for growth and small businesses will play a leading role in that effort.

For any further information on this hearing, please refer to Committee publication #108–34.

7.3.7 FEDERAL PRISON INDUSTRIES EFFECTS ON THE U.S. ECONOMY AND THE SMALL BUSINESS ENVIRONMENT, JOINT SUBCOMMITTEE HEARING WITH THE SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS AND THE SUBCOMMITTEE ON TAX, FINANCE AND EXPORTS

Background

On October 1, 2003, the Subcommittees held this hearing to draw attention to the negative impact Federal Prison Industries (FPI) has had on the U.S. economy and in particular, the nation’s small businesses. At the time of the hearing, FPI retained its mandatory source status for the vast majority of federal agencies. The Subcommittees strongly believed that, at the very least, FPI should not have this mandatory source status and should have to compete for its federal contracts, just like every other business in the country.

Summary

The hearing consisted of two panels. Panel one was comprised of the Hon. Peter Hoekstra (R–MI). Mr. Harley G. Lappin, Director, Federal Board of Prisons, Washington, DC; Mr. John Palatiello, Executive Director, Management Association for Private Photogrammetric Surveyors, Reston, VA; Mr. Christopher Fay, Director, Milton Eisenhower Foundation, Washington, DC; Ms. Rebecca Boenigk, CEO, Neutral Posture, Inc., Bryan TX; and Ms. Angie McClure, Vice President, Habersham Metal Products, Cornelia, GA comprised the second panel.

Representative Hoekstra provided an update as to the progress of his legislation, H.R. 1829, the “Federal Prison Industries Competition in Contracting Act of 2003,” stating that the House Com-

mittee on the Judiciary had recently filed its report on the bill by a bipartisan roll call vote of 19 to 8. Mr. Hoekstra continued to outline the major provisions of the bill, such as requiring FPI to compete for federal contract opportunities rather than simply being able to take them as they can now.

Mr. Lappin stood fast to the philosophy that FPI is an essential component of the Bureau of Prisons' efforts to prepare inmates to successfully reenter society. He also stated that FPI is ready, willing and able to work with Congress to find an equitable solution to the problems raised.

Mr. Palatiello echoed Mr. Hoekstra's statements, suggesting that FPI's mandatory source status must be revoked in order to ensure a true free-market arena. This is necessary not only because it will provide better value for taxpayers, but also provide hundreds, if not thousands of small businesses across the country opportunities to provide the federal government with needed goods and services.

In his capacity as Director of the Milton Eisenhower Foundation, Mr. Fay works intensively with former inmates to reduce their likelihood of returning to prison following their release. Mr. Fay noted that while FPI does have its merits, when it comes to training the inmate in marketable skills that can be transferred to the outside world, it falls sadly short.

Both Ms. McClure and Ms. Boenigk are intimately involved in the government contracting aspects of their respective small businesses. Both cited examples of their businesses being squeezed out of the contracting process by FPI. Ms. Boenigk also stated that she has been told by various Federal agencies that they would like to purchase products from her, but can not because of FPI's mandatory source status.

On November 6, 2003, the House of Representatives passed H.R. 1829 by an overwhelming bipartisan margin of 350 to 65.

For further information about this hearing, please refer to Committee publication 108-39.

7.3.8 UNION SALTING OF SMALL BUSINESS WORKSITES

Background

The term "salting" is used for the act of deliberately inserting a union member into a non-union company (of which the vast majority are small businesses) with the goal of eventually unionizing that non-union company. This paid union organizer aims to establish a wellspring of support for the union effort within the company. Fellow employees often do not know that their new co-worker is also a paid union organizer. In an effort to curb this practice, the Hon. Jim DeMint (R-SC) introduced H.R. 1793, the "Truth in Employment Act of 2003." This legislation, as well as the detrimental effects salting can have on small businesses, was discussed thoroughly at hearing held by the Subcommittee on February 26, 2004.

Summary

Panel one was comprised of the Hon. Jim DeMint (R-SC). The second panel was made up of Clyde Jacob, Esq., Jones Walker, LLP, New Orleans, LA; Mr. Jason Krause, Manager, Human Resources, Brubacher Excavating, Inc., Bowmansville, PA; Jonathan

Newman, Esq., Partner, Sherman, Dunn, Cohen, Lafer, and Yellig, Washington, DC; Mr. and Mrs. Leonard Cloninger, Owners, Construction Electric, Helena, MT; and Mr. Mark Mix, President, National Right to Work Committee, Springfield, VA.

Representative DeMint spoke on behalf of his legislation, H.R. 1793, the "Truth in Employment Act." Mr. DeMint recounted the downfall of the Yuasa Excide battery plant after being targeted by the Industrial Division of the Communications Workers of America. Union "salts" infiltrated the plant, and when employees there did not unionize, the union retaliated by sabotaging product, causing work slowdowns, making verbal threats, threatening phone calls, and even putting nails in people's tires. Union leaders threatened to shut down the plant and 650 people were laid off because Yuasa Excide plant could not afford the increased cost of business resulting from the salting.

H.R. 1793 aims to prevent more salting abuse. The bill amends the National Labor Relations Act (NLRA) to make clear that an employer is not required to hire any person who seeks a job in order to promote interests unrelated to those of their employer. Under the bill, employees will continue to enjoy their right to organize. The bill merely seeks to alleviate the legal pressures imposed upon employers to hire individuals whose overriding purpose for seeking the job is to disrupt the employers' workplace.

Mr. Jacob began the second panel by further explaining salting's destructive consequences, particularly in the legal arena and through the National Labor Relations Board (NLRB). Mr. Jacob testified that the labor unions that employ the salting tactic contend that a company faced with unlawful or possibly unlawful activity can discipline the worker, file a complaint with the NLRB, or notify law enforcement authorities. Experience has shown that an employer who responds by failing to hire, by discipline or by dismissal, will be faced with unfair labor practice charges filed with the NLRB and the expense of defending these charges, regardless of the legitimacy of its actions.

Mr. Krause and Mr. and Mrs. Cloninger both detailed the difficulties they have faced when confronted with salting campaigns. While Mr. Krause's employer, Brubacher Excavating, has been fortunate enough to survive these campaigns, Construction Electric has since been put out of business. Although it could no longer aid them, the Cloningers expressed the utmost support in favor of H.R. 1793. Mr. Mix also expressed strong support for H.R. 1793 while detailing two cases similar to Mr. Krause and the Cloningers.

The dissenting view came from Mr. Newman who believes that H.R. 1793 would deprive union organizers of the protection of the NLRA and permit employers to engage in what has been deemed unlawful discrimination. Mr. Newman maintained that salting is a legitimate organizing tool and that salts understand that when they apply for work that they will be expected to fulfill the employer's legitimate employment expectations. This view was in stark contrast to Representative DeMint's recount of the Yuasa Excide case, and the numerous examples put forth by all other witnesses.

In sum, the Subcommittee concluded that passage of H.R. 1793 was necessary to protect the rights of small business owners. For

further information about this hearing, please refer to Committee publication #108–55.

7.3.9 THE BENEFITS OF HEALTH SAVINGS ACCOUNTS

Background

The House Small Business Committee’s Subcommittee on Workforce, Empowerment and Government Programs held a hearing entitled “The Benefits of Health Savings Accounts” on March 18, 2004. The purpose of this hearing was to discuss Health Savings Accounts (HSAs). An HSA is a tax-free account that can be used to pay for medical expenses.

Under the recently passed Medicare prescription drug bill (P.L. 108–173), consumers can make pre-tax contributions into an HSA account up to their deductible. The HSA earns interest tax-free, and unused funds can be rolled over year to year. As long as the account is used for qualified medical expenses, it can be withdrawn tax-free. The individual, employer or family member can make pre-tax contributions. Individuals between the ages of 55 and 65 can make pre-tax “catch-up” contributions, which they can use for non-covered Medicare expenses, such as their Medicare premiums. Because the individual owns the account, he may take it with him to another job. Upon death, the HSA can be transferred to a family member.

Summary

The hearing consisted of two panels. The first panel consisted of the Hon. Philip Crane (R–IL). The second panel’s witnesses were: Ms. Kate Sullivan, Director, Health Care Policy, United States Chamber of Commerce, Washington, DC; Mr. David Alders, Owner, Carizo Creek Corp., Nacogdoches, TX; Mr. Daniel Perrin, Executive Director, HSA Coalition, Washington, DC; Ms. Victoria Braden, President, Braden Benefits Strategies, Norcross, GA; and Ms. Linda Blumberg, Ph.D., Senior Research Associate, The Urban Institute, Washington, DC.

Representative Crane spoke in support of HSAs. He opened up by declaring that he and several other members introduced H.R. 3901, the HSAs for the Uninsured Act of 2004, which will promote the use of health savings accounts throughout the country, by offering a tax deduction for premiums paid for HSAs.

Four witnesses on the second panel spoke in support of HSAs, explaining how small businesses previously shutout of consistently being able to supply health insurance to their employees, would now be able to as a result of competition created by HSAs. One witness opposed HSAs.

Ms. Sullivan explained that HSAs hold the promise of reviving the largely moribund but costly small business insurance market. The current insurance market is stagnant, stemming from state mandates on health plans, which have taken away health plans’ ability to differentiate themselves in the marketplace and compete for customers by offering benefits tailored to meet their needs. This lack of competition has forced many insurers out of the marketplace, sending small business scrambling for new providers in a panic.

Mr. Alders added that, “micro-business owners are unable to offer the extensive employment packages that large companies give to new employees.” He went on to add that, “. . . with the creation of HSAs, employers can contribute annually to their employees’ health costs. Micro-business owners who have been unable in the past to offer a health benefit to their employees, now have a valuable benefit to offer current employees or potential employees.”

Mr. Perrin explained his group is a coalition of non-profit groups that advocate for HSAs. He went on to point out that the most consumer friendly form of health insurance is affordable health insurance, and HSAs are affordable.

The eighth member of the second panel was Linda Blumberg of the Urban Institute. Ms. Blumberg opposed HSAs. She stated that HSAs included in the Medicare prescription drug legislation increase the problems faced by small businesses and their employees and “increase administrative costs, further segment individuals according to health care risk, and subsidize the highest income purchasers the most.” Ms. Blumberg also pointed out how the scope of the health insurance problems facing small employers and their workers would be compounded by the implementation of HSAs.

In sum, the Subcommittee concluded that HSAs were a positive but not the complete solution to the health care access crisis facing small business owners and their employees. Further work could be done to expand the popularity and use of HSAs by small businesses, including providing a tax deduction for HSAs (H.R. 3901).

For any further information on this hearing, please refer to Committee publication #108-58.

7.3.10 WOULD AN INCREASE IN THE FEDERAL MINIMUM WAGE HELP OR HINDER SMALL BUSINESS?

Background

The Fair Labor Standards Act of 1938 fixed in law a federal minimum wage of \$0.25 an hour for most workers. From 1939 to 1997 the minimum wage was raised 19 times. Currently, the basic minimum wage is \$5.15 an hour, with a lower wage for tipped employees, certain new hires under the age of 20, and full-time students who work part-time. There are currently several pieces of legislation before the 108th Congress that would raise the minimum wage to various levels. The purpose of the hearing, held on April 29, 2004, was not to debate the merits of any particular minimum wage increase bill but to discuss the general effect of raising the minimum wage on the small business community.

Summary

The hearing consisted of one panel: Mr. Paul Kersey, Bradley Visiting Fellow, Heritage Foundation, Washington, DC; Mr. Graig Garthwaite, Director of Research, Employment Policies Institute, Washington, DC; Mr. Todd McCracken, President, National Small Business Association, Washington, DC; Mr. Mike Fredrich, President and Owner, Manitowoc Custom Molding, LLC, Manitowoc, WI; and Mr. Jared Bernstein, Ph.D., Senior Economist, Economic Policy Institute, Washington, DC.

Mr. Kersey began his testimony by presenting evidence conducted by the Heritage Foundation that showed of the 7.8 million Americans currently earning less than \$6.55 an hour, only 15 percent are living in poverty and over half belong to families earning double the poverty level. Mr. Kersey testified that increasing the minimum wage would have a negative net effect on the unskilled entry-level jobs that typically pay the minimum wage.

Mr. Garthwaite echoed Mr. Kersey's testimony, pointing to a 1998 survey by economists at Stanford University, Princeton University, and the Massachusetts Institute of Technology stating that the average economist believes a 10 percent increase in the minimum wage will lead to a 2.1 percent decrease in effective employment. That by itself, Mr. Garthwaite testified, is a strong argument against raising the minimum wage. However, to further exacerbate this potential problem, the job loss would be concentrated on the least skilled employees, the very individuals supporters of a minimum wage increase attempt to help.

Both Messrs. McCracken and Fredrich illustrated practical examples of the effect of a minimum wage increase on employers. Mr. McCracken, speaking on behalf of his members, suggested that increasing the minimum wage would have an inflationary effect on all wages, so that small employers with approximately 15–20 employees could potentially face an additional cost of \$40,000 or \$50,000 a year. Mr. McCracken testified that that these additional labor costs could often mean the difference between a small company staying open or closing doors forever.

Mr. Fredrich's testimony was similar to Mr. McCracken's, explaining that raising the minimum wage would be devastating to his business. Currently, Mr. Fredrich assumes 80 percent of his employees' health care costs. By forcing him to pay additional labor costs, his only alternative to stay viable would be to lower that ratio, forcing his employees to bear more of their health care costs. Mr. Fredrich also testified that should he be forced to pay additional labor costs, he might consider outsourcing some of his production overseas.

Dr. Bernstein offered dissenting views to all previous panelists. Because it is not indexed to inflation, Dr. Bernstein suggests, the buying power of the minimum wage declines unless our nation's leaders enact an increase. When adjusted for inflation, the current minimum wage is 30 percent below its peak level in 1968 and 14 percent below its level in 1997 when it was last increased.

In sum, the Subcommittee concluded that raising the minimum wage would have a negative impact on small business.

For further information about this hearing, please refer to Committee publication #108–61.

7.3.11 THE DEPARTMENT OF LABOR'S OVERTIME REGULATIONS EFFECT ON SMALL BUSINESS

Background

On April 23, 2004, the Department of Labor issued final regulations under the Fair Labor Standards Act implementing the exemption from overtime pay for executive, administrative, professional, outside sales and computer employees. These exemptions

are often referred to as the “white collar” exemptions. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and, in most cases, must be paid on a salary basis at not less than minimum amounts as specified in pertinent sections of these regulations.

This is the first comprehensive update of overtime regulations in half a century. Many businesses found the old overtime rules vague, outdated and confusing. The lack of clarity in the regulations made it difficult to know if business owners were making correct decisions about who gets overtime and who does not. That confusion often led to costly litigation, draining resources away from our businesses—slowing our economic growth and costing jobs. On May 20, 2004, the Subcommittee held a hearing to examine the impact of the new overtime rules on small businesses.

Summary

Panel one was comprised of Mr. Alfred Robinson, Deputy Administrator, Wage and Hour Division, United States Department of Labor, Washington, DC. Panel two was comprised of Mr. Neill Fendly, President and CEO, Mortgage Defense, Inc., Scottsdale, AZ; Mr. John Fitch, Senior Vice President, National Funeral Directors Association, Washington, DC; Mr. Ronald Bird, Ph.D., Chief Economist, Employment Policy Foundation, Washington, DC; and Mr. Ross Eisenbrey, Vice President and Policy Director, Economic Policy Institute, Washington, DC.

