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104TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 104–750

SMALL BUSINESS PROGRAMS IMPROVEMENT ACT OF 1996

AUGUST 2, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. MEYERS of Kansas, from the Committee on Small Business, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3719]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 3719) to amend the Small Business Act and Small Business Investment Act of 1958, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Programs Improvement Act of 1996".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Administrator defined.
Sec. 3. Effective date.

TITLE I—AMENDMENTS TO SMALL BUSINESS ACT

Sec. 101. References.
Sec. 102. Risk management data base.
Sec. 103. Section 7(a) loan program.
Sec. 104. Disaster loan program.
Sec. 105. Microloan demonstration program.
Sec. 106. Small business development center program.
Sec. 107. Miscellaneous authorities to provide loans and other financial assistance.
Sec. 108. Small business competitiveness demonstration program.

29–006

Sec. 109. Amendment to Small Business Guaranteed Credit Enhancement Act of 1993.
Sec. 110. 1998 authorizations.
Sec. 111. Level of participation for export working capital loans.

TITLE II—AMENDMENTS TO SMALL BUSINESS INVESTMENT ACT

Sec. 201. References.
Sec. 202. Modifications to development company debenture program.
Sec. 203. Required actions upon default.
Sec. 204. Loan liquidation pilot program.
Sec. 205. Registration of certificates.
Sec. 206. Preferred surety bond guarantee program.

SEC. 2. ADMINISTRATOR DEFINED.

In this Act, the term "Administrator" means the Administrator of the Small Business Administration.

SEC. 3. EFFECTIVE DATE.

Except as otherwise expressly provided, this Act and the amendments made by this Act shall take effect on October 1, 1996.

TITLE I—AMENDMENTS TO SMALL BUSINESS ACT

SEC. 101. REFERENCES.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Small Business Act (15 U.S.C. 631 et seq.).

SEC. 102. RISK MANAGEMENT DATA BASE.

Section 4(b) (15 U.S.C. 633) is amended by inserting after paragraph (2) the following:

"(3) RISK MANAGEMENT DATABASE.—

"(A) ESTABLISHMENT.—The Administration shall establish, within the management system for the loan programs authorized by subsections (a) and (b) of section 7 of this Act and title V of the Small Business Investment Act of 1958, a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

"(B) INFORMATION TO BE MAINTAINED.—In addition to such other information as the Administration considers appropriate, the database established under subparagraph (A) shall, with respect to each loan program described in subparagraph (A), include information relating to—

"(i) the identity of the institution making the guaranteed loan or issuing the debenture;

"(ii) the identity of the borrower;

"(iii) the total dollar amount of the loan or debenture;

"(iv) the total dollar amount of government exposure in each loan;

"(v) the district of the Administration in which the borrower has its principal office;

"(vi) the borrower's principal line of business, as identified by Standard Industrial Classification Code (or any successor to that system);

"(vii) the delinquency rate for each program (including number of instances and days overdue);

"(viii) the number of defaults in each program (including losses and recoveries);

"(ix) the number of deferrals or forbearances in each program (including days and number of instances); and

"(x) comparisons on the basis of loan program, lender, Administration district and region, for all the data elements maintained.

"(C) DEADLINE FOR OPERATIONAL CAPABILITY.—The database established under subparagraph (A) shall be operational not later than March 31, 1997, and shall capture data beginning on the first day of the first quarter of fiscal year 1997 beginning after such date and thereafter.".

SEC. 103. SECTION 7(a) LOAN PROGRAM.

(a) SERVICING AND LIQUIDATION OF LOANS BY PREFERRED LENDERS.—Section 7(a)(2)(C)(ii)(II) (15 U.S.C. 636(a)(2)(C)(ii)(II)) is amended to read as follows:

"(II) complete authority to service and liquidate such loans without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.".

(b) CERTIFIED LENDERS PROGRAM.—Section 7(a)(19) (15 U.S.C. 636(a)(19)) is amended to read as follows:

"(19)(A) CERTIFIED LENDERS PROGRAM.—

"(i) ESTABLISHMENT.—In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements.

"(ii) SUSPENSION AND REVOCATION.—The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

"(B) UNIFORM AND SIMPLIFIED LOAN FORMS.—In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

"(C) LOW DOCUMENTATION LOAN PROGRAM.—The Administrator may carry out the low documentation loan program for loans of $100,000 or less only through Preferred Lenders and Certified Lenders, or lenders with significant experience making small business loans. The Administration shall give special consideration to lenders who have made loans under the authority of this section. The Administrator shall promulgate regulations defining the experience necessary for lenders other than Preferred or Certified Lenders for participation as a lender in the low documentation loan program no later than 90 days after the date of enactment of this subsection.

"(D) AUTHORITY LIQUIDATE LOANS.—

"(i) IN GENERAL.—Lenders participating in the Certified Lenders Program shall have authority to liquidate loans made with a guarantee from the Administration.

"(ii) APPROVAL.—The Administrator has the authority to require a certified lender to request approval of a routine liquidation activity, and if the Administrator does not approve or deny a request made by a certified lender within a period of 3 business days, such request shall be deemed to be approved.

"(E) LOW DOCUMENTATION LOAN PROGRAM SUBSIDY RATE.—The Administrator shall with the assistance of the Director of the Office of Management and Budget establish and monitor, on an annual basis, the subsidy rate for the low documentation loan program, independently of other loans authorized by this section.".

(c) LIMITATION ON CONDUCTING PILOT PROJECTS.—Section 7(a) (15 U.S.C. 636(a)) is amended by adding at the end the following new paragraph:

"(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

"(A) IN GENERAL.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

"(B) PILOT PROGRAM DEFINED.—In this paragraph, the term 'pilot program' means any lending program initiative, project, innovation, or other activity not specifically authorized by law.".

(d) SECURITIZATION OF UNGUARANTEED PORTIONS OF SBA LOANS.—Section 5(f)(3) (15 U.S.C. 634(f)(3)) is amended by adding at the end the following: "The Administration may not prohibit a lender from securitizing the nonguaranteed portion of any loan made under section 7(a). In order to reduce the risk of loss to the government in the event of default, the Administration shall require all lenders securitizing, or requesting Administration approval for the securitization of the nonguaranteed portion of any loan after August 1, 1996, to retain exposure of up to 10 percent of the amount of the loan, which percentage shall be applicable uniformly to both depository institutions and other lenders.".

(e) CONDITIONS ON PURCHASE OF LOANS.—

(1) SERVICING FEE.—Section 5(g)(5) (15 U.S.C. 634(g)(5)) is amended by adding at the end the following:

"(C) In the event the Administration pays a claim under a guarantee issued under this Act, the servicing fees paid to the lender from the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.".

(2) PAYMENT OF ACCRUED INTEREST.—Section 7(a)(17) is amended—

(A) by striking "(17) The Administration" and inserting "(17)(A) The Administration"; and

(B) by adding at the end the following:

"(B) Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.".

(f) PLAN FOR TRANSFER OF LOAN SERVICING FUNCTIONS TO CENTRALIZED CENTERS.—

(1) IMPLEMENTATION PLAN REQUIRED.—The Administrator of the Small Business Administration shall submit a detailed plan for consolidating, in one or more centralized centers, the performance of the various functions relating to the servicing of loans directly made or guaranteed by the Administration pursuant to the Small Business Act, addressing the matters described in paragraph (2) by the deadline specified in paragraph (3).

(2) CONTENTS OF PLAN.—In addition to such other matters as the Administrator may deem appropriate, the plan required by paragraph (1) shall include—

(A) the proposed number and location of such centralized loan processing centers;

(B) the proposed workload (identified by type and numbers of loans and their geographic origin by the Small Business Administration district office) and staffing of each such center;

(C) a detailed, time-phased plan for the transfer of the identified loan servicing functions to each proposed center; and

(D) any identified impediments to the timely execution of the proposed plan (including adequacy of available financial resources, availability of needed personnel, facilities, and related equipment) and the Administrator's recommendations for addressing such impediments.

(3) DEADLINE FOR SUBMISSION.—The plan required by paragraph (1) shall be submitted to the Committees on the Small Business of the House of Representatives and Senate not later than February 28, 1997.

(g) PREFERRED LENDER STANDARD REVIEW PROGRAM.—Not later than 60 days after the date of enactment of this Act, the Administrator shall issue a request for proposals regarding the standard review program for the Preferred Lender Program established by section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)). The Administrator shall require such standard review for each new entrant to the Preferred Lender Program.

(h) INDEPENDENT STUDY OF LOAN PROGRAMS.—

(1) STUDY REQUIRED.—The Administrator shall conduct a comprehensive assessment of the performance of the loan programs authorized by section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and title V of the Small Business Investment Act of 1958 (15 U.S.C. 661) addressing the matters described in paragraph (2) and resulting in a report to Congress pursuant to paragraph (5).

(2) MATTERS TO BE ASSESSED.—In addition to such other matters as the Administrator considers appropriate, the assessment required by paragraph (1) shall address, with respect to each loan program described in paragraph (1) for each of the fiscal years described in paragraph (3)—

(A) the number and frequency of deferrals and defaults;

(B) default rates;

(C) comparative loss rates, by—

(i) type of lender (separately addressing preferred lenders, certified lenders, and general participation lenders);

(ii) term of the loan; and

(iii) dollar value of the loan at disbursement; and

(D) the economic models used by the Office of Management and Budget to calculate the credit subsidy rate applicable to the loan programs.

(3) PERIOD OF ASSESSMENT.—The assessments undertaken pursuant to paragraph (2) shall address data for the period beginning with the first full fiscal

year of the implementation of each loan program described in paragraph (1) through fiscal year 1995.

(4) PERFORMANCE BY THE PRIVATE SECTOR.—

(A) CONTRACTOR PERFORMANCE.—A private sector contractor shall be used by the Administrator to conduct the assessment required by paragraph (1) and to prepare the report to Congress required by paragraph (3).

(B) SOLICITATION AND AWARD.—The contract shall be awarded pursuant to a solicitation issued not later than 60 days after the date of the enactment of this Act, which shall provide for full and open competition. The Administrator shall make every reasonable effort to award the contract not later than 60 days after the date specified in the solicitation for receipt of proposals.

(C) ACCESS TO INFORMATION.—The Administrator shall provide to the contractor access to any information collected by or available to the Administration with regard to the loan programs being assessed. The contractor shall preserve the confidentiality of any information for which confidentiality is protected by law or properly asserted by the person submitting such information.

(D) CONTRACT FUNDING.—The Administrator shall fund the cost of the contract from the amounts appropriated for the salaries and expenses of the Administration for fiscal year 1997.

(5) REPORT TO CONGRESS.—

(A) CONTENTS.—The contractor shall submit a report of—

(i) its analyses of the matters to be assessed pursuant to paragraph (2); and

(ii) its independent recommendations, with respect to each loan program, regarding—

(I) improving the Administration's timely collection and subsequent management of data to measure the performance of each loan program described in paragraph (1); and

(II) reducing loss rates for each such loan program.

(B) SUBMISSION BY CONTRACTOR.—The contractor shall submit the report required by subparagraph (A) not later than 6 months after the date of the contract award.

(C) SUBMISSION TO CONGRESS.—The Administrator shall submit the report received from the contractor pursuant to subparagraph (B) to the Committees on Small Business of the House of Representatives and the Senate within 30 days of receipt of the report. The Administrator shall append his comments, and those of the Office of Management and Budget, if any, to the report.

(i) GENERAL ACCOUNTING OFFICE STUDY.—

(1) IN GENERAL.—The General Accounting Office shall conduct a comparison of the cost of liquidation for—

(A) loans guaranteed under the Preferred Lenders Program that are authorized by section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and liquidated by the Preferred Lenders;

(B) loans made and liquidated by, Preferred Lenders, but not guaranteed under the authority in section 7(a); and

(C) loans guaranteed by the Small Business Administration under the authority in section 7(a) and liquidated by the Administration, taking into account all of the related costs incurred by the Federal Government.

(2) REPORT.—Not later than 9 months after the date of enactment of this Act the General Accounting Office shall deliver the results of the study to the Committees on Small Business of the House and Senate.

SEC. 104. DISASTER LOAN PROGRAM.

(a) INTEREST RATE.—Section 7(c) (15 U.S.C. 636(c)) is amended by redesignating paragraphs (6) and (7) as paragraphs (8) and (9), respectively, and by inserting after paragraph (5) the following:

"(6) DISASTERS COMMENCING AFTER OCTOBER 1, 1996.—Notwithstanding any other provision of law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) on account of a disaster commencing on or after October 1, 1996, shall be in the case of a homeowner, or business, or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, at the rate prescribed by the Administration but not more than ¾ of the rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities

of such loans plus an additional charge of not to exceed 1 percent per annum as determined by the Administrator, and adjusted to the nearest ⅛ of 1 percent.

"(7) LIABILITY.—Whoever wrongfully misapplies the proceeds of a loan under subsection (b) shall be liable to the Administrator in an amount equal to 1½ times the original principal amount of the loan.".

(b) PRIVATE SECTOR LOAN SERVICING DEMONSTRATION PROGRAM.—

(1)(A) DEMONSTRATION PROGRAM REQUIRED.—The Administration shall conduct a demonstration program, within the parameters described in paragraph (2), to evaluate the comparative costs and benefits of having the Administration's portfolio of disaster loans serviced under contract rather than directly by employees of the Administration.

(B) INITIATION DATE.—Not later than 90 days after the date of enactment of this Act, the Administration shall issue a request for proposals for the program parameters described in paragraph (2).

(2) DEMONSTRATION PROGRAM PARAMETERS.—

(A) LOAN SAMPLE.—The sample of loans for the demonstration program shall be randomly drawn from the Administration's portfolio of loans made pursuant to section 7(b) of the Small Business Act and include 20,000 loans for residential properties and 5,000 loans for commercial properties.

(B) CONTRACT AND OPTIONS.—The Administration shall solicit and competitively award one or more contracts to service the loans included in the sample of loans described in subparagraph (A) for a term of 2 years with 5 2-year options, each to be awarded subject to subparagraph (C).

(C) ASSESSMENTS OF PERFORMANCE.—Prior to award of any contract option, the Administration shall assess the costs and performance of each contractor and compare such costs and such performance to the costs and performance of servicing disaster loans by employees of the Administration. The Administrator shall not exercise a contract option if the cost of performance of the loan servicing by the contractor exceeds the cost of performance of the loan servicing by employees of the Administration. The Administrator may terminate the contract during its initial term (or any subsequent option period), based upon performance and cost criteria specified in the solicitation and included in the contract.

(D) DISPOSITION OF GOVERNMENT FURNISHED PROPERTY.—The contract shall require the contractor to—

(i) maintain the confidentiality of the loan files furnished by the Administration; and

(ii) return such loan files and other Government-furnished property within a specified period after expiration (or termination) of the contract.

(3) TERM OF DEMONSTRATION PROGRAM.—

(A) IN GENERAL.—The demonstration program required by paragraph (1) shall commence on the first day of the first fiscal year quarter after the award of the contract and continue through the last day of the fiscal year quarter at the expiration of the 2-year contract period or any subsequent contract option.

(B) EARLY TERMINATION.—If the Administrator terminates each contract pursuant to paragraph (2)(C), the demonstration program shall end on the effective date of such termination.

(4) REPORTS.—

(A) INTERIM REPORTS.—The Administrator shall submit to the Committees on Small Business of the House of Representatives and Senate interim reports on the conduct of the demonstration program not later than 60 days prior to the expiration of the initial 2-year contract performance period, each subsequent option period, or termination of a contract. The contractor shall be afforded a reasonable opportunity to attach comments to each such report.

(B) FINAL REPORT.—The Administrator shall submit to the Committees on Small Business of the House of Representatives and Senate a final report within 120 days of the termination of the demonstration program.

(c) DEFINITION OF DISASTER.—(1) Section 3(k) (15 U.S.C. 632(k)) is amended by striking "ocean conditions" and inserting "ocean conditions, or government action (regulatory or otherwise)".

(2) For the purposes of this Act this amendment shall be considered effective with respect to any disaster occurring on or after March 1, 1994.

SEC. 105. MICROLOAN DEMONSTRATION PROGRAM.

(a) TECHNICAL ASSISTANCE GRANT REQUIREMENTS.—Section 7(m)(4) (15 U.S.C. 636(m)(4)) is amended—

(1) in subparagraph (A) by striking "25 percent" and inserting "20 percent"; and

(2) in subparagraph (B) by striking "25 percent" and inserting "35 percent".

(b) IMPLEMENTATION OF GUARANTEED MICROLOAN PILOT PROGRAM.—

(1) ACTION REQUIRED.—The Administrator shall implement or submit a detailed report explaining the impediments to the implementation of a Guaranteed Microloan Pilot Program pursuant to section 7(m)(12) (15 U.S.C. 636(m)(12)) addressing the matters described in paragraph (2) by the deadline specified in paragraph (3).

(2) CONTENTS OF IMPLEMENTATION REPORT.—In addition to such other matters as the Administrator may deem appropriate, the plan required by paragraph (1) shall include any identified impediments to implementation of a Guaranteed Microloan Pilot Program that, in the opinion of the Administrator, require amendments to the program's authorizing legislation, and if such impediments are identified, includes recommendations for such statutory changes.

