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104TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 104–873

SUMMARY OF ACTIVITIES

A REPORT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

DECEMBER 31, 1996—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
Washington, DC
December 31, 1996

Hon. ROBIN H. CARLE
The Clerk
U.S. House of Representatives
Washington, DC

Dear Ms. CARLE:

On behalf of the Committee on Small Business of the House of Representatives, I am pleased to transmit the attached Summary of Activities of the Committee on Small Business for the 104th Congress.

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

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

Sincerely,

JAN MEYERS
Chair

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104TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 104–873

SUMMARY OF ACTIVITIES

DECEMBER 31, 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

REPORT
SUMMARY OF ACTIVITIES

CHAPTER ONE

INTRODUCTION

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

The adoption of the House Rules in the 94th through the 104th Congresses confirmed this action and continued the process begun on August 12, 1941, when, by virtue of House Resolution 294 (77th Congress, lst session), the Select Committee on Small Business was created. In January 1971, the House designated the Select Committee as a permanent Select Committee; and on October 8, 1974, the 93d Congress, recognizing the importance of the work performed, provided that the Committee should thereafter be established as a standing committee.

1.1 HISTORICAL BACKGROUND

The history of the Select Committee on Small Business from its inception in 1941 during the 77th Congress through 1972, the conclusion of the 92d Congress, may be found in House Document 93–197 (93d Congress, 2d session) entitled, "A History and Accomplishments of the Permanent Select Committee on Small Business."

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

In recognition of this expanded jurisdiction, the House of Representatives has established the Committee's membership at 43 Members. The following Members were named to constitute the Committee in the 104th Congress:

Jan Meyers (R-KS), Chair; Joel Hefley (R-CO); William Zeliff, Jr. (R-NH); James M. Talent (R-MO); Donald A. Manzullo (R-IL); Peter G. Torkildsen (R-MA); Roscoe G. Bartlett (R-MD); Linda Smith (R-WA); Frank A. LoBiondo (R-NJ); Zach Wamp (R-TN); Sue W. Kelly (R-NY); Dick Chrysler (R-MI); James B. Longley, Jr. (R-ME); Walter B. Jones (R-NC); Matt Salmon (R-AZ); Van Hilleary (R-TN); Mark E. Souder (R-IN); Sam Brownback (R-KS); Steve J. Chabot (R-OH); Sue Myrick (R-NC); David Funderburk (R-NC) (resigned September 5, 1996); Jack Metcalf (R-WA); Steven LaTourette (R-OH) (named June 13, 1995); John J. LaFalce (D-NY); Ike Skelton (D-MO) (named June 13, 1995); Ron Wyden (D-OR) (resigned February 5, 1996); Norman Sisisky (D-VA); Kweisi Mfume (D-MD) (resigned February 18, 1996); Floyd H. Flake (D-NY); Glenn Poshard (D-IL); Eva Clayton (D-NC); Martin T. Meehan (D-MA); Nydia Velazquez (D-NY); Cleo Fields (D-LA); Walter R. Tucker III (D-CA) (resigned November 20, 1995); Earl F. Hilliard (D-AL) (resigned June 4, 1996); Douglas Peterson (D-FL); Bennie G. Thompson (D-MS) (resigned April 22, 1996); Chaka Fattah (D-PA) (resigned March 5, 1996); Ken Bentsen (D-TX); Karen McCarthy (D-MO) (resigned June 13, 1995); William P. Luther (D-MN); Patrick Kennedy (D-RI) (resigned December 15, 1995); John Baldacci (D-ME) (named June 13, 1995); Jesse Jackson, Jr. (D-IL) (named April 22, 1996); Juanita Millender-McDonald (D-CA) (named April 22, 1996); Earl Blumenauer (D-OR) (named June 5, 1996); Xavier Becerra (D-CA) (named September 17, 1996); James Clyburn (D-SC) (named September 17, 1996); Eleanor Holmes Norton (D-DC) (named September 17, 1996); Maxine Waters (D-CA) (named September 17, 1996).

1.2 Extracts from the Rules of the House of Representatives

EXTRACT FROM RULE X,
RULES OF THE HOUSE OF REPRESENTATIVES

RULE X

ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES

The Committees and Their Jurisdiction

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, and 4; and all bills, resolutions, and other matters relating to subjects within the jurisdiction of any standing committee as listed in this clause shall (in accordance with and subject to clause 5) be referred to such committees, as follows:

* * *

(o) Committee on Small Business

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

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

GENERAL OVERSIGHT RESPONSIBILITIES

2. (b)(1) Each standing committee (other than the Committee on Appropriations and the Committee on the Budget) shall review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated. In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake future research and forecasting on matters within the jurisdiction of that committee. Each such committee having more than twenty members shall establish an oversight subcommittee, or require its subcommittees, if any, to conduct oversight in the area of their respective jurisdiction, to assist in carrying out its responsibilities under this subparagraph. The establishment of oversight subcommittees shall in no way limit the responsibility of the subcommittees with legislative jurisdiction from carrying out their oversight responsibilities.

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

SPECIAL OVERSIGHT FUNCTIONS

* * *

3. (g) The Committee on Small Business shall have the function of studying and investigating, on a continuing basis, the problems of all types of small business.

1.3 Number and Jurisdiction of Subcommittees

During the 104th Congress, the Committee on Small Business authorized the organization of four standing subcommittees. The Chair and the Ranking Minority Member served as *ex officio* members of all subcommittees, without a vote. The jurisdiction of the four named subcommittees includes the following:

GOVERNMENT PROGRAMS

Small Business Act, Small Business Investment Act, and related legislation.
Federal Government programs that are designed to assist business generally.
Small Business Innovation and Research Program.
Opportunities for minority and women-owned businesses.

PROCUREMENT, EXPORTS AND BUSINESS OPPORTUNITIES

Participation of small business in Federal procurement.
Export opportunities.
General promotion of business opportunities.
General economic problems.

REGULATION AND PAPERWORK

Responsibility for, and investigative authority over, the regulatory and paperwork policies of all Federal departments and agencies.
Regulatory Flexibility Act.
Paperwork Reduction Act.
Competition policy generally.

TAXATION AND FINANCE

Tax policy and its impact on small business.
Access to capital.
Finance issues generally.

1.4 Disposition of Legislation Referred to the Committee

A total of 41 House bills and 2 Senate bills were referred to the Committee on Small Business during the 104th Congress. The Committee reported five bills to the House, each of which passed the House, and four were enacted as part of broader legislation. For a summary of the Committee's legislative activities, refer to Chapter 5 of this report.

The Committee continued to consolidate related measures amending the Small Business Act and the Small Business Investment Act of 1958 into omnibus legislation. The major legislative effort of the first session of the 104th Congress was H.R. 2150, The Small Business Credit Efficiency Act of 1995. The Senate-passed legislation (S. 895) was reconciled with the House bill following a conference, and the President signed the final legislation on October 12, 1995 as Public Law 104–36. A summary of H.R. 2150 can be found in section 5.2 of this report.

Small business aspects of regulatory reform were considered by the Committee early in the first session. The Committee considered and favorably reported H.R. 937, on February 15, 1995. This legislation was subsumed into H.R. 926, the Regulatory Reform and Relief Act, which was considered and favorably reported by the Committee on the Judiciary on February 16, 1995 and passed by the House by a vote of 415 to 15 on March 1, 1995. Under the provisions of House Resolution 101, the provisions of H.R. 926 were incorporated into H.R. 9, which was passed by the House on March 3, 1995 by a vote of 277 to 141. Similar legislation concerning small business regulatory reform was considered in the Senate (S. 942) and was ultimately incorporated into Title III of H.R. 3136, which passed the House and the Senate on March 28, 1996. The President signed the bill on March 29, 1996 as Public Law 104–121. A summary of this legislation can be found in section 5.1 of this report.

Early in the second session of the 104th Congress, the Committee considered legislation to further reduce the paperwork burdens imposed on small business by the Federal government. The Committee considered and favorably reported H.R. 2715, the Paperwork Elimination Act of 1996, on March 29, 1996. The House passed the bill on April 24, 1996 by a vote of 418 to 0. The legislation was received in the Senate and referred to the Senate Committee on Governmental Affairs. Regrettably, it was not further considered. For a summary of H.R. 2715, refer to section 5.3 of this report.

The Committee also considered legislation to extend the pilot Small Business Technology Transfer (STTR) Program and make certain modifications to the STTR Program and the Small Business Innovation Research (SBIR) Program. The Committee favorably reported H.R. 3158, the Pilot Small Business Technology Transfer Program Extension Act of 1996, on March 28, 1996. The provisions of the bill extending the STTR program were ultimately incorporated into the omnibus consolidated appropriations legislation (H.R. 4278), which the House and the Senate passed together with the 1997 Department of Defense Appropriations Act (H.R. 3610). The President signed the legislation on September 30, 1996 as Public Law 104–208. A summary of H.R. 3158 is included in section 5.4 of this report.

During the second session of the 104th Congress, the Committee learned that the SBA and the Office of Management and Budget had revised the subsidy rates for the major lending programs administered by the SBA, resulting in a dramatic increase in the rates. In an effort to reduce the subsidy rates and provide continuing improvement for the long-term longevity of the loan programs, the Committee considered H.R. 3719, the Small Business Programs Improvement Act of 1996. On July 18, 1996, the Committee favorably reported the legislation, and the House passed the bill on September 5, 1996 by a vote of 408 to 0. Due to the pending adjournment of the Congress, a majority of the bill was incorporated into the omnibus consolidated appropriations legislation. The President signed that legislation on September 30, 1996 as Public Law 104–208. A summary of H.R. 3719 can be found in section 5.5 of this report.

CHAPTER TWO

THE SMALL BUSINESS ADMINISTRATION

The Committee on Small Business has both legislative and oversight jurisdiction over the Small Business Administration (SBA), an independent Federal agency chartered in 1953 to "aid, counsel, assist and protect the interests of small business."

During the 104th Congress, the Committee conducted a program-by-program review of the SBA. The Committee has attempted to work with SBA to improve its programs administratively and, when necessary, through legislative changes. The Committee recommended significant SBA-related legislation during the 104th Congress, and these bills and their disposition are described in Chapter 5 of this report.

The major programs administered by the SBA are briefly described below.

2.1 SBA Programs in General

The SBA operates through 85 district and branch offices and has a staff of approximately 4,700 permanent employees and a varying number of temporary disaster employees (as many as 1,600 in 1996). It provides loans and loan guarantees, both for business purposes and disaster recovery; assistance to small business in obtaining government contracts; and management and technical assistance through paid and volunteer staff. It also administers a surety bond program for contractors unable to obtain bonds, which are a prerequisite to bidding for, or performing on, certain contracts. The SBA also serves as an advocate for all small businesses, conducts economic research, and monitors the implementation of small business legislation and programs at other agencies, such as the Regulatory Flexibility Act and the Small Business Innovation Research Program. The SBA administers a portfolio of more than 463,000 loans for more than $35.2 billion of which $6.9 billion is comprised of loans to disaster victims.

2.2 SBA Business Loans

A major function of the SBA is to make capital available for those small businesses that cannot normally secure financing in the private sector. In addition to its general business loan program, SBA has specialized programs to help businesses owned by socially and economically disadvantaged individuals, businesses owned by or employing primarily the handicapped, businesses owned by veterans, and businesses in need of long-term fixed-asset financing.

Most SBA financial assistance is provided in the form of guarantees of commercial loans. Such guarantees can be for as much as 80 percent of loans up to $100,000 and for as much as 75 percent

of loans up to the statutory maximum guarantee of $750,000 in most cases. (Guarantees of up to $1 million can be approved for certain fixed-asset financings that promote public policy objectives set forth in the Small Business Act.) The interest rates on guaranteed loans are negotiated between the borrower and lender subject in most cases to a maximum of 2¾ percent above the prime rate. In fiscal year 1995, SBA approved 55,596 guaranteed loans, the guaranteed portions totaling $8.3 billion; in fiscal year 1996, the agency approved 45,845 guaranteed loans totaling $7.7 billion.

Certain applicants who cannot obtain commercial loans, even with a government guarantee, are eligible to apply for SBA direct loans. Between October 1, 1985 and September 30, 1994, eligibility for this type of assistance was limited to qualified businesses owned by individuals with low incomes or located in areas of high unemployment, Vietnam-era or disabled veterans, the handicapped or certain organizations employing them, certain businesses certified under the minority small business capital ownership development program, and certain intermediary non-profit lenders who, in turn, make smaller "microloans" to their clients. Funding for SBA direct loans to others was discontinued on October 1, 1985.

Beginning on October 1, 1994 direct loans were limited to the handicapped and intermediary "microlenders." Direct loans are in most cases limited to $150,000, and their interest rate determined by a formula relating to the government's cost of borrowing. The interest rate for handicapped assistance loans was 3 percent. In fiscal year 1995, SBA approved 40 direct participation (part SBA direct, part bank) handicapped assistance loans for $4 million, and 30 direct loans to microloan intermediaries totaling $12.9 million. This money was "relent" to entrepreneurs in amounts not exceeding $25,000. In fiscal year 1996 the Administration canceled funding for the handicapped assistance leaving the microloan program as the only direct loan program at the SBA. Microloan intermediaries received 23 loans totaling $9 million in fiscal year 1996.

2.3 Disaster Assistance Loans

The SBA provides loan assistance to disaster victims, including homeowners, businesses, and non-profit institutions. When a disaster strikes, it is important that damaged property be replaced or repaired and businesses be provided with adequate working capital to facilitate their recovery as quickly as possible. SBA disaster loans serve this purpose and minimize disruptions to jobs, business revenues, and taxes. In so doing, they play a vital role in restoring the economic health of a disaster-stricken community, often making the difference in the survival of businesses necessary to that recovery. During fiscal year 1995, 45,041 disaster loans were approved for $1.217 billion to businesses, homeowners and others affected by hurricanes, tornadoes, earthquakes, flooding, fires and other disasters. During fiscal year 1996, 37,822 disaster loans were approved for $988 million.

2.4 Small Business Investment Companies

There has been a continuing need for venture capital for new and growing small businesses. Small businesses historically have been the origin for new technological development and expansion. An important source of this venture capital has been SBA's Small Business Investment Company (SBIC) Program.

SBICs supply equity capital and long-term loan financing to small firms for expansion, modernization, and sound financing of their operations. They may also provide management assistance. They are licensed, regulated and, in part, financed by SBA, but their transactions with small companies are private arrangements and have no direct connection with SBA. An SBIC finances small firms in two general ways—through straight business loans and through venture capital or equity-type investments. In fiscal year 1995, 181 licensed SBICs provided their small business clients with $1.09 billion in 868 financings. During fiscal year 1996, 186 SBICs provided $1.17 billion in 1,041 financings.

The SBA also administers the Specialized Small Business Investment Company (SSBIC) Program, which is similar to the SBIC program. SSBICs are specialized SBICs that agree to make investments solely in small business concerns owned and controlled by socially or economically disadvantaged individuals. In fiscal year 1995, 93 licensed SSBICs provided disadvantaged small businesses with $153.5 million in 1,153 financings. During fiscal year 1996, 86 SSBICs provided $101.5 million in 837 financings.

Beginning in fiscal year 1997, the SSBIC program will be merged into the overall SBIC program, and all existing SSBICs will become regular SBICs. Under the combined program, each SBIC, regardless of its size will be required to invest at least 20 percent of its aggregate dollar investments in smaller enterprises. A special leverage reserve will be available to SBICs that invest at least half of their funds in "smaller enterprises"—a small business with a net worth of less than $6 million and a net income of less than $2 million. The special reserve and the elimination of certain investment restrictions will enable the smaller SBICs and former SSBICs to maintain their focus on financing for primarily minority and women-owned businesses, which tend to be smaller-sized businesses. A new reserve of debenture funding will also be available for the smaller SBICs in lieu of the prior funding mechanism for the SSBICs. The fund will be financed through the proceeds of the existing preferred stock repurchase program.

2.5 The 8(a) Program

In addition to the financial assistance programs available to businesses owned by socially and economically disadvantaged individuals, the SBA also administers a business development program for such concerns, the Minority Small Business and Capital Ownership Development Program, pursuant to Section 7(j)(10) of the Small Business Act. Participants in this program are eligible for the preferential award of Federal contracts under the authority of section 8(a) of the Small Business Act, under which the SBA acts as a "conduit" by channeling selected Federal procurement contracts to qualified firms owned and operated by socially and eco-

nomically disadvantaged individuals. In fiscal year 1995, 6,625 new 8(a) contracts were let to 1,120 businesses for a total of $3.1 billion. When option year awards on previous contracts awarded pursuant to section 8(a) are included, the total amount was $6.2 billion. For fiscal year 1996, over 5,400 new contracts amounting to over $3.6 billion were let to 8(a) firms. The amount of total awards pursuant to section 8(a) for fiscal year 1996, including options exercised on contracts awarded in prior years, was not available as of the date of this report.

2.6 Surety Bond Guarantees

Small business contractors and subcontractors who seek public (and some private) construction jobs are often required to furnish surety bonds. The SBA provides assistance to such contractors by extending a guarantee to a surety of up to 90 percent against potential losses in order for the contractor to obtain bonding more easily. The SBA's bonding assistance activity is accomplished through the Prior Approval Program or the Preferred Surety Bond Program. Bid bonds as well as performance and/or payment bonds may be guaranteed on contracts up to $1,250,000. The SBA will pay to the surety participating in the Prior Approval Program 90 percent of a loss incurred if: (1) the total amount of the contact is $100,000 or less; and (2) the bond was issued on behalf of a small concern owned and controlled by socially and economically disadvantaged individuals. Otherwise, SBA will pay a surety in an amount not to exceed an administrative ceiling of 80 percent of a loss on bonds issued to other than disadvantaged concerns in excess of $100,000. Under the Preferred Surety Bond program, the SBA's guarantee is limited to 70 percent of the bond amount for all small businesses on contracts that do not exceed a face value of $1,250,000. In fiscal year 1995, 23,034 bid bond guarantees produced 6,800 final bond guarantees for a total contract amount of over $1.2 billion. In fiscal year 1996, 15,650 bid bond guarantees produced 4,684 final bond guarantees, resulting in a total bond guarantee amount of $923 million.

2.7 Small Business Development Programs

The SBA's economic development assistance programs support SBA loan recipients and other small business owners/managers through individual counseling, management training, and publication of guidance materials. These programs are keyed to furthering the establishment, growth and success of small business. It is estimated that managerial deficiencies cause nine out of ten business failures.

The SBA programs can identify management problems, develop solutions, and help implement and expand business plans. In addition to its own business development officers, SBA relies heavily on national organizations such as the 13,000 volunteer member Service Corps of Retired Executives (SCORE) to expand its capability for individual counseling.

An important component of SBA's management assistance capabilities has been the Small Business Development Center (SBDC) Program. The SBDC program is a cooperative effort by universities,

the Federal government, State and local governments, and the private sector to provide specialized management and technical assistance to the small business community. Originating as a pilot program at one university in December 1976, the SBDC program has expanded to include 56 operating SBDCs in all 50 States, the District of Columbia, Puerto Rico and the Virgin Islands as of 1996. Over 900 branch centers are located throughout the States at colleges, universities, and local government offices, as well as in selected locations such as downtown storefronts easily accessible to small business clients.

2.8 Small Business Innovation Research

The Small Business Innovation Development Act of 1982, signed into law on July 22, 1982, provides for the establishment of Small Business Innovation Research (SBIR) grant programs in all Federal agencies with annual extramural research and development (R&D) budgets in excess of $100 million. The Act also requires the establishment of annual goals for small business research awards in all agencies with R&D budgets in excess of $20 million. The funding level of SBIR programs is derived from fixed percentages of an agency's R&D budget.

Through the SBIR program $834 million was awarded to small firms in fiscal year 1995. For fiscal year 1996, SBIR awards from the 11 participating agencies are expected to exceed $1.1 billion.

The SBIR program is highly competitive and provides funds for the feasibility testing of innovative ideas with Phase I and Phase II funding levels of up to $100,000 and $750,000 per grant, respectively. A third phase encourages commercialization of innovations utilizing private follow-on funding, or government contracts when appropriate. Roughly 38 percent of all SBIR projects result in commercially successful products. In fiscal year 1995, 3,085 Phase I awards for $232.1 million and 1,263 Phase II awards for $601.9 million were approved. For fiscal year 1996, an estimated 3,500 Phase I awards for approximately $450 million and an estimated 1,500 Phase II awards for approximately $800 million will be approved. The SBA Office of Innovation, Research and Technology monitors the implementation of this program at each participating agency and coordinates the SBIR solicitation releases.

2.9 Small Business Technology Transfer

The pilot Small Business Technology Transfer (STTR) Program was established by Title II of Public Law 102–564, the Small Business Research and Development Enhancement Act of 1992, and authorized for an initial three-year demonstration, beginning in fiscal year 1994. Building upon the established model of the SBIR Program, the pilot STTR Program provides the statutory basis for structured collaborations between small technology entrepreneurs and non-profit research institutions, such as universities or Federally-funded Research and Development Centers (FFRDCs) to foster commercialization of the results of Federally-sponsored research.

Like the SBIR Program, and pilot STTR Program seeks to stimulate technological innovation and increase private-sector commercialization of innovations derived from basic research as well as

more mission-oriented advanced research and development undertaken by Federal agencies. The program assures that small business is not excluded from the extramural research and development (R&D) activities conducted by Federal agencies, those undertaken through private-sector sources, and often dominated by Federally-supported research institutions such as universities and FFRDCs.

To assure a baseline of small business participation and to maintain stable funding for technology commercialization, like the SBIR Program, the pilot STTR Program requires a participating Federal agency to reserve a small percentage of its external R&D budget for the program. The pilot STTR Program also uses the highly competitive three-stage process that is designed to identify and nurture only the most promising technology innovations, seeking to move them to full commercialization under the technical and entrepreneurial leadership of small business owners. Unlike the SBIR Program, however, the pilot STTR Program requires a small business to collaborate with a non-profit research institution, such as a university or FFRDC. In fiscal year 1995, 238 Phase I awards for $22.9 million and 22 Phase II awards for $10.7 million were approved. For fiscal year 1996, an estimated 275 Phase I awards for approximately $30 million and an estimated 40 Phase II awards for approximately $15 million will be approved.

2.10 Export Assistance

The SBA is authorized to promote the increased participation of small businesses in international trade. To offset some of the inherent disadvantages to successful small business participation in international trade, the SBA, the U.S. Department of Commerce, other government agencies, and private associations work together to identify, inform, motivate, and provide access to financial assistance for the small businesses seeking to enter into business transactions abroad. The goal of the SBA's program is to continue to facilitate financial assistance and other appropriate management and technical assistance to small business concerns that have the potential to become successful exporters.

The SBA's export counseling and training includes one-on-one counseling through SCORE program volunteers with significant international trade expertise, access to university research and counseling, assistance from professional international trade management consulting firms, referral to other public or private-sector expertise, free consultation through the Export Legal Assistance Network (ELAN) program, which enables small businesses interested in starting export operations to consult with international trade attorneys from the Federal Bar Association, and access to publications on international trade and export marketing.

The SBA's financial export assistance includes several loan programs depending on the purpose for which the funds will be used. Exporters may obtain funds for fixed asset acquisition during start-up or expansion and for general working capital needs through the general 7(a) loan program. Export Trading Companies (ETCs) can qualify for SBA's business loan guaranty program, provided that they are for-profit ETCs and have no bank equity participation.

The Export Working Capital Program (EWCP) allows a guarantee on private-sector loans of up to $750,000 for working capital. The guarantee percentage for loans made in fiscal year 1995 and 1996 was 75 percent (80 percent for loans under $100,000) and in 1997 the percentage will increase to 90 percent. Loans guaranteed under the EWCP program generally have a 12-month maturity, subject to two 12-month renewal options. The loans can be for single or multiple export sales and can be extended for pre-shipment working capital and post-shipment exposure coverage, although the proceeds cannot be used to acquire fixed assets. In fiscal year 1995, the SBA approved 215 guaranteed loans under the EWCP, the guaranteed portions totaling $75.4 million; in fiscal year 1996, the agency approved 272 guaranteed loans totaling $97.25 million.

Through the 7(a) loan program, the SBA also offers export assistance through guarantees of international trade loans, which provide long-term financing to small businesses engaged, or preparing to engage, in international trade, as well as those businesses adversely affected by import competition. The SBA can guarantee loans up to $1.25 million. In fiscal year 1995, the SBA approved 126 guaranteed international trade loans, totaling $50 million; in fiscal year 1996, the agency approved 74 guaranteed international trade loans totaling $19.2 billion.

2.11 Office of Advocacy

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

The eleven statutorily prescribed "primary functions" of the Office of Advocacy are: (1) examining the role of small business in the American economy; (2) assessing the effectiveness of all Federal subsidy and assistance programs for small business; (3) measuring the cost and impact of government regulations on small business and making legislative and non-legislative recommendations for the elimination of unnecessary or excessive regulations; (4) determining the impact of the tax structure on small business and making legislative and other proposals for reform of the tax system; (5) studying the ability of the financial markets to meet the credit needs of small business; (6) determining availability and delivery methods of financial and other assistance to minority enterprises; (7) evaluating the efforts of Federal departments and agencies, business, and industry to assist minority enterprises; (8) recommending ways to assist the development and strengthening of minority and other small businesses; (9) recommending ways for small business to compete effectively and to expand, while identifying common causes for small business failures; (10) developing criteria to define small business; and (11) advising and consulting with the chairman of the Administrative Conference of the United States on the amount of fees and other expenses awarded during

the fiscal year year by the Federal government to plaintiffs who prevail in administrative proceedings before Federal departments and agencies.

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

In 1980, the Regulatory Flexibility Act (Public Law 96–354) enlarged the responsibilities of the Office of Advocacy to include the monitoring of Federal departments' and agencies' compliance with the Act's requirements, performing regulatory impact analyses, and making annual reports to Congress. Also in 1980, Public Law 96–302 required the SBA Administrator to establish and maintain a small business economic data base to provide Congress and the Administration with information on the economic condition of the small business sector. The statute prescribed twelve categories of data and required an annual report on trends. Although none of these data-base functions was expressly delegated to the Office of Advocacy by statute, they have historically been assigned to the office by the SBA Administrator.

The Office of Advocacy also has Regional Advocates who monitor small business and regulatory activities at the State level and disseminate relevant information about small business issues. In fiscal year 1995, the Office of Advocacy had a budget of $7.9 million to carry out its statutory and other activities; in fiscal year 1996, its budget was $4.1 million.

CHAPTER THREE

HEARINGS AND MEETINGS HELD BY THE COMMITTEE ON SMALL BUSINESS AND ITS SUBCOMMITTEES, 104TH CONGRESS

3.1 FULL COMMITTEE

Date	Subject & Location
January 11, 1995	Organizational Meeting; Washington, D.C.
January 18, 1995	Hearing: Overview of Small Business Tax Proposals in the "Contract with America"; Washington, D.C.
January 19, 1995	Hearing: Home Office Deduction; Washington, D.C.
January 19, 1995	Hearing: Independent Contractor Status; Washington, D.C.
January 20, 1995	Hearing: Health Insurance Deductibility for Self-Employed Individuals; Washington, D.C.
January 23, 1995	Hearing: Strengthening the Regulatory Flexibility Act; Washington, D.C.
January 25, 1995	Hearing: Oversight—SBA 7(a) Lending Program; Washington, D.C.
January 26, 1995	Hearing: Capital Gains Tax Reform and Investment in Small Business; Washington, D.C.
January 27, 1995	Hearing: Paperwork Reduction Act; Washington, D.C.
January 31, 1995	Hearing: Estate Tax Reform and the Family Business; Washington, D.C.
February 10, 1995	Hearing: Amending the Regulatory Flexibility Act—Past Performance and the Need for Meaningful Reform; Washington, D.C.
February 13, 1995	Meeting: Oversight Agenda; Washington, D.C.
February 14, 1995	Markup: H.R. 937, to amend Title V, United States Code, to clarify procedures for judicial review of Federal agency compliance with regulatory flexibility analysis requirements, and for other purposes; Washington, D.C.
February 22, 1995	Hearing: Capital Gains Tax Reform; Washington, D.C.
February 28, 1995	Hearing: Overall Review of SBA; Washington, D.C.
March 2, 1995	Hearing: Review of the SBA Procurement Assistance Programs; Washington, D.C.
March 6, 1995	Hearing: Review of SBA Business Development Programs; Washington, D.C.
March 9, 1995	Hearing: Review of SBA 504 Program; Washington, D.C.
March 14, 1995	Hearing: SBA's Pilot Microloan Program; Washington, D.C.
March 16, 1995	Hearing: U.S. Small Business Administration's Business Development Programs; Washington, D.C.
March 28, 1995	Hearing: Review of the SBIC and SSBIC Programs; Washington, D.C.
March 30, 1995	Hearing: The Small Business Administration of the Future; Washington, D.C.
April 4, 1995	Hearing: SBA Office of Advocacy; Washington, D.C.
April 27, 1995	Hearing: Small Business Administration Programs and Tax and Regulatory Issues Impacting Small Business; Overland Park, Kansas.
June 29, 1995	Hearing: Small Business Participation in Federal Contracting: Assessing H.R. 1670, the "Federal Acquisition Reform Act of 1995"—Part I; Washington, D.C.

Date	Subject & Location
July 12, 1995	Hearing: Reduction of Airline Ticket Sales Commission and Its Impact on Small Travel Agencies; Washington, D.C.
July 18, 1995	Hearing: The Administration's Initiatives to Reduce Regulatory Burdens on Small Business; Washington, D.C.
July 20, 1995	Hearing: Assessing the Implementation of Public Law 103–355, the "Federal Acquisition Streamlining Act of 1994"; Washington, D.C.
July 26, 1995	Hearing: The Administration and Congressional Initiatives to Reform OSHA, and their Impact on Small Businesses; Washington, D.C.
August 3, 1995	Hearing: Small Business Participation in Federal Contracting: Assessing H.R. 1670, the "Federal Acquisition Reform Act of 1995"—Part II; Washington, D.C.
August 4, 1995	Markup: H.R. 2150, Small Business Credit Efficiency Act of 1995, to amend the Small Business Act and the Small Business Investment Act of 1958 to reduce the cost to the Federal Government of guaranteeing certain loans and debentures, and for other purposes; Washington, D.C.
September 8, 1995	Hearing: Pension Reform and Simplification: A Small Business Perspective; Washington, D.C.
September 13, 1995	Hearing: The Impact of Solid Waste Flow Control on Small Businesses and Consumers; Washington, D.C.
September 28, 1995	Hearing: SBA's Venture Capital Programs; Washington, D.C.
October 11, 1995	Hearing: Federal Contract Bundling: How Can Small Business Compete?; Washington, D.C.
October 19, 1995	Hearing: The Effects of Superfund Liability on Small Business; Washington, D.C.
October 25, 1995	Hearing: The Internal Revenue Service's Initiatives to Reduce Regulatory and Paperwork Burdens on Small Business; Washington, D.C.
October 31, 1995	Hearing: The Cost of Federal Regulations on Small Business; Washington, D.C.[1]
November 8, 1995	Hearing: Railroad Consolidation: Small Business Concerns; Washington, D.C.[1]
December 13, 1995	Hearing: The Abuses in the SBA's 8(a) Procurement Program; Washington, D.C.
February 28, 1996	Hearing: Small Business' Access to Capital: Impediments and Options; Washington, D.C.
March 6, 1996	Hearing: Pilot Small Business Technology Transfer (STTR) Program and Small Business Innovation Research (SBIR) Program: Assessing the results of Public Law 102–654, the "small Business Research and Development Enhancement Act of 1992"; Washington, D.C.
March 7, 1996	Hearing: The EPA's Progress in Reducing Unnecessary Regulatory and Paperwork Burdens upon Small Business; Washington, D.C.
March 14, 1996	Meeting: Budget Views and Estimates; Washington, D.C.
March 21, 1996	Hearing: SBA FY 1997 Budget; Washington, D.C.

Date	Subject & Location
March 29, 1996	Markup: H.R. 2715, Paperwork Elimination Act of 1995, to amend chapter 35 of title 44, United States Code, popularly known as the Paperwork Reduction Act, to minimize the burden of Federal paperwork demands upon small businesses, educational and nonprofit institutions, Federal contractors, State and local governments, and other persons through the sponsorship and use of alternative information technologies; H.R. 3158, Pilot Small Business Technology Transfer Program Extension Act of 1996, to amend the Small Business Act to extend the pilot Small Business Technology Transfer program, and for other purposes; Washington, D.C.
April 12, 1996	Hearing: The Practice of "Salting" and Its Impact on Small Business; Overland Park, Kansas[2]
April 17, 1996	Hearing: The Kemp Commission Recommendations: A Small Business Perspective; Washington, D.C.
April 25, 1996	Hearing: Patent Term and Patent Disclosure Legislation; Washington, D.C.
May 1, 1996	Hearing: Small Business' Access to Capital: The Role of Banks in Small Business Financing; Washington, D.C.
May 8, 1996	Hearing: Music Licensing and Small Business; Washington, D.C.
May 15, 1996	Hearing: Small Business and Entry-level Employees: How to Increase Take-home Pay and Keep America Working; Washington, D.C.
June 6, 1996	Hearing: Proposed Reforms of the Small Business Investment Company Program; Washington, D.C.
June 27, 1996	Hearing: Small Business Competition for Federal Contracts: The Impact of Federal Prison Industries; Washington, D.C.
July 16, 1996	Hearing: Unfair Competition with Small Business from Government and Not-For-Profits: Assessing the Current State of the Problem and the Recommendations of the 1995 White House Conference on Small Business; Washington, D.C.
July 18, 1996	Hearing: Unfair Competition with Small Business from Government and Not-For-Profits: Assessing the Current State of the Problem and the Recommendations of the 1995 White House Conference on Small Business; Washington, D.C.
July 18, 1996	Markup: H.R. 3719, Small Business Programs Improvement Act of 1996, to amend the Small Business Act and the Small Business Investment Act of 1958; Washington, D.C.
July 31, 1996	Markup (continued): H.R. 3719, Small Business Programs Improvement Act of 1996, to amend the Small Business Act and the Small Business Investment Act of 1958; Washington, D.C.
September 18, 1996	Hearing: Proposed Reform of the 8(a) Program Through H.R. 3994, the Entrepreneur Development Program Act of 1996; Washington, D.C.
September 25, 1996	Hearing: OSHA Reform and Relief for Small Business: What Needs to be Done?; Washington, D.C.

3.2 Subcommittee on Government Programs

Date	Subject & Location
February 13, 1995	Hearing: The Impact of Hanscom Air Force Base upon Small Business in the New England Region; Bedford, Massachusetts.
April 6, 1995	Hearing: Small Business Administration's Small Business Innovation Research (SBIR) Program; Washington, D.C.
April 10, 1995	Hearing: Small Business Administration Programs to Assist the New England Fishing Industry; Gloucester, Massachusetts.
May 25, 1995	Hearing: Small Business Administration's Disaster Loan Program; Washington, D.C.
June 28, 1995	Hearing: U.S. Small Business Administration Low Documentation Loan Program; Washington, D.C.
July 19, 1995	Hearing: SBA's LowDoc Loan Program; Washington, D.C.
August 2, 1995	Hearing: Professional Certification as a Sole Source Bid Requirement in Federal Contracting; Washington, D.C.
September 7, 1995	Hearing: The Export Working Capital Program; Washington, D.C.[3]
October 12, 1995	Hearing: Loan Packaging; Washington, D.C.
March 4, 1996	Hearing: The Effects of Bank Consolidation on Small Business Lending; Boston, Massachusetts.[4]
March 27, 1996	Hearing: H.R. 2715: Paperwork Elimination Act; Washington, D.C.
April 18, 1996	Hearing: Venture Capital Marketing Association Charter Act; Washington, D.C.
May 6, 1996	Hearing: H.R. 2579: The Travel and Tourism Partnership Act of 1995; Newburyport, Massachusetts.
May 30, 1996	Hearing: Oversight of the Environmental Protection Agency's Progress on Reducing Unnecessary Paperwork Burdens Upon Small Business; Washington, D.C.
June 26, 1996	Hearing: Oversight of the Department of Labor's Progress on Reducing Unnecessary Paperwork Burdens upon Small Business; Washington, D.C.
July 10, 1996	Hearing: Massachusetts' Request for Disaster Funds from the SBA; Washington, D.C.
July 15, 1996	Hearing: The Government's Solicitation Process and Whether or Not It is Discriminatory to Small Business; Danvers, Massachusetts.
July 17, 1996	Hearing: H.R. 1863: The Employment Non-Discrimination Act; Washington, D.C.
July 24, 1996	Hearing: Oversight of the Food and Drug Administration's Progress on Reducing Unnecessary Paperwork Burdens upon Small Business; Washington, D.C.
July 31, 1996	Hearing: SBA Programs to Assist Veterans in Readjusting to Civilian Life; Washington, D.C.[5]
September 25, 1996	Hearing: FDIC's Handling of Small Business Asset Foreclosures; Washington, D.C.

3.3 Subcommittee on Procurement, Exports and Business Opportunities

Date	Subject & Location
March 29, 1995	Hearing: Export Promotion Programs: How is Small Business Helped?; Washington, D.C.
April 5, 1995	Hearing: Small Business Administration's Surety Bond Guarantee Program; Washington, D.C.
May 17, 1995	Hearing: Agriculture Export Promotion Programs: How are the Small Farmer and Rancher Helped?; Washington, D.C.
May 23, 1995	Hearing: Federal Export Promotion Programs: An Academic Perspective; Washington, D.C.
June 22, 1995	Hearing: Export Promotion: A Business Perspective; Washington, D.C.
September 7, 1995	Hearing: The Export Working Capital Program; Washington, D.C.[3]
October 11, 1995	Hearing: Technologies for Accessing Foreign Markets; Washington, D.C.
February 13, 1996	Hearing: Resources for Export Assistance; Rockford, Illinois.
May 2, 1996	Hearing: The Impact of "Short Supply" on Small Manufacturers; Washington, D.C.
July 25, 1996	Hearing: The Effectiveness of U.S. Export Assistance Centers; Washington, D.C.

3.4 Subcommittee on Regulation and Paperwork

Date	Subject & Location
February 2, 1995	Hearing: Joint Hearing on the Impact of Workplace and Employment Regulation on Business; Washington, D.C.[6]
June 7, 1995	Hearing: Regulatory Barriers to Minority Entrepreneurs; Washington, D.C.
June 15, 1995	Hearing: OSHA Fall Protection Standard; Washington, D.C.
August 23, 1995	Hearing: Candidates for the Regulatory Corrections Calendar; Despares, Missouri.
March 7, 1996	Hearing: Examining the Issues Surrounding the National Labor Relations Board's Rulemaking Concerning Single Location Bargaining Units in Representation Cases; Washington, D.C.

3.5 Subcommittee on Taxation and Finance

Date	Subject & Location
May 18, 1995	Hearing: The Flat Tax and Small Business; Washington, D.C.
June 28, 1995	Hearing: The Burden of Payroll Taxes on Small Business; Washington, D.C.
July 26, 1995	Hearing: Clarifying the Status of Independent Contractors—Part I; Washington, D.C.
August 2, 1995	Hearing: Clarifying the Status of Independent Contractors—Part II; Washington, D.C.
February 9, 1996	Hearing: Fundamental Tax Changes Needed to Unleash America's Small Businesses—Part I; Indianapolis; Indiana.

Date	Subject & Location
March 4, 1996	Hearing: The Effects of Bank Consolidation on Small Business Lending; Boston, Massachusetts.[4]
March 25, 1996	Hearing: Fundamental Tax Changes Needed to Unleash America's Small Businesses—Part II; Mentor, Ohio.
April 3, 1996	Hearing: Fundamental Tax Changes Needed to Unleash America's Small Businesses—Part III; Seattle, Washington.

[1] Joint hearing with the Senate Committee on Small Business.
[2] Joint hearing with the Committee on Economic and Educational Opportunities.
[3] Joint hearing by the Subcommittee on Government Programs and the Subcommittee on Procurement, Exports and Business Opportunities.
[4] Joint hearing by the Subcommittee on Government Programs and the Subcommittee on Taxation and Finance.
[5] Joint hearing with the Subcommittee on Education Training Employment and Housing of the Committee on Veterans' Affairs.
[6] Joint hearing with the Subcommittee on Oversight and Investigations of the Committee on Economic and Educational Opportunities.

CHAPTER FOUR

PUBLICATIONS OF THE COMMITTEE ON SMALL BUSINESS AND ITS SUBCOMMITTEES, 104TH CONGRESS

4.1 REPORTS

House Report No.	Title & Date
104–49 (Part 1)	Report to accompany H.R. 937, to amend Title V, United States Code, to clarify procedures for judicial review of Federal agency compliance with regulatory flexibility analysis requirements, and for other purposes; February 23, 1995.
104–239	Report to accompany H.R. 2150, Small Business Credit Efficiency Act of 1995; September 6, 1995.
104–269	Conference report to accompany S. 895, Small Business Lending Enhancement Act of 1995; September 28, 1995.
104–520 (Part 1)	Report to accompany H.R. 2715, Paperwork Elimination Act of 1995; April 16, 1996.
104–850 (Part 1)	Report to accompany H.R. 3158, Pilot Small Business Technology Transfer Program Extension Act of 1996; September 26, 1996.
104–750	Report to accompany H.R. 3719, Small Business Programs Improvement Act of 1996; August 2, 1996.
104–873	Summary of Activities; December 31, 1996.

4.2 HEARING RECORDS

Serial No.	Held by *	Title, Date & Location
104–1	Full	Independent Contractor Status; January 19, 1995; Washington, D.C.
104–2	Full	Overview of Small Business Tax Proposals in the "Contract with America"; January 18, 1995; Washington, D.C.
104–3	Full	Tax-Home Office Deduction; January 19, 1995; Washington, D.C.
104–4	Full	Health Insurance Deductibility for Self-Employed Individuals; January 20, 1995; Washington, D.C.
104–5	Full	Strengthening the Regulatory Flexibility Act; January 23, 1995; Washington, D.C.
104–6	Full	Oversight--SBA 7(a) Lending Program; January 25, 1995; Washington, D.C.
104–7	Full	Capital Gains Tax Reform and Investment in Small Business; January 26, 1995; Washington, D.C.

Serial No.	Held by *	Title, Date & Location
104–8	Full	Paperwork Reduction Act; January 27, 1995; Washington, D.C.
104–9	Full	Estate Tax Reform and the Family Business; January 31, 1995; Washington, D.C.
104–10	Full	Amending the Regulatory Flexibility Act—Past Performance and the Need for Meaningful Reform; February 10, 1995; Washington, D.C.
104–11	Full	Capital Gains Tax Reform; February 22, 1995; Washington, D.C.
104–12	Government	The Impact of Hanscom Air Force Base upon Small Business in the New England Region; February 13, 1995; Bedford, Massachusetts.
104–13	Full	Overall Review of SBA; February 28, 1995; Washington, D.C.
104–14	Full	Review of the SBA Procurement Assistance Programs; March 2, 1995; Washington, D.C.
104–15	Full	Review of SBA Business Development Programs; March 6, 1995; Washington, D.C.
104–16	Regulation[1]	Joint Hearing on the Impact of Workplace and Employment Regulations on Business; February 2, 1995; Washington, D.C.
104–17	Full	Review of SBA 504 Program; March 9, 1995; Washington, D.C.
104–18	Full	SBA's Pilot Microloan Program; March 14, 1995; Washington, D.C.
104–19	Full	U.S. Small Business Administration's Business Development Programs; March 16, 1995; Washington, D.C.
104–20	Full	The Small Business Administration of the Future; March 30, 1995; Washington, D.C.
104–21	Full	Review of the SBIC and SSBIC Programs; March 28, 1995; Washington, D.C.
104–22	Procurement	Export Promotion Programs: How is Small Business Helped?; March 29, 1995; Washington, D.C.
104–23	Full	SBA Office of Advocacy; April 4, 1995; Washington, D.C.
104–24	Procurement	Small Business Administration's Surety Bond Guarantee Program; April 5, 1995; Washington, D.C.
104–25	Government	Small Business Administration's Small Business Innovation Research (SBIR) Program; April 6, 1995; Washington, D.C.
104–26	Government	Small Business Administration Programs to Assist the New England Fishing Industry; April 10, 1995; Gloucester, Massachusetts.
104–27	Full	Small Business Administration Programs and Tax and Regulatory Issues Impacting Small Business; April 27, 1995; Overland Park, Kansas.
104–28	Procurement	Agriculture Export Promotion Programs: How are the Small Farmer and Rancher Helped?; May 17, 1995; Washington, D.C.
104–29	Taxation	The Flat Tax and Small Business; May 18, 1995; Washington, D.C.
104–30	Procurement	Federal Export Promotion Programs: An Academic Perspective; May 23, 1995; Washington, D.C.
104–31	Government	Small Business Administration's Disaster Loan Program; May 25, 1995; Washington, D.C.
104–32	Regulation	Regulatory Barriers to Minority Entrepreneurs; June 7, 1995; Washington, D.C.
104–33	Regulation	OSHA Fall Protection Standard; June 15, 1995; Washington, D.C.

Serial No.	Held by *	Title, Date & Location
104–34	Procurement	Export Promotion: A Business Perspective; June 22, 1995; Washington, D.C.
104–35	Taxation	The Burden of Payroll Taxes on Small Business; June 28, 1995; Washington, D.C.
104–36	Full	Small Business Participation in Federal Contracting: Assessing H.R. 1670, the "Federal Acquisition Reform Act of 1995"—Part I; June 29, 1995; Washington, D.C.
104–37	Government	U.S. Small Business Administration Low Documentation Loan Program; June 28, 1995; Washington, D.C.
104–38	Full	Reduction of Airline Ticket Sales Commission and Its Impact on Small Travel Agencies; July 12, 1995; Washington, D.C.
104–39	Full	The Administration's Initiatives to Reduce Regulatory Burdens on Small Business; July 18, 1995; Washington, D.C.
104–40	Government	SBA's LowDoc Loan Program; July 19, 1995; Washington, D.C.
104–41	Full	Assessing the Implementation of Public Law 103–355, the "Federal Acquisition Streamlining Act of 1994"; July 20, 1995; Washington, D.C.
104–42	Full	The Administration and Congressional Initiatives to Reform OSHA, and their Impact on Small Businesses; July 26, 1995; Washington, D.C.
104–43	Taxation	Clarifying the Status of Independent Contractors—Part I; July 26, 1995; Washington, D.C.
104–44	Government	Professional Certification as a Sole Source Bid Requirement in Federal Contracting; August 2, 1995; Washington, D.C.
104–45	Taxation	Clarifying the Status of Independent Contractors—Part II; August 2, 1995; Washington, D.C.
104–46	Full	Small Business Participation in Federal Contracting: Assessing H.R. 1670, the "Federal Acquisition Reform Act of 1995"—Part II; August 3, 1995; Washington, D.C.
104–47	Regulation	Candidates for the Regulatory Corrections Calendar; August 23, 1995; Despares, Missouri.
104–48	Full	Pension Reform and Simplification: A Small Business Perspective; September 8, 1995; Washington, D.C.
104–49	Government & Procurement.	The Export Working Capital Program; September 7, 1995; Washington, D.C.
104–50	Full	The Impact of Solid Waste Flow Control on Small Businesses and Consumers; September 13, 1995; Washington, D.C.
104–51	Full	SBA's Venture Capital Programs; September 28, 1995; Washington, D.C.
104–52	Full	Federal Contract Bundling: How Can Small Business Compete?; October 11, 1995; Washington, D.C.
104–53	Procurement	Technologies for Accessing Foreign Markets; October 11, 1995; Washington, D.C.
104–54	Government	Loan Packaging; October 12, 1995; Washington, D.C.
104–55	Full	The Effects of Superfund Liability on Small Business; October 19, 1995; Washington, D.C.
104–56	Full	The Internal Revenue Service's Initiatives to Reduce Regulatory and Paperwork Burdens on Small Business; October 25, 1995; Washington, D.C.

Serial No.	Held by *	Title, Date & Location
104–57	Full[2]	The Cost of Federal Regulations on Small Business; October 31, 1995; Washington, D.C.
104–58	Full[2]	Railroad Consolidation: Small Business Concerns; November 8, 1995; Washington, D.C.
104–59	Full	The Abuses in the SBA's 8(a) Procurement Program; December 13, 1995; Washington, D.C.
104–60	Taxation	Fundamental Tax Changes Needed to Unleash America's Small Businesses; February 9, 1996; Indianapolis; Indiana; March 25, 1996; Mentor, Ohio; April 3, 1996; Seattle, Washington.
104–61	Procurement	Resources for Export Assistance; February 13, 1996; Rockford, Illinois.
104–62	Full	Small Business' Access to Capital: Impediments and Options; February 28, 1996; Washington, D.C.
104–63	Full	Pilot Small Business Technology Transfer (STTR) Program and Small Business Innovation Research (SBIR) Program: Assessing the results of Public Law 102–654, the "Small Business Research and Development Enhancement Act of 1992"; March 6, 1996; Washington, D.C.
104–64	Full	The EPA's Progress in Reducing Unnecessary Regulatory and Paperwork Burdens upon Small Business; March 7, 1996; Washington, D.C.
104–65	Regulation	Examining the Issues Surrounding the National Labor Relations Board's Rulemaking Concerning Single Location Bargaining Units in Representation Cases; March 7, 1996; Washington, D.C.
104–66	Government & Taxation.	The Effects of Bank Consolidation on Small Business Lending; March 4, 1996; Boston, Massachusetts.
104–67	Full	SBA FY 1997 Budget; March 21, 1996; Washington, D.C.
104–68	Government	H.R. 2715: Paperwork Elimination Act; March 27, 1996; Washington, D.C.
104–71	Full[3]	The Practice of "Salting" and Its Impact on Small Business; April 12, 1996; Overland Park, Kansas
104–72	Full	The Kemp Commission Recommendations: A Small Business Perspective; April 17, 1996; Washington, D.C.
104–73	Government	Venture Capital Marketing Association Charter Act; April 18, 1996; Washington, D.C.
104–74	Full	Patent Term and Patent Disclosure Legislation; April 25, 1996; Washington, D.C.
104–75	Procurement	The Impact of "Short Supply" on Small Manufacturers; May 2, 1996; Washington, D.C.
104–76	Full	Music Licensing and Small Business; May 8, 1996; Washington, D.C.
104–77	Government	H.R. 2579: The Travel and Tourism Partnership Act of 1995; May 6, 1996; Newburyport, Massachusetts.
104–78	Full	Small Business' Access to Capital: The Role of Banks in Small Business Financing; May 1, 1996; Washington, D.C.
104–79	Full	Small Business and Entry-level Employees: How to Increase Take-home Pay and Keep America Working; May 15, 1996; Washington, D.C.

Serial No.	Held by*	Title, Date & Location
104–80	Government	Oversight of the Environmental Protection Agency's Progress in Reducing Unnecessary Paperwork Burdens upon Small Business; May 30, 1996; Washington, D.C.
104–81	Full	Proposed Reforms of the Small Business Investment Company Program; June 6, 1996; Washington, D.C.
104–82	Government	Oversight of the Department of Labor's Progress on Reducing Unnecessary Paperwork Burdens on Small Business; June 26, 1996; Washington, D.C.
104–83	Full	Small Business Competition for Federal Contracts: The Impact of Federal Prison Industries; June 27, 1996; Washington, D.C.
104–84	Government	Massachusetts' Request for Disaster Funds from the SBA; July 10, 1996; Washington, D.C.
104–85	Government	The Government's Solicitation Process and Whether or Not It is Discriminatory to Small Business; July 15, 1996; Danvers, Massachusetts.
104–86	Full	Unfair Competition with Small Business from Government and Not-For-Profits: Assessing the Current State of the Problem and the Recommendations of the 1995 White House Conference on Small Business; July 16, 1996; Washington, D.C.
104–87	Government	H.R. 1863: The Employment Non-Discrimination Act; July 17, 1996; Washington, D.C.
104–88	Government	Oversight of the Food and Drug Administration's Progress in Reducing Unnecessary Paperwork Burdens Upon Small Business; July 24, 1996; Washington, D.C.
104–90	Procurement	The Effectiveness of U.S. Export Assistance Centers; July 25, 1996; Washington, D.C.
104–91	Government[4]	SBA Programs to Assist Veterans in Readjusting to Civilian Life; July 31, 1996 Washington, D.C.
104–92	Full	Proposed Reform of the 8(a) Program Through H.R. 3994, the Entrepreneur Development Program Act of 1996; September 18, 1996; Washington, D.C.
104–93	Full	OSHA Reform and Relief for Small Business: What Needs to be Done?; September 25, 1996; Washington, D.C.
104–94	Government	FDIC's Handling of Small Business Asset Foreclosures; September 25, 1996; Washington, D.C.

*Full: Full Committee on Small Business.
Government: Subcommittee on Government Programs.
Procurement: Subcommittee on Procurement, Exports and Business Opportunities.
Regulation: Subcommittee on Regulation and Paperwork.
Taxation: Subcommittee on Taxation and Finance.

[1] Joint hearing with the Subcommittee on Oversight and Investigations of the Committee on Economic and Educational Opportunities.
[2] Joint hearing with the Senate Committee on Small Business.
[3] Joint hearing with the Committee on Economic and Educational Opportunities.
[4] Joint hearing with the Subcommittee on Education Training Employment and Housing of the Committee on Veterans' Affairs.

CHAPTER FIVE

SUMMARY OF LEGISLATIVE ACTIVITIES OF THE COMMITTEE ON SMALL BUSINESS

During the 104th Congress, 41 House bills and 2 Senate bills were referred to the Committee on Small Business. The Committee reported five bills to the House, each of which passed the House, and four were enacted into law as part of broader legislation.

5.1 H.R. 937 (H.R. 926, H.R. 9, S. 942, AND H.R. 3136); PUBLIC LAW NO. 104–121.

LEGISLATIVE HISTORY

Date	Action
H.R. 937:	
February 14, 1995	Referred to the House Committee on the Judiciary.
February 14, 1995	Referred to House Committee on Small Business.
February 15, 1995	Committee Consideration and Mark-up Session Held.
February 15, 1995	Ordered to be Reported (Amended) by Voice Vote.
February 23, 1995	Reported to House (Amended) by House Committee on Small Business Report No. 104–49 (Part I).
February 23, 1995	For Further Action See H.R. 926 (H.R. 937 was subsumed into H.R. 926).
H.R. 926:	
February 14, 1995	Referred to House Committee on the Judiciary.
February 16, 1995	Committee Consideration and Mark-up Session Held.
February 16, 1995	Ordered to be Reported (Amended) by Voice Vote.
February 23, 1995	Reported to House (Amended) by House Committee on the Judiciary Report No. 104–48.
February 23, 1995	Placed on Union Calendar No. 25.
February 27, 1995	Committee on Rules, by Voice Vote, Granted an Open Rule Providing 90 Minutes of Debate; Making in Order the Committee on the Judiciary Amendment in the Nature of a Substitute as an Original Bill; Giving Priority Recognition to Members who have Pre-Printed their Amendments in the Congressional Record Prior to their Consideration; Providing One Motion to Recommit With or Without Instructions.
February 27, 1995	Rules Committee Resolution H. Res. 100 Reported to House.
February 28, 1995	Rule Passed House.
March 1, 1995	Called up by House by Rule.
March 1, 1995	Committee Amendment in the Nature of a Substitute Considered as an Original Bill for the Purpose of Amendment.
March 1, 1995	House Agreed to Amendments Adopted by the Committee of the Whole.
March 1, 1995	Passed House (Amended) by Yea-Nay Vote: 415–15 (Record Vote No. 187).
March 3, 1995	Received in the Senate.
March 3, 1995	Referred to Senate Committee on Governmental Affairs.
March 3, 1995	Pursuant to the Provisions of H. Res. 101 the House Incorporated the Text of this Measure, as Passed by the House, into H.R. 9.

LEGISLATIVE HISTORY—CONTINUED

Date	Action
H.R. 9:	
January 4, 1995	Referred to Committee on Ways and Means
January 24, 1995	Committee on Ways and Means Hearings Held.
January 25, 1995	Committee on Ways and Means Hearings Held.
January 26, 1995	Committee on Ways and Means Hearings Held.
February 1, 1995	Committee on Ways and Means Hearings Held.
January 4, 1995	Referred to House Committee on Commerce.
January 13, 1995	Referred to Subcommittee on Energy and Power.
January 13, 1995	Referred to Subcommittee on Health and Environment.
January 13, 1995	Referred to Subcommittee on Commerce, Trade, and Hazardous Materials.
February 1, 1995	Joint Hearings Held by the Subcommittee on Health and Environment and by the Subcommittee on Commerce, Trade and Hazardous Materials.
February 2, 1995	Joint Hearings Held by the Subcommittee on Health and Environment and by the Subcommittee on Commerce, Trade and Hazardous Materials.
February 2, 1995	Subcommittee on Commerce, Trade, and Hazardous Materials Discharged.
February 3, 1995	Subcommittee on Energy and Power Discharged.
February 3, 1995	Subcommittee on Health and Environment Discharged.
February 7, 1995	Committee on Commerce Consideration and Mark-up Session Held.
February 8, 1995	Committee Consideration and Mark-up Session Held.
February 8, 1995	Ordered to be Reported (Amended) by the Yeas and Nays: 27–16.
February 15, 1995	Reported to House (Amended) by House Committee on Commerce Report No. 104–33 (Part I).
January 4, 1995	Referred to House Committee on Government Reform and Oversight.
January 11, 1995	Referred to Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs.
January 4, 1995	Referred to House Committee on the Budget.
January 4, 1995	Referred to House Committee on Rules.
January 4, 1995	Referred to House Committee on the Judiciary.
January 4, 1995	Referred to House Committee on Science.
January 31, 1995	Committee Hearings Held on Title III, Risk Assessment and Cost/Benefit Analysis for New Regulations.
February 2, 1995	Committee Hearings Held on Title III, Risk Assessment and Cost/Benefit Analysis for New Regulations.
February 8, 1995	Committee Consideration and Mark-up Session Held.
February 8, 1995	Ordered to be Reported (Amended) by Voice Vote.
February 15, 1995	Reported to House (Amended) by House Committee on Science Report No. 104–33 (Part II).
February 9, 1995	Rereferred to the House Committee on Small Business for Titles V, VI and Section 4003.
March 3, 1995	Called up by House by Rule.
March 3, 1995	The House struck all after Section 1 and inserted in lieu thereof the provisions of a text composed of 4 divisions: (1) H.R. 830; (2) H.R. 925; (3) H.R. 926; and (4) H.R. 1022, as each bill was passed by the House.
March 3, 1995	Motion to Recommit with Instructions Failed in House by Yea-Nay Vote: 180–239 (Record Vote No. 198).
March 3, 1995	Passed House (Amended) by Yea-Nay Vote: 277–141 (Record Vote No. 199).
March 9, 1995	Received in the Senate.
March 9, 1995	Referred to Senate Committee on Governmental Affairs.
S. 942:	
June 16, 1995	Referred to Senate Committee on Small Business.
February 28, 1996	Committee on Small Business Hearings Held.
March 6, 1996	Committee Consideration and Mark-up Session Held.
March 6, 1996	Ordered to be Reported (Amended).
March 6, 1996	Reported to Senate (Amended) by Senate Committee on Small Business.

LEGISLATIVE HISTORY—CONTINUED

Date	Action
March 6, 1996	Placed on Senate Legislative Calendar under General Orders. Calendar No. 342.
March 15, 1996	Measure laid before Senate.
March 15, 1996	Considered by Senate.
March 19, 1996	Passed Senate (Amended) by Yea-Nay Vote: 100–0 (Record Vote No. 43).
March 22, 1996	Referred to House Committee on the Judiciary.
March 22, 1996	Referred to House Committee on Small Business.
March 22, 1996	Referred to House Committee on Rules.
March 28, 1996	For Further Action See H.R. 3136.
H.R. 3136:	
March 21, 1996	Referred to Committee on Ways and Means.
March 21, 1996	Referred to House Committee on the Budget.
March 21, 1996	Referred to House Committee on Rules.
March 21, 1996	Referred to House Committee on the Judiciary.
March 21, 1996	Referred to House Committee on Small Business.
March 21, 1996	Referred to House Committee on Government Reform and Oversight.
March 25, 1996	Referred to Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight.
March 27, 1996	Rules Committee Resolution H. Res. 391 Reported to House.
March 27, 1996	Committee on Rules Granted, by Voice Vote, a Closed Rule Providing for the Consideration in the House of the Bill as Modified by the Amendment Designated in the Report of the Committee on Rules on the Resolution; Waiving All Points of Order Against Consideration of the Bill Except Section 425(a) of the Budget Act (Unfunded Mandate Point of Order); Providing that if the Clerk has, Before March 30, 1996, Received a Message From the Senate that the Senate has Adopted the Conference Report on S. 4, the Line Item Veto Act, then the Clerk Shall Delete Title II (the Line Item Veto Act) From the Engrossment of the Bill (Unless Amended), and the House Shall be Considered to Have Adopted the Conference Report.
March 28, 1996	Rule Passed House.
March 28, 1996	Called up by House by Rule.
March 28, 1996	On motion to table the motion to appeal the ruling of the chair agreed to by recorded vote: 232–185 (Roll no. 99).
March 28, 1996	Motion to Recommit with Instructions Failed in House by Yea-Nay Vote: 159–256 (Record Vote No. 101).
March 28, 1996	Passed House (Amended) by Recorded Vote: 328–91 (Record Vote No. 102).
March 28, 1996	Received in the Senate.
March 28, 1996	Passed Senate by Unanimous Consent.
March 28, 1996	Cleared for White House.
March 29, 1996	Presented to President.
March 29, 1996	Signed by President.
March 29, 1996	Became Public Law No. 104–121.

REASON FOR LEGISLATION

The Regulatory Flexibility Act (RFA) requires agencies to review any new rules and regulations they promulgate and determine whether they will have a significant economic impact on a substantial number of small entities. If they will have a significant impact, agencies are required to conduct a regulatory flexibility analysis detailing the impact and explaining why a less burdensome rule was not available. If the agency determines that there will be no

significant impact, the agency is allowed to certify that conclusion and no further analysis is required. Unfortunately, the lack of judicial review prohibits legal challenges to such determinations or challenges to flawed regulatory flexibility analyses. This makes agency compliance with the RFA essentially voluntary as Federal regulators face no judicial action for failure to comply. As a result, the RFA needs to be amended to allow judicial review so that enforcement "teeth" exist in the law.

The RFA also directs the Chief Counsel for Advocacy of the Small Business Administration (SBA) to monitor RFA compliance. However, that ability has been limited. Legislative changes must be implemented to improve the cooperation between Federal agencies and the SBA Chief Counsel for Advocacy and encourage regulators to minimize the impact of their rules and regulations on small entities prior to adoption.

Finally, the RFA, as passed in 1980, grants the SBA Chief Counsel for Advocacy the authority to appear as *amicus curiae* in court cases involving review of Federal rules. The Chief Counsel's ability to exercise this authority, however, has been severely limited, hampering the Chief Counsel's ability to represent small business in Federal court. As a result, legislation is necessary to reaffirm the authority provided in 1980 for the Chief Counsel to speak out on behalf of small business.

HEARINGS

The Committee on Small Business held two hearings on the Regulatory Flexibility Act. The first hearing, held on January 23, 1995, focused on the need for strengthening the RFA. (For further information on this hearing, refer to section 7.2.5 of this report). The second hearing, held on February 10, 1995, examined the past performance of the RFA and the need for meaningful reform. (For further information on this hearing, refer to section 7.2.10 of this report). Both hearings also considered the relevant provisions concerning RFA reform contained in Title VI of H.R. 9, one of the bills making up the "Contract with America."

SUMMARY OF LEGISLATION

Judicial Review

Section 1 of H.R. 937 would amend Section 611 of Title V of the United States Code to allow and clarify the procedures for judicial review of agency compliance with the RFA. Section 611 as it currently exists prohibits court challenge of an agency determination of the applicability of the RFA and prohibits court review of any regulatory flexibility analysis prepared under the Act, unless it is conducted in the context of the review of a rule made on an independent basis. Judicial review of certification under the Act is completely barred. In practice, this prohibition on judicial challenges has allowed agencies to ignore the letter and spirit of the RFA.

The primary features of the new judicial review provision in the bill are: (1) a small entity can only seek judicial review arising from a final rule; (2) the judicial review can be for either a wrongful certification that the rule will not have a significant economic impact on a substantial number of small entities or a flawed or to-

tally absent final regulatory flexibility analysis; (3) the small entity seeking judicial review must do so within 180 days of the effective date of the final rule. However, if some other provision of law requires a lesser time for judicial review of a final agency rulemaking action, then the lesser time prevails; and (4) agencies will be allowed a short period (90 days) in which to correct regulatory flexibility defects (after that time, a reviewing court can stay the operation of the rule or provide whatever relief it deems appropriate).

Earlier Involvement in the Rulemaking Process by the SBA Chief Counsel for Advocacy.

While the primary intention of the bill is to strengthen agency compliance with the Regulatory Flexibility Act, it is also intended to require agencies to work more closely with the SBA Chief Counsel for Advocacy, who is charged with monitoring compliance with the Act, during the drafting of new rules.

Section 2 of H.R. 937 would amend Section 612 of Title V of the United States Code to require that, when an agency is drafting a new rule, the agency must provide the SBA Chief Counsel for Advocacy with an advance copy of the rule 30 days before publishing a general notice of proposed rulemaking in the Federal Register pursuant to the Administrative Procedures Act. An exception to the advance notification approach is made in the bill for draft proposed rules of certain banking agencies.

The purpose behind Section 2 of the bill is to attempt to involve the SBA Chief Counsel for Advocacy in securing agency compliance with the Act at the earliest possible time and to allow agencies to benefit from the Chief Counsel's views before the proposed rule is in the public domain.

Authority of the SBA Chief Counsel for Advocacy to Appear as Amicus Curiae.

Section 3 of H.R. 937 is a "sense of Congress" provision reaffirming the provisions contained in 5 U.S.C. § 612(b). The RFA currently gives the SBA Chief Counsel for Advocacy authority to file *amicus* briefs in litigation involving Federal rules. In the history of the RFA, this authority has only been utilized once, in the 1986 case of *Lehigh Valley Farmers.* At that time, the Justice Department indicated that this *amicus* authority was unconstitutional because it would impair the ability of the Executive branch to fulfill its constitutional functions. After considerable friction between the Department of Justice and the SBA Chief Counsel for Advocacy, the Chief Counsel eventually withdrew the *amicus* brief filed in the *Lehigh Valley Farmers* case.

The ability to appear as *amicus curiae* is important to the ability of the SBA Chief Counsel for Advocacy to represent the interests of small businesses in the rulemaking process. Furthermore, if the bill were to become law with its provision to permit judicial review of agency compliance with the RFA, the importance of the SBA Chief Counsel's ability to file *amicus* briefs will be magnified.

FINAL LEGISLATION

Several of the regulatory revisions, which began in H.R. 937, were included in the Small Business Regulatory Enforcement Fair-

ness Act of 1996 (Title III of H.R. 3136), which became part of the Federal debt-extension legislation. Title III of the Act contained five subtitles designed to provide regulatory relief for small business.

Regulatory Compliance Simplification.

Subtitle A requires agencies to publish easily understood guides to assist small businesses in complying with regulations and provide informal, non-binding advice about regulatory compliance. The subtitle creates permissive authority for Small Business Development Centers to offer regulatory compliance information to small businesses and to establish resource centers of reference materials. The agencies are directed to cooperate with the States to create guides that fully integrate Federal and State requirements on small businesses.

Regulatory Enforcement Reforms.

This subtitle creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at the SBA to give small businesses a confidential means to comment on and rate the performance of agency enforcement personnel. It also creates Regional Small Business Regulatory Fairness Boards at the SBA to coordinate with the Ombudsman and to provide small businesses a greater opportunity to come together on a regional basis to assess the enforcement activities of the various Federal regulatory agencies.

The subtitle also directs all Federal agencies that regulate small businesses to develop policies or programs providing for waivers or reductions of civil penalties for violations by small businesses under appropriate circumstances.

Equal Access to Justice Act Amendments.

The Equal Access to Justice Act (EAJA) provides a means for prevailing small entities to recover their attorneys fees and costs in a wide variety of civil and administrative actions between small entities and the government. This subtitle amends the EAJA to allow small entities to recover the fees and costs attributable to a demand by the agency that is excessive and unreasonable under the facts and circumstances of the case. While the small entity would not be required to prevail in the underlying action, the final outcome of the action must be to require payment of an amount substantially less than what the agency originally sought to recover. The amendment also increases the maximum hourly rate for attorneys fees under the EAJA from $75 to $125.

Regulatory Flexibility Act Amendments.

Subtitle D of the Act gives teeth to enforcement of the RFA by specifically providing for judicial review of selected portions of the Act in order to make agencies accountable for their failure to comply with the Act's requirements. Additionally, the subtitle enlarges the scope of the rules to which the RFA applies by defining a rule to include interpretative rules involving the Internal Revenue laws.