Mr. Robinson led off the hearing with an overview of the regulations and a status update. Mr. Robinson testified that under the new regulations, workers earning less than \$23,660 per year (or \$455 per week) are guaranteed overtime protection. This new minimum salary level for exemption triples the current minimum salary of only \$8,060 per year, and strengthens overtime rights for 6.7 million Americans. Additionally, the regulations strengthen overtime protection for licensed practical nurses, police officers, fire fighters, paramedics, and similar public safety employees, and blue-collar workers, such as construction workers, manual laborers, and employees on factory lines. Such employees will not be affected by the new regulation.

Mr. Robinson continued in his testimony, as well as in the question and answer portion of the hearing, that by and large, these regulations will require more overtime being paid to employees. Despite the additional cost to employers, the regulations have the overwhelming support of the business community. Mr. Robinson stated that currently, businesses are losing resources to the legal system attempting to sort out which employees are entitled to overtime. Mr. Robinson surmised, that in the long run, the legal and administrative cost savings garnered by the new regulations far outweighs the additional pay.

On the second panel, Messrs. Fendly and Fitch, along with Dr. Bird all testified in support of the regulations, citing red-tape reduction, easier use, and fairness as reasons why they and their parent organizations support the regulations. However, each stated that the primary reason for support is the expected reduction in litigation.

Mr. Eisenbrey testified against implementation of the regulations. Finding perceived flaws in the language, Mr. Eisenbrey focused on what the regulations do not cover, such as employees deemed as “team leaders.” Because this particular employee is not delineated within the regulations, employers will face the same problems they currently have under the old system. Additionally, Mr. Eisenbrey pointed out that because of this and other flaws, employers will find ways to circumvent the system by giving new titles and tasks to individual employees to avoid paying them overtime.

In sum, the Subcommittee concluded that the Department of Labor’s new overtime regulations are beneficial to small business.

For further information about this hearing, please refer to Committee publication #108–67.

7.3.12 EXCELLENCE IN ACTION: GOVERNMENT SUPPORT OF DISABLED VETERAN-OWNED BUSINESSES, JOINT SUBCOMMITTEE HEARING WITH THE SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS AND THE HOUSE VETERANS’ AFFAIRS COMMITTEE’S SUBCOMMITTEE ON BENEFITS

Background

The purpose of this hearing, held on July 15, 2004, was to discuss federal department and agency initiatives that would increase the use of discretionary set asides and restricted authorities (established in Public Law 108–183) in contracting with service-disabled veteran-owned businesses (SDVOSBs).

Section 502 of Public Law 106–50, the Veterans Entrepreneurship and Small Business Act of 1999, established that, annually, three percent of all federal contracts and subcontracts should be awarded to SDVOSBs. For the first two fiscal years after enactment of Public Law 106–50, less than one-half of one percent of such contracts had been awarded to service disabled veteran-owned businesses. In order to provide the federal agencies with the necessary tools to meet the three percent goal, Congress and President Bush enacted Public Law 108–183 into law on December 16, 2003. Section 308 of this new law provides additional statutory authority for contracting officers to make it easier to meet the three percent goal.

Summary

The hearing consisted of two panels: Panel one was comprised of Ms. Allegra McCoullough, Associate Deputy Administrator for Government Contracting and Business Development, United States Small Business Administration, Washington, DC; Mr. Frank Ramos, Director, Office of Small and Disadvantaged Business, Department of Defense, Washington, DC; Mr. Bradley Scott, Regional Administrator, General Services Administration, Kansas City, MO; Mr. Scott Denniston, Director, Office of Small Business and Center for Veterans Enterprise, Department of Veterans Affairs, Washington, DC; and Ms. Nina Rose Hatfield, Deputy Assistant Secretary for Business Management and Wildland Fire, Department of the Interior, Washington, DC. The second panel consisted of Mr.

John Lopez and Mr. Rick Weideman, Co-Chairmen of the Task Force for Veterans Entrepreneurship, Silver Spring, MD; Mr. Steven Schooner, Associate Professor of Law and Co-Director of the Government Procurement Law Center, George Washington University, Washington, DC; Mr. Joseph Forney, President, Vetsource, Inc., Hesperia, CA; and Mr. James Hudson, Marketing Director, Austad Enterprises, Inc., Centennial, CO.

Ms. McCoullough detailed the interim final rule published by the SBA and the Federal Acquisition Regulatory Council on May 5, 2004. Additionally, Ms. McCoullough detailed efforts such as outreach training and other policy program initiatives specifically for SDVOSBs.

Mr. Ramos described three areas of focus to improve the Department of Defense's (DOD) performance in meeting the three percent goal. First, the DOD is developing a strategy to increase service-disabled veteran supplier pool in order to augment contract amounts to these businesses. The second area is training DOD personnel in small business-related courses to help them better recognize and support small business concerns. The third area is raising the profile of service-disabled veterans within the DOD.

Mr. Scott detailed "Operation Fast Break," the General Services Administration's (GSA) two pronged approach aimed at creating and improving GSA's external and internal offerings to their federal customers, and to SDVOSBs. The broad goals of Operation Fast Break are first to identify, recruit, train, and assist SDVOSBs to get on GSA's multiple-award schedule program. And second, it is to inform client agencies of the new law and the opportunity contained therein to streamline the ability to access SDVOSBs.

Mr. Denniston detailed the efforts of the Center for Veterans' Enterprise. Created in 2001, the Center's principal mission is to promote business ownership and expansion for veterans and service-connected disabled veterans. Mr. Denniston testified that on February 24, 2004, the Department of Veterans Affairs issued an information letter instructing all staff to immediately begin implementing the new set-aside provisions contained in Public Law 108-183 prior to the issuance of regulations.

Ms. Hatfield articulated her support for the changes made by Public Law 108-183 and expressed the Department of the Interior's enthusiastic outreach efforts in this regard. Ms. Hatfield detailed the Department's outreach efforts via open houses, forums, and direct contact to ensure SDVOSBs realize the changes and have the capabilities to participate fully.

Mr. Lopez, who expressed concerns regarding federal agency implementation of Public Law 108-183, led off the second panel. Mr. Lopez was grateful of the efforts of Congress, but suggested yet still many agencies fail to meet the three percent goal. Additionally, Mr. Lopez lamented that the commitment of the private sector prime contractors lags behind the substandard federal effort.

Mr. Schooner testified that, while expressing his reverence for service-disabled veterans, establishing an arbitrary goal of federal contract dollars is not the most efficient mechanism to increase participation by any segment of the small business community. He based his concerns on uncertainty in the procurement system, the potential to create infighting between SDVOSBs, the difficult na-

ture of oversight and accountability, and finally, the burden it would place on the federal acquisition workforce.

Mr. Hudson expressed concerns similar to Mr. Lopez. Mr. Hudson is an SDVOSB and in addition maintains a database of SDVOSBs. He testified that he has corresponded with and spoken to approximately 400 SDVOSBs in the past few years and knows only a handful who have successfully entered the federal marketplace. Mr. Hudson requested that the federal government establish a case-managed approach to service-disabled veterans, as they need more follow-along and more intensive service.

Mr. Forney concluded the hearing with more concerns regarding federal agency efforts to meet the goal. Mr. Forney, a SDVOSB, testified that repeated efforts by him have yielded no results. Citing as examples, a letter he received from the Department of Agriculture stating that the three percent goal is discretionary, not mandatory, and no return calls from the Department of Veterans Affairs following several attempts by him.

In sum, the Subcommittees concluded that much more oversight is needed to insure that federal agencies aggressively use the new statutory tools provided them in Public Law 108-183 so that more contracts can flow to well-deserving SDVOSBs.

For further information about this hearing, please refer to Committee publication #108-73.

7.4 SUMMARIES OF THE HEARINGS HELD BY THE SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

7.4.1 IMPROVING AND STRENGTHENING THE SBA OFFICE OF ADVOCACY

Please refer to the hearing summary set forth in part 7.3.1, *supra*.

For further information on this hearing, refer to Committee publication 108-5.

7.4.2 FEDERAL AGENCY TREATMENT OF SMALL BUSINESS

Background

On May 15, 2003, the Subcommittee on Regulatory Reform and Oversight held a hearing to examine federal agency treatment of small business. The participants examined current efforts to take small businesses into account when federal agency rules are drafted as well as future regulatory reform initiatives. Each group also identified individual agencies and regulations that had been particularly sensitive to small business interests and those that had not been following their obligations under the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act.

Summary

The hearing was comprised of two panels of witnesses including: Mr. Michael Barrera, Regulatory Enforcement Ombudsman, United States Small Business Administration, Washington, DC; the Hon. Nina Olson, Taxpayer Advocate, Internal Revenue Service, Washington, DC; Ms. Kristie Darien, Director of Government Affairs,

National Association for the Self Employed, Washington, DC; and M. Dorothy Wood, President and CEO, J.D. & W, Inc., Virginia Beach, VA.

Mr. Barrera discussed his office's work to resolve small business regulatory enforcement complaints and has found high degrees of cooperation from most agencies. His regulatory fairness board hearings are now regularly attended by the National Taxpayer Advocate of the IRS and often lead to on site resolution of small business problems. Ms. Olsen shared the work of her outreach efforts to small businesses. The office is attempting to market its services better to small business owners especially in the area of payroll tax compliance because of the potential for stiff fines. In her 2002 Report to Congress, Ms. Olsen identified some of the most serious problems for small business including navigating the IRS, long delays to handle settlements of cases, handling IRS collections, employment tax deposits, and obtaining Employer Identification Numbers.

On the second panel, Dorothy Wood discussed the challenge of compliance with the Health Insurance Portability and Accountability Act and the Occupational Safety and Health Administration (OSHA) workplace regulations as a small businesswoman. She also described the harsh treatment she received by OSHA inspectors at her worksite. Kristie Darien of the National Association for the Self-Employed described improvements by the IRS in its treatment of micro-businesses, but ask for the agency and Congress to urgently address the definition of independent contractor. Ms. Darien also called for increasing tax simplification and paperwork reduction.

In sum, the subcommittee discovered that while there was progress being made in how federal agencies treated small businesses, there was still much more work needed to be done.

For further information on this hearing, refer to the Committee publication #108-15.

7.4.3 CRS REGULATIONS AND SMALL BUSINESS IN THE TRAVEL INDUSTRY

Background

On June 26, 2003, the Subcommittee on Regulatory Reform and Oversight held a hearing to examine U.S. Department of Transportation's (DOT) Computer Reservation System (CRS) regulations and their impact on small businesses in the travel industry. The rulemaking included an inadequate Regulatory Flexibility Analysis (RFA) that failed to account for its full impact on small businesses in the airline travel industry and, most specifically, small travel agents. The hearing explored the Department's compliance with the RFA and its potential effects on the subsequent rulemaking.

Summary

The hearing was comprised of one panel of witnesses including: the Hon. Thomas Sullivan, Chief Counsel Office of Advocacy, United States Small Business Administration, Washington, DC; Mr. Richard A. Cooper, President, National Travel Systems, Lubbock, TX; Paul M. Ruden, Esq., Senior Vice President, Legal and

Industry Affairs, American Society of Travel Agents, Alexandria, VA; Norma R. Pratt, President, Rodgers Travel, Inc., Philadelphia, PA; David Schwarte, Esq., Executive Vice President & General Counsel, Sabre Holdings Corp., Southlake, TX; and Mr. David L. Rojahn, President, DTR Travel, Inc., Englewood, CO.

Chief Counsel Sullivan reviewed the role of SBA's Office of Advocacy in ensuring RFA compliance by the Department of Transportation (DOT) and other agencies. Advocacy reviewed the Notice of Proposed Rulemaking (NPRM) and became concerned about its incomplete analysis of impacts on small travel agencies. Advocacy requested that DOT publish a supplemental Initial Regulatory Flexibility Analysis (IRFA) before it moved to final rule stage.

Mr. Ruden walked the subcommittee through the entire rule-making process and a description of the economics of the travel agent industry. Many small travel agents rely on the income stream of productivity pricing and incentives provided by Computer Reservation Systems (CRS) to make their already difficult business more profitable. Many small travel agents closed in the post 9/11 environment because of the reduction in travel and the ending of fees paid from the airlines to agents. Mr. Schwarte of Sabre discussed the importance of allowing CRSs to make and define the terms of contracts between themselves and travel agents. Mr. Cooper, Mr. Rojahn, and Ms. Pratt echoed the concerns of Mr. Ruden and Mr. Schwarte and described the difficult economic consequences that their small travel businesses would face if DOT's current proposed rules were allowed to go into effect.

In sum, the subcommittee concluded that the Department of Transportation did not perform an adequate IRFA analysis and urged that agency to do a better job prior to final adoption of the CRS rule.

For further information on this hearing, refer to the Committee publication #108-22.

7.4.4 CONTRACT BUNDLING AND SMALL BUSINESS PROCUREMENT

Background

On July 15, 2003, the Subcommittee on Regulatory Reform and Oversight held a hearing to examine federal contract opportunities for small business and the use of bundling by agencies that combines smaller contracts into one larger contract that reduces the total number of procurement opportunities. Many of these larger bundled contracts are so large that small businesses are ineligible to compete as prime contractors. According to the Office of Management & Budget (OMB), the number and size of bundled contracts have reached record levels. The Subcommittee wished to examine this trend and the diminishing number of contract opportunities for small businesses. In March of 2002, the President laid out his small business agenda, which included increasing small business opportunities in federal procurement. Several departments were reviewed for their compliance with the President's bundling policy including the Departments of Defense, Housing & Urban Development (HUD), Energy, Transportation, and the National Aeronautics and Space Administration (NASA).

Summary

The hearing was comprised of two panels of witnesses including: Ms. Jo Baylor, Director, Office of Small Disadvantaged Business Utilization, United States Department of Housing and Urban Development, Washington, DC; Mr. Sean M. Moss, Director, Office of Small Disadvantaged Business Utilization, United States Department of Transportation, Washington, DC; Ms. Linda Oliver, Deputy Director, Office of Small Disadvantaged Business Utilization, Department of Defense, Washington, DC; Mr. Ralph C. Thomas III, Assistant Administrator, Office of Small Disadvantaged Business Utilization, National Aeronautics and Space Administration, Washington, DC; Ms. Theresa A. Speake, Director, Office of Small Disadvantaged Business Utilization, Department of Energy, Washington, DC; Mr. Dave Sterling, Vice President, VIRTEXCO Corp., Norfolk, VA; and Mr. Jorge Lozano, President/CEO, Condortech Services, Inc., Annandale, VA.

Ms. Baylor described the success HUD has had in unbundling contracts and creating opportunities for small business and announced that 50 percent of its prime contracts went to small businesses. Mr. Moss detailed DOT's successes in contracting over \$3.6 billion in prime contracts to small business representing over 44 percent of the agency's total contracting dollars. Ms. Oliver at the Department of Defense and the largest government procurer pointed to the department's success in increasing the total number of small business prime contractors to 33,936 from 24,130 the previous year and the number of bundled contracts at DOD to date being six. Mr. Thomas reflected on NASA's work to increase small business contracting from \$2.5 to \$3.6 billion annually with the same total contracting budget and its ability to triple the number of dollars going to minority and woman owned businesses. Ms. Speake described the difficulties her agency has in contracting out substantial amounts of work to small businesses because the vast majority of its procurement is in large scale maintenance and operation contracts for the national laboratories. Efforts continue to break out portions of existing and future contracts for small business contracting.