(3) DEADLINE FOR SUBMISSION.—The plan required by paragraph (2) shall be submitted to the Committees on Small Business of the House of Representatives and Senate not later than December 1, 1996.

(c) LIMITATION ON FUNDING.—In the event that the Administrator shall fail to submit the report required by subsection (b)(1) by the deadline specified in subsection (b)(3), none of the amounts appropriated to carry out the Microloan Program authorized by section 7(m)(12) of the Small Business Act (15 U.S.C. 636(m)(12)) during fiscal year 1997 may be expended until such time as the pilot program is implemented or the report is submitted.

SEC. 106. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

(a) ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) DUTIES.—Section 21(h) (15 U.S.C. 648(h)) is amended to read as follows:

"(h) ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT CENTERS.—

"(1) APPOINTMENT AND COMPENSATION.—The Administrator shall appoint an Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall serve without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS–17 of the General Schedule.

"(2) DUTIES.—

"(A) IN GENERAL.—The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include, but are not limited to, recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section.

"(B) CONSULTATION REQUIREMENTS.—In carrying out the duties described in this subsection, the Associate Administrator shall confer with and seek the advice of the Board established by subsection (i) and Administration officials in areas served by the small business development centers; however, the Associate Administrator shall be responsible for the management and administration of the program and shall not be subject to the approval or concurrence of such Administration officials.".

(2) REFERENCES TO ASSOCIATE ADMINISTRATOR.—Section 21 (15 U.S.C. 648) is amended—

(A) in subsection (c)(7) by striking "Deputy Associate Administrator of the Small Business Development Center program" and inserting "Associate Administrator for Small Business Development Centers"; and

(B) in subsection (i)(2) by striking "Deputy Associate Administrator for Management Assistance" and inserting "Associate Administrator for Small Business Development Centers".

(b) EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—Section 21(k)(3) (15 U.S.C. 648(k)(3)) is amended to read as follows:

"(3) EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—

"(A) IN GENERAL.—In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and certification program conducted pursuant to paragraphs (1) and (2).

"(B) CERTIFICATION REQUIREMENT.—After September 30, 2000, the Administration may not renew or extend any cooperative agreement with a small business development center unless the center has been approved under the certification program conducted pursuant to this subsection; except that the Associate Administrator for Small Business Development Centers may waive such certification requirement, in the discretion of the Associate Administrator, upon a showing that the center is making a good faith effort to obtain certification.".

(c) TECHNICAL CORRECTION.—Section 21(l) (15 U.S.C. 648(l)) is amended to read as follows:

"(l) CONTRACT AUTHORITY.—The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefore and affording the applicant an opportunity for a hearing, appeal, or other administrative proceeding under the provisions of chapter 5 of title 5, United States Code.".

SEC. 107. MISCELLANEOUS AUTHORITIES TO PROVIDE LOANS AND OTHER FINANCIAL ASSISTANCE.

(a) FUNDING LIMITATION; SEMINARS.—Section 7(d) (15 U.S.C. 636(d)) is amended—

(1) by striking "(d)(1)" and inserting "(d)"; and

(2) by striking paragraph (2).

(b) TRADE ADJUSTMENT LOANS.—Section 7(e) (15 U.S.C. 636(e)) is amended to read as follows:

"(e) [RESERVED].".

(c) WAIVER OF CREDIT ELSEWHERE TEST FOR COLLEGES AND UNIVERSITIES.—Section 7(f) (15 U.S.C. 636(f)) is amended to read as follows:

"(f) [RESERVED].".

(d) LOANS TO SMALL BUSINESS CONCERNS FOR SOLAR ENERGY AND ENERGY CONSERVATION MEASURES.—Section 7(l) (15 U.S.C. 636(l)) is amended to read as follows:

"(l) [RESERVED].".

SEC. 108. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) EXTENSION OF DEMONSTRATION PROGRAM.—Section 711(c) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note; 102 Stat. 3890) is amended by striking "September 30, 1996" and inserting "September 30, 2000".

(b) REPORTING OF SUBCONTRACT PARTICIPATION IN CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES.—Section 714(b)(5) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note; 102 Stat. 3892) is amended to read as follows:

"(5) DURATION.—The system described in subsection (a) shall be established not later than October 1, 1996 (or as soon as practicable thereafter on the first day of a subsequent quarter of fiscal year 1997), and shall terminate on September 30, 2000.".

(c) REFERENCES TO ARCHITECTURAL AND ENGINEERING SERVICES.—

(1) IN GENERAL.—The Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note; 102 Stat. 3889 et seq.) is amended in subsections (a)(3) and (d) by striking "surveying and mapping" and inserting "surveying, mapping, and landscape architecture".

(2) DESIGNATED INDUSTRY GROUPS.—Section 717(d) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note; 102 Stat. 3894) is amended by inserting "standard industrial classification codes 0781 (if identified as pertaining to architecture services)," after "(if identified as pertaining to mapping services),".

(d) REPORTS TO CONGRESS.—

(1) IN GENERAL.—Section 716 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note; 102 Stat. 3893) is amended—

(A) in subsection (a), by striking "fiscal year 1991 and 1995" and inserting "each of fiscal years 1991 through 1999";

(B) in subsection (a), by striking "results" and inserting "cumulative results"; and

(C) in subsection (c), by striking "1996" and inserting "1999".

(2) CUMULATIVE REPORT THROUGH FISCAL YEAR 1995.—A cumulative report of the results of the Small Business Competitiveness Demonstration Program for fiscal years 1991 through 1995 shall be submitted not later than 60 days after the date of the enactment of this Act pursuant to section 716(a) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note; 102 Stat. 3893), as amended by paragraph (1) of this subsection.

SEC. 109. AMENDMENT TO SMALL BUSINESS GUARANTEED CREDIT ENHANCEMENT ACT OF 1993.

(a) Section 7 of the Small Business Guaranteed Credit Enhancement Act of 1993 (Public Law 103–81; 15 U.S.C. 634 note) is repealed effective September 29, 1996.

(b) CLERICAL AMENDMENT.—The table of contents for the Small Business Guaranteed Credit Enhancement Act of 1993 (Public Law 103–81; 15 U.S.C. 631 note) is amended by striking the item relating to section 7.

SEC. 110. 1998 AUTHORIZATIONS.

Section 20 (15 U.S.C. 631 note) is amended—

(1) in subsection (p), by striking "authorized for fiscal year 1997" and inserting "authorized for each of fiscal years 1997 and 1998";

(2) by striking subsection (p)(3)(B) and by inserting the following:

"(B) $268,000,000 in guarantees of debentures; and";

(3) in subsection (q)(1) by striking "fiscal year 1997" and inserting "each of fiscal years 1997 and 1998"; and

(4) in subsection (q)(2) by striking "year 1997" and inserting "years 1997 and 1998".

SEC. 111. LEVEL OF PARTICIPATION FOR EXPORT WORKING CAPITAL LOANS.

Section 7(a)(2) (15 U.S.C. 636(a)(2)) is amended by adding at the end the following:

"(D) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Notwithstanding subparagraph (A), in an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall be equal to the rate specified under this paragraph as in effect on the day before the date of the enactment of the Small Business Lending Enhancement Act of 1995.".

TITLE II—AMENDMENTS TO SMALL BUSINESS INVESTMENT ACT

SEC. 201. REFERENCES.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.).

SEC. 202. MODIFICATIONS TO DEVELOPMENT COMPANY DEBENTURE PROGRAM.

(a) DECREASED LOAN TO VALUE RATIOS.—Section 502(3) (15 U.S.C. 696(3)) is amended to read as follows:

"(3) CRITERIA FOR ASSISTANCE.—

"(A) IN GENERAL.—Any development company assisted under this section or section 503 of this title must meet the criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

"(B) COMMUNITY INJECTION FUNDS.—

"(i) SOURCES OF FUNDS.—Community injection funds may be derived, in whole or in part, from—

"(I) State or local governments;

"(II) banks or other financial institutions;

"(III) foundations or other not-for-profit institutions; or

"(IV) the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this title.

"(ii) FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

"(C) FUNDING FROM A SMALL BUSINESS CONCERN.—The small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this title shall provide—

"(i) at least 15 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;

"(ii) at least 15 percent of the total cost of the project financed if the project involves the construction of a limited or single purpose building or structure;

"(iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions set forth in clauses (i) and (ii); or

"(iv) at least 10 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.".

(b) GUARANTEE FEE FOR DEVELOPMENT COMPANY DEBENTURES.—Section 503(b)(7)(A) (15 U.S.C. 697(b)(7)(A)) is amended by striking "0.125 percent" and inserting "0.8125 percent".

(c) FEES TO OFFSET SUBSIDY COST.—Section 503(d) (15 U.S.C. 697(d)) is amended to read as follows:

"(d) CHARGES FOR ADMINISTRATION EXPENSES.—

"(1) LEVEL OF CHARGES.—The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a).

"(2) PARTICIPATION FEE.—The Administration shall also impose a one-time fee of 50 basis points on the total participation in any project of any institution described in subclause (I), (II), or (III) of section 502(3)(B)(i). Such fee shall be imposed only when the participation of the institution will occupy a senior credit position to that of the development company. Such fee shall be collected by the development company, forwarded to the Administration, and used to offset the cost (as such term is defined in section 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

"(3) DEVELOPMENT COMPANY FEE.—The Administration shall collect annually from each development company a fee of 0.125 percent of the outstanding principal balance of any guaranteed debenture authorized by the Administration after September 30, 1996. Such fee shall be derived from the servicing fees collected by the development company pursuant to regulation, and shall not be derived from any additional fees imposed on small business concerns. All proceeds of the fee shall be used to offset the cost (as such term is defined in section 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).".

(d) EFFECTIVE DATE.—Section 503 (15 U.S.C. 697) is amended by adding at the end the following:

"(f) EFFECTIVE DATE.—The fees authorized by subsections (b) and (c) shall apply to financings approved by the Administration on or after October 1, 1996, but shall not apply to financings approved by the Administration on or after October 1, 1997.".

SEC. 203. REQUIRED ACTIONS UPON DEFAULT.

Section 503 (15 U.S.C. 697) is amended by adding at the end the following:

"(g) REQUIRED ACTIONS UPON DEFAULT.—

"(1) DEADLINES.—

"(A) INITIAL ACTIONS.—Not later than the 45th day after the date on which a payment on a loan funded through a debenture guaranteed under this section is due and not received, the Administration shall—

"(i) take all necessary steps to bring such a loan current; or

"(ii) implement a formal written deferral agreement.

"(B) PURCHASE OR ACCELERATION OF DEBENTURE.—Not later than the 65th day after the date on which a payment on a loan described in subparagraph (A) is due and not received, and absent a formal written deferral agreement, the Administration shall take all necessary steps to purchase or accelerate the debenture.

"(2) PREPAYMENT PENALTIES.—The Administration shall, with respect to the portion of any project derived from funds set forth in section 502(3)—

"(A) negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;

"(B) decline to pay any prepayment penalty or late fee on the default based purchase of loans issued after September 30, 1996; and

"(C) for any project financed after September 30, 1996, decline to pay any default interest rate higher than the interest rate on the note prior to the date of default."

SEC. 204. LOAN LIQUIDATION PILOT PROGRAM.

(a) IN GENERAL.—The Administrator shall carry out a loan liquidation pilot program (in this section referred to as the 'pilot program') in accordance with the requirements of this section.

(b) SELECTION OF DEVELOPMENT COMPANIES.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall allow not less than 15 development companies authorized to make loans and issue debentures under title V of the Small Business Investment Act of 1958 to participate in the pilot program. The development companies admitted shall agree not to take any action that would create a potential conflict of interest involving the development company, the third party lender, or an associate of the third party lender. In order to qualify to participate in the pilot, each development company shall—

(1) have a minimum of 6 years experience in the program established by such title V;

(2) have made, during the last 6 fiscal years, an average of 10 loans per year through the program established by such title V; and

(3) have a minimum of 2 years experience, either independently or through an agent, in liquidating loans under the authority of a Federal, State, or other lending program.

(c) AUTHORITY OF DEVELOPMENT COMPANIES.—The development companies selected under subsection (b) shall, for all loans in their portfolio of loans made through debentures guaranteed under title V of the Small Business Investment Act of 1958 that are in default after the date of enactment of this Act, be authorized to—

(1) perform all liquidation and foreclosure functions, including the acceleration or purchase of community injection funds; and

(2) liquidate such loans in a reasonable and sound manner and according to commercially accepted practices.

(d) AUTHORITY OF THE ADMINISTRATOR.—In carrying out the pilot program, the Administrator shall—

(1) have full authority to deny participation in the pilot program or rescind the authority granted any development company under this section upon a 10 day written notice stating the reasons for the denial or rescission; and

(2) implement the pilot program no later than 90 days after the admission of the development companies specified in subsection (b).

(e) REPORT.—

(1) IN GENERAL.—The Administrator shall issue a report on the results of the pilot program to the Committees on Small Business of the House of Representatives and the Senate. The report shall include information relating to—

(A) the total dollar amount of each loan and project liquidated;

(B) the total dollar amount guaranteed by the Administration;

(C) total dollar losses;

(D) total recoveries both as percentage of the amount guaranteed and the total cost of the project; and

(E) a comparison of the pilot program information with the same information for liquidation conducted outside the pilot program over the period of time.

(2) REPORTING PERIOD.—The report shall be based on data from, and issued not later than 90 days after the close of, the first eight 8 fiscal quarters of the pilot program's operation after the date of implementation.

SEC. 205. REGISTRATION OF CERTIFICATES.

(a) CERTIFICATES SOLD PURSUANT TO SMALL BUSINESS ACT.—Section 5(h) of the Small Business Act (15 U.S.C. 634(h)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D);

(2) by striking "(h)" and inserting "(h)(1)";

(3) by striking subparagraph (A), as redesignated by paragraph (1) of this subsection, and inserting the following:

"(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;"; and

(4) by adding at the end the following:

"(2) Nothing in this subsection shall prohibit the utilization of a book entry or other electronic form of registration for trust certificates. The Administration may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.".

(b) CERTIFICATES SOLD PURSUANT TO SMALL BUSINESS INVESTMENT COMPANY PROGRAM.—Section 321(f) (15 U.S.C. 6871(f)) is amended—

(1) in paragraph (1) by striking "Such central registration shall include" and all that follows through the period at the end of the paragraph; and

(2) by adding at the end the following:

"(5) Nothing in this subsection shall prohibit the use of a book-entry or other electronic form of registration for trust certificates.".

(c) CERTIFICATES SOLD PURSUANT TO DEVELOPMENT COMPANY PROGRAM.—Section 505(f) (15 U.S.C. 697b(f)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D);

(2) by striking "(f)" and inserting "(f)(1)";

(3) by striking subparagraph (A), as redesignated by paragraph (1) of this subsection, and inserting the following:

"(A) provide for a central registration of all trust certificates sold pursuant to this section;" and

(4) by adding at the end the following:

"(2) Nothing in this subsection shall prohibit the utilization of a book entry or other electronic form of registration for trust certificates.".

SEC. 206. PREFERRED SURETY BOND GUARANTEE PROGRAM.

(a) ADMISSIONS OF ADDITIONAL PROGRAM PARTICIPANTS.—Section 411(a) (15 U.S.C. 694(a)) is amended by adding a new paragraph (5), as follows:

"(5)(A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d).

"(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Bond Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to applications received (or pending substantive evaluation) on or after October 1, 1995.

PURPOSE OF THE BILL

The primary purpose of the bill is to reform the loan programs found in Section 7(a) of the Small Business Act, P.L. 83–163, 15 U.S.C. § 631, *et seq.*, and Section 503 of the Small Business Investment Act of 1958, P.L. 85–699, 15 U.S.C. § 661, *et seq.*, in order to reduce the subsidy rates of these programs and to strengthen the underwriting of loans guaranteed through the Small Business Administration (SBA).

The bill reduces the substantial subsidy rate for the disaster assistance loan program by slightly increasing the interest rate in that program.

Finally, the bill makes reforms to a number of other programs at the Small Business Administration, and removes various obsolete provisions and programs in the Small Business Act. The bill also requires a number of improvements in, and reports and studies on, the Small Business Administration's management practices and systems.

NEED FOR LEGISLATION

IN GENERAL

In October of 1995, the President signed into law P.L. 104–36, the Small Business Lending Enhancement Act of 1995. This law was designed to lower the subsidy rate of the 7(a) and 504 programs to reduce substantially the cost of the programs to the taxpayer. The subsidy rate for the 7(a) program was decreased by approximately 60 percent, from 2.74 percent to 1.06 percent. The subsidy rate for the 504 program was reduced to zero, effectively making it a self-financed program. The legislation was drafted and passed relying on estimates and information provided by the Office of Management and Budget and the Small Business Administration.

Under P.L. 10–436, the Small Business Administration was to be able to operate its loan programs at a significantly reduced cost. As a result, fewer funds were appropriated for the 7(a) program in 1996, and no funds were appropriated for the 504 program. Congress appropriated $114.5 million to fund the 7(a) program at a lending level of $11 billion. Currently, program demand for fiscal year 1996 is estimated to be approximately $8.75 billion in lending authority. At the assumed subsidy rate of 1.06 percent, this would cost $92 million, allowing a carryover of approximately $22.5 million.