The subtitle also establishes a small business advocacy review panel, which will provide small business participation in the rulemaking process. For proposed rules with a significant economic im-

pact on a substantial number of small entities, the Environmental Protection Agency and the Occupational Safety and Health Administration would have to collect advice and recommendations from small businesses to better inform those conducting the agencies' regulatory flexibility analyses on the potential effects of a rule.

Congressional Review of Agency Rulemaking.

Subtitle E of the Act provides an expedited procedure whereby Congress may review rules to determine whether they should be amended or halted prior to taking effect. Each agency will be required to submit to Congress a copy of each new rule, along with a report describing its contents. If a rule is a "major rule" (*i.e.,* one with an annual effect on the economy of $100 million or more, or similar effect), the effectiveness of the rule is stayed for 60 days in order to allow Congress to act on the proposed rule. Non-major rules will not be stayed but may be subject to the review process.

In the event that Congress does not believe that the rule should take effect, each chamber must pass a joint resolution of disapproval, which then must be signed by the President. The subtitle creates an expedited procedure for consideration of the joint resolution in the Senate, which continues in effect for 60-session days after receipt of the rule from the agency.

5.2 H.R. 2150 (S. 895), The Small Business Credit Efficiency Act of 1995; Public Law No. 104–36.

Legislative History

Date	Action
H.R. 2150:	
August 1, 1995	Referred to House Committee on Small Business.
August 4, 1995	Committee Consideration and Mark-up Session Held.
August 4, 1995	Ordered to be Reported (Amended) by Voice Vote.
September 6, 1995	Reported to House (Amended) by House Committee on Small Business Report No. 104–239.
September 6, 1995	Placed on Union Calendar No. 130.
September 12, 1995	Called up by House Under Suspension of Rules.
September 12, 1995	Passed House (Amended) by Yea-Nay Vote: 405–0 (Record Vote No. 653).
September 12, 1995	Laid on the table.
S. 895:	
June 8, 1995	Referred to Senate Committee on Small Business.
July 13, 1995	Committee Consideration and Mark-up Session Held.
July 13, 1995	Ordered to be Reported (Amended).
August 5, 1995	Reported to Senate (Amended) by Senate Committee on Small Business Report No. 104–129.
August 5, 1995	Placed on Senate Legislative Calendar under General Orders. Calendar No. 166.
August 11, 1995	Measure laid before Senate.
August 11, 1995	Passed Senate (Amended) by Voice Vote.
September 12, 1995	Considered by Unanimous Consent.
September 12, 1995	House Struck All After the Enacting Clause and Substituted the Language of H.R. 2150. Agreed to Without Objection.
September 12, 1995	Passed House (Amended) by Voice Vote.
September 12, 1995	A similar measure H.R. 2150 was laid on the table without objection.
September 12, 1995	House Insisted upon its Amendments.
September 12, 1995	House Requested a Conference.

LEGISLATIVE HISTORY—CONTINUED

Date	Action
September 12, 1995	The Speaker appointed conferees: Mrs. Meyers, Mr. Torkildsen, Mr. Longley, Mr. LaFalce, and Mr. Poshard.
September 26, 1995	Senate disagreed to the House amendments by Voice Vote.
September 26, 1995	Senate agreed to request for Conference.
September 26, 1995	The Senate appointed conferees: Sen. Bond, Sen. Burns, Sen. Coverdell, Sen. Bumpers, and Sen. Nunn.
September 27, 1995	Conference Held.
September 27, 1995	Conferees agreed to file conference report.
September 28, 1995	Conference report H. Rept. 104–269 filed.
September 28, 1995	Senate agreed to the conference report by Voice Vote.
September 29, 1995	House Agreed to Conference Report by Unanimous Consent.
September 29, 1995	Cleared for White House.
October 3, 1995	Presented to President.
October 12, 1995	Signed by President.
October 12, 1995	Became Public Law No. 104–36.

REASON FOR LEGISLATION

The estimated subsidy rate for the 7(a) program in 1995 was 2.74 percent, allowing the Small Business Administration (SBA) to offer a total of $7.8 billion of loan guarantees with appropriated funds of $215.1 million. Similarly, the estimated subsidy rate for the 504 program was 0.57 percent for 1995, permitting a total of $1.4 billion in loan guarantees with appropriated funds of $8 million. The Committee became aware of increasing demand for small business credit, which placed significant burdens on the SBA lending program as then structured. In addition, the SBA drastically reduced the size of 7(a) loans that it could guarantee, from $750,000 to $500,000, and imposed other administrative restrictions in order to continue to offer credit assistance to the small business community.

H.R. 2150 was designed to lower the credit subsidy rates for the SBA's two largest small business loan guarantee programs, the Section 7(a) guaranteed business loan program and the Section 504 Certified Development Company program. The bill accomplished this by restructuring the 7(a) program and increasing the fees in both programs. The Committee anticipated that the bill would reduce the subsidy rate for the 7(a) program to 1.06 percent and eliminate the subsidy rate for the 504 program, making it self-funding.

HEARINGS

The Committee held two hearings to review the current structure of both the 7(a) and 504 programs and their ability to meet small business credit needs. On January 25, 1995, the Committee held a hearing on the 7(a) program in order to clarify the reasons for the shortfall in program funds. (For further information on this hearing, refer to section 7.2.6 of this report). On March 9, 1995, the Committee held a hearing on the 504 program and its funding needs. (For further information on this hearing, refer to section 7.2.15 of this report).

SUMMARY OF LEGISLATION

Fee for Loans Sold on Secondary Market.

Section 2 of H.R. 2150 amends Section 634(g)(4)(A) of Title 15 of the United States Code to increase the annual fee charged to lenders who sell the guaranteed portion of their loans on the secondary market. The fee would increase from 0.4 percent of the outstanding principal balance of the guaranteed portion of the loan to 0.5 percent. In addition, Section 3(b) of the bill establishes a 0.4 percent annual fee on the outstanding principal of all guaranteed loans that are not sold into the secondary market.

General Business Loans.

Section 3(a) of H.R. 2150 reduces and simplifies the level of guarantee offered through the 7(a) program. Section 636(a)(2) of Title 15 of the United States Code is amended to change the guarantee percentage to no more than 80 percent of the total amount of loans up to $100,000 and no more than 75 percent of all loans above $100,000. This will alter the current system in which loans under $155,000 are guaranteed up to 90 percent; loans over $155,000 are guaranteed up to 85 percent; and loans from Preferred Lenders are guaranteed up to 70 percent.

Section 3(b) of the bill increases the guarantee fees charged on guaranteed loans. The current fee is 2 percent of the guaranteed portion of all loans. Under the bill, the fees would increase to 2 percent of the gross amount of any loans below $250,000; 2.5 percent of any loan between $250,000 and $500,000; and 3 percent of any loan above $500,000. Section 3(c) of the bill also ends the practice of allowing lenders to keep one half of the guarantee fees on loans under $50,000 or loans under $75,000 made in rural areas.

Modifications to Development Company Debenture Program.

Section 4(a) of H.R. 2150 amends section 502(2) of the Small Business Investment Act by increasing the total loan amount available from $750,000 to $1,250,000. Section 4(b) of the bill amends Section 697(b)(3) of Title 15 of the United States Code by adding a ⅛ of 1 percent fee to the cost of any loans made by a Certified Development Company under the 504 loan program. This fee is to be passed on directly to the SBA and is to be used solely to offset the cost of the program.

CONFERENCE AGREEMENT

Under the conference agreement, a flat 0.5 percent fee is established, which will be charged to all lenders participating in the 7(a) program on the outstanding principal balance of their 7(a) loans. The conference agreement also reduced and flattened the guarantee percentage for all loans—for loans up to $100,000 dollars, the guarantee percentage is lowered to 80 percent and for all loans over $100,000, the guarantee is 75 percent. Finally, the conference agreement established a tiered fee structure for the guarantee fee paid by the borrower. The borrower will pay a 3 percent fee on the first $250,000 of a loan; a 3.5 percent fee on the portion of the loan

between $250,000 and $500,000; and 3.875 percent for the portion which exceeds $500,000.

With respect to the 504 program, the conference agreement follows H.R. 2150 and imposed a new fee of ⅛ of 1 percent of the outstanding principal balance of the loan. This fee is to be paid by the borrower. The conference agreement left the maximum amount for a 504 loan at $1 million.

5.3 H.R. 2715, The Paperwork Elimination Act of 1996.

Legislative History

Date	Action
December 5, 1995	Referred to the House Committee on Small Business
December 5, 1995	Referred to Subcommittee on Government Programs of the Committee on Small Business.
December 5, 1995	Referred to the Committee on Government Reform and Oversight.
December 11, 1995	Referred to Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the Committee on Government Reform and Oversight.
March 27, 1996	Subcommittee on Government Programs Hearings Held.
March 29, 1996	Subcommittee on Government Programs Discharged.
March 29, 1996	Committee Consideration and Mark-up Session Held.
March 29, 1996	Ordered to be Reported in the Nature of a Substitute by Voice Vote.
April 3, 1996	Committee on Government Reform and Oversight Waives Jurisdication and Defers to the House Committee on Small Business.
April 16, 1996	Reported to House (Amended) by House Committee on Small Business Report No. 104–520 (Part I).
April 23, 1996	Rules Committee Resolution H. Res. 409 Reported to House.
April 23, 1996	Committee on Rules Granted, by Voice Vote, an Open Rule Providing One Hour of General Debate; Making in Order an Amendment in the Nature of a Substitute Recommended by the Committee on Small Business for the Purpose of Amendment Under the Five-minute Rule; Providing One Motion to Recommit, With or Without Instructions.
April 24, 1996	Rule Passed House.
April 24, 1996	Called up by House by Rule.
April 24, 1996	Committee Amendment in the Nature of a Substitute Considered as an Original Bill for the Purpose of Amendment.
April 24, 1996	House Agreed to Amendments Adopted by the Committee of the Whole.
April 24, 1996	Passed House (Amended) by Yea-Nay Vote: 418–0 (Record Vote No. 130).
April 25, 1996	Received in the Senate.
April 25, 1996	Referred to Senate Committee on Governmental Affairs.

Reason for Legislation

As part of the continuing efforts to enable the Federal government to take advantage of the Information Age, the Committee on Small Business recognized the need to encourage and monitor the progress of Federal agencies in their efforts to utilize new "information technology" to reduce the public costs and burdens of meeting the Federal government's information needs. The legislation also addresses the need for small businesses, taxpayers, and others with access to computers and modems to be able to use them when deal-

ing with the Federal government. As a result, the bill is intended to amend chapter 35 of title 44, United States Code, popularly known as the Paperwork Reduction Act, to minimize the burden of Federal paperwork demands upon small businesses, educational and non-profit institutions, Federal contractors, State and local governments, and other persons through the sponsorship and use of alternative information technologies.

HEARINGS

On March 27, 1996, the Subcommittee on Government Programs of the Committee on Small Business held a hearing on H.R. 2715 to examine the need for legislation to permit the use of new information technologies in meeting the Federal government's information demands and the effect of such legislation on small business. (For further information on this hearing, refer to section 7.3.11 of this report).

SUMMARY OF LEGISLATION

Purposes.

Section 2 of H.R. 2715 stresses that the intention of the legislation is to advance the use of alternative information technologies and, in so doing, decrease the burden of paperwork demands imposed by the Federal government. The intended beneficiaries of the legislation are small businesses, educational and non-profit institutions, Federal contractors, State and local governments, and others. Small businesses, which face a disproportionate burden in complying with Federal regulations, are especially targeted by the legislation.

Authority and Functions of the Director of the Office of Management and Budget.

Section 3(a) of H.R. 2715 describes the responsibilities of the Director of the Office of Management and Budget (OMB) to oversee the acquisition and use of information technology and compels the Director to consider alternative information technologies when working with agencies to develop strategies to reduce paperwork burdens. Section 3(b) of the bill directs the Director of OMB to promote the use of electronic submission, maintenance, and disclosure as an option for entities complying with the regulations of Federal agencies. The section complements and is added to section 3504(h) of the Paperwork Reduction Act, which outlines the Director's obligations to advance the use of information technology.

OMB Report.

Section 4 of H.R. 2715 supplements the requirement that the Director of OMB, in consultation with other Federal agencies, provide a progress report on the status and success of efforts to advance information resources management. The bill requires that the report include the extent to which the paperwork burden on small businesses and individuals has been relieved as a result of the use of electronic submissions, maintenance, or disclosure of information as a substitute for paper.

Federal Agency Responsibilities.

Section 5(a) of H.R. 2715 requires the Federal agencies, when it is appropriate, to provide respondents with the option of maintaining, submitting, or disclosing information electronically when complying with Federal regulations. Section 5(b) of the bill states that each agency must certify and report on the extent to which it has considered and relieved the burdens of paperwork, particularly on small businesses and individuals, by enabling the optional use of electronic maintenance, submission, or disclosure of information. Section 5(c) of the bill amends section 3506(c)(3)(J) of the Paperwork Reduction Act to specify that, when certifying and reporting on information technologies used to collect information, Federal agencies must also consider the ability of respondents to maintain, submit, and disclose information electronically.

Public Information Collection Activities.

Section 6 of H.R. 2715 prohibits agencies from collecting information until they have first published a notice in the Federal Register describing how the information may, if appropriate, be electronically maintained, submitted or disclosed by a respondent.

Responsiveness to Congress.

Under the bill, when responding to Congress annually or at other times, the Director of OMB must report on how the collection of information by electronic means has affected regulatory burdens on small businesses and other persons. The report must specifically include any instances in which the maintenance, submission, or disclosure of information electronically, as opposed to with paper, increased regulatory burdens. It should specifically identify such instances that involve the collection of information by the Internal Revenue Service.

Effective Date.

The provisions of H.R. 2715 would take effect on October 1, 1997.

5.4 H.R. 3158, Pilot Small Business Technology Transfer Program Extension Act of 1996; Public Law No. 104–208.

Legislative History

Date	Action
H.R. 3158:	
March 6, 1996	Committee Hearings Held.
March 25, 1996	Referred to House Committee on Small Business.
March 29, 1996	Committee Consideration and Mark-up Session Held.
March 29, 1996	Ordered to be Reported (Amended) by Voice Vote.
September 26, 1996	Reported to House (Amended) by House Committee on Small Business Report No. 104–850 (Part I).
September 26, 1996	Placed on Union Calendar No. 462.
September 27, 1996	Discharged from Union Calendar.
September 27, 1996	Referred Sequentially to House Committee on Science for a Period Ending not Later Than October 11, 1996.
September 28, 1996	For Further Action See H.R. 4278 (reauthorization provisions of H.R. 3158 were subsumed into H.R. 4278).

LEGISLATIVE HISTORY—CONTINUED

Date	Action
H.R. 4278:	
September 28, 1996	Passed House pursuant to Unanimous Consent Agreement Following the Passage of H.R. 3610.
September 30, 1996	Measure laid before Senate by Unanimous Consent.
September 30, 1996	Received in the Senate, read twice.
September 30, 1996	Passed Senate by Yea-Nay Vote: 84–15 (Record Vote No. 302).
September 30, 1996	Cleared for White House (together with H.R. 3610).
September 30, 1996	Presented to President.
September 30, 1996	Signed by President.
September 30, 1996	Became Public Law No. 104–208.

REASON FOR LEGISLATION

The pilot Small Business Technology Transfer (STTR) Program was established by Title II of Public Law 102–564, the Small Business Research and Development Enhancement Act of 1992, and authorized for an initial three-year demonstration, beginning in fiscal year 1994. Building upon the established model of the Small Business Innovation Research (SBIR) Program, the pilot STTR Program provided the statutory basis for structured collaborations between small technology entrepreneurs and non-profit research institutions, such as universities or Federally-funded Research and Development Centers (FFRDCs) to foster commercialization of the results of Federally-sponsored research. Title I of Public Law 102–564 provided a multi-year extension of the SBIR Program, extending it through fiscal year 2000. This 1992 extension of the SBIR Program was the third, and longest, since that Program's creation in 1982. Unless reauthorized, the pilot STTR program would have terminated on September 30, 1996.

The SBIR Program and pilot STTR Program both seek to stimulate technological innovation and increase private-sector commercialization of innovations derived from basic research as well as more mission-oriented advanced research and development undertaken by Federal agencies. Both programs assure that small business is not excluded from the extramural research and development (R&D) activities conducted by Federal agencies; that is, those undertaken through private-sector sources, and often dominated by Federally-supported research institutions such as universities and FFRDCs. To assure a baseline of small business participation and to maintain stable funding for technology commercialization, both the SBIR Program and the pilot STTR Program require a participating Federal agency to reserve a small percentage of its external R&D budget for each program. Both the pilot STTR Program and the basic SBIR Program use a highly competitive three-stage process that is designed to identify and nurture only the most promising technology innovations, seeking to move them to full commercialization, under the technical and entrepreneurial leadership of small business owners. The two programs differ, however, in one fundamental aspect: under the pilot STTR Program, a small business must collaborate with a non-profit research institution, such as a university or FFRDC.

The STTR Program enjoys broad support among its private- and public-sector participants, and the Small Business Administration (SBA) and the General Accounting Office (GAO) have urged that the pilot STTR Program be continued. In addition, a recommendation regarding both the SBIR Program and the pilot STTR Program was ranked 13th by the delegates to the 1995 White House Conference on Small Business. The recommendations call on Congress and the President to "expand, improve and make permanent the SBIR/STTR programs." A recommendation ranked 6th by the delegates to the 1980 White House Conference on Small Business was instrumental in the enactment of the initial authorization for the SBIR Program in 1982. Similarly, a recommendation ranked 14th by the delegates to the 1986 White House Conference on Small Business was used to propel the enactment of Public Law 102–564.

H.R. 3158 extends the pilot STTR Program through September 30, 2000, and puts the expiration of STTR on the same timetable as the most recent extension of SBIR Program. This extension will facilitate concurrent oversight and future legislative consideration of these related small business technology programs by Congress and provide an additional four years to assess more conclusively the value of the pilot STTR Program.

HEARINGS

The Committee held a hearing on March 6, 1996 to assess the implementation of Public Law 102–564, the Small Business Research and Development Enhancement Act of 1992, which improved and expanded the SBIR Program and authorized the pilot STTR Program. Testimony was received from small business participants in both the pilot STTR Program and the established SBIR Program. Two of these small business witnesses expressed support on behalf the U.S. Chamber of Commerce and National Small Business United. The SBA also expressed support for extension of the pilot STTR Program on behalf of the Administration. Similarly, GAO's representatives recommended extension of the pilot STTR Program to provide a longer period for evaluation, but were complimentary of STTR in their preliminary assessments of the Program.

SUMMARY OF LEGISLATION

Program Extension.

Section 2 of H.R. 3158 extends the pilot STTR Program, authorized by Section 9(n) of the Small Business Act, through September 30, 2000. The proposed program extension provides for the expiration of the pilot STTR Program at the same time as the Small Business Innovation Research (SBIR) Program, initially authorized in 1982 and most recently reauthorized in 1992 by Title I of Public Law 102–564.

This section also provides for a 1/10 of 1 percent increase in the percentage of extramural research budgets dedicated to awards under the pilot STTR Program, from 0.15 percent to 0.25 percent, by those agencies participating in the program. Only those Executive agencies with an annual extramural research budget of $1 bil-

lion or more are required to reserve at least the specified percentage for exclusive competition among proposals from small businesses collaborating with non-profit research institutions, such as universities or FFRDCs. The proposed percentage would remain constant during the entire four-year term of the program extension.

Assessment by the Comptroller General.

Section 3(a) requires the GAO to monitor the implementation of both the extension of the pilot STTR Program and the on-going SBIR Program, specifying the matters to be assessed. Section 3(b) specifies that the GAO assessment address implementation of both the SBIR Program and the STTR Program over a four-year period, covering fiscal year 1995 through fiscal year 1999. Section 3(c) requires that a report be submitted by not later than February 1, 2000. The report is to include summaries of previous GAO reports relating to the SBIR Program and the STTR Program as well as any reports by the SBA, any of the sponsoring agencies, or others that would be helpful during consideration of the reauthorization of both programs during fiscal year 2000.

Interagency Task Force on Commercialization.

Section 4(a) establishes an interagency task force on fostering commercialization of the results of projects being undertaken by small businesses through the SBIR Program and the pilot STTR Program. The Administrator of the SBA (or a designee) is given the responsibility of leading the effort. Section 4(b) establishes the purposes and objectives of the work of the interagency task force.

Section 4(c) specifies the Executive agencies to be represented on the interagency task force, including: representatives of the SBA Office of the Chief Counsel for Advocacy, the five Executive departments or agencies having the greatest dollar value of awards under the SBIR Program during fiscal year 1995, the five Executive departments or agencies participating in the pilot STTR Program in fiscal year 1995, and the President's Office of Science and Technology Policy. The SBA Administrator may invite participation by representatives of other Executive agencies, and the subsection requires the interagency task force to consult closely with representatives of the small business community and others in the private sector.

Section 4(d) requires the SBA Administrator to give notice of the work of the interagency task force, invite public participation, and announce any schedule of public meetings. The subsection also makes explicit that the interagency task force should seek public participation throughout its work. Section 4(e) requires the interagency task force to submit a report of its work, including recommendations for appropriate legislative and administrative actions, to the Senate and House Committees on Small Business by March 1, 1999.

Technical Correction.

Section 5 corrects an erroneous cross-reference in Section 9(e) of the Small Business Act, which authorizes the SBIR Program.

FINAL LEGISLATION

Provisions extending the pilot STTR Program through September 30, 1997 were included in the omnibus consolidated appropriations legislation (H.R. 4278), which the House and the Senate passed together with the 1997 Department of Defense Appropriations Act (H.R. 3610) at the end of the 104th Congress. The remaining provisions of the bill were not enacted.

5.5 H.R. 3719, THE SMALL BUSINESS PROGRAMS IMPROVEMENT ACT OF 1996; PUBLIC LAW NO. 104–208.

LEGISLATIVE HISTORY

Date	Action
H.R. 3719:	
June 26, 1996	Referred to House Committee on Small Business.
July 10, 1996	Committee Consideration and Mark-up Session Held.
July 18, 1996	Committee Consideration and Mark-up Session Held.
July 18, 1996	Ordered to be Reported (Amended) by Voice Vote.
August 2, 1996	Reported to House (Amended) by House Committee on Small Business Report No. 104–750.
August 2, 1996	Placed on Union Calendar No. 396.
September 4, 1996	Rules Committee Resolution H. Res. 516 Reported to House.
September 4, 1996	Committee on Rules Granted, by Voice Vote, an Open Rule Providing One Hour of General Debate; Waiving All Points of Order Against Consideration of the Bill for Failure to Comply with Clause 2(1)(2)(B) of Rule XI (requiring roll call votes to be printed in the committee report); Waiving Points of Order Against the Committee Amendment in the Nature of a Substitute for Failure to Comply with Clause 5(a) of Rule XXI (prohibiting appropriations in an authorization measure); Providing One Motion to Recommit, With or Without Instructions.
September 5, 1996	Rule Passed House.
September 5, 1996	Called up by House by Rule.
September 5, 1996	Committee Amendment in the Nature of a Substitute Considered as an Original Bill for the Purpose of Amendment.
September 5, 1996	House Agreed to Amendments Adopted by the Committee of the Whole.
September 5, 1996	Passed House (Amended) by Yea-Nay Vote: 408–0 (Record Vote No. 406).
September 6, 1996	Received in the Senate.
September 28, 1996	For Further Action See H.R. 4278 (H.R. 3719 was largely subsumed into H.R. 4278).
H.R. 4278:	
September 28, 1996	Passed House pursuant to Unanimous Consent Agreement Following the Passage of H.R. 3610.
September 30, 1996	Measure laid before Senate by Unanimous Consent.
September 30, 1996	Received in the Senate, read twice.
September 30, 1996	Passed Senate by Yea-Nay Vote: 84–15 (Record Vote No. 302).
September 30, 1996	Cleared for White House (together with H.R. 3610).
September 30, 1996	Presented to President.
September 30, 1996	Signed by President.
September 30, 1996	Became Public Law No. 104–208.

REASON FOR LEGISLATION

In October of 1995, the President signed into law Public Law 104–36, the Small Business Lending Enhancement Act of 1995,

which was designed to lower the subsidy rate of the 7(a) and 504 loan programs, which are administered by the Small Business Administration (SBA), in an effort to reduce substantially the cost of the programs to the taxpayers. 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-financing loan program. The legislation was drafted and passed relying on estimates and information provided by the Office of Management and Budget (OMB) and the SBA. (For further information on this legislation, H.R. 2150, refer to section 5.2 of this report).

Under Public Law 104–36, the SBA 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, and no funds were appropriated for the 504 program in fiscal year 1996. With an appropriation of $114.5 million for the 7(a) program (which would produce a lending level of $11 billion) and demand for fiscal year 1996 estimated to be approximately $8.75 billion, a carryover of approximately $22.5 million will result for fiscal year 1997 (assuming a subsidy rate of 1.06 percent).

In March of 1996, on the eve of the release of the President's Fiscal Year 1997 Budget, the Committee learned for the first time that the subsidy rate for the 7(a) and 504 programs had been recalculated and had increased significantly. The recalculation was the result of an SBA and OMB study of portfolio performance in the programs over the past 13 years. The result was an estimated subsidy rate for the 7(a) program of 2.68 percent, almost the same rate as prior to the enactment of Public Law 104–36. In the case of the 504 program, the increase was more than twelve-fold, from the fiscal year 1996 estimated rate of 0.57 percent (prior to the enactment of Public Law 104–36) to an estimated rate of 6.85 percent for fiscal year 1997.

The Administration's "solution" to the 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 situation. The Administration also proposed converting the 504 program into a direct lending program. In contrast, H.R. 3719, the Small Business Programs Improvement Act of 1996, makes a number of changes to the SBA's lending programs and implements management changes designed to make the programs more efficient and thereby reduce the subsidy rates.

HEARINGS

The Committee held a hearing on March 21, 1996, to review the President's fiscal year 1997 budget for the SBA and to examine the reasons behind the substantially increased subsidy rates. (For further information on this hearing, refer to section 7.2.39 of this report). The Committee also held a series of meetings with the SBA, OMB, and various private-sector lending partners to try and identify the problems, and causes thereof, that contributed to the dramatic increase in the subsidy rates for the major SBA lending programs. The major problems identified included the need for better data collection in order to correct problems at an earlier date, and the existence of significant management problems in the SBA's liq-

uidation practices, which contribute greatly to the high subsidy rates.

SUMMARY OF LEGISLATION

Comprehensive database.

Section 102 of H.R. 3719 amends the Small Business Act to require that the SBA establish 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.

Section 7(a) Loan Program Reforms.

Section 103(a) of H.R. 3719 amends the Small Business Act to specify that Preferred Lenders shall have full authority to collect on, and liquidate loans that they made to small businesses without having to obtain prior written approval of the SBA for routine activities.

Section 103(b) of the bill clarifies Section 7(a)(19) of the Small Business Act regarding the Certified Lender Program and also institutes new authority for Certified Lenders to begin performing liquidation of SBA guaranteed loans subject to the approval of the Administration. The section also requires that loans under the low documentation loan program (LowDoc) be made only through Certified and Preferred Lenders or lenders with significant small business lending experience.

Section 103(c) of the bill provides that the SBA may not establish a pilot program or initiative in the 7(a) program that exceeds 10 percent of the loans guaranteed in the 7(a) program during that year. Section 103(d) of the bill amends the Small Business Act to allow banks, as well as non-banks, to securitize the non-guaranteed portion of SBA loans. Section 103(e) establishes procedures 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.

Section 103(f) of the bill requires the SBA to report on its progress with centralizing loan-servicing functions. Section 103(g) of the bill requires the SBA to issue a Request for Proposals to implement its standard review program for Section 7(a) Preferred Lenders.

Section 103(h) of the bill provides that 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. The report shall compare information with the subsidy model for the programs as prepared by OMB.

Section 103(i) of the bill calls for a study by the GAO to compare the costs of liquidating loans both privately and through the SBA.

Disaster Loan Program.

Section 104(a) of H.R. 3719 changes 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. Section 104(b) of the bill provides for a pilot project to be conducted on a competitive

basis, to contract with private sector entities to service and liquidate a total of 25,000 randomly chosen disaster loans. Section 104(c) of the bill provides for expansion of the definition of disaster to include the closure of customary fishing waters by government action, regulatory or otherwise.

Microloan Program.

Section 105(a) of H.R. 3719 amends the Small Business Act to decrease the maximum amount an intermediary may receive through technical assistance grants. Section 105(b) of the bill requires the SBA to either implement the Microloan Guarantee Pilot Program or issue a report on why the agency is unable to implement it.

Small Business Development Centers.

Section 106 of the bill provides 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.

Miscellaneous authorities to Provide Loans and Other Financial Assistance.

Section 107 of H.R. 3719 eliminates several provisions for programs that are either redundant or are no longer being funded or implemented.

Small Business Competitiveness Program.

Section 108 of H.R. 3719 extends the Small Business Competitiveness Demonstration Program through fiscal year 2000. In addition, the section requires the SBA to submit a detailed report on the program, complete with the procurement statistics on the program from 1992 through 1995, within 60 days of enactment. The bill also provides clarification of the small businesses eligible under the pilot program.

Amendment to the Small Business Guaranteed Credit Enhancement Act of 1993.

Section 109 of H.R. 3719 repeals section 7 of the Small Business Guaranteed Credit Enhancement Act of 1993 and eliminates the sunset of the fee on the sale of guaranteed loans on the secondary market.

1998 Authorizations.

Section 110 of H.R. 3719 reauthorizes the Small Business Administration and its programs through fiscal year 1998.

Level of Participation for Export Working Capital Loans

Section 111 of H.R. 3719 restores the 90-percent guarantee level for Export Working Capital Loans, which was reduced to a maximum of 75 percent (80 percent for loans under $100,000) in Public Law 104–36.

Modifications to the 504 program.

Section 202(a) of H.R. 3719 modifies the contribution required from a small business for receipt of a 504 loan. Start-up small businesses and borrowers seeking financing for a special purpose building, must put a minimum of 15 percent down, instead of the minimum of 10 percent as required under current law. Section 202(b) of the bill amends Section 503(b)(7)(A) of the Small Business Investment Act to increase the ⅛ of 1 percent fee that the borrower pays on the annual outstanding balance to 13/16 of 1 percent. Section 202(c) of the bill amends Section 503(d) of the Small Business Act to include two new fees for this program; a one-time, up-front fee of 1½ of 1 percent on the total participation of the first mortgage holder, and a ⅛ of 1 percent annual servicing fee collected from Development Companies that will be passed through to the SBA.

Required Actions Upon Default.

Section 203(a) of the bill instructs the 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 get a deferral agreement. Within 65 days of a missed payment and absent a deferral, the SBA must start to accelerate (foreclose) on the loan. Section 203(b) of the bill 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.

Loan Liquidation Pilot Program.

Section 204 of H.R. 3719 requires the SBA to develop and implement a pilot program in which Certified Development Companies (CDCs) will have the authority to liquidate their own loans. This responsibility will be delegated only to a select number of the most experienced and active CDCs.

Registration of Certificates.

Section 205 of H.R. 3719 amends the Small Business Act and the Small Business Investment Act to allow SBIC and 504 development company debentures and securities to be registered electronically.

Preferred Surety Bond Guarantee Program.

Section 206 of H.R. 3719 amends the surety bond program to give new applicants 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.

FINAL LEGISLATION

The vast majority of the provisions contained in H.R. 3719 were included in the omnibus consolidated appropriations legislation (H.R. 4278), which the House and the Senate passed together with the 1997 Department of Defense Appropriations Act (H.R. 3610) at the end of the 104th Congress. The final language included in the

omnibus appropriations legislation contained several changes and some additional provisions from H.R. 3719.

Comprehensive database.

The final legislation includes the provisions of H.R. 3719 that establish 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.

Section 7(a) Loan Program Reforms.

The 7(a) Loan Program is modified under the final legislation to specify that Preferred Lenders shall have full authority to collect on, and liquidate loans that they made to small businesses without having to obtain prior written approval of the SBA for routine activities. In addition, Certified Lenders are permitted to begin performing liquidation of SBA guaranteed loans subject to the approval of the Administration. The section also requires that LowDoc loans be made only through Certified and Preferred Lenders or lenders with significant small business lending experience.

The provision in H.R. 3719 prohibiting new pilot programs or initiatives in the 7(a) program from exceeding 10 percent of the loans guaranteed by the 7(a) program during that year is also included in the final language.

The bill also incorporates the various report provisions from H.R. 3719 that: (1) requires the SBA to report on its progress with centralizing loan-servicing functions; (2) instructs the SBA to issue a solicitation and award a contract for an independent study and comprehensive report on the status of the 7(a) and 504 loan programs, including a comparison to the subsidy model for the programs as prepared by OMB; and (3) requests the GAO to compare the costs of liquidating loans both privately and through the SBA.

Securitization of the Non-guaranteed Portion of 7(a) Loans.

The final legislation provides that securitization of the non-guaranteed portion of 7(a) loans will continue under current practices until regulations are issued by the SBA that permit both bank and non-bank lenders to undertake securitization subject to certain terms and conditions, including the maintenance of appropriate reserve requirements and other safeguards necessary to protect the safety and soundness of the 7(a) program. If the SBA fails to promulgate these final regulations by March 31, 1997, the authority to sell the non-guaranteed portion of 7(a) loans will be suspended for all lenders until a final regulation is published.

Disaster Loan Program.

The pilot loan-servicing program for disaster loans is expanded to include up to 30 percent of the residential loan portfolio, and commercial loans are excluded from the pilot program. The section of H.R. 3719 that would have changed 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 was excluded from the final legislation, thereby leaving the interest rate on disaster assistance loans unchanged.

Microloan Program.

The final legislation excludes the sections of H.R. 3719 that decrease the maximum amount an intermediary may receive through technical assistance grants and that require the SBA to either implement the Microloan Guarantee Pilot Program or issue a report on why the agency is unable to do so. The final legislation did contain language that allows the SBA to lend funds to intemediaries in excess of the statutory limit if unused appropriated funds are available in the fourth quarter of a fiscal year.

Small Business Development Centers.

The final bill provides 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.

Miscellaneous authorities to Provide Loans and Other Financial Assistance.

The provisions of H.R. 3719 that eliminate several SBA programs that are either redundant or are no longer being funded or implemented are included in the final bill.

Small Business Competitiveness Program.

The Small Business Competitiveness Demonstration Program is extended under the final legislation through fiscal year 1997. In addition, the legislation includes the provisions requiring the SBA to submit a detailed report on the program, complete with the procurement statistics on the program from fiscal years 1991 through 1995, not later than February 28, 1997.

Amendment to the Small Business Guaranteed Credit Enhancement Act of 1993.

The final legislation repeals section 7 of the Small Business Guaranteed Credit Enhancement Act of 1993 and eliminates the sunset of the fee on the sale of guaranteed loans on the secondary market.

Small Business Technology Transfer Program.

The Small Business Technology Transfer (STTR) program is extended through September 30, 1997. (For further information on legislative action with respect to the STTR program, refer to section 5.4 of this report).

Level of Participation for Export Working Capital Loans

The final legislation incorporates the section of H.R. 3719 that restores the 90-percent guarantee level for Export Working Capital Loans.

Modifications to the 504 program.

The final bill modifies the contribution required from a small business for participation in a 504 loan such that start-up small businesses and borrowers seeking financing for a special purpose building, must put a minimum of 15 percent down, instead of the minimum of 10 percent as required under current law. The bill also

allows the fee that the borrower pays on the annual outstanding balance to be up to 15/16 of 1 percent as needed to bring the overall program subsidy rate to zero. Two new fees are also added for the 504 program; a one-time, up-front fee of ½ of 1 percent on the total participation of the first mortgage holder, and a ⅛ of 1 percent annual servicing fee collected from Development Companies that will be passed through to the SBA.

Required Actions Upon Default.

The final legislation includes the section of H.R. 3719 that instructs the SBA to take action on defaulted loans in order to speed recoveries and liquidations. Accordingly, within 45 days of a missed payment, the SBA must act to bring the loan current or get a deferral agreement; and within 65 days of a missed payment and absent a deferral, the SBA must start to accelerate (foreclose) on the loan. The legislation prohibits the SBA from paying late fees or prepayment penalties on defaulted loans and prohibits the SBA from paying any "default interest rate" on a defaulted loan.

Loan Liquidation Pilot Program.

The SBA is required under the final legislation to develop and implement a pilot program in which CDCs will have the authority to liquidate their own loans. This responsibility will be delegated only to a select number of the most experienced and active CDCs.

Registration of Certificates.

The final bill allows SBIC and 504 development company debentures and securities to be registered electronically.

Preferred Surety Bond Guarantee Program.

The surety bond program is amended under the final legislation to give new applicants 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.

Sense of Congress.

The final legislation includes a sense of Congress that the subsidy models prepared by the OMB for SBA loan programs tend to overestimate potential risks of loss and overemphasize historical losses that may be anomalous and that do not truly reflect the success of the loan program. This section of the bill also mandates the independent study provided under section 103(h) of the bill in order to improve the ability of the OMB to reflect the budgetary implications of the SBA's loan programs more accurately.

Small Business Investment Company Program.

The small business provisions included in the omnibus legislation also include a number of improvements to the Small Business Investment Company (SBIC) program, which were inserted by the Senate based on S. 1784. These provisions restructure the SBIC program to incorporate several vital changes to the program, which are effective upon enactment of the legislation. First, the minimum

capital requirements for new license applicants are increased. New applicants for debenture licenses must have $5 million in private capital; new applicants for participating security licenses must have $10 million in private capital. The SBA, however, is permitted to approve a participating security applicant if it has between $5 and $10 million, given a sound investment plan. All existing licensees are fully grandfathered allowing existing licensees to refinance or borrow additional leverage.

The final legislation also changes two fees paid by SBICs. SBICs will pay an annual charge of 1 percent on the value of all outstanding leverage granted after the effective date, and the non-refundable up-front fee, which is currently 2 percent, is increased to 3 percent of new leverage amounts. These fees will greatly reduce the subsidy cost of the program, enabling Congress to provide more venture capital funding for small business than ever before.

A number of changes to enhance the safety and soundness of the SBIC program are also included in the final legislation. The SBA must ensure that each license applicant maintains diversification between the management and ownership of the SBIC. The SBA must also regulate SBICs closely to (1) ensure that they do not incur excessive third-party debt; (2) ensure that no SBIC receives leverage when it is under capital impairment; and (3) require each SBIC to adopt valuation criteria set forth by the SBA to establish the values of loans and investments of each SBIC, subject to an annual review by an independent certified accountant.

The SBA is also required to submit to the Senate and House Committees on Small Business a detailed plan to expedite the orderly disposition of all licensee assets currently in liquidation. The final legislation contains provisions to speed up the processing of applications for business entities seeking an SBIC license, and a requirement that the SBA provide an applicant with a status report within 90 days of filing the application.

Specialized Small Business Investment Company Program.

Under the final legislation, section 301(d) of the Small Business Investment Act of 1958 is repealed, and the Specialized Small Business Investment Company (SSBICs) program is merged into the SBIC program, with all existing SSBICs becoming regular SBICs. Currently, SSBICs are restricted to investing in socially or economically disadvantaged businesses, most of which are owned by women and minorities. Merging the programs will address the SSBICs' historic objection that the restriction hinders their ability to grow like other SBICs.

The legislation removes certain investment restrictions and creates a special leverage reserve available only to SBICs that invest at least half of their funds in "smaller enterprises," which are defined as small businesses with individual net worth of less than $6 million and a net income of less than $2 million. These provisions will enable smaller SBICs, especially the former SSBICs, to maintain their focus on financing for primarily minority and women-owned businesses, which tend to be smaller-sized businesses, without any specific restrictions that might negatively affect the ability to seize investment opportunities.

The new reserve of debenture funding for smaller SBICs is also established in lieu of the prior funding mechanism for the SSBICs. The fund will be financed through the proceeds of the existing preferred stock repurchase program. The availability of this special pool of leverage, along with leverage available to all SBICs, will substantially increase access to capital for minority and women-owned business investments.

The legislation also requires that each SBIC, regardless of its size, invest at least 20 percent of its aggregate dollar investments in smaller enterprises. This new focus is designed to ensure that the smaller businesses continue to obtain full benefit of the SBIC program from all its participants.

CHAPTER SIX

SUMMARY OF OTHER LEGISLATIVE ACTIVITIES OF THE COMMITTEE ON SMALL BUSINESS

6.1 COMMITTEE MEETINGS

6.1.1 ORGANIZATIONAL MEETING

On January 11, 1995, the Committee on Small Business held an organizational meeting. The primary purpose of the meeting was the consideration of the Committee rules for the 104th Congress. The Members of the Committee considered a draft set of rules to govern the Committee operations and a number of revisions were incorporated. First, an additional seat was added for the Minority to each of the subcommittees. Second, proposed rule 12(b) was modified to allow the salaries of the Minority staff to be set independent of Majority staff salaries. In prior Congresses, the Minority staff salaries could be no higher than those of the Majority staff. Third, the Committee decided that jurisdiction over the 8(a) program administered by the Small Business Administration would rest with the Subcommittee on Government Programs as opposed to the Subcommittee on Procurement, Exports and Business Opportunities.

A discussion on the use and issuance of subpoenas by the Committee also occurred. Under the rules, a subpoena may be issued by the Chair of the Committee with notification to the Ranking Minority Member, or by the Chair of a subcommittee with the approval of a majority of the subcommittee members. The Committee decided, as in prior Congresses, that the approval of the Ranking Minority Member was not required for a subpoena to be issued. There was also a discussion on the new rule for the 104th Congress that prohibits proxy voting. As a result of the new rule, rolling quorums for Committee votes were also prohibited.

Once the Committee had completed its review and modification of the draft rules, a voice vote was taken, and the rules were adopted.

The Chair explained the process for Committee assignments and introduced the Subcommittee Chairmen and the Ranking Subcommittee Members. The Subcommittee on Government Programs was chaired by Peter Torkildsen and the Ranking Member was Glenn Poshard. The Subcommittee on Procurement, Exports, and Business Opportunities was chaired by Donald Manzullo and the Ranking Member was Eva Clayton. The Subcommittee for Regulation and Paperwork was Chaired by Jim Talent and the Ranking Member was Ron Wyden. The Subcommittee on Taxation and Finance was chaired by Linda Smith and the Ranking Member was Martin Meehan.

The meeting concluded with the distribution of a hearing schedule for the first nine hearings of the Committee and a review of the procedures that the Committee would follow when conducting hearings (*e.g.,* the Chair and Ranking Minority Member would make opening statements with all other Members permitted to submit written statements for the record; questioning of the witnesses would be conducted under the five minute rule, with Members offering questions in the order of appearance at the hearing).

6.1.2 OVERSIGHT AGENDA FOR THE 104TH CONGRESS

On February 13, 1995, the Committee on Small Business met to consider its oversight agenda for the 104th Congress. One of the new provisions in the House Rules requires that each Committee adopt a plan of oversight activities and forward that plan to the Committees on Government Reform and Oversight and House Oversight by February 15th of the first year of the Congress.

The Committee's draft oversight plan included a three-pronged agenda: First, a top-to-bottom review of the Small Business Administration (SBA) and its programs; second, efforts to implement a common sense tax code for small business; and third, actions to lighten the regulatory burden on small business. After reviewing the draft plan, the Chair explained that the purpose behind the agenda was to lay out an overall plan for the Committee, with the understanding that some aspect of the agenda may be referred to the subcommittees. The Chair also noted that the agenda would not preclude oversight or investigation of additional matters as the need arose. With the Committee's broad oversight jurisdiction, the Chair pointed out that any issue affecting small business, from minimum wage to health insurance, could be addressed in a Committee or subcommittee hearing.

The Committee considered a number of amendments to the oversight plan. Mr. LaFalce offered amendments on the following issues: specialized small business investment companies, the preferred surety bond guarantee programs, procurement from very small businesses, participation of the handicapped in set-aside contracts, debenture prepayment penalties, and women-owned businesses. After discussion of the amendments, a motion was made to accept the amendments en bloc, and the amendments were agreed to by a vote of 14 to 11.

Mr. Mfume proposed two additions to the agenda regarding Federal procurement programs designed to promote minority-business development and access to capital and credit for minorities and small businesses operating in distressed communities. After the Chair noted that the amendments were too detailed for the agenda, Mr. Mfume revised his amendments to add the phrase, "and other Federal programs to promote minority business development to include access to capital and credit," to the minority-enterprise development section of the agenda. The agreement was agreed to by a voice vote.

Mr. Manzullo offered an amendment on behalf of himself, Mr. Hilleary, Mr. Longley, Mr. Brownback, Mr. Salmon, Mr. Chabot, Mr. Chrysler, Mr. Funderburk, Mr. Wamp, Ms. Kelly, and Mr. Metcalf, that would add the following to the first part of the over-

sight plan concerning the top-to-bottom review of the SBA: "The Committee will conduct hearings on every program in the Small Business Administration to determine its effectiveness and whether it should be continued." A debate followed concerning the scope of the amendment and whether it was within the jurisdiction of the Committee, and constitutionally permitted, to determine if SBA programs should be continued. The Chair noted that under the House Rules, the Committee has both the legislative and oversight jurisdiction to review SBA programs and make recommendations on which programs should be continued or eliminated. Mr. Mfume pointed out that some of the SBA programs had been created by Executive Order, and he maintained that Congress, not the Executive Branch, had jurisdiction over them. Following the debate, the amendment was agreed to by voice vote.

The Committee then turned to the approval of the oversight plan together with the various amendments previously adopted by the Committee. Upon a voice vote, the oversight plan, as amended, was adopted.

The text of the oversight plan follows:

OVERSIGHT PLAN FOR THE COMMITTEE ON SMALL BUSINESS

104TH CONGRESS

U.S. HOUSE OF REPRESENTATIVES

Congresswoman Jan Meyers, Chair

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

This oversight plan of the Committee on Small Business includes areas in which the Committee expects to conduct oversight activity during the 104th Congress. However, this agenda does not preclude oversight or investigation of additional matters as the need arises.

OVERSIGHT OF THE SMALL BUSINESS ADMINISTRATION

The Committee will conduct hearings on every program in the Small Business Administration to determine its effectiveness and whether it should be continued.

FINANCIAL PROGRAMS

The Committee will conduct hearings on the effectiveness and efficiency of the SBA's financial programs. Particular emphasis is to be placed on the economic benefits of these programs to the small business community versus their cost to the taxpayer.

(a) General Business Loan Program

Following on a hearing conducted in January, 1995, the Committee will investigate current shortfalls and study proposed program modifications that have been put forward by the Administration and others. Oversight will also focus on the underlying need for the program, and the root causes of credit shortages in the small business sector. (Winter, 1995)

Certified Development Company Program

Oversight activities will focus on the recent restructuring of the certified development company and its effect on business development efforts. The Committee will also ascertain if there are any improvements that can be made to the program. (Winter, 1995)

Small Business Investment Company Program

Oversight will focus on the new participating securities program and the new licensees that have entered the program. The Committee will also investigate current program management activities and efforts that have been made to stem losses in the program and stabilize the program's portfolio.

Hearings will also investigate possibilities for privatization of the SBIC program and other modifications that might serve to continue access to venture capital for the small business community. (Winter/Spring, 1995)

Specialized Small Business Investment Company Program

Oversight will focus on the Specialized Small Business Investment Company Program which delivers venture capital to socially or economically disadvantaged small businesses, including the benefits it has provided to the assisted firms, the economy, and to State and local governments, as well as to the Federal Government.

Particular attention will be given to a report anticipated from a blue ribbon commission which has been appointed by the SBA.

The Committee will also investigate reports of misuse of the Specialized Small Business Investment Companies and what actions have been taken to prevent further abuses. (Winter/Spring, 1995)

Microloan Program

The Committee will conduct hearings concerning the expansion and progress of this innovative program. Hearings will focus on the effectiveness of this program in providing seed capital to start-up small businesses and in alleviating economic hardship in rural and urban areas. The Committee will also investigate the progress of the guarantee-based microloan pilot program, and its possible extension. (Winter, 1995)

Surety Bond Guarantee Program

The Committee, in conjunction with legislatively mandated reports, will investigate the effectiveness of this program in providing bonding capability to underserved sections of the construction community. Oversight will also focus on the need for recent infusions of capital to the Surety program account.

The Committee will also examine the effectiveness of, and benefits provided by, the Preferred Surety Bond Guarantee Program which sunsets on September 30, 1995. (Winter/Spring, 1995)

Debenture Prepayment Penalty Relief

The Committee will review the adequacy of Title V of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403) to provide some relief to participants in the now defunct section 503 development company program. Legislation enacted last year authorized and subsequently provided $30 million to mitigate against prepayment penalties under this program.

PROCUREMENT ASSISTANCE

The Committee will examine the effectiveness of the SBA's procurement assistance activities. Hearings will focus on the Certificate of Competency program and its effectiveness in protecting small business contractors.

The Committee will also investigate the Natural Resources assistance program and the effectiveness of the procurement center representatives, particularly in the area of contract bundling.

The Committee will also examine the Agency's progress in implementing a pilot program included in the Small Business Reauthorization and Amendments Act of 1994 (Public Law 103-403) to allow very small businesses to participate in Federal procurement programs.

The Committee will also examine the extent to which organizations of the handicapped have been permitted to participate in small business set-aside contracts under section 15 of the Small Business Act. The Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403) authorized such organizations to participate during fiscal year 1995 only in an aggregate amount of contracts not to exceed $40 million. (Winter/Spring, 1995)

ADVOCACY

The Office of Advocacy provides small business with an effective voice inside the government. The Committee will conduct hearings on how to strengthen this voice and make sure the Chief Counsel for Advocacy continues to effectively represent the interests of small business. (Winter/Spring, 1995)

TECHNOLOGY AND RESEARCH ASSISTANCE

Small Business Innovation and Research

The Small Business Innovation and Research (SBIR) program aids small business in obtaining Federal research and development funding for new technologies. In conjunction with statutorily mandated reports from the General Accounting Office, the Committee will monitor the progress of this program. Oversight will focus on the ability of this program to develop new, marketable technologies, and compare the effectiveness of the 2 percent of Federal research dollars directed to the SBIR program with the commercial applications resulting from the other 98 percent of Federal R&D spending. (Spring, 1995)

Small Business Technology Transfer

The Small Business Technology Transfer program authorization will expire on September 30, 1995. Committee oversight will focus on the program's success at helping small business access technologies developed at Federal laboratories and put that knowledge to work. (Spring/Summer, 1995)

MINORITY ENTERPRISE DEVELOPMENT

The Committee will conduct hearings on the history and effectiveness of the 8(a) program and other Federal programs to promote minority business development, including access to capital and credit. Recent administrative changes will be investigated along with several recent legislative proposals. (Winter/Spring, 1995)

WOMEN-OWNED BUSINESSES

The Committee will continue its active involvement in encouraging the development of women-owned small businesses, and its oversight of relevant Federal programs including the activities of the statutorily-created Office of Women's Business Ownership; the implementation of the newly established government-wide 5 percent procurement goal; and the establishment and activities of the new Interagency Committee and National Women's Business Council. (Spring 1995 through Fall 1996)

OFFICE OF INSPECTOR GENERAL

The Committee will conduct hearings and investigations regarding the effectiveness of the Inspector General's office at the SBA. The Committee's efforts will center on the IG's ability to effectively monitor the myriad financial programs at the agency. (Summer, 1995)

OFFICE OF DISASTER ASSISTANCE

In declared disasters the SBA is the little-known hero that helps business owners and homeowners put their communities back together. Committee oversight will focus on recent increases to the disaster loan limits and their effect on rebuilding ravaged communities. The Committee will also study the Administration's proposals for improving the subsidy rate and cost-effectiveness of the disaster assistance program. (Spring, 1995 through Spring, 1996)

OFFICE OF ECONOMIC RESEARCH

The Committee will investigate the activities of the Office of Economic Research and its work product. We will consider the value of the research provided, and coordination with the research of other Federal agencies. (Spring, 1995)

OFFICE OF INTERNATIONAL TRADE

The Committee will conduct oversight concerning the new Export Assistance Centers initiative. Committee investigations will center on the effectiveness of SBA's small business export efforts. (Spring, 1995)

The Committee also intends to determine the extent of efforts at other agencies to serve the small business community's trade and export needs. In particular, the

Committee will investigate efforts to provide financing for the small business community in export markets and the efforts or lack of effort to aid small business in overcoming foreign trade barriers. (Spring, 1995 through Summer, 1996)

OFFICE OF BUSINESS INITIATIVES AND TRAINING

The Committee will explore the agency's commitment to these business development programs and their interrelation with the SBA's other program efforts. Investigations and hearings will center on the amount and types of assistance provided and their relationship to the changing business environment.

The Committee will also investigate small business assistance programs at the other Federal agencies to determine their effectiveness and the need for coordination between the agencies. These hearings will cover the activities of the Small Business Development Centers, Business Information Centers, SCORE, and the Small Business Institute program. (Winter/Spring, 1995)

FEDERAL PROCUREMENT

The Committee will examine the changes in Federal procurement since the last Congress. The Federal Acquisition Streamlining Act instituted sweeping changes in the way the government will purchase goods and services. The Committee will investigate the implementation of these changes and the effect they are having on small businesses involved in government contracting. (Fall, 1995 through Fall, 1996)

The Committee will also be conducting hearings concerning any new proposals that would affect opportunities for small business in Federal procurement.

GOVERNMENT & NON-PROFIT COMPETITION

The Committee will be conducting hearings and investigations of the extent to which non-profit organizations and the Federal government itself compete with small business. Our focus will include activities in both the private sector and government procurement. (Winter, 1996)

REGULATORY FLEXIBILITY & PAPERWORK REDUCTION

The Committee will continue its oversight of agency implementation of the Regulatory Flexibility Act and Paperwork Reduction Act. This oversight will include implementation of any future amendments to these Acts. (Winter 1995 through Fall 1996)

GOVERNMENT REGULATION

The Committee will continue to investigate the regulatory agenda of the various Federal agencies and the impact of regulations, both specific requirements and the cumulative effect of regulations, on the small business community. (Winter, 1995 through Fall, 1996)

TAXATION

The Committee will continue to conduct oversight hearings into common sense reduction of the tax burden on small business. These hearings will include not only the fiscal but the paperwork burden of the Federal tax system and Federal enforcement efforts. (Winter, 1995 through Fall, 1996)

MINIMUM WAGE

The Committee will be conducting hearings on proposals to increase the minimum wage and on the restoration of the minimum wage exemption for certain small businesses. These hearings will focus on the economic impact of these proposals particularly regarding inflation and job creation. (Spring/Summer, 1995)

HEALTH INSURANCE

The Committee will be considering new proposals for improving access to the health care system for small business owners and their employees. We will also focus on the economic impact of expanding the health insurance deduction for the self-employed and related self-insurance issues. (Spring, 1995 through Spring, 1996)

6.2 Budget Views and Estimates

Pursuant to Section 301(c) of the Congressional Budget Act of 1974, the Committee prepared and submitted to the Committee on the Budget its views and estimates on the fiscal year 1996 and fiscal year 1997 budget with respect to matters under the Committee's jurisdiction.

6.2.1 fiscal year 1996 budget

On March 7, 1995, the Committee submitted its views and estimates on the fiscal year 1996 budget. The Committee emphasized that the SBA provides important services to the small business community, and as part of the continuing efforts to reduce the Federal deficit, the Committee committed to working towards that goal with regard to expenditures under its jurisdiction. While the President's fiscal year 1996 budget request represented a 5.3 percent reduction from the SBA's fiscal year 1995 appropriation, the Committee planned, as an initial goal, to identify spending reductions amounting to at least an additional 10 percent over the President's request.

The Committee noted that it was beginning the task of identifying programs within SBA that are in need of reform or have outlived their purpose, with the goal being a total review of the SBA. The Committee noted that the review will be a bipartisan and total small business effort that will include all viewpoints. In the end, the entire small business community will benefit from a leaner and stronger SBA.

6.2.2 fiscal year 1997 budget

On March 14, 1996, the Committee submitted its budget views and estimate on the fiscal year 1997 budget. The Committee did not have the benefit of the President's fiscal year 1997 budget submission, which had not been filed in February as is customary, or final appropriations figures for fiscal year 1996. As a result, the Committee's views and estimates were based on the funding provided in the Conference report for H.R. 2076, the FY 1996 Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act.

In general, the Committee recommended a 10 percent reduction in appropriated funds for the SBA in fiscal year 1997. The Committee made specific recommendations with respect to four areas: (1) assistance programs, (2) financial programs, (3) Office of the Inspector General, and, (4) disaster loans.

Assistance Programs.

The Committee noted that the SBA has been successful in providing a number of programs that benefit and assist small businesses financially throughout the country, including the Office of Advocacy and the various management assistance programs. The Committee found, however, that there were programs that had either outlived their usefulness or become ineffective. The Committee expected that no further funding would be provided to programs that were not funded in the 1996 Conference Report for H.R. 2076,

such as the Small Business Institute (SBI) or the Natural Resources Development Program. In addition, the Committee supported lifting the prohibition on Small Business Centers (SBDC), which has prevented them from charging reasonable fees to clients, when appropriate. It was believed that such fees would help provide much needed revenue for the SBDC program.

Financial Assistance Programs.

The Committee recommended with regard to the general business loan programs that all SBA loan programs operate on a guaranteed basis rather than as direct loans. Recalling that it acted in 1995 to lower the subsidy rate of the 7(a) and 504 programs, the Committee believed that no budget increase would be necessary and that any carryover should be applied to maintain the programs. The Committee also recommended that any increases in the subsidy rates for these programs, which may require increased appropriations, should be offset by reduction in the SBA's salaries and expenses account.

With respect to the Small Business Investment Company (SBIC) Program, the Committee recommended the implementation of changes designed to enhance program safety and soundness and also to reduce the subsidy rate of the program. The Committee found that SBIC liquidation practices were not efficient and recommended new methods of portfolio management, including contracting out all liquidation activities. The Committee believed that the SBIC program levels could be maintained without additional appropriations through subsidy rate reductions.

Disaster Loan Program.

The Committee was concerned by the shortfalls in the SBA's disaster loan program both in terms of salaries and expenses and in loan funding. The Committee suggested that the SBA immediately begin a program of privatization of loan servicing and liquidation functions and recommended that 40 percent of the loan portfolio be privatized, which is expected to result in a 10 percent savings over previous appropriations. It was emphasized that the cost of this program must be reduced but without burdening the victims of natural disasters.

Office of the Inspector General.

The Committee recommended an increase to $10 million for fiscal year 1997 funding for the Office of the Inspector General. The Committee believed that the fiscal year 1996 Conference Report level of $8.5 million was far below that needed to police adequately an agency with a multi-billion dollar lending authority.

Minority Views.

The Minority members of the Committee submitted their views and estimates on the SBA fiscal year 1997 budget. Like the majority, the Minority members were concerned by the lack of an Administration budget submission and final fiscal year 1996 appropriations for the SBA and the difficulty inherent in formulating budget

views and estimates without such information. The Minority also noted that if the SBA receives the funding for all of fiscal year 1996 that was proposed in H.R. 2076, it will constitute a budget cut of more than one-third from the prior year. The Minority believed that such a deduction was excessive and that with the advancements realized by the small business community in recent years, SBA's programs need to be expanded and additional appropriations need to be made, or at a minimum the budget should be frozen at current levels.

The Minority was also concerned about the Committee's recommendation that funding be shifted from the SBA's salaries and expenses account to the program accounts rather than appropriating additional funds or reconsidering the amount of fees imposed on borrowers. The Minority noted that there may be ways to improve the delivery of SBA programs and urged the Committee to explore those options.

CHAPTER SEVEN

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

7.1 SUMMARY OF COMMITTEE OVERSIGHT PLAN AND IMPLEMENTATION

Pursuant to a new rule adopted by the 104th Congress, the Committee on Small Business adopted on February 13, 1995 an oversight agenda for the two-year period of the Congress. (For a discussion of the Committee's consideration of the oversight agenda and final agenda, refer to section 6.1.2 of this report). Rule X, clause 2(d), of the Rules of the House of Representatives also requires that each Committee summarize its activities undertaken in furtherance of the oversight agenda as well as any additional oversight actions taken by the Committee.

In the following portions of this section 7.1, each provision of the oversight agenda is separately set forth and is followed by a discussion of the related Committee hearings and legislative or other activities. A summary of each hearing conducted by the Committee appears in section 7.2 of this report and summaries of each subcommittee hearing appear in sections 7.3 through 7.6 of this report. An overview of the Committee's legislative activities appears in chapter 5 of this report.

7.1.1 OVERSIGHT OF THE SMALL BUSINESS ADMINISTRATION

The Committee will conduct hearings on every program in the Small Business Administration to determine its effectiveness and whether it should be continued.

From the outset of the 104th Congress, the Committee held a number of hearings to examine each program administered by the Small Business Administration and evaluate whether particular programs should be continued, reformed, or eliminated. The Committee's hearings began with an overall review of the SBA on February 28, 1995 and also included a hearing dedicated to the future of the SBA on March 30, 1995. (For further information on these hearings, refer to sections 7.2.12 and 7.2.19 of this report). In addition, the Committee and its subcommittees held hearings on specific SBA programs, which are summarized below with respect to the relevant portion of the Committee's oversight agenda.

Legislatively, the Committee marked up and favorably reported two pieces of legislation, H.R. 2150 and H.R. 3719, which were designed to address specific weaknesses in particular SBA programs as well as to promote greater efficiency within the agency. The relevant portions of these legislative efforts are discussed below with the corresponding section of the Committee's oversight agenda. In

addition, the Committee considered one other bill, H.R. 3158, which was designed to extend and improve the Small Business Innovation and Research and the pilot Small Business Technology Transfer programs. This legislation is discussed in section 7.1.5 of this report.

7.1.2 FINANCIAL PROGRAMS

The Committee will conduct hearings on the effectiveness and efficiency of the SBA's financial programs. Particular emphasis is to be placed on the economic benefits of these programs to the small business community versus their cost to the taxpayer.

7(a) General Business Loan Program.

Following on a hearing conducted in January, 1995, the Committee will investigate current shortfalls and study proposed program modifications that have been put forward by the Administration and others. Oversight will also focus on the underlying need for the program, and the root causes of credit shortages in the small business sector. (Winter, 1995)

The Committee began the 104th Congress with a hearing dedicated to the SBA's 7(a) general business loan program. The Committee heard testimony from agency and small business witnesses who agreed that the 7(a) program has been a vital tool for small business growth and development. The agency witnesses noted that the number and size of 7(a) loans had been rising consistently and stressed that with the heavy demand for 7(a) loans, the agency would run out of guarantee authority by the Summer of 1995. As a result, the agency administratively capped the maximum loan guarantee at $500,000 rather than the statutory maximum of $750,000.

The witnesses representing the small business community and the 7(a) lenders testified that the 7(a) program is critical for many small businesses seeking operating capital, especially those in the start-up phase. These panelists also emphasized that the 7(a) program is an important and successful example of how a public/private-sector partnership should operate. In general, the panels urged the Committee to continue and, if possible, expand the program. (For further information on this hearing, refer to section 7.2.6 of this report).

The Subcommittee on Government Programs also held hearings on the 7(a) program, with a particular emphasis on the pilot low documentation, or LowDoc, program. The witnesses at these hearings generally praised the pilot program, which was designed to reduce the SBA paperwork to a two-page application for borrowers seeking loans of $100,000 or less. Concerns were raised, however, about the rising subsidy rate for the overall 7(a) program and lack of information about the overall performance of LowDoc loans, which have become a significant portion of the overall 7(a) portfolio. A witness from the Office of Management and Budget (OMB) testified that the administration had decided against developing a separate subsidy rate for the LowDoc loans. (For further information on these hearings, refer to sections 7.3.5 and 7.3.6 of this report).

The Subcommittee on Government Programs also examined current developments involving loan packaging, which generally in-

volves 7(a) loans. At its hearing on October 12, 1995, witnesses testified about increasing incidents of fraud and abuse by loan packagers. The Subcommittee also received testimony on various proposals to reduce such incidents and better regulate the loan-packaging industry. The SBA witnesses reviewed their efforts to investigate improper activities by loan packagers and prevent fraud in the industry. (For further information on this hearing, refer to section 7.3.9 of this report).

In the Summer of 1995, the full Committee considered legislation designed to address the increasing subsidy rate in the 7(a) program and reduce the overall costs of the program to the American taxpayer. Under the conference agreement to H.R. 2150, a flat 0.5 percent fee was established, which will be charged to all lenders participating in the 7(a) program on the outstanding principal balance of their 7(a) loans. The conference agreement also reduced and flattened the guarantee percentage for all loans—for loans up to $100,000 dollars, the guarantee percentage was lowered to 80 percent and for all loans over $100,000, the guarantee was reduced to 75 percent. Finally, the conference agreement established a tiered fee structure for the guarantee fee paid by the borrower. The borrower will pay a 3 percent fee on the first $250,000 of a loan; a 3.5 percent fee on the portion of the loan between $250,000 and $500,000; and 3.875 percent for the portion which exceeds $500,000. (For further information on this legislation, refer to section 5.2 of this report).

At the beginning of the second session of the 104th Congress, the Committee learned that the subsidy rate for the 7(a) program had been recalculated by the SBA and the OMB and, as a result, had nearly doubled from the estimates that the Committee relied upon in its consideration of H.R. 2150. At a hearing on March 21, 1996, the SBA Administrator came before the Committee to explain the surprising increase in the subsidy rate for the program. He attributed much of the increase to the results of a comprehensive study of the 7(a) loan portfolio that OMB had recently completed. Despite repeated inquires by Committee members about the specific details of the study and the actual calculation of the subsidy rate, the SBA witnesses were unable to provide satisfactory answers. The SBA's answer to the problem was to request additional appropriations for the program without addressing the underlying reasons for the increase in the subsidy rate. (For further information on this hearing, refer to section 7.2.39 of this report).

In response to the alarming increase in the subsidy rate for the 7(a) program, the Committee marked up and favorably reported H.R. 3719, in July of 1996. After passing the House, this legislation was largely incorporated into the omnibus consolidated appropriations legislation that was signed into law at the end of September, 1996. The final legislation contained a number of provisions that addressed problems that the Committee had identified in the 7(a) program. While the Committee avoided adding additional fees on the borrowers or lenders in the program after the increases included in H.R. 2150, the legislation focused extensively on improving the liquidation results of 7(a) loans by allowing more private-sector involvement. In particular, the legislation gives Preferred Lenders full authority to collect on, and liquidate, loans that they

made to small businesses without having to obtain prior written approval of SBA for routine activities. Certified Lenders are also permitted to begin performing liquidation of SBA guaranteed loans subject to the approval of the Administration. The legislation also establishes procedures 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.

The legislation addresses the potential risks associated with the SBA's LowDoc loans by requiring that LowDoc loans be made only through Certified and Preferred Lenders or lenders with significant small business lending experience. In addition, for all future pilot programs or initiatives in the 7(a) program, the legislation prohibits the pilot program or initiative if it exceeds 10 percent of the loans guaranteed in the 7(a) program during that year.

The legislation contains several reporting requirements and a comprehensive database designed to monitor loan liquidation and the subsidy rate for 7(a) loans. (For further information on this legislation, refer to section 5.5 of this report).

Certified Development Company Program.

Oversight activities will focus on the recent restructuring of the certified development company and its effect on business development efforts. The Committee will also ascertain if there are any improvements that can be made to the program. (Winter, 1995)

The Committee held a hearing on March 9, 1995 to examine the performance of the SBA's 504 loan program. The agency and small business witnesses agreed that the 504 program is vital for small businesses seeking to acquire or expand their facilities given the frequent lack of long-term, fixed-rate capital available to the small business sector of the economy. The small business witnesses also provided the Committee with considerable anecdotal evidence of the program's success. (For further information on this hearing, refer to section 7.2.15 of this report).

In response to concerns about the overall cost of the program, the Committee marked up and favorably reported H.R. 2150. Through a new fee of one-eighth of 1 percent of the outstanding principal balance of the loan imposed on the borrower, the Committee expected to reduce the subsidy rate for the 504 program to zero and make the program essentially self-funding. (For further information on this legislation, refer to section 5.2 of this report).

At the Committee's March 21, 1996 hearing on the SBA's budget submission for fiscal year 1997, the Committee learned that the subsidy rate for the 504 program, as recalculated by the SBA and OMB, had risen from 0 to 6.85 percent. As with the 7(a) program, the SBA Administrator was unable to a provide satisfactory explanation for the increase, and one small business witnesses concluded that the exceedingly high loss rate is due either to inadequate collateral or to poor or inattentive handling of liquidation once the loan goes into default. The agency's answer to the problem was to convert the 504 program into a direct lending program, an alternative that met with considerable opposition from the Committee. (For further information on this hearing, refer to section 7.2.39 of this report).