Mr. Sterling and Mr. Lozano described their experiences as small business owners with contract bundling. Both argued that despite some positive news from government agencies, the procurement officials in charge of contracting continue to attempt to bar the smallest companies from doing business by bundling smaller contracts or unfairly raising the qualifications to bid.

In sum, the subcommittee concluded that while some efforts were underway to help small businesses obtain more federal contacts, contract bundling or consolidation still presented a significant hurdle to small businesses.

For further information on this hearing, refer to the Committee publication #108-25.

7.4.5 WHAT IS OMB'S RECORD IN SMALL BUSINESS PAPERWORK RELIEF?

Background

On July 18, 2003, the Subcommittee held the first of three joint hearings with the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs of the Committee on Government Reform to examine the Administration's record in paperwork reduction and burden relief for small businesses. The Small Business Paperwork Relief Act of 2002 required the Office of Management and Budget (OMB) to take certain actions by June 28, 2003, including to: (a) publish the first annual list of all compliance assistance resources available to small businesses; (b) have each agency establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements; and, (c) report to Congress on the findings of an interagency task force, chaired by OMB. The hearing concluded that OMB's two June 27th published documents were incomplete and unsatisfactory, its task force report was unresponsive, and its track record in small business paperwork reduction was dismal.

Summary

The hearing was comprised of three panels of witnesses. The first panel consisted of the Hon. Senator George V. Voinovich (R-OH) and the Hon. Donald A. Manzullo (R-IL). Panel two's lone witness was the Hon. John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. Panel three consisted of: Ms. Karen Kerrigan, Chairman, Small Business Survival Committee, Washington, DC; and Mr. Andrew Langer, Manager, Regulatory Policy, National Federation of Independent Business, Washington, DC.

Senator Voinovich and Representative Manzullo shared their concerns on how the Small Business Paperwork Relief Act (SBPRA) was being implemented. The list of compliance assistance resources was haphazard and incomplete; the meetings of the task force did not seem to accomplish much; and the draft report of the task force included the presumption that agencies collect the minimum amount of paperwork necessary to comply with statutory or regulatory obligations. Mr. Manzullo decried this mindset and had hoped that the task force would review opportunities for elimination of unnecessary or duplicative paperwork. The over reliance on e-government solutions to reduce the paperwork burden was also noted by Mr. Manzullo.

Dr. Graham defended the Bush Administration's and OIRA's record on implementation of SBPRA and in reducing government paperwork. He described how the President's e-government initiatives would assist in consolidating information collection requirements, publishing an organized searchable list of data collections, and implementing electronic submissions. He highlighted the opportunities in the Business Compliance One Stop Initiative that would incorporate elements of the task force report and could be the platform for consolidating and harmonizing federal paperwork requirements.

Ms. Kerrigan and Mr. Langer described the difficulties of their small business members in complying with federal regulatory and paperwork requirements. Ms. Kerrigan praised the Administration's e-government initiatives but stated that it should not supercede the central objective of the Paperwork Reduction Act and SBPRA, which was to actually eliminate unnecessary paperwork.

In sum, the subcommittee concluded that much more work was needed in order for the Executive Branch to comply with the mandates Congress set out in SBPRA.

For further information on this hearing, refer to the Committee publication #108-27.

7.4.6 SPAM AND ITS EFFECTS ON SMALL BUSINESS

Background

On October 30, 2003, the Subcommittee on Regulatory Reform and Oversight held a hearing to examine the impact of unsolicited commercial e-mail or spam on small businesses. It is estimated that unsolicited commercial e-mail accounts for 45 percent of all e-mails; roughly 15 billion messages a day. Worldwide, spam costs businesses a total of \$20 billion a year in lost productivity and technology expenses. However, many e-mail marketers execute their campaigns legally, and many businesses rely on commercial e-mail to communicate with existing customers. Members of the House of Representatives and the Senate introduced seven competing bills attempting to eliminate e-mail spam. Several proposals would have adverse impacts on small businesses including some individual state legislation that would ultimately be pre-empted by a federal spam law.

Summary

The hearing was comprised of two panels of witnesses including: Mr. J. Howard Beales, III, Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC; Mr. Jerry Ceresale, Senior Vice President for Government Affairs, Direct Marketing Association, Washington, DC; Mr. Bruce Goldberg, President, Weatherman Records, Farmer's Branch, TX; Mr. John Rizzi, CEO, e-Dialog, Inc., Lexington, MA; Mr. Shane Ham, Senior Policy Analyst, Progressive Policy Institute, Washington, DC; Ms. Catherine Giordano, President/CEO, Knowledge Information Systems, Virginia Beach, VA; and Mr. Wayne Crews, Director of Technology Studies, CATO Institute, Washington, DC.

Mr. Beales addressed the economic impact of spam on small businesses. Although an individual spam e-mail has a de minimis cost, the cumulative economic damage can be enormous. Estimates put the cost of spam to consumers and businesses at between \$10 billion and \$87 billion a year. The flood of fraudulent and offensive spam messages also removes the benefit of e-mail as a marketing tool to legitimate small businesses. The FTC put together consumer education material to help prevent unsuspecting small businesses from having their e-mails harvested or their servers overloaded with spam. The FTC has also aggressively pursued enforcement actions against spammers that already break the law. Mr. Beales discussed the various legislative proposals to combat spam and out-

lined the FTC's principles for a bill that would help small businesses.

Mr. Ceresale and Mr. Rizzi cautioned that Congress not make legitimate e-mail marketing and customer retention e-mails illegal under a spam enforcement regime. Business developed through legitimate use of e-mail tops \$7 billion annually. Mr. Rizzi specifically described how some state legislation might put his small business in serious legal jeopardy. Mr. Goldberg and Ms. Giordano described their experiences in dealing with spam as recipients of spam and as small business owners. Mr. Goldberg lost countless amounts of business by being unable to identify legitimate customer e-mails to his website from spam. Mr. Crews cautioned that no legislative solution can truly end spam but that almost any legislation might cause legitimate companies serious trouble and economic harm. He suggested that the marketplace and technology could ultimately be used to solve the problem by forcing the costs of spam back on the senders of unsolicited e-mail. Mr. Ham argued that legislation was long overdue and that any downsides of legislation were far outweighed by the cost and inconvenience associated with spam e-mail.

In sum, the subcommittee concluded that the problem of e-mail spam is complex from a small business perspective and that Congress should avoid "solutions" with unintended consequences for small business.

For further information on this hearing, refer to Committee publication #108-44.

7.4.7 INCREASING THE COMPETITIVENESS OF U.S. MANUFACTURERS, FIELD HEARING, SPARTANBURG, SC

Background

On November 17, 2003, the Subcommittee on Regulatory Reform and Oversight held a roundtable to discuss ways to increase the competitiveness of U.S. manufacturers. This field hearing was held in Spartanburg, South Carolina along with Representative Jim DeMint, a valuable Member of the Small Business Committee. Issues that impact the competitiveness of manufacturers include producing a skilled workforce; identifying and mitigating harmful regulations; reforming the tax code to encourage job retention; fostering innovation; the high cost of health insurance; and enforcing trade agreements. By November 2003, 2.8 million U.S. manufacturing jobs had been lost in the previous 38 months.

Summary

The hearing was comprised of two panels of witnesses including: the Hon. Grant Aldonas, Undersecretary for International Trade, United States Department of Commerce, Washington, DC; Mr. Daniel Young, CecD, Managing Director, Business Development Division, South Carolina Department of Commerce, Columbia, SC; Ms. Deborah Moore, Spartanburg, SC; Ms. Phyllis Eisen, Vice President, Manufacturing Institute, National Association of Manufacturers, Washington, DC; and Ms. Barbara League, Corporate Secretary, GF League Manufacturing, Greenville, SC.

Mr. Aldonas noted that our manufacturing firms are facing an increasingly competitive global marketplace and we must create an environment in which domestic firms can succeed. The President's manufacturing initiative was discussed with a focus on "keeping our side of the street clean" or removing barriers to competitiveness and reducing the cost of doing business in the United States. Items on the list of barriers include higher energy costs, higher medical and pension costs, as well as higher insurance and tort costs. On the trade side, elimination of tariff and non-tariff barriers, fair and market-based currency valuations, and the vigorous enforcement of current trade laws are also components of the Administration's manufacturing initiative.

Mr. Young testified to the current state of manufacturing in South Carolina. Over 90,000 manufacturing jobs had been lost in the last five years, and the textile industry alone lost nine percent of its employment over the last year. The South Carolina Department of Commerce aggressively recruits new industries and businesses to make up for the changing landscape of jobs in the state. Tax credits for job creation and worker retention are used with other incentives to encourage companies to view the state as friendly to new business.

On the second panel, Deborah Moore, described her story from being gainfully employed as a textile worker for 25 years to now being out of work with no transferable skills. Through government job retraining programs, she attended a local technical college, and has found a new career in college financial aid. Ms. League described the experience of her company and the difficulty in competing with companies in countries like China. Ms. Eisen discussed the need to "re-brand" manufacturing employment and make it more palatable to our nation's students. The perception of manufacturing employment is leading to fewer young people viewing it as a good career choice or as working on a dirty factory floor and so high skilled, high paying manufacturing jobs often go unfilled.

In sum, the subcommittee concluded that the manufacturing climate is rough in the United States, particularly in formerly textile-dependent South Carolina, but if the federal and state governments redouble efforts to further strengthen our nation's overall competitiveness, the slide can be stopped.

For further information on this roundtable, refer to Committee publication #108-45.

7.4.8 WHAT IS THE ADMINISTRATION'S RECORD IN RELIEVING BURDEN ON SMALL BUSINESS?—PART I

Background

On January 28, 2004 the Subcommittee on Regulatory Reform and Oversight held its second of three joint hearings with the Government Reform Subcommittee on Energy, Natural Resources, and Regulatory Affairs to examine the Administration's record in paperwork reduction and burden relief for small businesses. The Small Business Paperwork Relief Act of 2002 (SBPRA) required the Office of Management and Budget (OMB) to take certain actions by June 28, 2003 and others by December 31, 2003.

The hearing reviewed: (a) OMB's still incomplete listing of each agency's single point of contact to act as a liaison between small business and the agency; (b) OMB's still incomplete listing of agency compliance assistance resources available to small businesses; (c) the incomplete initial agency enforcement reports (due December 31st); and (d) additional significant (over 100,000 hours each) paperwork reduction accomplishments and plans to benefit small business. In addition, the three key regulatory agencies—the Departments of Labor (DOL) and Transportation (DOT) and the Environmental Protection Agency (EPA)—discussed their track record in relieving enforcement burdens on small business. The Subcommittee sent extensive post-hearing questions to OMB and DOL.

Summary

The hearing was comprised of three panels of witnesses. Panel one's only witness was the Hon. John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. Panel two consisted of: the Hon. Patrick Pizzella, Assistant Secretary for Administration and Management, United States Department of Labor, Washington, DC; the Hon. Jeffrey Rosen, General Counsel, United States Department of Transportation, Washington, DC; and the Hon. Kimberly T. Nelson, Assistant Administrator for Environmental Information, Environmental Protection Agency, Washington, DC. The third panel's members were: Mr. Harold Igdaloff, President, Sungro Chemicals, Inc., Los Angeles, CA and Mr. Andrew Langer, Manager, Regulatory Policy, National Federation of Independent Business, Washington, DC.

Dr. Graham again defended the administration's and OIRA's record on implementation of SBPRA and in reducing government paperwork. He continued to highlight the e-government initiative, the Business Gateway, and the upcoming SBPRA second task force report. Mr. Pizzella, Mr. Rosen, and Ms. Nelson all testified to specific paperwork reductions and enforcement actions against small businesses. Each defended their records on small business fairness and elimination of some paperwork burdens.

Mr. Igdaloff and Mr. Langer described the difficulties of their small business members in complying with federal regulatory and paperwork requirements and especially of the heavy hand of federal enforcement actions. Mr. Igdaloff described his experiences with EPA as a small producer of agricultural pesticides. Problems with EPA's Toxic Release Inventory program were also discussed.

In sum, the subcommittees concluded that much more work needed to be done by the administration in order to comply with the legislative mandates set-forth in the SBPRA.

For further information on this hearing, refer to the Committee publication #108-51.

7.4.9 CHALLENGES TO SMALL BUSINESS GROWTH, FIELD HEARING, AUGUSTA, GA

Background

On March 1, 2004, the Subcommittee on Regulatory Reform and Oversight held a hearing to discuss ways to increase the competi-

tiveness of U.S. manufacturers. This field hearing was held in Augusta, Georgia along with Representative Max Burns, who represents Augusta as part of the 12th District of Georgia. Witnesses identified solutions to increase the competitiveness of small businesses in Georgia. Topics included: actively working to produce a skilled workforce; identifying and mitigating harmful regulations; reforming the tax code; fostering innovation; and removing other barriers to entrepreneurship, all in service of helping businesses in the state to produce the kind of economic growth that Georgia and the nation needs.

Summary

The hearing was comprised of one panel of witnesses including: Ms. Nuby Fowler, Regional Administrator, United States Small Business Administration, Atlanta, GA; Mr. Randy Griffin, President, CSRA Business Lending, Augusta, GA; Mr. Terry Elam, President, Augusta Technical College, Augusta, GA; Mr. Patrick Wilbanks, Entrepreneur Services Coordinator, Economic Development Institute of Georgia Tech and the Georgia Rural Economic Development Center, Swainsboro, GA; Mr. Ed Presnell, President, Augusta Metro Chamber of Commerce, Augusta, GA; and Mr. Henry H. Logan, State Director, Small Business Development Center, University of Georgia, Athens, GA.

Ms. Fowler testified to the changing nature of the SBA workforce and its increased ability to offer more direct relationships with customers and resource partners. She further discussed the growth of the SBA loan programs from 59,563 to over 76,000 loans in Fiscal Year 2003. Also discussed were the Microloan program and the new Rural Business Investment Company (RBIC) program, which was passed into law as part of the 2002 Farm bill.

Mr. Griffin described the paperwork burden associated with the SBA's 504 guaranteed lending program and urged the agency to come up with a low document option in the program. He also urged the Chairman to not support a zero subsidy rate for the 7(a) loan program and suggested that small rural lenders and users will be hardest hit. Mr. Elam helps to run a small business incubator that provides low rent, and college staff to provide assistance and support in strategic business planning, management, market research, loan packaging, technical consulting, and legal advice through local attorneys. Additional services that assist a newly developing small business are high speed internet access, telephone lines, photo copying, conference rooms, and kitchen facilities. The incubator at Augusta Technical College has 10 start-up companies.

Henry Logan of the SBDC at the University of Georgia described his centers offering of assistance to small businesses through consulting tools and training programs. Pat Wilbanks of the Economic Development Institute at the Georgia Institute of Technology argued for more support for innovation, higher loan volumes in the SBA 7(a) program, continued tax relief, youth entrepreneurship, and minority enterprise development programs.

In sum, the subcommittee concluded that there are still many issues that still needed to be worked on in Washington to help entrepreneurs in small communities like Augusta, Georgia prosper and thrive.

For further information about this hearing, refer to the Committee publication #108–56.