Unfortunately, in March of 1996, on the eve of the release of the President's Budget for fiscal year 1997, the Committee learned for the first time that the subsidy rates for the 7(a) and 504 programs had been recalculated and had increased significantly. This recalculation was the result of a Small Business Administration and Office of Management and Budget study of portfolio performance in the programs over the past 13 years. The result was an estimated subsidy rate for the 7(a) lending program of 2.68 percent, almost the same rate as that used prior to the enactment of P.L. 10–436. In the case of the 504 program, the increase was more than twelvefold, from the fiscal year 1996 estimated rate of 0.57 (prior to enactment of P.L. 104–36) to the fiscal year 1997 estimated rate of 6.85 percent.

This information provoked a strong response from the Committee. Despite repeated Committee inquiries to the Administration for information on "rumored" increases in the subsidy rates, the SBA refused to come forward with this information, even though it was available for months prior to the release of the President's Budget. Compared to the previous subsidy rate of 1.06 percent, the newly assigned subsidy rate of 2.68 percent would require $234 million to accomplish the same amount of small business lending in fiscal year 1997, more than twice the fiscal year 1996 appropriation. For the 504 program to continue at all would require an appropriation of approximately $112 million, all of it new money. Further compounding this disturbing lack of cooperation by the Agency was the Administration's response to this problem.

The Administration's "solution" to this fiscal crisis, as embodied in the President's Budget, was simply to request more money and deny any responsibility for creating or contributing to this dilemma. To cover the projected shortfall in the 7(a) program, and

assuming an increased program level of $12 billion, the Administration requested an additional $180 million for the program. This represents an increase of 160 percent over the previous year's appropriations. While the Committee recognizes the value of the program in providing long-term financing to small businesses, the Administration's response is remarkably insufficient considering current fiscal realities and the President's commitment to help Congress balance the budget by the year 2002.

The Administration also proposed turning the 504 program into a direct financing program. Converting 504 to a direct lending program would wipe out the private market partnership that has developed in this program over the past ten years. In addition, it would be very difficult, and perhaps impossible, to bring the private market back into financing the 504 program if it were so abruptly removed now as a short-term fix for the subsidy rate. Furthermore, the Committee strongly rejected this notion as a budget "loophole" in which guaranteed lending with a substantial subsidy rate is suddenly scored with a zero subsidy when branded a "direct loan" program. Such a proposal suggests that the best response to the failures in collections and defaults is to hide the problem by containing it within the Federal bureaucracy.

The Committee's approach was substantially different from that proposed by the Administration, in that the Committee took a determined view that the causes of these subsidy rate fluctuations should be identified, and that legislation should address these causes, rather than "patch" the problem with higher fees for a temporary drop in the subsidy rate. New fees have been added to the 7(a) program over the past three years, only to have the subsidy rate return to its "pre-fee" state. The Committee believes that the point may have already been reached where additional fees render the 7(a) program undesirable, for borrowers and lenders, as the demand for 7(a) loans for fiscal year 1996 is running much lower than the anticipated $10 billion lending level. Legislation that provides long-term solutions to the problems plaguing the loan programs is important for stability and long-term viability of the loan programs.

After reviewing the President's Budget for fiscal year 1997, and testimony presented before the Committee regarding the SBA Budget for fiscal year 1997, the Committee began a series of meetings with the SBA, OMB, and with various private-sector lending partners. The purpose of these meetings was to try to identify the problems, and the causes of these problems, that are contributing to the dramatic increases in the subsidy rates for the major SBA programs. One problem that was clearly identified was a need for better data collection. The Agency must be able to conduct more detailed portfolio analyses on an ongoing basis to identify potential problems at an early date. Another significant management problem is SBA's liquidation practices. Recovery rates are down substantially in nearly every major loan program. Perhaps more than any other factor, the recovery rate is a key component of the subsidy rate calculation. The tremendous time lag for conducting liquidations, exacerbated by a lack of adequate field staff designated for this purpose, is certainly one reason for lower recoveries. Finally, the Committee continues to be puzzled by the subsidy rate

calculations of OMB. While the default and recovery rates are clearly major components of the calculations, OMB analysts also factor in other "intangible" items. These items, which are not disclosed to the Committee, can change from day to day, calculation to calculation, in such a way that the Committee has come to question the objectivity and accuracy of these subsidy rate calculations.

CHANGES TO THE 7(a) PROGRAM

The changes in this bill will strengthen the 7(a) program by moving more functions to the private sector and relying on the SBA's most experienced lending partners to carry out these functions. The bill provides that Preferred Lenders (PLPs) will be allowed to have full loan liquidation authority, free from unnecessary delays that now occur due to the Administration's insistence upon a lengthy review and approval process for each individual step taken in the course of a liquidation. Anecdotal evidence presented to the Committee indicates that the SBA is micro-managing the PLP liquidation process so as to render it virtually useless as a tool for achieving program efficiencies. The Committee intends to restore that tool. The Administration's stubborn resistance to change in the liquidation arena is very troubling to the Committee, particularly as it appears to be a common thread of dysfunction running through the loan programs. Therefore, the Committee intends to monitor closely the Administration's adoption and acceptance of these mandated changes in liquidation practices.

The Committee also places a restriction on the use of the Low-Doc program. This program will henceforth be available only to the Preferred and Certified Lending institutions, or to lenders with significant small business lending experience. The Committee believes that this is a prudent step, given the rapid growth of this Administration-inspired pilot program, and is based upon the Administration's own guidelines for the Low-Doc program, which state that Low-Doc is for use by the SBA's most experienced lending partners. Currently, the noncurrency rate for Low-Doc is higher than for the non-Low-Doc portfolio. This points to possible underwriting problems, problems that may be attributable, in part, to the dramatic number of lenders using Low-Doc who have not previously participated in SBA lending programs.

The purpose of the Low-Doc program is to provide a simplified loan application process for the borrower, not to alleviate underwriting and due diligence requirements for lenders seeking entry into the 7(a) program. The 7(a) program remains open to any lender, rural or urban, small or large, through the general lending program. The Committee is concerned, however, that the Low-Doc program, coupled with District Office lending goals for minority and women borrowers, is a potentially dangerous situation in which Low-Doc may be evolving into a "quota lending" program. It is only in the past few months that the Committee has confirmed the existence of these lending goals. The Committee learned, and the Agency confirmed, that it prepares, using census data for the geographic area covered by a District Office, a specific goal for the number of loans each District Office must make to small business owners of certain ethnic backgrounds, such as African Americans, Hispanic Americans, and Native Americans, and to women. Meet-

ing these goals is a critical factor in the performance evaluation of each District Director. However, the Committee notes that the Agency does not set such stringent goals for portfolio performance for the District Offices. Quantity lending goals without quality goals with equal weight in the performance evaluations is a recipe for disaster. The Committee expects the Agency to remedy this situation immediately by either eliminating lending goals for the District Offices, as these goals may place undue pressure on SBA personnel to approve loans for reasons other than the borrower's creditworthy status, or by implementing strong goals for portfolio quality, such as high currency rates.

Finally, the Committee seeks to establish some discipline in the granting of the Federal guarantee through the imposition of reductions in the interest rates and servicing fees paid to borrowers on defaulted loans. The Committee reasons that a lender who has committed the Small Business Administration to a loan that defaults is not entitled to a full servicing fee or the full interest rate on that loan from the time of default to the time it is paid off by the Administration. The Committee believes that rather than producing a hesitancy in lenders to aid small business under this program, it will instead encourage more cooperation and assistance from the lender in order to aid the small business to succeed. The incentives are clear: aiding a small business borrower generates a grateful and successful future client.

These changes are necessary to instill a sense of commitment in all parties to this program. The Administration is asked to relinquish some control in order to gain willing and strong lending partners. The lending community, in turn is asked to exercise its powers to ensure the continued viability of the program by aiding its partners, the small business borrowers, and by working to gain experience and knowledge of the program in order to gain its full benefits.

CHANGES TO THE 504 PROGRAM

As stated above, the Congress relied on information from the Small Business Administration and the Office of Management and Budget in order to set additional fees that would reduce the subsidy rate in the 504 program to zero, creating an essentially self-funded program. Unfortunately, the OMB review again revealed the actual subsidy rate would be far higher.

Because no funds were appropriated for this program in fiscal year 1996, all the costs from the mistaken subsidy rate will be added to the deficit. As a result, the Small Business Administration is obligated for funds well in excess of the amounts appropriated. This means that the taxpayers could ultimately face millions of additional dollars added directly to the Federal deficit when the shortfall comes due in the future.

The Committee believes that a better solution exists than the Administration's proposal of converting the 504 program to a direct-lending program. This solution is to increase fees temporarily in the 504 program, distributing this burden among the borrower, the first mortgage holder, and the certified development company. In addition, the Committee requires changes to the underwriting and management of this loan program in the belief that such improve-

ments though not be reflected immediately in the subsidy rate will eventually bring defaults down and increase recoveries. The most experienced certified development companies will be allowed to perform, on a pilot basis, liquidation and collection functions. The Committee expects the SBA to make a genuine, good faith effort to facilitate this pilot and cooperate fully with those development companies in the pilot program. The Committee believes that the certified development companies may be more efficient in liquidating than the SBA, and they certainly have a vested interest in seeing increased recovery rates, as it is a central component of the subsidy rate.

The Committee also notes that, despite the evidence of losses far in excess of those anticipated, and despite evidence that information on these losses was neither collected nor collated in a fashion designed to inform the management of the impending problems, no actions have been taken to discipline the career staff responsible. In fact, the Administration's proposed liquidation improvement does not clearly address the lack of careful data collection required to monitor this program. The Committee believes that the management information system required in this bill will address this oversight.

CHANGES TO THE DISASTER ASSISTANCE PROGRAM

The Administration originally requested that the interest rate for disaster assistance loans be increased from the current one-half of the Treasury rate for securities of similar duration to the full Treasury rate. While this provision was originally included in the bill, the Committee felt that such a large increase in the interest rate may force an undue hardship on disaster victims without credit available elsewhere. Consequently, the bill, by bipartisan agreement, increases the rate to three-fourths of the Treasury rate. The Committee recognizes the balance that must be achieved between fiscal responsibility and the desire to aid our citizens in need. The Committee also agrees that despite the ongoing arguments regarding the proper role of government in the lives of our citizens, disaster assistance is one of the few clear cut areas in which the government should act. The Committee, therefore, declines to push the interest rate higher, despite the Administration's proposal.

The Committee also initiates a pilot program for the servicing and liquidation of disaster assistance loans. The Committee believes it is appropriate to begin privatizing this function in light of the character of the portfolio. Most of the disaster assistance loans made by the SBA are for repair and replacement of homes, and the terms of the loans often stretch twenty to thirty years. This is, in essence, mortgage lending, an industry that is heavily modernized and efficiently operated by the private sector. The Committee, therefore, believes it is appropriate to explore the potential for private sector servicing of the disaster loan portfolio.

CHANGES TO THE MICROLOAN PROGRAM

The Committee has become aware of actions taken by the Administration to spread access to technical assistance grant funds more equitably within the microlending community. It is apparent that the microlenders who apply for grants early in the year are

given the full apportionment of grant funds permitted under the statute. Unfortunately, this often means that intermediaries that apply for grants later in the year are left with only minimal funds due to shortfalls. The timing of eligibility for applications is based on the date of acceptance of an intermediary. This results in intermediaries being forced into applying late in the fiscal year due to no fault of their own. The Committee, therefore, proposes changes allowing for a more equitable distribution of these funds to all intermediaries. By lowering the maximum amount available to all, the Committee hopes to prevent unfairness to some.

The Committee also notes the lack of effort made by the SBA on the Microloan Guarantee Pilot Program and is surprised that the SBA should so readily ignore both the statutory mandate and the recommendations of the National Performance Review. The Committee has yet to receive any formal explanation of the lack of progress in this pilot program. As a result, this bill requests that the Administration either implement the pilot program or report on its inability to implement.

SMALL BUSINESS DEVELOPMENT CENTERS

The Administration proposed in the reinvention proposal of March, 1995, to consolidate the Small Business Development Center (SBDC) Program with the Women's Demonstration and Minority-Owned Business Technical Assistance Programs. The SBA's plan would include placing primary responsibility for management and oversight of the SBDCs with the District Offices, and gradually increasing the state and local fund match from the current $1 dollar for every $1 dollar in federal grant, to a 3 to 1 formula, reducing the federal contribution. These changes, which SBA planned to implement at the beginning of fiscal year 1997, also would provide authority for SBDCs to charge fees for counseling and other services.

The Committee rejects the SBA's plan to move oversight authority over the SBDCs to the District Offices, and statutorily creates the Office of Associate Administrator for Small Business Development Centers who shall be solely responsible for administering the program. The Associate Administrator is required to consult Administration officials in the areas served by SBDCs; however, the management and administration of the program shall not be subject to the approval or concurrence of these officials. While the Committee understands the importance of having local input to ensure the SBDC networks serve the communities in which they are located, problems have arisen under the current policy in which district office personnel must concur with the directives of the Associate Administrator. Issues requiring timely action have sometimes taken months, and in some cases years, to resolve. The Committee believes these delays threaten the quality of the SBDC program and the services it provides to small businesses, thus prompting this provision.

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

The Small Business Competitiveness Demonstration Program (SBCDP) was initially authorized by Title VII of P.L. 100–656, the Business Development Opportunity Reform Act. The purpose of the

SBCDP was to assess the ability of small businesses in four small business-dominated industry groups to compete successfully for Federal prime contract opportunities without the use of small business "set-asides" (competitions restricted to small firms). The four designated industry groups are: construction (other than dredging); architectural-engineering services (including surveying, mapping, and landscape architecture); refuse systems and related services; and non-nuclear ship repair. Under the program, contracting opportunities for these services are solicited and awarded through full and open competition as long as the rate of small business participation remains at or above 40 percent. The 40-percent threshold was selected because it represents twice the statutory goal for small business participation required by Section 15(g) of the Small Business Act. To provide protection to small firms in the Designated Industry Groups, the program requires the re-imposition of small business set-aside competitions if the small business participation rate falls below the threshold and they are continued until the 40 percent participation rate is again attained. Changes in competition practices, as appropriate, are made on a quarterly basis.

The SBCDP requires participation by those ten Departments or agencies that are the largest buyers in the Federal procurement system. Currently, the ten are: the Departments of Agriculture, Defense, Energy, Health and Human Services, Transportation, and Veterans Affairs, as well as the General Services Administration, the National Aeronautics and Space Administration, and the Environmental Protection Agency. In the aggregate, the procurement programs of these departments and agencies account for more than 90 percent of all procurement dollars spent annually. The statute authorized the Administrator for Federal Procurement Policy to specify additional Executive agencies as part of the published test plan for the program. None was so designated.

As an integral component of the SBCDP, participating agencies were directed to re-focus their small business advocacy resources to other industry groups that have historically had relatively low rates of small business participation in Federal contracting opportunities, despite substantial small business capacity in the private sector. Under the program, participating agencies are required to designate 10 such Targeted Industry Groups, and fashion programs to expand small business participation in them. Such programs to expand participation within the Targeted Industry Groups are developed by each participating agency, tailored to its procurement activities. SBA assists and reviews the individual programs proposed by the participating agencies.

The SBCDP was previously extended for a four-year period by Section 201 of P.L. 102–366, the Small Business Credit and Business Opportunity Enhancement Act of 1992. This action was taken based on the comprehensive program report received from the Office of Federal Procurement Policy in December 1993, which covered the period January 1, 1989 through September 30, 1992. That report demonstrated strong small business participation through full and open competition with respect to three of the four Designated Industry Groups. Severe reporting problems were identified regarding architectural and engineering services (A–E services).

These reporting problems tended to obscure the program's performance with respect to A–E Services, but even the incomplete data showed a positive trend.

The same report showed very little progress with respect to expanding small business participation within the various Targeted Industry Groups. Additional experience was clearly called for with respect to this important element of the SBCDP.

Since the cumulative and comprehensive report received in December 1993, the Committee has received only preliminary data regarding fiscal years 1993, 1994, and 1995. That data seems to suggest that small business competitiveness remains strong within the four Designated Industry Groups, with A–E services showing the most difficulties in meeting the 40 percent small business participation rates. Small business set-aside competitions have been reimposed when appropriate to protect small business participation.

The bill provides for an additional four-year extension of the SBCDP from is current expiration on September 30, 1996 to September 30, 2000. The Committee believes that this extension will provide additional time for the participating agencies to be more creative regarding expanding small business participation within the Targeted Industry Groups and to measure, on a long-term basis, the ability of small firms in the Designated Industry Groups to succeed in the Government prime contract market without the use of set-aside competitions. It will also provide additional time to obtain clearer data regarding the competitiveness of firms providing A–E services.

The 1992 reauthorization of the program directed the conduct of a data collection effort to capture the full range of small business subcontracting in the Designated Industry Group of A–E services. Unfortunately, it still has not been implemented. The bill again directs such an addition to the overall SBCDP.