The Committee addressed the 504 program's subsidy rate in H.R. 3719, the relevant provisions of which were included in the omnibus consolidated appropriations legislation that was enacted at the end of September, 1996. This legislation modifies the contribution required from a small business for participation in a 504 loan such that start-up small businesses and borrowers seeking financing for a special purpose building, must put a minimum of 15 percent down, instead of the minimum of 10 percent as required under current law. The bill also increases the fee that the borrower pays on the annual outstanding balance to a maximum of 15/16 of 1 percent as needed to bring the overall program subsidy rate back to zero. For fiscal year 1997, this fee will be 13/16 of 1 percent. Two other new fees were also added for the 504 program; a one-time, up-front fee of ½ of 1 percent on the total participation of the first mortgage holder, and a ⅛ of 1 percent annual servicing fee collected from Development Companies that will be passed through to the SBA.

The Committee also included provisions in the final legislation that were designed to improve the loan liquidation results under the 504 program. Specifically, the legislation instructs the SBA to take action on defaulted loans within specific time periods in order to speed recoveries and liquidations. The bill also prohibits the SBA from paying late fees or prepayment penalties on defaulted loans and prohibits the SBA from paying any "default interest rate" on a defaulted loan.

Finally, the legislation requires the SBA to develop and implement a pilot program in which Certified Development Companies (CDCs) will have the authority to liquidate their own loans. This responsibility will be delegated only to a select number of the most experienced and active CDCs. (For further information on this legislation, refer to section 5.5 of this report).

Small Business Investment Company Program.

Oversight will focus on the new participating securities program and the new licensees that have entered the program. The Committee will also investigate current program management activities and efforts that have been made to stem losses in the program and stabilize the program's portfolio.

Hearings will also investigate possibilities for privatization of the SBIC program and other modifications that might serve to continue access to venture capital for the small business community. (Winter/Spring, 1995)

The Committee held three hearings during the 104th Congress that focused specifically on the SBA's Small Business Investment Company (SBIC) program. At two hearings during the first session of the Congress, the Committee heard testimony about the benefits that SBICs represent in terms of providing a vital source of capital for many small businesses. Witnesses at these hearings, however, also identified a number of problems with the SBA's oversight, examinations, licensing, and liquidation activities with respect to the program. (For further information on these hearings, refer to sections 7.2.18 and 7.2.29 of this report).

The Subcommittee on Government Programs also held a hearing on April 18, 1996 to evaluate H.R. 2806, "The Venture Capital Marketing Association Act," introduced by Chairman Peter Torkildsen (R-MA). The bill is designed to privatize the SBIC program, through a government-sponsored enterprise called the Ven-

ture Capital Marketing Association (Vickie Mae). The witnesses at the hearing were supportive of the legislation, and several panelists contended that establishing Vickie Mae would lower costs to the government of administering the program, enhance the safety and soundness of SBICs by ensuring a stable flow of capital, and increase the capital available to small businesses by releasing funds currently restricted by government appropriations. (For further information on this hearing, refer to section 7.3.12 of this report).

In the Summer of 1996, the Committee held a hearing to continue its review of the program and assess legislation that was introduced in the Senate that would reform the SBIC program. The witnesses at this hearing noted that some improvements had been made in the program, and they generally supported the Senate legislation, including the increased fees and the efforts to expand the availability of debenture funding. The witnesses also agreed with the Committee's desire to ensure the stability of the program. (For further information on this hearing, refer to section 7.2.46 of this report).

The small business provisions that were included in the omnibus consolidated appropriations legislation at the end of the 104th Congress included a number of improvements to the Small Business Investment Company (SBIC) program. In general, these provisions restructure the SBIC program to incorporate several vital changes, which are effective upon enactment of the legislation. First, the minimum capital requirements for new license applicants are increased, while all existing licensees are fully grandfathered allowing existing licensees to refinance or borrow additional leverage.

The final legislation also changes two fees paid by SBICs. SBICs will pay an annual charge of 1 percent on the value of all outstanding leverage granted after the effective date, and the non-refundable up-front fee is increased to 3 percent of new leverage amounts. These fees will greatly reduce the subsidy cost of the program and allow additional venture capital funding for small business.

A number of changes to enhance the safety and soundness of the SBIC program were also included in the legislation. The SBA must ensure that each license applicant maintains diversification between the management and ownership of the SBIC. The SBA must also regulate SBICs closely to (1) ensure that they do not incur excessive third-party debt; (2) ensure that no SBIC receives leverage when it is under capital impairment; and (3) require each SBIC to adopt valuation criteria set forth by the SBA to establish the values of loans and investments of each SBIC, subject to an annual review by an independent certified accountant.

The legislation also addressed the disposition of SBIC assets that are in liquidation. Under the bill the SBA is required to submit to the Senate and House Committees on Small Business a detailed plan to expedite the orderly disposition of these assets. (For further information on this legislation, refer to section 5.5 of this report).

Specialized Small Business Investment Company Program.

Oversight will focus on the Specialized Small Business Investment Company Program which delivers venture capital to socially or economically disadvantaged small businesses, including the benefits it has provided to the assisted firms, the economy, and to State and local governments, as well as to the Federal Government.

Particular attention will be given to a report anticipated from a blue ribbon commission which has been appointed by the SBA.

The Committee will also investigate reports of misuse of the Specialized Small Business Investment Companies and what actions have been taken to prevent further abuses. (Winter/Spring, 1995)

The Committee held three hearings that focused on the Specialized Small Business Investment Company (SSBIC) program during the 104th Congress. At the first two hearings on March 28 and September 28, 1995, the Committee received testimony, primarily from the General Accounting Office (GAO), about continuing oversight and management weaknesses within the SSBIC program. These problems were underscored by a number of well-publicized failures of SSBICs and allegations of mismanagement and improper activities.

The GAO also testified before the Committee on its investigation of the SBA's 3-percent stock buy-back program, under which SSBICs are permitted to repurchase their preferred stock from the SBA at a significant discount from the face value of the stock. The GAO informed the Committee that based on preliminary data, 15 SSBICs have participated in this program, and they have repurchased preferred stock with a par value of $41 million from SBA for only $14 million, resulting in a significant loss to the government. (For further information on these hearings, refer to sections 7.2.18 and 7.2.29 of this report).

In the Summer of 1996, the Committee continued its assessment of the SSBIC program and evaluated legislation introduced in the Senate that would significantly modify the program. At a hearing on June 6, 1996, witnesses expressed support for the legislation's proposal to merge the SSBIC licensees into the SBIC program. One witness cautioned, however, that for smaller SBICs, alternative sources of financing should be sought and protections should be included for existing SSBICs.

The industry witnesses also addressed the SSBIC's 3-percent preferred stock repurchase program. The witnesses responded to concerns that the program permitted significant forgiveness of SSBIC debt to the SBA by allowing SSBICs to repay only about 35 percent of their stock value. The witnesses noted that the SSBICs were paying what was agreed to be a fair market price, and pointed out that the stock had no mandatory repayment term. (For further information on this hearing, refer to section 7.2.46 of this report).

A number of provisions affecting the SSBIC program were included in the omnibus consolidated appropriations legislation in September, 1996. In particular, the final legislation merges the SSBIC and the SBIC programs, with all existing SSBICs becoming regular SBICs. This provision was designed to address the SSBICs' historic objection that the program restrictions hinder their ability to grow like other SBICs.

The legislation also removes certain investment restrictions and creates a special leverage reserve available only to SBICs that in-

vest at least half of their funds in smaller enterprises. These provisions will enable the smaller SBICs to maintain their focus on financing for primarily minority and women-owned businesses, which tend to be smaller-sized businesses, without any specific restrictions that might negatively affect the ability to seize investment opportunities.

A new reserve of debenture funding for these smaller SBICs was also established in lieu of the prior funding mechanism for the SSBICs. The fund will be financed through the proceeds of the existing preferred stock repurchase program. The availability of this special pool of leverage, along with leverage available to all SBICs, will substantially increase the access to capital for minority and women-owned business investments.

Finally, the legislation requires that each SBIC, regardless of its size, invest at least 20 percent of its aggregate dollar investments in smaller enterprises, which is designed to ensure that smaller businesses continue to obtain full benefit of the SBIC program from all its participants. (For further information on this legislation, refer to section 5.5 of this report).

Microloan Program.

The Committee will conduct hearings concerning the expansion and progress of this innovative program. Hearings will focus on the effectiveness of this program in providing seed capital to start-up small businesses and in alleviating economic hardship in rural and urban areas. The Committee will also investigate the progress of the guarantee-based microloan pilot program, and its possible extension. (Winter, 1995)

On March 14, 1995, the Committee held a hearing to review the SBA's Microloan Demonstration Project. The witnesses expressed the belief that the program is an important tool for meeting the needs of the smallest of small businesses in the most efficient and cost effective way. It was also emphasized that the program accomplishes this goal while leveraging the Federal dollars loaned by requiring the intermediary lenders to come up with matching capital. The small business representatives also expressed broad support for the program and provided the Committee with anecdotal evidence of its success.

The witnesses also identified areas for improvement within the Microloan program including: minimizing the expense of micro lending; reducing the risk of micro lending as compared to general business lending; incorporating and leveraging more effectively primary SBA resources; and addressing the fact that the current initiative will never generate sufficient funds to meet the level of demand. (For further information on this hearing, refer to section 7.2.16 of this report).

Pursuant to its legislative jurisdiction, the Committee approved two changes to the Microloan program. First, Section 105(a) of H.R. 3719 amends the Small Business Act to decrease the maximum amount that an intermediary may receive through technical assistance grants. Second, Section 105(b) of the bill requires the SBA to either implement the Microloan Guarantee Pilot Program or issue a report on why the agency is unable to do so. (For further information on this legislation, refer to section 5.5 of this report).

Surety Bond Guarantee Program.

The Committee, in conjunction with legislatively mandated reports, will investigate the effectiveness of this program in providing bonding capability to underserved sections of the construction community. Oversight will also focus on the need for recent infusions of capital to the Surety program account.

The Committee will also examine the effectiveness of, and benefits provided by, the Preferred Surety Bond Guarantee Program which sunsets on September 30, 1995. (Winter/Spring, 1995)

The full Committee reviewed the status of the SBA's Surety Bond Guarantee Program as part of its overall consideration of the SBA of the future on March 30, 1995. At the hearing, the SBA Administrator noted the benefits that the program provides for qualifying small businesses and testified that the agency plans to consolidate the surety bond delivery system with its government contracting oversight operations. (For further information on this hearing, refer to section 7.2.12 of this report).

The Subcommittee on Procurement, Export and Business Opportunities also held a hearing on April 5, 1995 to examine in greater detail the efficacy of the program and areas for improvement. The witnesses generally agreed that the Surety Bond Guarantee Program was critical to small businesses seeking to participate in many Federal contracts. The SBA witnesses noted the success of the program in guaranteeing more than 218,000 bonds for more than $21 billion in contracts for small businesses. The witnesses also noted that the pilot Preferred Surety Bond Guarantee Program enables the SBA to provide a reduced guarantee to participating sureties in exchange for the sureties having authority to issue, monitor and service bonds without SBA's prior approval.

The industry witnesses stressed the importance of the SBA's Surety Bond Program and offered several recommendations for improving the program, including an increase in the maximum bond size allowable under the program; extension of the pilot Preferred Surety Bond Guarantee Program; a requirement that bond underwriters disclose fully the basis for denying a surety bond and the actions that the applicant must take in order for the bond to be approved; and amendment of the Miller Act to improve the payment rights for subcontractors and suppliers through payment bonds. (For further information on this hearing, refer to section 7.4.2 of this report).

The full Committee addressed the Surety Bond Guarantee Program legislatively in Section 206 of H.R. 3719, which amends the surety bond program to give new applicants 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. (For further information on this legislation, refer to section 5.5 of this report).

Debenture Prepayment Penalty Relief.

The Committee will review the adequacy of Title V of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403) to provide some relief to participants in the now defunct section 503 development company program. Legislation enacted last year authorized and subsequently provided $30 million to mitigate against prepayment penalties under this program.

During the 104th Congress, the Committee monitored the implementation of the debenture prepayment penalty relief provisions that were included in the Small Business Administration Reauthorization and Amendments Act of 1994. This legislation authorized the appropriation of $30 million to enable small businesses with 503 loans or small business investment companies with similar debenture debt to prepay or refinance those loans with a reduced penalty for early prepayment. The prepayment penalty that was a condition of the original loan agreement was so high that it often surpassed the amount owed on the loan and was prohibiting small businesses from taking advantage of reduced interest rates. Repayment under the terms of the legislation was completed by the end of fiscal year 1995. By the end of the 104th Congress, 706 small businesses had prepaid or refinanced 503 loans with an outstanding principal balance totaling $117,072,580. None of the small business investment companies eligible elected to participate because their remaining balance was too small to make the option feasible.

7.1.3 PROCUREMENT ASSISTANCE

The Committee will examine the effectiveness of the SBA's procurement assistance activities. Hearings will focus on the Certificate of Competency program and its effectiveness in protecting small business contractors.

The Committee will also investigate the Natural Resources assistance program and the effectiveness of the procurement center representatives, particularly in the area of contract bundling.

The Committee will also examine the Agency's progress in implementing a pilot program included in the Small Business Reauthorization and Amendments Act of 1994 (Public Law 103-403) to allow very small businesses to participate in Federal procurement programs.

The Committee will also examine the extent to which organizations of the handicapped have been permitted to participate in small business set-aside contracts under section 15 of the Small Business Act. The Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403) authorized such organizations to participate during fiscal year 1995 only in an aggregate amount of contracts not to exceed $40 million. (Winter/Spring, 1995)

The Committee held a hearing on March 2, 1995 to review the activities of the SBA's procurement assistance to small business. The witnesses at this hearing noted the expansion of SBA's procurement assistance efforts and that small business has a significant voice in the government procurement process through the various Procurement Center Representatives in the Government Contract Division at the SBA. The panel also addressed the benefits that the Small and Disadvantaged Business Offices provide to small business. Several of the panelists also gave anecdotal testimony about the success of the SBA's government contracting programs. (For further information on this hearing, refer to section 7.2.13 of this report).

The Committee also held a hearing in the Fall of 1995 specifically to examine the trend in the Clinton Administration of bundling contracts to the exclusion of small businesses. This hearing

focused on two instances of contract bundling. The first involved an effort by the General Services Administration (GSA) to consolidate air-freight contracts by raising the minimum requirements that private air-freight carriers must meet in order to qualify for government-contracted business. The proposal raised the requirements to a level so high that there was little chance that small businesses competing in the government procurement process could have complied. The proposal would have made the GSA the sole negotiator and contractor for 67 government agencies and departments and would have covered almost all of the U.S. government's heavy air-freight business.

The second instance of contract bundling involved a proposal by the Military Traffic Management Command (MTMC) to consolidate its $1.1 billion per year personal property program under which household-goods movers and forwarders are hired to move military families who have been transferred from one military installation to another. The proposal would have abolished, rather than modified and improved, the existing procurement procedures specifically developed for that industry. (For further information on this hearing, refer to section 7.2.30 of this report).

Following the hearing and significant follow up by the Chair and Committee staff, the GSA withdrew their proposal concerning air-freight contracts. In addition, the Committee saw some progress in reaching a compromise between MTMC and the household-goods movers and forwarders with respect to contracts for moving the property of military families.

The Subcommittee on Government Programs also held a hearing on professional certification as a sole-source bid requirement in Federal contracts. At its August 2, 1995, hearing, the Subcommittee received testimony from witnesses who gave anecdotal evidence of the problems faced by small businesses that are affected by the sole-source bid requirements in government contracting. Witnesses also testified that certification requirements have become very pervasive either as a condition of employment, directly or indirectly, or as a condition of doing business. Additionally, even though certification is for individuals, it is often the case that a company cannot do business unless it has certified individuals on its payroll. (For further information on this hearing, refer to section 7.3.7 of this report).

7.1.4 ADVOCACY

The Office of Advocacy provides small business with an effective voice inside the government. The Committee will conduct hearings on how to strengthen this voice and make sure the Chief Counsel for Advocacy continues to effectively represent the interests of small business. (Winter/Spring, 1995)

* * *

The Committee will investigate the activities of the Office of Economic Research and its work product. We will consider the value of the research provided, and coordination with the research of other Federal agencies. (Spring, 1995)

As part of its overall review of the SBA, the Committee held a hearing on April 4, 1995 to focus specifically on the SBA's Office of Advocacy and the offices under its auspices, including the Office of Economic Research. The current and former Chief Counsels for

Advocacy emphasized that one of the great strengths of that office is its greater degree of independence than most other Federal officials. As a result, the Chief Counsel has the opportunity to truly be the "independent advocate" for small business. They noted that one of the most significant challenges facing small business is to help policy makers at all levels of government understand that small business is a driving force in the economy. The witnesses maintained that the Office of Advocacy is well placed to assist small businesses in achieving that goal. The small business witnesses agreed that the Office of Advocacy serves an important purpose in furthering the policies that nurture the small business and entrepreneurial sector of the economy.

Both the agency and small business witnesses offered a number of suggestions for strengthening and expanding the role of the Office of Advocacy and its Chief Counsel. The suggestions ranged from giving the Chief Counsel for Advocacy greater authority to prevent burdensome regulations on small business to enhancing the economic research functions of the Office and expanding its mission of commenting on proposed regulations. (For further information on this hearing, refer to section 7.2.20 of this report).

On October 31, 1995, the Committee also held a joint hearing with the Senate Committee on Small Business to examine the report to Congress by the Chief Counsel for Advocacy of the SBA requested under section 613 of Public Law 103–403 on "the impact of all Federal regulatory, paperwork, and tax requirements upon small business." The sole witness for the hearing was the SBA's Chief Counsel for Advocacy who maintained that the regulatory burden on businesses has leveled off as a percentage of the gross domestic product. He noted that the biggest increase in burden, however, has been in environmental regulations. The next largest increase is in process regulation, which is basically paperwork and involves the Internal Revenue Service and payroll and Social Security records. According to the Chief Counsel, social regulation costs such as Occupational Safety and Health Administration (OSHA) and worker safety rules have not increased significantly. (For further information on this hearing, refer to section 7.2.33 of this report).

While the Committee did not consider legislation that directly affects the Office of Advocacy, members of the Committee worked diligently to ensure that the Office received continued funding during the 104th Congress. These efforts were especially important for fiscal year 1996 when a proposal was made to eliminate the appropriation for the Office.

7.1.5 TECHNOLOGY AND RESEARCH ASSISTANCE

Small Business Innovation and Research.

The Small Business Innovation and Research (SBIR) program aids small business in obtaining Federal research and development funding for new technologies. In conjunction with statutorily mandated reports from the General Accounting Office, the Committee will monitor the progress of this program. Oversight will focus on the ability of this program to develop new, marketable technologies, and compare the effectiveness of the 2 percent of Federal research dollars directed to the SBIR program with the commercial applications resulting from the other 98 percent of Federal R&D spending. (Spring, 1995)

The full Committee and its Subcommittee on Government Programs held hearings in the first and second sessions of the 104th Congress on the Small Business Innovation and Research (SBIR) program. The Subcommittee found at its hearing, held on April 6, 1995, that the small business community rated their experience with the SBIR program as favorable. The witnesses noted that the program has been instrumental in helping many small businesses begin operations and in some cases assisting existing small businesses to expand their exports. The government witnesses also noted that the SBIR program contributes one of the highest returns to taxpayers and redirects money to small businesses that might otherwise have gone to large firms, universities, and Federal government labs that are far less efficient, far less innovative, and less able to commercialize their technologies. Despite the general praise for the SBIR program, several witnesses expressed concerns about the program including the documentation and accounting system requirements, which can be overly burdensome for small businesses. Two witnesses also suggested that a fraction of SBIR set-aside funds be used to provide commercialization assistance to SBIR awardees and to support administrative costs of the program's operation. (For further information on this hearing, refer to section 7.3.2 of this report).

The full Committee hearing, held on March 6, 1996, also found wide-spread praise for the SBIR program. The witnesses provided additional anecdotal evidence of the program's success, and emphasized the vital role that the program plays in the high-technology sector of the small business community and in the nation's research agenda, ensuring a flow of innovative new products and services to the American marketplace. In addition, the panelists stressed the need for the program to be continued and at current funding levels. (For further information on this hearing, refer to section 7.2.37 of this report).

Legislatively, the Committee favorably reported H.R. 3158 on March 29, 1996. This bill would have called on the General Accounting Office to monitor the implementation of the SBIR program over a four-year period, covering fiscal year 1995 through fiscal year 1999 and to submit a report on its finding by February 1, 2000. The bill also would have established an interagency task force on fostering commercialization of the results of projects being undertaken by small businesses through the SBIR program. Unfortunately, the provisions of H.R. 3158 concerning the SBIR program were not included in legislation that was signed into law. (For further information on this legislation, refer to section 5.4 of this report).

Small Business Technology Transfer.

The Small Business Technology Transfer program authorization will expire on September 30, 1995. Committee oversight will focus on the program's success at helping small business access technologies developed at Federal laboratories and put that knowledge to work. (Spring/Summer, 1995)

As part of its hearing on the SBIR program on March 6, 1996, the Committee examined the success of the pilot Small Business Technology Transfer (STTR) program. Overall, the witnesses testified that the pilot STTR program had been very beneficial for small

businesses, and the GAO report on the program found that participating agencies rated highly both the quality and commercial potential of the proposals and have not found any evidence that the pilot STTR program was competing for quality proposals with the SBIR program.

Witnesses from the small business community provided numerous examples of success stories from the pilot STTR program and the critical role that the program plays in fostering the transfer of technology to the marketplace. They expressed concern that the contribution to the nation's economy and defense from the resulting technologies and products would not have been possible without small business participation in the STTR program. For these reasons, the witnesses urged the Committee to reauthorize the pilot program, which was set to expire at the end of fiscal year 1996. (For further information on this hearing, refer to section 7.2.37 of this report).

The Committee's consideration of H.R. 3158 included several provisions concerning the pilot STTR program. Primarily, the bill would have reauthorized the pilot STTR program through September 30, 2000, placing it on the same authorization time frame as the SBIR program. The bill would also have provided a 1/10 of 1 percent increase in the percentage of extramural research budgets dedicated to awards under the pilot STTR program.

In addition, the bill would have called on the GAO to monitor the implementation of the program during the extension and submit a report by February 1, 2000. Under the bill, the interagency task force on fostering commercialization of the results of projects being undertaken by small businesses through the SBIR program would also have covered projects in the pilot STTR program.

Provisions extending the pilot STTR program through September 30, 1997, were included in the omnibus consolidated appropriations legislation (H.R. 4278), which the House and the Senate passed together with the 1997 Department of Defense Appropriations Act (H.R. 3610) at the end of the 104th Congress. The remaining provisions of the bill were not enacted. (For further information on this legislation, refer to section 5.4 of this report).

7.1.6 MINORITY ENTERPRISE DEVELOPMENT

The Committee will conduct hearings on the history and effectiveness of the 8(a) program and other Federal programs to promote minority business development, including access to capital and credit. Recent administrative changes will be investigated along with several recent legislative proposals. (Winter/Spring, 1995)

The Committee held three hearings to review the SBA's 8(a) Business Development Program. The 8(a) program was originally created to assist businesses owned by individuals who are socially and economically disadvantaged. The Committee's objective for the hearings was to examine the program's continuing efficacy and ability to meet its statutory objectives as well as to review reports of fraud and abuse within the program.

During the Committee's hearings on March 6, 1995, December 13, 1995, and September 18, 1996, the witnesses focused on a number of problems with the 8(a) program. Specifically, the hearings fo-

cused on charges that the program offers opportunity to only a relative few well-to-do individuals at the expense of the majority of persons whom the program was designed to assist. The witnesses at the hearings also pointed out that a number of companies have remained in, and have taken advantage of, the program long after they have become successful and self-sustaining, that most companies do not become self-sufficient by the time they leave the program, and that the program is laden with fraud and abuse. In reviewing these charges, the Committee heard testimony from the General Accounting Office, the SBA and its Office of the Inspector General, and numerous small business owners. (For further information on these hearings, refer to sections 7.2.14, 7.2.35, and 7.2.49 of this report).

In addition to the full Committee's inquiries into the 8(a) program, the Subcommittee on Regulation and Paperwork held a hearing to discuss the impact of Federal regulation on minority entrepreneurship. The witnesses agreed that because many small businesses are owned by and employ a large percentage of minorities, Federal regulations and taxes are said to fall disproportionately on minorities. The witnesses also emphasized that government programs such as welfare and minority set-asides are solutions for the symptoms of poverty among minorities, but do not go to the root of the problem, which is a lack of economic opportunities provided to minorities because small businesses are stifled with high taxes and oppressive regulations. (For further information on this hearing, refer to section 7.5.2 of this report).

7.1.7 WOMEN-OWNED BUSINESSES

The Committee will continue its active involvement in encouraging the development of women-owned small businesses, and its oversight of relevant Federal programs including the activities of the statutorily-created Office of Women's Business Ownership; the implementation of the newly established government-wide 5 percent procurement goal; and the establishment and activities of the new Interagency Committee and National Women's Business Council. (Spring 1995 through Fall 1996)

As part of its overall review of the SBA's programs, the Committee evaluated the various outreach efforts by the agency including the Women's Business Ownership Program. The witnesses agreed that the program was an important part of SBA's efforts to promote small business ownership by women and served to provide important resources for starting and operating small firms. (For further information on this hearing, refer to section 7.2.17 of this report).

The Committee also focused on a number of issues that directly affect the ability of women to start and continue their own businesses. For example, the Committee held a hearing dedicated to the home-office deduction and the 1993 Supreme Court case that drastically narrowed its availability. At that hearing, the witnesses, all of whom were women, testified to the importance of the home-office deduction for the smallest of small businesses that do not have the capital to acquire office space outside the home. (For further information on this hearing, refer to section 7.2.2 of this report).

Similarly, the Committee held individual hearings on the deductibility of health-insurance costs by the self-employed, which is a

significant issue for women business owners, and access to capital for small businesses. At the latter hearings, the Committee heard testimony concerning the particular difficulties of women business owners who seek debt and equity capital to start or expand their business. (For further information on these hearings refer to sections 7.2.4, 7.2.36, and 7.2.43 of this report).

7.1.8 OFFICE OF INSPECTOR GENERAL

The Committee will conduct hearings and investigations regarding the effectiveness of the Inspector General's office at the SBA. The Committee's efforts will center on the IG's ability to effectively monitor the myriad financial programs at the agency. (Summer, 1995)

During both sessions of the 104th Congress, the Committee undertook several investigations of alleged misconduct by employees of the SBA and by certain program participants. In each investigation, the Committee called on the Office of the Inspector General to conduct internal reviews and investigations of the particular matter. The Committee monitored the work product of the Office and evaluated it in comparison to the results of staff investigations and those of other outside investigative sources. Overall, the Committee found the efforts of the Inspector General and his staff to be satisfactory.

The Committee also endeavored to ensure that the Office of the Inspector General received adequate funding in both fiscal year 1996 and 1997 in order to carry out its responsibilities to the fullest extent.

7.1.9 OFFICE OF DISASTER ASSISTANCE

In declared disasters the SBA is the little-known hero that helps business owners and homeowners put their communities back together. Committee oversight will focus on recent increases to the disaster loan limits and their effect on rebuilding ravaged communities. The Committee will also study the Administration's proposals for improving the subsidy rate and cost-effectiveness of the disaster assistance program. (Spring, 1995 through Spring, 1996)

During the 104th Congress, the Committee held hearings on the overall management of the SBA. Testimony at these hearings and investigations and research by Committee staff showed that the disaster loan program continues to provide prompt and effective aid to areas of the country struggling to rebuild after the onset of disasters. The hearings on the SBA's budget also revealed that the subsidy rate for the disaster loan program dropped during fiscal years 1995 and 1996. The single largest component of the disaster assistance loan program's subsidy rate is the difference between the interest rate on the loans (capped at 4 percent in most cases) and the cost of borrowing money for the government (currently at 5.25 percent). The narrowing of this spread due to lower interest rates has significantly reduced the subsidy rate. Loss rates in the program remained within acceptable limits given the nature of the loan portfolio, and the Committee received reports and testimony from the Inspector General concerning fraud and abuse and found that the SBA had responded adequately.

Representative Torkildsen, Chairman of the Subcommittee on Government Programs held three additional hearings specifically on the disaster assistance program. The first of these hearings fo-

cused on the overall functioning of the disaster program and mirrored the full Committee's findings. While testimony revealed that the program has an excellent ability to respond quickly and efficiently, suggestions were developed for administrative efforts to decrease loan processing time and reduce the threshold level for assistance eligibility. The other two hearings dealt specifically with problems facing the fisheries industries in New England due to a dramatic and disastrous decline in groundfish stocks. The Subcommittee heard extensive testimony from small business owners and local government officials regarding the plight of the fisheries industry in New England. The Committee also developed evidence of mismanagement of the fisheries by regulatory agencies. While the SBA expressed a desire to be of assistance, SBA officials testified that the conditions in the area could not be construed as a disaster. (For further information on these hearings, refer to sections 7.3.3, 7.3.4, and 7.3.16 of this report).

Legislatively, the Committee acted to pass several improvements to the disaster assistance program as part of H.R. 3719. Recognizing the need to continue to reduce program costs whenever possible, the Committee proposed a pilot loan-servicing program for disaster loans that would test privatization of the servicing of 10 percent of the disaster loan portfolio. Due to its similarity to residential mortgage portfolios, the Committee believed that current commercial providers might effectively service the disaster portfolio. The Committee also examined an Administration suggestion to increase the interest rate structure for disaster loans from its current level of one-half the rate of similar government securities (but not more than 4 percent) to the full rate of similar government securities. The Committee felt that such a steep increase would be unwise in light of the nature of lending in disaster stricken areas, but agreed to an increase to three-fourths of the rate of similar government securities. Finally, the Committee accepted an amendment by Mr. Torkildsen expanding the definition of a disaster to include fisheries closed by government regulation.

The disaster assistance program provisions of H.R. 3719 were included in the final version of the omnibus appropriations legislation with some modification. The pilot disaster loan servicing program was expanded to 30 percent of the loan portfolio but restricted to residential loans. Mr. Torkildsen's amendment to provide disaster assistance to the New England fisheries was amended slightly to incorporate technical definitions. The modified version of the Administration's interest rate increase was omitted in the final version of the legislation. (For further information on this legislation, refer to section 5.5 of this report).

7.1.10 OFFICE OF INTERNATIONAL TRADE

The Committee will conduct oversight concerning the new Export Assistance Centers initiative. Committee investigations will center on the effectiveness of SBA's small business export efforts. (Spring, 1995)

The Committee also intends to determine the extent of efforts at other agencies to serve the small business community's trade and export needs. In particular, the Committee will investigate efforts to provide financing for the small business community in export markets and the efforts or lack of effort to aid small business in overcoming foreign trade barriers. (Spring, 1995 through Summer, 1996)

The Committee's international trade activities were conducted through its Subcommittee on Procurement, Exports and Business Opportunities, which held a series of eight hearings on the subject of increasing small business exports. The first hearing on March 29, 1995, centered on the various Federal export-promotion programs. The export-promotion divisions of the International Trade Administration (ITA) of the Department of Commerce (including Trade Development, International Economic Policy, and the U.S. & Foreign Commercial Service), the Small Business Administration (SBA), the Overseas Private Investment Corporation (OPIC), and the Trade Development Agency (TDA) provided the Subcommittee with information on the various export-promotion programs and the availability of their benefits to small businesses. (For further information on this hearing, refer to section 7.4.1 of this report).

The second hearing on May 17, 1995, focused almost exclusively on agriculture export-promotion programs. The Subcommittee received testimony from the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture and private-sector witnesses concerning the importance of agricultural exports and some of the obstacles that exists for small business. The Subcommittee also heard from John Frydenlund of the Heritage Foundation, who is a key opponent of these programs. (For further information on this hearing, refer to section 7.4.3 of this report).

The third hearing, on May 23, 1995, allowed individuals not directly connected with any of these programs to present an academic critique of the Federal export-promotion programs, including the costs and benefits of these programs and the need for these programs in an era of immense foreign competition to the country's exporters. Following this hearing, the Subcommittee held a hearing on export promotion from the small business perspective. On June 22, 1995, four small to medium-sized businesses testified before the Subcommittee about Federal export-promotion programs and how they benefited their companies and increased job growth in their communities. In addition, the Subcommittee heard testimony about how a public-private sector partnership between the Federal government and a local college has helped disseminate trade information to resource-poor small businesses. (For further information on these hearings, refer to sections 7.4.4 and 7.4.5 of this report).

The fifth hearing, which was a joint hearing with the Committee's Subcommittee on Government Programs, on September 7, 1995, focused on the problems of trade finance with an emphasis on the potential problems with a change in the guarantee rate for the Export Working Capital Program at the SBA, which is part of the SBA's 7(a) loan program. At that time, small business exporters were able to obtain a 90-percent guarantee for pre-export working capital for deals under $750,000 through the SBA. For export sales above that amount, the Export-Import Bank of the United States (Eximbank) had a harmonized program also with the 90-percent guarantee level. (For further information on this hearing, refer to section 7.4.6 of this report).

In October of 1995, a comprehensive bill to reduce the guarantee rate for all SBA loan programs to 80 percent for loans below $100,000 and 75 percent for loans above $100,000 was enacted into law, thus placing a temporary disparity between the export-financ-

ing programs administered by the SBA and Eximbank. The guarantee rate for export working capital loans was restored to 90 percent in the legislation that was included in the omnibus consolidated appropriations legislation in September of 1996. (For further information on both legislative changes, refer to sections 5.2 and 5.5 of this report).

Two subsequent hearings on October 11, 1995 and February 13, 1996 focused on technologies for accessing foreign markets. These hearings allowed representatives from the Federal government and the private sector to demonstrate technologies designed to assist small businesses in obtaining timely and concise information at relatively low cost about overseas markets and foreign customers. The final Subcommittee hearing, on July 25, 1996, examined the effectiveness of the newly opened U.S. Export Assistance Centers (USEACs). This hearing permitted the GAO and the Inspector General of the Department of Commerce to present their findings and allow a response from the Federal agencies that are part of the USEAC system (Commerce, SBA, and Eximbank). (For further information on these hearings, refer to section 7.4.7 and 7.4.9 of this report).

In addition to its series of hearings on trade, the Subcommittee also held a hearing on the "short supply" problem in the anti-dumping laws facing small manufacturers. On May 2, 1996, the Subcommittee heard from both the Congressional proponent and the opponent of H.R. 2822, legislation to provide discretion to the Department of Commerce to waive anti-dumping duties for up to one year when it can be demonstrated that the long-term survivability of a U.S. business is in jeopardy because it cannot find at a competitive price certain goods subject to anti-dumping orders. No further legislative action was taken on H.R. 2822 during the 104th Congress. (For further information on this hearing, refer to section 7.4.8 of this report).

In addition to its hearings, the Subcommittee took an active interest in the "Made in USA" labeling issue. The Subcommittee protested proposed changes by the Federal Trade Commission that would have weakened the "Made in USA" labeling standards through regulatory changes. The FTC ultimately agreed to slow the regulatory change to seek more public comment. The Subcommittee also requested and received a comprehensive report from the GAO on the impact of defense offsets on the U.S. manufacturing base. This GAO report helped set the stage for the Administration to include an entire chapter in the 1996 National Export Strategy report to Congress outlining areas in which the Executive Branch will undertake to negotiate in multilateral forums with the country's trading partners to reduce this practice. Finally, on November 30, 1995, the Subcommittee held an open briefing, along with the Subcommittee on International Economic Policy and Trade and the Subcommittee on Asia and the Pacific of the House Committee on International Relations, on the potential U.S. export opportunities to the Three Gorges Dam project along the Yangtze River in the People's Republic of China. This forum allowed specific companies, along with trade, environmental, and engineering experts, to comment on the worthiness of this immense project and the decision by Eximbank to deny export-credit assistance to any U.S. company

seeking to sell products to the Three Gorges Dam project, which effectively put American companies out of the competition for these export sales.

7.1.11 OFFICE OF BUSINESS INITIATIVES AND TRAINING

The Committee will explore the agency's commitment to these business development programs and their interrelation with the SBA's other program efforts. Investigations and hearings will center on the amount and types of assistance provided and their relationship to the changing business environment.

The Committee will also investigate small business assistance programs at the other Federal agencies to determine their effectiveness and the need for coordination between the agencies. These hearings will cover the activities of the Small Business Development Centers, Business Information Centers, SCORE, and the Small Business Institute program. (Winter/Spring, 1995)

The Committee held a hearing on March 16, 1995 to review the SBA's Business Development Programs. In particular, the hearing focused on the Service Corps of Retired Executives (SCORE), the Small Business Development Centers (SBDCs), the Small Business Institutes (SBIs); the Office of International Trade; the Office of Women's Business Ownership, and the Office of Veterans Affairs.

The witnesses generally agreed that the SBA's business development programs are very beneficial for small business growth and development, and they provide small business owners with significant resources either for free or for a small affordable fee. Several witnesses offered suggestions for improving the programs, including such things as better coordination between the SBA and the Export-Import Bank of the United States to encourage exports. (For further information on this hearing, refer to section 7.2.17 of this report).

Legislatively, the Committee favorably reported H.R. 3719, which provides 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 provisions were included in the omnibus consolidated appropriations legislation enacted in September of 1996.

7.1.12 FEDERAL PROCUREMENT

The Committee will examine the changes in Federal procurement since the last Congress. The Federal Acquisition Streamlining Act instituted sweeping changes in the way the government will purchase goods and services. The Committee will investigate the implementation of these changes and the effect they are having on small businesses involved in government contracting. (Fall, 1995 through Fall, 1996)

The Committee will also be conducting hearings concerning any new proposals that would affect opportunities for small business in Federal procurement.

The Committee held several hearings on legislation concerning Federal procurement and, in particular, its effect on small business. On June 29, 1995, the Committee on Small Business held the first in a series of two hearings on H.R. 1670, the Federal Acquisition Reform Act of 1995 (FARA). The first hearing was to provide representatives of small business an opportunity to assess the potential impact of H.R. 1670 on their ability to compete for Federal contracts. On August 3, 1995, the Committee held a second hearing to assess the impact of H.R. 1670, as reported by the Committee on Government Reform and Oversight on July 27, 1995.

Witnesses at the June 29, 1995 hearing testified that H.R. 1670 would reduce the number of participating government contractors by replacing "full and open competition" with a standard based on "maximum practicable competition." Witnesses testified that the maximum practicable competition clause would give government officials too much power over business decisions and that anything less than full and open competition would artificially restrain trade and hurt smaller companies disproportionately.

At the August 3, 1995 hearing, witnesses testified that the government must put forth an effort to achieve vigorous commercial-style competition, and the bureaucracy that is preventing the government's ability to serve the taxpayer must be ended. According to the witnesses there is an extreme distrust in the current system toward front-line contracting and program professionals and a complete lack of faith in their ability to use common sense and good judgment to make sound business decisions in the best interest of the taxpayer. The witnesses also stated that the Federal government has a fiduciary responsibility to follow rational procedures, as opposed to the often arbitrary procedures established by contracting officers. (For further information on these hearings, refer to section 7.2.22 of this report).

On July 20, 1995, the Committee held a hearing to assess the implementation of Public Law 103–355, the Federal Acquisition Streamlining Act of 1994 (FASA), and its effect on small firms seeking to market supplies, services, and construction to the government. The witness representing the GAO reviewed three elements of the on-going implementation of FASA. First, they provided an assessment of the status of the proposed and final implementing regulations to be promulgated by the Executive Branch in accordance with FASA's statutory schedule. They also provided the Committee with a preliminary assessment of FACNET's implementation and its use by the Federal procuring agencies and the vendor community. Finally, the GAO's testimony provided a status report on the implementation of FASA's new authority regarding micro-purchases and the use of the IMPACT Purchase Card.

The witness representing the SBA's Office of Advocacy made a number of observations about the implementation of FASA and its potential impact on small firms seeking to market to the Federal government. First, the SBA Chief Counsel for Advocacy testified that while FASA made the most sweeping changes to the Federal procurement process in 10 years, FASA's specific effects, especially on small firms, cannot be assessed until its implementation regulations are in place given the substantial discretion accorded to the regulation writers. He also noted that the Office of Advocacy was applying steady pressure on the FASA regulation drafters to force their fullest compliance with the Regulatory Flexibility Act. In addition, he discussed his concerns about the implementation of FACNET, which he noted was proceeding quite slowly with very few procurement opportunities available through the system, and he emphasized that some of the provisions of FASA remained potentially dangerous to future small business participation. Finally, he urged the Committee to give the fullest consideration to the recommendations of the delegates to the 1995 White House Conference on Small Business and to the concerns being expressed by

many groups within the small business community. (For further information on this hearing, refer to section 7.2.25 of this report).

7.1.13 GOVERNMENT & NON-PROFIT COMPETITION

The Committee will be conducting hearings and investigations of the extent to which non-profit organizations and the Federal government itself compete with small business. Our focus will include activities in both the private sector and government procurement. (Winter, 1996)

The Committee held two hearings on unfair competition by government and non-profit organizations against small businesses. The first hearing, held on June 26, 1996, dealt with the Federal Prison Industries (FPI) and its competition with small manufacturers. The witnesses provided the Committee with substantial anecdotal evidence that FPI's super-preference, which forces many government agencies to buy from FPI rather than the private-sector, has prevented many small companies from competing for government business. The witnesses also noted that FPI's prices have not been competitive with industry prices and maintained that FPI's quality of products and contract performance in delivering products does not match that of the private sector. In defense of the current system, the FPI witnesses asserted that FPI is performing an important function of providing work for inmates at Federal correctional institutions. The small business witnesses stressed that in many cases their survival depends on FPI being required to compete on a level playing field with all businesses for government contracts. (For further information on this hearing, refer to section 7.2.47 of this report).

The Committee also held two days of hearings on the general topic of competition with small businesses by government and not-for-profit organizations. On July 16 and 18, 1996, the Committee heard from a number of witnesses about the current status of unfair government competition with small business, the ineffectiveness of existing administrative restraints, and the current status of various legislative proposals being advanced in the 104th Congress. These witnesses also gave anecdotal evidence of commercial activities being undertaken by an array of Federal agencies to the detriment of small firms.

The witnesses also provided the Committee with anecdotal evidence of the devastating effect of unfair competition by government-sponsored entities, in particular the National Industries for the Severely Handicapped (NISH) and the National Industries for the Blind (NIB). The witnesses raised concerns about a number of practices by these organizations including: potential unfair pricing, underutilization of persons with disabilities, and excessive subcontracting to selected for-profit companies in order to be able to meet their contractual performance obligations to the government. (For further information on these hearings, refer to section 7.2.48 of this report).

7.1.14 REGULATORY FLEXIBILITY & PAPERWORK REDUCTION

The Committee will continue its oversight of agency implementation of the Regulatory Flexibility Act and Paperwork Reduction Act. This oversight will include implementation of any future amendments to these Acts. (Winter 1995 through Fall 1996)

The Committee held four hearings regarding the Regulatory Flexibility Act and the Paperwork Reduction Act. These hearings focused on the effect of those laws since their enactment and the history of government compliance with their provisions.

On January 23, 1995, the Committee on Small Business held a hearing on strengthening the Regulatory Flexibility Act (RFA). The consensus of the witnesses was that Congress must put some "teeth" into the RFA. In addition, testimony indicated that the SBA's Office of Advocacy was being hindered by its inability to represent small business as an *amicus curiae* in judicial proceedings. More specifically, the witnesses recommended reforming the Paperwork Reduction Act, imposing a six-month moratorium on new regulations, strengthening private-property rights protection, allowing for a cost-benefit analysis and/or risk assessment, establishing a regulatory budget, and "sun setting" regulations. There was also support among the panelists for the provisions in H.R. 9, which would allow for judicial review of Federal agencies' regulatory decisions and their indirect effect on small business. The bill would also increase the role and authority of the SBA's Office of Advocacy in reviewing and improving regulations. Several witnesses focused on specific agencies, such as the Occupational Safety and Health Administration (OSHA), and the burdens that their regulations represent to small businesses. (For further information on this hearing, refer to section 7.2.5 of this report).

On February 10, 1995, the Committee on Small Business held a second hearing on the RFA. While the first hearing focused on legislation to strengthen the Act, this hearing was designed to provide the Committee with a historical perspective. In particular, the witnesses were asked to examine specific areas in which the RFA has worked as well as ways to improve the Act. The witnesses provided the Committee with historical background on the RFA and offered several suggestions, including judicial review of regulations. The testimony highlighted the inability of the RFA to provide small business with an effective means of enforcement of agency compliance. Evidence presented to the Committee showed that agency compliance was at best perfunctory and at worst deliberately insufficient. (For further information on this hearing, refer to section 7.2.10 of this report).

Hearings on the Paperwork Reduction Act (PRA) were held by both the full Committee and its Subcommittee on Government Programs. The full Committee held a hearing on January 27, 1995 focusing on agency compliance with the provisions of the PRA and agency information gathering efforts. At that hearing, the Committee heard from Sally Katzen, Administrator of Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Ms. Katzen testified that the current 5-percent goal per year in paperwork reduction is important to have as a goal, but that a fixed number would not be constructive. She also emphasized the need to use technology to make government more effi-

cient. While she could not provide the Committee with the number of cases in which her office had disapproved of agencies' paperwork requests, she testified that the number had gone down and that the decline was likely due to agencies better understanding what OMB expects.

The small business witnesses at the hearing testified that they were pursuing the goal of overhauling the Federal regulatory process, which would result in more efficient rulemaking and greater, less expensive, compliance. The witnesses expressed solid support for Title V of H.R. 9. In addition, the witnesses endorsed the concept of adding a cost-benefit analysis to the PRA, since it has been generally required with respect to regulatory burdens but not paperwork burdens. (For further information on this hearing, refer to section 7.2.8 of this report).

On March 27, 1996, the Subcommittee on Government Programs held a hearing to discuss H.R. 2715, the Paperwork Elimination Act. The bill, introduced by Chairman Torkildsen (R-MA), would minimize the burden of Federal paperwork demands upon small businesses, educational and non-profit institutions, Federal contractors, State and local governments, and other persons through the use of alternative information technologies, including electronic maintenance, submission, or disclosure of information as a substitute for paper. OIRA Administrator Sally Katzen provided the Subcommittee with the Administration's position on H.R. 2715. While supporting the intent of the legislation as an effort to reduce paperwork burdens and modernize government, the Administration had reservations about its necessity and requirements. Ms. Katzen claimed that the Administration was already doing its part to reduce paperwork burdens by complying with the PRA, and she questioned the timing of the Paperwork Elimination Act, citing that too many departments and agencies do not have the technological capability to comply with its requirements.

Two witnesses representing small businesses testified about the benefit that the small business community would receive from the passage of the Paperwork Elimination Act. In particular, one witness noted that individuals in the health-care industry have been significantly burdened by Federal paperwork demands. The witness maintained that this burden could be significantly reduced if regulators allowed compliance by alternative technological means. The other witness testified that the technology needed to comply with this legislation exists and using it could save at least $22 billion in mailing, receiving, rekeying, and routing costs. The two SBA witnesses testified that small businesses face tremendous burdens in terms of paperwork mandated by the Federal government, and noted that the SBA was making efforts to disseminate information electronically via the Internet. In addition, they testified that the SBA was conducting outreach and training activities to inform small businesses about the Federal government's transition from a paper-based procurement program to an electronic-based system. (For further information on this hearing, refer to section 7.3.11 of this report).

The Subcommittee on Government Programs also held a series of hearings to evaluate the extent to which various Executive Branch departments and agencies were complying with the PRA. In par-

ticular, the Subcommittee focused on the Environmental Protection Agency, the Department of Labor, and the Food and Drug Administration. At each hearing, the Subcommittee received testimony from the Administration concerning the initiatives that the department or agency was undertaking and from representatives of the small business community concerning the effectiveness of these efforts. In general, the consensus of the small business community was that the Administration was making some progress in reducing the paperwork burdens imposed on small business but considerable ground remains to be covered. (For further information on these hearings, refer to sections 7.3.14, 7.3.15, and 7.3.19).

Legislatively, the Committee acted to remedy the deficiencies in the Regulatory Flexibility Act through H.R. 937. The provisions of this legislation would add judicial review of RFA determinations, strengthen the *amicus* authority of the SBA, and close a loophole in the law that allows the Internal Revenue Service to avoid any RFA compliance. The bill was marked up by the Committee on the Judiciary and then by the Committee on Small Business. Final passage was delayed until the Regulatory Flexibility Act provisions were included in the Small Business Regulatory Enforcement Fairness Act of 1996, Title III of H.R. 3136, which became Public Law 104–121. This legislation included five sections on small business regulatory relief including the judicial review provisions from H.R. 937, the establishment of regional regulatory fairness boards, and a Regulatory Ombudsman at the SBA. (For further information on this legislation, refer to section 5.1 of this report).

Revisions to the PRA were included in Title V of H.R. 9, which were ultimately incorporated into H.R. 830. H.R. 830 passed the House on March 10, 1995 as an amendment to S. 244 and was enacted as Public Law 104–13 on May 22, 1995. Pursuant to the Committee's legislative jurisdiction over Title V of H.R. 9, it submitted a report of its findings at the Committee's hearings to the Committee on Government Reform and Oversight. These findings were incorporated in House Report 104-37, which accompanied H.R. 830.

The Committee also marked up H.R. 2715, the Paperwork Elimination Act of 1995, which was designed to encourage Federal agencies to increase opportunities for small businesses to complete forms and respond to requests for information electronically. The bill was marked up and favorably reported by the Committee on March 29, 1996, and passed the House on April 24, 1996, by a unanimous vote. Unfortunately, Senate action on this legislation was not completed before the adjournment of the 104th Congress. (For further information on this legislation, refer to section 5.3 of this report).

7.1.15 GOVERNMENT REGULATION

The Committee will continue to investigate the regulatory agenda of the various Federal agencies and the impact of regulations, both specific requirements and the cumulative effect of regulations, on the small business community. (Winter, 1995 through Fall, 1996)

During the 104th Congress, the Committee conducted a series of hearings on the Clinton Administration's initiatives to reduce regulatory burdens on small business. Beginning with a hearing on

July 17, 1995, the Committee sought a progress report on implementing President Clinton's March 1, 1995 directive to all Executive Branch departments and agencies to cut obsolete regulations, reduce red tape, work cooperatively with those being regulated, and negotiate instead of dictate. The Administration witnesses testified about the efforts that the various departments and agencies were undertaking to comply with the Executive Order and reduce the burdens on small businesses.

The small business witnesses provided the Committee with an opposing view point. In particular, the National Federation of Independent Business testified that its members have indicated that despite the Administration's claims that the agencies' have changed their focus toward assisting rather than penalizing small businesses, NFIB members continue to see significant problems especially with the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA), not to mention the Internal Revenue Service, which poses the most significant burdens for most small businesses. Another small business advocate noted that while a change in policy with regard to regulation of small businesses would be helpful, what is really needed is a change in the process of enforcing those regulations.

The panelists also offered a number of suggestions for improving regulatory reform efforts including providing better guidance to Federal agencies on exactly what is expected from the regulators and providing agency performance standards as a means of improving the process of helping small businesses to comply with existing regulations rather than continuing the history of enforcement actions. Witnesses from the General Accounting Office also urged the Committee to utilize the Government Performance and Results Act (GPRA) to its fullest extent as a tool for focusing on the particular outcomes that each agency is charged with achieving. (For further information on this hearing, refer to section 7.2.24 of this report).

The Committee's series on regulatory reform also included individual hearings designed to examine the reform efforts of specific agencies. The Committee held two hearings on the Occupational Safety and Health Administration (OSHA). At the first hearing on July 26, 1995, the Committee heard testimony from the OSHA Administrator about his efforts to reinvent the agency through such initiatives as the Maine 200 program, bringing common sense to agency regulations, and measuring performance based on reductions in worker injuries and deaths as opposed to the number of violations found and penalties imposed. The Committee also heard testimony on legislative proposals designed to reform OSHA on a statutory level.

The small business witnesses at the hearing stressed that compliance with OSHA's relations represents a greater burden for small businesses than for large business, in part due to the fact that small businesses typically have fewer employees to review, monitor, and implement the voluminous amount of regulations concerning worker safety. While the witnesses generally congratulated OSHA for its efforts to be more consultative and less confrontational, they were also supportive of legislation as a means of reinforcing the organizational changes that the Administration

pledged to implement. (For further information on this hearing, refer to section 7.2.26 of this report).

Nearly a year later, on September 25, 1996, the Committee held a second hearing on OSHA to evaluate the progress made to date and determine areas for continued improvement. The witnesses noted that OSHA continues to be one of the least-liked regulatory agencies in Washington due to a disjointed approach to enforcement and confusing, burdensome standards among other agency practices. In addition, the witnesses continued to favor legislation to reform OSHA, since, as one witness pointed out, there can be no guarantees that the next OSHA Administrator will maintain the policies set forth in the "Reinventing OSHA" initiative. With regard to specific reform provisions, several witnesses were supportive of the requirement that OSHA and other Federal agencies perform a cost/benefit analysis on regulations prior to their promulgation to ensure that the regulations do not impose unnecessary or duplicative burdens on the small business community. (For further information on this hearing, refer to section 7.2.50 of this report).

The Subcommittee on Regulation and Paperwork also held two hearings on workplace regulations. Beginning with a hearing on February 2, 1995, the Subcommittee examined from a broad perspective the impact of workplace and employment regulations on small business. At this hearing, the Subcommittee heard testimony concerning the detrimental effects of direct and indirect government regulations on small businesses, including minimum wage requirements, payroll and income taxes, and workplace safety rules. The Subcommittee also received a number of recommendations for easing these burdens, including reviewing all current regulations using cost-benefit analyses; providing information on regulations in "plain English"; reporting the cost of regulations; providing sunset requirements that would require regulations to be reviewed periodically before they are extended; placing the burden of proof on those who want to pass new regulations; and individualized regulatory requirements for businesses. (For further information on this hearing, refer to section 7.5.1 of this report).

At a subsequent hearing, the Subcommittee focused in particular on the new OSHA fall-protection standard, which lowered the fall-protection threshold from 16 feet to 6 feet. While the Administration witnesses testified that the fall protection threshold would prevent more injuries to workers and reduce workers' compensation payments without having a disproportionately adverse impact on small businesses, the small business witnesses agreed that this new standard would not only cost more money than anticipated, but would also result in more accidents. (For further information on this hearing, refer to section 7.5.3 of this report).

The full Committee also held hearings to examine the regulation-reduction efforts of the IRS and the EPA. At a hearing on October 25, 1995, the IRS Commissioner explained some of the programs that the IRS had been developing to streamline procedures for the small business owner. The small business witnesses stressed the need for much more to be done both by the IRS and the Congress. They maintained that the tax code is so convoluted and difficult to understand that it needs to be thrown out and totally rewritten from scratch. In addition, the small business witnesses testified

that reforms in the Regulatory Flexibility Act, the Taxpayer Bill of Rights, and the Paperwork Reduction Act must be passed to further enhance the process. The small business witnesses, however, opposed the final rule promulgated to implement the 1995 Paperwork Reduction Act given its public-protection exemption for the IRS. (For further information on this hearing, refer to section 7.2.32 of this report).

At the Committee's hearing on the EPA, the Administration witnesses noted that the EPA was half-way toward the reduction of its paperwork burden by 20 million hours, which EPA Administrator Carol Browner promised in March of 1995, with the implication being that the EPA would satisfy the 10-percent reduction goal established by the 1995 Paperwork Reduction Act. In particular, the witnesses noted the EPA's implementation of a new, streamlined, universal waste rule, less cumbersome Toxic Release Inventory reporting for small businesses, plans for cutting the frequency of Clean Air Act reports, and plans for phasing-in an electronic reporting system for discharge monitoring reports. The General Accounting Office (GAO) provided written testimony for the hearing and reported that while EPA claimed to have identified 18 million of the 20 million hours of its promised reduction, it was not likely to meet its actual reduction goals because of double counting and overstating of accomplishments. GAO predicted an increase in the EPA paperwork burdens for fiscal year 1996 as opposed to a decrease.

The small business witnesses overwhelmingly stressed that small businesses fear environmental regulatory agencies. They noted that these perceptions will not change simply as a result of policy pronouncements or shifts in attitude—concrete actions over time will be necessary to convince small business that the EPA is serious about changing its enforcement mentality. Several witnesses stressed that EPA regulations often prevent small businesses from being innovative and creating more environmentally conscious and economically efficient business practices. Small business owners also experience frustration in dealing with ever-changing regulations in many industries imposed on them by the EPA and State counterparts. Other witnesses stressed the importance of minimizing cost and avoiding duplication and complexity of regulatory compliance. (For further information on this hearing, refer to section 7.2.38 of this report).

In addition to its hearings on the initiatives of specific Executive Branch agencies, the Committee and two of its subcommittees held several hearings on various regulatory issues. The full Committee held a joint hearing with the Senate Committee on Small Business on October 31, 1995 to review the report issued by the Chief Counsel for Advocacy on the cost of Federal regulations on small business. The report was ordered by section 613 of Public Law 103–403 and was to include findings on "the impact of all Federal regulatory, paperwork, and tax requirements upon small business." The Chief Counsel reported that the regulatory burden had leveled off as a percentage of the gross domestic product and that two regulatory costs had actually gone down over the last two decades: the economic efficiency cost and the economic transfer cost. The biggest increase in burden, however, has been in environmental regula-

tions. The next largest increase is in process regulation, which is basically paperwork and involves the Internal Revenue Service and payroll and Social Security records. Social regulation costs such as Occupational Safety and Health Administration (OSHA) and worker safety rules had not increased significantly, according to the Chief Counsel. (For further information on this hearing, refer to section 7.2.33 of this report).

The Committee also held a hearing on the effects of Superfund liability on small businesses on October 19, 1995. The witnesses at this hearing reviewed the Administration's efforts to address the problems with Superfund and the initiatives designed specifically to benefit small businesses. Other witnesses at the hearing testified about the failure of Superfund to cleanup hazardous waste sites, and the need to eliminate the system of retroactive liability. (For further information on this hearing, refer to section 7.2.31 of this report).

The Subcommittee on Regulation and Paperwork held a hearing to identify regulation candidates for the House's new corrections calendar, which sets aside one morning every month to discuss regulations that face non-partisan opposition in an effort to eliminate regulations that are outdated or otherwise fail to achieve their purpose without having to go through the normal, laborious procedures required in passing legislation in the House. The Subcommittee received recommendations concerning FDA regulations governing the approval of new medical devices; regulations limiting the amount of water expelled per flush of a toilet; wetland-protection regulations; motor-carrier-safety regulations; and various tax regulations. (For further information on this hearing, refer to section 7.5.4 of this report).

Finally, the Subcommittee on Government Programs held a hearing to examine whether unrestricted government requests for proposals are discriminatory toward small business. The small business witnesses at this hearing provided anecdotal evidence that contract solicitations by Federal government agencies often include requirements that preclude or limit small business participation in the bid process. (For further information on this hearing, refer to section 7.3.17 of this report).

7.1.16 TAXATION

The Committee will continue to conduct oversight hearings into common sense reduction of the tax burden on small business. These hearings will include not only the fiscal but the paperwork burden of the Federal tax system and Federal enforcement efforts. (Winter, 1995 through Fall, 1996)

The Committee held a wide array of hearings on tax issues affecting small businesses. The Committee began the 104th Congress with an overview of the tax proposals included in the "Contract with America." The Committee also held hearings on individual provisions in the Contract including the reduction of the capital-gains tax rate; modification of the estate tax system, especially with regard to family-owned businesses; and restoration of the home-office deduction. Overall, the Committee heard testimony from dozens of small businesses stressing the need for meaningful tax reform in order to reduce the economic costs on small businesses as well as the compliance costs of the tax system, which

have risen dramatically in recent years. The witnesses also generally embraced the tax provisions contained in the Contract as a first step toward achieving overall tax reform. (For further information on these hearings, refer to sections 7.2.1, 7.2.2, 7.2.7, 7.2.9, 7.2.11, and 7.2.21).

The Committee also held a hearing in September of 1995 on pension reform and simplification from the perspective of small business. The small business representatives and government witnesses overwhelmingly supported the various legislative proposals designed to ease the regulatory burdens of pension administration and encourage small businesses to offer pension benefits to their employees. (For further information on this hearing, refer to section 7.2.27 of this report).

Although the Committee does not have legislative jurisdiction over tax issues affecting small business, members of the Committee actively promoted the legislation implementing the tax provisions of the Contract and the pension-reform proposals. In particular, these members were successful in having the capital-gains tax reduction, estate tax reform, increase in small business equipment expensing, S corporation reform, pension reform, and restoration of the home-office deduction included in the Balanced Budget Act of 1995 as passed by the House. While the final version of that legislation included these same provisions, except for the home-office restoration, the bill was vetoed by President Clinton in December of 1995.

The Committee also focused on the deductibility of health insurance by the self-employed and held a hearing on that issue on January 20, 1995. The witnesses stressed that the expiration of the deduction for health insurance costs by the self-employed in 1994 was a major set-back for the small business community and the deduction needs to be restored. (For further information on this hearing, refer to section 7.2.4 of this report). In response to these pleas, Chairwoman Jan Meyers (R-KS) introduced legislation to make the deduction permanent and increase it to 30 percent. In April of 1995, H.R. 831 was signed into law making the deduction permanent and increasing it to 30 percent. The Committee saw a further increase to the deduction in August of 1996 when H.R. 3103 was signed into law raising the deduction limit to 80 percent over a ten year period.

The clarification of the definition of independent contractors was also the focus of several hearings by the full Committee and its Subcommittee on Taxation and Finance. At three hearings, the full Committee and Subcommittee heard testimony about the lack of consistent rules for the classification of workers as either employees or independent contractors and the vigorous and often unreasonable enforcement activities of the Internal Revenue Service in this area. Overall, the small business witnesses were very supportive of legislative proposals for correcting the ambiguity in the definition and stressed the need for swift action to reduce the economic and compliance costs on small businesses. (For further information on these hearings, refer to sections 7.2.3 and 7.6.3 of this report).

While legislation that completely addressed the independent contractor issue was not enacted during the 104th Congress, the Committee saw the inclusion of procedural changes beneficial to small

business included in the Small Business Job Protection Act (H.R. 3448). In addition, the Chairs of both the full Committee and the Subcommittee on Taxation and Finance submitted extensive comments to the Internal Revenue Service on its proposed training manual for handling issues involving the classification of workers.

On a related topic, the Subcommittee on Taxation and Finance held a hearing on June 28, 1995 on the burden of payroll taxes on small business. The small business witnesses testified that the burden of payroll taxes falls excessively on small businesses. The witnesses maintained that payroll taxes are the greatest inhibitors to increased expansion and job creation because employers who are faced with payroll taxes must either raise prices, lower wages, or lay-off workers. (For further information on this hearing, refer to section 7.6.2 of this report).

Finally, the full Committee and its Subcommittee on Taxation and Finance dedicated a number of hearings to tax reform and the recommendations of the National Commission on Economic Growth and Tax Reform, also known as the "Kemp Commission." The Subcommittee began these efforts with a hearing on May 18, 1995 to discuss how a flat tax might affect small businesses. At this hearing, the witnesses reviewed and evaluated the various proposals for tax reform and focused especially on the flat tax proposals introduced in both Houses of Congress. (For further information on this hearing, refer to section 7.6.1 of this report).

Following the release of the Kemp Commission's final report in January of 1996, the Subcommittee conducted a series of three field hearings across the country and received extensive testimony about the defects in the current tax code and the need to replace it with a new tax system that is fairer, simpler, and less burdensome on small businesses. The witnesses at these field hearings also embraced the recommendations of the Kemp Commission that the new system must: (1) promote economic growth; (2) be fair and treat all persons equally; (3) be simple enough for anyone to understand; (4) be neutral (tax consequences should not be the prime factor in an individual's or business' economic decision-making); (5) be visible (special loopholes and benefits should not be hidden from view in a tax system); and (6) be stable (taxpayers should be able to plan their lives without the rules changing every year). The full Committee completed the series with a hearing on April 17, 1996 at which three commissioners from the Kemp Commission testified about their findings and the effects of tax reform on small business. (For further information on these hearings, refer to sections 7.6.4 and 7.2.41 of this report).

7.1.17 MINIMUM WAGE

The Committee will be conducting hearings on proposals to increase the minimum wage and on the restoration of the minimum wage exemption for certain small businesses. These hearings will focus on the economic impact of these proposals particularly regarding inflation and job creation. (Spring/Summer, 1995)

The Committee held a hearing on May 15, 1996, to assess from an economic and small-business point of view, how a proposed increase in the Federal minimum wage would affect small businesses' ability to provide jobs. The Committee also explored alternatives to an increase in the minimum wage that would boost take-home pay

and encourage employers to offer more job opportunities. In addition, the hearing focused on the Small Business Job Protection Act, which included several provisions that were designed to help increase the productivity of small businesses and promote opportunities for expansion.

The small business witnesses generally agreed that an increase in the minimum wage would be extremely detrimental to small business and would lead to the loss of jobs. The witnesses embraced alternatives to increasing the minimum wage, such as earned-income tax credits or payroll tax credits, which they stressed would better target the demographic groups in need of assistance. In addition, the costs of such targeted income redistribution through the tax code would be borne by the society as a whole rather than levied on a particular segment of the industry, namely, small businesses. (For further information on this hearing, refer to section 7.2.45 of this report).

Following the hearing, on May 23, 1996, the House considered and approved legislation that would increase the minimum wage by $0.90 over a two-year period. This legislation was coupled with a package of small business incentives designed to offset the detrimental effects of the minimum-wage increase on small business. The legislation was signed into law on August 20, 1996, as Public Law 104–188.

7.1.18 HEALTH INSURANCE

The Committee will be considering new proposals for improving access to the health care system for small business owners and their employees. We will also focus on the economic impact of expanding the health insurance deduction for the self-employed and related self-insurance issues. (Spring, 1995 through Spring, 1996)

As one of its first oversight activities, the Committee held a hearing on January 20, 1995, to consider the importance of the deduction for health-insurance costs by the self-employed. The witnesses noted that the 25-percent tax deduction for health-insurance costs for self-employed individuals was enacted by the Tax Extension Act of 1991 and expired on June 30, 1992. The deduction was extended for an additional year in the Omnibus Budget Reconciliation Act of 1993 through December 31, 1993. The deduction was not renewed after its expiration.

The witnesses agreed that health-care benefits are a necessity for small businesses and their employees. They stressed, however, that there is a great disparity between large companies, which generally can deduct 100 percent of their health-insurance costs, and small businesses, which historically have been able to deduct up to 25 percent and as of the date of the hearing none of their health-care costs. As a result, many small businesses are unable to offer their employees health-care benefits simply because of the costs involved. The panel stressed that companies would be more likely to provide benefits for their employees if they were able to offset these health-care costs with a tax deduction at some level, ideally 100 percent. (For further information, refer to section 7.2.4 of this report).

Following the hearing in April of 1995, H.R. 831 was signed into law making the health-care deduction permanent and increasing it to 30 percent. A further increase to the deduction occurred in Au-

gust of 1996 when H.R. 3103 was signed into law, and the deduction limit will rise to 80 percent over a ten year period.

7.1.19 OTHER COMMITTEE OVERSIGHT ACTIVITIES

Current Developments.

Throughout the 104th Congress, the Committee held a number of hearings to address developments that affected small businesses. For instance, the Committee held a hearing on July 12, 1995 to examine the effects on small travel agencies of the cap placed on airline ticket sales commissions by the major airlines. In 1995, the Committee also held hearings to review the effects of solid waste "flow control" on small businesses and consumers and the impact of the recent trend of railroad mega-merges on small business. In the Spring of 1996, the Committee held a joint hearing with the Subcommittee on Employer-Employee Relations of the Committee on Economic and Educational Opportunities to examine the union organizing practice know as "salting" and to assess its effects on small business. (For further information on these hearings, refer to sections 7.2.23, 7.2.28, 7.2.34, and 7.2.40 of this report).

The Subcommittee on Government Programs also held a number of topical hearings beginning with a February 13, 1995 hearing on the importance of Hanscom Air Force Base to small businesses in the New England region. In 1996, the Subcommittee held a hearing to examine how the Federal Deposit Insurance Corporation was handling small business asset foreclosures and a joint hearing with the Subcommittee on Education Training Employment and Housing of the Committee on Veterans' Affairs to evaluate programs administered by the Small Business Administration that assist veterans in readjusting to civilian life. (For further information on these hearings, refer to sections 7.3.1, 7.3.20, and 7.3.21 of this report).

The Subcommittee on Regulations and Paperwork held a hearing on March 7, 1996, to examine the ramifications of the National Labor Relations Board's proposed rule concerning single location bargaining units in labor representation cases. Also in March of 1996, the Subcommittee on Taxation and Finance held a joint field hearing with the Subcommittee on Government Programs to assess the effects of bank consolidations on small business lending. (For further information on these hearings, refer to sections 7.5.5 and 7.6.5 of this report).