7.4.10 SMALL BUSINESSES CREATING JOBS AND PROTECTING THE ENVIRONMENT

Background

On April 22, 2004, the Subcommittee on Regulatory Reform and Oversight held a hearing to examine innovative small businesses that are creating jobs and protecting the environment. Among the innovative and fast growing small business sector, many businesses are dramatically increasing the efficiency and productivity of our natural resources. Whether creating technologies to reduce pollution, increasing recycling and recovery, or leaving a smaller footprint on the environment, these job creators are also creating environmental benefits. This hearing explored the market driven contributions to the environment of small businesses nicknamed “green gazelles.”

Summary

The hearing was comprised of one panel: Mr. William Farland, Ph.D., Acting Deputy Assistant Administrator for Science, Office of Research and Development, United States Environmental Protection Agency, Washington, DC; Mr. Mark H. Clevey, Vice President, Entrepreneurial Development, Small Business Association of Michigan, Lansing, MI; Mr. Craig H. Lindell, President, Aquapoint, New Bedford, MA; Mr. Scott Seydel, President, EvCo Research, Atlanta, GA; and Phil Catron, President, NaturaLawn of America, Frederick, MD.

Dr. Farland testified that innovative technologies lead to more cost-effective environmental protection and growth and jobs in the economy. He said that there are particularly promising technologies in reducing pollution at its source, increasing recycling and recovery, and finding less costly ways to treat or remediate pollutants. EPA’s Small Business Innovation Research (SBIR) grants focused on waste minimization and pollution prevention. EPA also has a number of other programs that support innovative small businesses such as their Science to Achieve Results (STAR) research grants.

Mr. Clevey discussed the attempts of the Small Business Association of Michigan to assist and encourage the development of more “green gazelles.” They assist in connecting entrepreneurs with SBIR grants and other technical assistance. Mr. Lindell, Mr. Seydel, and Mr. Catron each described the efforts of their small business to find ways to conserve resources, increase recycling, and lower their environmental impact. Each discussed the need for partnership with government to make these innovations, jobs, and environmental improvements possible.

In sum, the subcommittee concluded that the free market—primarily led by innovative small businesses—could provide environmental solutions to difficult problems while, at the same time, create economic opportunity and jobs.

For further information about this hearing, refer to the Committee publication #108–60.

7.4.11 REFORMING REGULATION TO KEEP AMERICA'S SMALL
BUSINESSES COMPETITIVE*Background*

On May 20, 2004, the Subcommittee on Regulatory Reform and Oversight held a hearing to discuss ways to reform the regulatory system to keep America's small businesses competitive. In 2002, the Code of Federal Regulations required over 75,000 pages to record every executive agency rule and if laid down next to each other the volumes would extend 19 feet. From 1991 to 2000, the Code of Federal Regulations increased by 28 percent and showed no signs of stopping in 2002 when 4,167 rules were codified. A report authored by Drs. Crain and Hopkins for the Small Business Administration's (SBA's) Office of Advocacy calculated the cost of regulations to our economy at \$843 billion per year or \$8,164 for every household. Small businesses face a regulatory burden that is 60 percent higher per employee than large businesses. The authors estimated that the average small business is burdened with almost \$7,000 per employee in regulatory compliance costs. The hearing reviewed several approaches to reform of the regulatory process.

Summary

The hearing was comprised of two panels of witnesses. The Honorable J.D. Hayworth (R-AZ) was the sole witness for the first panel. Ms. Susan Dudley, Director, Regulatory Studies Program, Mercatus Center, Arlington, VA; Mr. James Gattuso, Roe Institute for Economic Policy Studies, The Heritage Foundation, Washington, DC; and Mr. Raymond Arth, President, Phoenix Products of Avon Lake, Ohio.

Representative Hayworth discussed his proposed legislation for regulatory reform. His proposal, H.R. 110, would require that all new regulations promulgated by agencies have an up or down vote of the Congress. Mr. Hayworth testified that Congress has ceded far too much of its lawmaking authority to unaccountable, unelected employees in the Executive Branch. He believes this is the only way to get regulation under control and restore common sense to the regulatory process.

Ms. Dudley reviewed the state of our regulatory system by the over 75,000 pages in the Federal Register, the \$28 billion in costs to fund regulatory agencies, the over \$93 billion cost to the regulated community of water regulation, and the fact that in 2000 U.S. manufacturers paid an average of \$2.2 million per firm to comply with federal workplace regulation. On her reform agenda was examining the possibility of a regulatory budget, post analysis of regulation after implementation, and a congressional office of regulatory review and analysis. Mr. Gattuso's suggestions for reform included developing mini-Office of Information and Regulatory Affairs (OIRA's) within each regulatory agency to review legacy regulation, designating regulatory reform czars at each agency, and requiring independent agencies to submit their regulation to the Office of Management and Budget (OMB) for analysis. Mr. Arth discussed his own small business experience with regulatory agencies and suggested passing several pieces of legislation to make SBA's

Office of Advocacy more independent, to examine regulatory budgeting, and to make some reforms of adjudication process of the Occupational Safety and Health Administration (OSHA) at the Department of Labor.

In sum, the subcommittee heard many positive suggestions on how to improve the regulatory process for small business and concluded that many of these items deserved implementation.

For further information on this hearing, refer to the Committee publication #108-66.

7.4.12 DEPARTMENT OF LABOR'S ENFORCEMENT ACTIONS AGAINST SMALL BUSINESS

Background

On June 17, 2004, the Subcommittee on Regulatory Reform and Oversight held a hearing to discuss the Department of Labor's enforcement program and enforcement actions against small businesses. In the previous fiscal year, the Department of Labor conducted enforcement actions against 143,000 businesses. Small businesses accounted for almost 66,000 of those actions. In 2001, the National Federation of Independent Business (NFIB) released a survey of their members which described some 82 percent of the respondents as discovering regulations in the normal course of business or when an enforcement action has begun. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), each agency must establish a policy to provide for the reduction or waiver of civil penalties for violations of statutory or regulatory requirements by a small business. The enforcement policies and compliance assistance programs of the Department of Labor were reviewed.

Summary

The first panel consisted of Mr. Robert C. Varnell, Deputy Solicitor, United States Department of Labor, Washington, DC. The second panel members were: Ms. Anita Drummond, Director of Legal and Regulatory Affairs, Associated Builders and Contractors, Arlington, VA; Mr. Perry A. Bennett, Jr., Health Safety and Environmental Director, Molded Fiber Glass Companies, Ashtabula, OH; and Ms. Patricia H. Lee, President & CEO, National Institute for Urban Entrepreneurship, Washington, DC.

Mr. Varnell described the Department of Labor's emphasis on compliance assistance. He quoted Labor Secretary Elaine Chao from a compliance assistance conference who said, "The reason we care about compliance assistance is that it is a powerful additional tool to help us protect workers." He reviewed the policies and programs of the Occupational Safety & Health Administration (OSHA) and the Wage & Hour Division of the Department and their compliance with the Small Business Regulatory Enforcement Fairness Act.

Ms. Drummond praised the Department of Labor's partnership program but said that OSHA still has some distance to travel before developing the trust of small businesses in the construction industry. She also pointed to the misallocation of resources on worker safety away from more serious problems such as preventing falls,

struck by, caught in/between, and electrical shocks and to less serious problems like silica and ergonomics. Mr. Bennett described his company's experiences dealing with OSHA and the fact that some standards enforced by the agency include 1969 standards that have been subsequently updated by the National Fire Prevention Association. Thus, companies that are in compliance with more recent up-to-date standards will be out of compliance with OSHA. Ms. Lee described the perils of new entrepreneurs in trying to navigate the regulatory process governing workplace regulation. She urged recognition of the opportunity cost of regulations and the cost in jobs. In addition, she recommended improving the Equal Access to Justice Act (EAJA) and giving a hard look at overly zealous enforcement programs.

In sum, the subcommittee concluded that while progress has been made on compliance assistance at the Department of Labor, more work needs to be done to help small business.

For further information on this hearing, refer to the Committee publication #108-69.

7.4.13 WHAT IS THE ADMINISTRATION'S RECORD IN RELIEVING BURDEN ON SMALL BUSINESS?—PART II

Background

On July 20, 2004 the Subcommittee on Regulatory Reform and Oversight held its last of three joint hearings with the Government Reform Subcommittee on Energy, Natural Resources, and Regulatory Affairs to examine the Administration's record in paperwork reduction and burden relief for small businesses. The Small Business Paperwork Relief Act of 2002 required the Office of Management and Budget (OMB) to take certain actions by June 28, 2003, others by December 31, and others by June 28, 2004.

The hearing reviewed: (a) OMB's still incomplete listing of each agency's single point of contact to act as a liaison between small business and the agency; (b) OMB's still incomplete listing of agency compliance assistance resources available to small businesses; (c) the still incomplete agency enforcement reports; (d) the second report of an OMB-chaired interagency task force (due June 28, 2004); and (e) additional significant (over 100,000 hours each) paperwork reduction accomplishments and plans to benefit small business. The hearing concluded that OMB's June 2003 and June 2004 task force reports were unresponsive to Congressional specifications and intent, and its track record in small business paperwork reduction remained dismal. The Subcommittees sent extensive post-hearing questions to OMB, Treasury, and the General Services Administration (GSA).

Summary

The first panel consisted of: the Hon. John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC; the Hon. Jesus Delgado-Jenkins, Acting Assistant Secretary for Management and Budget & Chief Financial Officer, United States Department of Treasury, Washington, DC; and Mr. Felipe Mendoza, Associate Administrator, Office of Small Business Utilization, General Services

Administration, Washington, DC. The third panel's members were: Mr. Joseph Acker, President, Synthetic Organic Chemical Manufacturers Association, Washington, DC; Ms. Anita Drummond, Director of Legal and Regulatory Affairs, Associated Builders and Contractors, Inc., Arlington, VA; and, Mr. John DiFazio, Assistant General Counsel—Legal/Regulatory Affairs, Consumer Specialty Products Association, Washington, DC.

Dr. Graham catalogued paperwork reduction efforts including RCRA changes at EPA that could save 929,000 hours and \$120 million annually, OSHA changes, and HHS CLIA regulations that could save over 400,000 hours. He said they would continue to monitor agency compliance and pay special attention to further reducing the paperwork burden on small businesses with fewer than 25 employees. Mr. Delgado-Jenkins and Mr. Mendoza discussed efforts by the Department of Treasury and the GSA to comply with SBPRA and provide reductions in real paperwork burden for small businesses.

Mr. Acker and Mr. DiFazio shared the experiences of small specialty chemical manufacturers with federal regulation and paperwork requirements. Mr. Acker described a typical small manufacturer that does not have dedicated employees for health, environment, and safety like large corporations but must “double hat” employees to perform multiple roles like regulatory compliance. Each added layer of regulation or paperwork burden comes directly out of time that employees could spend producing value for the company. Ms. Drummond provided the experience of the construction industry in regulatory compliance. The greatest difficulty, she said, is just trying to figure out what rules apply to an individual business. Compliance assistance efforts at the Department of Labor were praised.

For further information on this hearing, refer to the Committee publication 108–74.

7.4.14 SMALL BUSINESS LIABILITY REFORM

Background

On July 22, 2004, the Subcommittee on Regulatory Reform and Oversight held a hearing to discuss small business liability reform. The cost of tort liability for small businesses in America is \$88 billion a year. Small businesses bear a disproportionate share of the total tort liability burden. Although taking in only 25 percent of business revenue, they face 68 percent of the tort costs. The average liability cost for small businesses is \$15 per \$1,000 of revenue, while large corporations average \$5.39 per \$1,000 of revenue. The hearing examined several approaches to making small businesses more competitive through reforms of the tort liability system.

Summary

The hearing was comprised of two panels of witnesses including: The Hon. Steve Chabot (R–OH) was the sole witness on the first panel. The second panel consisted of: Ms. Jo Wagner, President, CTO, Inc., Harlingen, TX; Ms. Lisa A. Rickard, President, United States Chamber of Commerce Institute for Legal Reform, Washington, DC; Mr. Victor Schwartz, General Counsel, American Tort

Reform Association, Washington, DC; Mr. Chris Cavey, Owner, Cavey Insurance, Hampstead, MD; and Ms. Joanne Doroshow, Executive Director, Center for Justice & Democracy, New York, NY.

Representative Chabot described the high cost of tort liability to small businesses. He described his legislation, H.R. 2813, the Small Business Liability Reform Act, which would limit punitive damages and would eliminate joint and several liability for non-economic losses for businesses employing fewer than 25 people. It would also protect product sellers and distributors of goods they did not manufacture from liability when the seller was not negligent, or did not breach an express warranty.

Ms. Rickard shares the state of liability costs to large and small businesses. She discussed the high cost to small businesses, 44 percent of who pay all their tort costs out of pocket and not from insurance. She discussed and commended legislation in Congress to address class action lawsuits, asbestos lawsuits, medical malpractice, food consumption, “loser pays” for frivolous claims, and small business liability reform. Ms. Wagner described her harrowing experience as a small business contractor who was caught up in a legal action against all contractors on a school project. Even though she had no negligence on her part, the trial attorneys sought damages from everyone on the project. Mr. Cavey described his experience as an insurance agent and the small businesses that he has helped get liability coverage. He also has seen frivolous lawsuits on the part of “injured” plaintiffs almost destroy family owned small businesses even though they were not negligent.

Ms. Doroshow suggested that tort liability costs to small businesses were inflated and that tort reform was a boon to big business. Mr. Schwartz reviewed the state of the legal profession in torts and suggested that the most important change to the system would be to improve Rule 11, which helps to compensate a defendant if a plaintiff brings a frivolous lawsuit. He argues that if lawyers and plaintiffs were more fearful of losing a judgment and having to pay the costs of the other party, there would be more self-regulation.

In sum, the subcommittee concluded that our tort system is out of control and something needs to be done to help small businesses deal with frivolous lawsuits.

For further information on this hearing, refer to the Committee publication #108-76.

7.5 SUMMARIES OF HEARINGS HELD BY THE SUBCOMMITTEE ON TAX, FINANCE AND EXPORTS

7.5.1 SMALL BUSINESS ASSET EXPENSING

Background

The Subcommittee on Tax, Finance, and Exports conducted this hearing to draw attention to potential changes in Section 179 of the Internal Revenue code. Section 179 deals with the expensing of depreciable business assets. At the time of the hearing, small businesses could only expense the first \$25,000 spent on new equipment in a given year. The remainder (if any) was depreciated

under current cost recovery rules. The threshold for this tax subsidy was capped at \$200,000. In effect, this rule gives firms an incentive to invest no more than \$225,000 by substantially increasing their cost of capital above the threshold range.

Increasing the expensing limit to various levels have been included in each of President Bush's major economic recovery/tax relief plans (Public Laws 107-16, 107-147), and the current Fiscal Year 2004 budget request.

Summary

The hearing, held on April 3, 2003, consisted of two panels. Panel One was comprised of Mr. Gregg Jenner, Deputy Assistant Secretary and Senior Advisor for Tax Policy, Department of Treasury, Washington, DC. Panel Two was comprised of: Mr. Martin Regalia, Ph.D., Chief Economist and Vice President of Tax Policy, United States Chamber of Commerce, Washington, DC; Ms. Dena Battle, Legislative Affairs Manager, National Federation of Independent Businesses, Washington, DC; Mr. Leslie Shapiro, President, Padgett Business Services, Washington, DC; and Mr. Brian Harvey, President of H&C, Inc. Heating & Cooling, Laurel, MD.