The objectives and intended implementation of this enhanced subcontracting reporting system were described in the section-by-section analysis accompanying the Section 202(d) of P.L. 102–366. Subsection 202(h) of P.L. 102–366 also sought to encourage the implementation of the subcontract reporting system required by subsection (d) of that Act (as well as the improved data collection with respect to A–E services required by subsection (g) of that Act), by adjusting the threshold relating to A–E services. The threshold for A–E services would be 35 percent until these directed program management improvements were implemented. The Committee finds that the adjusted 35 percent threshold with respect to A–E services remains in effect.

The bill makes other amendments to the SBCDP that can be fairly characterized as technical in nature. For example, the bill adds a reference to landscape architecture to the SBCDP's definition of "architectural and engineering services" and the related citations to A–E services throughout the program's authorizing statute. This amendment is intended to recognize changes being made to the Standard Industrial Classification (SIC) Code system as it changes to its proposed successor, the North American Industrial Classification System.

Committee deliberations on the SBCDP were hampered by lack of data on the recent performance of the program. Reporting obliga-

tions under the program were transferred to the SBA by the Office of Federal Procurement Policy (OFPP). Due to the restructuring of the entire Office of Management and Budget (OMB) under "OMB 2000," the personnel resources of OFPP were reduced by approximately 50 percent. OFPP no longer possessed the professional staff to undertake the labor-intensive task of compiling and analyzing the data collected under the program. The data is collected from the participating agencies as part of the routine reporting of their procurement activities through the Federal Procurement Data System (FPDS).

The bill also amends the SBCDP's reporting requirements to assure cumulative reporting is available in the future. This will assist Congress and industry in reaching judgments about the program.

Finally, the bill requires the submission of a cumulative report regarding the program's performance through fiscal year 1995 within 60 days after the date of enactment. Under the 1992 reauthorization legislation, a report was due to the Congress 180 days after the availability of FPDS data for fiscal year 1995, or approximately June 30, 1996.

PREFERRED SURETY BOND GUARANTEE PROGRAM

The Preferred Surety Bond Guarantee (SBG) Program was authorized by Title II of P.L. 100–590, the Small Business Administration Reauthorization and Amendment Act of 1988. The fundamental objective of the Preferred SBG Program is to encourage the renewed participation of the large, so-called "standard" surety firms in the SBA SBG Program. A Preferred Surety, unlike a participant in the basic Prior-Approval SBG Program, is authorized to issue a bond with a Federal Government guarantee without obtaining SBA's prior-approval for each bond. Prior to designation as a Preferred Surety, SBA reviews the surety's basic business procedures regarding underwriting and administration of surety bonds that it provides in its general course of surety business. A Preferred Surety is required to use these same procedures in the underwriting of surety bonds with a Federal Government guarantee. In exchange for the freedom to issue government-guaranteed bonds using the firm's standard procedures, the government-guarantee percentage applicable to a bond issued by a Preferred Surety is limited to 70 percent (rather than the 90 percent maximum guarantee available in the Prior-Approval Program).

In order to preserve the role of the so-called "specialty sureties" that are the mainstay of the SBA SBG Program, bonding authority has been allocated between the two programs on approximately 60–40 split, with the larger share going to the specialty sureties in the Prior-Approval SBG Program. Because of this allocation, no additional participants have been admitted to the Preferred SBG Program, despite pending applications from several firms urging that they will be active participants. Despite having several persistently inactive Preferred Sureties, SBA program staff maintains that they currently lack statutory or regulatory authority to terminate a Preferred Surety simply on the basis of low (or no) participation. The bill provides that authority.

The Committee expects the SBA to amend the SBG Program's implementing regulations and standard operating procedures as

soon as practicable. The Committee further directs that such amendments make explicit that SBA will generally approve (or disapprove) a complete application within 30 days. If the SBA is unable to take action within such 30-day period, the applicant will be notified in writing, specifying a date certain for action on the application and the reason why additional time is needed by the Administration. The Committee recognizes that under current regulations for the Preferred SBG Program, designation as a Preferred Surety is not effective until a mutually agreeable Preferred Surety Bonding Agreement is negotiated between the surety and SBA.

The Committee emphasizes that the authority granted by new Section 411(a)(5)(B) of the Small Business Investment Act of 1958, added by Section 206(a) of the bill is permissive and not mandatory. Specifically, the Committee directs that SBA implementation of this new statutory authority not be implemented in a manner that gradually eliminates all but the most active Preferred Sureties through a purely mechanistic application of the new statutory standard.

The bill establishes the effective date of the amendment, making it applicable to applications pending on or after October 1, 1995. The Committee notes that the SBA has a number of applications pending, upon which no action has been taken.

COMMITTEE ACTION

Two days after receipt of the President's Budget the Committee convened a hearing to discuss the implications of the increase in the subsidy rates and their effect upon the future of the 7(a) and 504 programs. At the hearing, SBA Administrator Philip Lader described the findings of the subsidy rate study that the Agency undertook "* * * as a practice of conservative, responsible management," and that these findings, "require that these programs" subsidy rates be raised." The Administrator went on to describe the portfolio study, in which more than 600,000 loans and 25 million transactions were analyzed, as the most comprehensive loan portfolio study done by any major credit agency. The new subsidy rates, calculated from the results of the portfolio study, represented, "a correction in the course set in 1991 when SBA's first subsidy study was conducted," the Administrator commented. The Administrator further noted that "given the likely better performance of loans made in more recent years, the subsidy rate can probably be reduced over time."

Other witnesses presenting testimony before the Committee at the March 21, 1996 hearing, however, expressed concern, frustration, and a sense of "deja vu" over OMB's calculations, and the assumptions used in this calculation which seem to change from year to year. Mr. Anthony Wilkinson, President of the National Association of Government Guaranteed Lenders (NAGGL), testified that in months prior to the release of the President's Budget for fiscal year 1997, individual 7(a) lenders were told by OMB that the portfolio analysis indicated that the program's performance was slightly better than estimates and that the subsidy rate would decline slightly. This information was confirmed to Mr. Wilkinson by SBA officials in February 1996, only to have the 7(a) subsidy rate increase by

153 percent when the President's fiscal year 1997 Budget was finally released on March 19, 1996.

Mr. Ken Lueckenotte, testifying for the National Association of Development Companies (NADCO), echoed Mr. Wilkinson's frustration over these new subsidy rates, as NADCO's own analysis of the debenture portfolio revealed substantially different results from OMB's calculations. As Mr. Lueckenotte stated before the Committee, "* * * the 504 portfolio is performing up to market and commercial standards, both from the point of view of the institutional investors who purchase our securities in the private market each month, and in comparison to comparable commerical lending experience. If the quality of the portfolio measures up to market and commerical standards, how could OMB's calculations paint such a different picture?"

The industry representatives for the 7(a) and 504 program were also united in their opposition to "status quo" operation of these loan programs. Both NAGGL and NADCO expressed a desire to get to the root of the problems in the loan programs that are causing continued upward spikes in the subsidy rates, and that action be taken to address the causes, not appropriate more money or create new fees that mask any management or underwriting failings in the programs" operations.

In the months following the March 21, 1996 hearing, Committee staff (both minority and majority) met with Small Business Administration officials and members of the lending community in order to identify program weaknesses and problems and to discuss possible options for addressing these problems. A large number of these options were presented to the SBA for analyses and preliminary scoring. While the SBA did not express support for many of these options, the discussions were essential to the crafting of the provisions included in the Small Business Programs Improvement Act of 1996, which was introduced on June 26, 1996 as H.R. 3719.

The Committee met on July 10, 1996 to begin consideration of H.R. 3719. After opening statements, the Chair offered an amendment in the nature of a substitute that corrected technical and drafting errors and removed certain provisions that had the potential to violate certain provisions of the Credit Reform Act. The Chair and the Members began a discussion and consideration of the various provisions of the amendment in the nature of a substitute.

During the discussion both Mr. LaFalce and Mr. Manzullo expressed concerns regarding the section in both the introduced bill and the substitute on non-judicial foreclosure. This provision was added by the Chair at the request of the Administration, and was provided by the Department of Justice. Unfortunately, the provision was drafted in a fashion that presented grave problems concerning rights of redemption, unfunded mandates, and an overall question of the wisdom of overriding the public policy of nearly half the states in the Union. Consequently, the Chair, by unanimous consent, struck the provision.

The discussion and explanation of the bill's provisions concluded, at which time the Chair recessed the meeting. The meeting reconvened on Thursday July 18, 1996 and the amendment in the nature of a substitute was considered for amendment. Mr. LaFalce of-

fered an en bloc amendment containing a number of changes that were reached with bipartisan agreement. The changes included modifications to the qualifications for Low-Doc lenders, clarifications of the terms of the centralized loan center provision, implementation of the PLP Review program, the Disaster Loan Servicing pilot program, the Development Company Loan pilot program, and the interest rate provision for Disaster Loans. The en bloc amendment also contained language striking the provision regarding the Women's Demonstration Program. The compromise amendment was accepted by voice vote.

Mr. Hefley then offered an amendment extending the ability to liquidate and service guaranteed loans to Certified Lenders. During discussion of the amendment Mr. LaFalce asked for clarification of the amendment's language. Mr. Hefley agreed to change the language to clarify the Administrator's ability to approve such authority. The change was incorporated without objection, at which point the amendment was put to a vote. Mr. Hefley's amendment passed by voice vote.

Mr. Torkildsen then offered an amendment to direct the Administrator to, with assistance of the Office of Management and Budget, separately track the subsidy rate of the Low Documentation loan program. The amendment was passed by a voice vote.

Mr. LaFalce then offered another compromise amendment on behalf of himself and Chair Meyers regarding the securitization of the non-guaranteed portion of guaranteed loans. After discussion between Mr. Bentsen and Mr. LaFalce concerning the possible negative effect of the amendment in its current form on existing participants, Mr. LaFalce agreed to change the amendment to reflect the ability of the Administration to require a loss reserve of up to ten percent when circumstances required, rather than the flat ten percent originally proposed. The amendment clarifies that SBA has the authority, if necessary, to require lenders securitizing the non-guaranteed portion of SBA 7(a) loans to retain some level of exposure in the security, not to exceed 10 percent of the amount of the loan. In addition, the amendment states that reserve requirements should not be determined solely by an institution's status as a depository institution or a non-bank lender. Rather, it is the Committee's intent that any exposure or reserve requirement be determined on a lender-by-lender basis, based upon the lender's experience and the nature of the securitization. Further, it is not the Committee's intent that SBA regulations impair existing securitization structures that have proven effective in expanding capital availability, while ensuring an appropriate level of risk retention by the issuing lender. The change was made by unanimous consent and the amendment was agreed to by a voice vote.

Mr. Torkildsen then offered an amendment to Section 104 to change the definition of a disaster to include government action, regulatory or otherwise, in the clause regarding the closure of customary fishing waters. The amendment was debated and several Members expressed concern over the possible return to the prior (pre-1986) practice of granting "economic injury disaster loans." Mr. Torkildsen rejoined that his amendment was both specific and carefully thought out. The conditions he sought to alleviate are the result of both government action and changes in natural environ-

ment exacerbated by government action. The amendment was put to a vote and was passed with 21 votes in favor, 8 opposed.

Mrs. Kelly offered two amendments to Section 106. The first eliminated a provision that would have removed a prohibition on institutions other than colleges and universities competing for Small Business Development Company lead center status. Mrs. Kelly expressed concern that local government entities would be encouraged to enter the program, possibly injecting politics into the process. In addition, it was her opinion that since SBDCs were primarily educational in their function, they belonged at educational institutions. The amendment was agreed to by voice vote.

The second amendment eliminated a provision that would have allowed Small Business Development Centers to charge reasonable fees and prohibited the SBA from mandating such fees. Mrs. Kelly expressed her belief that the provision was detrimental because it raised the possibility of the withdrawal of assistance of matching funds from state and local partners. She also was concerned that such fees might serve to keep the smallest of entrepreneurs from coming to the centers, regardless of the optional nature of the fees. This amendment was also passed by voice vote.

Mr. Jackson then offered an amendment to take out the repeal of the provisions for the handicapped assistance loan program and the low income areas loan program. During the debate Mr. Jackson expressed his belief that despite the fact that the Administration had not requested or received funding for these programs in recent years, a real need for them might exist in the future. Mr. LaFalce also spoke on behalf of the amendment, in particular the handicapped assistance loan program. Chair Meyers expressed her belief that the lack of funding made these programs obsolete and her concern that direct lending programs in general represent a drain of resources, which could also be met through guaranteed lending. Provisions similar to both these programs do exist under the 7(a) program but are little used. The amendment was put to vote and was passed with 16 votes in favor, 10 opposed.

Mr. LaFalce then offered an amendment to increase the annual fee charged to 7(a) lenders by one-twelfth of one percent. The Chair expressed concerns over the addition of more fees to the program. The amendment failed by a voice vote.

Mr. Baldacci then offered an amendment to restore the guarantee percentage for Export Working Capital Loans to 90 percent from the current rate of 75 to 80 percent. Mr. Baldacci expressed his concern that this rate was necessary in order to encourage bank participation in small business export lending. Mr. Manzullo expressed his concern that such lending did not appear to declining as a result of the lower guarantee percentage, and his disbelief that the large scale loans at the Export-Import Bank of the United States (Ex-Im Bank) are guaranteed at the 90 percent rate. The amendment was passed by a voice vote.

Mr. LaFalce then offered an amendment with the support of the Chair to extend the authorization for SBA's programs through fiscal year 1998 at the fiscal year 1997 authorization levels. The amendment was agreed to by a voice vote.

Mr. LaFalce then offered an amendment to increase the fees on the 7(a) loan program. The Chair expressed concerns and Mr. LaFalce withdrew the amendment.

The Committee then moved to Title 2 of the bill. Mr. LaFalce offered a compromise amendment on behalf of himself and the Chair regarding the terms of the Development Company pilot liquidation program. Mr. Hefley expressed his concerns that the changes might encourage the SBA to limit participation in the program arbitrarily. The Chair echoed his concerns and expressed her intent that the program be implemented fully and seriously. The amendment was then passed by a voice vote.

Having completed consideration of amendments the Committee then voted on the amendment in the nature of a substitute, as amended. The amendment was accepted by voice vote. The Chair then ascertained that a sufficient number of members were present, and the Committee voted to report the bill as amended by a unanimous voice vote.

SECTION-BY-SECTION ANALYSIS AND COMMITTEE VIEWS

Section 1 provides that this bill be known as The Small Business Programs Improvement Act of 1996 and gives a table of contents. Section 2 defines the term "Administrator" as used in the bill to refer to the Administrator of the Small Business Administration. Section 3 establishes that, unless noted otherwise in the bill, all provisions of H.R. 3719 take effect on October 1, 1996.

SECTION 101. REFERENCES

Provides that unless expressly stated otherwise, all references in title one are to the Small Business Act (15 U.S.C. § 631, *et seq.*).

SECTION 102. RISK MANAGEMENT DATABASE

This section instructs the SBA to set up a comprehensive and fully integrated computer database to track the performance of the 7(a), 504, and disaster assistance loan programs, and stratify and identify loan underwriting problems. It requires that information be collected, in a single system, on: defaults, losses, recoveries, lenders, and borrowers. This database shall also be able to compare data regarding defaults and losses in the 7(a) program by SBA region, district, Standard Industrial Classification (SIC) code, and loan size. This data shall be collected solely for information purposes and to assist the Administration in its overall program management goals. The information is currently collected by the SBA but is not collated in a format that the Committee believes adequately serves the needs of the agency.

SECTION 103. SECTION 7(a) LOAN PROGRAM

(a) Servicing and liquidation by preferred lenders

This section amends Section 7(a)(2)(C) of the Small Business Act to specify that Preferred Lenders shall have full authority to collect on, and liquidate loans that they made without prior written approval of SBA for routine activities. The Committee desires that Preferred Lenders be afforded every opportunity to exercise the discretion they normally have in their lending liquidation activities.

The Administration has regularly expressed in testimony before the Committee that this is the case, and the Committee seeks to be ensure that result. At the Administration's request, language was added in the en bloc amendment prohibiting lenders from engaging in conflicts of interest.

(b) Certified lenders program

This section clarifies Section 7(a)(19) of the Small Business Act regarding the Certified Lender Program. It also institutes new authority for Certified Lenders to begin performing liquidation of SBA guaranteed loans subject to the approval of the Administration. This provision will essentially give Certified Lenders the authority that Preferred Lenders had prior to this Act.

The low-documentation program

This section also amends the Small Business Act to require that the Administration's low documentation loan program (Low-Doc) loans be made only through Certified and Preferred Lenders, or lenders with significant small business lending experience. The bill requires the Administration to define such experience. The Committee adds this language to ensure that the Small Business Administration is living up to the guidelines it has promulgated for the Low-Doc program. These guidelines specifically state that the program shall be used only by the SBA's experienced lending partners. The section also requires that the SBA begin to track the subsidy rate for Low-Doc separately, a change the Committee finds to be prudent due to Low-Doc's substantial presence in the loan portfolio.