Intellectual Property.

The Committee held two hearings to examine intellectual property rights and the particular concerns of small businesses. On April 25, 1996, the Committee held a hearing on patent term and patent disclosure issues. The hearing focused on two pending legislative proposals: H.R. 359, introduced by Congressman Dana Rohrabacher (R-CA), and H.R. 1733, introduced by Congressman Carlos Moorhead (R-CA). On May 8, 1996, the Committee held a hearing on music licensing and small business, which examined the issues in light of pending legislation, H.R. 789, introduced by Congressman James Sensenbrenner (R-WI), which would exempt certain smaller businesses from licensing fees for music that is aired

on radio or television, which the business uses for background only without separate charge to the customers. (For further information on these hearings, refer to sections 7.2.42 and 7.2.44).

Access to Capital.

In the Spring of 1996, the Committee held two hearings on small business' access to capital. The first hearing, held on February 28th, focused on the overall impediments and options that small businesses face when seeking to raise capital. The witnesses noted that the primary source of capital available to small businessmen and women continues to be bank lending. The Committee pursued the banking aspect of capital access in a hearing on May 1, 1996, and received testimony from two Federal regulatory agencies as well as several banks that focus significantly on small business lending. (For further information on these hearings, refer to sections 7.2.36 and 7.2.43 of this report).

Proposed Legislation.

The Subcommittee on Government Programs held two hearings to examine legislation pending in the 104th Congress that affects small businesses. On May 6, 1996, the Subcommittee held a field hearing to assess the effects of H.R. 2579, the Travel and Tourism Partnership Act of 1995, on the New England region and the country as a whole. Later, on July 17, 1996, the Subcommittee held a hearing on H.R. 1863, the Employment Non-Discrimination Act, and its impact on the small business community. (For further information on these hearings, refer to sections 7.3.13 and 7.3.18 of this report).

Committee Investigations.

As part of its general oversight jurisdiction, the Committee undertook several investigations concerning allegations of wrongdoing by various personnel at the SBA. In addition, the Committee investigated reports of improper activities by certain business entities licensed by the SBA or participating in SBA programs. At the time of the filing of this report, a number of these investigations were still on-going.

7.2 Summaries of the Hearings Held by the Committee on Small Business

7.2.1 Overview of small business tax proposals in the "Contract with America"

Background

On January 18, 1995, the Committee on Small Business held a hearing to provide an overview of small business tax proposals in H.R. 9, part of the legislation to enact the "Contract with America." This was the first in a series of hearings to look at the Contract with America and what its provisions mean for small business. The witnesses were asked to give broad overall impressions of the Contract's provisions for small business and how they would be helpful. The witnesses were also asked to address any concerns and problems for small business that are not covered in the Contract and how they would recommend that Congress address those problems and concerns.

Summary

The hearing was comprised of two panels, and the witnesses for the first panel included: John Motley, National Federation of Independent Business (NFIB); John Satagaj, Small Business Legislative Council (SBLC); and Karen Kerrigan, Small Business Survival Committee. The first panel emphasized the need for less taxation and regulation of small businesses. There was support for the Contract's proposal to clarify the home-office deduction and its S-corporation provisions. Because of the Contract's small business perspective, this panel gave it a grade of "B plus."

In particular, NFIB testified that many parts of the Contract with America, including the tax provisions, are supported by small-business owners according to its polls. NFIB indicated that the criteria it uses to judge the value of changes in the tax code include the following principles: keep it simple, cash flow is key, capital formation is needed for growth, and any tax cut needs to promote economic growth so the economy as a whole can grow. SBLC noted four provisions of H.R. 9 that were of interest to its members: capital gains tax relief, expansion of the direct expensing provision for small business under section 179 of the Internal Revenue Code, estate taxes relief, and restoration of the home-office deduction. In addition, NFIB and SBLC testified that they have developed a proposal for a fair classification of individuals as independent contractors or employees.

Witnesses for the second panel included: Ron Cohen, Cohen & Company, representing National Small Business United (NSBU); Alson Martin, Attorney, representing Small Business Council of America (SBCA); Ronald Sandmeyer, Jr., Sandmeyer Steel Company, representing the National Association of Manufacturers (NAM); and John Wharton, Miller and Long, representing the Associated Builders and Contractors (ABC).

SBCA expressed support for most, but not all, of the Contract with America. Specifically, its members supported: raising the estate and gift tax exemption, expanding the Individual Retirement Account and creating the American Dream Savings account, cor-

recting the "marriage penalty," establishing tax-exempt "Medisave" accounts through which the uninsured could pay for health insurance, allowing a per child tax credit of $500, providing long-term capital-gains tax relief, clarifying the home-office deduction, increasing allowable write-offs for new equipment, simplify the tax system, allowing employee stock ownership plans to be established by subchapter S corporations, and simplifying the pension and ERISA rules. NAM recommended that any tax cuts enacted as part of the Contract should be fully funded by offsetting spending reductions and urged the Committee not to lose sight of overhauling the Federal tax structure after the completion of the Contact with America.

ABC stressed that the Committee should take a serious look at the effects that some of the tax burdens are having on the construction industry and small businesses in every industry. In particular, ABC recommended that the lookback rule under the percentage-of-completion method for calculating annual income for long-term contracts should not apply to small contractors given the burdens that it imposes and its revenue neutrality to the Treasury. ABC also stressed the need for reform of the S-corporation rules. NSBU testified that the Contract with America was silent on several important small business issues: the rising cost of payroll taxes, S-corporation reform, and inequitable treatment of the health-care deduction between the self-employed and corporations. Overall, most of the panel gave the Contract a grade of "B" with respect to its small business proposals.

For further information on this hearing, refer to Committee publication number 104–2.

7.2.2 HOME OFFICE DEDUCTION

Background

On January 19, 1995, the Committee on Small Business held a hearing on restoring the home-office deduction. This was the second in a series of hearings devoted to tax policy and small business. Home offices are popular among small businesses because they make sense for businesses, families, and individuals. The hearing was designed to focus on the ability of taxpayers to deduct expenses relating to a home office that is used in the course of business. The hearing was also intended to explore the current limitations imposed by the Internal Revenue Service and the U.S. Supreme Court in *Commissioner v. Soliman,* 113 S.Ct. 701 (1993).

Summary

The hearing was comprised of two panels, and the witnesses for the first panel included: Wayne Allard (R–CO), Member of Congress; and Kweisi Mfume (D–MD), Member of Congress. Congressman Mfume introduced legislation to try to restore the deduction for home offices for small business in order to encourage the start-up of home-based businesses. Congressman Allard agreed with Congressman Mfume and added that the home-office deduction is both pro-family and helps our economy.

The second panel included: Beverly Williams, Williams Associates—Desk Top Publishing; Sandra Hanlon, Hanlon and Associates, representing the Bureau of Wholesale Sales Representatives; Carolyn Hennige, Creative Tutors; and Debra Lessin, D.J. Lessin and Associates, representing the National Association of Women Business Owners (NAWBO) and the Illinois Women's Economic Development Summit.

Ms. Williams expressed concerns with regard to local zoning and safety regulations and their effect on the home-office deduction. The Supreme Court's ruling in *Soliman* requires that a taxpayer must satisfy two tests before he or she may claim a deduction for expenses relating to a home office: (1) the customers/clients of a home-based business must physically visit the home office, and (2) the business must be generated from within the home office itself and not from transactions that occur outside the home office. Ms. Williams testified that local zoning regulations often prevent many owners from seeing clients in the home. In addition, home-based business owners may feel uncomfortable having total strangers in their homes. Both of these factors indicate that the *Soliman* decision precludes many home based businesses from claiming a deduction.

Ms. Hanlon pointed out that as the costs of conducting business continue to rise, and technology makes it easier to conduct business from the home, more businesses are moving back to the home office. Ms. Lessin testified that the requirements imposed by the Supreme Court's *Soliman* decision are short sighted and ignore the way that business is conducted today. In addition, she testified that the decision caught off guard many small business owners who had incorporated the effects of the home-office deduction into their economic planning.

Each of the small-business owners who testified expressed support for section 12003 of H.R. 9, the "Contract with America," which would restore the home-office deduction to its congressionally intended form.

For further information on this hearing, refer to Committee publication number 104–3.

7.2.3 INDEPENDENT CONTRACTOR STATUS

Background

On January 19, 1995, the Committee held a hearing on clarification of the status of independent contractors. This was the third hearing in a series devoted to tax policy and small business. The hearing focused on problems associated with the classification of workers as either employees or independent contractors by the Internal Revenue Service and was designed to look at the broad range of views on how best to classify workers.

In response to the intensity with which the Internal Revenue Service had pursued independent-contractor audits in the early 1970s, Congress dealt with the independent contractor issue beginning with the Revenue Act of 1970, which was modified in the early 1980s. Throughout its review of this issue, Congress found that classification of workers was extremely divisive and com-

plicated. Currently, the most difficult problem remains the lack of a clear definition of what constitutes an independent contractor.

Summary

The hearing was comprised of two panels, the first of which included: Cheryl M. Bass, American Professional Temporaries, Inc. and American Professional Home Health Inc.; Claudia Hill, National Association of Enrolled Agents; James Parmelee, Advertising Consultant and Freelance Writer, representing the National Association for the Self-Employed (NASE); Marc S. Wagner, H.D. Vest Financial Services; and Craig Willett, CPA, Willett and Associates, representing the National Federation of Independent Business (NFIB).

In general, the panel agreed that because of the intensity with which the IRS conducts independent-contractor audits, Congress needs to take steps to clarify the status of workers especially for small business persons who are frequently faced with this issue. Mr. Parmelee, who testified both as an independent contractor and representative of NASE, indicated that NASE's 320,000 small business owners have long supported the clarification of independent-contractor status. Other witnesses, including Ms. Bass, testified that legislation is particularly necessary to curb the IRS' intentional abuse of the independent-contractor designation in order to resolve many cases in favor of classifying workers as employees.

Members of the Committee and the witnesses generally agreed that the existing system is not achieving an equitable result with respect to classifying workers. In addition, Mr. Willett drew the Committee's attention to section 530 of the Revenue Act of 1978, which provides a "safe harbor" for businesses that have consistently treated and reported certain workers as independent contractors. Mr. Willett pointed out, however, that the criteria under Section 530 do not completely address the needs of NFIB's members. As a result, in 1991 NFIB developed a new, clearer safe-harbor proposal to prevent inadvertent reclassification of a worker who is currently considered an independent contractor.

The second panel included: Ronald Baker, BGM Industries, representing the Building Service Contractors Association International (BSCAI); Brickford Faucette, Perimeter Maintenance Corp.; Keith R. Fetridge of Aronson, Fetridge, Wiegle, and Stern, representing the Associated General Contractors of America (AGC); Wayne Kaufman, United Homecraft, Inc., representing the National Association of the Remodeling Industry (NARI); and Don Owen, P&P Contractors, representing the Associated Builders and Contractors (ABC).

The second panel echoed many of the same sentiments expressed by the first panel and agreed that independent contractors are an extremely valuable resource to the small business contracting community. Witnesses also emphasized that worker misclassification is an old issue for both the IRS and employers. In fact, Mr. Fetridge testified that AGC has been working with the IRS for over three years to resolve differences related to the twenty-factor common law test that the IRS uses to classify workers in order to arrive at more simplified classification criteria.

Mr. Kaufman illustrated the current climate for small businesses by discussing an audit that the State of Missouri undertook on his remodeling company in which every person that the company treated as an independent contractor was reclassified by the State as an employee. After the State imposed its fines, the IRS learned of the State's audit and fined the company an additional $3,000. The other witnesses concurred with Mr. Kaufman's concerns about audits and emphasized the damaging consequences of misclassifications mistakes. The panel agreed that Congress should provide small business and the IRS with clear guidelines on how to determine who is and who is not an employee. Toward these ends, Mr. Kaufman testified that NARI is working with a coalition headed by NFIB and Small Business Legislative Counsel to develop a new independent contractor "safe harbor" test that will be simple to understand and implement.

For further information on this hearing, refer to Committee publication number 104–1.

7.2.4 HEALTH INSURANCE DEDUCTIBILITY FOR SELF-EMPLOYED INDIVIDUALS

Background

On January 20, 1995, the Committee on Small Business held a hearing on the deductibility of health insurance by self-employed individuals. This was the fourth in a series of hearings devoted to tax policy and small business. The 25 percent health-insurance tax deduction for the self-employed was enacted by the Tax Extension Act of 1991 for the period ending on June 30, 1992. The deduction was extended for an additional year in the Omnibus Budget Reconciliation Act of 1993 for the period from July 1, 1992 to December 31, 1993. The deduction has been extremely important for small business owners, although in 1994, after its expiration, the deduction was not renewed. By extending the health deduction one year at a time, small-business owners were often not able to make necessary business planning decisions. As a result, Chairwoman Meyers introduced a bill to restore the deduction retroactively and to make the deduction permanent. Similarly, Congressman Earl Pomeroy introduced a bill to extend the deduction to 100 percent.

Summary

The hearing was comprised of a single panel, which included: Richard Enmeier, Marrick Company, representing the National Association for the Self-Employed (NASE); Jeanie Morrissette, Homestead Construction Company, representing the National Association of the Remodeling Industry (NARI); Lisa Sprague, Manager of Employee Benefits, Small Business Center for the U.S. Chamber of Commerce; Betty Stehman, Entrepreneurial Services, Inc., representing the National Association of Home-based Businesses (NAHB); and Craig Willett, Willett and Associates, representing the National Federation of Independent Business (NFIB). Overall, the panel agreed that health-care benefits are a necessity for small businesses and their employees. In addition, the panel stressed that companies would be more likely to provide better benefits for

their employees if they were able to deduct 100 percent of the associated costs as is the case for C corporations.

Research that Ms. Stehman prepared for her testimony revealed that 80 percent of all businesses in the United States are classified as small or home-based. As a result, 80 percent of all businesses are not able to deduct 100 percent of their medical-insurance costs as a business expense. Ms. Morrissette offered as an example her company, Homestead Construction Company, which provides health insurance to its shareholders, including Ms. Morrissette and her husband and one employee. Because the company is structured as an S corporation, the health-insurance benefits that Ms. Morrissette receives constitutes income to her resulting in the imposition of State and Federal taxes on value of this benefit. She, along with the National Association of the Remodeling Industry, testified that health-care insurance is an issue of importance to small business because of its significant cost to the business and the inequity in the treatment of the deductibility of health-care costs among C corporations, small businesses that are organized as S corporations, partnerships, and sole proprietorships.

Mr. Enmeier agreed with the other members of the panel that small business owners need the 25 percent health-care deduction and should be permitted to claim 100 percent of the cost of these benefits. Mr. Willett, as a small business owner and CPA, added that small business owners pay approximately 30 percent more than larger companies for similar health-care benefits. He was encouraged to hear that the Committee on Ways and Means planned to implement a 25 percent deduction for health-care insurance retroactive to January 1, 1994, although he would rather see 100 percent deductibility for small business.

Ms. Sprague testified that the Chamber of Commerce counts among its members 215,000 businesses, 96 percent of which have fewer than 100 employees and 71 percent of which have fewer than 10 employees. Ms. Sprague noted that the 25 percent health-care deduction for the self-employed was adopted in 1986 and was renewed annually until 1994. On behalf of the Chamber, Ms. Sprague asked the Committee to advocate for the 25 percent deduction to be restored retroactively to January 1, 1994 and for 100 percent deductibility to be phased-in over the near term.

For further information on this hearing, refer to Committee publication number 104–4.

7.2.5 STRENGTHENING THE REGULATORY FLEXIBILITY ACT

Background

On January 23, 1995, the Committee on Small Business held a hearing on strengthening the Regulatory Flexibility Act (RFA). With the enactment of RFA in 1980, Congress established the principle that small businesses are unique and that regulators could no longer promulgate rules and regulations without considering the effect on small businesses as well as less burdensome alternatives. Regulatory relief and flexibility were dominant themes at the 1980 White House Conference on Small Business, and the delegates and participants at that conference advocated the passage of legislation

to lighten the regulatory burdens imposed on small business. While RFA has met with some success, its primary weakness is its lack of an enforcement mechanism. As a result, the requirements of RFA are often ignored by some agencies.

Summary

The hearing was comprised of one panel, which included: Jere Glover, Chief Counsel for Advocacy, U.S. Small Business Administration (SBA); Jack Faris, President and CEO, National Federation of Independent Business (NFIB); Charles "Rusty" Griffiths, Jr., Binghamton Slag Roofing Company, Inc., representing the National Roofing Contractors Association (NRCA); James P. Carty, Vice President for Small Manufacturers, National Association of Manufacturers (NAM); Robert Pool, Homestyle Publishing; and Lee Taddonio, Vice President of TEC/Pennsylvania Small Business United, representing National Small Business United (NSBU).

The consensus of the panel was that Congress must put some "teeth" into RFA. The witnesses testified that small business owners want the government off their backs and out of their pockets. More specifically, NFIB recommended reforming the Paperwork Reduction Act, passing H.R. 450, which would include a six-month moratorium on new regulations, strengthening private-property rights protection, allowing for a cost-benefit analysis and/or risk assessment, establishing a regulatory budget, and "sun setting" regulations.

Mr. Griffiths focused on the asbestos standard, which is administered by the Occupational Safety and Health Administration (OSHA) and apply to the roofing industry. As Mr. Griffiths pointed out, the roofing industry consists of many small businesses that lack the resources and expertise to cope with OHSA's complicated standard, and NRCA emphasized the need for judicial review of the asbestos standard. Requiring OSHA to comply with RFA would help prevent arbitrary and burdensome regulations like the asbestos standard from adversely effecting small roofing companies as well as other small businesses.

Mr. Carty reminded the Committee that Federal agencies are not solely at fault; Congress needs to look at the laws that have been passed, and those that are under consideration, to assess their effect on the business community. NAM also suggested that one Federal agency, such as the SBA, be charged with ensuring that the other agencies are complying with RFA. He also pointed out that the Federal Trade Commission (FTC) was in the process of reviewing its regulations and asking specific questions of small business owners concerning the effects of FTC regulations on small business, and other agencies should be required to do the same type of review.

Several witnesses discussed H.R. 830, introduced by Congressman Thomas Ewing (R–IL) in the 103rd Congress, which would have provided regulatory reform and helped small business. Mr. Pool testified that the threat of judicial review could improve the seriousness with which RFA is treated by Federal agencies and improve the efficiency of the law. There was also general support among the panelists for the provisions in H.R. 9, which relate to the Regulatory Flexibility Act and would allow for judicial review

of Federal agencies' regulatory decisions and their indirect effect on small business. H.R. 9 would also increase the role and authority of the SBA's Office of Advocacy in reviewing and improving regulations.

For further information on this hearing, refer to Committee publication number 104–5.

7.2.6 OVERSIGHT—SBA 7(A) LENDING PROGRAM

Background

On January 25, 1995, the Committee on Small Business held an oversight hearing on the SBA's 7(a) General Business Guarantee Loan Program. The 7(a) program provides for $7.8 billion in small business loans, most of them for amounts under $100,000, to small businesses unable to obtain financing and credit from other sources. The 7(a) program is a significant aid to what is widely considered small business' greatest obstacle, the access to capital.

Summary

The hearing was comprised of two panels, the first of which included: Philip Lader, Administrator, U.S. Small Business Administration (SBA), accompanied by Patricia Forbes, Deputy Administrator for Economic Development, SBA, and John Cox, Associate Administrator for Financial Assistance, SBA. Mr. Lader testified that in 1991 the average size of a loan under the 7(a) program was $231,000. In contrast, for 1995, the SBA projected that the average loan will be $139,000. In addition, the number of loans was on the increase while the size of the loan was declining. Mr. Lader also testified that the 7(a) program had a current loss rate of 1.3 percent, which compares favorably with the 1 to 1.5 percent rate experienced by commercial lenders. When asked if he had put a cap on loans under the 7(a) program, Mr. Lader explained that the SBA had been approving loans in the amount of $38 million per day, and given the increased demand for 7(a) loans, the SBA would run out of guarantee authority by July, 1995. Mr. Lader testified that, as a result, he had administratively capped 7(a) loans at $500,000 instead of the statutory limit of $750,000 per loan.

The witnesses for the second panel included: James Maguire, Overhead Door Company; Paul Mayhew, SBA Officer; Deryl Shuster, President, Emergency Business Capital; Timothy Terry, President, Terry and Associates; and Anthony Wilkinson, President, National Association of Government Guaranteed Lenders (NAGGL). Mr. Terry testified that it is virtually impossible to find a lender who will lend to a small business startup, which is why the 7(a) program is so important. If a new business has a good business plan and a supportable sale forecast, the SBA will support the business and provide the guarantee for the bank to provide the loan. Mr. Terry mentioned, however, that there was some concern in the small business community about the limited SBA personnel available to review loan applications.

Two witnesses were associated with NAGGL and testified that NAGGL members make over 70 percent of all the 7(a) loans annually. They reminded the Committee of the conclusions made by

former SBA Administrator Saiki that the 7(a) program is an excellent example of how a public/private-sector partnership should be structured and even though it is a Federal government program, it should be held to a high standard. The witnesses assured the Committee that NAGGL is very serious about finding ways to reduce the subsidy rate for the 7(a) program while continuing to respond to as many potential borrowers as possible.

To illustrate a successful case involving a 7(a) loan, Mr. Maguire testified about the experience that his firm, the Overhead Door Company, had had with the program. Mr. Maguire stressed that without his company's SBA loan in 1993, he would not be in business today. As a result of the loan, he was able to restructure the company's financing and reduce the monthly debt payments, which enabled him to increase annual sales to $6 million in 1994. Since obtaining the loan, the company has paid down the balance by $90,000 and increased staff from 15 to 87 employees.

For further information on this hearing, refer to Committee publication number 104–6.

7.2.7 CAPITAL GAINS TAX REFORM AND INVESTMENT IN SMALL BUSINESS

Background

On January 26, 1995, the Committee on Small Business held an additional hearing on the small business incentives in the Contract With America focusing on the capital-gains tax reduction. The Contract provision would reduce the capital-gains tax rate by 50 percent across the board and would index the value of capital asset for inflation to prevent the tax from being levied on illusory gains, which are created largely as a result of inflation.

Summary

The hearing was comprised of a single panel, which included: Dr. John Goodman, President and CEO, National Center for Policy Analysis (NCPA); Sydney Hoff-Hay, President and Executive Director, Lincoln Caucus and Member, Board of Directors, Small Business Survival Committee (SBSC); Pete Linsert, Martek Biosciences Corp., accompanied by Chuck Ludlam, Esq., Vice President for Government Relations, Biotechnology Industry Organization (BIO); Paul Pryde, Pryde and Company; and Alan Sklar, CPA, Gleeson, Sklar, Sawyers, and Cumpata LLP.

While the witnesses generally had varying points of view on the issue of capital-gains taxes, the panel agreed that there should be some form of reduction or elimination of the tax levied on capital gains. Dr. Goodman, testified that NCPA was supportive of the proposal in the Contract With America to cut the capital gains tax rate in half and to index capital gains, which he believed would benefit both taxpayers and the Federal government. These sentiments were echoed by the witnesses representing the biotechnology industry, although BIO continues to support a targeted capital-gains incentive that would supplement an across-the-board capital-gains incentive. Similarly, Mr. Hoff-Hay testified that SBSC fully supports eliminating the capital-gains tax and stressed that the

Contract With America proposal is the most pro-growth, pro-American-dream step taken by the new Congress.

The importance of reducing the capital-gains tax was underscored by Mr. Pryde who operates a consulting firm specializing in capital and business formation issues. Mr. Pryde testified that according to research on capital-access problems of small and minority-owned firms to reduce joblessness in the Hispanic and African American communities, there needs to be an increase in the number of minority-owned business, which tend to hire more minority workers. To encourage the development of minority-owned business and increase minority hiring, Mr. Pryde testified that capital needs to be more accessible to these emerging enterprises. He also recommended that Congress strengthen Sections 1044 and 1202 of the Internal Revenue Code, which govern the rollover of certain gains into Specialized Small Business Investment Companies and the exclusion of gain from the sale of certain small business stock.

The final panelist, Alan Sklar, also favored reducing the capital-gains tax rate as an incentive for investment in small businesses. He recommended that Congress adopt a "small business investment incentive act" to correct the illusory aspects of Section 1244 of the Internal Revenue Code, which govern the treatment of certain losses on the sale of small business stock. Mr. Sklar testified that such legislation would create an inducement for investors to provide needed capital to the small business community as well as provide a tax deduction for certain investments in small business.

For further information on this hearing, refer to Committee publication number 104–7.

7.2.8 PAPERWORK REDUCTION ACT

Background

On January 27, 1995, the Committee on Small Business held a hearing on reducing the paperwork burdens on small business. The Paperwork Reduction Act (PRA), enacted in December of 1980, consolidated control over Federal agencies' paperwork requirements and compliance enforcement efforts within the Office of Management and Budget (OMB) through a newly created Office of Information and Regulatory Affairs (OIRA.) The Director of OMB is empowered to review all Federal agency paperwork requirements and reject those that are inappropriate, impose a budget limitation of each agency's total paperwork burdens, and assign an OMB control number to each approved paperwork requirement. Small business is the group identified to benefit the most from the reforms contained in PRA.

The hearing was designed to explore the issues surrounding the paperwork reduction provisions in Title V of H.R. 9, the Job Creation and Wage Enhancement Act of the Contract With America. These provisions were modeled upon H.R. 2995, "the Paperwork Reduction Act of 1993," which was introduced during the 103rd Congress in an effort to require Federal agencies, before they impose paperwork burdens, to determine the true cost of these requirements on small businesses and weigh the burdens against the expected benefits.

Summary

The hearing was comprised of two panels. The first panel included a single witness: Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). Ms. Katzen initially reviewed the legislative history of PRA and then discussed the Administration's efforts to comply with the Act. In addition, Ms. Katzen testified that the current 5-percent goal per year in paperwork reduction is important to have as a goal, but she indicated that to impose a fixed number legislatively would not be constructive. She also emphasized the need to use technology to make Government more efficient. Finally, Ms. Katzen could not state the number of cases in which her office had disapproved of agencies' paperwork requests, but she testified that the number had gone down in recent years. She indicated that the decline was likely due to the fact that agencies are getting better at understanding what OMB expects. Ms. Katzen also indicated that the Treasury Department accounts for 75 to 80 percent of the paperwork burden.

The witnesses for the second panel included James P. Carty, Vice President for Small Manufacturers, National Association of Manufacturers (NAM); Guy Courtney, President and CEO, The Machaira Group; William Koeblitz, President and CEO, Med Center, Inc., accompanied by Nancy Fulco, Manager, Regulator Policy, U.S. Chamber of Commerce, and David Voight, Director, Small Business Center, U.S. Chamber of Commerce; Dr. David Massanari, a private practitioner; and Dr. Victor Tucci, Three Rivers Health and Safety.

Several witnesses testified on behalf of the U.S. Chamber of Commerce, which has undertaken efforts to ensure a sound Federal regulatory infrastructure that is fair and conducive to business growth and job creation and that does not subject industry or the public to unreasonable regulatory costs and burdens. These witnesses testified that the Chamber is pursuing the goal of overhauling the Federal regulatory process, which would result in more efficient rulemaking and greater, but less expensive, compliance by regulated entities. The Chamber also strongly supports efforts to provide more reasonable regulations. The witnesses testified that Title V of H.R. 9 would strengthen OIRA's responsibilities under the original PRA, but H.R. 9 fails to include the corresponding provisions that would strengthen the PRA responsibilities of each agency.

Dr. Massanari provided the Committee with the health-care industry's perspective and testified that Federal regulatory activity and its paperwork burden are challenging health-care providers' ability to provide attentive, cost-efficient service to their patients. A physician's practice is a small business, and the Federal government regularly makes demands on doctors for more information and documentation, which increases overhead. Dr. Massanari also offered several recommendations for strengthening the Paperwork Reduction Act's ability to hold Federal agencies accountable for paperwork burdens that they impose on the medical community.

In general, the panel expressed solid support for Title V of H.R. 9. In addition, the witnesses endorsed the concept of adding a cost-benefit analysis to the PRA, since it has been generally required

with respect to regulatory burdens but not paperwork burdens. Mr. Carty testified that while NAM strongly supports Title V of H.R. 9, the bill's current goal of reducing paperwork burdens by 5 percent should be raised to 10 percent.

For further information on this hearing, refer to Committee publication number 104–8.

7.2.9 ESTATE TAX REFORM AND THE FAMILY BUSINESS

Background

On January 31, 1995, the Committee on Small Business held an additional hearing on tax reform and the Contract With America, with a particular focus on the estate tax and its effects on the family business. Estate taxes are a critical issue for small business owners who want to build a business and leave something for their children and families. In addition, the continuity of a business into the second and third generation of a family is vital to the American economy and an important aspect of our American society. Section 12001 of H.R. 9, the Job Creation and Wage Enhancement Act, contains a provision that would address this important issue by increasing the estate and gift tax exclusion from its current $600,000 to $750,000.

Summary

The hearing was comprised of two panels, the first of which included: Lee William McNutt, Jr., President, Collin Street Bakery, representing the National Federation of Independent Business; Diemer True, True Companies, Chairman of the Board, U.S. Business and Industrial Council; Harold Apolinsky, Sirote & Permutt, representing the Small Business Council of America (SBCA); Joseph Bracewell, Chairman, Century National Bank; and Robert Spence, President, Pacific Lumber and Shipping.

There was a general consensus among the first panel that the Contract With America provisions increasing the estate and gift tax exclusion would greatly benefit small businesses. Current estate-tax rates impose an often overwhelming burden on small family-run businesses, and many contend that the small amount of revenue generated by this tax does not justify the long-term damage that it has on small businesses. In the long run, the estate tax results in less economic activity, loss of jobs, and prevention of the continuity and fulfillment of the American dream of owning your own business and passing it on to your children. The panel recognized that exempting business assets from estate taxation would remove a tremendous governmental burden imposed on small family businesses.

Mr. Apolinsky reminded the Committee that the 1986 White House Conference on Small Business recommended eliminating estate and gift taxes on the transfer of small business assets to family members. He also noted that only 30 percent of family-owned businesses are passed on to a second generation, and then only 13 percent make it to the third generation. Mr. Apolinsky testified that the Federal estate tax, which can be as high as 55 percent, is the primary cause of this low rate of handing small businesses

down to succeeding generations. In addition, the panel agreed that the best thing that Congress could do to help family businesses grow and provide new jobs would be to repeal completely the estate and gift tax.

The witnesses on the second panel included: Raymond Arth, President, Phoenix Products, representing National Small Business United (NSBU) and the Council of Small Enterprises; Harry S. Bell, President, South Carolina Farm Bureau Federation; Patty DeDominic, President, PDQ Personnel Services, Inc., representing the National Association of Women Business Owners (NAWBO); Mark Vorsatz, Chairman, Estate and Gift Tax Committee of the American Institute of Certified Public Accountants (AICPA); and Chandler Noerenberg, Vice President, Washington Farm Forestry Association.

The members of the panel overwhelmingly supported the provision in H.R. 9 that would raise the non-taxable portion of an estate from the current $600,000 level to $750,000. Several witnesses also praised the provisions of the bill that would index the exemption for inflation. Additionally, the witnesses offered a number of other suggestions to the Committee. Mr. Arth testified that small businesses are eager to find more innovative and equitable ways to allow the continuation of family businesses. NSBU also supports another proposal, not in the Contract With America, that would specifically exempt family-owned businesses from the estate tax. Mr. Bell testified that the farming industry has advocated for many years that the estate tax should be abolished and that the annual gift-tax exemption per donee should be increased from $10,000 to $20,000. Ms. DeDominic also raised the issue of valuation of small businesses under the estate and gift tax, which is extremely important to small business and the NAWBO membership.

Mr. Vorsatz testified that family-owned businesses have many special problems and circumstances that should be given special consideration. He mentioned, for example, that transfer taxes frequently cause a tremendous financial strain on a small business. The AICPA recommended a number of technical and procedural changes to help small business owners deal with the burdens imposed by the estate tax. Finally, Ms. Noerenberg proposed a National Family Enterprise Preservation Act of 1995, which, she testified, would offer estate-tax relief to more that 98 percent of the country's family-owned farms and businesses.

For further information on this hearing, refer to Committee publication number 104–9.

7.2.10 AMENDING THE REGULATORY FLEXIBILITY ACT—PAST PERFORMANCE AND THE NEED FOR MEANINGFUL REFORM

Background

On February 10, 1995, the Committee on Small Business held a second hearing on the Regulatory Flexibility Act (RFA). While the first hearing (held on January 23, 1995) focused on current legislation designed to strengthen the Act, this hearing was designed to provide the Committee with a historical perspective on the RFA. In particular, the witnesses were asked to examine specific areas in

which the RFA has worked as well as ways to improve the Act in the areas in which it has not accomplished its intended purpose.

Summary

The hearing was comprised of two panels with witnesses from various Federal agencies. The first panel included: Jere Glover, Chief Counsel for Advocacy, U.S. Small Business Administration (SBA), and Frank Swain, former SBA Chief Counsel for Advocacy and currently with the firm of Baker & Daniels. Both witnesses provided the Committee with historical background on the RFA and offered several suggestions. Specifically, Mr. Swain urged that it is time to change the RFA so that if an agency fails to meet the standards for how a rule affects small business, the agency could be taken to court and made to justify that its regulation is not arbitrary and capricious. In addition, Mr. Glover testified that the RFA requires agencies to go back and do a periodic review of their regulations and look at the impact on small business. When the RFA was originally enacted, agencies were given 10 years in which to perform the review. Mr. Glover testified, however, that virtually no agency has complied.

The witnesses for the second panel included: Richard Roberts, Commissioner, Securities and Exchange Commission; John Spotila, SBA General Counsel; and Christian White, Director, Bureau of Consumer Protection, Federal Trade Commission (FTC). Like the first panel, the witnesses focused largely on suggestions for improving the RFA, including those included in pending legislation such as Title VI of H.R. 9. While the panelists generally recognized the need for judicial review as a means of enforcement for the RFA, one witness stressed that Congress should limit any new judicial remedy to avoid another class of unnecessary, unlimited, and unproductive litigation. There was also considerable concern about the proposal for agencies to notify the SBA Chief Counsel for Advocacy at least 30 days before publishing a notice of a proposed rulemaking. The requirement could extend the time period required for providing much needed rules and regulations as well as impose additional cost on the agencies and regulated businesses.

For further information on this hearing, refer to Committee publication number 104–10.

7.2.11 CAPITAL GAINS TAX REFORM

Background

On February 22, 1995, the Committee on Small Business held a hearing on the capital-gains tax reduction provisions in H.R. 9, which included many of the provisions of the Contract with America. On January 26, 1995, the Committee heard from several small business and economic development specialists regarding the need for investment in small business and how this could be enhanced through special tax treatment for capital gains. For this hearing, expert economic witnesses were asked to comment on the capital-gains tax reduction provisions in H.R. 9 and provide the Committee with their assessment of whether reducing the capital-gains tax rate would be a cost effective way to spur investment in economic

growth. Additionally, the witnesses were asked to examine whether an across-the-board cut in capital gains taxes would stimulate investment in all areas of the small business community or whether a more targeted incentive would be required.

Summary

The hearing was comprised of two panels, the first of which included: Henry Aaron, Brookings Institute; Sheldon Friedman, Department of Economic Research, American Federation of Labor-Congress of Industrial Organizations (AFL–CIO); Gary Robbins, President, Fiscal Associates; and Norman B. Ture, Institute for Research on the Economics of Taxation. A majority of the first panel supported the capital-gains tax reduction provisions included in H.R. 9. Witnesses noted that both of the principal features of the proposed capital-gains tax reform—reduction in marginal tax rates applicable to capital gains and the inflation adjustment to the basis of capital assets—would contribute to moderating the destructive income-tax bias against savings and would be a strong first step toward the complete elimination of tax on capital gains. Witnesses also emphasized that in order to promote economic growth in the United States—increased wealth for American taxpayers—requires an increase in domestic investment, which can only be accomplished if the savings level is also increased.

In contrast, the AFL–CIO strenuously opposed any further cuts in tax preferences accorded to capital gains. From labor's perspective, the capital-gains tax reduction provisions of H.R. 9 would have a severely negative effect on the Federal budget and would not stimulate productive investment, economic growth, or the creation or retention of jobs. Concern was also raised about the cost of the capital-gains tax reduction and the corresponding revenue effects. Witnesses noted that the larger the revenue loss attributed to capital gains, the greater the spending reductions that will have to be made somewhere else, making passage of the capital-gains tax reduction more difficult.

The second panel included the following witnesses: Dr. Jane Gravelle, Senior Specialist in Economic Policy, Congressional Research Service (CRS); Dr. Richard Rahn, Small Business Survival Committee; and J.D. Foster, Executive Director and Chief Economist, Tax Foundation. Witnesses on the second panel noted that a reduction in the capital-gains tax can affect small business in several ways. First, the capital-gains tax has a serious effect on the ability of a small business to begin and expand. Without the availability of capital, small businesses would have little chance of starting operations, and as the business succeeds, the capital-gains tax can have limiting effect on the business' ability to sell assets or stock in the company in order to obtain additional capital for expansion. On a broader level, a reduction in the capital-gains tax could cause interest rates to rise as capital is diverted into equities. In addition, a generally available capital gains provision could undermine the effect of the existing 50-percent exclusion for gains on new stock issues of small firms, which was enacted in 1993. One witness also noted that indexing of capital assets would be beneficial, although it would not offer significant relief for most small businesses.

The panelists offered differing opinions as to whether capital-gains tax relief should be targeted specifically toward small businesses. Suggestions for targeting capital-gains tax reductions included expansion of the present small-business stock exclusion, providing a lifetime dollar exclusion with respect to capital gains, and permitting averaging of capital-gains recognition. The witnesses cautioned, however, that targeting capital-gains tax relief may increase the administrative complexity of the tax system considerably. Other witnesses stressed that a reduction in the capital-gains tax should be across the board and treat all taxpayers as evenly and fairly as possible.

For further information on this hearing, refer to Committee publication number 104–11.

7.2.12 OVERALL REVIEW OF THE SBA

Background

On February 28, 1995, the Committee on Small Business held the first in a series of hearings on the overall review of the Small Business Administration. The purpose of this hearing was to give a broad review the SBA's programs and operations. The Committee undertook the hearing as part of its oversight jurisdiction in an effort to examine the success of current SBA programs as well as opportunities for efficiency among the programs and initiatives.

Summary

The hearing was comprised of one panel, which included three past SBA Administrators: Eugene Foley, who served as SBA Administrator under both Presidents Kennedy and Johnson; Vernon Weaver, who administered the SBA under President Carter; James Sanders, who served President Reagan at the SBA; and Barry Baldwin, Head of Research, Small Firms in the U.K., Small Business Bureau.

Mr. Foley discussed the financial programs at SBA and the importance of access to capital for small businesses. He also gave a short history of the SBA starting with the Reconstruction Finance Corporation (RFC) initiated by President Hoover in 1931, which was designed to help businesses during the Depression. The program existed until 1953 and was not restricted to small business. President Eisenhower turned the RFC into the Small Business Administration in 1953 and limited the program to small businesses.

Mr. Weaver listed some common complaints and misconceptions about the SBA. He testified that the agency should not be abolished, although some programs should be merged with others, while other programs could be eliminated. He also expressed the belief that most of the management assistance efforts undertaken by SBA should be privatized. Mr. Weaver also advocated that all SBA direct-lending programs should be eliminated, and he stressed the importance of the SBA Office of Advocacy.

Mr. Sanders testified primarily about two programs at SBA. He applauded the SBA's efforts with the disaster assistance program, although he expressed his belief that the program belongs under the administration of the Federal Emergency Management Agency

(FEMA). Mr. Sanders also testified that the 8(a) program is one of the biggest sources of scandal at SBA, and the program needs to be revamped.

Mr. Baldwin brought to the panel the perspective of the British government's efforts to assist small business through the Small Business Bureau, in London, England. Mr. Baldwin testified that in the late 1970's the small firms in England had been in long-term decline. In contrast, the British found that small business in the U.S. was viewed as the foundation of national security and free enterprise. He noted that historically, in contrast to the American Small Business Act under which the Federal government had a legal obligation to aid, counsel, assist and protect small businesses, the British government provided no support for small business. Mr. Baldwin indicated that the British continue to recognize the role of the SBA and the commitment of the agency to the success of American small businesses. Today the British government remains committed to the smaller firms and is confident that they will form a dynamic and growing part of the British economy throughout the 1990s and into the 21st century.

For further information on this hearing, refer to Committee publication number 104–13.

7.2.13 REVIEW OF THE SBA PROCUREMENT ASSISTANCE PROGRAMS

Background

On March 2, 1995, the Committee on Small Business held the second in a series of hearings on the overall review of the Small Business Administration (SBA). The purpose of this hearing was to continue with the top-to-bottom review of the SBA's programs and focus particularly on the SBA's Procurement Assistance programs.

Summary

The hearing was comprised of two panels, the first of which included: Philip Lader, Administrator, SBA, accompanied by Mary Jean Ryan, Senior Finance Executive, SBA, Patricia Forbes, Senior Finance Executive, SBA, Robert Neal, Associate Deputy Administrator, SBA, Robert Stillman, Associate Administrator for Investment, SBA, Marty Teckler, Deputy General Counsel, SBA, Doris Freedman, Associate Administrator for Disaster Assistance, SBA, and Douglas Criscitello, Deputy Administrator for Management and Administration, SBA.

At the outset, Administrator Lader reviewed the SBA's current loan portfolio, which he stated included 137,000 loans and financings of almost $23 million with a loss rate of 1.3 percent. The average size of the loans has gone from $250,000 down to $139,000. In addition, he noted that there were 250,000 current loans in the disaster loan portfolio totaling $5.5 billion. Administrator Lader also outlined his program for reinventing the SBA, which includes four areas of focus: (1) access to capital including the 7(a) loan and SBIC programs; (2) emphasis on education and training primarily through the Small Business Development Centers (SBDCs) and the Business Information Centers (BICs); (3) the SBA's role in advo-

cacy and contract opportunities for small business; and (4) the "SBA nobody knows," which includes the disaster assistance program.

The second panel included: Robert Neal, Associate Deputy Administrator, Government Contracting and Minority Enterprise Development Program, SBA, accompanied by Debra Libow, Procurement Center Representative, Robert Moffitt, and Thomas Dumar, Esq.; Anthony DeLuca, Small and Disadvantaged Business Officer, Department of the Air Force; Colette Nelson, Small Business Legislative Council; James Lee, Southeastern Lumber Manufacturer's Association; and Dona O'Bannon, National Association of Women Business Owners (NAWBO).

The second panel focused on the SBA's government contracting programs. Mr. Neal testified that these programs have an annual budget of $20 million and 250 employees, 7 percent of the SBA's work force, are assigned to this area. In 1994, the SBA's government contracting programs saved the taxpayer almost $220 million, ten times what it costs to run the program. Ms. Libow noted that small business has a significant voice in the government procurement process through the various Procurement Center Representatives in the Government Contract Division at the SBA. Mr. Neal offered as an example of the procurement assistance that the SBA provides for small businesses the Certificate of Competency (COC) program. He explained that the COC program is an appeal process for small businesses that are rejected for an award of a government contract based on a contracting officer's doubts about the company's ability to perform satisfactorily.

The panel also addressed the benefits that the Small and Disadvantaged Business Offices (SADBUs) provide to small business. Mr. DeLuca, a SADBU with the Department of the Air Force, emphasized the efforts that his office has made to expand the information available on Federal contracting opportunities for small business, especially through electronic media. Mr. DeLuca suggested that the Committee explore options for allowing contracting agencies more latitude in awarding advance payments and urged support for the Mentor-Protégé program, which he testified has been very successful in helping small minority businesses.

Several of the panelists also gave anecdotal testimony about the success of the SBA's government contracting programs. In particular, Ms. O'Bannon praised the SBA programs and congressional goals for promoting women-owned businesses, in part through Federal contract awards.

For further information on this hearing, refer to Committee publication number 104–14.

7.2.14 REVIEW OF SBA BUSINESS DEVELOPMENT PROGRAMS

Background

On March 6, 1995, the Committee on Small Business held a hearing on the Small Business Administration's 8(a) Business Development Program. This hearing is one in a series on the top-to-bottom review of the SBA. The 8(a) program was originally created to assist businesses owned by individuals who are socially and eco-

nomically disadvantaged. The Committee's objective for the hearing was to examine the program's continuing efficacy and ability to meet its statutory objectives as well as to review reports of fraud and abuse within the 8(a) program.

Summary

The hearing was comprised of two panels. The witnesses for the first panel included: Robert Neal, Associate Deputy Administrator, Government Contracting and Minority Enterprise Development, Small Business Administration (SBA), accompanied by Herbert Mitchell, Associate Administrator for Minority Enterprise Development, SBA; Judith England Joseph, Director, Housing and Community Development Issues, Division of Resources, Community, Economic Development Division, General Accounting Office (GAO); Ralph Thomas, Associate Administrator, National Aeronautics and Space Administration (NASA); Fernando Galaviz, Vice Chairman, National Federation of 8(a) Companies; and Walter Sorg, past Director of the Office of Minority Business, U.S. Department of Commerce.

Members of the panel noted that the SBA's Office of Minority Enterprise Development currently assists small, disadvantaged business in developing the capacity to compete successfully in the mainstream economy. Mr. Sorg provided the Committee with some history and testified that in March of 1969, President Nixon signed an Executive Order establishing minority business as a national priority. The mission was to confirm every citizen's right to participate in the America enterprise system as a business owner. Currently, there are 5356 certified firms in the 8(a) program, and while several witnesses stressed the need for reform within the program, evidence continues to indicate that there is still a need for assistance to small disadvantaged businesses.

Ms. Joseph reviewed the SBA's progress in implementing key changes that were designed to make the 8(a) program a more effective business-development initiative. She expressed concern, however, that many firms nearing the end of their program terms are still dependent on 8(a) contracts. These firms often leave the program without an adequate base of non-8(a) contracts, raising doubts about the firms' viability for success. Participants in the 8(a) program are required to develop business plans that include objectives for future 8(a) and non-8(a) contracts in an effort to plan for the day when they graduate from the 8(a) program. Ms. Joseph noted that the SBA is supposed to review the business plan of each firm in the 8(a) program annually.

Mr. Thomas provided the Committee with the perspective of a Federal agency that provides contracts to 8(a) companies. He testified that NASA has doubled its awards to small disadvantaged businesses in the last five years. In addition, NASA has doubled its subcontracting dollars to small disadvantaged businesses in the last four years. As a result, the 8(a) program represents one-fourth of NASA's total dollars going to small disadvantaged businesses. Mr. Thomas noted that NASA's increased participation in the 8(a) program was the result of the agency's efforts to integrate small disadvantaged businesses fully into NASA's competitive base of contractors.

On behalf of the National Federation of 8(a) Companies, Mr. Galaviz offered specific recommendations to improve the 8(a) program. In particular, he stressed that the SBA needs to make a greater effort to educate new participants in the 8(a) program concerning the responsibilities and obligations of a government contractor. He also recommended that Federal programs similar to 8(a) that are aimed at small disadvantaged businesses could be consolidated in order to help cut costs of running the Federal government. Mr. Galaviz also recommended that firms who are currently participating in the 8(a) program, as well as graduates, should be encourage to provide mentoring for other small firms.

The second panel included: Melvin Clark, President, Metroplex Corp.; Lloyd Parker, President and CEO, Contract Services, Inc.; Joe Gomez, President and Owner, Gomez Electric; Arnold O'Donnell, Vice President, O'Donnell Construction; Kemma Walsh, President, Lake Michigan Contractors, Inc.; Robert McCallie, President, McCallie Associates, Inc.; and Nancy Archuleta, President, MEVATEC Corp.

Several members of the panel were either current participants or graduates of the 8(a) program. These witnesses generally agreed that the program was a valuable tool for eligible small businesses that enables them to compete better in the marketplace. The witnesses, however, stressed that problems within the program need to be addressed. Specifically, the current high business failure rate among graduates of the 8(a) program should be reversed, and one witness recommended a postgraduate program to address this issue. Other problem areas within the program identified by the witnesses include: insufficient review by the SBA of applicants' background to ascertain their level of expertise; SBA's failure to enforce the two-years-in-business requirement; prevalence of contract awards outside the business area of expertise; failure of the program to provide competitive bidding; inadequate enforcement by the SBA of the required level of competitive work and 8(a) work; and participation in the program by firms not in need.

In contrast, two witnesses testified that the 8(a) program should be eliminated. These witnesses stressed that the SBA's efforts should be refocused towards guaranteeing the equality of opportunity rather than mandating the conformity of results to predetermined levels. In addition, these witnesses emphasized that the anti–competitiveness of the program and its use of sole-sourced contracts was detrimental to small businesses and should be halted.

For further information on this hearing, refer to Committee publication number 104–15.

7.2.15 REVIEW OF SBA 504 PROGRAM

Background

On March 9, 1995, the Committee on Small Business held a hearing on the Small Business Administration's 504 Program. Through the 504 program small businesses access financing for capital improvement—often referred to as "bricks and mortar work"—through a unique cooperative effort among bankers, non-

profit certified development companies, and the Small Business Administration (SBA). Historically, this cooperative effort, coupled with a requirement for job creation, has made the 504 program a solid tool for economic development and a program that has required little maintenance. Recent developments in the program include legislation considered in the 103rd Congress to streamline the 504 program loan-approval process. In addition, the SBA recently decertified a number of CDCs under their Associate Development Company Initiative.

Summary

The hearing was comprised of one panel, which included: Mary Jean Ryan, Associate Deputy Administrator for Economic Development, SBA, accompanied by Doug Criscitello, Deputy Associate Deputy Administrator for Management and Administration, SBA, John Cox, Associate Administrator for Financial Assistance, SBA, and LeAnn Oliver, Acting Director, Office of Rural Affairs and Economic Development, SBA; Kenneth Lueckenotte, Executive Director, Rural Missouri, Inc., and President, National Association of Development Companies (NADCO); A. Jeffrey Donaldson, Vice President, Northwest National Bank; Katharine Delahaye Paine, CEO, The Delahaye Group, Inc.; William Ruettgers, President, Southern Cast, Inc.; John Jensen, former owner of a Motel 60 in Centerville, Iowa; and Michael Kehoe, President of Kehoe Ford.

The witnesses on the panel representing the SBA testified that the 504 Program is vitally important because it provides long-term fixed-rate financing typically for buildings and heavy equipment acquired by small businesses. This program exists and needs to exists because the private market does not adequately provide financing for these purposes. The SBA witnesses stressed that banks typically do not undertake this type of lending because they frequently are unable to make long-term and fixed-rate loans. The 504 program is cost effective and there is a significant return on every dollar spent in the program. In an effort to achieve additional efficiencies, the SBA is currently implementing two new initiatives, such as the Accredited Lenders Program and the Premier Certified Lenders Program.

The small business witnesses also expressed support for the 504 program, noting that it enables certified development companies to finance businesses that are starting up, expanding, and relocating. Mr. Lueckenotte testified that the efficiency of the program is demonstrated by the fact that for every dollar of appropriated Federal funds, $400 of private capital is created in the marketplace. In addition, the program has financed 20,000 businesses and created over 350,000 jobs. Mr. Lueckenotte testified that NADCO has been working with the SBA to make the program more efficient, mainly through the creation of the Premier Certified Lenders Program as well as efforts to streamline and automate the program. Mr. Donaldson also expressed the belief that the 504 Program served a valuable role in providing capital to assist credit-worthy small businesses that would have not qualified for commercial real estate loan without the program. In addition, he noted that banks use the 504 program to enhance bank liquidity, since their portion of the 504 loans can be sold into the secondary market.

Other small business witnesses provided the Committee with anecdotal evidence of the program's success and the additional jobs that small businesses are able to create as a result of financing under the 504 program. In contrast, one witness, Mr. Jensen, testified that he was financially ruined because a competing motel was able to start operations with financing from the 504 program, leaving Mr. Jensen without the ability to compete due to a loss of jobs and customers.

For further information on this hearing, refer to Committee publication number 104–17.

7.2.16 SBA'S PILOT MICROLOAN PROGRAM

Background

On March 14, 1995, the Committee on Small Business held a hearing to review the Small Business Administration's Microloan program. Created in October, 1991, the Microloan Demonstration Project is a pilot loan program that is based on a partnership between the Small Business Administration (SBA), non-profit lending intermediaries, and technical assistance providers. The SBA provides loans to the intermediaries, which in turn make loans up to $25,000 to the small business borrowers. The loans made by SBA provide the basis for a revolving fund managed by the intermediary. In addition to the lending function, the Microloan program also makes grants for technical assistance available to small business borrowers. Recently, the program was expanded to increase the number of intermediaries from 35 to 101. The number of technical assistance providers was also increased, along with the aggregate amount of SBA funding available to intermediaries. In addition, a pilot guarantee program for microloans was signed into law in 1994. The purpose of the hearing was to examine the Microloan pilot project in order to determine if it has fulfilled its stated mission of providing very small loans to small businesses—loans that would otherwise not have been available through conventional lending sources.

Summary

The hearing was comprised of two panels, the first of which consisted of program managers from the SBA including: Patricia Forbes, Associate Deputy Administrator for Economic Development, SBA, accompanied by John Cox, Associate Administrator for the Office of Financial Assistance, SBA, Jody Raskind, Financial Assistant, Office of Financial Assistance, SBA, and Mike Curren, Budget Office, SBA. The witnesses testified that the Microloan Demonstration Project was off to a good start. In 1992, the SBA funded 35 intermediaries to provide microloans and technical assistance in 30 States; there are now 101 intermediaries in 48 States. Forty-three percent of the borrowers are women-owned businesses, 36 percent are minority-owned businesses, 12.5 are veteran-owned businesses, 15 percent are manufacturers, and over 27 percent of the microloans have gone to retail establishments.

The panel expressed the belief that the Microloan Demonstration Program is an important tool for meeting the needs of the smallest

of small businesses in the most efficient and cost effective way. As evidence of the program's efficiency, the witnesses pointed to the fact that the program is designed to leverage the Federal dollars loaned to the intermediary lenders by requiring them, a prerequisite to qualification, to come up with a 15 percent cash match. The match can come from local communities as long as it is non-Federal money and is set aside as a loan loss reserve as each microloan is made.

The second panel was comprised of lenders, technical assistance providers, and a microloan borrower. The witnesses included: Scott Daugherty, Executive Director, North Carolina Small Business Development Center; Ellen Golden, Coastal Enterprises, Inc.; Etienne LaGrand, Women's Initiative for Self-Employment; Joe Martinez, Economic Development Director, Chicanos Por La Causa; Robert Schall, President Self-Help Venture Fund; and Matt Toolan, President, Grade A T.E.M.P.S.

Each witness expressed broad support for the continuation of the Microloan program. In particular, the witnesses representing the certified development company lenders testified that by coordinating the provision of technical assistance with the availability of financing and delivering both services through intermediaries that are experienced in micro-enterprise development, the Microloan program responds to the needs of micro-enterprises for technical as well as financial support. In addition, because the intermediaries are locally based, they can respond to particular needs of small businesses in a particular geographic area. The witnesses also noted that the program fosters a broad partnership among the SBA, the local Small Business Development Centers (SBDCs), the minority development centers, banks, and local municipalities. Small businesses often have little or no access to capital from lending institutions since many banks shy away from lending small amounts of money, in large part because small firms frequently have little collateral to secure a loan. As a result of the Microloan program, financing is being made available to many small businesses that might not otherwise be in business today.

As the owner of a small business that has received a microloan, Mr. Toolan gave the Committee anecdotal evidence of the program's success. After being turned down for private bank loans due to a lack of collateral, in 1992 Mr. Toolan turned to the North Carolina Small Business Technology and Development Center and was introduced to the Self-Help Credit Union, which loaned him $5,000 for start-up costs of a new office. Without the loan, Grade A T.E.M.P.S. would have closed their doors in 1992. In March, 1993, Mr. Toolan received an additional $2,000 loan from Self-Help, and as a result of the microloan financing, the revenue of Grade A T.E.M.P.S. increase 81 percent in 1993 over 1992. In addition, the company was able to expand its operations to include a permanent placement service and human resources consulting. Mr. Toolan testified that his company is proof that the Microloan program has a tremendous impact on the businesses that it helps.

The panel also identified areas for improvement within the Microloan program including: minimizing the expense of micro-lending; reducing the risk of micro-lending as compared to general business lending; incorporating and leveraging more effectively pri-

mary SBA resources; and addressing the fact that the current initiative will never generate sufficient funds to meet the level of demand.

For further information on this hearing, refer to Committee publication number 104–18.

7.2.17 U.S. SMALL BUSINESS ADMINISTRATION'S BUSINESS DEVELOPMENT PROGRAMS

Background

On March 16, 1995, the Committee on Small Business held a hearing on the Business Development Programs of the U.S. Small Business Administration (SBA). The purpose of this hearing was to examine each of the SBA's Business Development Programs and evaluate whether they are providing the best service for the best price. The Business Development Programs include the Service Corps of Retired Executives (SCORE), the Small Business Development Centers (SBDCs), the Small Business Institutes (SBIs); the Office of International Trade; the Office of Women's Business Ownership, and the Office of Veterans Affairs. These programs generally deliver services through workshops, seminars, one-on-one counseling, as well as publications and the SBA's electronic bulletin board.

Summary

The hearing was comprised of one panel. The witnesses included: Mary Jean Ryan, Associate Deputy Administrator for Economic Development, SBA, accompanied by Jeanne Sclater, Assistant Administrator for International Trade, SBA, Monika Edwards Harrison, Associate Administrator for Business Initiatives, SBA, Johnnie Albertson, Associate Administrator/SBDC, SBA, Leon Bechet, Assistant Administrator for Veterans Affairs, SBA, and Betsy Myers, Assistant Administrator, Women's Business Ownership, SBA; Alexander Balc, President and Owner, C.S. Johnson Company; E. Martin Duggan, Small Business Exporters Association; Lee Borland, CSP, President, Security Press; Gregg S. Poorman, Poor Man Distributors; Amy DeLouise, President, Take Aim Productions; Sergeant Major Mickey Ehlo, USMC, Retired; and Lavern Hicks, President, Goode Computer Service, Inc.

The witnesses from the SBA reviewed the various program comprising the SBA's business development efforts. They noted that SCORE is an association of 13,000 business executives who volunteer their time and expertise to counsel small businessmen and women. The SBDCs are in 940 locations around the country and provide counseling and training on a wide range of topics primarily for established small businesses. The Women's Business Ownership program is designed to help women business owners with everything from loans to procurement. The Business Information Centers (BICs) offer the latest in computer hardware and software and an extensive business library. There are 14 existing BICs and 38 others are expected in the near future.

The SBA witnesses also testified that the Business Development Programs focus on one of the four major components of the SBA,

education and training. Often training is the critical link for a business to access capital or can be the difference between success and failure. The SBA, through its wide network of offices and national resource partners, offers a broad range of business education and training programs, which are offered either for free or for a small affordable fee. These programs are good examples of the SBA's public-private partnerships at work. Many of these programs operate through the use of volunteers, such as SCORE, and many require significant matching funds and leverage very substantial amounts of corporate investment.

The SBA witnesses provided the Committee with an example of how an individual actually receives service through the SBA's Business Development Programs: a person can go into a BIC and actually take a business planning guide down from the shelf and find one for a particular business, such as an ice cream shop. The plan may not fit all the individual's needs but it helps get a business owner or potential owner started. If an idea looks feasible, a small business owner can get further assistance through a BIC or SCORE with such issues as cash management and cash-flow projections.

The witnesses from the small business community expressed strong support for the SBA Business Development Programs and offered several suggestions for improvement. Mr. Balc testified that his company had benefited greatly from the SBA's Export Working Capital Program, which guarantees export loans. Mr. Balc suggested two ways to improve the program: First, the cooperative effort between the SBA and the Export-Import Bank needs to be improved in order to minimize the need for small business owners to have to deal with two different sets of rules and organizations with respect to export financing. Second, he suggested that the focus of the export programs needs to be more entrepreneurial as opposed to the strict regime that banks tend to follow.

Mr. Duggan testified about the SBA's international business development efforts. He noted that the SBA's International Trade Office lacks the focus, commitment, training, and experience necessary to assist aspiring or even seasoned exporters. In the area of promotion, SBA has no recognition overseas and yet promotes trade missions that clearly could be better organized and promoted by the International Trade Association at the Department of Commerce.

Two witnesses testified to the merits of the SBDC program. Mr. Borland explained his experience with SBDCs and attributed much of the success of his four businesses to the guidance he received from the local SBDC. He also noted that current data indicates that businesses that received SBDC assistance grew at twice the rate of the non-SBDC-counseled businesses. Mr. Ehlo also testified about the benefits of SBDC assistance and the Veterans Entrepreneurial Training (VET) Program, in which he participated. He emphasized that the VET Program is a successful way to provide veterans with the tools they need to operate a small business and compete in a changing economy.

The small business witnesses also testified about several other SBA programs that are viewed as very beneficial to small businesses. In particular, Mr. Poorman commended the SBI program

and credited the management counseling that he received through the program to the success of his business. Ms. DeLouise praised the SBA's Women Business Ownership Program and indicated that it had enabled her to advance significantly her business as well as assist her in handling management issues such as creating a business plan, producing her own financial statements, handling payroll, and expanding her marketing efforts. Lastly, Ms. Hicks testified about the substantial assistance that her business had received through the SCORE program.

For further information on this hearing, refer to Committee publication number 104–19.

7.2.18 REVIEW OF THE SBIC AND SSBIC PROGRAMS

Background

On March 28, 1995, the Committee on Small Business held a hearing on the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) Programs. Originated under the Small Business Investment Act of 1958, SBICs are venture capital companies that use private funds supplemented with government leverage to provide financing for small businesses, which have historically lacked long-term capitalization. In 1972, the program was expanded to include Specialized Small Business Investment Companies, which provide financing to businesses owned by socially or economically disadvantaged persons who have had difficulties participating in the economic mainstream.

As of the date of the hearing, SBICs and SSBICs represented $4 billion in a total venture capital industry that has over $37 billion in assets under management. The SBIC industry has not been free of problems, however. Over the years, a series of well-publicized failures and overall difficulties have led to changes in the program. For instance, Congress created the Participating Securities Program in 1991, which is designed to provide patient capital for the SBICs and cure a mismatch between financing and investments. In addition, management changes were implemented, transferring auditing functions from the Inspector General's Office back to the Investment Division of the Small Business Administration (SBA). Despite these efforts, problems have continued to arise in the SBIC and SSBIC Programs. As of the hearing date, 192 SBICs were in liquidation and approximately $523 million of government leverage was at risk. In addition, during the previous year the Committee received a GAO report documenting the misuse of an SSBIC in Arkansas by wealthy individuals connected to the White House.

The hearing was designed to investigate the Administration's initiatives for overcoming these problems and to review the current state of the SBIC and SSBIC Programs. Witnesses were asked to consider a number of specific issues with respect to the SSBIC program, such as financial returns, budget issues, and the SBA program management.

Summary

The hearing was comprised of one panel, and the witnesses included: Mary Jean Ryan, Associate Deputy Administrator for Economic Development, SBA, accompanied by Robert Stillman, Associate Administrator, Investment Division, SBA, and Marty Teckler, Deputy General Counsel, SBA; Will Dunbar, Chairman, National Association of Small Business Investment Companies (NASBIC); James Hoobler, Inspector General, SBA; Terry Jones; Chairman, National Association of Investment Companies (NAIC); William Thomas, President Capital Southwest Corporation; and Jim Wells, Associate Director of Housing and Community Development Issues, General Accounting Office (GAO).

The SBA witnesses testified that part of the Administration's reinvention initiative included a proposal for restructuring the SBA and a directive that SBA study the concept of privatizing the SBIC program. The study will also focus on additional ways to improve the program and to further decrease the program's costs. The SBA witnesses also reviewed the programs, noting that the SBIC program is designed to increase the availability of equity capital and long-term debt as well as to fill a gap that other SBA loan programs do not address. The program is funded primarily through investments by the private sector, leaving the cost to the U.S. Government at approximately $11 for every $100 of the guaranteed leverage. Ms. Ryan expressed her belief that the program had been strengthened by the new requirement that 30 percent of the private capital raised by the SBIC must come from investors who are unrelated to the SBIC's management.

The two industry witnesses emphasized that the programs are essential to many small businesses given that long-term capital is of critical importance and it often takes many years to build a company from the early stages to the point where it can financially self-sustain itself. The witnesses provided the Committee with anecdotal evidence of the programs' success and effects on participating small businesses. One witness testified that as a result of the SBIC Program's effectiveness, it had now served its purpose, and this is an appropriate time to either phase out the program or privatize it.

Mr. Wells testified that the GAO has started a comprehensive assessment of the investment programs at SBA, including the agency's oversight, examinations, licensing, and liquidation activities. He gave several examples of the problems that currently exist with SBA's oversight of the program, especially with respect to liquidations. Mr. Wells also testified that the GAO is investigating the SBA's 3-percent stock buy back program, under which SSBICs are permitted to repurchase their preferred stock from the SBA at a significant discount from the face value of the stock. While the investigation is not complete, Mr. Wells noted that as of the date of the hearing, 15 SSBICs have participated in this program, and they have repurchased preferred stock with a par value of $41 million from SBA for only $14 million.

For further information on this hearing, refer to Committee publication number 104–21.

7.2.19 THE SMALL BUSINESS ADMINISTRATION OF THE FUTURE

Background

On March 30, 1995, the Committee on Small Business held a hearing to explore the future of the U.S. Small Business Administration (SBA). On Monday, March 27, 1995, the Clinton Administration unveiled a plan to reduce spending in several independent agencies including the SBA. The plan for streamlining the SBA, entitled, Stretching Taxpayers Dollars, proposes significant program changes in the primary SBA loan programs—the 7(a) and 504 loan programs—and reductions in the field office structure of the agency. The Administration estimates that the plan will reduce the SBA budget by 29 percent from the original fiscal year 1996 request and save approximately $1.2 billion over five years. The purpose of the hearing was to have the SBA Administrator explain in detail the Administration's streamlining plan for SBA.

Summary

The hearing was comprised of a single panel, which included: Philip Lader, Administrator, SBA, accompanied by Cassandra Pulley, Deputy Administrator, SBA. Mr. Lader gave an overview of how critical small business is to the U.S. economy and a brief summary of SBA programs. He testified that the Administration's proposal for streamlining the SBA would include the following features with the goal of reducing the government's cost of small business financing, while serving more customers: (1) the SBA intends to consolidate its field operations by making greater use of public/private partnerships; (2) the SBA will continue to rely on effective Small Business Development Centers (SBDCs) to provide technical assistance to business owners; (3) the SBA intends to centralize its loan processing to achieve economics of scale and use current technology and has consolidated most of the business loan servicing for its loan portfolio into two locations; (4) the SBA plans to consolidate the surety bond delivery system with its government contracting oversight operations; (5) the SBA intends to relocate more headquarter functions to field operations; and (6) the SBA intends to explore alternatives for streamlining the Small Business Investment Company (SBIC) program, including the possibility of privatization.

Mr. Lader concluded that the Administration's proposal reflects a dedication to small business and a commitment to maximizing taxpayers dollars. He indicated that the Agency will continue to build on the progress it has made in improving customer service and programs, as well as enhancing efficiency, reducing regulatory and paperwork burden, and increasing small business access to capital.

For further information on this hearing, refer to Committee publication number 104–20.

7.2.20 SBA OFFICE OF ADVOCACY

Background

On April 4, 1995, the Committee on Small Business held a hearing on the SBA's Office of Advocacy. The hearing was the last in a series that focused on a top-to-bottom review of the Small Business Administration's programs and policies.

The Office of Advocacy was created in 1976 and is headed by the Chief Counsel for Advocacy who is a Senate confirmed, presidential appointee. The Office of Advocacy was designed to serve as a small business ombudsman advocating the interests of small business throughout the Federal government. In that capacity, the Office has played an important role in pursuing legislative and regulatory solutions for problems faced by the Nation's small businesses. The Office of Advocacy also serves the important function of monitoring Federal agency compliance with the Regulatory Flexibility Act (RFA).

Summary

The hearing was comprised of two panels. The first panel included the current and former SBA Chief Counsels for Advocacy: Jere Glover, Chief Counsel for Advocacy at the Small Business Administration; Milton D. Stewart, former SBA Chief Counsel for Advocacy (Carter Administration); Frank Swain, former SBA Chief Counsel for Advocacy (Reagan Administration); and Thomas Kerester, former SBA Chief Counsel for Advocacy (Bush Administration).

The current and three former SBA Chief Counsels for Advocacy reviewed the purpose and operation of the Office of Advocacy and its importance to the small business community. The Office of Advocacy is the only part of SBA that is not focused on programs. Rather, it is policy oriented, and was created to handle the broader policy and regulatory issues, both inside the government and in the private sector. In addition, Congress designed the Chief Counsel position to have a significantly greater degree of independence than most other Federal officials. As a result, the Chief Counsel has the opportunity to truly be the "independent advocate' for small business.