Mr. Jenner focused on President Bush's proposal to increase the Section 179 expensing limit contained in the Bush Administration's FY04 Budget Request. The proposal would, among other things, triple the maximum dollar amount that may be expensed to \$75,000 (from \$25,000) for qualifying property placed in service in 2003 and thereafter; index annually for inflation the amount that can be expensed each year (beginning in 2004); increase to \$325,000 from \$200,000 the point at which the benefits of section 179 begin to phase out, effective for qualifying property placed in service in 2003 and thereafter (and index such amount annually for inflation); include off-the-shelf computer software as qualifying property; and permit taxpayers to make or revoke expensing elections on amended returns without the consent of the Commissioner. Mr. Jenner also commented briefly on other aspects of the President's economic growth plan, including ending the double taxation of dividends.

Dr. Regalia and Ms. Battle echoed Mr. Jenner's support for the President's proposal, indicating that any increase in the limit would spur growth, create jobs, and boost the economy, citing numerous statistics for each positive aspect. Mr. Shapiro also testified in favor of increasing the expensing limit, however, he did not place as much emphasis on increasing the limit as previous witnesses. He commented on an alternative proposal where, in lieu of an automatic increase, small businesses would be able to "carry-over" unused expensing allowances from year to year, allowing them to build a surplus for those years they make significant purchases.

Mr. Harvey concluded the testimony by attesting that any significant increase in the expensing limit would allow him to immediately grow his business by purchasing new trucks, and probably at least one new employee.

On May 28, 2003, President Bush signed H.R. 2, the "Jobs and Growth Tax Act of 2003," into law (Public Law 108-27). Public Law 108-27 increases the Section 179 expensing limit from \$25,000 to

\$100,000 and increases the upper threshold limit from \$200,000 to \$400,000 for Fiscal Years 2003–2005.

For further information about this hearing, please refer to Committee publication 108–6.

7.5.2 OVERCOMING OBSTACLES FACING THE UNINSURED

Background

The Subcommittee on Tax, Finance, and Exports conducted this hearing to examine the role tax-advantaged mechanisms can have in decreasing the distressingly high number of uninsured Americans, which currently stands at approximately 43 million. About 60 percent of those Americans without health insurance are either small business owners, or employees of small business owners. The Subcommittee believes that removing current restrictions on and expanding the use of Medical Savings Accounts (MSAs), Flexible Spending Accounts (FSAs), and increased tax relief focused specifically toward the purchase of health insurance can help alleviate many of these problems.

FSAs are employer-established benefit plans, which first began in the 1970s, that reimburse employees for specified expenses. MSAs are tax-advantaged individual savings accounts that can also be used for unreimbursed expenses that became available under a demonstration that began in 1997. President Bush's FY 2004 budget proposed changes to FSAs and a permanent extension and substantial expansion of MSAs that are identical to President Bush's FY 2003 budget proposal.

Summary

The hearing, held on May 8, 2003, was composed of two panels. Panel one consisted of the Hon. Donald Manzullo (R–IL), Chairman of the House Committee on Small Business. The second panel was composed of Mr. Tom Miller, Director of Health Policy Studies, CATO Institute, Washington, DC; Mr. Edwin Hall, Senior Health Policy Analyst, Center on Budget and Policy Priorities, Washington, DC; Mr. Kim Snyder, Chairman, Lehigh Valley Chamber of Commerce, Bethlehem, PA; and Mr. Keith Hall, CPA, Houston, TX.

Chairman Manzullo's testimony focused on legislation he recently introduced with Congresswoman Nydia Velázquez, the Ranking Member of the House Small Business Committee. This legislation, H.R. 1873, the "Self-Employed Health Care Affordability Act of 2003," seeks to provide small business with the same opportunity for success as big business in affording quality health coverage. Specifically, H.R. 1873 would allow self-employed business owners to deduct their health care expenses from their payroll taxes (Social Security and Medicare) as well as their individual income taxes. Self-employed workers pay a 15.3 percent payroll tax on top of their individual income tax. Allowing them to deduct their health care expenses from their payroll taxes would effectively reduce their health care costs by 15 percent. Mr. Hall also focused on this legislation.

Mr. Miller and Mr. Park expressed differing views on expanded use of MSAs and FSAs. Mr. Miller testified in support of removing or redesigning restrictions on the availability of each one of them

would help reduce the number of uninsured individuals and families. Mr. Miller also stated that significant progress could be achieved by providing broader parity in the tax treatment of health insurance financing for all purchasers; reducing artificial tax and regulatory barriers to market-based, value-maximizing choices; and empowering all health care consumers to match their own needs and preferences to a wider variety of affordable options. Mr. Snyder of the Lehigh Valley Chamber of Commerce echoed these views.

Mr. Park expressed concerns regarding the expanded use of MSAs and FSAs. Chief among them, Mr. Park noted that such expansions could undermine the current traditional employer-based health insurance system through which the vast majority of Americans obtain their health insurance and place workers' access to affordable and comprehensive health insurance at risk.

For further information about this hearing, please refer to Committee publication 108–13.

7.5.3 THE CHILEAN FREE TRADE AGREEMENT: OPENING DOORS TO SOUTH AMERICAN MARKETS

Background

On June 12, 2003, the Subcommittee on Tax, Finance, and Exports conducted this hearing to emphasize the importance of free trade agreements for the American economy, and particularly America's small businesses. The Chilean Free Trade Agreement (CFTA) represents a significant step forward in America's return to the free trade agreement arena. Not only was it one of the first pacts Congress will have a chance to vote on under the newly re-established Trade Promotion Authority (Public Law 107–210), it was also the first agreement with a South American nation.

Talks on a free trade agreement with Chile began in December 2000. Following 14 rounds of negotiations, the Agreement was declared final on June 6, 2003, which cleared the way for a vote on implementing legislation in the 108th Congress.

Summary

The hearing was composed of two panels. The first panel consisted of two witnesses: Mr. Christopher Padilla, Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison, Office of the United States Trade Representative, Washington, DC and Mr. Manuel Rosales, Assistant Administrator, Office of International Trade, United States Small Business Administration, Washington, DC. The second panel consisted of Mr. Willard Workman, Senior Vice President for International Affairs, United States Chamber of Commerce, Washington, DC; Mr. James Morrison, President, Small Business Exporters Association, Washington, DC; Mr. Arland Schantz, Owner/Operator, Evergreen Farms, Zionsville, PA; and Mr. Larry Wesson, President and CEO of Aurora Instruments, Ambler, PA.

Both administration witnesses were in complete support of the agreement, citing numerous statistics detailing the negative impact of not having a free trade agreement with Chile has had on our economy. In addition, it was mentioned that America has been forced away from the Chilean market by recently completed free

trade agreements reached between Chile and several other countries including Canada, Mexico, and the European Union. Both Administration witnesses cited several examples of American small businesses that would benefit from expanded trade with Chile.

Mr. Padilla focused on numerous technical aspects of the agreement, contrasting it with the other 150 or so agreements currently on record across the globe. Specifically, Mr. Padilla stressed the agreement's comprehensive nature, promotion of transparency, modern composition, and its innovative approach that supports and promotes respect for environmental protection and worker rights.

Mr. Rosales focused on his efforts as Assistant Administrator at the Small Business Administration's Office of International Trade in preparation of the historic agreement. Mr. Rosales stated that in 2002, the SBA had entered into a cooperative agreement with its Chilean counterparts, the Technical Cooperation Service of Chile (SERCOTEC) and the Chilean Economic Development Agency (CORFO) to initiate institutional cooperation to promote and support the development, growth, stability, and global competitiveness of small and medium enterprises (SMEs), and promote trade opportunities for SMEs in each country. Additionally, Mr. Rosales detailed the technical assistance and loan programs available to small businesses wishing to become involved, or further involved in exporting.

Similar to the first panel, all four of the witnesses on the second panel were in complete support of the CFTA. Mr. Workman and Mr. Morrison commented on the economic benefits and employment increases on tap for the United States should Congress finalize the agreement.

Mr. Schantz focused on the CFTA's impact on the American agricultural sector, citing specific benefits for America's wheat, oilseeds, edible vegetable oils and sugar producers. Mr. Schantz testified that within 12 years, the agreement would eliminate the price band system used by Chile to protect its producers from lower-priced imports. Additionally, Mr. Schantz commented on the significant progress that was made during the negotiations with Chile to break down the walls of the sanitary and phytosanitary barriers on U.S. agricultural imports without a scientific basis, which rendered exportation impossible. According to Mr. Schantz, these changes will undoubtedly result in increased exports of U.S. fruits, beef, lamb and pork, as well as dairy products to Chile.

Mr. Wesson stated that the CFTA would immediately and dramatically improve his company's bottom line. Aurora Instruments is the sole producer of portable fully automatic fusion splicers in the Western Hemisphere. In 1997, Aurora Instruments maintained a 74 percent market share in Chile. By 2002, Aurora's market share had dropped to zero. Mr. Wesson stated that the absence of a U.S.-Chile free trade agreement was a major cause for this decline because many of his distributors elected to go with the less expensive European manufactured fusion splicers. Mr. Wesson believes that final approval of the CFTA will dramatically help his business by allowing him to re-establish ties with his distributors in Chile.

The U.S.-Chile Free Trade Agreement passed the House by a strong bipartisan margin of 270 to 156 on July 24, 2003 and was

signed into law by the President on September 3, 2003 (Public Law 108-77).

For further information about this hearing, please refer to Committee publication, #108-19.

7.5.4 REMOVING ROADBLOCKS TO SUCCESS: HOW CAN THE FEDERAL GOVERNMENT HELP SMALL BUSINESSES REVITALIZE THE ECONOMY?, FIELD HEARING, DENVER, CO

Background

America's small businesses are the backbone of our nation's economy. They represent 99 percent of all employers; more than half of all U.S. employees work for small firms; and they generate between 60 and 80 percent of all new jobs in America. Small businesses can and will be the leaders in our economic recovery and our elected officials must do all they can to foster, not hinder, their growth.

Unfortunately, some of our elected officials have been fond of passing new laws and imposing mandates and regulations on business. Congress has been working in recent years to diminish that burden with legislation such as the Paperwork Reduction Act, the Small Business Paperwork Relief Act, and most recently the Jobs and Growth Tax Relief Reconciliation Act of 2003. However, even with the passage of these bills, federal regulatory, tax, and compliance burdens continue to be cited by many owners as the most significant problems facing their businesses.

Summary

The hearing, held on August 27, 2003, consisted of one panel: Mr. Jim Henderson, Regional Advocate, Office of Advocacy, United States Small Business Administration, Denver, CO; Mr. Rick O'Donnell, Executive Director, Department of Regulatory Agencies, State of Colorado, Denver, CO; Ms. Rebecca Hea, Psy. D., Senior Administrator, Denver Children's Home, Denver, CO; Mr. Patrick Hilleary, Director of Operations, Brookfield Properties, Denver, CO; Mr. Robert Piper, Owner, Piper Electric, Inc., Arvada, CO; Ms. Susan Cirocki Trujillo, President/Owner, Arrow Sheet Metal Products, Denver, CO; Mr. Cedric Tyler, President, Business Genetics, Englewood, CO; Mr. Bert Weston, President and CEO of the Inner-City Community Development Corporation, Denver, CO; and Mr. John Zeigler, Chairman of Jackson's Sports Gril, Englewood, CO.

As small business owners and operators, Messrs. Zeigler, Tyler, Piper, and Hillary, along with Ms. Trujillo, each recounted numerous instances where the federal government imposed specific tax and regulatory burdens or has failed to examine and fix looming problems such as health care affordability or tort reform.

Mr. Henderson stressed the positive changes that have taken place over the past few years. He stated that efforts such as the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and the Jobs and Growth Tax Relief Reconciliation Act are welcome and necessary changes for America's small business community. Mr. Henderson did, however, fully recognize that greater efforts are necessary to ensure an optimum small business environment, citing continued tax reform and regulatory relief.

Mr. O'Donnell focused on regulatory burdens and stated that the State of Colorado has recently passed a law similar to the Federal Regulatory Flexibility Act in addition to creating a new website allowing small businesses in Colorado to sign up for e-mail alerts regarding specific regulations pertinent to their small business. Mr. O'Donnell noted that response to both of these measures has been positive.

Noting that federal burdens also impact the non-profit arena, Dr. Hea and Ms. Weston noted that they too face numerous challenges complying with federal regulations. Dr. Hea mentioned that Medicaid regulations are becoming increasingly burdensome. She stated that the Denver Children's Home needs three extra clinicians and one additional clerical assistant simply to keep up with the paperwork.

For further information about this hearing, please refer to Committee publication 108-32.

7.5.5 SMALL BUSINESS EXPORTING AND THE SOUTHERN CALIFORNIA ECONOMY, FIELD HEARING, LONG BEACH, CA

Background

Small and medium manufacturers make up 93 percent of all exporters in the nation, provide 9.5 million jobs, and account for 30 percent of total U.S. growth since 1989. Our federal, state, and local governments must continue to work toward fostering an environment where small and medium exporters can grow and prosper. In 2002 Congress passed and President Bush signed the Trade Promotion Authority Act, which is essentially an agreement between the President and Congress on how market-opening trade negotiations will be conducted and agreements approved. The large number of countries that have lined up seeking to enter free trade negotiations with our country demonstrates the success and need for trade promotion authority.

Just prior to the hearing, Congress passed and President Bush signed both the Chilean and Singapore Free Trade Agreements into law. This is welcome news to our nation's export community. However, it is often difficult for small and medium "would-be" exporters to become involved. Government assistance programs from, among others, the Small Business Administration (SBA), the Overseas Private Investment Corporation (OPIC), the Export-Import Bank of the United States (Ex-Im), and the Department of Commerce are essential to our nation's small businesses looking to become involved, or more involved, in trade.

Summary

The hearing, held on August 28, 2003, consisted of two panels: Panel one was comprised of Mr. Howard Shatz, Ph.D. and Mr. Jon Haveman, Research Fellows, Public Policy Institute of California, San Francisco, CA. The second panel was made up of: Mr. Adalberto Quijada, Deputy District Director, United States Small Business Administration, Los Angeles, CA; Ms. Julie Anne Hennesy, Director, West Los Angeles Export Assistance Center, United States Department of Commerce, Los Angeles, CA; Mr. Lawrence Spinelli, Ph.D., Director of Communications, Overseas

Private Investment Corporation, Washington, DC; Mr. Greg Davis, Director of Economic Development, Office of the Governor of California, Sacramento, CA; Mr. David Josephson, Western Regional Director, Export Import Bank, Long Beach, CA; and Ms. Patricia Unangst, Executive Director, Workforce Investment Network Board, Carson, CA.

Both Drs. Shatz and Haveman detailed numerous statistics on the current slate of free trade agreements, including the completed Chilean and Singapore Free Trade Agreements, as well as those currently being negotiated, such as the Free Trade Area of the Americas and the Central American Free Trade Agreement. By and large, both gentlemen noted that free trade agreements were good for our national economy, but less so for California and Southern California in particular.

All of the witnesses on the second panel, with the exception of Ms. Unangst, documented the specific programs available through their agencies designed to help small businesses become involved in exporting. All government witnesses stayed following the hearing to answer any questions from the audience regarding any programs mentioned to help maintain an open dialogue with the community. In her testimony, Ms. Unangst offered three suggestions to help ensure fair and equitable trade: (1) the federal government must work better with state and local agencies to coordinate services; (2) when considering trade policy, Congress must consider the impact on local employment; and (3) funding needs to be available to agencies to deal with various issues affecting the workforce.