(c) Pilot program restriction

This section amends Section 7(a) to provide that SBA may not establish a pilot program or initiative in the 7(a) program that in any one fiscal year exceeds ten percent of the total number of loans guaranteed in the entire 7(a) program. The Committee adds this language as a safeguard and a firewall from possible unintended consequences. The Committee appreciates the concern expressed by the Administration regarding the restriction that this may place on their ability to move forward with innovations. However, the Committee wishes to make clear that nothing prevents the SBA from implementing a pilot program and then asking the Committee to approve such an idea through simple legislative action. Any pilot program that would affect approximately $800 million of Federal guarantees is deserving of Congressional consideration.

(d) Securitization of unguaranteed loan portion

This Section amends Section 5(f) of the Small Business Act to allow banks, as well as non-banks to securitize (*i.e.,* sell in the secondary market) the non-guaranteed portion of SBA loans. Currently, only non-bank lenders may securitize the non-guaranteed portion of their SBA guaranteed 7(a) loan portfolio. There are stringent regulations governing this practice, and non-bank lenders must apply individually and receive permission from the Agency to engage in this practice. H.R. 3719 removes the prohibition that prevents bank (depository institution) lenders from securitizing their

non-guaranteed portion of their 7(a) portfolio. The bill also makes clear that the SBA shall require each lender participating in this program to keep a sufficient reserve (up to ten percent) to safeguard the Administration's interest.

(e) Conditions on purchase of loans

This section amends Sections 5(g) and 7(a) to establish procedures requiring the SBA to reduce the servicing fees or accrued interest paid to a lender for the period of time between the default of a loan and the payment on the guarantee. Both the fee and the interest rate would be reduced by one percent for that period. Currently, lenders are paid a fee for servicing loans that are sold on the secondary market. This provision would lower that payment for the period of time between the default on the loan and the payment on the guarantee. Similarly, the interest payable to a lending institution for that period would also be reduced.

The Committee institutes this provision for two reasons: first, as a discipline fee to encourage lenders to improve the quality of the loans made, and to insure careful and serious monitoring of the health of the small business borrower; second, as a means of reducing, however slightly, the subsidy rate for the 7(a) program.

(f) Transfer of servicing functions

This provision requires SBA to report to the Committee on its progress with centralizing loan servicing functions. The SBA has been transferring its loan servicing functions from the SBA District offices to the centralized loan servicing centers. Approximately half of the District offices have completed this transfer, and lenders have found the centralized servicing centers to be very efficient. However, the SBA has not completed the transfer of the remaining District office files to the centralized centers. The Committee bill directs the SBA to report on the status of this effort and any possible impediments within 90 days of enactment.

(g) Preferred lender review

This provision requires the SBA to issue a Request for Proposals to implement its standard review program for Section 7(a) Preferred Lenders. The program parameters are now ready but the program has yet to go forward. This review is a vital tool for the monitoring of SBA's largest lending partners, and the Committee intends that implementation go forward without further unnecessary delay.

(h) Independent study of loan programs

Within two months of enactment of this legislation, the Administrator shall issue a solicitation and award a contract, through full and open competition, for an independent study and comprehensive report on the status of the 7(a) and 504 loan programs. This report shall contain detailed historical information and data on the losses incurred by the programs, the default rate for each year's lending cohort (*i.e.,* loans made during that year), the number and frequency of defaults and deferrals for each year's cohort, and an analysis of the prospective loan losses for the program based on such data.

The report shall also contain information comparing the relative loss rates of the loans provided by preferred lenders, certified lenders, or general participation lenders; a comparison of the loss rates of loans based upon their maturity; and a comparison of the loss rate of loans based on their dollar amount at disbursement. The report shall compare such information with the subsidy model for the program as prepared by OMB and report on the accuracy and validity of the OMB subsidy model and its assumptions.

Finally, the report will provide recommendations for improving the information management and data collection activities of the Administration with regards to the 7(a) and 504 programs. This report shall be delivered to the Small Business Administration which will have 30 days to append its comments, and those of the Office of Management and Budget, before presenting the report to the House and Senate Committees on Small Business.

The Committee institutes this report because of a mounting frustration with the response received from both the SBA and the Office of Management and Budget. The Committee believes that it is imperative to obtain an impartial and objective accounting as to the health of the loan programs and their subsidy cost. This information is vital to the functioning of the SBA and the efficient operation of the legislative process. Finally, the Committee urges the Administrator to make every effort to draft the request for proposals for this report in a fashion that provides the maximum opportunity for small business to compete for this contract.

(i) General Accounting Office study

This section requests a study by the General Accounting Office (GAO) to compare the costs of liquidating loans both privately and through the SBA. Currently, the Committee is informed that the costs of Preferred Lender Liquidation is higher than the cost of SBA liquidations. This statistic, however, belies the fact that the costs of SBA employees and other Federal employees are not counted towards the subsidy cost of the program. The Committee believes that this unfairly prejudices the accounting and masks the true cost of the 7(a) program. Consequently, the Committee requests that GAO study and compare the full costs on both sides of the equation, including indirect costs such as those of SBA personnel and U.S. Attorneys involved in the liquidations.

In addition, as a control group, the Committee asks that GAO compare these costs with non-guaranteed loans made by Preferred Lenders to show any possible hidden costs not accounted for by the Committee. The Committee does not impose this as a condition upon Preferred Lenders, but hopes they will be cooperative with the GAO in their efforts.

SECTION 104. DISASTER LOAN PROGRAM

(a) Interest rate

This section amends Section 7(c) of the Small Business Act to change the interest rate on disaster assistance loans to a rate equal to three-fourths of the rate for a Treasury instrument of a similar duration. This means that disaster loans will still be made at a rate below the cost of money to the Federal Government. Origi-

nally, the Administration had proposed raising the rate further to the full cost of money. While this would have saved the government additional funds, the Committee was not comfortable with that significant an increase in the interest rate for disaster victims.

(b) Servicing and liquidation pilot

This section provides for a pilot project to be conducted by the Administration. The Administration will solicit and award, on a competitive basis, a contract to one or more private sector entities to service and liquidate a total of 25,000 randomly chosen disaster loans (20,000 residential loans and 5,000 commercial loans). The pilot contract term will be two-years with options for five additional two-year terms. The SBA is required to report on the results of this pilot and compared the costs with the costs of SBA based liquidation.

The Committee institutes this pilot program with the view towards the possibility of eventual privatization of disaster loan servicing and liquidation. The Committee has heard good reports regarding such efforts at other agencies and believes that, because the majority of disaster loans are long-term home loans, they can be serviced efficiently by private sector entities familiar with mortgage servicing.

(c) Disaster definition

This provision amends Section 3(k) of the Small Business Act to expand the definition of disaster to include the closure of customary fishing waters by government action either regulatory or otherwise. Currently, the definition excludes closures of fisheries that are imposed by government fiat. This provision will include situations in which the government through law, regulation or malfeasance causes or orders the suspension of fishing.

SECTION 105. MICROLOAN DEMONSTRATION PROGRAM

(a) Technical assistance grant requirements.

This provision amends Section 7(m) of the Small Business Act to decrease the maximum amount that an intermediary may receive through the technical assistance grant component of the microloan program. It will be reduced by 5 percent, from 25 percent to 20 percent, of the loan fund amount. The matching funds requirement will also be increased from 25 percent to 35 percent.

(b) Requiring implementation of fiscal year 1995 program

The bill requires the SBA to either implement the Microloan Guarantee Pilot Program established in Section 7(m)(12) of the Small Business Act or issue a report on why they are unable to implement the Microloan Guarantee Pilot Program. The bill specifies that failure to perform one of these options by December 1, 1996 will result in a freeze in the authorization for the program as a whole.

In Section 201 of P.L. 103–403, the reauthorization bill adopted in 1994, the House and Senate Committees on Small Business directed the agency to pilot a guaranteed loan program for microloans. Currently, all microloan intermediaries get their loan

funds on a direct lending basis from the SBA. The 1994 legislation authorized providing a guarantee of up to 100 percent to banks making the same type of loan to the intermediaries who use it to relend in small amounts to entrepreneurs. The microloan is one of the few direct loan program still in existence at the Agency, and moving the program to a guaranteed basis would result in savings to the Federal Government. This approach was, in fact, recommended by the National Performance Review. Appropriations have been provided since fiscal year 1995 to implement this microloan guarantee pilot. However, the Agency has yet to do so.

SECTION 106. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM

The bill amends Section 21 of the Small Business Act to provide for clear authority for the Associate Administrator for Small Business Development Centers to establish a comprehensive certification and eligibility review program for Small Business Development Centers. These changes clarify the management structure of the program and provide for enhanced oversight of grants and cooperative agreements.

SECTION 107. MISCELLANEOUS AUTHORITIES

This section eliminates several provisions for programs that are either redundant or are no longer being funded or implemented. These include Trade Assistance Loans and Solar Energy Loans, both programs that are unfunded and whose purposes are currently satisfied by other programs such as the 7(a) loan program.

SECTION 108. SMALL BUSINESS COMPETITIVENESS PROGRAM

This section will extend the Small Business Competitiveness Demonstration Program, which is due to expire at the end of fiscal year 1996, by four years, or through fiscal year 2000. This program suspends small business procurement set-asides for four industrial categories, promoting full and open competition in those categories. No small business set-aside will exist for these categories under the pilot, as long as the number of small businesses competing and winning awards in these categories meets and exceeds twice the 20 percent small business goal.

In addition, the bill requires the SBA to submit a detailed cumulative report on the program, complete with the procurement statistics on the program from 1992 through 1995, within 60 days of enactment. This section also restates the reporting requirement for information on small business subcontracting in the Architecture and Engineering category, information that has yet to be provided despite existing requirements. The bill also provides technical clarification of the small businesses eligible under the pilot program. The clarifications are necessary due to changes in the Standard Industrial Classification code system.

SECTION 109. AMENDMENT TO P.L. 103–81

This section repeals Section 7 of the Small Business Guaranteed Credit Enhancement Act of 1993 and eliminates the sunset of a fee on the sale of guaranteed loans on the secondary market.

SECTION 110. EXPORT WORKING CAPITAL LOAN PROGRAM LEVEL

This section restores the 90 percent guarantee level for Export Working Capital Loans. The guarantee was reduced to a maximum of 75 percent (80 percent for loans under $100,000) in P.L. 104–36. While this change represents a return to the "harmonization" with Ex-Im Bank loans, which are also guaranteed at 90 percent, the Committee continues to be concerned about the need to guarantee any loan at such a high rate.

In addition, there is a continuing lack of interest in small business lending at the Ex-Im Bank. It seems absurd to this Committee that the Ex-Im Bank and the Administration continue to push assistance for Ex-Im Bank's large business clientele while Ex-Im Bank ignores its charter and treats small business lending as a poor relation. "Harmonization" appears to be no more than an opportunity for Ex-Im Bank to continue to evade its responsibility to the small business exporting community. The Committee is pleased that SBA steps up to the plate but is concerned with Ex-Im Bank's continuing failure.

SECTION 111. 1998 AUTHORIZATIONS

This section amends Section 20 of the Small Business Act to reauthorize the Small Business Administration and its programs through fiscal year 1998. This provision is at the same authorization level as fiscal year 1997, representing neither a cut nor an increase in the authorization. The authorization also eliminates the earmark for debentures for the Specialized Small Business Investment Company (SSBIC) debentures. The heavily subsidized SSBIC program has proven an undue burden on the program's finances and consequently the specific earmark is removed. It is the Committee's intent that no more of these debentures be funded.

SECTION 201. REFERENCES

This section provides that unless expressly stated otherwise, all references in Title 2 are to the Small Business Investment Act of 1958 (15 U.S.C. § 661, *et seq.*).

SECTION 202. MODIFICATIONS TO THE 504 PROGRAM

(a) Loan to value ratio

This provision amends Section 502 of the Small Business Investment Act by modifying the amount of contribution required from a small business for participation in a 504 loan package. Start-up small businesses (*i.e.*, those in business two years or less) and borrowers seeking financing for a special purpose building (*i.e.*, a building with a specific use, such as a hotel or carwash), must put a minimum of 15 percent down, instead of the minimum of 10 percent as required under current law. This additional 5 percent down will reduce the SBA's portion of the project from 40 percent to 35 percent, resulting in a 15–50–35 split—borrower, first mortgage holder, and SBA debenture financing, respectively, for the project.

Furthermore, these requirements are additive, so that a start-up small business seeking financing for a special purpose building must put 20 percent down (*i.e.*, an additional 5 percent for being

a start-up small business and 5 percent for financing a special purpose building). This will effectively lower the SBA's financing for the project to 30 percent. These new requirements are designed to help mitigate the risk to the portfolio as evidenced by a much higher default rate for start-up small businesses and the liquidation problems presented by special purpose buildings.

(b) Guarantee fee for development company debentures

This provision amends Section 503(b)(7)(A) of the small Business Investment Act to increase the one-eighth of 1 percent fee that the borrower is currently required to pay on the annual outstanding balance of the principal on the SBA portion of the project (pursuant to P.L. 104–36) to thirteen-sixteenths of one percent. The Committee is not pleased that the increase in fees is required, but as outlined elsewhere in this report, finds it has little alternative.

(c) Fees to offset subsidy cost

This provision amends Section 503(d) to include two new fees for this program. The participation fee is a one-time, up-front fee of one-half of one percent on the total cost of the project. It will be levied on the first mortgage holder. This is typically a local bank that funds 50 percent of the project. This fee will be passed through to the SBA to offset the subsidy rate.

Under the development company servicing fee, one-eighth of one percent of the annual servicing fee collected by Development Companies will be passed-through to the SBA to offset the subsidy rate. Certified Development Companies currently receive a total of between 0.5 percent and 1.5 percent from the borrower in loan servicing fees.

SECTION 203. REQUIRED ACTIONS UPON DEFAULT

(a) Deadlines

This section amends Section 503 of the Small Business Investment Act by instructing SBA to take action on defaulted loans within a certain time frame in order to speed recoveries and liquidations. Within 45 days of a missed payment, the SBA must act to bring the loan current or enter into a deferral agreement. Within 65 days of a missed payment and absent a deferral, the SBA must start to accelerate (*i.e.*, foreclose) on the loan. This provision is added to ensure that prompt action is taken by the SBA. It is a bromide in the financial services industry that time is money. Any time that the SBA allows to go by on a defaulted loan without definitive action increase the risk of loss to the government. The Committee believes that this provision will encourage decisive action by the SBA and thereby improve the monitoring and performance of the loan portfolio.

(b) Prepayment penalties and late fees

This provision prohibits the SBA from paying late fees or prepayment penalties on defaulted loans. It also prohibits the SBA from paying any "default interest rate" on a defaulted loan. This language is designed to cure a problem that occurs when the SBA purchases the first mortgage position from banks that participate in

Development Company loans. The SBA is often obliged to pay "prepayment" penalties on loans that have gone into default. Prepayment penalties are more commonly, and appropriately, charged only when a borrower pays off a loan early.

This provision put a stop to that practice and requires that the local banks, Development Companies, and the SBA work out loan terms that reflect the real partnership occurring in this program.

This section contains similar language regarding late fees paid by the SBA in the same circumstances. The Committee believes that the SBA's purchase of the first mortgage position negates any need to pay a "late fee". Like a prepayment penalty this charge is not appropriate for a defaulted, rather than delinquent, loan.

SECTION 204. LOAN LIQUIDATION PILOT PROGRAM

This provision requires SBA, working cooperatively with the Certified Development Companies, to develop and implement a pilot program in which CDCs will have complete authority to liquidate their own loans. This responsibility will be delegated only to a select number of the most experienced and active CDCs, namely those with six years of program experience and an average of ten loans per year, and liquidation experience sufficient to carry out this function. SBA will be charged with the responsibility of overseeing the implementation and functioning of this pilot program and will issue a report on the effectiveness of the pilot program at the end of two years.

While it is the intent of the Committee to allow the Administrator discretion in the admission of Development Companies to the pilot program within the bounds of the program parameters, the Committee expects the Administration to deny admission only in circumstances in which it is apparent that the Development Company cannot carry out the responsibilities required under the pilot program.

SECTION 205. REGISTRATION OF CERTIFICATES

This section amends Section 5 of the Small Business Act and Section 321 of the Small Business Investment Act to allow SBIC and 504 development company debentures and securities to be filed electronically. Currently, the law requires a number of unnecessary disclaimers and statements on these securities, which prevent the instruments from being electronically registered. This section removes those restrictions.

SECTION 206. PREFERRED SURETY BOND GUARANTEE PROGRAM

This section amends Section 411 of the Small Business Investment Act to provide new applicants with expeditious responses to their applications. It also requires that the SBA police the use of the program to ensure that participant companies are using their bonding authority and authorizes the removal of program participants who do not use their authority adequately. The Committee adds this provision in response to concerns over insufficient participation by some program participants. The Committee intends that the Administration will take action with regard applications pending on or after October 1, 1995.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with Clause 2(l)(3)(c) of rule XI of the House of Representatives, the Committee sets forth, with respect to H.R. 3719, the following statement received by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 2, 1996.

Hon. JAN MEYERS,
Chair, Committee on Small Business,
House of Representatives, Washington, DC.

DEAR MADAM CHAIR: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3719, the Small Business Programs Improvement Act of 1996.