The witnesses also stressed that the Office of Advocacy has and must continue to foster recognition of the link between the success of small business and the prosperity of the country as a whole. One of the greatest challenges facing small business is to make policy makers at all levels of government understand that small business is a driving force in the economy. The witnesses maintained that the Office of Advocacy is well placed to assist small businesses in achieving that goal.

The current and former Chief Counsels also offered several suggestions to the Committee for strengthening the Office of Advocacy and its ability to promote the interests of small business. One witness urged that the Chief Counsel of Advocacy be given authority to put a hold on burdensome regulations until Advocacy has given a final stamp of approval, which would help reduce the negative effects of retroactive legislation and any regulations with unreason-

able effective dates. Another recommendation was to establish a small business forms review committee to monitor the ever-changing tax and other forms and reports, which small business must file with the Federal government. The witnesses also stressed the need for increased information flow to small business on a timely basis.

The second panel consisted of leading representatives from the small business community, including: John Galles, President, National Small Business United; Karen Kerrigan, President, Small Business Survival Committee; John Satagaj, President, Small Business Legislative Council; Bennie Thayer, President, National Association for the Self-Employed; and David Voight, Director, Small Business Center, U.S. Chamber of Commerce. The panelists shared their views on Advocacy's mission, its history, how it might be improved, and its future as an important and independent voice for small business throughout the Federal government.

The general consensus of all the witnesses on the second panel was that the Office of Advocacy serves an important purpose in furthering the policies that nurture the small business and entrepreneurial sector of the economy. The witnesses offered a number of suggestions for strengthening and expanding the role of the Office of Advocacy and its Chief Counsel. In particular, it was recommended that the Chief Counsel be given more authority as well as autonomy within the Administration in order to effectuate the Office's mission. The witnesses also stressed the need for the Office of Advocacy to focus creatively on the future for small business in order for small business to be more proactive instead of reactive to economic and regulatory changes. The Committee was urged to enhance the economic research functions of the Office and to expand its mission of commenting on proposed regulations.

For further information on this hearing, refer to Committee publication number 104–23.

7.2.21 SMALL BUSINESS ADMINISTRATION PROGRAMS AND TAX AND REGULATORY ISSUES IMPACTING SMALL BUSINESS

Background

On April 27, 1995, the Committee on Small Business held a field hearing in Overland Park, Kansas, on the programs administered by the Small Business Administration (SBA) and tax and regulatory issues effecting small business. Small business plays a vital role in the economy of this region, as well as across the country, and the overwhelming majority of new jobs are created by small businesses. At the beginning of the 104th Congress, the Committee on Small Business held a number of hearings on the SBA's small business programs and received testimony from the Administration as well as small businesses and advocacy groups representing a cross section of the country. At this hearing, the Committee received testimony from the small business owners of Kansas and Missouri in order to provide a local perspective, and the witnesses were asked to evaluate which SBA programs worked and which ones needed improvement. The witnesses were also asked to focus on tax and regulatory burdens imposed on small business and ways

that Congress can seek to eliminate or at least reduce those burdens.

Summary

The hearing was comprised of six panels with each panel focusing on different SBA programs as well as tax and regulatory burdens on small enterprises. The first panel examined small business financing programs and included: Keith Cowen, President, Airport Systems International, Inc.; Don Sladek, Coast to Cost Hardware; Bill Goble, Snack-eze Convenience Store; Caroline Salyer, Santa Fe Optical, Inc.; Jerry Darnell, Avis Furniture Company; Bill Reisler, Kansas City Equity Partners; Gary Thomas, Guaranty Bank & Trust; Rob Park, Commerce Bank; and Deryl Schuster, Emergent Business Capital.

The first panel discussed small business financing from both the borrowers and lenders perspectives. The witnesses testified about the SBA's lending programs and provided the Committee with anecdotal evidence as to the success of these programs and their importance to small businesses. Two witnesses reviewed their experience with the 504 loan program, which is designed to provide long-term debt financing for small businesses that seek to expand their physical premises. The witnesses noted that their 504 loans allowed them to construct their own buildings, which enabled them to construct facilities that met their particular needs and avoid paying high rents. Witnesses also testified about the benefits of the SBA's 7(a) loan program, which is designed to provide working capital for small enterprises on a shorter term than the 504 program. While the witnesses were generally very supportive of the program, several suggested changes that would improve the program. One witness also testified about the SBA's small business investment company (SBIC) program, which provides venture capital to small businesses. The witness emphasized the critical role that SBIC capital played in the initial development of his company.

The small business lenders on the first panel were also very supportive of the SBA's financing programs. Mr. Reisler of Kansas City Equity Partners, an SBIC, testified that recent changes to the SBIC program have improved the program and moved towards lowing its cost to the Federal government. He attributed much of the improvement to the new licensing criteria, stringent monitoring of SBICs after being licensed, the increased capital requirement, and the participating securities. The two witnesses representing local banks testified from the lender's perspective about the benefits of the 504 loan program and the critical role of long-term financing for small businesses. They also noted that the 7(a) and low documentation (or LowDoc) programs have been very beneficial to small businesses with respect to shorter-term working capital. The witnesses also offered a number of suggestions for improving the SBA lending programs. With regard to the 504 program, steps should be taken to increase the turn-around time on application approvals. In the 7(a) program, the guarantee percentage should not be changed and the maximum guarantee amount should be reduced from $750,000 to $500,000. The witnesses also recommended that the certified and preferred lending status program be continued and evaluated on an annual or every other year basis.

The second panel focused on the SBA's small business development programs. The witnesses included: Mike O'Donnell, Director, Small Business Development Center, University of Kansas; Winston Joe Sowers, CPS; Ana Riojas, Riojas Enterprises, Inc.; Randee Brandy, Center for Technology and Business Development, Central Missouri State University at Warrensburg; Richard Hunt, Rockhurst College, Small Business Institute; Don Stevenson, Kansas City District Manager, SCORE; and Jan Ilames, Owner, American Balloon Factory.

Two of the witnesses represented local Small Business Development Centers (SBDCs). Over the last five years the amount of small businesses seeking assistance from SBDCs has increased dramatically, in one case over 700 percent. The SBDCs provide a wide variety of assistance to small business owners from developing a business plan to marketing and cash-flow management. SBDC funding comes from State and local sources subject to Federal matching funds. To improve the SBDC program, the witnesses recommended that they leverage existing resources, utilize new technology, and increase services to small business through program revenue such as a nominal consultation fee. Two other witnesses on the panel testified about the Small Business Institute (SBI) and the Service Corps of Retired Executives (SCORE) programs, which are two of the three consultation programs administered by the SBA, the other being the SBDC program. The SBI program handles special projects for the small businesses that the business owners cannot handle in-house or cannot afford to contract out to a professional consultant. SBIs serve over 6,000 small businesses a year with an average of 120 hours per client on a no-charge basis except for special services like mailings. Based on local surveys of SBI clients, the value of SBI consultations to small businesses range from $2,000 to $10,000. The SCORE program uses retired executives who volunteer their time to the program to counsel business owners. By providing consultation programs for existing business owners and those contemplating a new business venture, the program is able to impart the knowledge and experience of retired executives to small firms at a low cost to the government.

The small business witnesses on the panel provided the Committee with anecdotal evidence of the value of the SBA's business development programs. Two witnesses testified about their experience with local SBDCs, and commended the program for providing training on survival and business-planning skills as well as programs designed to improve efficiency, increase profits, and reduce overhead. One witness suggested that the Committee consider expanding the scope of the SBDC program in order to assist more small business owners and recommended that the SBDCs be permitted to charge minimal consultation fees of $10 or $15 per hour to finance the expansion of the program. Another small-business witness testified about the benefits that she received from the SBA programs as a minority business owner. She noted that small minority and women-owned businesses often have a difficult time competing against large corporations, and the SBA programs help level the playing field.

The third panel examined SBA programs from a regional perspective, and included a single witness: Bruce Kent, SBA Regional Administrator, Kansas City, Missouri. Mr. Kent testified that the SBA has aggressively moved forward in the area of better access to capital for small business owners and has been working with the Certified Development Companies to improve the 504 loan program. He also testified that the LowDoc program is helping small businesses with access to capital by easing the application process for loans under the 7(a) program, with LowDoc constituting approximately 56 percent of the SBA's loan approvals in 1995. Mr. Kent noted that the Kansas City Regional Office is attempting to expand its activities, despite staff reductions, and is working closely with the SCORE program and the SBDCs to leverage the benefits of these consultation activities.

The fourth panel focused on tax issues affecting small businesses. The witnesses included: Al Martin, Shook, Hardy, & Bacon; Dennis Parker, Independent Telecommunications Network, Inc.; Linda Gill Taylor, Of Counsel, Inc. The panel reviewed the current tax burdens imposed on small businesses and emphasized the need for meaningful reform of the tax system. The witnesses offered a number of recommendations to the Committee. One witness focused largely on estate tax reform and noted that at a minimum, the estate tax needs to be revised, if not repealed completely. In addition, the current $600,000 exemption from the estate and gift tax should be raised to at least $1 million per person, although the increase to $750,000 in the Contract with America is a step in the right direction. The exemption from estate and income taxation for retirement plans should be restored, and the generation-skipping tax should also not be applied to retirement plans.

The witnesses also recommended a broad range of tax reforms to assist small business, the most important of which was to simplify the tax laws. Small businesses have a difficult time keeping up with the constantly changing tax laws and regulations, which requires monetary and personnel resources that are not always available to small firms. On a more specific level, the witnesses urged Congress to restore the investment tax credit so that small businesses can compete effectively with larger businesses. Alternatively, the equipment expensing provision under Section 179 of the Internal Revenue Code should be expanded. In addition, the deduction for business meals and entertainment should be restored to 100 percent, and the availability of Employee Stock Ownership Plans (ESOPs) should be extended to S corporations. Witnesses also emphasized that the complexities of the payroll tax deposit system must be addressed by Congress and simplified so that small businesses can comply without incurring substantial burdens and costs.

The fifth panel addressed the regulatory and paperwork issues affecting small business. The witnesses on this panel included: Chuck Vogt, All Star Awards and Ad Specialties; Dan Wright, Mid-America Signal; Ben Griffith, Central Cooperatives, Inc.; and Greg Shuey, Tensortech Corporation. The witnesses testified that Congress should concentrate on creating a stable, positive economic climate that will foster the country's free enterprise system and enable it to reach its fullest potential. A number of examples of op-

pressive regulatory burdens on small business were brought to the Committee's attention, but particular emphasis was placed on the regulations promulgated by the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and the Internal Revenue Service (IRS). The witnesses testified that the amount of paperwork and the potential penalties are often oppressive for small businesses with few employees and resources that can be dedicated to all of the compliance burdens that the government imposes on businesses. In some cases, these burdens can force a small firm out of business. One witness emphasized the need for cost-benefit analysis to be applied when regulations are implemented and reviewed to make sure that the regulations achieve their intended purpose at a reasonable cost to the regulated parties.

The final panel was designed as an open forum, and the witnesses included: William Miller, Building Erection Services of Olathe, Kansas, representing the American Subcontractors Association; Ernest Fleischer, Blackwell, Sanders Law Firm; Judy Burngen, Former Rockhurst College SBDC Director; Patty Klinko, Center for Business Innovation; John Halsey, IBT Reference Laboratory; and Clyde McQueen, Full Employment Council of Kansas City, Kansas. The six witnesses on this panel presented testimony on a wide variety of small-business issues. Mr. Miller expressed his support for the recently passed Paperwork Reduction Act of 1995 and reminded the Committee that another powerful tool to combat unnecessary regulatory and paperwork is the proposed amendments to the Regulatory Flexibility Act (RFA). Although the RFA, was enacted in 1980, Federal agencies have failed to implement it fully. Mr. Miller noted that the Department of Labor leads the way in oppressive regulations for small business, namely the OSHA regulation governing worker-safety standards. He stressed that the most effective way to achieve the goal of occupational safety should be performance-based prevention and education rather than enforcement-driven tactics like fines.

The effects of burdensome regulations on small business were exemplified by another panelist, Mr. Halsey, who testified about the recent regulatory activities of the Food and Drug Administration (FDA). Mr. Halsey noted that the majority of the medical device industry is made up of small businesses and is an important contributor to the national economy in terms of both domestic products as well as exports. The overzealous regulation by the FDA poses a significant threat to the industry, for the FDA regulates too many products that do not need to be regulated. In addition, it currently takes too long for the FDA to approve new products, and the FDA's export certification program is in need of improvements if small businesses are to expand their export activities. On a related issue, Mr. Fleischer testified that the Congress should adopt a Truth in Government Act that would permit citizens to challenge enforcement actions by the government. He maintained that every law passed by Congress should provide a means by which a citizen can seek the reversal of an adverse action by the government.

Two panelists provided additional testimony on the SBA's business development programs. Ms. Burngen stresses the benefits and importance of the SBDC program and emphasized that the pro-

gram greatly leverages Federal funds by requiring contributions from State and local governments. She recommended that Congress combine the SBDC program with the SCORE and SBI programs, the Women's Business Development Program, and the Minority Business Development Administration, which is managed by the Department of Commerce. She also recommended that SBDCs be permitted to charge a fee for the services they provide and that the SBDC's reporting requirements be modified to focus on economic impact rather than the number of businesses visiting the centers. Ms. Klinko testified about the SBA's Microloan Program, which fills an important capital gap for small businesses by providing loans from as low as $500 to a maximum of $25,000. An important part of the Microloan Program is the technical assistance that is made available as part of each loan. Ms. Klinko urged the Committee to retain the technical assistance aspect of the program since it has proven to be a significant benefit to small businesses needing assistance with such projects as setting up an accounting system, hiring personnel, preparing cash flow projections, marketing, and direct mailings.

The final panelist addressed the issue of child labor laws. Mr. McQueen testified that under current rules young people between the ages of 14 and 15 can only work 25 hours a week without the employer being fined. As a result, many employers will not hire individuals between 14 and 15 years old, which reduces the number of jobs available for this age group. Mr. McQueen maintained that the law should be changed to permit individuals in this age group to work up to 40 hour per week.

For further information on this hearing, refer to Committee publication number 104–27.

7.2.22 SMALL BUSINESS PARTICIPATION IN FEDERAL CONTRACTING: ASSESSING H.R. 1670, THE "FEDERAL ACQUISITION REFORM ACT OF 1995"

Background

On June 29, 1995, the Committee on Small Business held the first in a series of two hearings on H.R. 1670, the Federal Acquisition Reform Act of 1995. The first hearing was to provide representatives of small business an opportunity to assess the potential impact of H.R. 1670 on their ability to compete for Federal contracts. Many of the provisions of the bill would fundamentally change the Federal procurement process, making it substantially less open and fair and could present obstacles to small business participation. The bill proposed to abandon the standard of "full and open competition," established by the landmark Competition in Contracting Act of 1984. H.R. 1670 would repeal, as duplicative, the very provisions of the Small Business Act that ensure adequate notice of contracting opportunities and adequate time for small firms to fashion an offer.

On August 3, 1995, the Committee held a second hearing to assess the impact of H.R. 1670, as reported by the Committee on Government Reform and Oversight on July 27, 1995. While the reported bill had addressed some of the concerns raised by small business and others, H.R. 1670 still sought to eliminate the prac-

tice of "full and open competition," while appearing to keep the words in the statute. There are many provisions that would empower contracting officers to preclude small firms from competing for contracts and to eliminate them earlier from consideration for awards, if they were permitted to compete initially.

Summary

The June 29, 1995, hearing was comprised of two panels, the first of which included: Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration (SBA), accompanied by Jim O'Connor, Chief Counsel for Procurement Policy, SBA, and Kay Ryan, Deputy Counsel, SBA; Amy Erwin, Procurement Technical Assistance Program, George Mason University, representing the Association of Government Marketing Assistance Specialists; William F. Blocher, Jr., a small businessman; and James E. Lewin, Jr., Vice-President, Government Affairs, Sprint.

Mr. Glover testified that H.R. 1670 would reduce the number of participating government contractors by replacing "full and open competition" with a standard based on "maximum practicable competition." He further said that small businesses received three times more contracts under the competitive process than they did under any non-competitive process and that only 4 percent of non-competitive contracts over $25,000 go to small businesses.

Other witnesses testified that H.R. 1670 would prove a hindrance to small business. One witness stated that the maximum practicable competition clause would give government officials too much power over business decisions and that anything less than full and open competition artificially restrains trade and hurts the smaller companies disproportionately. Overall, witnesses believed that a streamlined process that will save taxpayer dollars would be appropriate, but if the implementation is not done carefully, the small business community will be severely damaged in the process.

The second panel of the June 29th hearing included: Tom Frana, President, Vion Corporation; Gerry Nowak, President, Meridian Construction, representing the Associated Builders and Contractors; Matthew S. Forelli, President, Precision Gear, Inc.; and Aleta Robinson Wilson, Past Chairperson, National Association of Minority Business. The panelists testified that by repealing the standard of "full and open competition," government agencies would be encouraged to exclude those companies that have not already demonstrated their abilities, thereby prohibiting new participants from entering the market. One problem, a witness noted, is that government contracting officers do not clearly define their needs and/or allow less than fully qualified vendors to compete. It is believed that this may be the reason that the government receives and evaluates too many bids from unqualified vendors.

Another witness stated that the current standard of "full and open competition" has been a proven method of assuring equal access for all qualified contractors and has made it possible for construction contractors to gain entry and build a resume in Federal work. Efforts to reform the Federal procurement system should not only benefit the Federal purchasing agents or the large companies that receive the majority of the contracts, but should strengthen the opportunities for local and small businesses, and certainly

should not impose further obstacles for these companies to enter the Federal market.

The August 3, 1995, hearing was also comprised of two panels. The first panel included: Marshall J. Doke, Esq., McKenna & Cuneo; Ronald W. Berger, Associate General Counsel, U.S. General Accounting Office (GAO); Steven Kelman, Administrator for Federal Procurement Policy, Office of Management and Budget; Kevin Johnson, Contracting Officer, Internal Revenue Service; Jere W. Glover, Chief Counsel for Advocacy, SBA; and Derek J. Vander Schaaf, Deputy Inspector General, Department of Defense.

Several witnesses testified that while the government must put forth an effort to achieve vigorous commercial-style competition, the bureaucracy that is preventing the government's ability to serve the taxpayer must be ended. One witness stated that there is an extreme pathological distrust in the current system toward front-line contracting and program professionals and a complete lack of faith in their ability to use common sense and good judgment to make sound business decisions in the best interest of the taxpayer. The witness went on to say that because of the fear of discretion, endless paper trails are created.

The SBA witness testified that while the amendments to H.R. 1670 are an improvement over the original bill, they do not reach far enough to mitigate the serious concerns of the small business community. Mr. Glover stated that while the words "maximum practicable competition" are gone, the current standard of "full and open competition" is diluted. The revised bill would require the government to obtain competition that provides open access and promotes efficiency in fulfilling the government's procurement process.

The second panel of the August 3rd hearing included: E. Colette Nelson, Chair, Small Business Working Group on Procurement Reform; Edward J. Black, President, Computer and Communications Industry Association, accompanied by David S. Cohen, Esq., Cohen & White; Matthew S. Forelli, President, Precision Gear, Inc., representing American Gear Manufacturers Association; Edward Hammond, President, K.C. Bobcat, Inc., representing North American Equipment Dealers Association, accompanied by John Mullenholz, Counsel to the Association; and Thomas R. Gunerman, President and CEO, Intersurgical, Inc., representing the Health Industry Manufacturers Association.

Small business witnesses on the second panel were strong opponents of the Federal Acquisition Streamlining Act of 1994 (FASA) and H.R. 1670. They testified that the Federal government has the same fiduciary responsibility to follow very rational procedures and not arbitrary procedures established by a contracting officer. Witnesses testified that they believe that H.R. 1670, as then drafted, has serious flaws that will jeopardize the ability of small- and medium-sized firms to compete fairly for Federal procurement contracts. It was also noted that H.R. 1670, in its revised form, increased the potential for the use of other than competitive procedures under two broad new exceptions: "not appropriate" or "not feasible." Under the bill, these new conditions were left to the regulators to define.

One witness representing the Health Industry Manufacturers Association stated that members of his organization do not object to most of the other reforms in FASA, only to the implementation of a cooperative purchasing program without complete information on its broad effects. He stated that under a one-size-fits-all concept, it becomes extremely difficult to structure a single contract that will meet the needs of the Federal, as well as State and local, buyers. The witness went on to describe the concerns of the health-care industry with regards to H.R. 1670.

For further information on these hearings, refer to Committee publication numbers 104–36 and 104–46.

7.2.23 REDUCTION OF AIRLINE TICKET SALES COMMISSION AND ITS IMPACT ON SMALL TRAVEL AGENCIES

Background

On July 12, 1995, the Committee on Small Business held a hearing on the reduction of airline ticket sales commission and its impact on small travel agencies. The purpose of this oversight hearing was to review the situation faced by many small travel agencies in which the commissions provided by many airlines had been capped. In February 1995, many airlines placed a cap on the commission paid to travel agents for the sale of domestic airline tickets. Under the cap, the maximum commission for the sale of a ticket over $500 is $50 for a round-trip ticket and $25 for a one-way ticket. Previously, the commission was 10 percent of the total cost of each ticket sold. The reduction in commission has been a hardship for many travel agencies, and some of these small businesses, which average annual airline ticket sales of $1.7 million per year and have an average of five employees, have been forced to lay off employees or close their doors completely.

On March 3, 1995, the American Society of Travel Agents (ASTA) filed a lawsuit against six major airlines, Delta, American, Northwest, U.S. Air, United, and Continental, alleging price fixing. The Committee held the hearing to allow the travel and tourism industry, an important industry to thousands of small businesses, to testify about the perceived effect of the airline industry's actions on their economic well being. The hearing was also designed to give the Committee a better understanding of the travel agent industry and its relationship with the airline industry.

Summary

The hearing was comprised of one panel, which included: Dan Bohan, CEO, Omega World Travel, Inc.; David Edgell, Commissioner of Tourism, U.S. Virgin Islands; Jeanne Epping, President and CEO, American Society of Travel Agents (ASTA); Mary Hogan, former owner, Hogan Travel; Lauraday Kelley, President, Association of Retail Travel Agents; and J. Diane Panegasser, CTC, Travel Trends, Ltd. The Air Transport Association was also invited to testify but declined. In addition, TWA was invited but was unable to testify before the Committee.

The panel provided the Committee with considerable background on the industry and commission situation, noting that the airlines

and travel-agency industry have been tightly intertwined since the inception of both industries. The airlines have always controlled the relationship and continue to do so, which is evidenced by the fact that any travel agency seeking to sell airline tickets must obtain the approval of the particular carrier through the Airline Reporting Corporation (ARC). ARC is wholly owned by the airlines, and they determine the standards applicable to travel agents. In addition, every travel agency must utilize one or more of the computer systems that the airlines own. For instance, all ticketing, boarding passes, and itineraries must be done through the computerized reservation system (CRS). One witness noted that, although the airlines were deregulated in 1978 and the Civil Aeronautics Board (CAB) no longer exists, most of the systems that were in place prior to deregulation are still with the industry today.

The panel also noted that consumers seem to favor the use of travel agents, with travel agents making up 60 percent of the airline ticketing in 1978, and over 80 percent at the time of the hearing. Witnesses also testified that 10 percent commission on ticket sales was reached 14 years ago and has been in effect until Delta Airline's announcement of the new commission cap on February 9, 1995. Shortly thereafter, all the major airlines followed suit with a few exceptions. The witnesses pointed out, however, that all the major airlines continue to pay the 10 percent commission to Canadian travel agents when they book tickets in the United States. In addition, the Scheduled Airline Ticket Office (SATO), which handles ticketing for the Federal government, pays over 9 percent and continues to do that without caps.

The panel emphasized that the new cap will have a detrimental effect on the travel-agent industry. Prior to the new caps, travel agents worked on a 1 to 2 percent net profit with very low salaries and benefits. The consensus of the panel was that the many small travel agencies will not be able to make a profit under the new caps and will be forced out of business. In addition, the witnesses cautioned that the caps could have a broader impact on more than just the travel agencies—a loss of travel agencies and jobs will result in reduced spending within the overall small business community as well as a reduction in tax base. For instance, Dr. Edgell testified that the commission caps have had a detrimental effect on the hotel bookings in the U.S. Virgin Islands so much so that one hotel has responded by offering to pay the lost commission to travel agents along with their normal hotel commission. Dr. Edgell also noted the disparity in the airline's treatment of the U.S. Virgin Islands and Puerto Rico as domestic destinations while the other U.S. Commonwealths are considered international.

The witnesses offered a number of suggestions with respect to the commission caps and asked for the Committee's consideration. In particular, one witness recommended low interest small business loans that are easy and fast to obtain in order to help some of the adversely affected agencies. Mr. Bohan suggested that the Justice Department should investigate SATO's unfair and anticompetitive price fixing and boycotting activities and urged that SATO be dismantled. He also advocated that the Defense Department not consolidate its travel management awards into giant contracts for which only a few companies would be able to bid.

For further information on this hearing, refer to Committee publication number 104–38.

7.2.24 THE ADMINISTRATION'S INITIATIVES TO REDUCE REGULATORY BURDENS ON SMALL BUSINESS

Background

On July 18, 1995, the Committee on Small Business held a hearing to examine the Administration's initiatives to reduce regulatory burdens on small business. This hearing was one in a series of oversight hearings on what was happening to reduce paperwork and regulatory burdens upon small business. The Administration was asked to provide a progress report on implementing the President's March 1, 1995, directive to all executive departments and agencies to cut obsolete regulations, reduce red tape, work with the grassroots, and negotiate instead of dictate. As part of cutting obsolete regulations, the President asked the department and agency heads for a list of regulations that should be eliminated or modified, which was to be delivered to him by June 1, 1995. As of the date of the hearing, no list had been sent to the President.

Summary

The hearing was comprised of three panels, the first of which included: Sally Katzen, Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB); Jere Glover, Chief Counsel for Advocacy; U.S. Small Business Administration (SBA); Mark Isakowitz, Director of Federal Government Relations, House, National Federation of Independent Businesses (NFIB); and John Paul Galles, President, National Small Business United (NSBU).

The Administration witnesses testified about the steps that the Administration was taking to ease the regulatory and paperwork burdens on small businesses. Ms. Katzen noted that the government was scrapping 16,000 pages of the Code of Federal Regulations and injecting common sense into the rest, with a particular focus on the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA). The EPA is implementing changes to focus on assisting small businesses to clean up environmental hazards rather than on historical practices of assessing fines. Ms. Katzen also submitted a report on OSHA entitled, "The New OSHA: Reinventing OSHA, Reinventing Worker Safety and Health." The report is based on OSHA's experience in the Maine 200 program, in which OSHA went to companies with the highest workers compensation claims and offered to work with the companies to correct unsafe conditions, instead of fine them. The results showed far fewer worker injuries and have prompted OSHA to expand the program on a nationwide basis.

Mr. Glover noted that regulatory-reform recommendations received the most votes of all the recommendations at the 1995 White House Conference on Small Business. He stressed that the Regulatory Flexibility Act (RFA) is the strongest tool to attack the cumulative burden of regulation on small business and provides an excellent road map on how the government should treat small busi-

ness in rule-makings, although some questions remain unresolved with regard to the compliance procedures under the Act. Mr. Glover testified that the most important measure of success in reducing regulatory burdens is the dollars saved by small business, which is also the hardest to measure. Other measurements, such as reducing the number of pages of regulations in the Federal Register and the Code of Federal Regulations and lowering the burden-hours of paperwork required, all go to identify burden. Regulatory reform is not just regulatory reduction, but crafting better, more efficient regulations and must focus on small business. Mr. Glover opined that continued vigilance by Congress, OIRA and the Office of Advocacy will help in removing regulatory burdens for small business.

The small business witnesses on the panel testified about the success of the Administration in reaching its goals with regard to regulatory reform. Mr. Isakowitz testified that NFIB has surveyed its members, and the results indicate that small businesses do not see any improvement in the regulatory environment created by the Federal government. NFIB's members indicated that despite the Administration's claims that the agencie's have changed their focus towards assisting rather than penalizing small businesses, they continue to see significant problems especially with OSHA and EPA, not to mention the Internal Revenue Service, which poses the most significant burdens for most small businesses. Both small business witnesses expressed their supports for regulatory reform legislation. Mr. Galles noted that while a change in policy with regard to regulation of small businesses would be helpful, what is really needed is a change in the process of enforcing those regulations.

The second panel included Rep. Tom Delay (R–TX) who testified that he wanted to see the shackles of regulatory burden, which had been imposed by the Federal government, removed from small business. Regulations affect small businesses disproportionately to larger businesses. Besides the incredible number of hours, money, and effort spent filling out forms and complying with these regulations, small businesses feel an even bigger effect on lost profit. Small business owners spend a least a billion hours a year filling out government forms at an annual cost of $100 billion, according to SBA. Mr. Delay noted that despite the good intentions of the Administration, there is little evidence that any reduction in the regulatory burden is taking place. He called on the Congress and the Administration to examine why the agencies are not complying with the President's Executive Order and determine whether they are fulfilling the requirements of the Paperwork Reduction Act.

The third panel included: Jeff Joseph, Vice President, Domestic Policy, U.S. Chamber of Commerce; C. Boyden Gray, Chairman, Citizens for a Sound Economy; Mike Baroody, Vice President, Public Affairs, National Association of Manufacturers (NAM); and L. Nye Stevens, Director of Federal Management and Work Force Issues, General Accounting Office (GAO), accompanied by Curtis Copeland, Assistant Director, GAO.

The small business witnesses on the panel stressed the need for regulatory reform in order to reduce the burdens imposed on small businesses. Witnesses noted two issues that are at the center of the regulatory debate: First, the interaction of Federal agencies with

the private sector must be examined along with the subsequent level of and need for the regulations and paperwork requirements. Second, some standard of accountability to which the agencies will be held must be established.

The witnesses also echoed the testimony of the small business witnesses on the first panel, stressing that the regulatory burdens are not being reduced. Instead, they continue to grow, and State and local regulations add to the overall burden. Mr. Joseph testified that according to the Chamber of Commerce's surveys: 67 percent of the Chamber's members said that Federal regulations require them to purchase additional equipment; 72 percent had to modify their facilities; and 72 percent spend up to 25 hours a month filing out forms required by the government. Mr. Baroody also testified that many times a small busines's compliance costs with respect to Federal regulations exceeds its pretax profits, a result that demonstrates the destructive nature of regulations on small business.

The panel also offered several suggestions to the Committee for improving regulatory reform efforts. Congress must make tough decisions about public policy choices, giving better guidance to Federal agencies on exactly what is expected from the regulators. The regulated community must also be a better participant in the process, voicing its views loud and clear. Finally, Federal agencies themselves must be prepared to answer for both the intended and unintended consequences of their actions and their failure to follow the rules. Witnesses also stressed the need for agency performance standards as a means of improving the process of helping small businesses to comply with existing regulations rather than continuing the history of enforcement actions. The GAO witnesses urged the Committee to utilize the Government Performance and Results Act (GPRA) to its fullest extent as a tool for focusing on the particular outcomes that each agency is charged with achieving. GPRA will also enable Congress to examine whether the regulatory burdens imposed by the agency are necessary for achieving the particular outcome.

For further information on this hearing, refer to Committee publication number 104–39.

7.2.25 ASSESSING THE IMPLEMENTATION OF PUBLIC LAW 103–355, THE "FEDERAL ACQUISITION STREAMLINING ACT OF 1994"

Background

On July 20, 1995, the Committee on Small Business held a hearing to assess the implementation of Public Law 103–355, the "Federal Acquisition Streamlining Act of 1994" (FASA), and its effect on small firms seeking to market supplies, services, and construction to the government. Signed into law on October 13, 1994, and effective October 1, 1995, FASA made the most sweeping statutory changes to the Federal procurement process since the landmark "Competition in Contracting Act of 1984."

During the consideration of the legislation that became FASA, the small business community struggled to assure that the changes

being made in the name of "procurement streamlining" did not become obstacles to small business participation. In the end, they were only partially successful since FASA granted expansive authority to the regulation writers, constrained only by broad statutory standards in many key areas relating to the solicitation and award of Federal contracts, especially those below $100,000, the new small purchase threshold, which FASA increased from $25,000 and renamed the Simplified Acquisition Threshold (SAT).

The small business community also worked hard to link the SAT and other grants of permissive authority to the implementation of the Federal Acquisition Network (FACNET). Through the use of computer-assisted electronic commerce, FACNET would provide small firms with better access to information about contracting opportunities, especially those below the $100,000 threshold, at various Executive departments and agencies. Through FACNET, small firms (or any firm) could electronically obtain copies of the government's contract solicitation (and any modifications), submit offers, receive notices of award (and indirectly a notice that a offeror was not successful), communicate with the government regarding contract administration during performance, and receive payments. Data generated by transactions through FACNET would also become a valuable source of information.

FASA also established a new micropurchase threshold at $2,500, and purchases below this threshold were no longer reserved for competition among small businesses. This significant change was strongly advocated by the Administration as essential to facilitate "streamlined" purchases using the new government purchase card, the IMPACT Card. The IMPACT Card was intended to be used more broadly by agency personnel to purchase simple commercial products without any assistance from the agency's procurement specialist. Since purchases below the new threshold do not have to be announced or even competed, small firms now confronted a new and significant challenge in continuing to tap this segment of the market.

Summary

The hearing was comprised of a single panel, which included: David E. Cooper, Associate Director, Acquisition Policy, Technology and Competitiveness, National Security and International Affairs Division (NSIAD), U.S. General Accounting Office (GAO), accompanied by David Childress, Assistant Director for Acquisition Policy, Technology and Competitiveness Issues, NSIAD, GAO, William T. Woods, Assistant GAO General Counsel, and Chris Martin, Assistant Director, Office of the Chief Scientist, GAO; Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration (SBA), accompanied by James M. O'Connor, Assistant Chief Counsel for Procurement Policy, SBA.

The GAO witnesses reviewed three elements of the on-going implementation of FASA. First, they provided an assessment of the status of the proposed and final implementing regulations to be promulgated by the Executive Branch in accordance with FASA's statutory schedule. The witnesses reviewed the extensive efforts being made to develop the necessary revisions to the government-wide Federal Acquisition Regulation (FAR). While the Adminis-

trator of Federal Procurement Policy at the Office of Management and Budget projected that the new regulations would be completed almost three months ahead of the October 1 statutory deadline, the GAO witnesses testified that the accelerated timetable had not been met. They noted that some of the most important implementing regulations, such as those pertaining to SAT and FACNET, were issued in so-called interim final form, in which the proposed regulations were made effective, and public comment sought after the fact.

Second, the GAO witnesses provided the Committee with a preliminary assessment of FACNET's implementation and its use by the Federal procuring agencies and the vendor community. They confirmed that the implementation of FACNET was proceeding very slowly, with only a small fraction of the available procurement opportunities being solicited and awarded through FACNET. The primary obstacle for implementation was system reliability. The witnesses observed that FACNET implementation would require additional leadership and direction from senior management in the Executive Branch.

Third, the GAO's testimony provided a status report on the implementation of FASA's new authority regarding micropurchases and the use of the IMPACT Purchase Card. The witnesses reported that agency use of the IMPACT Card has been expanding rapidly. While the GAO issued a report on August 6, 1996 concerning acquisition reform, it did not include any data on the effect on small business of the expanding use of the purchase card or the elimination of the small business reserve for purchases below the Micropurchase threshold. Without such information, small firms cannot compete for the millions of purchases below $10,000, which is now the threshold below which no form of public notice is required.

The SBA's Chief Counsel for Advocacy made five principal observations about the implementation of FASA and its potential impact on small firms seeking to market to the Federal government. First, he testified that while FASA made the most sweeping changes to the Federal procurement process in 10 years, FASA's specific effects, especially on small firms, cannot be assessed until its implementation regulations are in place given the substantial discretion given to the regulation writers. He cited several examples relating to the new SAT, including the potential benefit to small business by having these contracting opportunities reserved for small business and the potential adverse effects of having lost the statutory guarantees for adequate advance notice of contracting opportunities and the adequate time to develop and submit offers.

Second, Mr. Glover noted that the Office of Advocacy was applying steady pressure on the FASA regulation drafters to force their fullest compliance with the Regulatory Flexibility Act. His office has been admonishing the regulation writers that a simple assertion that a regulatory proposal would generally benefit small business government contractors was unacceptable to absolve them from conducting an initial regulatory flexibility analysis meeting the Act's standards. He also stressed the importance of the small business community's participation in the public comment process with regard to the new regulation.

Third, Mr. Glover discussed his concerns about the implementation of FACNET, which he noted was proceeding quite slowly with very few procurement opportunities available through the system. Given the status of FACNET, participating small firms were subject to unreasonably high government marketing costs in the form of the subscription and transaction fees charged for transacting electronic commerce through FACNET. Mr. Glover stressed the need for smaller firms, which are limited participants in the Federal procurement market, to obtain access to FACNET at reduced costs.

Fourth, he emphasized that some of the provisions of FASA remained potentially dangerous to future small business participation. Among others, he cited FASA's provisions that would further encourage the bundling of contracting opportunities, which would effectively eliminate chances for a capable small firm to become a prime contractor. He also expressed concern about FASA's elimination, as part of the new $2,500 Micropurchase threshold, of the reservation of small purchase opportunities for small firms.

Finally, Mr. Glover urged the Committee to give the fullest consideration to the recommendations of the delegates to the 1995 White House Conference on Small Business and to the concerns being expressed by many groups within the small business community. He stressed that given the opportunity to compete on fair terms, small business can remain a source of quality products, services, and construction that are innovative and cost effective.

For further information on this hearing, refer to Committee publication number 104–41.

7.2.26 THE ADMINISTRATION AND CONGRESSIONAL INITIATIVES TO REFORM OSHA, AND THEIR IMPACT ON SMALL BUSINESSES

Background

On July 26, 1995, the Committee on Small Business held a hearing to examine the initiatives undertaken by the Administration and Congress to reform the Occupational Safety and Health Administration (OSHA) and their effect on small businesses. The hearing was the second in a series of oversight hearings that focused on the Administration's efforts to reduce paperwork and regulatory burdens on small business.

At the White House Conference on Small Business in June 1995, the President described the Administration's initiatives to reduce regulatory burdens on small business. He referred to his March 1, 1995, memorandum to department and agency heads to make regulatory reform a priority. Agency heads were directed to review their regulations page by page and indicate by June 1, 1995, which regulations they would eliminate or modify and which needed legislative attention in the reinvention exercise.

Summary

The hearing was comprised of two panels, the first of which included a single witness: Charlie Norwood (R–GA), Member of Congress. The Congressman's testimony focused on H.R. 1834, "Safety

and Health Improvement and Regulatory Reform Act of 1995," introduced by Congressman Cass Ballenger (R–NC), which would protect small businesses by requiring employees to work with employers to fix a perceived problem before OSHA becomes involved in the issue. The Clinton Administration has agreed that OSHA needs to be changed and has indicated that it will be guided by three principles: more cooperation between OSHA and employers; more common sense solutions; and a focus on results, not red tape. Congressman Norwood urged the Committee to monitor OSHA's activities closely to make sure that it adheres to these principles.

The second panel included: Joseph A. Dear, Assistant Secretary of Labor and Occupational Health, U.S. Department of Labor; Giovanni Coratolo, Owner, Port of Italy Restaurant; Eamonn McGready, President, Martin Imbach, Inc.; Richard Palmer, Vice President and Secretary Treasurer, Palmer Painting Co., Inc.; William Roth, Finite Industries of New Jersey; and William Stone, President, Louisville Plate Glass Co.

Mr. Dear reviewed the Administration's efforts to reform OSHA and reduce the burdens on small business. One of the primary changes undertaken by the agency was to offer employers a choice between traditional enforcement or a partnership with OSHA to achieve better worker safety. Mr. Dear gave the Committee as an example of the partnership approach the so-called Maine 200 program, in which OSHA identified the 200 firms throughout the State of Maine with the highest workers compensation claims and offered them the opportunity to work with OSHA in collaboration to modify the factors contributing to the high levels of worker injuries. Out of the 200 offers, 198 of the firms accepted and 60 percent have reduced their incidents of injury and illness.

Mr. Dear also testified that OSHA is bringing common sense to the regulations and how they are developed and enforced. In addition, OSHA is focusing on ways to change the way that the agency measure performance. Instead of measuring performance based on the number of violations found and penalty dollars collected, OSHA has refocused its efforts on reducing illness, injuries, and deaths as a measurement of the agency's success.

The balance of the panel was comprised of witnesses from the small business community who testified about the tremendous burdens that OSHA regulations represent for small businesses in this country. Witnesses noted that small business compliance with OSHA's relations represents a greater burden than for large business, in part due to the fact that small businesses typically have fewer employees to review, monitor, and implement the voluminous amount of regulations concerning worker safety. This is especially true for the restaurant industry, which one witness noted, is second only to the nuclear power industry in terms of number of applicable regulations.

The witnesses also commented that old regulations are rarely replaced by new regulations; rather the new ones are just added to the list. OSHA standards and regulations should be based on common sense and sound scientific judgment in order to produce reasonable and efficient rules that promote the safety and protection of workers. The witnesses generally congratulated OSHA for its efforts to be more consultative and less confrontational. In addition,

the panel supported the aims of the Ballenger legislation as a means of reinforcing the organizational changes that Mr. Dear pledged to implement.

The panelists stressed that worker safety is particularly important to small businessmen and women, for they are the prime investors in the business and they suffer the consequences of work-related injury through increased workers-compensation insurance premiums. In addition, the greatest assets to small businesses are their employees, and historically small businesses are the primary job creators in the nation. As a result, it is in the direct interest of small business owners to make every effort to reduce worker injury.

For further information on this hearing, refer to Committee publication number 104–42.

7.2.27 PENSION REFORM AND SIMPLIFICATION: A SMALL BUSINESS PERSPECTIVE

Background

On September 8, 1995, the Committee on Small Business held a hearing on pension reform and simplification from the perspective of small business. As the seventh highest vote-receiving recommendation from the 1995 White House Conference on Small Business, pension reform and simplification has significant effects on small business. Historically, however, the number of small businesses that offer pension benefits to their employees has been alarmingly low. The witnesses were asked to address this problem in two ways. First, they were asked to evaluate the technical aspects of H.R. 2037, the "Pension Simplification Act of 1995," the Joint Committee on Taxation's "Description of Miscellaneous Tax Proposal's" (Committee Print JCS–19–95), and the proposal formulated by the White House. In many cases, each of the three proposals contained provisions on a specific pension issue, and the witnesses were asked to identify the version most favorable to small business. Second, the witnesses were asked to identify alternatives through which pension plans could be made more accessible to small business in this country.

Summary

The hearing was comprised of three panels. The first panel consisted of Congressman Rob Portman (R–OH) who testified about H.R. 2037, which he and Congressman Ben Cardin (D–MD) sponsored. Congressman Portman emphasized that the level of small businesse's sponsorship of pension plans was dangerously low, which has long-term detrimental effects on private retirement savings. This low level is largely due to the fact that small businesses are faced with enormously complex reporting and compliance requirements if they chose to offer pension benefits. He testified that his bill was intended to alleviate many of these burdens and encourage small businesses to make pensions available to their employees.

The second panel consisted of representatives from the small-business community, including: Paula Calimafde, Chair, Small

Business Council of America, also representing the Small Business Legislative Council, and the National Association of Women Business Owners; Sandra Turner, Bates, Turner & Associates, representing National Federation of Independent Business; Ron Merolli, Director, Pension Legislative & Technical Services, National Life Insurance Company; Janice Matthews, Manager, Employee Benefits, Trans Financial Bank, representing National Small Business United; and Sam Gilbert, President, United Plan Administrators, Inc., representing the U.S. Chamber of Commerce.

The panel agreed on a number of the pension provisions contained in the three legislative proposals. Specifically, the panel overwhelmingly supported the repeal of the following pension rules under the current law: the family aggregation rules, the "top heavy" restrictions, the $150,000 limit on compensation, the minimum participation rules, the 15-percent excise tax on excess distributions and estate tax on excess accumulations, the combined plan limitations under section 415(e) of the Internal Revenue Code, the lump-sum distribution limits imposed under the GATT legislation, and the 150 percent full-funding limitation imposed under the Omnibus Budget Reconciliation Act of 1987.

In addition, the panel expressed strong support for a simplified definition of "highly compensated employee" and generally agreed that a person should be so classified if he or she is a 5-percent owner in the current or preceding year or if his or her compensation in the preceding year exceeded $80,000, indexed for inflation. There was also strong support for design-based safe-harbors for 401(k) plans, which the witnesses stated would be a significant improvement over current law. If asked to choose among the three proposals, the witnesses generally favored the Joint Committee's design-based safe-harbors or those contained in H.R. 2037. The panel also supported the provisions for a look-back rule for determining maximum 401(k) contributions and the proposal to make corrective distributions for 401(k) plans optional, subject to a consistency rule.

The Committee also heard support for the provisions in H.R. 2037 and the Administration's proposal that would repeal the required distributions for individuals beginning at age 70½, although they would go further and allow 5-percent owners to also postpone distributions. The panel agreed with the provisions in H.R. 2037 and the Administration's proposal to coordinate the pension reporting penalties with other penalties imposed under the Internal Revenue Code. Finally, the panel expressed support for the prohibition on State source taxes on pension benefits and the exemption for small businesses from the partial termination rules, which currently cover multi-employer plans.

With respect to alternatives to encourage small businesses to offer pension benefits, the panel generally agreed that the single most effective step would be the adoption of designed-based safe-harbors for 401(k) plans. These safe-harbors would eliminate many of the regulatory and compliance burdens associated with these plans. Some of the small business witnesses also testified that if the Administration's national employee savings trust, or NEST, were adopted, it might be useful to some small businesses, but they expressed concerns about the mandatory employer contributions re-

quired under the plan. In addition, the panel expressed support for the proposals to expand salary reduction simplified employee plans, known as SARSEPs, to cover employers with up to 100 employees. The Committee also heard support for the tax credit under H.R. 2037 for small businesses that set up a new pension plan, although some witnesses questioned whether the $1,000 amount was a sufficient incentive.

The second panel consisted of two Administration witnesses: Jere Glover, Chief Counsel for Advocacy, U.S. Small Business Administration; and J. Mark Iwry, Benefits Tax Counsel, U.S. Department of Treasury.

The Administration's representatives expressed general support for the same issues emphasized by the small business panel but generally advocated the version of each provision that was set forth in the Administration's proposal. This panel did, however, disagree with the small business witnesses in certain aspects. For instance, the Administration supported retention of the top heavy rules, although Mr. Iwry suggested that the Treasury Department would be open to modifications of the existing rules.

Similarly, the Administration supported the repeal of the minimum participation rules only for defined contribution plans; not all plans as advocated by the small business witnesses. In addition, the Administration expressed a preference for repealing the combined-plan limitations under section 415(e) rather than repealing the 15-percent excise tax on excess distributions and the estate tax on excess accumulations. Finally, the Administration witnesses advocated the creation of a NEST as a means for encouraging small businesses to offer pension benefits.

For further information on this hearing, refer to Committee publication number 104–48.

7.2.28 THE IMPACT OF SOLID WASTE FLOW CONTROL ON SMALL BUSINESSES AND CONSUMERS

Background

On September 13, 1995, the Committee on Small Business held a hearing to examine the impact of solid waste flow control on small businesses and consumers. Flow control is the legal authority given to States and local governments to designate specifically where municipal solid waste may be taken for treatment or disposal. Without flow control, small business consumers and others who must pay to remove their waste usually have choices about where to take the trash.

In May 1994, the Supreme Court decision in *C&A Carbone v. The Town of Clarkstown* declared that a flow control ordinance violated the Interstate Commerce clause of the U.S. Constitution. In effect, the Court ruled that solid waste constitutes an article of interstate commerce and its movement cannot be restricted without explicit congressional authority. Small business owners have approached the Committee on Small Business expressing the concern that the congressional debate on flow control was dominated by the local government and big waste company perspectives to the detriment of small businesses.

Summary

The hearing was comprised of four panels, the first of which included: John Broadway, Virginia State Director, National Federation of Independent Businesses; John McKeon, GZK Inc., representing the National Restaurant Association; Cheryl L. Dunson, Legislative Affairs Director, Santek Environmental, Inc., and Friends of Locally Owned Government Waste (FLOW); and David Muchnick, President, South Bronx 2000 Local Development Corporation. The consensus of this panel was that flow control ordinances negatively affect small business owners. These ordinances force waste disposal customers to use government mandated facilities and, in effect, create monopolies. The most obvious impact of flow control, one witness testified, is on price. In communities where there are no flow control ordinances, processors and recyclers compete for market price. One small business owner testified that flow control allows a political jurisdiction to determine which disposal method and which facility will be used.

One small business advocate testified that the issue of who controls waste streams and their destinations is about the livelihoods of small independent haulers who do not own landfills and thus produces negative repercussions for the Nation's small business owners. The witness testified that flow control makes the small business owner captive to a single public or private-sector waste hauler or waste disposal facility, which in turn denies small business the opportunity to reduce their cost by source-separating and marketing, donating, or otherwise distributing their recyclable materials on their own.

The second panel included: Jere Glover, Chief Counsel for Advocacy, Small Business Administration (SBA); and Michael H. Shapiro, Director, Office of Solid Waste, Environmental Protection Agency (EPA). The EPA's testimony regarding the report that it submitted to Congress in September 1992 indicated that flow controls provide an administratively effective tool for local governments to plan and fund solid waste management systems. However, they found no data showing that jurisdictions having flow control authority provide more protection in terms of human health and the environment than jurisdictions without such authority. The SBA testified that full and open competition is always better for small business. According to one study, flow control imposes between 20 and 30 percent monopoly surcharges on small business for their solid waste disposal. SBA stated that economic regulations, which impose regulatory cost on taxpayers and small business without at least having some significant environmental benefit, should not exist.

The third panel included: Sharpe James, Mayor, Newark, New Jersey; and Randy Johnson, County Commissioner, Hennepin County, Minnesota. The Mayor of Newark testified that when flow control came into existence in 1987 in the Newark area, the immediate effect of the mandated flow control was a dramatic increase in disposal cost to $103 per ton for municipal solid waste and $109 per ton for bulk debris. Prior to the mandate, Newark had been disposing of its waste at a nearby facility for approximately $25 per ton. Flow control brought about a four-fold increase in Newark's

waste disposal costs. The Mayor also stated that two of the negative effects that flow control has on small businesses are an increase in the cost of doing business in a non-competitive marketplace and it bars entry to the market for companies that wish to recycle and dispose of waste.

Commissioner Johnson testified that flow control has allowed Hennepin County to manage solid waste over the long term with stable prices and in an environmentally sound manner. He stated that flow control is not a debate between public versus private facilities but that flow control systems enable many small trash haulers to survive, compete, and flourish. Entering into long-term contracts for disposal and paying the same price at the designated facility as every other hauler enables small haulers to compete against the large, multinational waste companies that own their own mega-landfills, transfer stations, and large numbers of trucks.

The fourth panel included: Paul M. Felix, President, Container Corporation of Carolina; Mel Kelly, President, K&K Trash Removal, Inc.; Richard A. Perry, Executive Director, California Refuse Removal Council; Brian W. Clements, President, Clements Waste Services, Inc.; and Kenneth Bell, Vice President for Development, ReComp of Washington. The general consensus of the panelists was that flow control was detrimental to small business. The small business owners felt that flow control takes away the choice of each small business owner to make the right economic decision for his or her business. For example, if flow control were implemented in one small business owner's company, it would have a net impact of increasing the cost of disposal to the 10,000 customers who are small businesses by over $15 million.

One small business owner on the panel testified that often the debate about flow control revolves around what is merely governmental intervention that stifles competition and makes things tough for small businesses. This witness indicated that his small business supports a competitive model of flow control. Previously when flow control was believed to be a basic local governmental power, his company was committed to providing long-term solid waste processing service to the community. Now, the witness maintained, flow control is being undermined. He testified that it should be reinstated in the name of fairness and in the name of allowing local governments to do their job as they see fit without having their hands tied by the Federal government.

For further information on this hearing, refer to Committee publication number 104–50.

7.2.29 SBA'S VENTURE CAPITAL PROGRAMS

Background

On September 28, 1995, the Committee on Small Business held a hearing to examine the Small Business Investment Company (SBIC) and the Specialized Small Business Investment (SSBIC) Programs. The SBIC and SSBIC Programs have provided early stage funding for what are now some of America's largest publicly held companies. The programs arrange for private investment companies to raise a pool of capital to invest in or lend to SBICs that

are licensed by the Small Business Administration (SBA). The SBICs agree to abide by the SBA's rules and regulations regarding transactions with small businesses. In exchange, the SBA provides matching funds either through debentures or through participating securities. Ultimately, the SBA-provided funds are supposed to be paid back to the government.

The SBIC Program fills a gap in the small business financing marketplace. As a result, small business owners have a place to turn for investment capital, especially in the startup phase when there is a great need for "risk capital." The SSBIC Program provides the same kind of assistance targeted at the minority community, which has traditionally had an even more difficult time finding risk capital. The role of the SBA is to make sure that the SBIC or SSBIC adheres to the regulations, manages its deals appropriately, and does not expose the Federal government and the taxpayer to undue risk. The Committee has learned, however, that there are many problems with both programs and that the potential risks to the government are great.

Summary

The hearing was comprised of one panel, which included: Judy England-Joseph, Office of Housing and Community Development Issues, U.S. General Accounting Office (GAO); Patricia Forbes, Office of Economic Development, SBA, accompanied by Don A. Christensen, Associate Administrator for Investments, SBA; and Donald J. Wheeler, Deputy Director, Office of Special Investigations, GAO.

The GAO witnesses testified that weaknesses in SBA's oversight and management continue to place Federal funds at risk. Although recent SBA actions and legislative changes are steps in the right direction, these oversight and management weaknesses continue to plague the SBIC and SSBIC Programs. GAO testified that corrective actions on examination findings are not pursued rigorously, financially troubled firms are not transferred to liquidation quickly, and overstated asset valuations are not detected in a timely manner. GAO believes that these weaknesses result in losses to the Federal government that could have been avoided.

The GAO witnesses testified that the organizational placement of the Office of Examinations in the same division that is responsible for promoting the SBIC and SSBIC Programs leaves it vulnerable to questions about its independence. They recommend that Congress consider directing the Administrator of the SBA to move the Office of Examinations out of the investment division and have it report directly to the Associate Deputy Administrator for Economic Development. GAO further recommended that the SBA develop an overall strategy to better target oversight resources to SBICs and SSBICs that commit repeated or egregious violations and on those investments that pose the greatest risk of loss to the Federal government.

The SBA witnesses referred to the March 28, 1995, hearing in which the rejuvenation of the SBIC Program through the Small Business Equity Enhancement Act of 1992 was discussed. According to the SBA the result of the Act on the SBIC Program has incorporated the best practices of the private venture capital industry

as well as the lessons learned from past experience with the program. The agency believes that, although more remains to be done, the result has been an enormous strengthening of the program and correction of the weaknesses that had led to the well-publicized problems of the past.

For further information on this hearing, refer to Committee publication number 104–51.

7.2.30 FEDERAL CONTRACT BUNDLING: HOW CAN SMALL BUSINESS COMPETE?

Background

On October 11, 1995, the Committee on Small Business held a hearing to assess the impact of Federal contract bundling on small business. Contract bundling is the practice of consolidating government contracts and limiting access to open competition in the procurement process. The Committee focused on two industries that rely on government contracts and that were being threatened by proposals that would have effectively excluded small businesses from openly competing for government business. The two industries were air-freight forwarding, which was threatened by a proposal from the General Services Administration (GSA) and household-goods moving, which was being threatened by a proposal from the Military Traffic Management Command (MTMC).

In 1995, GSA issued a solicitation for air-freight contracts that would have raised the minimum requirements that private air-freight carriers must meet in order to qualify for government-contracted business. These minimum requirements had been set at a level so high that there was little chance that small businesses competing in the government procurement process could have complied. Historically, government agencies have generally contracted directly with air-freight forwarders to ship heavy items. The proposed solicitation, however, would have transferred all contract authority for heavy air-freight to GSA, making GSA the sole negotiator and contractor for 67 government agencies and departments (including all of the Department of Defense (DOD), which is the largest shipper of heavy air freight). The solicitation would have covered almost all of the U.S. government's heavy air-freight business.

In early 1995, MTMC issued a contract proposal for its $1.1 billion per year personal property program that would have abolished, rather than modified and improved, the existing procurement procedures specifically developed for that industry. Household-goods movers and forwarders are hired to move military families who have been transferred from one military installation to another. MTMC's goal was to substitute the general Federal Acquisition Regulations (FAR) procurement procedures for the system that had been in place for over forty years. Under the traditional system, carriers bid on routes out of military installations at specific rates. In addition, carriers were allowed to bid a second time to reduce their initial bid in response to the lowest bidder (which is sometimes referred to as "me-too" bidding). This permitted the me-too carriers to share with the low cost carrier in the residual traffic on

all channels at the established low rate. This system also ensured a low rate for the government.

MTMC's proposal was a "winner take all" system. In other words, any company could bid on specific routes between military bases. Unlike the traditional system that ensured that many carriers serviced each route, however, only one carrier would have been able to service each route under MTMC's proposal. This, in effect, would have bundled what had historically been multiple contracts into one contract per route.

Summary

The hearing was comprised of four panels, the first of which included a single witness: Jack Quinn (R–NY), Member of Congress. Congressman Quinn expressed his opposition to GSA's contract solicitation for air-freight services, which would have a significant effect on one of his constituents.

The second panel consisted of representatives from the air-forwarding industry and GSA: Chris Alf, President, National Air Cargo; Jim Foster, President, Airforwarders Association; and Allan Beres, Assistant Commissioner of the Office of Transportation and Property Management, GSA. The small business witnesses presented testimony regarding GSA's contract solicitation for air-freight services. Both witnesses were strongly against GSA's proposal and claimed that the sole purpose of GSA's proposal was to eliminate small companies from the system in order to award a contract to a few very large companies. Mr. Alf explained that if GSA's proposal was adopted, his company would go out of business. Mr. Foster similarly explained that this proposal would shut hundreds of other companies out of the business of government air-freight services, thereby forcing them out of business altogether. Mr. Beres maintained that GSA was not bundling contracts, but rather "aggregating demand." He testified that any company could bid on GSA's contract solicitation and that multiple awards would be issued. He did not address the industry's contention that there were essentially two companies in the country that could meet GSA's impossibly high requirements.

The third panel consisted of representatives from the household-goods moving industry and MTMC: Robert Moore, Deputy Chief of Staff for Operations, MTMC; Bill Gremmels President, AALCO Forwarding, Inc.; Donald H. Mensch, President, Household Goods Forwarders Association of America, Inc.; and Joseph Harrison, President, American Movers Conference.

The panel presented testimony regarding MTMC's contract solicitation for the moving of household goods for U.S. military members. Mr. Moore maintained that the system that had been in place for over forty years was so badly broken that nothing short of completely re-engineering the program could possibly fix it. The industry representatives unanimously agreed that while there were problems with the system, a mutually beneficial compromise could be worked out so as to ensure small business participation and improved service. In addition, they claimed that, like the GSA solicitation, the sole purpose of the MTMC proposal was to eliminate small companies from the system in order to award a contract to a few very large companies.

The fourth panel consisted of Jere W. Glover, Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration. Mr. Glover testified against the practice of contract bundling and, more specifically, against the contract solicitations that had been issued by GSA and MTMC. He stated that contract bundling was a trend that was rapidly advancing in Federal procurement under the auspices of contract simplicity, but with devastating results manifested in less competition, higher government costs in the long run, and reduced small business participation.

For further information on this hearing, refer to Committee publication number 104–52.

7.2.31 THE EFFECTS OF SUPERFUND LIABILITY ON SMALL BUSINESS

Background

On October 19, 1995, the Committee on Small Business held a hearing to examine the effects of Superfund liability on small businesses. Superfund was created with the enactment of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in 1980. It has long been considered a program in need of major reforms—to some, the program appears to be more of a cash cow for environmental lawyers than an efficient mechanism for cleaning up hazardous waste sites. In addition, meaningful reform of Superfund, particularly the liability system, ranked as the number five recommendation at the 1995 White House Conference on Small Business.

Summary

The hearing was comprised of two panels, the first of which included: Lois J. Schiffer, Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice; Susan M. Eckerly, Director of Regulatory Policy, Citizens for a Sound Economy; Raymond J. Keating, Chief Economist, Small Business Survival Committee; and John C. Shanahan, Policy Analyst, Environmental Affairs and Energy Studies, The Heritage Foundation.

Ms. Schiffer began the panel and testified that the problems with Superfund range from insensitive bureaucrats writing letters that no one wants to receive; to people bringing small businesses into a liability system in which there is really no reason for their participation; to private companies going after small businesses even when the government has determined not to prosecute. Ms. Schiffer stated that the Administration has recognized these problems and has been working diligently to solve them. She went on to state that the Department of Justice is using six approaches to the problems with Superfund. One of the proposals relates to small business generators that contribute very small amounts of waste—a few barrels—and would exempt these small businesses. Another proposal is for small business owners who operate hazardous waste sites or transporters who cannot afford to pay the high cleanup costs for which they may be responsible. The Department's proposal would review what the business and its owner have, and de-

termine what they can pay, while leaving the owner and business in tact.

Other witnesses on this panel spoke as to the failure of Superfund to cleanup hazardous waste sites. One aspect of the program that is believed to be in need of elimination is the system of retroactive liability. The witnesses stated that this system is very detrimental to small business, and one complication is the lack of records that are available for small business as opposed to larger businesses to prove their innocence. It was also stated that the delays and costs of litigation hinder Superfund's effectiveness. Reforms should address the core elements of the Superfund structure that fuel litigation, slow cleanups, and raise costs. One of the most publicized criticisms of Superfund is that instead of monies being spent on cleanup, it has been spent on lawyers.

The second panel included: John De Vinck, De Vinck, Inc., representing the National Automobile Dealers Association; Kevin R. Herstad, United Truck Body Company, representing the National Federation of Independent Business; Edward L. Quinn, Sr., Chairman of the Board, K.J. Quinn & Company; and David Norwine, Haward Corporation, representing the National Association of Metal Finishers.

The panel consisted of small business owners whose businesses have suffered because of Superfund. All of the witnesses stated that Superfund's system of retroactive liability is unduly harsh on small businesses. Under this system, any contributor to a site is potentially responsible for the entire cost of cleanup, even if the amount they contributed to the site is minimal. Small businesses can be held liable for cleanups that resulted from alleged waste management activities occurring years and even decades in the past. In addition, the law does not require a demonstration that the small business was negligent or at fault to establish liability.

As an example, one small business owner referred to a site that was in the process of being "cleaned up." He stated that after the cleanup began, the plant blew up and a three-alarm fire broke out. It is believed that there was more contamination from the cleanup, with the explosion of the plant, than there had been over the last 30 years of the site's mere existence.

For further information on this hearing, refer to Committee publication number 104–55.

7.2.32 THE INTERNAL REVENUE SERVICE'S INITIATIVES TO REDUCE REGULATORY AND PAPERWORK BURDENS ON SMALL BUSINESS

Background

On October 25, 1995, the Committee on Small Business held a hearing to examine the initiatives undertaken by the Internal Revenue Service (IRS) to reduce regulatory and paperwork burdens on small business. The IRS estimates that the American public expends over 5 billion hours responding to regulatory forms, reports, and record keeping requirements of the tax system, and small business carries a disproportionate share of that burden. The Paperwork Reduction Act of 1995 established a goal of reducing the gov-

ernment's overall paperwork burden on the public by 10 percent in each of the following two years. In addition, at the White House Conference on Small Business held in June 1995, the President committed his Administration to reducing regulatory and paperwork burdens on small business significantly.

Summary

The hearing was comprised of one panel, which included: Margaret Milner Richardson, Commissioner, IRS; Jack Faris, President, National Federation of Independent Business; William P. Fisher, Executive Vice President, National Restaurant Association; Jeff Joseph, Vice President, Domestic Policy, U.S. Chamber of Commerce; Bennie L. Thayer, President and Chief Executive Officer, National Association for the Self-Employed; and Ken Wolfe, Kohlhepp, Wolfe & Associates, representing the U.S. Chamber of Commerce.

The Commissioner testified that the IRS has established an Office of Small Business Affairs that will focus on the concerns of small business. In this regard, the IRS has conducted town meetings across the country to hear concerns from small business owners. The Commissioner also explained some of the programs that the IRS had been developing to streamline procedures for the small business owner. In addition, she testified that the IRS is anxious to keep building on the progress already made but that the current budget environment and the significant proposed reductions in appropriations will hinder the agency's ability to deliver these kinds of services.

The witnesses testifying on behalf of small business owners stated that the Internal Revenue Code has endured over 4,000 changes since 1986. The witnesses maintained that the Code is so convoluted and difficult to understand that it needs to be thrown out and totally rewritten from scratch. Several witnesses provided the Committee with stories of how they had been involved in a small business in the past and were still receiving letters from the IRS asking them to be responsible for something they had not participated in for many years. One witness stated that he simply paid the fine for which the IRS said he was responsible because the time and energy it would have taken to get through to the IRS and straighten the matter out would amount to much more money than the IRS claimed he owed.

Witnesses also testified that reforms in the Regulatory Flexibility Act, the Taxpayer Bill of Rights, and the final rule on the Paperwork Reduction Act, which involves compliance by the IRS, must be passed to further enhance the process. The Committee was given as an example the business that is suddenly told by the IRS that is should have been treating its independent contractors as employees. Such a change in worker status can involves back taxes, interest, penalties, and even if the IRS determines that no amount is due, the business and/or independent contractor often must expend considerable sums defending against the IR's allegations of misclassification.

For further information on this hearing, refer to Committee publication number 104–56.

7.2.33 THE COST OF FEDERAL REGULATIONS ON SMALL BUSINESS

Background

On October 31, 1995, the House and Senate Committees on Small Business held a joint hearing to examine the costs of Federal regulations on small business. It is believed that the regulatory cost of regulations for small companies is some 50 percent more than the cost to large firms. This finding establishes an appropriate perspective for prompt action on eliminating unnecessary regulatory compliance costs to encourage rather than discourage new small businesses. The hearing was designed to examine the report to Congress by the Chief Counsel for Advocacy of U.S. Small Business Administration (SBA) requested under section 613 of Public Law 103–403 on "the impact of all Federal regulatory, paperwork, and tax requirements upon small business."

Summary

The hearing was comprised of a single witness: Jere Glover, Chief Counsel for Advocacy, SBA. Mr. Glover initially stated that the one thing small businesses fear the most is government regulations and that since 1980, the SBA's Office of Advocacy has undertaken over 30 different studies on the regulatory burdens of various sectors of the small business community.

Mr. Glover reviewed the recent study that the SBA undertook pursuant to Public Law 103–403, which focused on the regulatory costs for all businesses and a general analysis of these costs. He maintained that the regulatory burden has leveled off as a percentage of the gross domestic product. He also stated that two regulatory costs have actually gone down over the last two decades: the economic efficiency cost and the economic transfer cost. The biggest increase in burden, however, has been in environmental regulations. The next largest increase is in process regulation, which is basically paperwork and involves the Internal Revenue Service and the payroll and Social Security records. Social regulation costs such as Occupational Safety and Health Administration (OSHA) and worker safety rules have not increased significantly, according to Mr. Glover.

Mr. Glover also testified that the study split the regulatory burden between consumers and business with 60 percent of the regulatory burden falling on business. After looking at all business, the study was then directed to the small business sector. In examining the average cost of regulations per employee, small businesses were much harder hit than large businesses. In looking at the cost per dollar of sales, there is a disparate burden on small businesses as well. The conclusion of the study was that there is a very clear disproportionate burden on small business, which continues despite the passage of the Regulatory Flexibility Act.

Mr. Glover mentioned the Paperwork Reduction Act, recently passed by Congress, which will require that the agencies reduce their paperwork burden by 10 percent each year for each of the next 2 years and 5 percent thereafter. He stated that while these efforts are significant, more should be done to decrease the disparate burden on small businesses.

For further information on this hearing, refer to Committee publication number 104–57.

7.2.34 RAILROAD CONSOLIDATION: SMALL BUSINESS CONCERNS

Background

On November 8, 1995, the House and Senate Committees on Small Business held a joint hearing to examine railroad mergers and their impact on small business and, in particular, small shippers. A recent trend had been developing toward mega-mergers among previously competing Class I railroads. The primary concern of this hearing was to see how these mega-mergers would affect small business shippers, particularly shippers of bulk commodities such as agricultural goods.