For further information about this hearing, please refer to Committee publication #108-33.

7.5.6 FEDERAL PRISON INDUSTRIES EFFECTS ON THE U.S. ECONOMY AND THE SMALL BUSINESS ENVIRONMENT, JOINT SUBCOMMITTEE HEARING WITH THE SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS AND THE SUBCOMMITTEE ON TAX, FINANCE AND EXPORTS

Please refer to the summary set forth in 7.3.7, *supra*.

For further information about this hearing, please refer to Committee publication 108-39.

7.5.7 THE AUGUST 14, 2003 BLACKOUT: EFFECTS ON SMALL BUSINESS AND POTENTIAL SOLUTIONS

Background

By far, the worst blackout in our nation's history, hitting numerous areas of the Northeast and Midwest of the United States and Canada, this blackout served as a stark reminder of the importance of electricity in our society. This unprecedented event posed severe threats to the public health, safety, and economy of several states and two nations. The consequences go far beyond the personal inconvenience of lights, refrigerators, and air conditioning. Emergency services were disrupted, sensitive security systems were knocked off-line, and the general disarray that followed was a severe cause of concern for the general public's safety. The Subcommittee held this hearing to examine the effects of this blackout

on small businesses and examine what changes might be made to avoid future blackouts.

According to a preliminary federal report, the blackout cost Americans anywhere between \$4 and \$6 billion in total. Among those hardest hit were America's small businesses. The problems caused were not simply lost perishable merchandise and loss of sales. Although for a small business, these troubles alone are not simply a blip on the revenue sheet, but numerous other problems continued to plague small business. For example, the interruption of business activity resulted in the loss of millions of dollars of economic activity that will not be fully recouped through private insurance and state and federal programs, if at all.

Summary

This hearing, held on October 8, 2003, consisted of one panel: Ms. Patricia Orzano, Owner, 7-11 Massapequa, NY; Mr. Tom Leonard, Vice President for Research, Progress and Freedom Foundation, Washington, DC; and Mr. Douglas Voda, Senior Vice President and General Manager, Automation Technologies Division of ABB, Inc., Allentown, PA.

As a small business owner, Ms. Orzano detailed the difficulties she faced both during the "complete bedlam" in the store immediately following the blackout, to the problems she was facing this day, nearly two months following. Ms. Orzano stated that 3% of her entire inventory was destroyed. Initially, the 7-11 corporation indicated that the company would cover the costs through their own blanket liability insurance. However, several days following the blackout, the 7-11 Corporation informed her that the insurance would not cover the food spoilage. At best, she claimed, the 7-11 Corporation would file a claim on her behalf in a future class action lawsuit against her energy companies.

Mr. Leonard focused his testimony on policy that would ensure greater reliability in our electricity grids. By moving toward a more competitive, more flexible electricity market, costs will drop and reliability will increase.

Mr. Voda stated in his testimony that ABB, Inc., along with several other power technology companies, have produced technology that could have limited the impact of the blackout to a more local area. That technology, known as Wide Area Measurement Systems (WAMS), utilizes Global Positioning System satellite signals to very accurately create measurement information and perform analysis on system conditions and indicate if system instability conditions are beginning to occur. The technology also allows operators to monitor neighboring grids, giving them additional minutes to react to prevent the disturbance from spreading.

Although the technology is relatively inexpensive, Mr. Voda stated that power companies are reluctant to install WAMS because there is no real incentive for them to do so as they face no real repercussions for blackouts. Additionally, Mr. Voda suggested that the threat of legal action could also be hampering distribution of WAMS because voluntarily shutting down a power grid due to a perceived problem nearby, when no such shutdown was warranted, could leave the power companies open to lawsuits.

For further information about this hearing, please refer to Committee publication #108–40.

7.5.8 H.R. 1818, THE WORKFORCE HEALTH IMPROVEMENT PROGRAM ACT: HEALTHY EMPLOYEES, HEALTHY BOTTOM LINE

Background

Sixty percent of all Americans are physically inactive, and that contributes significantly to the growth in our Nation's obesity rate to where it is today, near epidemic proportions. The Centers for Disease Control and Prevention, the Rand Corporation, the Surgeon General and countless other experts consistently document that obesity, often exacerbated by this lack of physical activity, is in fact, the number one health problem in the United States today.

The Workforce Health Improvement Program Act, (the WHIP Act), introduced on April 11, 2003 by Congressman Patrick Toomey, aims to take a significant step towards encouraging the use of fitness centers, which in turn would lead to a healthier population, which would in-turn decrease health care costs, reduce government spending, and help prevent debilitating illnesses.

The approach the WHIP Act takes is prevention. Under current federal tax law, the value of on-premises athletic facilities that are provided by employers to their employees are not counted as employee income. However, if an employer does not have the resources to build facilities on premises, but instead provides health club services to employees at an off-site facility, the value of that benefit is included as taxable income to the employee. The WHIP Act would stipulate that this wellness benefit would be excluded and not considered taxable income for the employee.

Summary

The hearing, held on July 8, 2004, consisted of one panel comprised of: Mr. John McCarthy, Executive Director, International Health, Racquet, and Sportsclub Association, Boston, MA; Edwin Foulke, Esq. Jackson Lewis, LLP, Greenville, SC.; Mr. John Brinson, Owner, Lehigh Valley Racquet and Fitness Centers, Allentown, PA; Mr. David Fehrmann, Director, Brand Standards and Operating Systems, USA Management, Inc., Washington, DC; and Ms. Karen Silberman, Executive Director, National Coalition for Promoting Physical Activity, Washington, DC.

Mr. McCarthy was up first and provided an overview of the WHIP Act and stated that healthcare costs are spiraling out of control, driven in large part by the unhealthy lifestyles of many Americans. Mr. McCarthy argued that the tax code creates an unlevelled playing field for employees working for small businesses who cannot provide an on site fitness facility.

Mr. Foulke focused on the benefits of this legislation on employers, as they are not unaffected by a "heavy" workforce. Extra pounds are having serious ramifications relating to health care costs, productivity, absenteeism, workplace injuries, morale, and potential employee discrimination. Mr. Foulke estimated that employers lose approximately \$12.7 billion per year because of poor lifestyle choices by employees. Direct costs of obesity include higher

medical insurance rates, hospitalization, physician visits, outpatient testing/treatment, lab work and medication.

Mr. Brinson centered his testimony on the legislation's effect on the relationships fostered between small and medium sized companies and fitness centers. Specifically, the added hassle and paperwork associated with providing the additional wellness benefit, citing the 1099 form that must be provided to employees to fill out their tax return. On several occasions, Mr. Brinson noted, that he had started working relationships with small and medium businesses to have their employees work out at his centers, however, once Mr. Brinson informed the employer he must provide the additional forms, the employer decided against forming a partnership with Mr. Brinson's business, simply because of the hassle it could cause.

Mr. Fehrmann is in the hospitality business and his company, USA Management, Inc., has several offices and restaurants all of the Washington, DC metro area. Even if they could provide an on-site facility for their employees, the location would be difficult for some employees to get to. USA Management currently provides a wellness benefit for its employees as they feel that because of the frenetic pace of the hospitality industry, a healthy and fit employee serves the company better than an unfit employee.

Ms. Silberman focused health benefit of the WHIP Act, citing the alarming rate of obesity, chronic disease and inactivity in the United States. Ms. Silberman surmised that one of the best delivery systems to incorporate physical activity into a lifestyle is through the workplace. Although not a cure-all, the WHIP Act provides flexibility and incentive to both employers and employees to make physical activity a part of their daily routine.

For further information about this hearing, please refer to Committee publication 108-71.

7.6 SUMMARIES OF THE HEARINGS HELD BY THE SUBCOMMITTEE ON RURAL ENTERPRISES, AGRICULTURE AND TECHNOLOGY

7.6.1 LITIGATING THE AMERICANS WITH DISABILITIES ACT

Background

On April 8, 2003, the Rural Enterprise, Agriculture and Technology Subcommittee held a hearing to discuss the concerns of small business owners as they struggle fully understand and comply with the confusing provisions of the Americans with Disabilities Act (ADA).

In 1990, Congress overwhelmingly passed this landmark legislation. Because of the vagueness in the way this legislation was written, it has opened up a wave of lawsuits. According to the CATO Institute, employers prevailed in over 90 percent of Title I cases. The hearing also focused on H.R. 728, the ADA Notification Act, introduced by Representative Mark Foley. HR 728 allows a 90-day grace period for businesses to correct and become ADA compliant before a civil suit can be filed. Many businesses have thought they were fully ADA compliant only to find themselves the victims of a lawsuit for a small infraction that could easily be corrected.

Summary

The hearing consisted of two panels. The first panel consisted of the Hon. Mark Foley (R-FL). The second panel included: Mr. Ron Richard, Owner, Carl Richard Bowling Centers, Joplin, MO; Mr. Robert L. Fleckenstein, President, Summit Contractors, Inc., Jacksonville, FL; Mr. Kevin Maher, Vice President for Government Affairs, American Hotel and Lodging Association, Washington, DC; Mr. Brendan Flanagan, Legislative Representative, National Restaurant Association, Washington, DC; Mr. Steven Rattner, DDS, College Park, MD; and Mr. John E. Garber, President & CEO of Garber & Associates, LLC, Harleysville, PA.

Representative Foley spoke of a rash of lawsuits that have hit Florida, California and Hawaii by a handful of lawyers or “drive-by lawsuits” targeting small businesses that believe they have complied with ADA structural rules and then are hit by lawsuits. While ADA does not allow plaintiffs to win damages, it does award legal fees to attorneys and unscrupulous attorneys have used this vehicle to “shake down” businesses. Representative Foley cited several cases including the case of a wheelchair store whose owners were both handicapped. Rather than just have a few handicapped parking spaces, the owners decided to make all the parking places handicapped and were sued for not having the correct color paint to designate handicapped parking spaces.

All the witnesses supported the goal of the Americans with Disability Act and agreed that businesses that intentionally did not comply with this legislation should be punished. The first four witnesses on the second panel all testified to the confusion surrounding structural compliance with ADA, saying that most small businesses make every effort to be in compliance, but that state and local codes are not themselves compliant with federal ADA regulations. Ron Richards testified that he knew of bowling alleys that were sued because the ramps were a degree or two off regulation. Robert L. Fleckenstein stated that his company was being sued because they were building multi-family residential units that were built to the specifications of the engineer, but yet under the statute his company is held partially responsible. Both Kevin Maher and Brendan Flanagan explained that members of their associations have been hard hit by lawsuits while trying to comply with ADA because of the vagueness of the statute.

Dr. Rattner disagreed with any weakening of the Americans with Disabilities Act as it was originally passed in Congress, saying that it had been 13 years since it had become law and businesses had had enough time to comply with the statute.

Mr. Garber testified that ADA protects individuals with disabilities from discrimination in the workplace. Under the ADA, a recovering or rehabilitated drug or alcohol abuser is covered as an individual with a record of impairment, and thus protected; however, the current use of alcohol or illegal drugs is not. Organizations, therefore, can have policies that prohibit the possession of drugs and alcohol in workplace. There is much confusion for employers trying to comply with state and federal employment laws; much of which concerns the intersection of various laws and the myriad legal remedies available to disgruntled employees.

For further information on this hearing, refer to Committee publication #108-7.

7.6.2 TRAVERSING THE TWISTS AND IMPACTS OF THE HIGHWAY BEAUTIFICATION ACT UPON SMALL BUSINESSES

Background

The Rural Enterprise, Agriculture and Technology Subcommittee held a hearing on Thursday, May 15, 2003, to discuss the impact of the Highway Beautification Act on small businesses across America. The Highway Beautification Act of 1965 (HBA) was passed by Congress and signed into law by President Lyndon Johnson in order “to insure effective control of billboards along our highways.” This law controls outdoor advertising along Interstate and federal-aid primary highways. HBA does allow for billboards in commercial and industrial areas as zoned, but mandates a state compliance program including the development of state standards and promotes the removal of illegal signs. States and localities are free to enact stricter standards than the federal regulations. However, this law failed to take into account its affect on small business, particularly in rural areas that rely heavily on billboard advertising. Additionally, in rural areas, billboard advertising is the most economically efficient advertising available to small businesses.

Summary

There was one panel of witnesses who testified: Ms. Sarah Kothe, Owner, House of Os Bed & Breakfast, Salisbury, MO; Mr. Charles R. Taylor, Ph.D., Professor of Marketing, Villanova University, Villanova, PA; Mr. Chris Byrns, Counsel, Defenders of Property Rights, Washington, DC; Mr. David Gorin, President, David Gorin and Associates, McLean, VA; Mr. John P. Eck, Owner, Servicetown Travel Plaza, Fredericksburg, VA; Mr. Joe Martin, Owner/Operator, Best Western Mark Motor Hotel, Hampton Inn & Suites, Stillwater, OK; and Ms. Meg Maguire, President, Scenic America, Washington, DC.

Sarah Kothe testified that she had placed a small outdoor sign to advertise her bed and breakfast in rural Missouri. She was later ordered to remove the sign and told that because her business was in a rural area with no commercial zoning and the sign was not on contingent land, she could not advertise with an outdoor sign. Because she has no means of advertising her business has been dramatically reduced.

Professor Charles Taylor testified regarding his expertise in the area of advertising and explained that billboards produce great results for rural small businesses. In his studies of billboard advertising, 80 percent of businesses that utilize billboards to advertise say they would experience a significant loss of business if they were forced to remove these signs.

Chris Byrns testified to his organizations concern over the loss of property rights to the government through the HBA ban on outdoor billboard advertisements. He cited the vital link between the freedom to advertise and a free-market economy.

David Gorin testified that billboard advertisement is the most effective source of advertising that the members of the National As-

sociation of RV Parks and Campgrounds have experienced. He further stated that in the travel industry, 80 percent of travel is on U.S. highways and travelers select stopping places for stays and meals 30 to 60 minutes prior to stopping.

John Eck testified to the significance of billboard advertisement for the travel plaza industry, citing statistics from owners who use billboards, that the removal of billboard advertisement causes a 15 percent to 25 percent decrease in business. Travel plazas rely heavily on billboard advertisement as their main advertising vehicle.

Joe Martin representing the American Hotel and Lodging Association also spoke of how heavily individual hotel and motels relied on billboard advertising to draw in travelers.

Meg Maguire testified as the witness for the minority that while the HBA was passed and restricted billboard advertisement, billboards have actually proliferated through the years since passage of this legislation. She further stated that this legislation should be properly enforced and strengthened to preserve the intent of it and to ensure American highways are littered with “junk signs.”

In sum, the Subcommittee learned that rural small businesses—particularly those in the travel and tourism industry—rely heavily upon billboard advertisements. Regulators should examine the impact upon small business and propose alternative solutions that will mitigate the affect upon small business prior to removing a billboard to comply with the HBA.

For further information on this hearing, refer to Committee publication #108–16.

7.6.3 ENDANGERED FARMERS AND RANCHERS: THE UNINTENDED CONSEQUENCES OF THE ENDANGERED SPECIES ACT

Background

On July 17, 2003, the Rural Enterprise, Agriculture and Technology Subcommittee held a hearing on to discuss the plight of small farmers and ranchers as they struggle comply with provisions of the Endangered Species Act (ESA), particularly the designation of “critical habitat.” The Endangered Species Act took effect in 1972 to protect animals like the bald eagle. Today there are over 1,200 species that have the protection of federal law. However, only 25 species have ever been de-listed. Many farmers and ranchers have become victims of this law because they cannot fully utilize their land due to restrictions imposed on them by ESA.