Enactment of H.R. 3719 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3719.
2. Bill title: Small Business Programs Improvement Act of 1996.
3. Bill status: As ordered reported by the House Committee on Small Business on July 18, 1996.
4. Bill purpose: H.R. 3719 would amend the Small Business Act and the Small Business Investment Act to modify a number programs administered by the Small Business Administration (SBA) and would reauthorize certain SBA programs for fiscal year 1998.

Section 7(a) of the Small Business Act authorizes the SBA to guarantee business loans for certain purposes. Title I of H.R. 3719 would modify the 7(a) program by:

Allowing certain SBA-licensed private sector lenders to liquidate and service SBA 7(a) loans without specific prior approval from the SBA,

Reducing the payments made by the SBA to private-sector lenders upon default of a SBA-guaranteed loan,

Allowing a lender to sell the non-guaranteed portion of any 7(a) loan, provided the lender meets certain requirements, and;

Requiring the SBA to establish a separate subsidy rate for the 7(a) loans made under the low documentation program.

In addition, the bill would require the SBA to establish a data base for the purpose of tracking the performance of the 7(a) and disaster loans and would require a number of studies by the SBA and General Accounting Office (GAO).

Title I would modify the disaster loan program to increase the interest rate on disaster loans, subject to the discretion of the Administrator of the SBA, but would set a new cap on the interest

rate. That cap would be equal to three-quarters of the rate on Treasury securities with comparable maturities plus 1 percent. In addition, the bill would change the SBA definition of "disaster" to include government action that results in the closure of customary fishing waters. The provision would thus allow those adversely affected by the Government closure of a fishery to apply for SBA disaster loans.

Title I also would terminate a number of small loan programs and would extend the Small Business Competitiveness Demonstration Program through the end of fiscal year 2000. The title also would authorize appropriations for fiscal year 1998 of about $150 million for SBA disaster programs and about $1.3 billion for SBA business programs.

The Small Business Investment Act authorizes the SBA to guarantee debentures issued by development companies who, in cooperation with banks or other lending institutions, assist small businesses with plant acquisition or construction projects. Title II of the bill would increase the annual fee that is charged to the small businesses and would establish a participation fee and a development company fee to be paid by the lending institution and the development company, respectively. Proceeds from the fees would be used to offset the cost of making the guarantees. In certain cases, the bill also would increase the amount of participation in the project by the small business. Finally, Title II would authorize the SBA to terminate the participation of certain companies in the Preferred Surety Bond Program.

5. Estimated cost to the Federal Government: Assuming appropriation of the authorized amounts, CBO estimates that enacting H.R. 3719 would result in new discretionary spending of about $1.3 billion over the 1997–2002 period, primarily for SBA expenditures. CBO's estimate of new discretionary spending includes amounts authorized in H.R. 3719 for several SBA programs that did not receive an appropriation in fiscal year 1996. Outlays estimates are based on historical spending rates for the authorized programs and assume that appropriations will be provided before the start of each fiscal year.

Fiscal year 1996 appropriations totaled $817 million for the SBA. In fiscal year 1997, current law authorizes an appropriation of about $1.7 billion for the agency. H.R. 3719 would modify or terminate several loan programs currently authorized for fiscal year 1997 resulting in a decrease in the amount of appropriations needed to fund the authorized level of loans in that year. The following table summarizes the budgetary impact of this bill.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION							
Spending Under Current Law:							
Estimated Authorization Level [1]	817	1,669	.....	.....	.....	.....	.....
Estimated Outlays	1,058	1,483	574	94	.....	.....	.....
Proposed Changes:							
Estimated Authorization Level	.....	−230	1,594	1	1	.....	.....
Estimated Outlays	.....	−141	954	453	97	.....	.....
Spending Under H.R. 3719:							
Estimated Authorization Level [1]	817	1,439	1,594	1	1	.....	.....

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Estimated Outlays	1,058	1,342	1,528	547	97	.....	.....

[1] The 1996 level is the amount appropriated for that year.

The costs of this bill fall within budget functions 370 and 450.

6. Basis of estimate: CBO estimates that the bill would reduce existing authorization amounts for fiscal year 1997 by $230 million. Based on the loan levels specified in H.R. 3719, CBO estimates that the bill would provide an authorization level of about $1,590 million for fiscal year 1998. We estimate that extending the competitiveness demonstration program would cost about $1 million a year for each of fiscal years 1997 through 2000.

Modifications to the 7(a) loan program.—H.R. 3719 would make a number of changes to the 7(a) loan program. The bill would allow certain SBA lenders to liquidate and service 7(a) loans without prior specific approval from the agency. Currently, lenders that liquidate the SBA-guaranteed loans deduct their administrative costs from the amounts recovered and forward the remaining money to the government. Enacting this provision would likely cause a slight increase in cost of the 7(a) program because the SBA would not be above to halt or renegotiate the terms of a loan recovery if the lending institution's administrative costs are too high. This cost would likely be offset by the reduction in payments made by the SBA upon the default of a guaranteed loan. CBO estimates that there would be at most a negligible effect of these two provisions on the subsidy rate.

H.R. 3715 would require the SBA to promulgate regulations defining the experience necessary for lenders to participate in the 7(a) low documentation program. Based on information from the SBA, CBO estimates that the cost of the rulemaking would be less than $100,000. CBO would not expect the other provisions modifying the 7(a) program to have any budgetary impact.

Modifications to the disaster loan program.—H.R. 3719 would modify the disaster loan program to increase the interest rate on disaster loans from no more than 4 percent to no more than three-quarters of the rate on Treasury securities with comparable maturities plus 1 percent. Under current law, the SBA is authorized to loan $1.7 billion in disaster loans in fiscal year 1996 and such sums as necessary in fiscal year 1997. (For the purpose of this estimate, CBO assumes that fiscal year 1997 appropriations will provide the same loan level for 1997 as for 1996.) CBO estimates that the subsidy rate for fiscal year 1997 for the disaster loan program would be about 16.5 percent under current law.

Enacting H.R. 3719 could reduce the estimated subsidy rate for the program because the bill would likely require borrowers to repay the loans at a higher interest rate. Assuming that the Administrator of the SBA chooses to increase the interest rate to the maximum rate that the bill would allow, CBO estimates that the average subsidy rate for the disaster loan program would fall from approximately 16.5 percent to 12.3 percent in fiscal year 1997. The reduction in the subsidy rate would decrease the amount of appropriations needed to subsidize the disaster loans in fiscal year 1997

at the authorized level from an estimated $213 million to $159 million. Assuming that the SBA would be authorized to make the same amount of loans in fiscal year 1998 as in fiscal year 1996, we estimate that the amount of appropriations needed to subsidize the loan level would be $153 million. In addition to the subsidy costs, CBO estimates that expenses for administering the loans would total about $130 million in each of fiscal years 1997 and 1998.

In addition, H.R. 3719 would expand the disaster loan program to allow individuals and small businesses adversely affected by the government closure of a fishery to receive SBA disaster loans. Based on information provided by the National Oceanic and Atmospheric Administration and the Massachusetts Office of Development, CBO predicts that those affected by the closure of the New England groundfish fishery would be most likely to apply for loans, but other fisheries are or may be closed, and those working in and around those fisheries would be eligible as well. Of those affected by the closure of the groundfish, CBO estimates that loan demand would total between $20 million and $30 million, resulting in a subsidy cost of about $3 million over fiscal years 1997 and 1998, assuming appropriation of the estimated amounts.

Modifications to the 504 loan program.—Under current law, SBA is authorized to guarantee $3.25 billion in 504 loans for fiscal year 1997. Fiscal year 1996 appropriations provided for $2.5 billion in SBA-guaranteed 504 loans. CBO estimates that under current law the subsidy rate for the 504 loans would be about 6.8 percent in fiscal year 1997 and that the amount of appropriations needed to subsidize the 504 guarantees at the authorized level would be about $221 million. CBO estimates that enacting H.R. 3719 would reduce the average subsidy rate for the 504 program 1.5 percent in fiscal year 1997. The reduction in the subsidy rate would decrease the amount of appropriations needed to subsidize 504 loans at the authorized level to $49 million in fiscal year 1997.

Enacting H.R. 3719 would reduce the subsidy rate for the 504 program because the bill would authorize the SBA to impose additional fees on program participants for fiscal year 1997 and would modify other aspects of the 504 program. The imposition of the additional fees accounts for most of the reduction in the subsidy rate. Other changes in the program also would reduce the subsidy slightly. CBO assumes, however, that the decrease in the subsidy rate due to the additional fees would be partially offset by an increase in the default rate because some of the more qualified small businesses would seek less expensive financing elsewhere.

H.R. 3719 also would authorize the SBA to guarantee $3.25 billion in 504 loan program for fiscal year 1998. Because the bill would authorize the SBA to collect the additional fees to offset the cost of the 504 program in fiscal year 1997, CBO would estimate the average subsidy cost of the loans would increase from 1.5 percent to 6.6 percent in that year.

Small Business Competitive Demonstration Program.—H.R. 3719 would extend this program from the end of fiscal year 1996 to the end of fiscal year 2000 and would require the Department of Commerce to participate in the program. Based on information from the participating agencies, CBO estimates that extending the program would cost each of the 11 participating agencies and the SBA less

than $100,000 a year to report and compile the required data, assuming appropriation of the necessary amounts. Hence, we estimate a total annual cost of about $1 million for each year that the program is extended.

Other provisions.—A small portion of the estimated reduction in the authorization level for 1997 is attributable to a shift from one small business investment company program to another. The bill also would require the SBA to conduct a comprehensive study of several loan programs. Based on information from the SBA, CBO estimates that the study would cost about $1 million in fiscal year 1997, assuming appropriation of the necessary amounts. Title I would require the GAO to study the cost of liquidating certain SBA-guaranteed loans. Based on information from the GAO and assuming appropriation of the necessary amounts, CBO estimates that the study would cost about $350,000 in fiscal year 1997. Finally, Title I of H.R. 3719 would require the SBA to establish a data base to track the performance of the 7(a) loans and disaster loans. Because the SBA has already established this data base, CBO estimates that this provision would result in no additional cost to the government.

7. Pay-as-you-go considerations: None.

8. Estimated impact on State, local, and tribal governments: H.R. 3719 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). The bill would impose a fee (for fiscal year 1997 only) on state or local governments that choose to take a senior credit position in a project funded through the Development Company Debenture program. (The senior credit position belongs to the institution or organization lending the most funds for the project.) Based on information from SBA, CBO estimates that the total cost to state and local governments would be negligible because they rarely take such a credit position.

9. Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in Public Law 104–4.

10. Previous CBO estimate: None.

11. Estimated prepared by: Federal Cost Estimate: Rachel Forward and Rachel Robertson. Impact on State, Local, Tribal Governments: Marc Nicole. Impact on the Private Sector: Patrice Gordon.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the House of Representatives, the Committee estimates that H.R. 3719 will have no inflationary impact on prices and costs in the operation of the national economy.

UNFUNDED MANDATES ESTIMATE

Pursuant to the provisions of P.L. 104–4 (109 Stat. 48, *et seq.*), the Unfunded Mandates Reform Act of 1995, the Committee estimates that H.R. 3719 will not impose unfunded mandates as defined in that Act.

OVERSIGHT FINDINGS

In accordance with clause (l)(3)(D) of rule XI of the House of Representatives, the Committee states that no oversight findings or recommendations have been made by the Committee on Government Reform and Oversight with respect to the subject matter contained in H.R. 3719.

In accordance with clause 2(l)(3)(A) of rule I and clause 2(b)(1) of rule X of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 3719 are incorporated into the descriptive portions of this report.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SMALL BUSINESS ACT

* * * * * * *

SEC. 3. (a) * * *

* * * * * * *

(k) For the purposes of this Act, the term "disaster" means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, [ocean conditions] *ocean conditions, or government action (regulatory or otherwise)* resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

* * * * * * *

SEC. 4. (a) * * *

(b)(1) * * *

* * * * * * *

(3) RISK MANAGEMENT DATABASE.—

(A) ESTABLISHMENT.—The Administration shall establish, within the management system for the loan programs authorized by subsections (a) and (b) of section 7 of this Act and title V of the Small Business Investment Act of 1958, a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

(B) INFORMATION TO BE MAINTAINED.—In addition to such other information as the Administration considers appropriate, the database established under subparagraph (A) shall, with respect to each loan program described in subparagraph (A), include information relating to—

(i) the identity of the institution making the guaranteed loan or issuing the debenture;

(ii) the identity of the borrower;

(iii) the total dollar amount of the loan or debenture;

(iv) the total dollar amount of government exposure in each loan;

(v) the district of the Administration in which the borrower has its principal office;

(vi) the borrower's principal line of business, as identified by Standard Industrial Classification Code (or any successor to that system);

(vii) the delinquency rate for each program (including number of instances and days overdue);

(viii) the number of defaults in each program (including losses and recoveries);

(ix) the number of deferrals or forbearances in each program (including days and number of instances); and

(x) comparisons on the basis of loan program, lender, Administration district and region, for all the data elements maintained.

(C) DEADLINE FOR OPERATIONAL CAPABILITY.—The database established under subparagraph (A) shall be operational not later than March 31, 1997, and shall capture data beginning on the first day of the first quarter of fiscal year 1997 beginning after such date and thereafter.

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SEC. 5. (a) * * *

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(f)(1) * * *

* * * * * * *

(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations. *The Administration may not prohibit a lender from securitizing the nonguaranteed portion of any loan made under section 7(a). In order to reduce the risk of loss to the government in the event of default, the Administration shall require all lenders securitizing, or requesting Administration approval for the securitization of the nonguaranteed portion of any loan after August 1, 1996, to retain exposure of up to 10 percent of the amount of the loan, which percentage shall be applicable uniformly to both depository institutions and other lenders.*

* * * * * * *

(g)(1) * * *

* * * * * * *

(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

* * * * * * *

(C) In the event the Administration pays a claim under a guarantee issued under this Act, the servicing fees paid to the lender from

the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.

(h)*(1)* Upon the adoption of final rules and regulations, the Administration shall—

[(1) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;]

(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;

[(2)] *(B)* contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interest of the Government;

[(3)] *(C)* prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term "seller" does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

[(4)] *(D)* have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsection (f) and (g) of this section.

(2) Nothing in this subsection shall prohibit the utilization of a book entry or other electronic form of registration for trust certificates. The Administration may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

* * * * * * *

SEC. 7. (a) The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) * * *

(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

(A) * * *

* * * * * * *

(C) INTEREST RATE UNDER PREFERRED LENDERS PROGRAM.—

(i) IN GENERAL.—The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, applicable to other loans guaranteed under this subsection.

(ii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term "Preferred Lenders Program" means any program established by the Administrator, as authorized under the proviso in section 5(b)(7), under which a written agreement between the lender and the Administration delegates to the lender—

(I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and

[(II) authority to service and liquidate such loans.]

(II) complete authority to service and liquidate such loans without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.

(D) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Notwithstanding subparagraph (A), in an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall be equal to the rate specified under this paragraph as in effect on the day before the date of the enactment of the Small Business Lending Enhancement Act of 1995.

* * * * * * *

(17)*(A)* The Administration shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

(B) Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

* * * * * * *

[(19)(A) In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is

authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

[(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.]

(19)(A) CERTIFIED LENDERS PROGRAM.—

(i) ESTABLISHMENT.—In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements.

(ii) SUSPENSION AND REVOCATION.—The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

(B) UNIFORM AND SIMPLIFIED LOAN FORMS.—In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

(C) LOW DOCUMENTATION LOAN PROGRAM.—The Administrator may carry out the low documentation loan program for loans of $100,000 or less only through Preferred Lenders and Certified Lenders, or lenders with significant experience making small business loans. The Administration shall give special consideration to lenders who have made loans under the authority of this section. The Administrator shall promulgate regulations defining the experience necessary for lenders other than Preferred or Certified Lenders for participation as a lender in the low documentation loan program no later than 90 days after the date of enactment of this subsection.

(D) AUTHORITY LIQUIDATE LOANS.—

(i) IN GENERAL.—Lenders participating in the Certified Lenders Program shall have authority to liquidate loans made with a guarantee from the Administration.

(ii) APPROVAL.—The Administrator has the authority to require a certified lender to request approval of a routine

liquidation activity, and if the Administrator does not approve or deny a request made by a certified lender within a period of 3 business days, such request shall be deemed to be approved.

(E) LOW DOCUMENTATION LOAN PROGRAM SUBSIDY RATE.—The Administrator shall with the assistance of the Director of the Office of Management and Budget establish and monitor, on an annual basis, the subsidy rate for the low documentation loan program, independently of other loans authorized by this section.

* * * * * * *

(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

(A) IN GENERAL.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

(B) PILOT PROGRAM DEFINED.—In this paragraph, the term "pilot program" means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

* * * * * * *

(c)(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

* * * * * * *

(6) DISASTERS COMMENCING AFTER OCTOBER 1, 1996.—Notwithstanding any other provision of law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) on account of a disaster commencing on or after October 1, 1996, shall be in the case of a homeowner, or business, or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, at the rate prescribed by the Administration but not more than 3/4 of the rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 percent per annum as determined by the Administrator, and adjusted to the nearest 1/8 of 1 percent.