Summary

The hearing was comprised of two panels, the first of which included: Dan Glickman, Secretary, U.S. Department of Agriculture (USDA), accompanied by Paul Kepler, Deputy Director of Transportation and Marketing Division, Agricultural Marketing Service, USDA. Secretary Glickman testified that in 1989 the USDA's Economic Research Service issued a report that concluded that competition among railroads had a strong effect on rates for agricultural shippers. The Secretary added that when there is more competition, the rates are lower. An increase in concentration reduces competition, and agricultural shippers will incur higher rates, particularly those shippers who are long distances from barge transportation.

Secretary Glickman stated that small shippers and railroads have a number of concerns with the increased consolidation of the major railroads, including a growing potential for captive shippers who are only served by one railroad; reduced or inadequate service; and non-competitive rates. The Secretary stated that reliable, cost-effective transportation of agricultural products enables U.S. agricultural producers and shippers to be competitive in both domestic and export markets. In closing, Secretary Glickman stated that the government must ensure the continued availability of an adequately and competitively priced railroad system in order to maintain continued growth in U.S. export markets.

The second panel included: Richard J. Barber, Barber & Associates; Ed Emmett, President, National Industrial Transportation League; Duane "Butch" Fischer, President, Scoular Grain Company; Curtis Grimm, Professor, College of Business and Management, University of Maryland; Phil Hoffman, Secretary, Hoffman & Reed; James F. Jundzilo, Transportation Manager, Tetra Chemical Company; Ned Leonard, Manager, Communications and Government Affairs, Western Fuels Association, Inc.; and William F. York, Manager, Lange Company, LLC.

Small business owners and shippers testifying at the hearing were concerned about antitrust oversight of the railroad industry. The owners stated that deregulation can only work as long as competition is maintained. Current government standards allow mega-mergers and concentration in the marketplace with very little con-

sideration of competition. For some small business owners, transportation is 50 percent of their costs. Limiting competition threatens their ability to compete.

Several small business owners testified about their concerns with the proposed Union Pacific and Southern Pacific (UP-SP) merger. These witnesses believe that it is possible that this mega-merger will result in rail-service dislocation and will put some small business owners at a disadvantage since they will not have access to railroad transportation. A professor from the University of Maryland's College of Business and Management advocated deregulation of the U.S. railroad industry but maintained that deregulation does not authorize the government to abdicate its antitrust responsibility. Professor Grimm testified that the UP-SP merger would eliminate rail competition to an unprecedented degree and that the Interstate Commerce Commission should deny such a merger.

Advocates for consolidation in the railroad industry testified that with the decline in the number of Class I railroads over the past two decades, the remaining railroads are more efficient, more productive, and better able to serve grain shippers, both large and small, than they were 15 years ago. The witnesses also stated that consolidations have created opportunities for producers and merchandisers to find new markets for their products. One advocate testified that the transportation infrastructure to haul grain was devastated by the effect of reduced production and reduced exports. If expansion of grain production were permanent, the capital inflow would improve infrastructure.

For further information on this hearing, refer to Committee publication number 104–58.

7.2.35 THE ABUSES IN THE SBA'S 8(A) PROCUREMENT PROGRAM

Background

On December 13, 1995, the Committee on Small Business held an oversight hearing to examine the Small Business Administration's (SBA) Minority Enterprise Development Program, also known as the 8(a) Program. The 8(a) Program began as a way to help develop small businesses owned by socially and economically disadvantaged individuals. For some time prior to the hearing, the Committee has received reports concerning abuses and fraud in the 8(a) Program from entities such as the General Accounting Office (GAO) and the SBA Inspector General.

For example, the SBA Inspector General looked at 50 larger size firms in the 8(a) Program and found that 35 of the 50 participant owners were millionaires but maintained their classification as economically disadvantaged. Congressional efforts to fix the program in 1988 failed. Given all of the abuses surrounding the sole-source authority in the 8(a) Program, the Chair of the Committee called upon the SBA Administrator to place an immediate moratorium on all sole-source contracting through the 8(a) Program.

Summary

The hearing was comprised of a single panel, which included: William Campbell, Chief Financial Officer, U.S. Coast Guard; Nich-

olas R. Innerbichler, President, Technical and Management Services Corporation (TAMSCO); Calvin Jenkins, Associate Administrator, Minority Small Business and Capital Ownership Development, SBA; Karen S. Lee, Deputy Inspector General, SBA; and Donald J. Wheeler, Director, Office of Special Investigations, GAO.

The witnesses from the GAO and SBA Inspector General's Office testified about abuses in the 8(a) Program. Specifically, the SBA Inspector General had discovered major systemic problems during audits and investigations into the 8(a) Program. The three major problems involve eligibility, competition, and brokering. Over the past 3 years, the SBA Inspector General's Office has obtained 26 indictments, 25 convictions, and approximately $60 million in financial recoveries. In some cases of participant fraud, the SBA Inspector General found that diligence on the part of SBA employees would have prevented the fraud or contributed to discovery sooner. The GAO testified that one firm misrepresented to the SBA its qualifications to enter and remain in the program and, upon learning of the misrepresentations, the SBA's 8(a) Program office did not act to suspend the firm's contracts or remove it from the program.

In reviewing larger companies, the SBA Inspector General's Office found that participants remained in the program even though they had overcome impediments to obtain access to financial markets or had accumulated substantial wealth. Prosperous individuals remained eligible because equity in their businesses, primary residences, and spousal assets are not considered in determining net worth under current rules.

The witness from the SBA Inspector General's Office testified that in order to minimize abuse, simplify program administration and reduce concentration, a ceiling on the dollar amount of contracts that a participating company could receive should be established. They also noted that a requirement in the 1988 amendments for companies to obtain certain levels of non-8(a) business, known as a competitive mix, has not been effectively enforced by the SBA.

A witness from one company alleged to have misrepresented itself in applying to the 8(a) Program refuted the allegations by testifying that he had abided by all requirements in the application process and throughout his company's program term. The company maintained that GAO had not been fair or accurate in suggesting that SBA failed to properly address his 8(a) Program eligibility.

For further information on this hearing, refer to Committee publication number 104–59.

7.2.36 SMALL BUSINESS' ACCESS TO CAPITAL: IMPEDIMENTS AND OPTIONS

Background

On February 28, 1996, the Committee on Small Business held the first, introductory hearing in a series on small business' access to capital. The delegates at the 1995 White House Conference on Small Business ranked a number of recommendations concerning capital formation at the top of their list of critical issues for small business. The goal of the Committee's series of hearings was to ad-

dress certain of these recommendations with an emphasis on how the private sector, rather than the government, can meet the capital needs of small business as the Congress reduces the burdensome role that government has historically played in the lives of small businessmen and women. This first hearing focused on introducing and defining the problems surrounding small business' access to capital. The witnesses were asked to provide the Committee with their views on the current conditions and availability of capital for small businesses.

Summary

The hearing was comprised of one panel, which included the following witnesses: William J. Dennis, Senior Research Fellow, National Federation of Independent Businesses; Murray A. Gerber, President and CEO, Prototype and Plastic Mold Company, representing the National Association of Manufacturers; Virginia C. Kirkpatrick, President, CVK Personnel Management & Training Specialists, representing the National Association of Women Business Owners; John Satagaj, President, Small Business Legislative Council; and Robert Smith, President, Spero-Smith Investment Advisors, Inc., representing National Small Business United.

The majority of the witness' testimony focused on the role that banks play in lending to small business. In general, the witnesses pointed to the difficulties of securing small business bank loans, and the demise of community bankers, which has led to weakening relationships between bankers and borrowers, as well as a decline in so called "character loans." The witnesses also noted that the high collateral and paperwork requirements banks demand from borrowers, as well as various other regulatory barriers, present significant obstacles for small businesses seeking bank loans. In addition, the witnesses testified that capital for start-up businesses is almost non-existent.

According to the witnesses, unlike banks, venture capital, securities offerings, and institutional investors (such as insurance companies, pension funds, and mutual funds) provide relatively little capital to small businesses. The witnesses also stated that the diminishing role of banks in small business financing, coupled with the relative lack of capital from the above mentioned sources has led to increasing reliance on SBA guaranteed loans, as well as a rise in non-bank lender participation.

For further information on this hearing, refer to Committee publication number 104–62.

7.2.37 PILOT SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM AND SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM: ASSESSING THE RESULTS OF PUBLIC LAW 102–654, THE "SMALL BUSINESS RESEARCH AND DEVELOPMENT ENHANCEMENT ACT OF 1992"

Background

On March 6, 1996, the Committee on Small Business held a hearing to evaluate the results of two Small Business Administration (SBA) programs: the pilot Small Business Technology Transfer

Program (STTR) and the Small Business Innovation Research (SBIR) Program. Under both the STTR and SBIR programs, Federal agencies reserve a small portion of their extramural, or contracted, research and development (R&D) budget for competition among small businesses. Both programs share a common three-stage process designed to enable small firms to identify and nurture promising innovations toward the marketplace. They differ in one aspect: an STTR award recipient must collaborate with a non-profit research institution, such as a university or Federally funded research and development center. These programs were created to harness the technological innovations of small business—the source of 55 percent of the nation's innovations and new technologies—and promote commercialization of innovations derived from Federal research and development. Without these programs, small business would have little opportunity to compete for Federal technology R&D. The three-year pilot STTR Program will terminate on September 30, 1996 unless reauthorized by Congress.

Witnesses from the small business and non-profit research community were asked to provide the Committee with examples of their experiences with both the SBIR and STTR programs, including success in moving research to commercialization. They were also asked whether the pilot STTR program should be reauthorized and to provide any recommendations for making the STTR and SBIR programs more effective in attaining their objectives. The Committee also requested the General Accounting Office (GAO) to review the findings from its January 1996 report on the STTR program and the March 1995 and previous reports on the SBIR program. The SBA was asked to present its assessment of the SBIR and STTR programs, recommendation regarding extension of the STTR program, and any other changes recommended for the two programs.

Summary

The hearing was comprised of a single panel of witnesses representing individual small firms who participated in both the pilot STTR Program and the expanded SBIR Program, small business organizations, the GAO, and the SBA. The witnesses included: Richard W. Carroll, President, Digital System Resources, Inc.; Brian Clevinger, President, MEGAN Health Inc.; John B. Phillips, Department of Chemistry and Biochemistry, Southern Illinois University at Carbondale; Robin F. Risser, Chief Executive Officer, Picometrix, Inc., representing National Small Business United; Steven Zylstra, Director of Business Development, Simula Government Products, representing the U.S. Chamber of Commerce; Victor S. Rezendes, Director of Energy, Resources and Science Issues Resources, Community and Economic Development Division, GAO; Daniel O. Hill, Assistant Administrator, Technology Programs, SBA.

All of the witnesses advocated maintaining a separate STTR Program and recommended its reauthorization. In addition, the witnesses generally supported the SBIR Program and its continuation. Mr. Rezendes noted that quality research proposals characterized both the SBIR and the pilot STTR Programs. The March 1995 GAO review of the SBIR Program found that the high level of competi-

tion, large numbers of worthy but unfunded projects and views expressed by agency officials indicated that the quality of research proposals has kept pace with the Program's initial increase in funding. GAO found that it was too early (after reviewing only one-year's experience in the SBIR Program), however, to make a conclusive judgment about the long-term quality of research proposals. The January 1996 GAO report on the pilot STTR Program determined that participating agencies rated highly both the quality and commercial potential of the proposals and have not found any evidence that the pilot STTR Program was competing for quality proposals with SBIR. Mr. Rezendes advised the Committee that more time will be needed to determine the full impact of the STTR Program.

Mr. Hill conveyed the SBA's strong recommendation to continue both the SBIR and Pilot STTR Programs at their current funding levels. He cited the vital role that both programs play in the high-technology sector of the small business community and in the nation's research agenda, ensuring a flow of innovative new products and services to the American marketplace. Commercial successes associated with the SBIR program, for example, have come from a wide range of technologies and industries from laser manufacturer to medical research to robotics to military decision making. Twenty-four percent of completed projects achieved commercialization within four years. The percentage rises to 40 percent for products that are the result of more than one contributory SBIR Project. The SBA also noted the success of the STTR Program to date and anticipates a success rate for STTR similar to that achieved by the SBIR Program.

Witnesses from the small business community provided numerous examples of success stories from both the SBIR and pilot STTR Programs and the critical role that the programs play in fostering the transfer of technology to the marketplace. They expressed concern that the contribution to the nation's economy and defense from the resulting technologies and products would not have been possible without small business participation in the SBIR and STTR Programs. There are no other opportunities for small firms to participate in high-tech Federal research and development, and small businesses continue to be the source of the majority of the nation's innovations and new technologies.

For further information on this hearing, refer to Committee publication number 104–63.

7.2.38 THE EPA'S PROGRESS IN REDUCING UNNECESSARY REGULATORY AND PAPERWORK BURDENS UPON SMALL BUSINESS

Background

On March 7, 1996, the Committee on Small Business held a hearing on the progress of the Environmental Protection Agency (EPA) in reducing regulatory and paperwork burdens on small businesses during the Clinton Administration. This was the fourth in a series of such oversight hearings on congressional and Administration initiatives to reduce the burdens of regulatory actions

upon small businesses. The hearing was designed to continue the Committee's evaluation of the actions that various agencies were taking to (1) fulfill the President's March 4, 1995, directive to agency heads, which required them to read every page of their agency's regulations and make regulatory reform a priority; (2) fulfill the recommendations of the 1995 White House Conference on Small Business; and (3) accomplish the burden-reduction goals of the Paperwork Reduction Act of 1995.

Summary

The hearing was comprised of a single panel, which included: Fred Hansen, Deputy Administrator, EPA; Dennis Murphey, Director, Center for Environmental Education and Training, University of Kansas; Carol Andress, Project Manager; Great Lakes Printers Project, and Economic Development Specialist, Environmental Defense Fund (ED); Andy Hines, Vice President, Emerald Green Lawncare, representing the Small Business Council of the U.S. Chamber of Commerce; Harold Igdaloff, President, Sungro Chemicals Inc., representing National Small Business United; and Sal Risalvato, Owner, Riverdale Texaco, representing the National Federation of Independent Business.

Mr. Hansen testified that the EPA had made substantial progress in reinventing regulations over the past year. He acknowledged that small businesses have a particularly difficult time understanding and complying with environmental responsibilities despite their overwhelming desire to live and work in safe, clean communities. Mr. Hansen testified that the EPA was half way toward the reduction of its paperwork burden by 20 million hours, which EPA Administrator Carol Browner promised in March of 1995, with the implication being that the EPA would satisfy the 10 percent reduction goal established by the 1995 Paperwork Reduction Act. He also noted the EPA's implementation of a new, streamlined, universal waste rule, less cumbersome Toxic Release Inventory reporting for small businesses, plans for cutting the frequency of Clean Air Act reports, and plans for phasing in an electronic reporting system for discharge monitoring reports. Administrator Browner also announced at the White House Conference a new compliance policy that will waive penalties for non-criminal, first-time violations. Mr. Hanson described the activities of EPA's Small Business Ombudsman, Karen Brown, and discussed the Common Sense Initiative, a project to bring together stakeholders in six specific industries (such as metal finishing and printing, which are two industries dominated by small businesses) to look for cleaner, cheaper, and smarter ways to protect public health and the environment. Mr. Hansen maintained that EPA was deliberately changing the culture within its organization to be less adversarial with small business, with the anticipated result being fewer regulatory and paperwork burdens and an improved environment.

The small business witnesses on the panel provided the Committee with the industry's perceptions of the initiatives undertaken by the EPA. The witnesses overwhelmingly stressed that small businesses fear environmental regulatory agencies. The biggest problem in providing any kind of compliance assistance is to establish credibility and overcome the fear. Offers of free seminars did not

work, for example, unless potential small business participants were assured that attendance would not result in being visited by a regulatory agency or being put on a list that would target them for enforcement action. The perception of environmental agencies as enforcement-minded rather than assistance-minded also undermine any initiative that depends on small business participation in voluntary or other assistance oriented programs designed to reduce regulatory or paperwork burdens. Witnesses noted that these perceptions will not change simply as a result of policy pronouncements or shifts in attitude—concrete actions over time will be necessary to convince small business that the EPA is serious about changing its enforcement mentality.

Several witnesses also provided the Committee with anecdotal evidence of their experiences with the EPA. One witness described the success of the Great Lakes Printers Project in which small business, environmental advocates, and State and Federal regulatory agencies have successfully worked together to reduce the paperwork and costs of regulations while increasing environmental compliance. Other witnesses stressed that EPA regulations often prevent small businesses from being innovative and creating more environmentally conscious and economically efficient business practices. Small business owners also experience frustration in dealing with ever changing regulations in many industries imposed on them by the EPA and State counterparts. Mr. Murphey noted that a survey of small businesses undertaken by the Institute for Public Policy and Business Research at the University of Kansas concluded that the cost of regulations are a major factor in the degree of regulatory compliance—the less expensive the cost of complying, the more likely there would be compliance. Other witnesses agreed and stressed the importance of minimizing cost and avoiding duplication and complexity of regulatory compliance.

The General Accounting Office (GAO) provided written testimony for the hearing in response to the Chair's request that GAO review the EPA's progress in meeting Administrator Browner's promise to reduce the burden of the EPA's paperwork on the public by 25 percent within a year. The GAO reported in "Assessing EPA's Progress in Paperwork Reduction" that while EPA claimed to have identified 18 million of the 20 million hours of its promised reduction, it was not likely to meet its actual reduction goals because of double counting and overstating of accomplishments. GAO predicted an increase in the EPA paperwork burdens for fiscal year 1996 as opposed to a decrease.

For further information on this hearing, refer to Committee publication number 104–64.

7.2.39 SBA FY 1997 BUDGET

Background

On March 21, 1996, the Committee on Small Business held a hearing on the fiscal year 1997 budget for the Small Business Administration (SBA). The Administration's budget proposal for the SBA requested a budget authority of $808 million in fiscal year 1997, as compared to an estimated funding level of $590 million in

fiscal year 1996, not counting supplemental appropriations that may be needed for disasters in the spring of 1996. The funding increase proposed by the President for SBA includes continuation of the 7(a) and 504 programs without proposing legislative changes to reduce the newly projected subsidy rate for each program.

Summary

The hearing was comprised of one panel, which included: Philip Lader, Administrator, SBA; Greg Walter, Acting Chief Financial Officer, SBA; Patricia Forbes, Acting Associate Deputy Administrator for Economic Development, SBA; Anthony Wilkinson, President and Chief Executive Officer, National Association of Government Guaranteed Lenders; Ken Leuckenotte, Executive Director, Rural Missouri, Inc., and Past President, National Association of Development Companies; Roland Cook, Financial Consultant, Development Company Funding Corporation; and Raymond Rafferty, General Partner, Meridian Venture Partners, representing the National Association of Small Business Investment Companies.

Mr. Lader opened by stating that the Small Business Administration supports small business through four principal portfolios: access to capital; the education/training mission; advocacy and contract opportunities; and the Disaster Assistance Program. He noted that the SBA's current business portfolio has about 170,000 financings, in the form of $26 billion, which has been made available to aid small businesses. Mr. Lader also stated that 7(a) loans, the cornerstone program of the SBA, more than doubled in the past two years.

In response to questions about the effectiveness of the LowDoc program, Mr. Lader concluded that LowDoc loans were performing better than the loans under $100,000 that are not in the LowDoc program. The Chair also inquired about which loans may not be performing well, and Mr. Lader responded that the principal indicator of the health of the portfolio is the currency rate, that is, that the percentage of the loans whose monthly payments are being made on time. Mr. Lader stated that the improvement in the currency rate was substantiated by the fact that the SBA has gone from a low of 70 percent in the 1980s to more than 90 percent of the loans being current today.

Mr. Lueckenotte testified about why the subsidy rates were so high for the 504 loan program. He noted that based on his assessment of the 504 loan portfolio and on comparison of that loan portfolio with commercial industrial loans, 504 loan accelerations are very much consistent with market expectations and with commercial lending of a similar nature. He concluded that the exceedingly high loss rate is due either to inadequate collateral or to poor or inattentive handling of liquidation once the loan goes into default.

In response to questions regarding the SBA's comprehensive study of facts and figures in relation to both the 7(a) and the LowDoc programs, Mr. Lader stated that the SBA has now established a base from which data can continue to be collected and maintained in order to evaluate specific categories of loans. In addition, he recommended that a two-year recertification process be instituted for preferred lenders, and as a criteria for being recertified, their loan portfolios be examined.

Several members of the Committee expressed concern about the SBA's proposal for converting the 504 program into a direct lending program. One member noted that there does appear to be a reduction immediately in the subsidy rate, however, he would like to see what the mathematical model says about long-term repayment rates. The hearing concluded with a promise from the SBA to provide the Committee with specific data on this proposal as well as a complete explanation of the reasons for the surprising increase in the subsidy rates for both the 7(a) and 504 programs.

For further information on this hearing, refer to Committee publication number 104–67.

7.2.40 THE PRACTICE OF "SALTING" AND ITS IMPACT ON SMALL BUSINESS

Background

On April 12, 1996, the Committee on Small Business together with the Subcommittee on Employer-Employee Relations of the Committee on Economic and Educational Opportunities held a field hearing in Overland Park, Kansas, to examine a union-organizing practice known as "salting" and its effect on small business. The purpose of salting is to recruit union members from the ground up on a worker-to-worker level. Significant concern has been raised by small business and their employees that salting has a more sinister goal, putting small businesses out of business if they fail to sign collective bargaining agreements with the union.

The hearing was also designed to focus on H.R. 3211, The Truth in Employment Act of 1996, sponsored by Congressman Harris Fawell (R-IL), Chairman of the Subcommittee on Employer-Employee Relations, who co-chaired the field hearing. The Act would amend Section 8 of the National Labor Relations Act (NLRA) "to provide that nothing in specified prohibitions against unfair labor practices shall be construed as requiring an employer to employ any person who seeks or has sought employment with the employer in furtherance of other employment or agency status."

Summary

The hearing was comprised of a single panel, which included: William Creeden, Director of Organizing, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; Gregory Hoberock, Vice President of HTH Companies, Inc.; Robert Janowitz, Chair, Labor and Employment Practice Group, Shook Hardy & Bacon; Lindell Lee, Business Manager, Local 124, International Brotherhood of Electrical Workers; Bill Love, President, SKC Electric, Inc.; David R. Meyer, Vice President, Secretary, Meyer Brothers Building Co.; Richard Oberlechner, employee, SKC Electric, Inc.; and James K. Pease, Jr., Esq., Melli, Walker, Pease & Ruhly.

The general consensus among small business owners on the panel was that employees were free to join the union and have elected not to. The small business witnesses maintain that the union is targeting employers of non-union shops with the main purpose of putting them out of business. The shop owners must incur

exorbitant legal fees and spend many hours of their time proving their innocence to the National Labor Relations Board (NLRB). Regardless of the outcome of the charges, small business owners are on the losing side of the battle. Even if they are found "not guilty" of the charges, the time and money spent to defend themselves can put their small firms out of business.

The small business witnesses stressed that the NLRA is a good Act and should not be repealed. They do, however, believe that clarifications need to be made to the Act because unions are misusing the NLRB. The small business owners also believe that unions are sending people to their businesses to apply for jobs that they have no intention of fulfilling. All the while, the union is subsidizing their salaries and giving them benefits to "invade" the small businesses and begin the process of union organizing as well as creating mishaps that would allow them to file charges with the NLRB.

The small business owners testified that H.R. 3211 would put them back on a level playing field with the unions. It would give them the ability to hire someone whom they consider to be a good employee whether the individual is a union member or not. Union members certainly have the right to approach employees on their own time whether at a lunch break or after working hours. During the work day, however, the employee is hired to do a job for the employer. An employer should not have to worry about hiring someone who will spend his or her working hours trying to organize the other employees.

Several members of organized unions testified at the hearing on behalf of unions. The view of the union is that construction industry workers are tied to an industry or craft rather than to a specific employer. They believe that the NLRA fails to address adequately the need for organizing in this industry. The unions maintain that the majority of their contacts with non-union workers are initiated by members who voluntarily obtain employment with non-union contractors in order to assist in the organizing efforts. These members do not receive compensation, wage subsidy or any other fringe benefit from the union for their efforts. All organizers, paid or unpaid, must devote working hours to working for the employer and organize only on their own time—before work, after work or on breaks. The union representatives testified that to do otherwise would subject them to discharge for cause.

The union representatives also testified that their goal is very simply: to organize the unorganized employees in a specific industry. One union representative stated that several current and former employees of one of the small business owners testifying at the hearing have become members of his union. He also testified that these employees had never been afforded the right to vote on whether they want representation by the union. Instead, the employees had been threatened and coerced and were fearful of being punished or fired if they openly expressed an interest in union involvement. The unions believe that H.R. 3211 would remove all the protection for employees and allow employers to discipline them for exercising their freedom of choice. The union representatives also maintain that the same NLRB that investigates union complaints also protects owners in the event that the union violates the law.

Chairman Fawell concluded the hearing by noting that he is cognizant of the fact that there are views on both sides of this subject. H.R. 3211 is designed to provide language that would be fair to employers as well as prospective employees. The bill would not affect voluntary salters who are not paid by the union. Its goal is to promote fairness for employers and allow these businesses to hire individuals who want the job for which they are applying without the threat of ulterior motives.

For further information on this hearing, refer to Committee publication number 104–71.

7.2.41 THE KEMP COMMISSION RECOMMENDATIONS: A SMALL BUSINESS PERSPECTIVE

Background

On April 17, 1996, the Committee on Small Business held a hearing to examine the small business implications of the recommendations of the National Commission on Economic Growth and Tax Reform, also known as the "Kemp Commission." The Commission was appointed by House Speaker Newt Gingrich and Senate Majority Leader Robert Dole in May 1995 and was composed of 18 members from the private sector, Federal and State governments, and non-profit organizations, and was headed by Jack Kemp, former Member of Congress and Secretary of Housing and Urban Development. The Commission's mission was to make recommendations for a tax code that would encourage economic growth to benefit all Americans. The Kemp Commission held multiple hearings across the country at which a broad cross-section of taxpayers testified. On January 17, 1996, the Commission released its report entitled, "Unleashing America's Potential."

The witnesses were asked to review the Commission's report and focus specifically on the issues and concerns particular to small business, such as how the new system will reduce the regulatory and paperwork burdens on small business. In addition, the witnesses were asked to address ways in which Congress can make the transition to a new tax system without creating devastating financial consequences in the near term for small business.

Summary

The hearing was comprised of a single panel, which included three commissioners from the Kemp Commission: Jack Kemp, Chairman of the Commission, Co-Director, Empower America, and former Member of Congress and former Secretary of Housing and Urban Development; Jack Faris, President, National Federation of Independent Business; and Shirley D. Peterson, President, Hood College, and former Commissioner of the Internal Revenue Service.

The panel began by reviewing the final recommendations contained in the Commission's report, which were based on the finding that the current tax system is too broken to be fixed and should be completely repealed. Specifically, the Commission recommended that a new tax system should be adopted based on a single low tax rate that will lower the tax burden on working Americans with a generous exemption that would exempt persons least able to pay

taxes. The new system should end the bias against work, savings, and investment, primarily through the elimination of double taxation. The new tax system should allow for the full deductibility of payroll taxes. And finally, once the new tax system is in place, it should be protected against frequent changes and special-interest provisions by requiring that any changes in the rate be passed by a two-thirds vote in both houses of Congress.

The panel also reviewed the Commission's "tax test," which is a six-part evaluation that each proposals for a new tax system must pass. The six criteria are: (1) the tax system must promote economic growth; (2) it must be fair and treat all persons equally; (3) the system must be simple enough for anyone to understand; (4) it must be neutral (tax consequences should not be the prime factor in an individual's or business' economic decision making); (5) it must be visible (special loopholes and benefits should not be hidden from view in a tax system); and (6) the tax system must be stable (taxpayers should be able to plan their lives without the rules changing every year).

In the context of the small business consequences of tax reform, the witnesses testified that the Commission's recommendations would have positive, far-reaching effects. First and foremost, a reduced tax rate would leave greater after-tax dollars in the hands of small business owners to reinvest in their businesses. The elimination of double taxation, namely the capital-gains tax, would also free up considerable amount of capital that could then be made available for small business growth and development. The witnesses also noted that a simple tax system would dramatically reduce the time that small businessmen and women now spend learning about and complying with the tax laws and regulations and would ease the paperwork burdens since the tax reporting requirements would consequently be reduced. In addition, the panel noted that the Commission's recommendation to allow individuals to deduct their payroll taxes would put them on the same footing as businesses, which can currently deduct the employer's portion of payroll taxes.

The panel stressed that the Commission's recommendations are not intended to be a complete blueprint for a new tax system. Rather, the recommendations are meant to provide a broad framework for a tax system that will benefit individual taxpayers as well as small and large businesses. The witnesses also noted that the issue of transition is a key feature of the tax-system replacement debate that is beginning in Congress and across the country. Particular attention needs to be paid to transition issues such as the treatment of existing debt, net operating losses, fringe benefits, and mortgage interest, in order to reduce the negative effect on businesses, especially small enterprises.

For further information on this hearing, refer to Committee publication number 104–72.

7.2.42 PATENT TERM AND PATENT DISCLOSURE LEGISLATION

Background

On April 25, 1996, the Committee held a hearing on the importance of patent term and patent disclosure issues to small business. The discussion was based on two different legislative proposals. H.R. 359, introduced by Congressman Dana Rohrabacher (R-CA), would allow an exclusive patent term to the inventor for 20 years from the date of filing the patent application or 17 years from the date of issuance of the patent, whichever is greater. The bill would also allow pending patents to be published after five years. The second bill, H.R. 1733, introduced by Congressman Carlos Moorhead (R-CA), would conform the U.S. patent term to the current international requirements as promulgated in conjunction with the GATT Uruguay Round. The bill would also permit publication of patent information after 18 months. The hearing was designed to examine the issues and impediments that small businesses face with regard to obtaining and enforcing patent rights. The witnesses were asked to assess the strengths and weaknesses of both bills pending before Congress on these issues.

Summary

The hearing was comprised of one panel, which included: Donald Banner, Esq., Banner & Allegretti, Ltd.; Donald R. Dunner, Esq., Finnegan, Henderson, Farabow, Garrett & Dunner and Chair, Section of Intellectual Property Law, American Bar Association; Orville "Nip" Litzsinger, Vice President, The Alliance for American Innovation, Inc.; Charles E. Ludlam, Vice President, Bio-Technology Industry Organization; Diane L. Gardner, Molecular Biosystems, Inc.; Michael Kirk, Executive Director, American Intellectual Property Law Association; and Ginny Beauchamp, Vice President, National Association of the Self-Employed.

The witnesses supporting H.R. 359 expressed general agreement that the current system of 17 years of patent protection from the date of grant is more conducive to promoting American innovation and protecting the rights of small business inventors. The bill would restore the patent term by offering a dual term, giving equal protection to all inventors of all technologies. Several panelists contended that H.R. 1733 was contrary to the purpose of the patent system, and it hurt small inventors, because the earlier there is disclosure for a small inventor, the earlier they may be attacked by large entities with more resources. Witnesses also noted that premature disclosure of intellectual property can be extremely detrimental to small businesses that worked hard to develop new innovations, only to lose the means of marketing these products due to the premature release of technical information.

The advocates of H.R. 1733 argued that the implementation of H.R. 1733 would be one of the best ways to regulate and eventually end the delays that now exist in the patenting process, which in turn strengthens small business. In particular, witnesses noted that the United States should change to an 18-month publication system because one of the purposes that a patent serves is to in-

duce people to invest in a particular innovation before it is brought to market.

For further information on this hearing, refer to Committee publication number 104–74.

7.2.43 SMALL BUSINESS' ACCESS TO CAPITAL: THE ROLE OF BANKS IN SMALL BUSINESS FINANCING

Background

On May 1, 1996, the Committee on Small Business held the second in a series of hearings on small businesses' access to capital. The topic for the hearing was the role of banks in small business financing. On February 28, 1996, the Committee held the introductory hearing for this series, the purpose of which was to identify the various problems small businesses face with respect to meeting their capital needs. The present hearing was designed to examine in greater detail the banking issues raised at the first hearing.

The witnesses were asked to provide the Committee with their views on the impediments to small business bank lending. In addition, the banking and consulting-industry witnesses were asked to address whether there are legitimate regulatory impediments or disincentives that banks face in lending to small business, and, if so, the witnesses were asked to identify them and offer any suggestions to eliminate these obstacles. The banking witnesses were also asked to inform the Committee about efforts that their institutions were making to lend successfully to small business. The witnesses representing the Federal regulatory bodies were asked to address the regulatory impediments or disincentives that banks face in lending to small business and ways to eliminate them either legislatively or at the administrative level. Finally, the witnesses were asked for their comments on the rise of non-bank lending institutions and, in particular, the affect that they have on credit availability for small business.

Summary

The hearing was comprised of one panel of witnesses from the banking, regulatory, and consulting fields. The witnesses included: Andrew C. Hove, Jr., Vice-Chairman, Federal Deposit Insurance Corporation; Janet L. Yellen, Governor, Federal Reserve System; Sandy Maltby, Senior Vice President for Small Business Services, KeyCorp, and Member, Small Business Council, U.S. Chamber of Commerce; Cynthia A. Glassman, Ph.D., Managing Director, Furash & Company; Frank A. Suellentrop, President, State Bank of Colwich, representing the Independent Bankers Association of America; and James Dowe, President, Bangor Savings Bank, representing America's Community Bankers.

The witnesses representing the banking and consulting industries testified that the current environment for bank lending to small business is excellent because banks are healthy, their capital positions are strong, and earnings have hit record highs for the last four years. Furthermore, the economy is growing, technological advances have reduced the cost of small business lending, and regulators are now encouraging banks to lend to small businesses. With

respect to bank regulation, the witnesses generally agreed that while the costs of regulatory compliance is too high, the current regulatory environment is much better than in the early 1990s, as regulators have generally stopped evaluating individual loans and instead begun concentrating on the risk level of a bank's overall loan portfolio.

With respect to character loans, the witnesses were somewhat divided. While the banking witnesses testified that they are generally more willing to loan money to someone from the community with whom they have a relationship, the consulting witness stated that banks are in the business of making money and, hence, are less concerned with an individual's intention to pay back a loan than they are with a business' ability to pay back a loan. In addition, the consulting witnesses noted that small businesses generally need more equity capital rather than debt capital. All witnesses agreed that banks are currently facing more and more competition from non-bank lenders that are not subject to regulatory restrictions, which has forced them to be more competitive.

The Federal regulators on the panel were generally enthusiastic about the current climate for small business bank lending, especially when compared to the period in the early 1990s known as the "credit crunch." The regulatory witnesses testified that bank lending to small businesses declined in every quarter during the period of 1990 to 1992, as banks focused their resources on eliminating leftover problem loans and improving troubled balance sheets rather than taking on new credit risks. In addition, as a result of legislation and regulations enacted after the savings and loan crisis, regulators were forced to monitor bank lending activities more strictly. As a consequence, banks made fewer loans during that period.

The witnesses also testified that out of concern that exaggerated lending restraints might have been fostered by legislative and regulatory reactions to the numerous problems in the banking industry, the regulatory agencies undertook an extensive review of their policies and practices. The result of this review has been a concerted effort to reduce the burden of regulation and to ensure that examiners evaluate bank lending in a consistent, prudent, and balanced manner. Both witnesses testified that the financial environment today is markedly improved from that of the early 1990s, and as a result, banks' business loans have expanded rapidly. In addition, the witnesses stated that according to data collected from banks in the June Call Reports, small businesses loans (defined as commercial loans of $1 million or less) increased 7 percent between June 1994 and June 1995. With respect to the issue of bank consolidation, the witnesses testified that there is no evidence to suggest that it has led to a decline in small business lending.

For further information on this hearing, refer to Committee publication number 104–78.

7.2.44 MUSIC LICENSING AND SMALL BUSINESS

Background

On May 8, 1996, the Committee on Small Business held a hearing on music licensing and small business, which was the second in a series of hearings examining intellectual property issues of importance to small business. The issues surrounding music licensing practices of the performing rights societies, which are primarily the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music Incorporated (BMI), has long been a major concern for small businesses in the entertainment and retailing industry. The hearing was designed to examine these issues in light of pending legislation, H.R. 789, which would exempt certain smaller businesses from licensing fees for music that is aired on radio or television, which the business uses for background only without separate charge to the customers.

Summary

The hearing was comprised of one panel, which included: Charles F. Rule, Esq., a former Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and currently with the law firm of Covington & Burling; Stephen P. Barba, President and Managing Partner, The Balsams Grand Resort Hotel; Pat Alger representing ASCAP; Stuart Epperson, Vice-Chairman, National Religious Broadcasters; Marvin L. Berenson, Esq., Senior Vice President and General Counsel, BMI; and Tommy Taverna, President, Silo Inn.

The panel generally agreed that the issue of music licensing remains critical to many small businesses. Several witnesses testified that H.R. 789 would stop licensing groups from charging fees more than once. Currently, ASCAP and BMI can charge a hotel or restaurant licensing fees on background music on television and the radio, which witnesses noted is patently unfair because the rights to use that music have already been paid for by television and radio stations.

One witness noted that H.R. 789 addresses two problems critical to small business. The first is a requirement that the music monopolies offer a per program license to radio broadcasters that is a real economic alternative to the blanket license favored by ASCAP and BMI. The second is the requirement that each music licensing organization provide online access to the repertoire of works for which it is authorized to collect license fees. The opponents of the bill argued that the inherent property right of a musical composition is no different than that of any sort of tangible property and merits the same degree of property protection.

For further information on this hearing, refer to Committee publication number 104–76.

7.2.45 SMALL BUSINESS AND ENTRY-LEVEL EMPLOYEES: HOW TO INCREASE TAKE-HOME PAY AND KEEP AMERICA WORKING

Background

On May 15, 1996, the Committee on Small Business held a hearing to examine, from an economic and small-business owner point of view, how a proposed increase in the Federal minimum wage would affect small businesses' ability to provide jobs. Alternatives to an increase in the minimum wage that would boost take-home pay and encourage employers to offer more job opportunities were also discussed. In addition, the hearing focused on the Small Business Job Protection Act since it includes several provisions that were designed to help increase the productivity of small businesses and promote opportunities for expansion.

Summary

The hearing was comprised of one panel, and the witnesses included: Dr. Martin Regalia, Vice President and Chief Economist, U.S. Chamber of Commerce; Taalib-Din Uqdah, Co-Owner, Cornrows & Co., representing the Small Business Survival Committee; Bruce Bartlett, Senior Fellow, National Center for Policy Analysis; Audrey Tayse Haynes, Executive Director, Business and Professional Women USA and Owner, Kelly's Garden Cafe; and Duncan Thomas, President, Q-Markets, Inc., representing the National Association of Convenience Stores.

There was a general consensus among the panelists that an increase in the minimum wage would be detrimental to small business and would lead to a loss of jobs. The small business owners maintain that the typical minimum-wage worker is generally a single, young person who is unskilled and looking for a job to gain experience and move up the ladder. The increase in the minimum wage would force employers to look for skilled instead of nonskilled employees since they will be able to hire fewer employees. The negative effects will fall on the lowest-skilled workers and not allow them to gain the experience needed to succeed.

A small business owner from Washington, D.C. testified that the impact of a mandated wage increase would have far greater effects on his business because under existing law, businesses operating in the District of Columbia are forced to pay a minimum wage $1 above the Federal rate. The small business owner believed that the increase in the minimum wage would not provide an incentive to employers to hire unskilled employees who require extensive and intensive training and at the same time do not generate revenue during the training period.

An alternative offered to the increase in minimum wage was targeted tax policies—either an earned income tax credit or a payroll tax credit—which the small business owners believe would target the demographic groups in need of assistance. The costs of achieving a targeted income redistribution through the tax code would be born by the society as a whole rather than levied on a particular segment of the industry, namely, small businesses. Witnesses testified that it is believed that in the long run, if an increase in the minimum wage takes away jobs, many unskilled workers will not

be able to increase their skills through education, training, and on-the-job experience.

A small business owner and proponent of the minimum wage increase testified that more than three out of every five workers earning the minimum wage are women. The small business owner testified that these women are struggling to support their families and that the free market does not work the same way for women and minorities as it does for men. The owner maintained that if the fast-food chain that resides next to her cafe had to raise its minimum wage rate, it would be more competitive with her business. At the time of the hearing, the witness was paying hirer wages and therefore had to charge higher rates while this fast-food chain owner could purchase food in much larger quantities and pay employees at the current lower minimum wage. The witness testified that she would like to raise the salaries of her employees based on merit but cannot because of the fast-food competitor.

For further information on this hearing, refer to Committee publication number 104–79.

7.2.46 PROPOSED REFORMS OF THE SMALL BUSINESS INVESTMENT COMPANY PROGRAM

Background

On June 6, 1996 the Committee on Small Business met to consider testimony regarding legislative proposals for the reform of the Small Business Investment Company (SBIC) Program administered by the Small Business Administration (SBA). Authorized through the Small Business Investment Act of 1958, the SBIC program provides for the licensing and financing of small business investment companies, firms that provide equity and specially structured venture capital to small businesses. SBICs are eligible to obtain financing, also known as leverage, from the SBA through either the issuance of SBA guaranteed debentures or SBA guaranteed participating securities. The program also provides for the licensing of Specialized Small Business Investment Companies (SSBICs), which are restricted to financing small businesses owned by socially or economically disadvantaged persons. SSBICs may obtain financing under the same vehicles as SBICs or through more heavily subsidized debentures and the direct sale of preferred stock to the SBA. The witnesses were asked to comment on the current health of the SBIC and SSBIC program, provide suggestions for reform, and evaluate the reform legislation pending in the Senate (S. 1784).

Summary

The hearing was comprised of a single panel, which included: Keith Fox, Chairman, National Association of Small Business Investment Companies, and Partner, Exeter Venture Lenders; Terry Jones, Chairman, National Association of Investment Companies, and Partner, Syncom Venture, Inc.; and Patricia Forbes, Deputy Administrator for Finance and Economic Development, SBA, accompanied by Don Christensen, Associate Administrator for Investment, SBA.

The SBA witnesses testified about the agency's efforts to improve the SBIC program's stability. Ms. Forbes emphasized the strong capitalization of the 65 new licensees who have over $827 million in private capital and the decline in defaults and liquidations. The witnesses reviewed the new valuation criteria and the tighter requirements for obtaining leverage that the SBA has implemented as part of its program improvements. In addition, the SBA was generally supportive of S. 1784, underscoring the need for the 1-percent fee on SBIC financing and the need for a $21.7 million dollar appropriation, which would enable the SBA to provide a total of $400 million in debenture leverage and $225 million in participating securities leverage. The SBA was concerned, however, that the Senate's legislation could be construed to require the removal of some of the smaller licensees from the program. The witnesses suggested changes in the capital-standards language that would broaden the exemption to the increased capital standards and allow smaller, profitable licensees to remain in the program.

The industry witnesses also testified about the enhanced safety and soundness of the SBIC program, particularly the improved valuation standards and reviews of SBIC financial strength. They emphasized the need for the SBIC program in light of continued consolidation in the banking industry, which has led to reduced investment in smaller firms. Mr. Jones also sought to correct the impression that the smaller SBIC licensees are inherently more risky. He contended that the size of an SBIC should not necessarily be used to determine its chances of success.

The industry witnesses generally supported the Senate legislation, including the increased fees and the efforts to expand the availability of debenture funding. In addition, the witnesses agreed with the Committee's desire to ensure the stability of the program. Support was also given to the legislation's proposal for the merging of the SSBIC licensees into the SBIC program. One witness cautioned, however, that an alternative source of financing needs to be available for smaller SBICs as well as certain other protections for existing SSBICs.

The industry witnesses also addressed the SSBIC's 3-percent preferred stock repurchase program. The witnesses responded to concerns that the program permitted significant forgiveness of SSBIC debt to the SBA by allowing SSBIC to repay only about 35 percent of their stock value. The witnesses noted that the SSBICs were paying what was agreed to be a fair market price, and pointed out that the stock had no mandatory repayment term.

For further information on this hearing, refer to Committee publication number 104–81.

7.2.47 SMALL BUSINESS COMPETITION FOR FEDERAL CONTRACTS: THE IMPACT OF FEDERAL PRISON INDUSTRIES

Background

On June 27, 1996, the Committee on Small Business began a series of hearings on unfair government competition, with the first hearing designed to examine the effect of the Federal Prison Industries on the ability of small business to compete for Federal pro-

curement contracts. Federal agencies spend approximately $200 billion a year for goods and services, including everything from paper clips, clothing, and furniture to major weapon systems such as the B–2 bomber. One of the primary responsibilities of the Committee has historically been to insure that small businesses have a fair opportunity to participate in the Federal procurement system.

Federal Prison Industries (FPI), also known by its trade name, UNICOR, is a government-owned corporation sponsored by the Bureau of Prisons of the Department of Justice. FPI manages a chain of manufacturing facilities located within Federal correctional institutions operated by the Bureau of Prisons. Established in 1934, FPI produced $392 million worth of goods and services in 1994. By law, FPI may sell only to Federal agencies, and under the government-wide Federal Acquisition Regulation, FPI has been designated as a "required source of supply" and "a mandatory source" for Federal government purchasing. In practice, this "super preference" puts a Federal agency in the position of having to buy from FPI if FPI determines it can meet the agency's need, or be granted a waiver by FPI in order to buy from the commercial market place. When FPI determines that it can supply the product, the normal procurement system is circumvented, and private-sector firms are deprived of an opportunity to compete for the government's business. While FPI's mission is to provide work for prisoners, in the face of a growing prison population, small businesses, affected by what they deem to be FPI's predatory business practices, have become increasingly concerned about unfair competition.

Summary

The hearing was comprised of a single panel, which included: Steve Schwalb, Chief Operating Officer, Federal Prison Industries, and Assistant Director for Industries, Education and Vocational Training, Federal Bureau of Prisons, Department of Justice; Rick Francis, Vice President of Administration, Tennessee Apparel, representing the American Apparel Manufacturers Association; Sharon Krell, Owner, Access Products; James L. Riley, President, Omni International Inc., representing the Quarters Furniture Manufacturers Association (QFMA) and the Business and Institutional Furniture Manufacturers Association (BIFMA); Tim Graves, Co-owner, General Engineering Services Inc.; and Roger English, Sales Manager, ADM International.

Mr. Schwalb indicated the Clinton Administration was reviewing legislative proposals to eliminate FPI's mandatory source and had not yet announced a position on such proposals. As a result, he testified only to the Justice Department's position. He made the positive case for FPI's operations and explained that FPI could not fulfill its mission as a correctional program without the mandatory source status. He asserted that the status was needed to maintain a continuous, steady work flow without engaging massive sales and marketing activities to ensure customer contact with the agencies, and to provide an incentive for private-sector companies to become partners with FPI in manufacturing products through prison labor.

The small business witnesses testified that FPI unfairly took business away from them and prevented private-sector companies

from continuing business with the government. For many small businesses, the lost of government business could mean the very existence of the company and threaten the jobs associated with that enterprise so that convicts could be put to work. The witnesses noted that FPI's prices have not been competitive with industry prices, and none of the witnesses agreed with Mr. Schwalb's assertion that FPI's quality of products and contract performance in delivering products matched that of the private sector.

All the small business witnesses agreed that requiring FPI to compete as any other commercial firm would create a more level playing field and be more fair than the current system. They maintained that permitting agency contract officers to choose among suppliers and enforce the government's rights as spelled out in Federal procurement regulations would end most of the perceived abuses. It would also enable dispute mechanisms to be made available for disappointed bidders, which do not exist currently.

Three Members of Congress also joined the Committee as guest participants during the panel discussion. Congressman Peter Hoekstra (R-MI) elicited testimony from Mr. Schwalb that focused on FPI's concentration on the furniture industry, despite the legal constraint that FPI limit itself to a "reasonable share" of any particular market. Congressman Mac Collins (R-GA) raised the specialized missile-container market to make a similar point. Congressman Thomas Petri (R-WI) pointed out that FPI's partnering with Krueger International, a furniture manufacturer, provided jobs in his district. He also noted the concerns of prison guards, who view the activity of Federal Prison Industries in the Federal correctional institutions as vital to their job safety.

For further information on this hearing, refer to Committee publication number 104–83.

7.2.48 UNFAIR COMPETITION WITH SMALL BUSINESS FROM GOVERNMENT AND NOT-FOR-PROFITS: ASSESSING THE CURRENT STATE OF THE PROBLEM AND THE RECOMMENDATIONS OF THE 1995 WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Background

On July 16 and 18, 1996, the Committee held hearings on the problem of unfair competition with small business from commercial activities undertaken by government and not-for-profit organizations. The witnesses were asked to provide current examples of the scope and breadth of this fundamental problem, discuss the recommendations adopted by the delegates to the 1995 White House Conference on Small Business, and specify actions that could be taken to implement those recommendations effectively.

The delegates to the 1980 and 1986 White House Conferences on Small Business ranked recommendations regarding unfair competition among their top 10 recommendations. Despite this long-term attention from the small business community, the problem of unfair competition by governments and from the not-for-profit community has steadily grown throughout the 1990s. As traditional funding sources have been curtailed, both governments and not-for-profit entities have expanded their commercial-type activities to

generate the funding to sustain themselves. With the renewed attention generated by the recommendations from the 1995 White House Conference on Small Business and the 104th Congress, the small business community has re-energized its efforts to formulate effective remedies to unfair government competition with small business, giving practical substance to the national policy of reliance on the private sector to meet the government's needs for supplies, services, and construction.

Summary

The hearing on July 16th focused on unfair competition from governments, especially the Federal government, and was comprised of a single panel, which included: David Gorin, Chairman, Business Coalition for Fair Competition (BCFC) and President, National Association of RV Parks and Campgrounds (ARVC); Rich Hoffmann, President, Sundex Corporation, representing the Management Association for Private Photogrammetric Surveyors (MAPPS); Molly F. Greene, President, General Engineering Laboratories, representing ACIL—The Association of Independent Scientific, Engineering and Testing Firms and the International Association of Environmental Testing Laboratories (IAETL); Elaine Boissevain, Owner, Highland Orchard Park Resort and Chair, ARVC; Katherine DePuydt, Board Member, National Child Care Association; and Frank L. Jensen, Jr., President, Helicopter Association International (HIA).

The panelists provided a comprehensive review of the current status of unfair government competition with small business, the ineffectiveness of existing administrative restraints, and the current status of various legislative proposals being advanced in the 104th Congress. Witnesses also gave anecdotal evidence of commercial activities being undertaken by an array of Federal agencies to the detriment of small firms.

Mr. Gorin identified a number of governmental and private-sector assessments that demonstrated the benefits of contracting-out. He also emphasized the ineffectiveness of the processes specified by Office of Management and Budget (OMB) Circular A-76 for determining whether a commercial activity currently performed by Federal employees should be contracted-out. He argued that the "Revised Supplemental Handbook on the Performance of Commercial Activities," issued by the OMB in March 1996 to provide detailed guidance to the Executive agencies, was likely to inhibit rather than encourage contracting-out to the private sector. Mr. Gorin reviewed some of BCFC's efforts to block additional statutory impediments to contracting-out and advance legislation that will foster the contracting-out of existing commercial activities being undertaken by the various Executive agencies and to discourage the increasing tendency of many agencies to furnish commercial activities to other Federal agencies, State and local governments and even the private sector.

All of the witnesses expressed strong support for H.R. 28, the "Freedom from Government Competition Act," and its Senate companion S. 1724, both of which attracted substantial bipartisan support. The witnesses also highlighted provisions that were included in the National Defense Authorization Act for Fiscal Year 1996

that require the Secretary of Defense to identify the various commercial activities of the Department of Defense (DOD); highlight those that are suitable for conversion to performance by the private sector; and justify those proposed to be maintained for performance by DOD employees. The provision also calls upon the Secretary to identify all legislative and regulatory impediments to converting commercial activities to performance by the private sector. These provisions represented a victory for accelerating the contracting-out of commercial activities currently performed by Federal agencies.

The hearings continued on July 18, 1996, with another single panel of witnesses, which included: Thomas J. Scanlon, Vice Chairman, BCFC; Michael Lieberman, President, Valley Forge Flag Company; Philip C. Hanson, Vice President, C.H. Hanson Company; Evan J. Keep, Jr., Evan Keep and Associates; Robert P. Stack, President, Community Options; Gene Meier, Owner, Lewistown Propane and Fertilizer, representing the National Federation of Independent Business (NFIB); Roger S. Ralph, President, Bel Air Health Club, representing the International Health, Racquet and Sportsclub Association; Dr. Charles A. Garber, President, Structure Probe; Michael K. McGee, National Environmental Testing, Inc., representing the International Association of Environmental Testing Laboratories; and Lou O'Brien, Chairman, ModelStar Services, representing the Textile Rental Services Association of America.

The witnesses provided the Committee with anecdotal evidence of the devastating effect of unfair competition by government-sponsored entities on small business. Mr. Lieberman particularly emphasized the effects when he testified that Valley Forge Flag Company, a 114 year-old small business, family-owned for four generations, was now facing an essentially insurmountable competitive challenge for business by the National Industries for the Severely Handicapped (NISH), a government-sponsored, not-for-profit enterprise and a companion organization to the National Industries for the Blind (NIB).

Under the Javits-Wagner-O'Day (JWOD) Act, NISH and NIB are given a preferential status with respect to selling certain designated products or services to Federal agencies. Once a product or service has been designated, Federal agencies are required to solicit offers from NISH or NIB before offering the contracting opportunities to the private sector. Products or services, however, are not to be designated under the JWOD if it is determined that the "proposed addition to the procurement list would have a severe adverse impact on the current or most recent contractor for the specific commodity or service." As Mr. Lieberman testified, a very high threshold has been adopted for determining what constitutes doing adverse economic harm to a small business—essentially not taking more than 20 percent of a small firm's total annual revenue. After taking 20 percent of Valley Forge Flag Company's largest contract in 1993, which involved furnishing interment flags to the Department of Veterans Affairs (DVA), on May 17, 1996, NISH informed the company that it intended to take another 20 percent of the same contract.

Mr. Hanson testified about similar experiences with regard to another family-owned small business that had furnished the gov-

ernment since the Civil War with brass stencils for labeling. When this work was completely taken for the JWOD program, the C.H. Hanson Company sought to diversify to related products, like identification tags and surveyors' markers, only to have these products taken by the JWOD Program. Mr. Hanson and Mr. Lieberman also raised concerns about whether pricing by NISH and NIB represented fair market prices to the buying Federal agencies; the underutilization of persons with disabilities in the actual performance of JWOD contracts; and excessive subcontracting by NISH and NIB to selected for-profits companies in order to be able to meet their contractual performance obligations to the government.

Two advocates for persons with disabilities provided the Committee with a perspective on the issue from the view point of the disabled community. Mr. Kemp suggested that the workshops operated by NISH and NIB tended to perpetuate the segregation of persons with disabilities rather than emphasizing their mainstreaming in keeping with the landmark Americans with Disabilities Act of 1990. Mr. Stack provided specific examples of how organizations like his worked to integrate persons with disabilities into the employment mainstream. Mr. Lieberman also emphasized that Valley Forge Flag Company currently employs persons with disabilities, and he testified that his company was willing to employ more individuals with disabilities than would be employed if the contract were performed by a NISH-affiliated organization.

For further information on this hearing, refer to Committee publication number 104–86.

7.2.49 PROPOSED REFORM OF THE 8(A) PROGRAM THROUGH H.R. 3994, THE ENTREPRENEUR DEVELOPMENT PROGRAM ACT OF 1996

Background

On September 18, 1996, the Committee on Small Business held an oversight hearing to examine the proposed reform of the Small Business Administration's (SBA) Minority Enterprise Development Program (also known as the 8(a) Program) through H.R. 3994, "The Entrepreneur Development Program Act of 1996." Congress intended that the 8(a) Program would utilize Federal procurement to promote development of small businesses owned by socially and economically disadvantaged individuals. The program put in motion a contracting mechanism within the SBA through which purchases by the Federal government, now worth about $6 billion, are made, for the most part, on a non-competitive basis through set-asides.

The intent of the 8(a) Program was to allow eligible companies an opportunity to get on their feet, gain practical business experience, and at the end of a maximum nine years, to graduate from the program and be prepared for the competitive marketplace. It has been found, however, that opportunity has been minimal for most of the approximately 6,000 firms that have been certified in the program and that a select few companies, though financially able, remain in the program long after achieving a success level of which most struggling entrepreneurs only dream.

Congress has attempted to clean up the longstanding problems with this program through three major legislative overhauls in 1978, 1980 and 1988. Each time, the SBA has been directed to increase oversight of the program and to ensure that the benefits are distributed fairly and to guard against fraud and abuse. However, studies by independent investigators such as the General Accounting Office (GAO) have given the program poor and, in many cases, failing grades. General findings of these studies have concluded that the 8(a) Program's success in helping disadvantaged firms to become self-sufficient and competitive was minimal.

Summary

The hearing was comprised of two panels. The first panel included: Philip Lader, Administrator, SBA, accompanied by Calvin Jenkins, Associate Administrator of Minority Enterprise Development, SBA, John Spotila, General Counsel, SBA, and Hugh Wright, Assistant District Director for Minority Enterprise Development, SBA Washington District Office; and Judy England-Joseph, Director of Housing and Community Development Issues, GAO. Mr. Lader testified that significant improvements have been made to the 8(a) Program. He stated that a new comprehensive management information system was in place, annual reviews of program participants had been done, and that they had reduced the application processing time. The Administrator also testified that, although their efforts had not been perfect, they could demonstrate that the 8(a) Program is currently being mended. One example of improvement, the Administrator stated, was that 84 percent of all portfolio firms were reviewed last year as compared to only 57 percent the previous year. Mr. Lader stated that the Administration strongly opposes H.R. 3994 and that the SBA would recommend that the President veto any legislation that passes Congress that would not allow the continued "mending" of the program. The SBA believes that the 8(a) Program is necessary, but it does not condone any past abuses that may have occurred.

GAO testified that its reports and testimony over the years have chronicled the difficulties that the SBA has had in implementing many of the changes to the 8(a) Program, which were mandated by Congress in the Business Opportunity Development Reform Act of 1988. The latest information that the GAO has obtained directly from the SBA's automated system shows that while the dollar amount of 8(a) contracts awarded competitively during fiscal year 1995 increased over fiscal year 1994, the percentage of contract dollars awarded competitively remained at about 19 percent.

According to GAO testimony, during fiscal year 1995, three firms, among some 6,000 firms, were graduated from the program according to the SBA—the first graduations in the Program's history. The SBA determined that the firms had met their developmental goals and were able to compete in the marketplace without further assistance from the 8(a) Program. The GAO also stated that in May of 1995, the SBA established requirements for its field staff to evaluate the financial condition of 8(a) firms and to determine whether firms were ready to graduate from the program. An evaluation done by the SBA of their field staff in February of 1996 found that the staff's financial analysis was poor and an under-

standing of concepts of economic disadvantage, financial conditions of the firms, access to capital, and comparisons to non-8(a) firms in similar businesses was limited.

GAO testified that while the 8(a) program has not yet achieved key changes mandated by Congress, the SBA has taken actions during the past year that indicate steps in the right direction. GAO was concerned, however, about the need to collect data to measure better the overall effect of the 8(a) Program and the need to improve the skills and abilities of the SBA staff who are responsible for assessing the financial condition and competitiveness of the 8(a) firms.

The second panel included: Shirley A. Stewart-Veal, President and Founder, SAS, General Construction Contractor; Brenda Ford, President, Ford & Associates; Jim Offord, Retired Contract Specialist; George R. La Noue, Director, Policy Sciences, Policy Sciences Graduate Program, University of Maryland-Baltimore County; Jeffrey Rosen, Associate Professor, George Washington University School of Law and Legal Affairs and Editor, *The New Republic*; Tapan Banerjee, President, Tapan & Associates; and Steven Farinha, President, Farinha, Inc.

Several small business owners who are designated as 8(a) firms or previously sought such certification testified that the SBA program officers have not been helpful to them. One such owner testified that even though she has utilized all of the counseling programs available, she found the SBA and the contracting officers to be determined not to help her. Another owner stated that she had documented cases of wrongdoing by the SBA, facilities services managers, and contracting officers. After 15 years of being an 8(a) firm, the contracts on which she bid were always awarded to the larger firm. Testimony was received from a retired Federal contract specialist whose job it was to be an advocate for minority set-asides. This witness stated that among other abuses, the Federal program managers frequently found ways to avoid letting contracts be awarded to minority firms by sometimes using unique specifications that only the majority vendor possessed.

The Committee also received testimony from witnesses who were considered experts in the field of affirmative action and discrimination. Classification of an individual as socially and economically disadvantaged has recently been questioned and brought to the U.S. Supreme Court. The witnesses testifying questioned how the SBA decides who fits its "list" of socially and economically disadvantaged individuals. Some of the groups included in this list are at the socioeconomic bottom of society, while others, measured by education, income, and business formation rates, are at the top. Facts about individual group characteristics were apparently irrelevant to the SBA's decision.

Testimony was also received from several 8(a) firms who have had good experiences with the program. These owners testified that the Program has given them the opportunity to stabilize their businesses and to create a good track record for clients. Two 8(a) firms stated that 65 percent of their current contracts are non-8(a) contracts. These owners testified that they believed H.R. 3994 would not reform the 8(a) Program but would eliminate it altogether.

For further information on this hearing, refer to Committee publication number 104–92.

7.2.50 OSHA REFORM AND RELIEF FOR SMALL BUSINESS: WHAT NEEDS TO BE DONE?

Background

On September 25, 1996, the Committee on Small Business held a hearing on reform efforts undertaken by the Occupational Safety and Health Administration (OSHA) from the small business perspective. The Committee previously held a total of five hearings on the issue of OSHA reform and the regulatory burdens imposed on small business generally. This hearing was designed to further the process of OSHA reform by reviewing OSHA's efforts to date and to evaluate the merits of H.R. 3234, the "Small Business OSHA Relief Act of 1996."

OSHA was created in 1970 as a result of Public Law 91–596, and the statute has not been amended since its enactment. Furthermore, the 1995 White House Conference on Small Business ranked the issue of regulatory reform 28th out of 60 final recommendations, underscoring the critical need for reform in this area. The primary thrust of the OSHA reform legislation introduced in the 104th Congress has been to reduce the number of penalties and citations issued by OSHA and to reduce OSHA's role as a rule enforcer in favor of a consultation resource for employers. Witnesses were asked to comment on H.R. 3234, the status of OSHA reform, and specifically on the proposals for cost-benefit analysis for new regulations.

Summary

The hearing was comprised of a single panel, which included: Joseph Dear, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor; F.M. "Pete" Lunnie, Jr., Executive Director, Coalition on Occupational Safety and Health; Ed Hayden, Safety and Health Director, Associated General Contractors of Greater Milwaukee; Kent Swanson, Owner, Nurses Available Staffing, Inc., representing the National Federation of Independent Business; and Larry Larsen, President, Larsen Holmes, representing the National Association of Home Builders.

The panel began with Mr. Dear who reviewed the Administration's progress to reform OSHA and provide relief for small businesses. He testified that OSHA now emphasizes cooperative partnerships with employers and workers, with small-business employers being involved whenever a new OSHA rule would have a significant economic effect upon small businesses. The agency was also implementing common sense regulations written in plain language and a new agency culture focusing on the reduction of injuries and illnesses rather than the number of inspections and penalties. He maintained that performance measures, such as inspectors being evaluated on the number of inspections, citations, and fines that they have issued, had been eliminated. Mr. Dear advised the Committee that before his tenure at OSHA is completed, the agency will eliminate more than 1,000 pages of regulations and will simplify hundreds more.

Mr. Dear also commented on H.R. 3234 and asserted that the bill would substantially compromise worker protection. He claimed that the "New OSHA" has begun reducing or eliminating penalties for technical paperwork violations while directing its enforcement activities to the most dangerous work sites. Mr. Dear concluded his testimony by stating that he has changed OSHA forever by offering employers a choice between cooperation and enforcement and by using common sense in developing and enforcing regulations.

The small business representatives on the panel shared Mr. Dear's call for cooperation and expressed their equal commitment to work constructively with their employees, OSHA, and other interested parties for continued improvement in worker safety and health. The witnesses noted, however, that OSHA is one of the least-liked regulatory agencies in Washington due to a disjointed approach to enforcement and confusing, burdensome standards among other agency practices. OSHA in many ways treats small business as an adversary, which was evidenced by the 1995 White House Conference on Small Business. When the delegates to this conference were asked what concerned them most about the Federal government, the overwhelming response was not the IRS, health-care reform, or the minimum wage—it was the OSHA inspector. Mr. Lunnie noted as an example that of the top twenty most frequently cited OSHA violations in 1994, eleven of them were for paperwork and of those, the majority involved OSHA's hazard communication standard.

The small-business witnesses generally favored the reforms proposed in H.R. 3234. As one witness pointed out, there can be no guarantees that the next OSHA Administrator will maintain the policies set forth in the "Reinventing OSHA" initiative. H.R. 3234 will ensure that these policy changes will be continued. Witnesses noted that OSHA reform legislation must ensure that OSHA's primary concern will be safety and not the punishment of small business for minor mistakes. With regard to specific provisions of H.R. 3234, several witnesses were supportive of the requirement that OSHA and other Federal agencies perform a cost/benefit analysis on regulations prior to their promulgation to ensure that the regulations do not impose an unnecessary or duplicative burden on the small business community.

A number of small business witnesses also testified about the effects of OSHA's proposed ergonomics regulations. The witnesses maintained that under this proposal small businesses would be required to implement comprehensive medical-management programs for jobs with high signal risk factors for employees including lifting 25 pounds, repetition (such as using a computer keyboard or clicking a mouse), pushing or pulling, and using an awkward position. The proposed regulations would require small businesses to retrain employees and radically re-engineer their businesses. Mr. Swanson commented that the new regulations do not reflect the effort to reform OSHA that Mr. Dear had previously pledged to implement.

For further information on this hearing, refer to Committee publication number 104–93.

7.3 Summaries of the Hearings Held by the Subcommittee on Government Programs

7.3.1 The Impact of Hanscom Air Force Base Upon Small Business in the New England Region

Background

On February 13, 1995, the Subcommittee on Government Programs held a field hearing in Bedford, Massachusetts, to examine the impact of Hanscom Air Force Base upon small business. The Federal government selected Hanscom as a possible target for shutdown and/or movement of sections of the base to other locations. A number of small businesses in the area depend on the base for much of their business. Hanscom is the fourth largest employer in Massachusetts, directly employing 11,500 persons on the base and indirectly providing for another 19,800 jobs in the surrounding region. The total effect on the New England economy is $3.2 billion per year, of which $120 million a year goes to the regional small business community.

Summary

The hearing was comprised of three panels, the first of which included: Colonel Ken Collins, Director of Quality Initiatives and Strategic Planning, Electronic Systems Center, Hanscom Air Force Base; Captain Shannon Sullivan, member of Team 21, which supports the BRAC process by providing installation data through the Department of Defense structure; and Al Hart, Director, Small Business Office, Electronic Systems Center, Hanscom Air Force Base.

This panel described the relationship between the business community and Hanscom Air Force Base. The base produces the world's finest command, control, communications, computing, and intelligence systems, known as C4I, which would not be possible without the many small businesses that contract with Hanscom. Hanscom's contractors fall under one of several major categories: engineering services, intelligence systems, C4I systems integrations, research and development, construction, small purchases, physical security systems, travel services, and base maintenance. The total small business obligations for Hanscom over the past four years made up 10 to 15 percent of the obligations to profit-seeking companies. Small businesses provide backbone support to keep the base and its facilities running smoothly and are able to provide technical expertise quickly and accurately. The witnesses also testified to the synergy of the small businesses and Hanscom and the importance of this relationship to the economy as a whole.

The second panel consisted of Sanford Weiner, Research Associate, Center for International Studies, Massachusetts Institute of Technology; and William F. Weld, Governor, Commonwealth of Massachusetts. Mr. Weiner discussed the system's integration and how it was accomplished, and he testified that Hanscom has been a true partner with small engineering firms, major contractors, and the Federal contract centers to have successful systems integration. Governor Weld reiterated the importance of Hanscom to economy

and said that relocating the base would weaken the quality of the C4I systems, force the Air Force to spend time and money reconstructing an existing technical base, and harm the commercial high tech cluster that has developed in that area. Hanscom is also involved with universities in the area and provides invaluable opportunities and knowledge. Governor Weld further discussed the $100 million bond bill he had signed the previous week that would aid in expanding Hanscom Air Force Base and two other bases in Massachusetts. This bond bill was seen as a major commitment from the State.

The third panel consisted of James Henderson, CEO and President, Analytical Systems Corporation; David Vining, Vining Disposal Services; Peng Siu Mei, President, Mei Technology Corporation; Samir Desai, President and Founder, Systems Resources Corporation; and Victoria Bondoc, President and CEO, Gemini Industries.