Summary

There were three panels that testified before the Subcommittee. The first panel consisted of the Hon. Richard Pombo (R–CA). The second panel consisted of the Hon. Harold Manson, Assistant Secretary for Fish, Wildlife and Parks, Department of Interior, Washington, DC; and the Hon. Thomas Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC. The third panel included: Mr. Tom Waters, Orrick, MO; Mr. John V. Hays, Owner, Rouse Bros. Ranch, Unity, OR; Mr. Robert Gordon, Director, National Wilderness Institute, Washington, DC;

and Mr. Michael J. Bean, Attorney, Environmental Defense, Washington, DC.

Representative Pombo testified that he supported revisions to the Endangered Species Act. He further told of his own experience trying to build a ranch on acres of property he already owned in California that was classified as critical habitat.

Harold Manson testified that in 30 years of implementing the ESA, the Fish and Wildlife Service (FWS) has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits its ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs.

Thomas Sullivan testified of his concern that the FWS is the proposed designation of critical habitat for the pygmy owl published by the Service on November 27, 2002. He explained that the FWS had introduced critical habitat restrictions without affording small entities notice and an opportunity to comment as required by law.

His office conducted outreach after the proposal and learned that the Service had not incorporated the concerns of small ranchers, miners, homebuilders, and others into its threshold analysis as to whether the rule would affect small businesses.

Tom Waters testified that privately owned lands provide habitat for approximately 76 percent of all species listed under the Endangered Species Act. He further stated that if the FWS believes a farmer's basic agricultural practices have disturbed an endangered or threatened species, he could face fines or imprisonment. With its prohibitions against "taking" a species or disturbing habitat, the ESA often results in restrictions on what farmers and ranchers can do on their private lands.

John Hays told of meeting with the U.S. Forest Service (USFS) to discuss the future of his grazing allotment and that he was concerned his animal unit months (AUMs) would be severely reduced due to an endangered species, the Canadian lynx. However, the lynx had never been found on his allotment and did not even reside within his geographic area of the state. He explained that the USFS Resource Staff Advisor stated that parts of his allotment had been determined to be lynx habitat, even though the USFS "did not think there were any lynx in the area, but that they are required to manage for lynx anyway."

Robert Gordon spoke of the disincentives that the Endangered Species Act has fostered and stated that it is a bureaucratic machine and its fruits are paperwork, court cases and fines, not conserved and recovered endangered species. In the 30 years the Endangered Species Act has been in on the books, it has almost never brought about the recovery and de-listing of an endangered species. He further stated a prejudice that species are far more likely to be listed as endangered if they reside in the western part of the country than in the eastern United States.

Michael Bean spoke of his support for safe harbor agreements that allow landowners to enhance, restore, or create habitat for endangered species without incurring new or additional regulatory re-

restrictions, citing successful cases in North Carolina and Texas. Further, he stated that the FWS should make it far easier for landowners to enter into these agreements.

For further information on this hearing, refer to Committee publication 108–26.

7.6.4 THE FUTURE OF RURAL TELECOMMUNICATIONS: IS THE UNIVERSAL SERVICE FUND SUSTAINABLE?

Background

On September 25, 2003 the Subcommittee held a hearing to discuss the future of rural telecommunications. The concept of universal phone service for rural America was one of the bedrocks of the telecommunications industry and first introduced in the Communications Act of 1934. When Congress passed the 1996 Telecommunications Act, it re-affirmed its support for universal service for rural America, providing for quality and affordable telecommunications services that are comparable with urban areas. The underpinnings of the 1996 Act are competition and universal service. The Rural Incumbent Local Exchange Carriers (ILECs) have delivered universal service to rural consumers and provide the infrastructure and high-quality telecommunications service to remote, sparsely populated areas that for these very reasons cost considerably more than urban areas. The FCC established the Universal Service Fund (USF) for the purpose of cost recovery for high-cost carriers.

In the 1996 Act, the Universal Service Fund (USF) was codified into law and allowed for more than one local carrier through the designation of an Eligible Telecommunications Carrier (ETC) and also would be eligible for universal service support. While the 1996 Act expected “competitive neutrality,” critics claim that there are no established rules or regulations defining the level of service an ETC must provide, or when it is the public interest to have competition, or whether every area can support more than one carrier. Since 1999, there have been numerous ETC designations that allow for these companies to access the USF. This hearing examined whether sufficient mechanisms were in place to allow for the long-term sustainability of the USF.

Summary

There were two panels of witnesses that testified. The first panel consisted of the Hon. Kathleen Abernathy, Commissioner, Federal Communications Commission, Washington, DC. The second panel included: Mr. Robert Williams, Owner, Oregon Farmers Mutual Telephone Company, Oregon, MO; Mr. Tom Attar, Vice President for Corporate Development, Highland Cellular, Inc., Beckley, WV; Mr. Brian Staihr, Ph.D., Senior Regulatory Economist, Sprint Corp., Kansas City, MO; Mr. Michael Balhoff, Managing Director Telecommunications Research, Legg Mason, Baltimore, MD; and Glenn Brown, President, McLean and Brown, Sedona, AZ.

Commissioner Abernathy spoke of the goals of the Telecommunications Act of 1996 that were high-quality telecommunications services to all Americans at affordable rates. The 1996 Act directed the FCC to promote two key goals that at times appear to be in

tension with one another: opening local markets to competition and preserving universal service. To help rural areas, Universal Service Fund was created. Because federal universal service contributions under existing rules are assessed only on interstate revenues from end-user telecommunications services, this shrinking of the applicable revenue base has contributed to a steady rise in the contribution factor over time—it has increased by more than six percentage points over the last six years.

Bob Williams testified that the high-cost universal service program has been put at great risk largely due to ill-advised decisions made by federal and state regulators governing eligibility for high-cost support. He further stated that Congress needs to exercise vigilant oversight of the process for designating Eligible Telecommunications Carriers (ETCs) in areas served by rural telephone companies in order to ensure the long-term sustainability of the Universal Service Fund.

Tom Attar stated that the landline industry has reaped the benefits of the Universal Service Fund (USF) for decades. At the same time the wireless industry has been contributing to the fund for over six years and has only started receiving money out of the fund in the past couple years. He further stated that his company believes that these smaller communities have a critical need for coverage within small towns, a need which will not be met by national providers focused on metropolitan areas.

Dr. Staihr stated that sustainability of the fund is most directly affected by who pays into the fund, and what those payments are based on; and by a determination of who can draw out of the fund, and what those payments support. The current mechanism for paying into the fund is broken and must be fixed. The federal universal service fund was designed to co-exist with competition. One cannot be sacrificed in favor of the other. Competitive neutrality is a necessary component of any proposed “fix” to the contribution mechanism of the federal universal service fund.

Michael Balhoff testified that the current contribution system appears to be precariously overextended. He stated that the introduction of USF payments that began in 2001, to carriers other than the incumbent local telephone company, are creating many problems. He stated there exists an uneven playing field between the incumbent carrier and the wireless carriers due to the reduced set of obligations for the wireless compared with those imposed on the incumbent.

Glenn Brown testified Eligible Telecommunications Act (ETC) designation is being too easily designated to wireless carriers which allows them to access the Universal Service Fund and yet they do not have to meet the same criteria as incumbent local carriers. Further he stated that wireless carriers have built networks in rural areas, but generally along main highways where it is less expensive and not throughout all rural areas. As more wireless companies access these funds, it is placing a stress on a limited resource and could well bankrupt the system if it isn't remedied.

For further information, please refer to committee publication #108–38.

7.6.5 CHALLENGES THAT SMALL BUSINESSES FACE ACCESSING HOMELAND SECURITY CONTRACTS

Background

On October 21, 2003, the Subcommittee on Rural Enterprises, Agriculture and Technology held a hearing to discuss the challenges that small businesses encounter trying to secure contracts with the Department of Homeland Security. Annually, the federal government spends over \$200 billion on goods and services purchased from the private sector. The Department of Defense is by far the largest federal marketplace accounting for over \$120 billion in prime contract awards or more than 60 percent of federal procurement dollars. Historically, small businesses have faced many barriers accessing federal procurement contracts. Congress has set statutory goals for all agencies that 23 percent of all prime contracts must be given to small businesses, yet that benchmark has not always been achieved.

On January 24, 2003 the Department of Homeland Security (DHS) became a reality. However, there have been concerns that many of these contracts are awarded to large corporations and that many small businesses have been shut out of the process. Historically, small business has been more productive and technologically innovative than their large business counterparts. Additionally, small business has frequently been able to provide better goods and services at lower prices than their larger competitors.

More procurement opportunities for small business has also been a goal of the President. He said in a speech to women entrepreneurs in 2002, “. . . whenever possible, we are going to break down large federal contracts so that small business owners have got a fair shot at federal contracting.”

Summary

There were two panels that testified before the Subcommittee. The first panel consisted of Mr. Michael Barrera, Acting Associate Deputy Administrator for Government Contracting and Business Development, United States Small Business Administration, Washington, DC and Kevin Boshears, Director, Office of Small and Disadvantaged Business Utilization, Department of Homeland Security, Washington, DC. The second panel included: Mr. Daniel Lane, CEO, EMCOM Project, Independence, MO; Mr. Benjamin M. Brink, CEO, Data Search Systems, Inc. St. Louis, MO; Mr. Tim May, CEO, Advanced Interactive Systems, Seattle, WA; Ms. Patricia Driscoll, Frontline Defense Systems, Washington, DC; and Ms. Marian Sabety, President and CEO, Flywheel Group, Washington, DC.

Michael Barrera explained to the Subcommittee that the SBA works with all federal agencies to assist them in meeting the 23 percent prime contracting goals for small business, including the Department of Homeland Security. He stated that DHS has proposed an aggressive subcontracting goal of 40 percent for small business.

Kevin Boshears testified that DHS was committed to the President's small business agenda including efforts to avoid unnecessary

contract bundling or contract consolidation. He further stated that in his position as Director of the Office of Small and Disadvantaged Business Utilization, he was committed to maximizing opportunities for small business. He also stated that DHS was establishing several non-traditional small business goals.

Daniel Lane testified that his company Emcom has produced a communications device that interfaces with every other communication device from cell phone to pagers and others that could be used to alert people about emergencies, particularly first responders. Emcom has numerous contracts with state and local governments, but despite their repeated attempts, he has not been able to set up meetings with officials in DHS with regard to his product.

Ben Brink testified that while his company had not pursued contracts with DHS, his past experience with government contracting was not good. He explained the difficulty a small business has dealing with government contracting, particularly being paid on time.

Tim May illustrated the difficulties that small business subcontractors face. Even though they successfully fulfilled their commitment to DHS through a large prime vendor, they had very little contact with DHS so that it did not help them in their marketing for future contracts.

Patricia Driscoll testified that while her business has had numerous contracts with high levels of government with very sensitive security clearances, they have had enormous difficulty securing a contract from DHS, despite their track record.

Marian Sabety testified to the problems she has encountered with the Transportation Security Administration (TSA). Despite having several contracts with DHS, her company submitted a proposal to TSA following their request for new technologies. Her company repeatedly made follow up attempts, but have heard nothing back. Additionally, she noted that TSA is exempted from following the 23 percent small business contracting goals, making it even more difficult for a small business to secure a contract with them.

In sum, the Subcommittee concluded that small businesses still have difficulty in selling to the Department of Homeland Security and encouraged representatives from DHS and SBA to follow-up on the complaints heard at the hearing. For more information, refer to Committee publication #108-43.

7.6.6 A SMALL BUSINESS COMPONENT TO THE FEDERAL FLIGHT DECK OFFICER PROGRAM—IT'S A WIN-WIN SCENARIO, FIELD HEARING, PAULDEN, AZ

Background

The Rural Enterprise, Agriculture and Technology Subcommittee held a field hearing on Thursday, January 15, 2004 at the Gunsite Academy, Inc. in Paulden, Arizona. The purpose of this hearing was to hold a forum to discuss full implementation of the Federal Flight Deck Office (FFDO) program to include a small business component. The Transportation Safety Administration (TSA) announced its plan for implementation of the FFDO program with no private sector contributions. However, there are private training facilities that can provide crucial knowledge and expertise to TSA that should be utilized. Small businesses can play a critical role in

the goal of increasing the number of commercial and cargo pilots trained as FFDOs.

TSA currently faces a backlog of training an estimated 35,000 pilots. Private training facilities could play an invaluable role in assisting TSA and should be incorporated into their program and particularly their re-certification program. By increasing the number of facilities eligible to train Federal Flight Deck Officers, we will ensure that pilots who choose to protect themselves and their aircraft from potential terrorists threats have the ability to do so. The FFDO program could serve as an example of how the government can work with small business to protect our nation in the War on Terrorism. It's a win-win scenario.

Summary

There was one panel that consisted of Mr. Owen Mills, President & CEO, Gunsite Academy, Paulden, AZ; Captain Stephen Luckey, Chairman, National Security Committee, Air Line Pilots Association, International, Washington, DC; Mr. Terry Sapio, Pilot, Southwest Airlines; and Mr. Dean Roberts, Security Committee Chairman, Southwest Pilots Association.

Owen Mills testified that his facility, Gunsite Academy, had the ability to train airline pilots taking part in the Federal Flight Deck Officer (FFDO) program. He stated that he believed a great deal of the training in the FFDO program could be done by the private sector and could be done more economically and efficiently. He further stated that Gunsite Academy already trains many law enforcement officers and military personnel each year, including Special Forces and Navy Seals.

Captain Luckey testified that the Air Line Pilots Association was the first organization to call for the creation of the Federal Flight Deck Officer (FFDO) Program. He applauded the TSA for their creation of the FFDO program. He also called on the TSA to continue to refine the FFDO program in order to best utilize pilots to keep our skies and our country safe from terrorists.

Captain Terry Sapio stated that he believed that the current FFDO program did not have enough participating pilots to operate as a deterrence that was envisioned by Congress. He stated that the FFDO program was severely hindered by the way that TSA had implemented the program and that many pilots who would otherwise take part in the program are not.

Dean Roberts spoke of his experience going through the first FFDO class and being dropped from the program one hour prior to graduation by TSA without being given a reason. He felt that TSA never wanted to implement this program and was taking steps to minimize pilot participation.

In sum, the Subcommittee concluded that by having private sector participation in the training of pilots to carry firearms, it would produce benefits for both homeland security and small business. For more information, please refer to Committee publication #108-49.

7.6.7 THE ENDANGERED SPECIES ACT'S IMPACT ON SMALL
BUSINESSES AND FARMERS, FIELD HEARING, ST. JOSEPH,
MO

Background

On February 23, 2004, the Subcommittee on Rural Enterprises, Agriculture, and Technology held a field hearing in St. Joseph, Missouri, to examine the devastating economic impact the Endangered Species Act (ESA) has had on small businesses and farmers. When the Endangered Species Act was passed in 1973, 109 species were listed as endangered. Currently there are over 1,200 species listed as endangered and 250 more considered "candidates" for ESA listing. On December 16, 2003, the U.S. Fish and Wildlife Service (USF&WS) issued their Biological Opinion on the Missouri River, which would end its commercial usefulness due to the mandated spring rise and split navigation season because of the concern over the fate of the piping plover, pallid sturgeon, and interior least tern. This decision will have a large impact on the people and businesses that rely on the river for day-to-day operations. The Army Corps of Engineers estimates economic losses of at least \$7 million dollars to commercial navigation and grain terminals as a result of flows declining to below minimum navigation service levels.