(7) LIABILITY.—Whoever wrongfully misapplies the proceeds of a loan under subsection (b) shall be liable to the Administrator in an amount equal to 1 1/2 times the original principal amount of the loan.

[(6)**]** *(8)* Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rate for loans

made under paragraphs 7(b)(1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided,* That no loan under paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation: *Provided further,* That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than $100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than $20,000 for each disaster, such sums being in addition to any eligible refinancing: *Provided further,* That the Administration shall not require collateral for loans of $10,000 or less which are made under paragraph (1) of subsection (b). Employees of concerns sharing a common business premises shall be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises.

With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.

[(7)**]** *(9)* The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in section 7(b)(2) the term "an area affected by a disaster" includes any county, or county contiguous thereto, determined to be a disaster by the President, the Secretary of Agriculture or the Administrator of the Small Business Administration.

(d)**[**(1)**]** The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act.

[(2) The Administration is authorized to hold seminars throughout the Nation to make potential applicants aware of the opportunities available under this subsection and related government energy programs, and to make grants to qualified organizations to provide training seminars for small business concerns regarding practical and easily implemented methods for design, manufacture, installation, and servicing of equipment and for providing services listed in paragraph (1) of this subsection, except that recipients of loans made pursuant to this subsection shall not subsequently be eligible for such grants.**]**

[(e) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any firm to adjust to changed economic conditions resulting from increased competition from imported articles, but only if (1)

an adjustment proposal of such firm has been certified by the Secretary of Commerce pursuant to the Trade Expansion Act of 1962, (2) the Secretary has referred such proposal to the Administration under that Act and the loan would provide part or all of the financial assistance necessary to carry out such proposal, and (3) the Secretary's certification is in force at the time the Administration makes the loan. With respect to loans made under this subsection the Administration shall apply the provisions of sections 314, 315, 316, 318, 319, and 320 of the Trade Expansion Act of 1962 as though such loans had been made under section 314 of that Act.]

[(f) In the administration of the disaster loan program under subsection (b)(1) of this section, the case of property loss or damage as a result of a disaster which is a "major disaster" as defined in section 102(2) of the Disaster Relief and Emergency Assistance Act, the Small Business Administration, to the extent such loss or damage is not compensated for by insurance or otherwise, may lend to a privately owned college or university without regard to whether the required financial assistance is otherwise available from private sources, and may waive interest payments and defer principal payments on such a loan for the first three years of the term of the loan.]

(e) [*RESERVED*].

(f) [*RESERVED*].

* * * * * * *

[(l)(1) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administrator may determine to be necessary or appropriate to assist any small business concern in financing plant construction, conversion, expansion (including acquisition of land for such a plant), or startup, and the acquisition of equipment, facilities, machinery, supplies, or materials to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service any of the following energy measures:

[(A) Solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types.

[(B) Photovoltaic cells and related equipment.

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

[(D) Equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy.

[(E) Equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste.

[(F) Hydroelectric power equipment.

[(G) Wind energy conversion equipment.

[(H) Engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in subparagraphs (A) through (C).

Proceeds of loans under this subsection shall not be used primarily for research and development.

[(2) No loan shall be made under this subsection if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed $500,000. No loan made or effected under this subsection directly or in cooperation with banks or other lending institution through agreements to participate on an immediate basis shall exceed $350,000.

[(3) No financial assistance, shall be extended pursuant to this subsection unless the financial assistance applied for is not otherwise available on reasonable terms from non-Federal sources.

[(4) No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no loan may be made unless it is shown that a participation is not available.

[(5) In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

[(6) The Administration's share of any loan made under this subsection shall bear interest at the same rate as loans made under subsection (a) of this section. The maximum terms of any such loan, including extensions and renewals, may not exceed fifteen years.

[(7) All loans made under this subsection shall be of such sound value as reasonably to assure repayment, recognizing that greater risk may be associated with loans made to business concerns in this field: *Provided,* That factors in determining "sound value" shall include, but not be limited to, quality of the product or services; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further,* That such status need not be as sound as that required for loans under subsection (a) of this section.

[(8)(A) The Administration, after consultation with the Department of Energy and other Federal departments and agencies as the Administrator deems appropriate, shall publish in the Federal Register for public comment not later than sixty days after the date of enactment of this subsection proposed regulations to carry out the provisions of this subsection. The Administration shall make all reasonable efforts to solicit comments from small businesses and shall take into consideration comments submitted regarding such proposed regulations.

[(B) The administration shall publish final regulations under this subsection not later than one hundred and eighty days after the date of enactment of this subsection.

[(9) It is the intent of Congress that the paperwork burden and regulatory impact on applicants under this subsection shall be minimized, and that to the maximum extent practicable, the Administrator may rely upon consultation with the Department of En-

ergy and other agencies, upon paid consultants, and upon voluntary public submissions of information to obtain market data, industry sales projections, energy savings, and other economic information needed to carry out the provisions of section 7(l)(1) (D) and (E). Noting in this subsection shall be construed as precluding the Administrator from using any of his lawful powers to obtain information from applicants.]

(l)(1) [*RESERVED*].

* * * * * * *

(m) MICROLOAN DEMONSTRATION PROGRAM.—

(1) * * *

* * * * * * *

(4) MARKETING, MANAGEMENT AND TECHNICAL ASSISTANCE GRANTS TO INTERMEDIARIES.—Grants made in accordance with subparagraph (B)(ii) of paragraph (1) shall be subject to the following requirements:

(A) GRANT AMOUNTS.—Except as otherwise provided in subparagraph (C) and subject to subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. Except as provided in subparagraph (C), each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than [25] *20* percent of the total outstanding balance of loans made to it under this subsection.

(B) CONTRIBUTION.—As a condition of any grant made under subparagraph (A), except for a grant made to an intermediary that provides not less than 50 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area, the Administration shall require the intermediary to contribute an amount equal to [25] *35* percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

* * * * * * *

SEC. 20. (a) * * *

* * * * * * *

(p) The following program levels are [authorized for fiscal year 1997] *authorized for each of fiscal years 1997 and 1998*:

(1) * * *

* * * * * * *

(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

(A) $25,000,000 in purchases of preferred securities;

[(B) $268,000,000 in guarantees of debentures, of which $48,000,000 is authorized in guarantees of debentures

from companies operating pursuant to section 301(d) of such Act; and]

(B) $268,000,000 in guarantees of debentures; and

(C) $900,000,000 in guarantees of participating securities.

* * * * * * *

(q)(1) There are authorized to be appropriated to the Administration for [fiscal year 1997] *each of fiscal years 1997 and 1998* such sums as may be necessary to carry out the provisions of this Act, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the provisions of the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

(2) Notwithstanding paragraph (1), for fiscal [year 1997] *years 1997 and 1998*—

(A) * * *

* * * * * * *

SEC. 21. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(7) The [Deputy Associate Administrator of the Small Business Development Center program] *Associate Administrator for Small Business Development Centers*, in consultation with the Small Business Development Centers, shall develop and implement an information sharing system. Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) shall not be applicable to grants or cooperative agreements under this paragraph. The system shall—

(A) * * *

* * * * * * *

[(h)(1) The Administrator shall appoint a Deputy Associate Administrator for Management Assistance who shall report to the Associate Administrator for Management Assistance and who shall serve without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS–17 of the General Schedule.

[(2) The sole responsibility of the Deputy Associate Administrator for Management Assistance shall be to administer the small business development center program. Duties of the position shall include, but are not limited to, recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dis-

semination and exchange of information between small business development centers and conducting audits of recipients of grants under this section. The Deputy Associate Administrator for Management Assistance shall confer with the seek the advice and counsel of the Board in carrying out the responsibilities described in this subsection.]

(h) ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) APPOINTMENT AND COMPENSATION.—The Administrator shall appoint an Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall serve without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS–17 of the General Schedule.

(2) DUTIES.—

(A) IN GENERAL.—The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include, but are not limited to, recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section.

(B) CONSULTATION REQUIREMENTS.—In carrying out the duties described in this subsection, the Associate Administrator shall confer with and seek the advice of the Board established by subsection (i) and Administration officials in areas served by the small business development centers; however, the Associate Administrator shall be responsible for the management and administration of the program and shall not be subject to the approval or concurrence of such Administration officials.

(i)(1) There is established a National Small Business Development Center Advisory Board (herein referred to as "Board") which shall consist of nine members appointed from civilian life by the Administrator and who shall be persons of outstanding qualifications known to be familiar and sympathetic with small business needs and problems. No more than three members shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. At the time of the appointment of the Board, the Administrator shall designate one-third of the members and at least one from each category whose term shall end in two years from the date of appointment, a second third whose term shall end in three years from the date of appointment, and the final third whose term shall end in four

years from the date of appointment. Succeeding Boards shall have three-year terms, with one-third of the Board changing each year.

(2) The Board shall elect a Chairman and advise, counsel, and confer with the [Deputy Associate Administrator for Management Assistance] *Associate Administrator for Small Business Development Centers* in carrying out the duties described in this section. The Board shall meet at least semiannually and at the call of the Chairman of the Board. Each member of the Board shall be entitled to be compensated at the rate not in excess of the per diem equivalent of the highest rate of pay for individuals occupying the position under GS–18 of the General Schedule for each day engaged in activities of the Board and shall be entitled to be reimbursed for expenses as a member of the Board.

* * * * * * *

(k) PROGRAM EXAMINATION AND CERTIFICATION.—

(1) * * *

* * * * * * *

[(3) EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and certification program conducted pursuant to paragraphs (1) and (2).]

(3) EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—

(A) IN GENERAL.—In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and certification program conducted pursuant to paragraphs (1) and (2).

(B) CERTIFICATION REQUIREMENT.—After September 30, 2000, the Administration may not renew or extend any cooperative agreement with a small business development center unless the center has been approved under the certification program conducted pursuant to this subsection; except that the Associate Administrator for Small Business Development Centers may waive such certification requirement, in the discretion of the Associate Administrator, upon a showing that the center is making a good faith effort to obtain certification.

[(l) The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriations Acts.]

(l) CONTRACT AUTHORITY.—The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefore and affording the applicant an opportunity for a hearing, appeal, or other administrative

proceeding under the provisions of chapter 5 of title 5, United States Code.

* * * * * * *

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM ACT OF 1988

* * * * * * *

TITLE VII—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

* * * * * * *

Part B—Demonstration Program

SEC. 711. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) * * *

* * * * * * *

(c) PROGRAM TERM.—The Program shall be conducted over a period of 4 years, beginning on January 1, 1989, and ending on September 30, **[**1996**]** *2000*.

* * * * * * *

SEC. 714. REPORTING.

(a) * * *

* * * * * * *

(b) SUBCONTRACTING ACTIVITY.—The Administrator for Federal Procurement Policy shall devise and implement, during the term of the Program, a simplified system to test the collection, reporting, and monitoring of data on subcontract awards to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals for—

(1) * * *

* * * * * * *

[(5) DURATION.—The system described in subsection (a) shall be established not later than October 1, 1992 (or as soon as practicable thereafter on the first day of a subsequent quarter of fiscal year 1993), and shall terminate on September 30, 1993.**]**

(5) DURATION.—The system described in subsection (a) shall be established not later than October 1, 1996 (or as soon as practicable thereafter on the first day of a subsequent quarter of fiscal year 1997), and shall terminate on September 30, 2000.

* * * * * * *

SEC. 716. REPORT TO CONGRESS.

(a) IN GENERAL.—Within 180 days after data for [fiscal year 1991 and 1995] *each of fiscal years 1991 through 1999* are available from the Federal Procurement Data Center, the Administrator for Federal Procurement Policy shall report the *cumulative* results of the Small Business Competitiveness Demonstration Program to the Committees on Small Business of the Senate and House of Representatives, to the Committee on Governmental Affairs of the Senate, and to the Committee on Government Operations of the House of Representatives. The views of the Administrator of the Small Business Administration shall be included in the report.

* * * * * * *

(c) RECOMMENDATIONS.—To the extent the results of the Program demonstrate sufficiently high small business participation based on unrestricted contract competition in the designated industry groups, the report to be submitted during calendar year [1996] *1999* shall include recommendations (if appropriate) for changes in legislation or modifications of procurement regulations aimed at increasing reliance on unrestricted competition if high rates of small business participation in the Federal procurement market can be maintained.

SEC. 717. DESIGNATED INDUSTRY GROUPS.

(a) IN GENERAL.—For the purposes of participation in this Program, the designated industry groups are—

(1) construction (excluding dredging);

(2) refuse systems and related services;

(3) [architectural and engineering services (including surveying and mapping)] *architectural and engineering services (including surveying, mapping, and landscape architecture)*; and

(4) non-nuclear ship repair.

(b) CONSTRUCTION.—Construction shall include contract awards assigned one of the standard industrial classification codes that comprise—

(1) Major Group 15 (Building Construction—General Contractors and Operative Builders),

(2) Major Group 16 (Construction Other Than Building Construction—General Contractors and Dredging), and

(3) Major Group 17 (Construction—Special Trade Contractors).

(c) REFUSE.—Refuse systems and related services shall include contract awards assigned to standard industrial classification code 4212 or 4953.

(d) ARCHITECTURAL AND ENGINEERING.—[Architectural and engineering services (including surveying and mapping)] *Architectural and engineering services (including surveying, mapping, and landscape architecture)* shall include contract awards assigned to standard industrial classification code 7389 (if identified as pertaining to mapping services), *standard industrial classification codes 0781 (if identified as pertaining to architecture services),* 8711, 8712, or 8713.

* * * * * * *

SMALL BUSINESS GUARANTEED CREDIT ENHANCEMENT ACT OF 1993

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Guaranteed Credit Enhancement Act of 1993".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * * * *

[Sec. 7. Repealer.]

* * * * * * *

[SEC. 7. REPEALER.

[Sections 3 and 5 of this Act are hereby repealed on September 30, 1996.]

SMALL BUSINESS INVESTMENT ACT OF 1958

* * * * * * *

TITLE III—SMALL BUSINESS INVESTMENT COMPANIES

* * * * * * *

SEC. 321. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

(a) * * *

* * * * * * *

(f)(1) The Administration shall provide for a central registration of all trust certificates sold pursuant to this section. [Such central registration shall include with respect to each sale—

[(A) identification of each small business investment company;

[(B) the interest rate or prioritized payment rate paid by the small business investment company;

[(C) commissions, fees, or discounts paid to brokers and dealers in trust certificates;

[(D) identification of each purchaser of the trust certificate;

[(E) the price paid by the purchaser for the trust certificate;

[(F) the interest rate on the trust certificate;

[(G) the fee of any agent for carrying out the functions described in paragraph (2); and

[(H) such other information as the Administration deems appropriate.]

* * * * * * *

(5) Nothing in this subsection shall prohibit the use of a book-entry or other electronic form of registration for trust certificates.

* * * * * * *

TITLE IV—LEASE GUARANTEES

* * * * * * *

PART B—SURETY BOND GUARANTEES

SEC. 411. (a)(1) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any contract up to $1,250,000.

* * * * * * *

(5)(A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d).

(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Bond Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.

* * * * * * *

TITLE V—LOANS TO STATES AND LOCAL DEVELOPMENT COMPANIES

* * * * * * *

LOANS FOR PLANT ACQUISITION, CONSTRUCTION, CONVERSION, AND EXPANSION

SEC. 502. The Administration may, in addition to its authority under section 501, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: Provided, however, That the foregoing powers shall be subject to the following restrictions and limitations:

(1) * * *

* * * * * * *

[(3) Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration, Community injection funds may be derived, in whole or in part, from—

[(A) State or local governments;

[(B) banks or other financial institutions;

[(C) foundations or other not-for-profit institutions; or

[(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this title.]

(3) CRITERIA FOR ASSISTANCE.—

(A) IN GENERAL.—Any development company assisted under this section or section 503 of this title must meet the criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

(B) COMMUNITY INJECTION FUNDS.—

(i) SOURCES OF FUNDS.—Community injection funds may be derived, in whole or in part, from—

(I) State or local governments;

(II) banks or other financial institutions;

(III) foundations or other not-for-profit institutions; or

(IV) the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this title.

(ii) FUNDING FROM INSTITUTIONS.—Not less than 50 percent of the total cost of any project financed pursuant to clauses (i), (ii), or (iii) of subparagraph (C) shall come from the institutions described in subclauses (I), (II), and (III) of clause (i).

(C) FUNDING FROM A SMALL BUSINESS CONCERN.—The small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this title shall provide—

(i) at least 15 percent of the total cost of the project financed, if the small business concern has been in operation for a period of 2 years or less;

(ii) at least 15 percent of the total cost of the project financed if the project involves the construction of a limited or single purpose building or structure;

(iii) at least 20 percent of the total cost of the project financed if the project involves both of the conditions set forth in clauses (i) and (ii); or

(iv) at least 10 percent of the total cost of the project financed, in all other circumstances, at the discretion of the development company.

* * * * * * *

DEVELOPMENT COMPANY DEBENTURES

SEC. 503. (a) * * *

(b) No guarantee may be made with respect to any debenture under subsection (a) unless—

(1) * * *

* * * * * * *

(7) with respect to each loan made from the proceeds of such debenture, the Administration—

(A) assesses and collects a fee, which shall be payable by the borrower, in an amount equal to [0.125] *0.8125* percent per year of the outstanding balance of the loan; and

(B) uses the proceeds of such fee to offset the cost (as such term is defined in section 502 of the Federal Credit

Reform Act of 1990) to the Administration of making guarantees under subsection (a).