The witnesses on the panel all represented small businesses directly affected by Hanscom Air Force Base. The witnesses described specifically how their companies were involved with Hanscom and the potential impact on their business if the base were to be shut down. For instance, Mr. Vining testified that if the base were shut down, it would result in a direct loss of 4.6 percent, and a potential indirect loss of 34 percent, to his company. This would equal a total dollar value loss of $4,632,000 and the elimination of 40 jobs. All witnesses predicted the elimination of jobs if the base were to close.

For further information on this hearing, refer to Committee publication number 104–12.

7.3.2 SMALL BUSINESS ADMINISTRATION'S SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM

Background

On April 6, 1995, the Subcommittee on Government Programs held a hearing to discuss the Small Business Innovation and Research (SBIR) program, which is administered by the Small Business Administration (SBA) and assists small, technology-oriented businesses. Because of their creativity and flexibility, small businesses are often fertile ground for innovation. These businesses, however, must overcome a number of obstacles, including little access to capital and the lack of a forum in which to supply their innovations to the Federal government and commercial interests. In an effort to alleviate these obstacles, the SBIR program requires Federal departments and agencies with extramural research budgets in excess of $100 million to take a nominal percentage of those funds and set them aside for small businesses that compete for research projects.

Summary

The hearing was comprised of a single panel, which included: Samuel J. Barish, SBIR/STTR Program Manager, Office of Energy Research, U.S. Department of Energy; Constantine A. Bassilakis, Grey Fox Technologies, Inc.; Jere W. Glover, Chief Counsel for Advocacy, SBA; Robert L. Norwood, Director, Commercial Develop-

ment and Technology Transfer Division, Office of Space Access and Technology, National Aeronautics and Space Administration (NASA); Victor S. Rezendes, Director, Energy and Science Issues, Resources, Community, and Economic Development Division, U.S. General Accounting Office (GAO); Robert Neal, Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, SBA; and Roger Little, President, Spire Corporation.

Representatives from the small business community, including Mr. Bassilakis and Mr. Little, rated their experience with the SBIR program as favorable. Mr. Bassilakis lauded the impact of the SBIR program on his company, Grey Wolf Technologies, citing that it had provided an excellent foundation for launching a new business and led to the award of two non-SBIR contracts from General Electric in the second half of 1994. According to Mr. Little, the SBIR program has contributed to Spire Corporation's technology base and products in a number of ways. For instance, it has allowed his corporation to export to Europe and Japan, as well as various third-world countries. Although these two small business representatives generally praised the SBIR program, they also expressed some concerns. Mr. Bassilakis called the documentation requirements and the accounting system requirements overly burdensome for small businesses. He suggested simplifying these requirements and offering alternatives to "cost-plus fixed fee" contracts. Mr. Little criticized the lack of time between program phases, citing as an example a five to ten year time frame from the point of initial funding to commercialization.

Representatives from the SBA, including Mr. Glover and Mr. Neal, generally praised the SBIR program. Mr. Glover testified that the SBIR program contributes one of the highest returns to taxpayers and redirects money to small businesses that might otherwise have gone to large firms, universities, and Federal government labs that are far less efficient, far less innovative, and less able to commercialize their technologies. Mr. Glover found the technology commercialization rate to be between 30 and 40 percent for small businesses involved in the SBIR program. According to Mr. Neal, since the program began, the 11 Federal agencies in the program have made over 37,000 competitive awards worth more than $5.3 billion. Mr. Neal concluded that the unqualified success of the SBIR program attests to the strength of small business entrepreneurs and their creativity.

Representatives from Federal agencies, including Dr. Barish of the Department of Energy and Dr. Norwood of NASA, attested to the success of the SBIR program, but also made some suggestions regarding set-aside funds. Both witnesses recommended using a small fraction of SBIR set-aside funds to provide commercialization assistance to SBIR awardees and to support administrative costs of the program's operation.

Mr. Rezendes testified about the GAO's report evaluating the interim status of the SBIR program. The three basic objectives of this report were to assess whether: (1) the quality of research has kept pace with the increase in the percentage of awards; (2) implementation of the technical assistance program has occurred at the various agencies; and (3) there is any duplicate funding of research.

The report identified only one problem area—duplicate funding. According to the Department of Justice, one company received $1.4 million in duplicate funding from NASA and various Department of Defense agencies. In addition, 11 research ideas were recycled 40 times by this company. Most agencies agree, however, that only a small percentage of these companies are responsible for the majority of offenses.

For further information on this hearing, refer to Committee publication number 104–25.

7.3.3 SMALL BUSINESS ADMINISTRATION PROGRAMS TO ASSIST THE NEW ENGLAND FISHING INDUSTRY

Background

On April 10, 1995, the Subcommittee on Government Programs held a field hearing in Gloucester, Massachusetts, to examine the plight of the fishing industry in New England and to discuss options for Federal government assistance from the Small Business Administration (SBA).

The breeding stocks of several types of groundfish, most notably cod, haddock, and yellow-tailed flounder, have been depleted in the New England coastal area. Under Amendment 7 to the Multi-species Plan and Amendment 5 to the Lobster Plan, harvesting was temporarily restricted pending the stocks' return to sustainable levels. Once the stocks are replenished, licenses will allow harvesting at levels near what they had previously been. The combination of natural and man-made circumstances has had a negative effect on the fishing industry in the area, which is predominantly comprised of small businesses. The economic downturn has not only affected fisherman and fish processors, but also the towns that depend upon the constant economic input of the fishing industry.

Summary

The hearing was comprised of three panels, the first of which included: Bruce Tobey, Mayor, City of Gloucester; Bruce Tarr, Senator, Massachusetts State Senate; and Dr. Andy Rosenberg, Deputy Regional Director, Northeast Regional Office, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

The first panel gave an overview of the situation in the New England region with regards to the fishing industry. Mayor Tobey and Senator Tarr explained the plight of fishermen who have struggled with the depletion of fishing stocks and will continue to struggle as harvesting restrictions are imposed. Both stressed that more loans are not the answer, as the region's fleet is already overcapitalized. Mayor Tobey suggested financial grants to assist fishermen in modernizing and refitting their vessels, thus enabling them to harvest alternative fish stocks, and to assist in marketing these fish domestically. Other suggestions included balancing the Magnuson Act to reflect the views of fishermen, easing waste-water regulations and, as a last resort, expanding a boat buy-back program to encourage a reduction in the fishing fleet. Senator Tarr concurred with these suggestions and also stressed the need for ex-

tended loan terms, thus reducing monthly payments, and helping to create new business opportunities for boat-owners and their crews. Dr. Rosenberg gave a brief overview on the status of groundfish stocks in the region, which he contends have been severely depleted by over-fishing. According to Dr. Rosenberg, restrictions on harvesting should continue for approximately five to six years to allow stocks to grow to sustainable levels.

The second panel included: Angela Sanfilippo, President, Fishermen's Wives Association; Jose Testaverde, President, CGN Corporation; Edward Lima, Director, Cape Ann Fishermen's Cooperative of Gloucester; Scott Memhard, President and General Manager, Cape Pond Ice Company; Pasquale Frontierro, Owner, Frontierro Brothers, Inc.; and Edward MacLeod, consultant to the fishing industry.

The second panel was comprised of area citizens who, like many in New England's coastal towns, have been adversely affected by fishing conditions. They complained about the difficulty in obtaining loans to modernize their industry and expand into new markets. According to the witnesses, banks will not extend capital to small businesses in the fishing industry because of the current depletion of groundfish stocks. All of the witnesses noted the dependence on the fishing industry of Gloucester and towns like it in New England. Mr. MacLeod stressed the importance of maintaining an experienced corp of fisherman and fish processors to jump start the fishing economy once groundfish stocks return to sustainable levels. He suggested assistance from the SBA in obtaining loans to start new small businesses, expand into alternative fish markets, and improve and modernize equipment for both fishermen and fish processors.

The third panel included: Patrick McGowan, Regional Administrator, SBA; Patricia Hanratty, Senior Vice President, Fleet Bank; and David L. Marsh, President, Gloucester Bank & Trust Company. This panel responded to the previous panels' requests for financial assistance. While declaring their willingness to assist whenever possible, each stressed the fact that making loans to those who would be unable to repay them was not feasible. Each committed themselves to keeping a healthy and efficient fishing industry while concurrently providing opportunities for those who are displaced as the industry downsizes. All of the panelists expressed a need for government assistance in providing any capitalization. Also discussed was the possibility of declaring the region a disaster area, thus making it eligible for low-interest loans.

For further information on this hearing, refer to Committee publication number 104–26.

7.3.4 SMALL BUSINESS ADMINISTRATION'S DISASTER LOAN PROGRAM

Background

On May 25, 1995, the Subcommittee on Government Programs held a hearing to examine the disaster assistance loan program administered by the Small Business Administration (SBA) and how it aids small businesses and individuals after a disaster. Disaster

loans are the primary form of Federal assistance for non-agricultural and private-sector disaster losses.

Summary

The hearing was comprised of a single panel, and the witnesses included: Jim Hammersley, Acting Deputy Associate Administrator, Office of Disaster Assistance, SBA; Quirino "Bud" Iannazzo, Administrative Program Manager, Massachusetts Emergency Management Policy; and Karen Lee, Deputy Inspector General, SBA.

The panel began by providing the Subcommittee with background on the two basic types of disaster loans, namely physical disaster loans and economic injury disaster loan. Witnesses also summarized the procedural precautions that SBA applies to loan applications to ensure claims awarded are legitimate.

The panel also provided the Subcommittee with anecdotal evidence as to the efficacy of the SBA's Disaster Loan Program as well as some areas for improvement. Overall, witnesses testified that the Disaster Loan Program is a quality program that should continue with a few adjustments. Suggested changes included making the program more "user-friendly," increasing the process time from a month to 15 calendar days, expanding the use of "loan packagers," and reducing SBA's threshold amount for determining when a disaster victim can qualify for benefits under the loan program.

For more information on this hearing, refer to Committee publication number 104–31.

7.3.5 U.S. SMALL BUSINESS ADMINISTRATION LOW DOCUMENTATION LOAN PROGRAM

Background

On June 28, 1995, the Subcommittee on Government Programs held the first in a series of hearings to review the Small Business Administration (SBA) and its specific loan programs and, for this hearing, the SBA's Low Documentation (LowDoc) Program. The LowDoc Program began as a pilot program in December of 1993 and expanded nationally in the summer of 1994. The program was created to respond specifically to a critical funding need, that is, small business unable to find lenders who are willing and able to provide loans in amounts under $100,000. What makes a LowDoc loan unique is that the application form for this type of loan is only one page in length; therefore, it is easier on the borrower to apply for the loan. Between December 1, 1993 and March 31, 1995, the SBA approved 21,520 LowDoc loans, totaling approximately $1.8 billion.

The hearing was designed to evaluate two aspects of the LowDoc Program. First, the witnesses were asked to discuss the expected default rate on all loans as they enter their second and third years of repayment. Secondly, the witnesses were asked to discuss the scoring of the subsidy rate for the LowDoc Program as it relates to the 7(a) Loan Program. Currently, it is understood that the LowDoc Program has not been scored separately, but that the Office of Management and Budget (OMB) is considering a separate score in the future.

Summary

The hearing was comprised of two panels, the first of which included: Patricia R. Forbes, Acting Associate Deputy Administrator for Economic Development, SBA, accompanied by John Cox, Associate Administrator for Financial Assistance, SBA. Ms. Forbes discussed the internal workings of the LowDoc Program, stressing the differences between the LowDoc Program and the 7(a) Loan Program. The LowDoc Program was established in direct response to the concern of small business owners regarding their lack of access to capital. Small businesses were unable to find lenders that were willing to provide loans under $100,000. The loan application was also a concern, and as part of this program, the application was reduced to one page. Ms. Forbes noted that the single page form is both the applicant's loan application and the lender's request for a guaranty.

The witnesses also discussed the statistics available for the LowDoc program, noting that LowDoc loans are high in numbers compared to all 7(a) loans, but not in overall dollars. LowDoc loans, both by dollars and numbers, however, are performing slightly better than non-LowDoc loans of any size approved during the same period. The witnesses emphasized that the LowDoc program has been extremely well received by both borrowers and lenders, and is serving many small financing needs of the small business community.

The second panel included: Anthony R. Wilkinson, President and Chief Executive Officer, National Association of Government Guaranteed Lenders; Deryl Schuster, President for the Central Division of Emergent Business Capital and Vice President of Government Relations, National Association of Government Guaranteed Lenders; and Blain Marchand, Vice President and SBA Loan Specialist, Flagship Bank. All witnesses on this panel were asked to discuss their experience with the loans, and their recommendations for and concerns about the LowDoc Program.

The second panel recommended that the SBA develop procedures to place more reliance on the private sector since the SBA can no longer handle the rapidly growing loan programs with staff resources that have continued to shrink. If LowDoc or any other SBA loan program is to pass the test of time and survive, it must be operated efficiently and managed effectively. These programs are vital to the small business community and are the primary source of long-term capital for many small businesses. The panelists stressed that the SBA's loan programs have improved considerably since the 1970s, with the 7(a) Loan Program now described as the "flagship program" of the SBA.

Mr. Marchand testified regarding the future of SBA loan programs and how effective LowDoc has been for banks. A few years ago, community banks were very eager to lend to small businesses but were worried about the risks that go into lending to new and/or small businesses. Smaller banks with limited capital need a partner like the SBA as a way to reduce the risks. While the guaranteed-loan option is attractive, banks found the process of dealing with the SBA to be frustrating for both banks and businesses, because it was too lengthy, too costly, and too confusing. It was rec-

ommended that the SBA continue to consolidate and streamline the process to reduce overhead and reduce the number of programs.

Mr. Marchand also stressed that the SBA should focus on the 7(a) and 504 loan programs, concentrating on term lending rather than asset-based lending, with which the SBA has historically not been very successful. Bank lenders have also advocated that the SBA reduce the guaranty percentages rather than increase fees. If a bank is not going to approve a loan because it has 70 percent guaranty versus 80 percent rate, it probably should not be written in the first place. Mr. Marchand specifically recommended that LowDoc loans have a lower guaranty percentage. He noted that there should be some correlation between the reduced work on each loan and a reduced guarantee rate.

For further information on this hearing, refer to Committee publication number 104–37.

7.3.6 SBA'S LOWDOC LOAN PROGRAM

Background

On July 19, 1995, the Subcommittee on Government Programs held a hearing on the Low Documentation, or "LowDoc," loan-guarantee program administered by the Small Business Administration (SBA). The first day of hearings on this issue was held on June 28, 1995, and at that time, the Office of Management and Budget (OMB) declined to testify before the Subcommittee on the LowDoc program and OMB's scoring of the subsidy rate for the program.

Because OMB refused to provide a witness for the hearing, the Subcommittee moved to subpoena Alice Rivlin, Director of OMB, to testify. A formal vote was held and the motion passed the Subcommittee by a vote of 7-0. Chairman Torkildsen and Ms. Rivlin spoke several times thereafter, agreeing on July 19 for continuation of the hearing. Due to scheduling conflicts, Ms. Rivlin could not attend the July 19 hearing, and instead the Deputy Director for Management, attended the hearing on her behalf to discuss the SBA's LowDoc loan program.

Summary

The hearing was comprised of a single witness, John Koskinen, Deputy Director for Management, OMB. Mr. Koskinen covered a number of issues in his testimony, beginning with a summary of credit reform and OMB's role in establishing credit subsidy rates for loan programs. The Federal Credit Reform Act of 1990 made fundamental changes in the budgetary treatment of direct loans and loan guarantees. These reforms became effective in FY 1992 and shifted the basis for Federally guaranteed credit from a cash basis to a net-present-value basis. This new approach, Mr. Koskinen explained, is far superior to the previous budgeting system in many ways. Under credit reform, the Executive Branch must predict how loan programs will perform and request budgetary resources up-front based on the forecast. While this change has been complex, Mr. Koskinen noted that it has greatly improved the budgetary treatment of credit programs.

Mr. Koskinen also explained the process of estimating subsidy rates. The Executive Branch is now required to follow a specific process in developing and implementing subsidy rates. During the development of the President's budget proposal, OMB and other agencies with credit programs jointly establish projections about how the loans that are expected to be made during that year are likely to perform. Numerous assumptions are made about the projected loans, such as expected defaults, delinquencies, prepayments, loan maturity, and interest rates. For loan programs already in existence, the Federal Credit Reform Act requires subsidy estimates to be based on historic loan performance data. Once OMB and an agency agree on the assumptions, those assumptions are then reflected in the President's budget.

The SBA initiated the LowDoc program as a pilot in December of 1993. In the beginning, it was a very small program within the Section 7(a) general business loan guarantee program, the SBA's largest loan program. The LowDoc program allows lenders to submit a one-page application for a Federal guarantee, without most of the previously required attachments, and is available for loans under $100,000. The SBA also established a procedure for faster and more efficient turn-around on LowDoc loan application reviews. When the LowDoc program began, OMB and SBA discussed the options for establishing a separate subsidy rate for the program. It was decided, for several reasons, that a separate subsidy rate would not be calculated. Primarily, it was not clear that LowDoc loans would perform differently from regular 7(a) loans, the key difference between LowDoc and regular 7(a) loans being that the lender is allowed to submit less documentation to SBA. At the time LowDoc was proposed, SBA was not prepared to budget and account for loans by risk category, and the SBA was still working to implement the Federal Credit Reform Act. OMB did not believe SBA's financial systems could accurately handle this level of sophistication. Given SBA's limited resources, OMB contended that SBA should focus on accurately meeting the core credit-reform requirements.

Mr. Koskinen testified that the lack of reliable loan performance data is directly linked to the system constraints. Agencies had little incentive to develop the capacity to analyze loan performance across categories of loans, even though this would have provided the important data that was needed. Most agencies have made great strides in implementing automated systems designed to provide detailed loan performance information quickly and easily. By Winter 1996, OMB anticipates that the SBA will have useful and accessible loan performance data for use in developing the FY 1997 budget. Given the lack of useful alternatives, OMB determined that a single subsidy rate was the best option and that the existing subsidy rate modeling procedure, which generates a blended subsidy rate, could address many of the issues raised by LowDoc. The subsidy model allows OMB to incorporate different loan characteristics into the subsidy rate, so the effects of the LowDoc program could be reflected in the overall 7(a) subsidy rate.

LowDoc offers an innovative way to reduce the paperwork burden on private lenders and applicants for loan guarantees. Mr. Koskinen testified that the LowDoc program has been successful in

increasing the portion of smaller loans in the SBA's portfolio. There is reason to believe that these smaller loans more often go to smaller businesses, and to businesses owned by women and minorities, groups that frequently have the least access to capital.

For further information on this hearing, refer to Committee publication number 104–40.

7.3.7 PROFESSIONAL CERTIFICATION AS A SOLE SOURCE BID REQUIREMENT IN FEDERAL CONTRACTING

Background

On August 2, 1995, the Subcommittee on Government Programs held a hearing on professional certification as a sole-source bid requirement in Federal contracts. In recent years, serious questions have been raised relating to the fairness, particularly to small business, of requiring one particular version of professional certification over any alternatives as a precondition to bidding on or being awarded a Federal contract. Witnesses were asked to comment on the qualification of certain Federal agencies to differentiate between competing professional certification programs and the standards that should be used to evaluate these programs.

The hearing was also designed to focus on the pricing of certification programs. Witnesses were asked to provide testimony about the cost of these certification programs and if the taxpayers will bear the cost of their development and maintenance. Finally, the hearing was intended to examine the disturbing charges relating to deliberate attempts by certain organizations to use professional certifications simply as a revenue-producing product, rather than recognizing the serious responsibilities assumed by these organizations.

Summary

The hearing was comprised of a single panel, which included: Pete Geren (D-TX), Member of Congress; John Antrim, General Manager of Certification Programs, National Society of Professional Engineers; Gary Clark, President, Z-Scan, Inc.; Steven Halsey, Immediate Past President, International Air Filtration Certifiers Association; Dave Prevar, Manager of Safety and Health, Beltsville Agricultural Research Center, U.S. Department of Agriculture; and Frank Simione, Vice President of Operations, American Type Culture Collection.

The hearing began with anecdotal evidence of the problems faced by small businesses that are affected by the sole-source bid requirements in government contracting. Congressman Geren and Mr. Clark both provided the Subcommittee with testimony concerning Z-Scan, Inc., a small business, that has been trying to attain certification for testing biohazard cabinets through the National Sanitation Foundation (NSF). The owners of Z-Scan spent over 600 hours complying with the requirements of the program to attain certification and submitted an application and check to the NSF for both organizational certification and individual certification. Both the check and application were later returned with an explanation that the certification program was not yet in place. During the in-

vestigation by Congressman Geren's office, it was learned that the NSF's organizational certification program was still under development. Congressman Geren was also informed by the NSF that participation in the program was voluntary, and if government agencies require the NSF certification as a requirement for a contract bid, many small businesses in the biohazard industry would not qualify. The witnesses noted that to date the NSF has not completed its organizational certification program, which the NSF had previously indicated would be in place by 1992.

Other witnesses on the panel testified that certification requirements have become very pervasive either as a condition of employment, directly or indirectly, or as a condition of doing business. Additionally, even though certification is for individuals, it is often the case that a company cannot do business unless it has certified individuals on its payroll. Dr. Antrim noted that the National Commission for Certifying Agencies has published criteria for the accreditation of certifying bodies based on a consensus of the certification industry as to the requirements for a credible certification program.

Other witnesses alerted the Subcommittee that some companies have discovered that the government-contract bidding process can be used to establish a monopoly. For example, a company will seek out an industry that is considering the need for professional certification, and then the company creates a steering committee to assist the industry in establishing the process and requirements for certification. Finally, the certification program is instituted, and the sponsoring company enjoys a monopoly in the field. Mr. Halsey stated that due to the nature of professional certification and an increasing reliance upon such programs throughout both the public and private sectors, organizations that manage to inject their certification programs into government contract-bidding specifications are often in a unique position of power over an industry. Mr. Halsey also called into question the quality of the NSF certification program based on feedback he had received from industry representatives.

The consensus of the panel was that it is inappropriate for any government agency or private firm to choose a competent contractor by limiting the bidding process only to vendors that possess a specific certification. Mr. Simione noted that his company, American Type Culture Collection (ATCC), competes for government grants and contracts as part of its business, but does not rely solely on the qualification of the vendor. ATCC's solicitations carry specific requirements, which are intended to ensure that the vendor's products and services meet the company's particular needs. Mr. Simione testified that in contrast to ATCC's practices, many firms use certification, citing the government standards as a means of leveraging their products or services. In essence, a company will assert that its product or services meet the relevant government standard, and imply that if the customer does not buy the product or service, the customer may not be in compliance with government standards.

One panelist presented the government's perspective on the issue and testified about his experience at the U.S. Department of Agriculture (USDA) with certification of contractors to inspect biological safety cabinets. Mr. Prevar testified that the need for competency

in this area is no less important at the USDA than it is in any other entity that works with pathogens. Mr. Prevar pointed out that USDA utilizes small businesses in their contract activities, and while he regarded the NSF certification programs as the consensus standard, he assured the Subcommittee that he will not specify the NSF standard as a sole-source requirement for USDA procurement contracts.

For further information on this hearing, refer to Committee publication number 104–44.

7.3.8 THE EXPORT WORKING CAPITAL PROGRAM

Background

On September 7, 1995, the Subcommittee on Government Programs and the Subcommittee on Procurement, Exports and Business Opportunities held a joint hearing on the Export Working Capital Program administered by the Small Business Administration (SBA). The hearing examined the SBA's partnership with the Export-Import Bank (Eximbank) through the pilot Export Working Capital Program. The program was a product of the 1993 Trade Promotion Coordinating Committee recommendations that prompted the harmonization of the SBA and Eximbank in terms of their respective pre-export working capital programs. Under these programs, the SBA processes loans of under $750,000 and Eximbank processes loans above $750,000.

The hearing was also held to explore a proposal made by Congressman John LaFalce (D-NY) during the markup of the Small Business Credit Efficiency Act of 1995 (H.R. 2150) that would allow the SBA to retain a 90-percent guarantee for a revolving line of credit for export purposes. The credit line would include a maximum of three years for repayment, regardless of the loan amount. The Small Business Credit Efficiency Act of 1995 lowered the guarantee rate on SBA 7(a) loans, including those for exporting, to 80 percent for all loans below $100,000 and 75 percent for all loans above $100,000.

Summary

The hearing was comprised of a single panel, which included: JayEtta Hecker, Director, Office of International Trade, Finance, and Competitiveness, General Accounting Office; Cassandra Pulley, Deputy Administrator, SBA; Martin A. Kamarck, Vice Chairman and Chief Operating Officer, Eximbank; and William C. Cummins, Group Vice President, South Trust Bank of Alabama, Co-Chairman, Small Business Export Finance Committee, Banker's Association for Foreign Trade (BAFT).

The four witnesses were in agreement that the Export Working Capital Program, although in its early stages, is a successful program committed to aiding small firms in securing the capital that they need to enter the international marketplace. In addition, the number of secured export loans has increased due to the SBA's new outreach efforts. The program focuses on getting the capital to small businesses by using the guaranteed loan process. The wit-

nesses believed that the new partnership between SBA and Eximbank was very beneficial to the small business community.

The witnesses from Eximbank, SBA, and BAFT agreed that lowering the guarantee rate from 90 percent to 75 or 80 percent would limit access to capital for many small businesses. The GAO, however, did not necessarily concur with that conclusion. According to the Eximbank, SBA, and BAFT witnesses, the lower rate would not give lenders the security in making a loan, much of the collateral for which is in transit overseas. Moreover, Eximbank has a guarantee level of 90 percent on the loans that it processes. With the Export Working Capital Program guarantee level lowered to 75 or 80 percent, Eximbank is at a competitive advantage, and it discourages new banks from lending to small firms. The witnesses maintained that the lower rate would also lead to discrimination against businesses seeking the smaller loans under $750,000.

For further information on this hearing, refer to Committee publication number 104–49.

7.3.9 LOAN PACKAGING

Background

On October 12, 1995, the Subcommittee on Government Programs held a hearing on the issue of "loan packaging." The Small Business Administration (SBA) manages two general types of loans that assist small businesses: normal business loans, which are issued by local banks and guaranteed by the SBA through such programs as the 7(a) and 504 lending programs, and disaster assistance loans, which are direct loans from the SBA. Loan packagers serve as an intermediary between the borrower and lender and assist the borrower in finding the best rate and with necessary paperwork. In return for these services, the loan packager receives a fee.

In recent years, the activities of loan packagers have come under increased scrutiny given the dramatic increase in claims of fraudulent activity. As a result, a number of proposals have been made to reduce the incidents of fraud and better regulate the loan-packaging industry. The hearing was designed to review these suggested reforms, including proposals for a registration or licensing system for loan packagers, in an effort to improve the system and protect the interests of the small business borrower.

Summary

The hearing was comprised of a single panel, which included: Charles Tomlinson, Owner, Tomlinson Funeral Home; Karen Lee, Deputy Inspector General, SBA; Patricia Forbes, Acting Associate Deputy Administrator for Economic Development, SBA; Steve Stultz, Stultz Financial; and Anthony R. Wilkenson, President and CEO, National Association of Government Guaranteed Lenders.

The hearing began with anecdotal evidence of the problems that many small businesses have encountered with loan packaging. Mr. Tomlinson testified that he had attempted to utilize a loan packager to obtain an SBA loan and was told that before any application could be submitted, payments of more than $3,700 would be required. Despite the packager's guarantee that Mr. Tomlinson

would receive a loan, no loan materialized, and the packager later disappeared. Subsequently, the packager was prosecuted and sentenced to five years in jail. The packager was also required to repay Mr. Tomlinson's fees, although no reparations have been forthcoming. Mr. Tomlinson recommended that the Committee require that SBA have more control over loan packagers and supervise their activities in order to prevent future fraud.

The witnesses representing the SBA described the agency's efforts to investigate improper activities by loan packagers as well as prevent fraud in the industry. During the last five years, 323 criminal investigations have been initiated with respect to 7(a) loans prepared by 19 different packagers. Similarly, 110 investigations were undertaken concerning disaster assistance loans involving more than $44 million. So far these investigations have resulted in 42 indictments and 38 convictions. Ms. Forbes noted, however, that the large number of investigations must be taken in context of the overall level of SBA's lending activities. During the five year period, the SBA received more than 250,000 applications, and as a result, the criminal investigation represented less that 1/10 of 1 percent of that total.

The SBA witnesses reviewed some of the bases for the investigations including discrepancies in the fee payment schedule charged by loan packagers from that permitted by SBA regulations. The witnesses informed the Committee that the SBA is currently pursuing four strategies to help prevent future fraud by loan packagers. The strategies include a registration system for packagers, certification for packagers, criminal background checks of packagers, and a requirement that packagers provide full disclosure to applicants about the responsibilities of the packager and the scope of the packager's services. The SBA is also implementing a conflicts of interest policy under which a packager would not be permitted to receive compensation from both the borrower and the lender.

The witnesses from the lending industry acknowledged that the incidents of fraud have increased, although they, too, noted that as a percentage of total SBA lending, the level was relatively low. While witnesses generally agreed with the SBA's proposals for improving the system, they stressed that the need for additional supervision of loan packagers should be balanced against the fact that market competition is a very effective regulator. The lenders that are committed to the industry will provide fair services and treat borrowers appropriately or be faced with a loss of customers that ultimately could result in termination of their businesses.

For further information on this hearing, refer to Committee publication number 104–54.

7.3.10 THE EFFECTS OF BANK CONSOLIDATION ON SMALL BUSINESS LENDING

On March 4, 1996, the Subcommittee on Taxation and Finance and the Subcommittee on Government Programs held a joint hearing in Boston, Massachusetts, to examine how consolidation affects banks' lending practices toward small businesses in New England and across the country. For a complete summary of this hearing, see section 7.6.5 of this report.

7.3.11 H.R. 2715: THE PAPERWORK ELIMINATION ACT

Background

On March 27, 1996, the Subcommittee on Government Programs held a hearing to discuss H.R. 2715, the Paperwork Elimination Act. The bill, introduced by Chairman Torkildsen (R-MA), would minimize the burden of Federal paperwork demands upon small businesses, educational and non-profit institutions, Federal contractors, State and local governments, and other persons through the use of alternative information technologies, including electronic maintenance, submission, or disclosure of information as a substitute for paper. The goals of this legislation have been recommended by many, including President Clinton who, at the signing of the Paperwork Reduction Act of 1995, stated that he wanted all agencies to provide for the electronic submission of every new government form.

The Paperwork Elimination Act would amend Chapter 35, Title 44, the Paperwork Reduction Act of 1995, by requiring all Federal agencies to provide the option of electronic submission of information, electronic compliance with regulations, and electronic disclosure of information to all who must comply with Federal regulations. Furthermore, Federal agencies would be prohibited from collecting information until they have first published a notice in the *Federal Register* detailing how the information may be maintained, submitted, or disclosed electronically. The Director of the Office of Management and Budget (OMB) would be required to oversee the implementation of electronic submission, compliance, and disclosure and to monitor and report on the progress of Federal agencies and how regulatory burdens on small businesses have been reduced.

Summary

The hearing was comprised of a single panel of six witnesses, including: Pedro Alfonso, President, Dynamic Concepts, Inc., representing the National Small Business United; Marvin Beriss, President, MB Associates, Inc.; Melvin Gerald, M.D., representing the American Academy of Family Physicians; Jere Glover, Chief Counsel, U.S. Small Business Administration (SBA); Monika Harrison, Associate Administrator, Office of Business Initiatives, SBA; and Sally Katzen, Administrator, Office of Information and Regulatory Affairs, OMB.

Ms. Katzen provided the Committee with the Administration's position on H.R. 2715. While supporting the intent of the legislation as an effort to reduce paperwork burdens and modernize government, the Administration had some reservations about its necessity and requirements. Ms. Katzen claimed that the Administration was already doing its part to reduce paperwork burdens by complying with the Paperwork Reduction Act of 1995, and she questioned the timing of the Paperwork Elimination Act, citing that too many departments and agencies do not at this time have the technological capability to comply with its requirements.

Two witnesses representing small businesses testified about the benefit that the small business community would receive from the

passage of the Paperwork Reduction Act. Dr. Gerald, a physician, testified that the field of medicine has been significantly burdened by Federal paperwork demands, citing a recent study finding that physicians spend 20 percent of a 60-hour work week on administrative tasks. He believed that this burden could be significantly reduced if regulators allowed compliance by alternative technological means. Mr. Beriss, owner of a small company that focuses on electronic forms and electronic mail messaging, testified that the technology needed to comply with this legislation exists and using it could save at least $22 billion in mailing, receiving, rekeying, and routing costs. Mr. Alphonso agreed and called upon the Federal government to use electronic alternatives for retrieving, storing and disseminating information.

The two SBA witnesses testified about the agency's efforts to bring itself into the computer age. The witnesses acknowledged that small businesses face tremendous burdens in terms of paperwork mandated by the Federal government, and noted that the SBA was making efforts to disseminate information electronically via the Internet. In addition, the SBA is conducting outreach and training activities to inform small businesses about the Federal government's transition from a paper-based procurement program to an electronic-based system.

For more information on this hearing, refer to Committee publication number 104–68.

7.3.12 VENTURE CAPITAL MARKETING ASSOCIATION CHARTER ACT

Background

On April 18, 1996, the Subcommittee on Government Programs held a hearing to discuss H.R. 2806, "The Venture Capital Marketing Association Act," which was introduced by Chairman Peter Torkildsen (R-MA). The bill is designed to privatize the Small Business Investment Company (SBIC) program, which is administered by the Small Business Administration (SBA).

The current SBIC program is a partnership between the Federal government and the private sector, by which privately-funded SBICs provide loans and equity capital to small growth companies. These SBICs are managed by skilled venture capitalists who make investment decisions without intervention from the government. They are licensed by the SBA based upon their size, expertise, and investing history. Once licensed, an SBIC may obtain guarantees from the SBA on its securities, which it sells in the capital markets. Capital is then typically invested in companies that may have low cash flows but also the potential for fast growth after a short start-up period (*e.g.,* high-tech companies). In 35 years, SBICs licensed by the SBA have invested more than $11 billion in more than 100,000 small growth companies at a net positive return on the government's investment.

The Venture Capital Marketing Association (Vickie Mae) would be a Government Sponsored Enterprise (GSE) that is able to make its own investment decisions under careful watch of the Federal government. Its initial capitalization would come from a $20 million stock purchase made by existing and newly formed SBICs that

met standards set by the legislation. Additional investments could come later from outside sources. The newly formed Board of Directors, consisting of shareholder-elected individuals and Presidential appointees, would develop the corporation's charter in accordance with parameters set by Congress. Additional capital could come from fees charged to SBICs.

Summary

The hearing was comprised of a single panel, which included: Michael Clare, Department Head for Asset-backed and Government-backed Securities, Chase Securities, Inc.; William F. Dunbar, President, Allied Capital Corporation II; Jim Murray, Counsel, Brown and Wood; Raymond R. Rafferty, Jr., General Partner, Meridian Venture Partners; and Joel Zegart, President, JBS & Associates.

The witnesses were generally very supportive of the Vickie Mae legislation and testified to its different aspects, depending upon their expertise. Mr. Dunbar and Mr. Rafferty, both owners of SBICs, testified on the need for privatization of the SBIC program. From their perspective, the main problem with the current system is its ties to the Federal budget. Because the amount that the SBA can legally guarantee is limited and can change from year to year, the capital provided to SBICs is not as consistent as is needed to ensure the most efficient allocation of capital. In addition, the government must pay for the costs of administering the program and its liquidation portfolio. They contended that establishing Vickie Mae would lower the costs to the government of administering the program, enhance the safety and soundness of SBICs by ensuring a stable flow of capital, and increase the capital available to small businesses by releasing funds currently restricted by government appropriations.

The other witnesses concurred with the assessment of Mr. Dunbar and Mr. Rafferty and gave their own statements outlining the feasibility of the proposal. Mr. Clare, an expert in securities markets, assured the Subcommittee that the securities market would be able to absorb any increase in volume due to the privatization of the program. He did note that there may some additional cost involved initially as the guarantees switched from having an explicit guarantee from the government to having an implicit one. Mr. Murray, a lawyer, stated that Vickie Mae's ability to borrow from the Treasury and provisions allowing investment by financial institutions made it a full-fledged GSE, which status would allow the corporation to borrow at low interest rates. Finally, Mr. Zegart testified on the provisions of H.R. 2806 that allow Vickie Mae to charge SBA a fee to liquidate the portfolio of SBICs that have gone into default. He testified that Vickie Mae would be able to liquidate these investments in an orderly and efficient manner. Overall, the entire panel was enthusiastic about H.R. 2806 and urged its passage.

For more information on this hearing, refer to Committee publication number 104–73.

7.3.13 H.R. 2579: THE TRAVEL AND TOURISM PARTNERSHIP ACT OF 1995

Background

On May 6, 1996, the Subcommittee on Government Programs held a field hearing in Newburyport, Massachusetts to discuss how the Travel and Tourism Partnership Act of 1995 (H.R. 2579) would affect the small business community in the Sixth Congressional District of Massachusetts and the United States in general. Early in 1996, Federal funding for the United States Travel and Tourism Administration (USTTA) was eliminated. While most people, including many in the travel and tourism industry, agree that this was a positive move toward decreasing needless government bureaucracy, the fact remains that some of the USTTA's marketing and promotional activities were valuable to the U.S. economy. Without an active USTTA, the marketing of the United States as a popular travel destination for foreign and domestic travelers is significantly diminished, threatening a greater loss in the country's market share of the worldwide travel and tourism industry, which directly or indirectly employs 14.3 million Americans and contributes more than $400 billion annually to the U.S. economy. Unfortunately, the U.S. share of international tourism has already shrunk by 17 percent in the past two years.

H.R. 2579, legislation introduced by Congressman Toby Roth (R-WI), would charter a private, non-profit organization to fill the marketing void left when the USTTA lost its funding. The organization would be a partnership between public and private sectors, unifying the travel and tourism industry and allowing it to work directly with Federal agencies to promote travel to and within the United States. As a Federally chartered organization, it would have authority to work with foreign governments as an arm of the U.S. government, thus greatly reducing the burdens of foreign regulations.

Summary

The hearing was comprised of three panels, the first of which included: Lisa Mead, Mayor, Newburyport, Massachusetts; James Jajuga, State Senator, Newburyport, Massachusetts; and Frank Cousins, State Representative, Newburyport, Massachusetts. This panel of area public officials expressed support for the passage of H.R. 2759, emphasizing that it would allow the Federal government to join with the tourism industry in promoting U.S. travel destinations. Currently, businesses must advertise their travel destinations independently, or with small regional groups of businesses. Because many of these regional groups are in small, rural areas, they find it difficult to attract visitors, particularly visitors from outside of the United States. These foreign visitors are often preferred because they typically stay longer and can spend more money. Witnesses noted that State and local governments were already working to ease transportation concerns and enable businesses to construct accommodations for visitors.

The second panel included: Shirley Magnanti, Greater Newburyport Chamber of Commerce; Bill MacDougall, Massachusetts Office

of Travel and Tourism; Michelle Hatem Meehan, North of Boston Convention and Visitors Bureau; and Maria Miles, Salisbury Chamber of Commerce. This panel, comprised of representatives of State and local businesses, testified about the importance of tourism to local economies. They emphasized that the beneficiaries of tourism are not only the hotels, restaurants, and other tourist attractions that directly receive dollars from travelers, but also the manufacturing, retail, and service industries that support the tourism industry. The witnesses also pointed out that many of the beneficiaries, both direct and indirect, are small businesses. Ms. Meehan and Mr. MacDougall noted that the United States' budget of $16 million placed 33rd in the world in advertising money spent annually to attract foreign travelers. The panelist contended that State and local governments do not have the resources to compete successfully for foreign travelers and strongly urged the passage of H.R. 2579.

The third panel included: Mary Ann Abbott, Abigail's Fashions; Kathy Aiello, Custom House Maritime Museum; Ann Lagasse, Piper Properties; and Phyllis TeSelle, New England Holidays. The final panel, composed of local small businesspeople, reiterated many of the ideas and suggestions of the previous two panels. They noted that their region had been hit particularly hard by economic downturns and had been struggling to recover. According to the panelists, tourism provides a great stimulus because it infuses new money into the area, enabling businesses to grow and create job opportunities. Like the previous panels, the third panel also supported the passage of H.R. 2579.

For further information on this hearing, refer to Committee publication number 104–77.

7.3.14 OVERSIGHT OF THE ENVIRONMENTAL PROTECTION AGENCY'S PROGRESS IN REDUCING UNNECESSARY PAPERWORK BURDENS UPON SMALL BUSINESS

Background

On May 30, 1996, the Subcommittee on Government Programs held a hearing to examine the progress of the Environmental Protection Agency (EPA) in reducing unnecessary paperwork burdens upon small business, as well as compliance with the President's recent order to review all regulations and to comply with the Paperwork Reduction Act of 1995.

Summary

The hearing was comprised of one panel, which included a single witness: Thomas E. Kelly, Director, Office of Regulation Management and Information, EPA. Mr. Kelly had been asked to comment on three general areas: President Clinton's March 4, 1995 directive on regulation reform; the burden-reduction goals of the newly enacted Paperwork Reduction Act of 1995, especially EPA's pledge to reduce the burden by 25 percent; and EPA's response to the recommendations adopted by the delegates to the 1995 White House Conference on Small Business regarding regulatory and paperwork burdens.

Mr. Kelly began his testimony by noting that 'small business' is an aggregate term that stands for hundreds of thousands of diverse, diffuse activities throughout the country in which people are making money by providing goods and services. The only way to stay in touch with this segment of the economy is to spend time with those who participate in small business. Despite the difficulties that the agency has had over the past year in terms of budget resources, EPA continued to be on the road meeting with small business representatives.

Mr. Kelly testified that, in an effort to reduce burdens on small business, the EPA Administrator targeted a 25-percent burden reduction. This percentage was translated into 25 million hours, from which 23 million hours have either already been eliminated or will be eliminated in the very near future. This is not simply a one-time exercise dedicated to reducing burden on the public as measured by the Information Collection Request's on a certain date—it is the Administration's commitment to minimize the paperwork burden on the public going forward.

Mr. Kelly emphasized that the EPA is committed to the use of electronic information and has been working for the last few years to develop prototypes for Electronic Data Interchange as a mainstream method of collecting environmental information. In fact, the EPA has one program that is functioning, the Reformulated Gasoline Program, and will shortly be implementing the Discharge Monitoring Report, which will serve to accept data electronically in the Safe Drinking Water Data Collection and the Hazardous Waste Manifest, both of which will soon be subject to Electronic Data Interchange.

Mr. Kelly told the Subcommittee that the EPA, in reaching out to small business, is requiring every regulatory working group that is focusing on a regulation, which might affect small business, to hold focus groups, hearings and meetings specifically designed to integrate the views of small business. He also stated that the EPA would continue its commitment to the needs of small business and will continue to provide flexible compliance opportunities for small business as well as an implementation of the Small Business Regulatory Enforcement Fairness Act.

For further information on this hearing, refer to Committee publication number 104–80.

7.3.15 OVERSIGHT OF THE DEPARTMENT OF LABOR'S PROGRESS ON REDUCING UNNECESSARY PAPERWORK BURDENS ON SMALL BUSINESS

Background

On June 26, 1996, the Subcommittee on Government Programs held a hearing to examine the compliance by the Department of Labor (DOL) with the Paperwork Reduction Act of 1995 as it relates directly to reducing unnecessary paperwork burdens on small business. The Paperwork Reduction Act, which was passed unanimously by the 104th Congress, amends the original Paperwork Reduction Act of 1980, making it more effective in reducing and preventing needless paperwork. The Act requires the Office of Information and Regulatory Affairs to set a goal of at least a 10 percent

for reducing government-wide paperwork burdens for fiscal year 1996. It also sets certain procedures for regulatory agencies in developing information collection plans, such as a 60-day notice and comment period.

Summary

The hearing was comprised of a single panel, which consisted of one witness: Patricia Watkins Lattimore, Deputy Assistant Secretary for Administration and Management, DOL.

Ms. Lattimore opened by stating that DOL implemented the 1995 changes quickly, coordinating with key regulatory officials in each DOL agency, by briefing executive staff and administrative officers and training more than 250 Department officials. In addition, each DOL agency has a clearance officer to provide hands-on assistance, working with agency regulatory and enforcement officials to minimize the paperwork burden from the planning stages to the actual preparation of paperwork-clearance packages for submission to the Office of Management and Budget.

Ms. Lattimore projected a three percent reduction in total DOL burden hours when the fiscal 1996 statistics are compared to those for fiscal year 1995, which was better than originally anticipated since the primary Information Collection Budget projected no change. She also testified that there is a very strong possibility of reaching the 10 percent reduction goal by the end of the fiscal year if OSHA is able to finalize revisions now under way to reduce the burden estimates for two existing standards, Process Safety Management and Hazardous Waste Operations, and eliminate certification-recordkeeping requirements in several existing rules.

The Chairman questioned Ms. Lattimore's statement concerning whether or not the Pension Welfare Benefits Administration could electronically implement the streamlined reporting and disclosure of the Form 5500 series. Ms. Lattimore stated that DOL is exploring the use of electronic application support via the Internet for all regulatory reporting. This use of the Internet would have to be examined in terms of DOL being able to receive authentic documents with the technology available in the business community.

Ms. Lattimore was also asked to describe for the Subcommittee the process that DOL employs in examining new regulations to ensure that they meet the paperwork requirements. Ms. Lattimore described that, within the Department, each agency has a clearance officer who works in conjunction with the Office of Policy, the Solicitor's Office and program staff to examine all aspects of a regulation. The process is formulated to ensure that all aspects, including paperwork concerns are addressed, in order to avoid creating unnecessary additional burden. Ms. Lattimore emphasized that DOL wants to ensure that it is creating regulations that are not unduly burdensome to the industry. DOL's Paperwork Reduction Act Staff will continue to work in tandem with the Office of Policy and technical staffs as DOL develops regulations, taking all considerations into account.

For further information on this hearing, refer to Committee publication number 104–82.

7.3.16 MASSACHUSETTS' REQUEST FOR DISASTER FUNDS FROM THE SBA

Background

On July 10, 1996, the Subcommittee on Government Programs held an oversight hearing on the request for disaster funds from the Small Business Administration (SBA) by the Commonwealth of Massachusetts. In March 1995, Governor William Weld made a request to the Federal Emergency Management Agency for a Presidential declaration of a major disaster for the Massachusetts fishing industry. The request was made on behalf of the fishermen of Essex, Bristol, and Barnstable Counties, all of whom have suffered severe economic losses because of the sudden collapse of cod, yellowtail flounder, and haddock fisheries in the region. The request was declined in July 1995 and again, on appeal, in December 1995. By letter dated April 30, 1996, Governor Weld requested an Economic Injury Disaster Declaration on behalf of the fishermen in three Massachusetts counties pursuant to Section 7(b)(2)(D) of the Small Business Act. SBA Administrator Philip Lader declined to issue the declaration and Governor Weld was notified of this decision by letter dated June 3, 1996.

The initial denial of Governor Weld's request was based on the argument that "over fishing" was not a "sudden" event as defined under the statute governing the SBA's disaster assistance program. Chairman Peter Torkildsen (R-MA) amended this language at a later markup to include "federal or governmental action" as the cause of a disaster. Once enacted this amendment would eventually enable the Secretary of Commerce to make the final decision as to whether or not Federal or governmental action would be the cause of a disaster. At this hearing, witnesses were asked to comment on the Governor's request and also on the SBA's ruling.

Summary

The hearing was comprised of two panels, the first of which included: Bernard Kulik, Associate Administrator for Disaster Assistance, SBA; Trudy Coxe, Environmental Affairs Secretary, Commonwealth of Massachusetts; Bruce Tarr, Senator, Commonwealth of Massachusetts; Bruce Tobey, Mayor, Gloucester, Massachusetts; and Christine Heanue, Massachusetts Emergency Management Agency. The panel agreed that the Massachusetts fishing industry was damaged by the closure of the fishing grounds, but Mr. Kulik reiterated that the disaster-assistance request was denied based on the definition of a disaster. In the context of this situation, Mr. Kulik explained that a disaster as defined in Section 3(k) of the Small Business Act means a sudden event that causes severe damage including ocean conditions resulting in the closure of customary fishing waters. Again, Mr. Kulik stated that overfishing is not considered a sudden event. Mr. Kulik also noted that this disaster request was in large part the result of the issuance of emergency rules by the Secretary of Commerce as recommended by the New England Fishery Management Council, through the National Marine Fisheries Service.

The other panelists explained that the emergency rules placed on the fishermen by the New England Fishery Management Council were too extreme. Two amendments called Amendments 5 and 7 to the Northeast Fishery Management Plan have mandated a 50 percent reduction in total fishing effort for the fishermen in this region. The witnesses agreed that the Department of Commerce failed to abide by the Regulatory Flexibility Act in producing a Final Regulatory Analysis, and they maintained that with the implementation of Amendment 7, New England's off-shore fleet will not be able to break even within two years of its enactment. The panelist pointed out that Canada has exploited the newly imposed regulatory scheme by increasing quotas for Canadian fishing vessels on George's Bank. As a result of all of the events in the New England region, many of the small businesses making up the fishing industry would likely go bankrupt without financial backing from the Federal government.

The second panel consisted of representatives of the fishing industry: Vito Calomo, Executive Director, Gloucester Fisheries Commission; Jim Kendall, Executive Director, New Bedford Seafood Coalition; and Corrado Bucceri, BNN Fishing Gear. The second panel reiterated many of the concerns raised by the first panel and elaborated on the emergency rules and how these regulations affect not only fishermen but small businesses that serve the fishing industry. The panel agreed that the emergency rules implemented by the Department of Commerce would eventually bankrupt many of these businesses and that the Federal government should provide affected fishermen with disaster-loan assistance through the SBA.

For further information on this hearing, refer to Committee publication number 104–84.

7.3.17 THE GOVERNMENT'S SOLICITATION PROCESS AND WHETHER OR NOT IT IS DISCRIMINATORY TO SMALL BUSINESS

Background

On July 15, 1996, the Subcommittee on Government Programs held a field hearing in Danvers, Massachusetts, to examine the Federal government's solicitation process. Specifically, the hearing focused on the government's method of soliciting requests for proposals (RFPs), and whether or not the process discriminates against small business. RFPs are the method by which Federal departments and agencies request bids on specific projects to be awarded to private-sector companies. The department or agency making the request may specify the contract as either open to set-asides or "unrestricted," meaning any company or individual may apply. Although this practice should apply to the small business community, some contend that unrestricted RFPs are often used as a means to exclude small business from competing for contracts.

Summary

The hearing was comprised of one panel, which included: Robert Kern, Owner, Kernco, Inc.; and Karl Thidemann, Director of Marketing, Solectria Corporation. Mr. Thidemann, whose company is the largest independent maker of electronic vehicles in the United

States, expressed his concern that in a recent public unrestricted bid to the General Services Administration, Solectria and other smaller companies making electric vehicles were restricted from meeting the qualifications not based on competitiveness, but rather because they were not a large automaker. Specifically, the RFP did not seek the best vehicles—range, performance, experience and other relevant factors were not part of the bid at all, except as footnotes. The key criteria for eligibility to participate in this RFP was that, "vehicles shall be supplied by" a bidder that first, is an Original Equipment Manufacturer (OEM), defined as "a motor vehicle manufacturer who is responsible for the vehicle fuel economy of the gasoline version of the model supplied," which restricts the qualifier to only very large companies that also produce gasoline vehicles. The RFP also required that an offeror "must have an agreement with OEM," one of the large automakers for warranty purposes.

Mr. Thidemann testified that Solectria spent considerable time and effort to put together its bid for these vehicles. If his company is screened out as the language of the RFP implies, the government will not get the best vehicle and his small business will have been excluded from the competition for clearly inappropriate reasons. An additional concern is the precedent-setting nature of this RFP. If small companies like Solectria are eliminated from eligibility at this stage, it could put them and other small motor vehicle suppliers at a competitive disadvantage in future bids.

Mr. Kern described the experience of Kernco, Inc., a hardware supplier for the Department of Defense and National Aeronautics and Space Administration (NASA), in early 1990. At that time, Kernco submitted a bid to supply atomic clocks as part of a major contract (the GPS Program) and won the bid. While Kernco competitively out bid several of the large aerospace companies, before the contract award could be completed, Kernco was told to obtain a "big brother," indicating that the company was considered to be too small. Kernco was then forced to enter a joint enterprise agreement with a large manufacturing company under which Kernco would do the development and the design, and its "big brother" would do the production, of only 20 units.

Mr. Kern noted that while the GPS Program was being completed, the customer put out an additional RFP for an item to replace a concept that did not work. Kernco subsequently won this bid, and consequently was given six months to complete the project, with the entire satellite system depending upon the results. The company has completed 50 percent of the shipments to date, and have thus defied the belief that small companies cannot respond. Mr. Kern emphasized that his company has consistently demonstrated technical excellence as well as the ability to successfully manufacture, only to have this proven performance be pushed aside in the government-contracting process. The costs to the government are continually increasing, and the cost factors, the performance factors and some of the delivery difficulties now experienced by the GPS Program could be resolved very simply by a realistic look at actual small business performance.

For further information on this hearing, refer to Committee publication number 104–85.

7.3.18 H.R. 1863: THE EMPLOYMENT NON-DISCRIMINATION ACT

Background

On July 17, 1996, the Subcommittee on Government Programs held a hearing to examine H.R. 1863, the Employment Non-Discrimination Act (ENDA), and its impact on the small business community. This legislation, introduced by Congressman Gerry Studds (D-MA) and co-sponsored by 118 other Members of Congress, was designed to aid businesses by providing a healthy, stable and productive work environment for all employees. The bill would also remove potential barriers that might impede our nation's progress in the diverse, global marketplace.

Summary

The hearing was comprised of four panels, the first of which included: Constance A. Morella (R-MD), Member of Congress; Gerry E. Studds (D-MA), Member of Congress; Tom Campbell (R-CA), Member of Congress; and Barney Frank (D-MA), Member of Congress. The consensus of this panel, which consisted of sponsors or co-sponsors of H.R. 1863, was that ENDA needs to be passed. The witnesses testified that the legislation simply prohibits employment discrimination based on sexual orientation without creating special rights. The witnesses maintained that American businesses would broaden the talent pool and diversity of their businesses by hiring without prejudice.

One member of the Subcommittee raised the controversial part of this legislation by questioning whether the government would be condoning a lifestyle if it condemns discrimination against those that practice that lifestyle. The witnesses agreed that there are not always only two choices in a situation, and that it is unfair to assume that ending discrimination leads to more acceptance of the practice being legally protected. For example, laws prohibit discrimination against individuals for their religious beliefs. A public school teacher is hired for his or her abilities to teach, and no one should assume that that person will impose his or her religious viewpoints on the children in the class. The witnesses emphasized the need for a level playing field in the workplace without regard to sexual orientation.

The second panel included: Michael Morley, Senior Vice President and Director of Human Resources, Eastman Kodak; Paula Alexander, Director of Human Resources, Eastman Gelatine Corporation; Patrick McVeigh, Senior Vice President, Franklin Research & Development Corporation; and Brenda Cole, Member of the Board of Directors, Wainwright Bank & Trust Company. The witnesses on this panel represented businesses that have voluntarily implemented policies similar to ENDA, and they provided the Subcommittee with their perspective on how such policies have affected their firms. The consensus of the panel was that policies like ENDA are good for businesses because they keep companies competitive in a diverse world by reflecting the marketplace. As a result, these companies can hire and retain the most qualified workers regardless of personal lifestyles. The businesses witnesses maintained that with non-discrimination policies in place, they sig-

nificantly improve employee morale, loyalty and productivity. The witnesses on this panel supported passage of H.R. 1863.

The third panel included: Michael Proto, U.S. Department of Justice; Nan Miguel, Seranga General Hospital; Todd Dobson, Management Information Systems Director, Creative Office Interiors; Ernest Dillon, U.S. Postal Service; and Karen Solon, Child Development Center. These witnesses came forward to testify as to discrimination they had faced due to being homosexual or supporting individuals that were (or allegedly were) gay or lesbian. The witnesses had lost job opportunities or were fired from positions due to their alleged sexual orientation or for standing up for gay/lesbian rights. All of the witnesses on this panel were concerned that there were no Federal laws protecting them or their jobs against this type of discrimination, and they supported passage of ENDA.

The fourth panel included: Elizabeth Birch, Human Rights Campaign; Michael Duffy, Massachusetts Commission Against Discrimination; and Chai Feldblum, Director, Federal Legislation Clinic and Associate Professor of Law, Georgetown University Law Center. The witnesses on the fourth panel were experts in the field of anti-discrimination policy. The consensus was that legislation such as ENDA is necessary and beneficial to businesses and society as a whole. Anti-discrimination policies allow businesses to value employees for their talents, work ethics and loyalty, while employees are more motivated, committed and aware of equal rights. ENDA gives gays and lesbians recourse against discrimination, and also protects people who associate with individuals who are leading alternative lifestyles.

For further information on this hearing, refer to Committee publication number 104–87.

7.3.19 OVERSIGHT OF THE FOOD AND DRUG ADMINISTRATION'S PROGRESS IN REDUCING UNNECESSARY PAPERWORK BURDENS UPON SMALL BUSINESS

Background

On July 24, 1996, the Subcommittee on Government Programs held a hearing on the Food and Drug Administration's (FDA) progress in complying with the Paperwork Reduction Act. This was the third in a series of hearings examining Federal agencies' efforts to reduce the burdens of paperwork. Experts currently estimate that paperwork compliance occupies six and a half billion hours of America's time annually. On March 4, 1995, the President directed all Federal agency heads to read each of their regulations, page by page, and to make regulatory reform a priority. The 1995 White House Conference on Small Business also recommended addressing the burden reduction goals of the 1995 Paperwork Reduction Act.

The FDA, which regulates the safety and effectiveness of cosmetics, food, drugs, and medical devices, has been accused of requiring excessive paperwork burdens during approval processes. Although, many of these requirements are necessary to ensure safe and effective foods and products, with each additional rule the burden of paperwork and other regulations comes closer to outweighing any benefits of the approval process. Concerning drugs and medical de-

vices, *The Los Angeles Times* reported on April 17, 1995, that it typically takes 12 years, including six years of clinical trials, before a major drug or medical device wins approval.

Summary

The hearing was comprised of a single panel, which included: Robert J. Byrd, Acting Deputy Commissioner for Management and Systems, FDA; and Jeffrey J. Kimbell, Executive Director, Medical Device Manufacturers Association.

Mr. Byrd described for the Committee the FDA's efforts currently in progress for meeting the statutory requirements of the Paperwork Reduction Act. He noted that small businesses are extremely valuable to the FDA and to the consumer market in general for their many contributions and innovations. He described the efforts undertaken by the FDA in response to a department-wide review at the Department of Health and Human Services, Vice President Gore's regulatory reinvention task force, and the directive from President Clinton to reduce unnecessary rules and regulations. Examples of these efforts include: a page-by-page review of existing regulations to eliminate or update outdated regulations; changing the way performance is measured to focus on results instead of process and punishment and allowing waivers for minor violations that are quickly corrected; outreach with stakeholders through grass-roots partnerships; and increased efforts to promote consensual rulemaking. According to Mr. Byrd, the FDA has maintained a constant level of burden hours for its information collection and has proposed the deletion or reform of 74 percent of its rules that have a regulatory impact.

Mr. Kimbell testified about the burdens that FDA paperwork and regulations create, particularly for the small entrepreneurs who make up 98 percent of the medical-device industry. For instance, a new medical-device reporting regulation has resulted in over 100,000 reports received annually by the FDA. The agency also has a plan pending to regulate further the manufacturing practices of medical-device companies. The effect of these burdens has been three-fold. First, many new life-saving devices are kept from the patients who need them for many years while they await FDA approval. Second, because regulatory and paperwork rules are eased for innovations based upon older technology, the focus of researchers has shifted from the search for breakthrough technologies to less significant changes in existing devices. Finally, many medical-device companies are taking their innovations outside of the United States where they can more easily gain approval and move into the marketplace. This deprives the United States not only of qualified health-care professionals, scientists, and researchers, but also domestic companies and jobs.

Mr. Kimbell praised new efforts by Congress and the FDA in streamlining the approval process and urged continuing action to ensure that new life-saving devices become available to the public as quickly and safely as possible. Among other things, Mr. Kimbell recommended continued efforts to hold FDA inspectors accountable for their actions and establishing a third-party review system by which an FDA-approved independent research group would determine the safety and effectiveness of new products.

For further information on this hearing, refer to Committee publication number 104–88.

7.3.20 SBA PROGRAMS TO ASSIST VETERANS IN READJUSTING TO CIVILIAN LIFE

Background

On July 31, 1996, the Subcommittee on Government Programs held a joint hearing together with the Veterans' Affairs Subcommittee on Education, Training, and Employment, on Small Business Administration (SBA) programs to assist veterans in readjusting to civilian life. This hearing explored the SBA's efforts to assist veterans in procuring their own small businesses. In the past, many veterans have expressed concern that Federal agencies were ignoring the entrepreneurial interest of veterans starting their own small business. According to many U.S. veterans, programs to assist veterans in small business procurement have been passed around among various Federal agencies. Witnesses at the hearing were asked to comment on the past and present role of the SBA and its effectiveness in helping veterans access capital. Witnesses were also asked to comment on cooperation efforts between the SBA and the Department of Veterans Affairs in helping veterans readjust to civilian life.

Summary

The hearing was comprised of three panels, the first of which included: John Lopez, Chairman, Association for Service Disabled Veterans; Emil Nascinski, Representative, American Legion; Michael Hladky, U.S. Army; and Dr. Paul Camacho, University of Massachusetts. The first panel generally agreed that the Office of Veterans Affairs at the SBA has been bureaucratically strangled by initiative as well as funding. They also agreed that veterans have been discriminated against by not allowing certain privileges in affirmative-action procurement contracts and that Federal agencies such as the Department of Defense and the Department of Veterans Affairs have been delinquent in their handling of veterans entrepreneurial abilities. The panel maintained that these two Departments should have taken a more direct approach in helping veterans with this task, especially since these two Departments had considerably more funding for this task than the SBA.

This panel also agreed on a legislative platform designed to address veterans' needs. The agenda contained three specific recommendations: (1) legislation should provide that action and results, not consideration and efforts, are the required objective of legislation to assist veterans; (2) legislation should contain detail in its language that those who sacrificed their well being for the benefit of all the free world's economic benefit are the primary priority in business assistance programs of the Federal government; and (3) legislation should be introduced that amends the Small Business Act to add the directive that "for purposes of this Act, service disabled and prisoner of war veterans are considered a socially and

economically disadvantaged population and/or group and/or individuals."

The second panel included: Cecil Byrd, Executive Director, National Association of Concerned Veterans; Robert Sniffen, Chairman, San Diego Veterans Services; and James Stephan, President, Veterans Small Business Association. This panel had many of the same concerns as the first panel, and the witnesses agreed with the first panel that veterans are the very group that have been denied full access to the free enterprise system that they fought to protect and that there needs to be legislation to implement procurement set-aside contracts for U.S. veterans.

The panel agreed that partisan bickering during the past two decades has resulted in congressional ignorance of veteran issues. In addition, the witnesses noted that the background of veterans is especially well suited to starting and operating small businesses. The discipline that veterans have accrued over the years would make veterans excellent entrepreneurs. The witnesses also suggested setting up veterans business networks to enable veterans to be more productive in their business ventures, and, like the first panel, they agreed that legislation needs to be enacted that provides veterans with special privileges in terms of government contracts and business procurement.

The final panel consisted of a single witness: Leon Bechet, Assistant Administrator for Veterans Affairs, SBA. Mr. Bechet testified about the general goals of the SBA with respect to veterans assistance, and he provided the Subcommittees with background on the SBA's Office of Veteran Affairs. He asserted that there has been a dramatic increase in the number of SBA guaranteed loans to veterans, and he noted that the SBA has piloted the Veteran Entrepreneurial Training Program, which provides long-term, in-depth training to veterans and their spouses. Mr. Bechet also testified about the Defense Loan and Technical Assistance (DELTA) program, which provides both financial and technical assistance to help defense-dependent small firms adversely affected by defense cutbacks diversify into the commercial market. He maintained that both of these programs have been highly successful for veterans seeking small business assistance and training. He also pointed out that the Administration's FY 1996 budget for the SBA contained a request for $485,000 for veterans outreach efforts, but no funds were appropriated for that year. Mr. Bechet concluded his testimony by stating that the Office of Veteran Affairs needs more resources to be able to produce the financial assistance that veterans demand.

For further information on this hearing, refer to Committee publication number 104–91.

7.3.21 FDIC'S HANDLING OF SMALL BUSINESS ASSET FORECLOSURES

Background

On September 25, 1996, the Subcommittee on Government Programs held a hearing on the management of small business asset foreclosures by the Federal Deposit Insurance Corporation (FDIC) and specifically the handling of such foreclosures in Massachusetts.

The hearing focused on two situations in which small business projects were not completed due to the failure of one bank, ComFed Savings, and the alleged actions of the Resolution Trust Corporation (RTC), which was appointed as the conservator for the bank in December of 1990.

Summary

The hearing was comprised of two panels, the first of which included: Rhetta Sweeney, a small business owner in Hamilton, Massachusetts; Betty Scott, a small business owner in Concord, Massachusetts; and Peter Britton, Hamilton Planning Board, Hamilton, Massachusetts. Mrs. Sweeney and Mrs. Scott testified about their businesses and relationship with ComFed Savings. They also testified about the Hamilton Rock Maple Flexible Subdivision plan and the difficulty they had surrounding the unfair and deceptive trade business practices with ComFed Savings, which resulted in litigation in the Middlesex Superior Court of Massachusetts. In addition, they maintained that the RTC and its agent had taken extraordinary actions designed to cover up the State court judgment. Mr. Britton, a member of the planning board that approved Mrs. Sweeney's subdivision plan, asserted that the subdivision plan, which permitted Mrs. Sweeney to develop her property, had been illegally obstructed for eight years.

The second panel included a single witness: John Bovenzi, Director, Depositor and Asset Services, FDIC. Mr. Bovenzi testified that the past 10 years have posed tremendous challenges to the banking industry and the FDIC. During that time nearly 1,250 commercial banks have failed, with combined assets of over $225 billion and deposits of almost $190 billion. The FDIC has resolved these failures without taxpayer assistance. Over the same period of time, almost 1,100 savings associations failed and were resolved by the former Federal Savings and Loan Insurance Corporation and the RTC. These savings associations had combined assets of over $540 billion and deposits of almost $445 billion. According to the General Accounting Office, the estimated direct cost to taxpayers of these failures was almost $125 billion.

Mr. Bovenzi noted that the FDIC prefers to work with borrowers to achieve a mutually agreeable repayment plan for unpaid loans. After the FDIC succeeded the RTC as receiver of ComFed Savings in January of 1996, it undertook a thorough review of the Sweeney matter. To avoid further costs to taxpayers, the FDIC subsequently provided the Sweeneys with three settlement alternatives by letter of July 29, 1996. All of these alternatives would allow the Sweeneys to continue living on the property, yet the Sweeneys did not accept any of the alternatives. According to the FDIC, through their failure to repay money that they borrowed and their subsequent actions, the Sweeneys have caused a loss to the taxpayers, which the FDIC estimates at over $3 million. Unless the FDIC is able to reach a settlement with the Sweeneys, the FDIC unfortunately must obtain possession of the property that it legally owns.

For further information on this hearing, refer to Committee publication number 104–94.

7.4 Summaries of the Hearings Held by the Subcommittee on Procurement, Exports and Business Opportunities

7.4.1 Export promotion programs: how is small business helped?

Background

On March 29, 1995, the Subcommittee on Procurement, Exports, and Business Opportunities held a hearing to examine how small business is helped by the various export promotion programs administered by the Federal government. The 104th Congress had a series of proposals before it that would eliminate trade-promotion programs, transfer them over to the State Department, or combine all trade functions into a Department of Trade. The goal of these proposals was to streamline the existing export-promotion programs that have similar or duplicate functions in order to focus and serve small businesses, which in turn will generate new jobs in the United States.

Summary

The hearing was comprised of one panel, which included: Lauri Fitz-Pegado, Director General, U.S. Foreign Commercial Service, Department of Commerce; Raymond Vickery, Jr., Assistant Secretary for Trade Development, Department of Commerce; Charles Meissner, Assistant Secretary for International Economic Policy, Department of Commerce; Mary Jean Ryan, Associate Deputy Administrator for Economic Development, Small Business Administration (SBA); Maria Louisa Haley, Member, Board of Directors, Export-Import Bank of the United States (Eximbank); Joseph Grandmaison, Director, U.S. Trade and Development Agency; and Christopher Finn, Executive Vice-President, Overseas Private Investment Corporation.

The panelists estimated that over the last year, the International Trade Administration (ITA) facilitated over $9 billion in sales for small companies, which supported approximately 180,000 jobs. In addition, there have been dramatic increases in both the number of small businesses exporting and the value of these exports. They generated an estimated $134 billion in merchandise exports in 1993, an increase of 84 percent from 1987. Moreover, about 22 percent more small businesses exported in 1992 than in 1987.