Summary

The hearing was made up of two panels. The first panel consisted of: Mr. Larry Cieslik, Deputy Director, Civil Works and Management and Chief, Missouri River Basin Water Management, Army Corps of Engineers, Omaha, NE; Mr. Dale Hall, Director, Southwest Region, United States Fish & Wildlife Service, Albuquerque, NM; Mr. Mike Wells, Chief of Water Resources, Missouri Department of Natural Resources, Jefferson City, MO; and Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, Jefferson City, MO. The second panel included Mr. Blake Hurst, Vice President, Missouri Farm Bureau, Jefferson City, MO; Mr. Dick DeShon, Chairman, St. Joseph Regional Port Authority, St. Joseph, MO; Mr. Chad Smith, Director, Nebraska Field Office, American Rivers, Lincoln, NE; Mr. Bruce Hanson, MFA, Inc., Columbia, MO; and Mr. Paul Davis, Operator, Interstate Marine Terminals, Inc, Boonville, MO.

Larry Cieslik testified that the Corps built and maintain six dam and reservoir projects on the Missouri River. He also said that in accordance with the ESA the Corps must (in consultation with the USF&WS) insure that any action taken by them on the Missouri River must not jeopardize the existence of any endangered or threatened species. The Corps entered into formal consultation with the USF&WS, which culminated in the Missouri River Biological Opinion. This opinion concluded that the Corps' proposed action jeopardized the pallid sturgeon, piping plover, and the interior least tern, which are listed as endangered or threatened species. Because of this finding, the 2003 Amended Biological Opinion (BiOp) calls for a spring rise and for a low summer release.

Dale Hall testified that USF&WS is the primary federal agency responsible for implementing the ESA. In 2000, the USF&WS pro-

vided the Corps with a Biological Opinion on the Corps' operation of dams on the Missouri River, saying their proposed operation would jeopardize the existence of three species. In 2003 the Corps requested to remove the requirements for the spring rise and low flows based on new data for the terns and plovers, as well as designation of critical habitat for the plovers. While the piping plover and least tern had improved, the pallid sturgeon has not recovered.

Mike Wells of the Missouri Department of Natural Resources testified that physical habitat restoration projects could be accomplished that would alleviate the need for drastic flow changes in the river. He further stated that the low summer flows had halted Missouri barge traffic, impacted water facilities that provide drinking water, and caused power plants that used the river for cooling to decrease their capabilities. Over half of the population of Missouri get their drinking water from the Missouri River. Additionally, the mandated spring rise could potentially flood low-lying communities and river bottom farmers.

Kevin Keith of the Missouri Department of Transportation testified that both the Missouri River and the Mississippi River are vital to the state's economy. Further, what happens on the Missouri River impacts the Mississippi River. The river has historically been used as a navigational system and communities have built infrastructure and made business decisions based on these assumptions. The mandated spring rise and low summer flows have decimated barge traffic on the Missouri River, which was used to primarily transport agricultural products. These products must now be shipped on highways or by railroads, increasing the cost, as well as placing stress on these other transportation systems and causing more air pollution.

Blake Hurst stated that he believed the ESA is broken and needs to be fixed. In his estimation, when an animal is considered threatened or endangered, the government acts without any regard or in consultation with those who own the land or depend on the land. The current plan for spring pulse (or prescribed flood) and low summer flows because of three species is at a great cost to all of Missouri. Instead of such draconian measure, the USF&WS should try and bring the stakeholders together to find a solution that all can live with.

Dick DeShon testified that in 2002, the St. Joseph Regional Port Authority opened a new barge facility on the Missouri River. They expected to quadruple the barge traffic in 2003, but due to the initial river mandates, barge traffic decreased significantly. The ESA mandates have completely closed barge traffic on the river for 2004.

Chad Smith supported the measures recommended by the USF&WS saying that the health of the Missouri River was in dire straits. The spring rise and low summer flows are meant to mimic the natural flow of the river before it was extensively dammed. He suggested that this was an opportunity to develop tourism centered on the river.

Bruce Hanson testified that barge traffic closure on the Missouri River would cost Missouri over \$22 million. Over two-thirds of inbound fertilizer is moved by barge. In the spring, fertilizer moves

upstream and in the summer and fall, crops are shipped downstream for distribution.

Paul Davis talked of how barge traffic along the river has ground to a halt because a federal judge ordered the Corps to reduce river flows from July to September, 2003, after environmentalists brought suit. He stated that ESA in its current form has resulted in few resources being spent by USF&WS to save animals because the resources go to litigation. He further stated that the way ESA does not give incentives to landowners to save species, but to remove or diminish their habitat in order to be out from under intrusive and capricious regulation.

In sum, the Subcommittee concluded that the ESA needs reform to promote more input from the local community to avoid situations that bans barge traffic on the Missouri River, which has devastating negative effects upon many local small businesses. For more information, please refer to Committee publication #108-54.

7.6.8 THE BENEFITS OF TAX INCENTIVES FOR PRODUCERS OF RENEWABLE FUELS AND ITS IMPACT ON SMALL BUSINESSES AND FARMERS

Background

On May 6, 2004, the Subcommittee on Rural Enterprises, Agriculture, and Technology held a hearing to explore the value of renewable fuels and the role they play in a comprehensive energy policy, in our economy, and in our national security. The purpose of this hearing was to hold a forum to discuss the positive impact that renewable fuels have on our economy and our nation's energy security and what can be further done to increase domestic production of renewable energy sources. Beginning with Organization of Petroleum Exporting Countries (OPEC's) oil embargo of the 1970s, American reliance on imported energy has caused a re-examination of energy policies. Energy security, a major driver of federal renewable energy programs, came back into play as oil and gas prices rose late in 2000. The terrorist attack of September 11, 2001, and the Iraq war of 2003 have led to heightened concern about energy security, energy infrastructure vulnerability, and the need for alternative fuels. Further, the 2001 electricity shortages in California, the high natural gas prices in 2003, the Northeast-Midwest blackout of 2003 and current gas prices have brought a new emphasis to the role that renewable energy may play in producing electricity, displacing fossil fuel use, and curbing demand for power transmission equipment.

Currently, the market for ethanol, which utilizes 10 percent of the nation's corn crop, is heavily dependent on federal incentives and regulations. A major impetus to the use of ethanol has been the exemption that it receives from the motor fuels excise tax. Regarding bio-diesel, there are proposals that would provide a tax credit of up to \$1.00 per gallon for the production of bio-diesel. Additionally, the Energy bill (H.R. 6) includes a renewable fuel standard (RFS) that would require the blending of 2.7 billion gallons of renewable fuel with gasoline in 2005. Most of this would be met with ethanol, but other renewable fuels, including bio-diesel, would qualify.

Summary

The hearing panel consisted of Mr. Brooks Hurst, Missouri Soybean Association, Tarkio, MO; Mr. Charlie Hurst, Golden Triangle Energy, Craig, MO; Mr. Duane Adams, Cosmos, MN; Mr. Bob Dinneen, President, Renewable Fuels Association, Washington, DC; Mr. Joe Jobe, Executive Director, The National Biodiesel Board, Jefferson City, MO; Mr. Phillip Lampert, Executive Director, National Ethanol Vehicle Coalition, Jefferson City, MO; and Ms. Carol Werner, Executive Director, Environmental and Energy Study Institute, Washington, DC.

Mr. Brooks Hurst testified that the excise tax exemption for biodiesel is probably the single most important legislative initiative in the history of the soybean industry. He expressed his desire for biodiesel to become a major commercial fuel, which would translate into approximately \$148 million in additional farm income just in Missouri. He contends it helps clean the air we breathe and is better for the environment than petroleum-based fuel. Lastly, he testified biodiesel lessens the nation's dependence on foreign oil because U.S. farmers can grow 100 percent of the renewable fuel on their farms in environmentally beneficial ways.

Mr. Charlie Hurst testified in support of the federal exemption of 5.2 cents per gallon of ethanol, stating it expands the ethanol industry and reduces the need to import expensive oil from the Middle East. He added that the subsidy is needed in order for ethanol to be a viable renewable energy source and would not be a drain on federal resources as offsetting savings in the federal farm program.

Mr. Duane Adams supported the current ethanol and renewable energy programs, but saw problems in both. He stated that there is no energy bill yet, and any attempts to push such have been met with a run-around on the Hill. He testified that legislators need to do their job and pass an effective energy bill so he may go about his job of raising his crops.

Mr. Bob Dinneen's argument was in support of Congress extending the ethanol tax incentive, passing H.R. 3119, the Volumetric Ethanol Excise Tax Credit (VEETC), and by making modifications to the small ethanol producer tax credit. He also emphasized the importance of enacting the Renewable Fuels Standard (RFS), which would be helpful to growing the domestic renewable fuels industry. He believed these steps would provide an economic stimulus to small business across rural America, as well as a step toward a more sustainable energy future for Americans.

Mr. Joe Jobe also believes the passage of the VEETC and RFS will have a positive impact on the ethanol industry, as well as the biodiesel industry, both to improve our nation's energy security and economy. He believed, as many of the other panel participants, in the importance of biodiesel as an alternative fuel to our nation's economy at this time of all-time highs in oil prices.

Mr. Phillip Lampert addressed the U.S. government's dominant usage of petroleum in the world market, and the attempts to modify this behavior to advance alternative fuel use. He outlined Executive Order 13149 issued by the Clinton administration calling federal agencies to reduce petroleum consumption by 20 percent by

2005 from their 1999 baseline, and the lack of effort to follow this directive. He called on the government to set an example to reduce petroleum use and find alternatives.

Ms. Carol Werner testified about the three critical drivers fundamental to national concerns: rural economic development, national energy security through reduction of oil use and oil imports, and environmental protection through reduction of greenhouse gas emissions that contribute to global climate change. She addressed the importance of a bio-based economy made up of bioenergy, biobased products, and biofuels like ethanol and biodiesel, to lessen our dependence on foreign oil and reduce or eliminate the use of toxic substances harmful to human health and the environment.

In sum, the Subcommittee concluded that this nation needs alternative sources of energy and small rural agricultural producers can be one large part of the overall solution. For more information, please refer to Committee publication #108–63.

7.6.9 TAX INCENTIVES FOR HOMELAND SECURITY RELATED EXPENSES

Background

On Wednesday, July 21, 2004, the Rural Enterprise, Agriculture and Technology Subcommittee held a hearing to discuss various tax incentives for homeland security related expenses. The purpose of this hearing was to discuss the concerns of small business owners as they struggle to ensure that their businesses are adequately safeguarded. In the post–9/11 world, numerous companies have had to make substantial investments in security devices to safeguard their businesses, employees and products from those who would use it to harm others. The hearing focused on H.R. 3562, “The Prevent Act,” which was introduced by Representative Bill Shuster of Pennsylvania. This legislation would allow businesses a tax credit for installation of security devices or security assessments for “building security.”

Summary

There was one panel of witnesses that consisted of: Mr. James Hyslop, President, Standing Stone Consulting, Huntingdon, PA; Mr. Richard Chace, Executive Director, Security Industry Association, Alexandria, VA; Mr. Ken Ducey, Markland Technologies, Ridgefield, CT; and Mr. Peter R. Orszag, Brookings Institution, Washington, DC.

The first three panelists strongly endorsed Representative Shuster’s bill that would allow tax credits for the installation of security devices or for security assessments, saying that this would help promote private sector security enhancement. It was noted that many small businesses did not fully understand the steps that were necessary to secure their business and ensure the safety of their employees after 9/11. Peter Orszag advocated a mix between tax credits and government mandates as an appropriate response to increase private sector security enhancements.

In sum, the Subcommittee concluded that something more needed to be done to encourage small business to be better prepared for

emergencies. For more information, please refer to Committee publication #108-75.

7.6.10 THE IMPACT OF HIGH NATURAL GAS PRICES ON SMALL FARMERS AND MANUFACTURERS

Background

On Wednesday, September 22, 2004, the Rural Enterprise, Agriculture and Technology Subcommittee held a hearing to discuss the impact of high natural gas prices on small farmers and manufacturers. There are 60 million homes, farms, businesses and industries that are dependent on natural gas. While supplies are abundant, the supply chain has been significantly disrupted causing prices to be two to three times above historic averages. Shortages began in mid-2000 and by some estimates prices have increased over 80 percent. Consumers have been hit hard by these costs because half of all homes rely on natural gas. Businesses and agricultural interests have also been severely impacted. When energy prices go up, so do the costs of manufacturing, farming, transportation and all goods and services.

Natural gas accounts for more than 40 percent of commercial energy consumption. Our government encouraged many industries to turn to natural gas as an inexpensive way to comply with clean air regulations but now they are being squeezed by high costs. The manufacturing sector has been hardest hit by the recession and while it is slowly turning around, soaring energy prices threaten its recovery. High natural gas prices have increased the cost of producing important fertilizers that farmers rely on for their crops. Fertilizer producers have had to turn to foreign imports causing prices to skyrocket. Farmers have been forced to decrease production by 25 percent causing adverse financial damage to the industry and to the economy.

Summary

The Subcommittee heard from two panels. The first panel consisted of the Hon. Steve King (R-IA) and the Hon. John Peterson (R-PA). The second panel consisted of: Mr. Hal Swaney, Platte City, MO; Mr. Brent Rockhold, Arbela, MO; Mr. J. Fletcher Smoak, Chairman & CEO, Old Virginia Brick, Inc., Madison Heights, VA; Mr. Billy Willard, President, Willard Agri-Service, Frederick, MD; Mr. Peter Huntsman, Huntsman LLC, Houston, TX; and Mr. Bill Prindle, Deputy Director, American Council for an Energy Efficient Economy, Washington, DC.

Representative King spoke of high natural gas prices permeating all areas of rural and agricultural economies, from the cost of fertilizer, which is comprised primarily of natural gas, to fuel costs for heating livestock and processing crops. Representative Peterson stated that he personally believes the high cost of natural gas is one of the biggest factors contributing to the decline in the manufacturing sector.

Hal Swaney of the Missouri Farm Bureau and Brent Rockhold of the National Association of Corn Growers both spoke of the difficulties that farmers experience because fertilizer prices have spiked due to the fact that natural gas is the primary ingredient

in nitrogen fertilizer. They also spoke of the number of fertilizer makers have closed their doors and no longer produce fertilizer.

Fletcher Smoak cited the difficulties that his business, Old Virginia Brick, Inc., has encountered due to high natural gas prices. He encouraged the Subcommittee to look into the allegation that speculators have influenced the cost of natural gas on the New York Mercantile Exchange (NYMEX) market.

Peter Huntsman, CEO of Huntsman Chemicals, strongly advocated that there should be “stops” in the trading of natural gas on the NYMEX to decrease the volatility in natural gas trading. He further stated that he believes there was not enough transparency in the market, citing that several large firms had been fined for illegal trading. All of the participants on the panel encouraged further exploration and drilling of natural gas; building a natural gas pipeline; and support of clean coal technologies.

Bill Prindle who testified for the American Council for an Energy Efficient Economy encouraged energy efficiency as the best strategy for moderating natural gas prices and providing stability in the market.

In sum, the Subcommittee concluded that there is a problem in rising natural gas prices, which hurts small agricultural producers and manufacturers, and that the federal government has a role to play in mitigating this crisis. For more information, please refer to Committee publication #108-77.