* * * * * * *

(d) CHARGES FOR ADMINISTRATION EXPENSES.—

(1) LEVEL OF CHARGES.—The Administration may impose an additional charge for administrative expenses with respect to each debenture for which payment of principal and interest is guaranteed under subsection (a).

(2) PARTICIPATION FEE.—The Administration shall also impose a one-time fee of 50 basis points on the total participation in any project of any institution described in subclause (I), (II), or (III) of section 502(3)(B)(i). Such fee shall be imposed only when the participation of the institution will occupy a senior credit position to that of the development company. Such fee shall be collected by the development company, forwarded to the Administration, and used to offset the cost (as such term is defined in section 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

(3) DEVELOPMENT COMPANY FEE.—The Administration shall collect annually from each development company a fee of 0.125 percent of the outstanding principal balance of any guaranteed debenture authorized by the Administration after September 30, 1996. Such fee shall be derived from the servicing fees collected by the development company pursuant to regulation, and shall not be derived from any additional fees imposed on small business concerns. All proceeds of the fee shall be used to offset the cost (as such term is defined in section 502 of the Credit Reform Act of 1990) to the Administration of making guarantees under subsection (a).

* * * * * * *

(f) EFFECTIVE DATE.—The fees authorized by subsections (b) and (c) shall apply to financings approved by the Administration on or after October 1, 1996, but shall not apply to financings approved by the Administration on or after October 1, 1997.

(g) REQUIRED ACTIONS UPON DEFAULT.—

(1) DEADLINES.—

(A) INITIAL ACTIONS.—Not later than the 45th day after the date on which a payment on a loan funded through a debenture guaranteed under this section is due and not received, the Administration shall—

(i) take all necessary steps to bring such a loan current; or

(ii) implement a formal written deferral agreement.

(B) PURCHASE OR ACCELERATION OF DEBENTURE.—Not later than the 65th day after the date on which a payment on a loan described in subparagraph (A) is due and not received, and absent a formal written deferral agreement, the Administration shall take all necessary steps to purchase or accelerate the debenture.

(2) PREPAYMENT PENALTIES.—The Administration shall, with respect to the portion of any project derived from funds set forth in section 502(3)—

(A) negotiate the elimination of any prepayment penalties or late fees on defaulted loans made prior to September 30, 1996;

(B) decline to pay any prepayment penalty or late fee on the default based purchase of loans issued after September 30, 1996; and

(C) for any project financed after September 30, 1996, decline to pay any default interest rate higher than the interest rate on the note prior to the date of default.

* * * * * * *

POOLING OF DEBENTURES

SEC. 505. (a) * * *

* * * * * * *

(f)*(1)* The Administration shall—

[(1) provide for a central registration of all trust certificates sold pursuant to this section; such central registration shall include with respect to each sale, identification of each development company; the interest rate paid by the development company; commissions, fees, or discounts paid to brokers and dealers in trust certificates; identification of each purchaser of the trust certificate; the price paid by the purchaser for the trust certificate; the interest rate paid on the trust certificate; the fees of any agent for carrying out the functions described in paragraph (2); and such other information as the Administration deems appropriate;**]**

(A) provide for a central registration of all trust certificates sold pursuant to this section;

[(2)**]** *(B)* contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

[(3)**]** *(C)* prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

[(4)**]** *(D)* have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.

(2) Nothing in this subsection shall prohibit the utilization of a book entry or other electronic form of registration for trust certificates.

* * * * * * *

ADDITIONAL VIEWS OF JOHN J. LAFALCE

I am generally supportive of the provisions of this bill, the Small Business Programs Improvement Act of 1996. It has been improved considerably during the Committee's consideration, and I appreciate the consideration of the Committee, and its Chair, Mrs. Meyers, in examining the matters raised by me and other Members of the Minority.

There remain, however, three matters which are particularly troubling. It is my hope that they will be subsequently addressed by the House.

The first is the amount of 7(a) loan guarantees which will be made available in fiscal year 1997; the second is the amount of certified development company debentures which will be made available in fiscal year 1997; and the third is the extent to which the Small Business Administration is required to delegate its authority to liquidate SBA guaranteed financings in the event such action is necessary.

7(a) LOAN GUARANTEES

The primary financial assistance program operated by the Small Business Administration is the 7(a) loan guarantee program. Under this program, SBA guarantees to reimburse a lender for between 75% and 80% of any loss sustained by the lender on a loan made to a small business.

The cost of the program is partially paid by the appropriation of Federal money. The balance is from fees paid by both the borrower and the lender.

Legislation enacted last year increased the amount of fees to be paid by the borrower. Except on loans of less than $80,000, borrowers now pay between 3% and 3.875%, depending upon the size of the loan. In addition, the lender must pay, and absorb as part of its cost of doing business, an annual fee of .5% or one-half of one percent.

During the current fiscal year, 1996, the Office of Management and Budget, determined that operation of the 7(a) program, including these fees, would result in a subsidy rate of 1.06%. This rate determines the amount which must be appropriated in order to operate the program.

As a result of a major study of the 7(a) program, OMB determined that this rate would increase substantially for fiscal year 1997 to 2.68%. And the President proposed full funding at the new higher rate, even though it necessitated the budgeting of an additional $170 million.

The Republican majority on the Appropriations' Committee rejected this proposal. Instead, it provided a slight additional amount of funding above the 1996 level. It is my understanding that the proposed Federal funding, when added to funds expected to be un-

used this year, will result in a 7(a) program level next year of $6.5 billion.

On the other hand, demand is expected to be approximately $8.5 billion, a shortfall of $2 billion.

I believe that it is our responsibility to address this problem; we cannot simply sit back and argue that the Appropriations Committee did not provide enough money.

I would hope that as the 1997 appropriations bill moves through the Congress additional monies could be provided—about an additional $50 million would allow the program to fund an additional $2 billion in guarantees. But I do not believe that we can rely upon this hope.

This program was underfunded in 1995. The result was chaos. The loan window opened and closed. Finally, OMB dictated the result: stretch the available money by reducing the maximum loan per borrower. SBA then made the necessary reduction and refused any loan in excess of one-half of the statutory maximum of $750,000.

I believe it would be unconscionable to allow this situation to repeat itself.

I reluctantly supported the fees legislated last year. It seemed to me to be a choice between imposing the fees and denying small businesses access to a Federally guaranteed loan program.

I believe that we are confronted with the same problem this year, although on a much smaller scale. It is my understanding that an increase of 1/12 of 1% in the annual lender fee would generate sufficient income to restore approximately $2 billion in guarantees.

This minute increase would amount to less than $100 per year on the average loan, and it would decrease each year as the fee is applied to the outstanding balance of the loan which is being reduced each year.

I urge my colleagues to reconsider this very meager fee increase which was rejected by the Republican majority on the Committee.

DEVELOPMENT COMPANY LOANS

Small businesses in need of long term financing for plant and equipment needs frequently utilize the development company loan program or 504 program.

Under this program, the small business borrower puts up at least 10%, a bank provides 50% and receives a first lien position, and a private investor provides the other 40% by purchasing a debenture issued by a certified development company which is guaranteed by the SBA.

During the current fiscal year, it has been assumed that program participants were fully paying the cost of the program; the OMB approved subsidy rate was set at zero, and no appropriation of funds was necessary to support the program.

This subsidy rate will increase from zero to 6.85% for 1997, again as a result of the recently completed study of the losses in this program.

The President's budget addressed this need for Federal funding by requesting a change in the nature of the program funding—reverting to direct Treasury funding instead of the more costly use of the debenture guarantee process. This change would be accom-

panied by the imposition of a fee equal to the administrative cost of selling the debentures to private investors, thus resulting in no increase in total cost to borrowers, but reducing the subsidy rate to zero.

The majority Members of both the Appropriations Committee and the Small Business Committee rejected this proposed return to direct Treasury funding. And I must admit I have very serious qualms about the proposal as I see it as a temporary solution—the current use of the private markets is the long range solution and ultimately we would seek to return to it.

But when the Appropriations Committee refused to appropriate any money for the 504 program, there appeared to be only one immediate answer: impose fees, at least for one year.

I agree with the majority on most of the fee provisions—a fee of ⅛ of 1% to be paid by the certified development company as part of its cost of doing business; and a fee of one-half of one percent to be paid by the lender who was taking a first lien position on its one- half of the project cost.

The disagreement is over the amount of the fee to be paid by the borrower. Initially, based upon information received from SBA, I believed that an annual fee of 13⁄16 of 1%, when added to the other fees, would be sufficient to reduce the subsidy rate to zero and allow the program to operate without the appropriation of any Federal funds to pay losses.

Reluctantly, Mrs. Meyers and I agreed to impose a fee of this amount. Minutes before the Committee mark-up, however, representatives of OMB suddenly decreed that this amount would not be sufficient. Another 2⁄16 would be needed to reach zero.

I saw no other solution. The Appropriations' Committee was not appropriating any money. Either we would have to increase the borrower's fee to 15⁄16 or there would be no program. The result would not be a reduced program; the total absence of Federal funding would mean no program whatsoever, unless fee income reduced the cost to zero to equate with the complete absence of Federal dollars.

Due to Republican opposition, I withdrew the amendment. The net result: unless we appropriate Federal money, about $21 million, or we impose further fee increases to yield the same amount, there will be no program next year. That result, to me, is completely unacceptable.

LOAN LIQUIDATION

Under current practice, when an SBA financing defaults and there does not appear to be any other recourse, SBA begins a liquidation process and attempts to recover some of what it is owed. For the most part, this process is carried out by SBA employees, with additional support from U.S. attorneys if judicial action is required.

As part of the loan approval process, SBA stratifies its lenders. Some 7,900 lenders submit guarantee requests under the 7(a) program annually.

Of these 7,900, however, some 1,500 have demonstrated their knowledge of SBA requirements and have been designated by SBA as "certified lenders". This designation moves their loan guarantee

requests to the front of the processing line and they receive expedited consideration.

Another 440 have reached the top plateau: designation as a preferred lender which receives delegated authority to approve a government guarantee on behalf of the Agency. This designation, however, involves lender acceptance of additional responsibility. The lender, subject to SBA approval, must liquidate its defaulted loans.

It is believed that part of the increase in the subsidy rate for 1997 for both the 7(a) and 504 programs is attributable to a decline in amounts recovered by SBA during the liquidation process. Particularly in view of repeated reductions in SBA staff, it is not likely that additional SBA personnel can be made available to assist in this effort.

One alternative would be the delegation of more liquidation authority to those lenders who originated the financing. The bill moves in this direction, but I am concerned that we do so in a prudent manner.

On the one hand, I am convinced that government employees probably liquidate loans at less cost than would be involved in reimbursing a lender to employ private attorneys. On the other hand, private attorneys would probably liquidate assets more promptly and thus arguably improve the government's recovery, even if they do cost more.

The key issue is whether improved recoveries will exceed the anticipated higher costs.

These assumptions should be tested on a pilot basis. If they are wrong, the subsidy rate will go even higher. And, in addition, not every lender should be allowed to liquidate, particularly those with no liquidation experience.

Among the related provisions of this bill are three tests of the delegation of this liquidation authority.

The first is the complete delegation of this authority to preferred lenders. Since these are supposedly the best lenders, they probably are the most competent to perform liquidations, and they have agreed to do so. Thus I believe it reasonable to eliminate the need for them to obtain any SBA approval of specific actions they propose to take.

The second is the establishment of a pilot program to test liquidation by some certified development companies or CDCs. Under the bill, about 40 of the largest CDCs would be allowed to test their ability to liquidate failed loans, unless SBA determines on a case by case basis that a particular CDC should not participate.

Again, I am supportive of this test, although I would stress that it is a test and involves CDCs in a process in which they have never participated on behalf of SBA. I do not believe that it is necessary to involve so many companies in order to test the concept, and thus I hope SBA will keep the participation level closer to the minimum number of 15 which is prescribed in the bill.

Third and finally is the involvement of certified lenders, a provision which was added by amendment in committee.

I believe that there is a limit to the number of new initiatives which SBA should be directed to undertake simultaneously, particularly when we are also directing it to cut employment and thus do more with less.

I believe this bill more than reaches this limit. It exceeds it. I do not believe that it is reasonable to mandate SBA to add another 1,500 lenders to those to whom it will delegate liquidation authority. It becomes even more impossible when it is done under a mandate to the Agency to either disapprove a proposal by a certified lender within 3 days or be deemed to have approved it.

Testing of proposals to delegate authority to the private sector appears to be a reasonable response to the reduction in Federal employment. But, the private sector does not always do best in each and every instance and thus unbridled delegation to untested participants could result in test failures and an increase in Federal loan losses.

I would urge deliberative reconsideration.

JOHN J. LAFALCE.

ADDITIONAL VIEWS OF JAMES M. TALENT

Last year, in response to strong loan demand and tight fiscal constraints, Congress lowered loan guarantees and raised fees on borrowers and lenders participating in SBA's Section 7(a) loan program. As a result of these actions, the cost of the 7(a) program to taxpayers was reduced dramatically, allowing Congress to fund a 50% *increase* in small business lending. These changes involved a delicate balancing of the interest of borrowers, lenders and the long term health of the 7(a) loan portfolio. At that time, it was believed that those program changes could place the 7(a) program on a sound foundation that would permit future loan availability and growth despite tightening funding constraints.

Unfortunately, the Administration's 1997 budget revealed yet another surprise hike in the 7(a) subsidy. OMB and SBA explained that, although default trends continued to improve, the 7(a) portfolio had *slightly* underperformed previous historical estimates. Under the new subsidy rate of 2.68%—more than two-and-one-half times the FY96 rate—it would require a $180 million increase in the subsidy appropriation just to keep the 7(a) program at its current loan volume of $11 billion. Such an increase in spending in the current fiscal environment is impossible, and severely complicates Congressional efforts to meet small business demand for the type of long-term credit the 7(a) program was designed to provide. Although I have many questions concerning the calculations that lie behind the OMB and SBA's dramatic hike in the 7(a) subsidy, one think it clearly reveals is that this program requires tight supervision and major improvements in its own risk management.

I commend the Committee's legislation as it takes needed steps to reform the 7(a) program. In the future, we may need to consider changes to the SBA that reduce our reliance on SBA employees to perform basic loan transaction activity, such as loan processing, servicing liquidation. These activities can be performed more efficiently and effectively by private lenders. Such a change will free up SBA staff to perform regular lender examinations and to improve SBA's oversight of its loan portfolios. For example, I would like to see us place far more emphasis on the preferred lender program, which has already proven itself to be a very effective way to reduce SBA losses. Additionally, some further reductions in the guarantee percentages may also be necessary to keep the program funded to meet current demand.

We need to recognize that the SBA has failed to maintain an organization capable of effectively delivering its programs. In recent years, we have listened to SBA officials describe plans to streamline the agency, highlighted by its centralized loan servicing centers, its centralized loan processing centers, and its PLP examination center. While these initiatives sound good, implementation has either halted or it never began. For example, last fall SBA received

the necessary reprogramming authorization from the House and Senate Appropriations Committees to open two pilot LowDoc Processing Centers. Now, almost one year later, neither center has been opened nor have sites even been announced.

With respect to particular provisions contained in the present legislation, as passed by the Committee, I have a number of observations. With respect to the issue of securitization and the ability of both bank and non-bank lenders to benefit from access to the secondary market, I have continuing concerns with the approach which was ultimately adopted by the Committee. First of all, I believe it may be necessary for Congress to give the SBA further direction on this issue, as it seems somewhat incongruous to call for parity between banks and non-banks and at the same time permit SBA to regulate in this area on a lender-by-lender basis. While these may not be mutually exclusive goals, they do leave room for some mischief by the agency. I think a possible way to approach this would be to clarify that securitizations that are granted an investment-grade rating by nationally recognized bond rating firms, such as Moodys and Standard and Poor, should be granted something in the way of a "safe harbor" from SBA hold-back for those securitization that are unrated. This approach would (1) clearly not discriminate between banks and non-banks, (2) take advantage of the investment-grade rating status to minimize the amount of SBA administrative time spent reviewing securitization, and (3) still allow the issuance of unrated securitization. Nevertheless, I appreciate the changes made during the Committee's mark-up, and look forward to working on this issue in the future.

With respect to disaster loan serving, the Committee's approach to utilizing private servicing for loans directly held by the SBA is commendable. I would have preferred to have chosen a percentage of the portfolio to ensure that there are a number of qualified private vendors who can justify establishing a loan servicing infrastructure specific to these SBA loans. And I believe the Committee may want to consider expanding private servicing in the near future. I also believe the Committee should work to ensure that the comparable analysis of the contracts are credible. This will only happen if conducted by third parties (e.g., GAO). Clearly, an SBA in-house analysis can not be the final word. Additionally, care should be taken to give the selected contractors two years of performance after the successful transfer of servicing data before any performance comparison is conducted. The possibly complex process of transferring not only the payment information but underlying details on loan collateral status and location should not be underestimated.

JAMES M. TALENT.

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