Ms. Pegado also testified that by the end of fiscal year 1996 plans would be in place for all of the Commerce Department's domestic offices to operate as part of a customer focused hub-and-spoke system composed of export assistance centers and district export assistance centers that deliver integrated trade finance and export marketing assistance. The hubs of U.S. export assistance centers will coordinate the commercial services vital to international marketing services with the crucial trade finance services provided by SBA, Eximbank, State Department trade finance programs, and private banks. Mr. Vickery also emphasized that the Commerce Department's advocacy program is not just for large businesses, it is for small business as well. He estimated that over the past year, in terms of small businesses alone, there were about

$2 billion worth of successful transactions in which advocacy was provided in order to enable Americans to remain employed.

The Commerce Department witnesses testified that to assist small business better the ITA has brought together all of the Department of Commerce programs related to economic development in the United States border region. There are approximately eight parts of the Department of Commerce, outside of ITA, that are working on economic development in the border region.

Witnesses emphasized that one of the most significant obstacles for small business exporters has been the lack of export financing. Many banks think that small trade loans are too risky and time consuming, and it is precisely those types of deals with which small exports need help.

For further information on this hearing, refer to Committee publication number 104–22.

7.4.2 SMALL BUSINESS ADMINISTRATION'S SURETY BOND GUARANTEE PROGRAM

Background

On April 5, 1995, the Subcommittee on Procurement, Exports, and Business Opportunities held a hearing to evaluate the role and effectiveness of the Surety Bond Program, which is administered by the Small Business Administration (SBA). Surety bonds are designed to ensure that if a bonded contractor defaults, the terms of the contract will be completed and the subcontractor and its employees will be paid. On Federal contracts, surety bonds protect the American taxpayers if a bonded private-sector contractor defaults on the contract.

As part of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Congress mandated that the General Accounting Office (GAO) conduct a comprehensive survey of business firms to determine their experience in obtaining surety bonds. The GAO released the preliminary findings of this survey on the day of the hearing. In addition, prior to the hearing, the Administration proposed increasing a variety of fees imposed on participants in the Surety Bond Program. The witnesses were asked to comment on the proposals and discuss whether higher fees would increase or decrease participation of small businesses in Federal government procurement contracts, which frequently require the contract recipient to post a surety bond.

Summary

The hearing was comprised of a single panel, which included: John Curtin, President, Curtin International Insurance and Bonding Agency, Inc., representing the National Association of Surety Bond Producers; Dorothy Kleeschulte, Associate Administrator, SBA; Denise Norberg, Gust A. Norberg & Son, Inc., representing the American Subcontractors' Association; and Jim Wells, Associate Director, Housing and Community Development Issues, Resources, Community, and Economic Development Division, GAO.

Mr. Wells reviewed for the Subcommittee the basis for and results of the GAO's study on surety bonds. GAO surveyed approxi-

mately 12,000 randomly selected construction firms and received about 5,000 responses to the questionnaires. Special trade contractors, such as plumbers, painters, electrical contractors, and concrete masons make up about 80 percent of the population of small construction firms. From the survey results, GAO estimated that at least 23 percent of the small construction firms had obtained surety bonds. Roughly projected, 520,000 small business firms had never obtained a bond in the years between 1990 and 1993. Overall, GAO found that one in five small construction firms that had obtained a surety bond between 1990 to 1993 had at least one bond application denied during that period. The reasons for denial were generally two-fold: the firm's financial status was not strong enough or the particular firm had never been involved in the kind of work for which the surety bond was requested.

The SBA witness noted that the Surety Bond Guarantee program exists because the Miller Act requires prime contractors performing Federal construction contracts to post surety bonds. Since the program began in 1971, more than 218,000 final bonds have been guaranteed by the SBA for more than $21 billion in contracts for small businesses. The SBA guarantees to a qualified surety up to 90 percent of losses incurred under bid, payment, performance, or ancillary bonds if the contractor breaches the contract terms. Bonds for minority contractors receive a 90 percent guarantee on a maximum contract size of $1,250,000. Under the pilot Preferred Surety Bond Guarantee Program, the SBA provides a 70 percent guarantee to participating sureties, and in exchange the sureties have authority to issue, monitor and service bonds without SBA's prior approval. Ms. Kleeschulte emphasized that the pilot program enables the SBA to provide more contractors with more guarantee authority but with less direct SBA resources. She also defended the Administration's proposal for increased fees for surety bonds, noting that with the fee revenues, the SBA would be able to request less in appropriations for the surety bond program.

The industry witnesses stressed the importance of the SBA's Surety Bond Program and offered the Subcommittee several recommendations for improving the program. Mr. Curtin noted the strong partnership between the SBA and the surety bond underwriters but was critical of the Administration's proposal to increase fees. He warned the Subcommittee that an increase in fees levied on a contractor for a surety bond would put the contractor at a serious competitive disadvantage in the highly competitive construction environment that exists today.

The witnesses' recommendations for improving the surety bond program included an increase in the maximum bond size allowable under the program in order to serve an expanding pool of businesses without increased cost to government. The pilot Preferred Surety Bond Guarantee Program should be extended since it has proven useful in expanding access to surety bonds for small businesses. It was also recommended that bond producers be required to disclose fully the basis for denying a surety bond and the actions that the applicant must take in order for the bond to be approved. Finally, the Miller Act should be amended to improve the payment rights for subcontractors and suppliers through payment bonds.

For further information on this hearing, refer to Committee publication number 104–24.

7.4.3 AGRICULTURE EXPORT PROMOTION PROGRAMS: HOW ARE THE SMALL FARMER AND RANCHER HELPED?

Background

On May 17, 1995, the Subcommittee on Procurement, Exports and Business Opportunities held a hearing on agriculture export promotion programs and the effects that they have on small farmers and ranchers. The subcommittee considered it appropriate to devote an entire budget hearing on this subject given that the Department of Agriculture receives the majority of funding for promotion programs and agriculture accounts for 10 percent of the country's exports. The hearing was designed to evaluate efforts to streamline the Federal government with respect to agricultural export promotion programs.

Summary

The hearing was comprised of one panel, which included: August Schumacher Jr., Administrator of Foreign Agricultural Service, U.S. Department of Agriculture; Linda Reinhardt, Chair, Women's Committee, American Farm Bureau; Richard McGuire, Commissioner, New York Department of Agriculture and Markets; and John Frydenlund, Director, Agriculture Policy Project, Heritage Foundation.

The panel noted that the agriculture industry was at an all time high, with a $20 billion trade surplus, coming from almost every State, and consisting of many small companies. Growth targets were projected to be $80 billion by the year 2000 with a surplus of $25 to $30 billion, which will require nearly one quarter of the Federal government's promotional efforts to be devoted to agriculture. Such a large amount will be necessary given the competitive effects resulting from NAFTA and GATT. The European Union has also increased its spending by $10 billion in 1995, and its subsidies for wine alone is larger than the entire Market Promotion Program in the United States.

The supporters of U.S. agricultural export promotion programs argued that they should be maintained given their record of success and ability to keep rural America and small business growing. One witness noted that for every dollar invested into the program, a return of $16 is netted. Witnesses also commented that with current efforts to reduce Federal government involvement in the private sector, efforts must be made to insure that the United States maintains a foothold in the agriculture business, which necessitates agricultural export assistance programs. One witness suggests that for every dollar saved in the reduced government involvement, at least 25 cents should be devoted to these programs to help farmers. Without these programs in place, agricultural production will increase, due to the removal of acreage restrictions, but small farmers will not have adequate access to the world markets to realize the benefits of higher production levels.

The panelists also addressed the pending farm legislation and stressed that the new farm bill needs to provide a path for U.S. farmers to reestablish their dominance in the world market. The opponent of agricultural export promotion programs offered a number of suggested reforms to help U.S. farmers, including: elimination of all acreage reduction and set aside programs; phaseout of the subsidy and support programs, and phaseout of the conservation reserve program and the farmer owned reserve. Ending these programs would suggest to the world that the United States is promoting an aggressive agriculture policy, and would lead to an additional net farm income over $2 billion in 1996, with growth expected to reach $4 billion by 2001, and $10 billion by 2005. As a result, during these years, at least $21 billion would be channeled into the rural economy, which offers the potential for tremendous revitalization of rural areas.

For further information on this hearing, refer to Committee publication number 104–28.

7.4.4 FEDERAL EXPORT PROMOTION PROGRAMS: AN ACADEMIC PERSPECTIVE

Background

On May 23, 1995, the Subcommittee on Procurement, Exports and Business Opportunities held the third in a series of hearings on the appropriate role and effectiveness of various Federal export-promotion programs, especially as they effect small business. The hearing was designed to focus on a government-wide trade strategy, a one-stop shop that could bring some common sense to the process of export promotion for small businesses.

Summary

The hearing was comprised of a single panel, which included: Jennifer Bremmer, Deputy Director, International Business Education Center, Kenan Institute of Private Enterprise of the University of North Carolina at Chapel Hill; Allan I. Mendelowitz, Ph.D., Managing Director, International Trade, Finance and Competitiveness Issues, U.S. General Accounting Office; and Dean Stansel, Fiscal Policy Analyst, The CATO Institute.

According to one witness, with respect to trade policy objectives, there are three justifications for export promotion: helping U.S. firms overcome trade barriers; leveling the playing field so that U.S. exporters competing with subsidized foreign exporters can compete in world markets on an equal basis; and trying to take the profit out of subsidies on the part of the United States' competitors and bring them to the table in order to negotiate reductions in and elimination of trade-distorting subsidies.

It was also stated that export assistance programs have come under particular attack as unnecessary and ineffective, a form of corporate welfare. One witness commented that the impact of U.S. export assistance could be increased by closer cooperation between Federal and non-Federal programs at home. Further, it was suggested that an important strategy for improving Federal trade-program performance with reduced funds is to work more closely with

the private and non-profit sector, such as trade associations, and with State and local governments.

Conversely, Mr. Stansel testified that American businesses do not need a government program to survive or to compete with those in other countries. Any business that feels they would benefit from these goods would be willing to pay a certain price. Those who benefit from it should pay for it, and he testified that taxpayer dollars should not be used to support the bottom line of private businesses artificially, regardless of the size of those businesses. Mr. Stansel maintained that the government should not be in the business of spending taxpayer dollars to promote exports. He stated that nowhere in the Constitution is the Federal government granted the power to spend general taxpayer dollars to promote the specific interest of specific businesses or specific industries. In addition, the programs are too expensive. According to Mr. Stansel, if the goal is to promote economic growth, the money used in these programs would be put to much better use if left in the hands of its original owners, that is, the American taxpayers.

For further information on this hearing, refer to Committee publication number 104–30.

7.4.5 EXPORT PROMOTION: A BUSINESS PERSPECTIVE

Background

On June 22, 1995, the Subcommittee on Procurement, Exports and Business Opportunities held a hearing to continue its examination of Federal export-promotion programs. The hearing was designed to provide the Subcommittee with an overview from businesses that have participated in these programs.

With the future of the Department of Commerce uncertain, it was appropriate for the Subcommittee to continue its review of the trade-promotion programs. The witnesses were asked to provide testimony that will set the stage for how export-promotion programs fit into the country's overall competitive picture and if they make economic sense. The witnesses were also asked to provide testimony on how trade-promotion programs have effected companies.

Summary

The hearing was comprised of two panels, the first of which included: John L. Mica (R-FL), Member of Congress. Congressman Mica testified that currently the country's trade-promotion and assistance programs are disorganized. He noted that the Federal government has 19 agencies with separate missions and that billions of taxpayer dollars are spent often in an uncoordinated and inefficient manner. He advocated that an ideal solution would be to combine most of the 19 agencies and their functions that deal with trade and export promotions, negotiations, finance and assistance. Congressman Mica also stated that at the very least Congress should dismantle and reorganize trade and export functions from the Department of Commerce, Department of State, and other agencies and establish a coherent basis for an Office of Trade with cabinet-level status. He went on to say that U.S. businesses—

small, medium, and large—should have instantaneous and updated information on trade, business and service opportunities around the globe.

The second panel included: Tajiv Arora, Vice President, Virginia Transformer Corporation; Burt Norbert Beyer, Vice President/Chief Financial Officer, Procedyne Corporation; Peter A. Bowe, President, Ellicott Machine Corporation; Stephen D. Cohen, Ph.D., Professor of International Relations, American University; Peter Rogers, Director of Marketing, Micros Systems; Howard F. Rosen, Executive Director, Competitiveness Policy Council; and William Trueheart, Ph.D., President, Bryant College.

The witnesses provided the Subcommittee with anecdotal evidence of how export-promotion programs have helped their businesses. One witness suggested that export-promotion efforts need to be kept limited in scope and expense but that their importance should not be underrated. If there is an increase in U.S. exports, the trend would generate both jobs and corporate profits, and increased exports would eventually generate more tax revenue and improve the nation's saving rate.

The panelists also testified about their positive association with Federal government agencies. One witness stated that the Advocacy Center of the Commerce Department was very responsive in coordinating the proper support from the right governmental officials. The witness noted that when the customer is a foreign government, the customer is generally more receptive to official communication from American government officials. Another witness stated that without the Export-Import Bank of the United States, companies that export construction equipment and heavy capital goods could not stay in the export markets. The proposed budget cuts would seriously hurt small exporters and would be devastating. The witnesses maintained that export-promotion programs help small business become more vigorous, more competitive, and more engaged in the process in order to develop market opportunities abroad.

For further information on this hearing, refer to Committee publication number 104–34.

7.4.6 THE EXPORT WORKING CAPITAL PROGRAM

On September 7, 1995, the Subcommittee on Government Programs and the Subcommittee on Procurement, Exports and Business Opportunities held a joint hearing on the Export Working Capital Program administered by the Small Business Administration (SBA). For a complete summary of this hearing, see section 7.3.8 of this report.

7.4.7 TECHNOLOGIES FOR ACCESSING FOREIGN MARKETS AND RESOURCES FOR EXPORT ASSISTANCE

Background

On October 11, 1995 and February 13, 1996, the Subcommittee on Procurement, Exports, and Business Opportunities held hearings to examine various technologies available to help small businesses establish and expand their export activities. While many

small businesses are often intimidated when faced with the prospect of entering the export market, it is clear that as the economy becomes more globally oriented, more small businesses need to begin exporting their products and services in order to maintain and advance American's competitiveness. The hearing was designed to enable the Subcommittee to not only learn about technologies available to help small businesses export, but also to see actual demonstrations of those technologies.

Summary

The hearing on October 11, 1995 was held in Washington, D.C. and was comprised of a single panel, which included: Carl Anderson, Director, ITDN, accompanied by Raymond Fogarty, Director, Rhode Island Export Assistance Center; Joseph J. Douress, Director, Global Trade Services, Dun & Bradstreet, Information Services; C. Harvey Monk, Jr., Chief, Foreign Trade Division, Bureau of the Census; Richard Preuss, Foreign Trade Division, Bureau of the Census; James Segovis, Ph.D., Director, CIBED; William Trueheart, Ph.D., President, Bryant College; and Forrest Williams, Director of Operations, Economics and Statistics Administration, U.S. Department of Commerce.

The Commerce Department witnesses demonstrated the trade resource information that is available from the Federal government. Mr. Monk presented an overview of the Census Bureau's foreign trade statistics program, which has the primary responsibility for the collection, compilation, and dissemination of official export, import, and trade balance data of the United States. The program also generates statistics on foreign trade shipping. The witnesses demonstrated the various products that the Commerce Department makes available to small businesses that export goods or services. In addition, Mr. Williams reviewed the information available through the National Trade Data Bank to help businesses make contacts in existing markets.

A second group of witnesses testified about the International Trade Data Network (ITDN), which was developed by Bryant College and is essentially a public-private sector partnership that streamlines, consolidates, and makes much of the information already available from the Federal government into a more user-friendly package that could be easily understood by small business owners. ITDN involves a Windows-based computer software program that permits users to pinpoint information effortlessly and with little or no training. The information available helps small- and mid-sized businesses export their products on a global basis. Dr. Trueheart provided the Subcommittee with an example of a local small business owner who used the ITDN service, with a resulting increase to his export sales from $1.2 to $5 million annually in the last two years.

Mr. Anderson demonstrated for the Subcommittee the ease of using the ITDN system. With trade leads gathered from the U.S. Department of Commerce and other government agencies, a user can access the system by individual categories of products for export such as computers. During the hearing, Mr. Anderson went through 50 different databases and through over 200,000 files to match a sample request in a relatively short period of time. Dr.

Segovis testified that one of the key issues facing businesses is the cost of information and is especially critical for a small business with limited resources. The ITDN system is designed to address this issue and provides daily access to the 60,000 businesses in its network at about $3 for each business per year.

Mr. Douress testified about the export services available through Dun & Bradstreet. As the publisher of the Exporters Encyclopedia for Dun & Bradstreet's Information Services, Dun & Bradstreet gathers export information spanning over 200 countries and has more than 3,000 information consultants in 300 locations who collect and analyze information used daily by hundreds of firms around the world. Mr. Douress provided a demonstration on Dun & Bradstreet products designed to assist the small business owner through most of the steps of the exporting cycle, from identifying the best overseas markets at the commodity-specific level to ensuring payment. The Dun & Bradstreet database has 39 million businesses worldwide, which helps small businesses decide where to look for export opportunities.

The hearing on February 13, 1996, was held at Northern Illinois University in Rockford, Illinois, and was designed to examine further the issue of accessing foreign markets. The hearing was comprised of three panels, the first of which included: Michael P. Donnelly, Vice President, Marketing, W.A. Whitney Company; Maria Perr, Marketing Manager, International Sales, Pierce Chemical; and Derek Sherman, Purchasing and Sales, S. Franke & Company, Inc.

The first panel was comprised of representatives of companies based in Rockford, Illinois, and the witnesses testified about problems that their companies have had in obtaining timely, accurate, and cost effective information about export opportunities. In particular, Ms. Perr explained both the difficulties and successes that Pierce Chemical had experienced in utilizing the information from the Federal government. Although the company was able to obtain information, the company experienced problems due to the fact that when a niche market is being serviced, the use of a Standard Industrial Classification (SIC) code may not be feasible. Since the market being targeted is so small, it may prove impossible to determine what types of products are exported or imported under a particular SIC code.

The second panel included: Mary Ann Boukalis, Vice President, Global Trade Information Services, Inc.; Joseph J. Douress, Director, Global Trade Services, Dun & Bradstreet, Information Services; Raymond Fogarty, Director, Rhode Island Export Assistance Center; Craig Leonard, Account Consultant, AT&T, representing The Export Hotline; Richard Preuss, Foreign Trade Division, Bureau of the Census; and Forrest Williams, Director of Operations, Economics and Statistics Administration, U.S. Department of Commerce.

Several witnesses on the second panel also attended the hearing on October 11, 1995, and they presented similar testimony about the technology available for small businesses seeking to enter the export market. In addition, the new presenters, Mr. Leonard and Ms. Boukalis, discussed their respective information services, and how each aids businesses in exporting to foreign markets. Mr.

Leonard explained that The Export Hotline provides information by fax to those businesses that are expanding to foreign markets by providing, as a free service, information on such areas as trade barriers, financing, distribution, business etiquette, key contacts, and direct marketing. This service provides a wide range of information to businesses seeking to enter the export market. Ms. Boukalis testified that the Global Trade Information Service, a South Carolina-based market research and economic consulting firm, designs and markets international trade software called the World Trade Atlas CD-ROM. This service was designed to take merchandise trade data from the Bureau of the Census and make it into a more useful research and marketing tool for businesses.

The third panel was comprised of representatives of the U.S. Export Assistance Center (USEAC) in Chicago, Illinois, including: Stanley Bakota, Director, U.S. and Foreign Commercial Service, Department of Commerce; Mary Joyce, Senior International Trade and Finance Specialist, Small Business Administration (SBA); and Robert J. Kaiser, Vice President, Communications, Export-Import Bank of the United States (Eximbank). Mr. Bakota testified about the structure and operation of the USEACs, which are a unique partnership among three Federal agencies: Eximbank, the SBA and the Foreign Commercial Service. There are currently 12 USEACs in the United States, and they have connections to commercial service officers in approximately 70 foreign countries, with approximately 125 total different locations. The USEACs aid small business by assessing the export readiness of a particular company and providing assistance in developing a marketing strategy for entry into foreign countries as well as disseminating information.

Ms. Joyce noted that the SBA works closely with the Commerce Department, the Foreign Commercial Service, and the International Trade Centers. She explained that the success of the SBA and its partners in these centers is mainly based upon their ability to provide joint counseling. Based on the particular needs of the small business looking to access a foreign market, they have a range of resources to provide answers as well as financial assistance.

Mr. Kaiser testified that since 1983, Eximbank has placed a major emphasis on supporting the smaller exporter community. This goal has been achieved through two programs: the working capital guarantee program and the insurance program. The capital guarantee program induces commercial banks to extend credit to exporters who may be considered to be high risk borrowers. They provide a 90 percent guarantee because of the type of risk that the banks associate with this type of transaction. By providing insurance to small businesses, Eximbank enables them to sell more to existing customers as well as allow them to enter markets that otherwise would be too risky.

For further information on these hearings, refer to Committee publication numbers 104–53 and 104–61.

7.4.8 THE IMPACT OF "SHORT SUPPLY" ON SMALL MANUFACTURTERS

Background

On May 2, 1996, the Subcommittee on Procurement, Exports and Business Opportunities held a hearing on the impact of "short supply" on small manufacturers, focusing on those companies that use steel in their final product. Short-supply situations exist when U.S. manufacturers need certain raw materials, which may be subject to anti-dumping orders, to stay in business, but they cannot obtain such materials from U.S. producers. These manufacturers require the raw materials in order to integrate them in the United States into products with higher value added, destined either for export or U.S. consumption. This hearing was designed to examine the role that H.R. 2822, the Temporary Duty Suspension Act, may have in remedying short supply for small manufacturers.

Summary

The hearing was comprised of two panels, the first of which included: Phillip Crane (R-IL), Member of Congress and Chairman, Subcommittee on Trade, Committee on Ways and Means; and Sander Levin (D-MI), Member of Congress. The panelist presented differing views on H.R. 2822 and the short-supply issue. Congressman Crane, testified that he introduced H.R. 2822 to give the U.S. Department of Commerce authority to suspend temporarily the imposition of anti-dumping or countervailing duties on a limited quantity of a particular product needed by the American industry when users are effectively unable to obtain that product from U.S. producers. He also maintained that this legislation would be extremely important to small business, which very often are the victims of trade protections extended to help large industries such as the integrated steel industry and the semiconductor industry.

Congressman Crane noted that while the government should have anti-dumping laws, the focus needs to be more on the effect that anti-dumping orders may have on downstream industries—U.S. companies that purchase imported materials when such products are not available domestically. It is often extremely difficult for such companies, especially small businesses, to compete if the U.S. industry does not produce the product they need. Current U.S. trade laws simply do not provide adequate redress for American firms that need products that are subject to anti-dumping orders and that cannot be obtained from U.S. producers. Congressman Crane testified that his legislation will only address situations in which a product is temporarily unavailable, and this temporary relief will encourage the domestic industry to develop new products since it will enable U.S. downstream users to stay in business in the United States until the U.S. industry begins to manufacture the needed input product.

Congressman Levin, also a member of the Committee on Ways and Means, presented an opposing point of view. He noted that short supply proposals were thoroughly reviewed two years ago during consideration of the implementing legislation for the GATT Uruguay Round Agreements and were rejected by bipartisan ma-

jorities in both the Ways and Means Committee and the Senate Finance Committee. Congressman Levin maintained that anti-dumping laws are the first, and in many cases the last, line of defense against foreign unfair trade practices. The purpose of the trade laws is to provide a remedy against foreign unfair trade practices equal to the amount of the foreign subsidy or dumping margin.

According to Congressman Levin, current law already provides regulatory flexibility to administer the anti-dumping and countervailing duty laws to address situations in which no supply of a particular product exists. He noted that the bill would allow duty suspension whenever "prevailing market conditions related to the availability of the product in the United States make imposition of duties inappropriate." He also pointed out that the previous statement is an impossibly vague set of standards that would surely be invoked and litigated in every single anti-dumping suit, needlessly raising litigation costs. As a result, Congress would ultimately be lured into reviewing each interpretation of the language made by the Department of Commerce, which would hopelessly politicize the process and add lobbying expenses on top of litigation expenses.

The second panel included: Paul Joffe, Deputy Assistant Secretary for Import Administration, Department of Commerce; Richard Harcke, CEO, Branford Wire Manufacturing; John Phillips, Vice President (Sales), Berg Steel Pipe Corporation; Gary Green, Secretary/Treasurer, Gary Drilling Company; and Ray Hopp, President, H.K. Metalcraft. Other than Mr. Joffe, this panel agreed that H.R. 2822 would solve the short-supply problem of many small businesses. The small business witnesses all agreed that a temporary duty suspension provision would allow small firms to be competitive at a time when such competition is extremely difficult if achievable at all. The panelists also agreed that small businesses do not have the leverage to pass on increased product costs to their customers, nor do they have the reserves to stay in business for prolonged periods when their costs are arbitrarily increased as a result of short supply.

While emphasizing that the country must maintain a level playing field to ensure that trade brings growth and an economy that generates jobs at home, Mr. Joffe generally restated the arguments that Congressman Levin made in opposition to the legislation. He noted that the Commerce Department has been given enough regulatory flexibility to make sure that the short-supply situation would be remedied without amending the existing trade laws. He also stressed that with the demise of the Cold War, international rivalry has turned more and more to economics, and it is not an appropriate time to be dismantling defenses in the face of unfair foreign competition.

For further information on this hearing, refer to Committee publication number 104–75.

7.4.9 THE EFFECTIVENESS OF U.S. EXPORT ASSISTANCE CENTERS

Background

On July 25, 1996, the Subcommittee on Procurement, Exports, and Business Opportunities held a hearing to examine the effectiveness of the relatively new U.S. Export Centers (USEAC), which

were created as part of the 1992 Export Enhancement Act. USEACs are centers in various sites around the nation where small businesses can obtain export assistance from the Department of Commerce, the Export-Import Bank of the United States (Eximbank), and the Small Business Administration (SBA) in a single location. The hearing was designed to examine the comprehensive reviews of the USEAC system, which the General Accounting Office (GAO) and the Inspector General of the Commerce Department had recently completed to evaluate the effectiveness of having three independent agencies working together in a single location.

Summary

The hearing was comprised of one panel, which included: JayEtta Hecker, Director, International Trade, Finance and Competitiveness Division, GAO; Johnnie Frazier, Assistant Inspector General for Inspections and Program Evaluations, Department of Commerce; Lauri Fitz-Pegado, Assistant Secretary and Director General, U.S. Commercial Service, Department of Commerce; Mary N. Joyce, International Trade Specialist, SBA, Chicago, Illinois; James P. Morris, Director, Miami, Florida, Regional Office, Eximbank.

Ms. Hecker began her testimony by reviewing the methodology that GAO employed in evaluating the USEACs and to assess whether the Department of Commerce, Eximbank, and the SBA are able to coordinate their export assistance activities in a single location to the benefit of small businesses. She stated that the main operational problem that GAO identified was a lack of appropriate incentives in place to promote a good working relationship among the staff of the three different agencies. Basically, no common client tracking system existed, which reinforced a tendency for the agency officials to operate more independently. In addition, no information was available on the cost of the centers.

The Commerce Department witnesses testified that they had found that the USEACs did in fact offer a greater opportunity for a more coordinated Federal effort. This finding was significant since for more than a decade there has frequently been a major void in the levels of cooperation and coordination among the agencies in the trade-finance area. As a result, the correction of this problem was a major step in the right direction. The witnesses also noted that the Department of Commerce has not only achieved the goals first set by Congress and the Trade Promotion Coordinating Committee, but it has also expanded on this original concept in order to benefit American exporters. This has been achieved by fostering strong partnerships with Federal, State, and local trade promotion organizations, working to modernize their communications and client management systems, taking advantage of technological innovations, and strategically placing resources in order to serve clients most effectively. Ultimately, the goal is to create a truly integrated national export assistance delivery network. The Subcommittee was also informed that recently the agencies involved had signed a Memorandum of Understanding to begin to resolve the three main problems highlighted by the GAO and the Inspector General audits.

Mr. Morris testified that Eximbank views the USEAC as a way to more efficiently use taxpayer resources. The USEACs have proven to be extremely successful for the Eximbank, which firmly supports both the National Export strategy and the USEAC concept. Frequently, the critical missing element for many small businesses is financing, and the USEACs provide another outlet through which Eximbank can make its programs available to small businesses.

Ms. Joyce testified that the success of SBA and its partners is their ability to provide joint counseling and training to their customers. The SBA has worked closely with both the Foreign Commercial Service at the Department of Commerce and the Eximbank to make sure that companies are provided with the export marketing and trade-finance assistance that they may require when venturing into new international markets.

For further information on this hearing, refer to Committee publication number 104–90.

7.5 Summaries of the Hearings Held by the Subcommittee on Regulation and Paperwork

7.5.1 Joint hearing on the impact of workplace and employment regulation on business

Background

On February 2, 1995, the Subcommittee on Regulation and Paperwork held a joint hearing with the Subcommittee on Oversight and Investigations of the Committee on Economic and Educational Opportunities. The purpose of the hearing was threefold. First, the subcommittees wanted to examine jointly current Federal rules and regulations to determine their impact on businesses in the United States. The hearing further focused on the results, such as safe, productive, and cost-effective workplaces, which regulations and rules are attempting to achieve. Finally, the hearing was intended to identify modifications to the current statutes to achieve the intended results.

Summary

The hearing was comprised of two panels, the first of which included: Lowell Gallaway, Professor of Economics, Ohio University; Robert Hahn, American Enterprise Institute; Thomas Hopkins, Professor of Economics, Rochester Institute of Technology; and Brenda Enfinger, Hamlet Response Coalition.

The witnesses on the first panel outlined the different ways in which employment by American businesses is regulated and how those regulations affect business behavior. First, the Federal government enforces rules, such as the minimum wage, which dictate to American businesses how much to pay their workers. Secondly, the government imposes direct taxes, which decrease the amount that businesses may spend on, among other things, labor. Finally, through mandates, the government forces business owners to expend time and money complying with rules and regulations. According to one expert, those who are regulated spend $600 billion annually to comply with Federal regulations. In one way or another, all of these taxes and regulations increase the cost of hiring additional workers. In doing so, the demand for labor is lowered, leading to increased unemployment.

The witnesses offered several solutions, including reviewing all current regulations using cost-benefit analysis; providing information on regulations in "plain English"; reporting the cost of regulations; providing sunset requirements that would require regulations to be reviewed periodically before they are extended; placing the burden of proof on those who want to pass new regulations; and individualized regulatory requirements for businesses. One witness, Brenda Enfinger, a homemaker who had lost one son and had another disfigured as a result of accidents in the workplace, provided the Subcommittees with dissenting views.

The second panel consisted of David Sebright, Sebright Products, Inc.; John Lattauzio, Chief Executive Officer, J&J Investments, Ltd.; Linda Benso, Accounting Manager, Baird, Kurtz, and Dobson; and Ruth Ruttenberg, Ruth Ruttenberg and Associates.

The second panel included two small businessmen and one consultant to small businesses, each of whom had personal experience with the burdens of Federal regulations and taxes. Their testimony highlighted the fact that small businesses are disproportionately affected by regulations and taxes because they do not have the resources needed to understand, much less comply with, everything that the Federal government demands of them. The witnesses asked for relief from Federal regulatory and tax burdens through simplification of statutes, rewriting of costly regulations, restructuring of the tax code, and decreasing the Federal paperwork requirements. Ms. Ruttenberg, an economist specializing in Occupational Safety and Health Administration (OSHA) regulations, contended that OSHA regulations actually increase productivity and provide small businesses with opportunities in marketing compliance techniques.

For further information on this hearing, refer to Committee publication number 104-16.

7.5.2 REGULATORY BARRIERS TO MINORITY ENTREPRENEURS

Background

On June 7, 1995, the Subcommittee on Regulation and Paperwork held a hearing to discuss the impact of Federal regulation on minority entrepreneurship. Evidence exists that sets the annual cost of Federal regulation to the United States' economy at $500 billion. Many experts contend that the burden of Federal regulation and taxation falls disproportionately on small businesses, in part because they must comply with regulations and taxes intended more for larger companies. Because small businesses are owned by and employ a large percentage of minorities, Federal regulations and taxes are said to fall disproportionately on minorities as well.

Summary

The hearing was comprised of two panels, the first of which included: Jack Kemp, Co-Director, Empower America; Floyd Flake (D-NY), Member of Congress; Clint Bolick, Vice President and Director of Litigation, The Institute for Justice; and Peter Kirsanow, Labor Counsel, Leaseway Transportation.

The first panel consisted of experts in the field of regulation and small business whose testimony described the detrimental effects of Federal taxes and regulations on small businesses. They emphasized the great importance of small business to the American economy and the many opportunities that small business provides for minorities, not only in ownership, but also in the many jobs that are created. The panel emphasized that government programs such as welfare and minority set-asides are solutions for the symptoms of poverty among minorities, but do not go to the root of the problem, which is a lack of economic opportunities provided to minorities because small businesses are stifled with high taxes and oppressive regulations. Among other things, members of the panel recommended a moratorium on Federal regulations, broadening the Civil Rights Act to apply to the rights of "economic liberty," expanding enterprise zones, whose lower tax rates and exemption

from regulations encourage business formation in poor communities, and repealing the Davis-Bacon Act, a Depression-era law that has allegedly prevented minorities from bidding successfully for and working on Federal projects.

The second panel included: Leroy Jones, President and Founder, Freedom Cabs, Inc.; Talib-Din Abdul, co-owner, Cornrows and Company; and Art Pearson, Sole-Proprietor, Art Pearson Electrical and General Contracting Company. The second panel consisted of minority entrepreneurs who recounted their personal experiences of starting businesses in the face of oppressive regulations. The panelists implored that regulations at the Federal, State and local levels have a negative effect on small business start-ups and job opportunities and on the very freedom of enterprise in America. Mr. Pearson singled out the Davis-Bacon Act as a piece of legislation whose efforts to provide training and raise wages were admirable, but whose effects in practice created a web of regulations preventing minority entrepreneurs from starting and growing their businesses.

For further information on this hearing, refer to Committee publication number 104-32.

7.5.3 OSHA FALL PROTECTION STANDARD

Background

On June 15, 1995, the Subcommittee on Regulation and Paperwork held a hearing on the new fall-protection standard promulgated by the Occupational Safety and Health Administration (OSHA) and its effect on small businesses. The new standard lowered the fall protection threshold from 16 feet to 6 feet. An OSHA study conducted between 1985 and 1989 found that falls from elevations of 6 to 10 feet caused 8 percent of fall fatalities and 60 percent of lost workday fall injuries. OSHA estimated the cost of complying with the new regulation to be $40 million, or about $250 per worker. Industry representatives and employers dispute this estimate, finding the cost to be closer to $500 per worker. The savings from wage and productivity losses, medical expenses, administrative expenses, and other costs due to accidents were estimated by OSHA to be about $200 million. Witnesses were asked to discuss the effects of this new standard on small business.

Summary

The hearing was comprised of three panels, the first of which consisted of a single witness: Joseph Dear, Assistant Secretary and Director, Occupational Safety and Health Administration, U.S. Department of Labor. Mr. Dear began his testimony with a description of OSHA's reinvention efforts to make the agency more efficient and productive. He testified that the fall protection threshold was lowered to prevent more injuries to workers and reduce workers' compensation payments. He also noted that OSHA is looking for ways to reduce the paperwork burden of the new regulation and at alternative plans for businesses adversely effected by the new standard. Questions arose regarding OSHA's ability to control compliance, lost productivity, and the danger to homeowners attempting to do their own roof-work instead of hiring professionals. Over-

all, Mr. Dear testified that the new standard would not have a disproportionately adverse impact on small businesses.

The second panel consisted of representatives of associations whose members have been affected by the new fall protection standard: William Good, Executive Vice-President, National Roofing Contractors Association; Patty Burgio, Director of Government Affairs, National Association of the Remodeling Industry; Dan Gilligan, Vice-President, Manufactured Housing Institute; and Howard Saslow, member of the National Homebuilders Association. This panel raised many concerns regarding the high cost of implementing this standard, the additional accidents caused by the fall prevention devices, and the lack of information from OSHA. Overall, this panel was strongly opposed to the new standard.

The third panel consisted of employers affected by the regulation: Douglas Jones, Vice-President and Chief Operating Office, South Side Roofing Company; Robert Therrien, Vice-President, Al Melanson Company; Reid Ribble, President, Security Roofing and Siding Company; and William Brown, Production Superintendent, Security Roofing and Siding Company. All of the witnesses on the third panel were in agreement that this new standard had not only cost more money than anticipated, but had also resulted in more accidents. The panel also expressed concern over losing work to companies not complying with OSHA regulations. Since these companies began complying with the new fall protection standard, their production has decreased by 27 percent. Although the panel was opposed to the new standard, they admitted that steps were needed to ensure the safety of roofing workers. They asked for a compromise to be made by taking the roof angles, type of frame, and a higher height threshold into account.

For further information on the hearing, refer to Committee publication number 104-33.

7.5.4 CANDIDATES FOR THE REGULATORY CORRECTIONS CALENDAR

Background

On August 23, 1995, the Subcommittee on Regulation and Paperwork held a field hearing in Des Peres, Missouri. The purpose of the hearing was to explore a number of regulations that are particularly onerous and should be repealed through the use of the Corrections Calendar. The Corrections Calendar is the product of a new rule initiated by the 104th Congress, which sets aside one morning every month to discuss regulations that face non-partisan opposition. The purpose of the Calendar is to allow for the elimination of regulations that are outdated or otherwise fail to achieve their purpose without having to go through the normal, laborious procedures required in passing legislation in the House of Representatives.

Summary

The hearing was comprised of six panels, the first of which included a single witness: Melinda Warren, Associate Director, Center for the Study of American Business, Washington University in

St. Louis, Missouri. Ms. Warren testified on the proliferation of regulations and funding for regulatory agencies in recent years. She stated that, while many regulations are necessary for the public good, they should also be cost-effective. Ms. Warren estimated the cost to consumers of complying with regulations to be $400 billion per year, or $4,000 per family.

The second panel included a single witness: Leo Whiteside, M.D., Director, Biomedical Research Laboratory. Dr. Whiteside testified about the difficulties presented by the Food and Drug Administration in acquiring approval for new medical devices that are implanted within the human body. A newly developed implant must either complete a clinical study proving its safety and effectiveness or demonstrate that it uses technology available before 1976. Because a clinical study can take from four to eight years and cost between $3-8 million, many medical-device developers, particularly individual inventors, try to use 1976 technology to develop new products. The negative effects of this regulation have been twofold. First, many potentially beneficial and lifesaving innovations are not developed or marketed because they cannot be linked to pre-1976 technology. Second, many companies that develop and produce such devices are moving overseas, where regulations are not so strict. Dr. Whiteside recommended reforming the approval process by eliminating the need for clinical studies, extending something like the 1976-technology mechanism to simplify the process, and placing more trust in the hands of the professionals and doctors who develop new life-saving devices.

The third panel included: Richard Redington, on behalf of the J.E. Redington Company; Lee Kent, President, Missouri Chapter of the National Association of Plumbing, Heating, and Cooling Contractors; and Richard Church, President, Plumbing Manufacturers Institute. This panel was comprised of experts in plumbing who testified on a new Federal regulation passed in the 1992 Energy Policy Act that attempted to increase water conservation by requires new toilets in residential homes to limit the amount of water expelled per flush to 1.6 gallons, down from the industry standard of 3.5 gallons per flush. Many owners of the new toilets have complained that their lack of power in expelling waste makes them unsanitary and that they actually waste more water because multiple flushes are needed to accomplish what one flush would do in the old 3.5-gallon toilets. The experts noted that the regulation passed because legislators relied upon faulty studies that did not adequately simulate real conditions during their experiments. Mr. Church defended the statute, claiming that a single, Federal standard was needed for toilet manufacturers who could not continue to produce different size toilets to meet the varying standards set by different State and local governments.

The fourth panel included: Dennis Hayden, on behalf of the Hayden Company; Scott Harding, on behalf of Sci Engineering and Materials Testing; and Brad Goss, on behalf of Whittaker Construction. This panel provided the Subcommittee with testimony concerning the need for relief from regulations imposed by wetlands-protection legislation. They maintained that the definition of protected areas was inadequate, defining a wetland as any piece of land sustaining standing water for seven days out of the year.

Complex regulations were said to make government decisions subjective and confuse the authority of the various agencies that enforce the laws. Mr. Hayden recounted a personal experience in which he was forced to underwrite a six-month archaeological excavation on his development site at a personal expense of $130,000, excluding the costs of delaying the project and the $10,000 charge for a permit to work in a wetlands area. Witnesses also noted that the costs of complying with wetlands regulations are routinely passed on to consumers who pay more for food, housing, and other basic products. The panel recommended establishing a better standard for what constitutes a wetlands area, including definitions of what is not protected; simplifying regulations and making them more objective; and creating an administrative-appeals process for land-owners whose property is suddenly made subject to wetlands protection laws.

The fifth panel included: John Eber, on behalf of Interstate Brands; Pat Strader, on behalf of Union Electric; Wayne McKinnon, on behalf of Land Management, Incorporated; and John Stratton, also on behalf of Union Electric. The fifth panel outlined problems with Federal motor-carrier-safety regulations, which regulate all commercial vehicles weighing over 10,000 pounds. These regulations, which treat delivery vans in the same manner as eighteen-wheel trucks, require a great deal of paperwork, are confusing, and make compliance costly. One witness noted that it cost about $500 per driver to comply with all the regulations that, among other things, require owners to perform uniform maintenance practices; document maintenance and daily vehicle condition reports; and maintain driver files, hours of service, vehicle maintenance files, additional vehicle markings, on-board safety equipment, and documentation of authorized passengers. Drivers are required to pass a written exam and road test, meet physical requirements, be at least 21 years of age, speak English, and complete special training. Witnesses testified that regulations should be specialized to account for the differences between heavy-duty and light- to medium-duty commercial vehicles.

The sixth panel included: Mary Gillespie, CPA and attorney at law; Mike Meara, Certified Financial Planner, on behalf of Renaissance Financial; and Eileen Dorsey, President, Money Consultants, Incorporated. This panel provided the Subcommittee with a general view of the effect that regulations have on small businesses and noted that the many regulations that are imposed upon the self-employed result in lost opportunity and wasted resources. They stressed that with the increase in corporate downsizing and layoffs, self-employment and small business provide excellent opportunities for job creation. The government, however, has not made this transition easy, imposing regulations on the self-employed the complexity of which prevents any business from being in complete compliance. In particular, witnesses testified about the unfair treatment that small businesses face with regards to tax deductions for health care, archaic financial planning laws, oppressive social-security requirements, and excessive taxation on savings and investment. Panelists recommended streamlining the regulatory process for individuals, providing "plain-English" versions of regulations, strengthening the Paperwork Reduction Act and Regulatory Flexi-

bility Act, introducing judicial review for the Regulatory Flexibility Act, increasing health-care deductions, lowering estate and capital-gains taxes, and reforming Social Security.

For further information on the hearing, refer to Committee publication number 104–47.

7.5.5 EXAMINING THE ISSUES SURROUNDING THE NATIONAL LABOR RELATIONS BOARD'S RULEMAKING CONCERNING SINGLE LOCATION BARGAINING UNITS IN REPRESENTATION CASES

Background

On March 7, 1996, the Subcommittee on Regulation and Paperwork held a hearing to discuss the ramifications of the Nation Labor Relation Board's (NLRB) proposed rule concerning single location bargaining units in labor representation cases. Current law gives employees at any single location the right to form a bargaining unit, but allows a hearing for the employer at which he or she may show that a multi-unit facility unit is more appropriate. It is imperative that the size of a bargaining unit be determined prior to a vote by employees to unionize so that those involved know which employees are entitled to vote and who the union will represent if it wins.

Owners of businesses that operate more than one location can prove that the single location union proposed by their employees is an inappropriate bargaining unit by citing: evidence of central control of operations and labor relations; similarity of skills, functions, and working conditions of employees at all locations; the degree of employee interchange; distance between locations; and bargaining history, if any. Hearings are decided by the NLRB on a case-by-case basis. The new rule proposed by the NLRB changes that system to allow employees to form a bargaining unit at any single location, without a hearing for the employer, if the following conditions are met: fifteen or more employees work at the unrepresented location; no other location of the employer is within one mile of the requested site; at least one supervisor is present on the site for a regular and substantial period; and less that 10 percent of the employees at the facility have been temporarily transferred less than 10 percent of the time.

Summary

The hearing was comprised of two panels, the first of which included: William Gould, Chairman, NLRB. Chairman Gould defended the proposed rule as necessary to reduce litigation and make decision-making at the NLRB more efficient. He claimed that the ambiguity of the current system necessitated a new rule to make it more precise, thus ensuring that all concerned were aware of their rights and responsibilities. He also refuted allegations that the NLRB was attempting to change existing labor law, claiming that this was merely a rule change, perfectly within the bounds of the Board's jurisdiction and powers. In response to the claim that this rule is aimed at encouraging union organizing, he stated that no empirical evidence exists to prove that fact, and he maintained

that the sole intent of the rule was to make decision making more precise and efficient.

Chairman Gould pointed out that the Board considers many other factors such as common skills functions and working conditions when deciding on the appropriate size of a bargaining unit and has ruled in favor of a single-unit presumption for thirty years. Therefore, he did not foresee any instances when a decision rendered by the new rule would differ from a decision reached from litigation of the case and asserted that the rule was merely a codification of existing policy. In fact, he maintained that this rule would benefit small businesses that often cannot afford the counsel needed to arbitrate a case before the NLRB under the current system.

The second panel included: James Coleman, General Counsel, National Council of Chain Restaurants; Sue Lin Kekuna, K & I Management/The Coffee Beanery; Rock Magnan, Vice President - Operation, Con-Way Transportation Service; Harold P. Coxson, American Bankers Association; Joann Shaw, University of Chicago Hospitals; Curtis Mack, Esq., Mack, Williams, Haygood, & McLean; and Peter J. Ford, United Food & Commercial Workers International Union, AFL-CIO.

The second panel consisted of representatives of small businesses, small business owners and a union representative who gave their estimation of the proposed rule's effect on small businesses. All members of the panel except the union representative, Mr. Ford, agreed that NLRB's proposed rule would do more harm than good to business in general and small business in particular. They argued that the proposed rule would facilitate unions' ability to organize bargaining units by allowing them to organize more easily small groups of workers one unit at a time. They claimed that the new rule would allow for single-unit organizing without regard for circumstances such as common tasks and employee transfers. Furthermore, the situation could become so difficult, with employers hampered by multiple contract negotiations with various unions, under differing rules and terms, that businesses would be rendered non-competitive in the market. Faced with the new rule, business owners indicated that they would probably choose not to expand their businesses or hire new workers.

Several witnesses claimed that the rule would come down particularly hard on businesses in the restaurant and retail industry, composed significantly of franchised small businesses. Employees in franchised businesses work with a single set of policies and procedures and under close centralized control. They are transferred from location to location more frequently and typically work with the company for a shorter period of time. According to the panelists, the rule would allow each location of a franchise to organize independently, thus adding another regulatory burden to the duties of business owners, particularly small business owners who do not have the same resources as a larger business to ease compliance. The panel maintained that the current system works because it provides a means for businesses with legitimate reasons to have their employees organized as multi-location bargaining units.

Business owners and representatives claimed that the new rule would deny them a fundamental right in the bargaining process.

This fact has been substantiated by court rulings against the single location presumption. In response to Chairman Gould's argument that litigation has become a significant burden, Mr. Coleman cited evidence that litigation cases concerning the appropriateness of a single location unit have declined tremendously over the past 35 years.

Mr. Ford argued in support for the proposed rule. He called the rulemaking procedure perfectly within the NLRB's power according to the National Labor Relations Act. He declared that the extraordinary exceptions clause, which other witnesses claimed did little to abate the negative effects of the proposed rule, allowed for the appropriate amount of litigation. Mr. Ford noted that a change from the current rule was necessary to protect and facilitate employees' opportunity to organize unions, to reduce costs to the NLRB in light of recent budget cuts, and to shorten delays in union organizing. He concluded his testimony by alluding to situations in which multiple collective bargaining agreements have been successfully negotiated by a single employer.

For more information on this hearing, refer to Committee publication number 104–65.

7.6 Summaries of the Hearings Held by the Subcommittee on Taxation and Finance

7.6.1 THE FLAT TAX AND SMALL BUSINESS

Background

On May 18, 1995, the Subcommittee on Taxation and Finance held a hearing to discuss how a flat tax might affect small businesses. The flat tax is a proposal that would completely overhaul the current tax code with a simplified tax on consumption. Instead of filing multiple forms with the Internal Revenue Service for deductions, depreciations, and the like, businesses would submit a single form containing income, minus amounts expended on purchases, wages, salaries, and retirement benefits during the year, which would then be taxed at a single low rate. Individuals would be taxed at the same single rate on their wages and salaries less personal and dependent allowances. Among other things, a pure flat tax would eliminate multiple taxation, marginal tax rates, and most deductions, credits, exemptions, and depreciation schedules.

Summary

The hearing was comprised of three panels, the first of which included the following economists: Alvin Rabushka, Senior Fellow, Hoover Institution, Stanford University; Daniel Mitchell, McKenna Senior Fellow in Political Economy, The Heritage Foundation; Raymond J. Keating, Chief Economist, Small Business Survival Committee (SBSC); and Richard W. Kahn, Business Leadership Council.

The first panel stressed that the single greatest burden on small businesses today is the tax code. Witnesses testified that it hurts entrepreneurs by discouraging investment, thus stifling the economy. They maintained that more capital would become accessible to small, growing companies if investment were encouraged through lower interest rates and the elimination of estate and capital gains taxes. The complexity of the current tax code was noted as being especially hard on small businesses which, unlike larger businesses, cannot easily hire experts to handle their taxes. According to Dr. Mitchell, $150 to $200 billion is spent annually complying with the current tax law. By eliminating itemized deductions, depreciation schedules and multiple taxation, much of this burden would be greatly reduced. The panel admitted that some ambiguities in the tax code would still exist, such as the distinction between business and personal expenses, and that there may be some transition pains as people adapted to a new system. Despite this, Dr. Keating released a SBSC report to the Subcommittee revealing that in a poll of 500 small businesses on the flat tax proposed by House Majority Leader Armey, 56 percent favored the proposal to 36 percent against. Dr. Rahn stressed that, in comparison to a flat tax, no national sales tax should be considered without first repealing the 16th Amendment. And he expressed concern that, while a flat tax would simplify the system for most small businesses, it

would be unlikely to do so for small service businesses such as restaurants.

The Congressional panel included the following witnesses: Richard K. Armey (R-TX), Member of Congress and House Majority Leader; and Arlen Specter (R-PA), United States Senator. Both witnesses favored replacing the current tax code with some form of the flat tax and had proposals before Congress. Majority Leader Armey stressed the simplicity and fairness of the flat tax and praised its neutrality with respect to savings, investment and consumption. Senator Specter reiterated Congressman Armey's claim of the flat tax's simplicity and also praised it for its pro-growth incentives, claiming that interest rates would fall by 2 percent. His proposal would retain mortgage interest and charitable contribution deductions up to a certain limit. The panel stressed that high taxes and compliance costs are strangling the economy—and hurting small businesses most—with Americans spending 5.4 billion man-hours doing their taxes each year. The panel believed that a flat tax would lower marginal tax rates, improve incentives to work, save and invest, raise living standards, and spur capital investment in small businesses and economic growth. During Committee questioning, the panelists acknowledged that people fear such a drastic change and rebutted accusations that the flat tax was regressive, showing that the generous family allowance provided under the system actually makes the tax progressive.

The third panel consisted of representatives of small business, including: Jere W. Glover, Chief Counsel, Office of Advocacy, U.S. Small Business Administration; Paul Hense, Tax Committee, National Small Business United; James P. Lucier, Jr., Director of Economic Research, Americans for Tax Reform; Jeffrey Lear, Chairman, Ad Hoc Committee on Alternate Tax Systems, Small Business Legislative Council; and Bennie Thayer, President and Chief Executive Officer, National Association for the Self-Employed.

While those on the small business panel were in favor of simplifying the current tax code, they feared a shift in the tax burden from larger to smaller businesses, which might be caused by a flat tax. Mr. Hense stressed that the key elements of any new tax system should be simplicity, fairness, and consistency. The panel was in general agreement that the deductions and graduated corporate tax rates in the current system favored small businesses. They also acknowledged that small businesses are greatly burdened by compliance costs and would be helped greatly by lower interest rates. While Mr. Lucier strongly favored the flat tax proposal, the panel overall was not prepared to take a final position in favor of or against a flat tax. They did identify benefits of a flat tax to small businesses, including: simplicity; elimination of capital gains and estate taxes; deductions for land, structures, and capital equipment (i.e., 100-percent expensing); and ending the double taxation of business profits. Detriments were also identified, including: the loss of interest deductions, which would favor equity over debt and hurt start-ups; possible increase in the tax burden of small businesses; and the favoring of physical over human capital. In addition, this panel stressed the need for other reforms such as reductions in government spending, reductions in the combined Federal

tax rates, including payroll and social security taxes, and increasing access to capital.

For more information on this hearing, refer to Committee publication number 104–29.

7.6.2 THE BURDEN OF PAYROLL TAXES ON SMALL BUSINESS

Background

On June 28, 1995, the Subcommittee on Taxation and Finance held a hearing to discuss the impact of payroll taxes on small businesses. Payroll taxes include any government revenue collected by employers through withholding of employees' wages. For certain withholdings, such as those for Social Security and Medicare, the tax must be paid equally by employer and employee. Because of substantial increases over the years, payroll taxes now represent 37 percent of all Federal revenue collected, and an astonishing 7 percent of Gross Domestic Product. Accordingly, small businesses have urged that the payroll tax burden is excessive not only because of the high rate of taxation, but also because of its high cost of compliance. The Federal government has countered that, because payroll taxes make up 37 percent of its revenues, they are necessary for adequate funding.

Summary

The hearing was comprised of two panels, the first of which included: Mark Isakowitz, Director of House Lobbyists, National Federation of Independent Businesses; and Ronald B. Cohen, Owner, Cohen and Company, representing the National Small Business United. This panel represented small businesses and made the case that the burden of payroll taxes falls excessively on small businesses. The disproportionate burden exists because most small businesses are characteristically labor intensive, heavily reliant on cash flow, unable to deduct as much as large companies, and employers of lower-paid employees. Mr. Isakowitz concluded that payroll taxes are the greatest inhibitors to increased expansion and job creation because employers who are faced with payroll taxes must either raise prices, lower wages, or lay off workers. He stressed that almost $1 out of every $3 tax dollars collected by the Federal government is from a payroll tax. Mr. Cohen acknowledged that, while a lack of pensions and minimal withholdings made payroll taxes a good idea at the time of their inception, subsequent rate increases due to excessive cost of living adjustments and a higher life expectancy have made them an increasing burden on small businesses and the economy.

The second panel included: Mark J. Iwry, Benefits Tax Counsel, Office of Tax Policy, U.S. Department of the Treasury; and Peter J. Ferrara, Senior Fellow, National Center for Policy Analysis. The second panel consisted of two experts whose views contrasted as to the burden of payroll taxes on small businesses and the economy. Mr. Iwry acknowledged small business' contribution to the economy, but concluded that the impact of payroll taxes falls mainly on employees and that employment is affected more by the strength of the economy than by the burden of payroll taxes. He also stated

that payroll taxes are necessary to fund trusts to provide social insurance and recommended tax credits to prevent the working poor from being hurt disproportionately. Mr. Ferrara agreed that workers pay most of the cost of payroll taxes, but maintained that any tax on employment such as the payroll tax creates an impact on job availability. He also stated that large businesses can bear the burden with greater ease because they are more able to lay off workers and still maintain productivity. He warned that the cost of payroll taxes would continue to escalate because of higher wages and increased life expectancy. His suggestion was to begin to invest social insurance contributions in a private fund, similar to the Chilean government, to achieve greater gains with less withholdings.

For further information on this hearing, refer to Committee publication number 104–35.

7.6.3 CLARIFYING THE STATUS OF INDEPENDENT CONTRACTORS

Background

On July 26 and August 2, 1995, the Subcommittee on Taxation and Finance held hearings to discuss the policy of the Internal Revenue Service (IRS) regarding the classification of workers as employees or independent contractors. The classification of workers is extremely important because it determines who is responsible for making withholding payments for Federal income taxes, Social Security and Medicare. Some workers are classified as independent contractors by law and some by the safe-harbors set forth in Section 530 of the Revenue Act of 1978. Any workers who do not meet the requirements of a safe-harbor must pass a 20-factor test derived by the IRS from the common law in order to be classified as independent contractors. Otherwise, under current IRS practice, workers are classified as employees.

The 20-factor test has been declared by many to be unclear and subject to varying interpretations by IRS auditors. If the IRS deems a previously classified independent contractor to be an employee, the employer is then responsible for all back taxes and penalties retroactive to that date when the working relationship began. A reclassification of this sort can be particularly devastating to small businesses that often cannot afford such payments. As evidence of the importance of this issue to small business, clarification of independent-contractor status was voted the top recommendation by the 1995 White House Conference on Small Business.

Summary

The hearings were comprised of five panels. The first panel, which began on July 26, included: Jon Christensen (R-NE), Member of Congress; and Jay Kim (R-CA), Member of Congress. The first panel consisted of two Congressmen who have introduced legislation aimed at clarifying the status of independent contractors. Both agreed that the question of a worker's status as an independent contractor or employee is a very important one, especially to small businesses, and that efforts must be made to answer the question adequately and in a clear and objective way. The Independent Contractor Tax Simplification Act of 1995, introduced by

Congressman Christensen, would create an alternative to the 20-factor test whereby an individual would be given independent-contractor status by adequately exhibiting personal investment in the contractor's business, independence from the employer, and a written contract between the business and the contractor. Congressman Kim's legislation would grant independent-contractor status to any individual who could meet one of four criteria including: ability to realize a profit and loss; having a separate physical place of business; a personal investment in the business; or payment on a commission basis. Congressman Kim's proposal would also require contractors to itemize the services they render on their tax returns or face increased penalties.

The second panel included: Fern Denholm, Owner, Flowers and Ferns, representing the Society of American Florists; Debbi-Jo Horton, Accountant and New England Taxation Chair for the 1995 White House Conference on Small Business Implementation Team; Paul Johnson, Owner, P.J. Nice Construction, representing the Associated Builders and Contractors, Inc.; Raymond Peter Kane, Owner, Pisa Brothers, Inc., representing the American Society of Travel Agents; and Lockwood Phillips, Publisher, The Carteret County News-Times, representing the National Newspaper Association.

This panel was comprised of small business people with personal experience in dealing with the independent-contractor issue. Each witness considered the existing guidelines for determining independent-contractor status to be complicated, contradictory, subjective, and unrealistic for small businesses. They stressed that small businesses, because of their size, are often forced to hire contractors to complete tasks for which they cannot afford to hire additional employees to complete. The panelists were particularly critical that two IRS agents might see a situation differently and may reverse a classification retroactively. The costs of such a reversal, including payment of back taxes and penalties, additional paperwork, and employment benefits to the previously classified contractor, can be devastating to a small business. Members of the panel recommended a repeal of the IRS's 20-factor test in favor of the legislation offered by Congressmen Christensen and Kim.

The third panel included: Abraham L. Schneier, Counsel, McKevitt & Schneier, representing the National Federation of Independent Business; John S. Satagaj, President, Small Business Legislative Council; and Benson S. Goldstein, Legislative and Tax Counsel, National Association for the Self-Employed.

The third panel consisted of experts on the taxation of small businesses who presented testimony on behalf of organizations who represent small businesses. This panel acknowledged that there are two sides to this issue—the small businesses, which need the ability to hire independent contractors, and the IRS, which needs to ensure that all income and payments to the government are being accurately reported. The witnesses noted that examples of unfair behavior by the IRS stemmed from the fact that the agency is attempting to solve the problem of non-compliance on the part of independent contractors by classifying them as employees and requiring their employers to handle the problem. They asserted that, if a self-employed individual is not reporting his or her in-

come or making the correct withholdings, then the IRS should go after the individual, not the small business person who hired that person. Members of the panel stressed the need to reform the system of classification and recommended the pending legislation.

The fourth panel, which began the continuation of the hearings on August 2, included: Marshall V. Washburn, National Director of Specialty Taxes, IRS; and Natwar M. Gandhi, Associate Director for Tax Policy and Administration, U.S. General Accounting Office. This panel agreed that the guidelines for determining the status of independent contractors must be clarified and made consistent for the good of the businesses that hire independent contractors as well as the IRS agents who must make decisions as to the status of business relationships. Mr. Washburn testified that the 20-factor test had originated from the need to clarify common-law guidelines that defined an employer-employee relationship only as an individual having direction and control over the means and details of a worker's activities.

For the benefit of their own agents, as well as businesses, the IRS announced that it had initiated programs requiring all local offices to obtain National Office approval for any compliance projects involving worker classification and providing additional training for agents to promote consistency in decision-making. Mr. Gandhi suggested requiring businesses to withhold taxes from contractors as if they were employees and improving business reporting requirements to reflect the specific amount of payment made to independent contractors. He also stressed the need to broaden the laws that provide a safety net for workers to apply to the relationships between businesses and independent contractors.

The fifth panel included: James C. Pyles, Counsel, Powers, Pyles, Sutter & Verville, representing the Coalition for Fair Worker Classification; Harvey J. Shulman, General Counsel, National Association of Computer Consultant Businesses; and Michael A. Wolyn, Executive Director, Bureau of Wholesale Sales Representatives. The final panel was comprised of experts in the laws that define independent contractors. Members of this panel provided contrasting views as to the benefits of the legislation proposed by Congressmen Christensen and Kim. Mr. Pyles was opposed to the practice by which businesses try to gain an advantage over their competitors by classifying workers as independent contractors in order to avoid making withholding payments and complying with Federal and State labor laws. He maintained that these proposals would legitimize this behavior by making the definition of an independent contractor more vague and would cost the government billions of dollars. The other members of the panel supported the legislative proposals and particularly favored the provisions that provide safe harbors to businesses who hire independent contractors. Mr. Shulman provided specific examples of IRS abuse on worker classification.

For further information on these hearings, refer to Committee publication numbers 104–43 and 104–45.

7.6.4 FUNDAMENTAL TAX CHANGES NEEDED TO UNLEASH AMERICA'S SMALL BUSINESSES

Background

Early in 1996, the Subcommittee on Taxation and Finance held a series of three field hearings to evaluate the current Federal tax code and its effect on small businesses in several regions of the country. Many economists agree that the Federal tax system inhibits economic growth. It taxes income at high marginal rates, influences behavior through deductions and credits, and taxes capital gains and inheritance at high rates. Experts consider these practices to be multiple taxation of the same income, and accuse the tax code of stifling economic growth by encouraging debt and discouraging investment. Owners of small businesses have echoed these sentiments, disapproving of the complexity of the current system and the harsh enforcement practices undertaken by the Internal Revenue Service (IRS).

The hearings focused on the reforms proposed by the National Commission on Economic Growth and Tax Reform, also referred to as the Kemp Commission after its Chairman, Jack Kemp. The Kemp Commission was charged by Congress with examining the current tax code and developing recommendations on how to reform it. The Commission proposed six core recommendations to Congress: (1) adopt a single, low tax rate; (2) provide a generous personal exemption; (3) lower the tax burden on America's working families and remove it on those least able to pay; (4) end the bias against work, savings, and investment; (5) allow full deductibility of the payroll tax for working men and women; and (6) require a two-thirds vote in Congress to raise taxes. In implementing these changes to the tax code the Commission stressed the need to encourage economic growth, and to make the tax code fair, simple, neutral, visible, and stable. These six principles are included in the Commission's "Tax Test."

Summary

The first hearing was held on February 9, 1996, in Indianapolis, Indiana and was comprised of two panels. Members of the first panel included: Peter Pitts, on behalf of Alan Reynolds, Senior Fellow and Director of Research, The Hudson Institute, and Director of Research, The National Commission on Economic Growth and Tax Reform; William Styring, III, Director, Benjamin Rogge Chair for Public Policy, Indiana Policy Review Foundation; and Sandra J. Brothers, GRI, Coldwell Banker Graber Realtors.

This panel gave expert testimony on the downfall of the current tax system and what should be done to correct it. Mr. Reynold stressed that capital gains and estate taxes are unfair to small businesses that depend disproportionately more on equity investment and on the ability to pass their business from one generation to the next. He testified that the strength and growth of small businesses, along with the rest of the economy, depends on the quantity and quality of labor and capital, yet the current system of heavily taxing money acquired by selling an asset or through an inheritance is hostile to work, savings, and investment.

Mr. Styring, an economist, gave expert testimony on taxation in the State of Indiana and how residents of the State might benefit from a flat tax. He stressed that the current system violates Adam Smith's four principles of good taxation: economy of collection; convenience; certainty; and equality. Indiana, through its corporate gross income tax, taxes all corporate business transactions. Small businesses are hit particularly hard by this tax because they often operate on little or no profit. To offset this, many Indiana small businesses form S corporations, allowing them to avoid the corporate income tax, but forcing them to pay more in capital gains and estate taxes. He recommended a flat tax, a form of which is used in Indiana for personal income taxes, as a better alternative to the current Federal tax system. The final witness, Ms. Brothers, emphasized the need to continue allowing the interest on home mortgages to be deductible, particularly for first-time buyers. She cited specific examples of how the mortgage interest deduction encourages and facilitates home buying in a community, and listed two dozen professions related to real estate that could be affected by the elimination of the mortgage interest deduction.

The second panel in Indianapolis included: Craig S. Hartman, President, Preferred Industrial Services; Alfred Stovall, Jr., President, The Cellular Shoppe; Steven M. Souers, MST, CPA, Manager, George S. Olive & Company, LLC; and Don Villwock, Owner, Villwock Farms. The second panel consisted of owners of small businesses who testified on what changes in the tax code would be best for the citizens of Indiana. All agreed that the current system keeps small businesses from attaining their full potential.

Mr. Hartman, a delegate to the 1995 White House Conference on Small Business, suggested that small businesses in Indiana need: (1) the restoration of the 100-percent deduction for meals and entertainment; (2) clarification of the status of independent contractors; (3) simplification of the tax system; and (4) uniform application of tax laws. Mr. Souers agreed with the principles of the Kemp Commission, but was wary of eliminating taxation on investment income for individuals with inherited wealth. He maintained that the emphasis should be put on working for one's money. Mr. Villwock, a small farmer, concluded by providing his perspective of the current tax system. He testified that the two tax laws that most negatively affect farmers are the capital-gains tax, which inhibits the movement of assets and sound economic decisions, and the estate tax, which endangers family farms. The members of the panel made several additional suggestions for reforming the tax code: (1) expand the 50-percent capital-gains exclusion; (2) accelerate the depreciation for leasehold improvements; (3) increase small businesses' expensing allowance; (4) expand the home-office deduction; (5) repeal the alternative minimum tax; (6) increase the health-insurance deduction for the self-employed; and (7) simplify pensions for small businesses.

The second hearing was held on March 25, 1996, in Mentor, Ohio and was also comprised of two panels, the first of which included: J. Kenneth Blackwell, Treasurer, State of Ohio; Robert C. Smith, President and Chief Investment Officer, Spero-Smith Investment Advisers, Inc., representing the Council of Smaller Enterprises of the Growth Association; and Katherine E. Tatman, CPA, CPC,

Ciuni and Panichi, Inc. Dean Kleckner, President of the American Farm Bureau Federation, was unable to attend the hearing, but submitted a written statement for the record.

The first panel in Mentor included experts in the field of taxation and how taxes affect small businesses in Ohio. Mr. Blackwell, who served on the Kemp Commission, testified that the current system should be changed fundamentally according to the six principles listed in the Commission's "Tax Test." He assured the Subcommittee that any initial loss in government revenue caused by a new tax system would be offset by increased revenues due to economic growth and prosperity. Mr. Smith stated that to achieve his organization's strategic plan for economic growth and job creation, more small and mid-sized business would have to form in the Cleveland area. He noted that the current system of taxation hampers this growth by:(1) encouraging debt and thereby raising the cost of borrowing; (2) reducing profitability;(3) increasing compliance costs; (4) lowering the valuation of businesses; (5) making the hiring process complex and costly; and (6) reducing the chance that a business may be passed from one generation to another without having to sell a large portion of the business.

Ms. Tatman provided the Subcommittee with expert advise on pension issues and policy. She advised that the current system discourages small businesses from providing pension plans for their employees because the cost of administration and compliance with complex regulations is too high. She expressed concern that a flat tax with no deductions for pension benefits would merely shift the burden from employers to employees, and she proposed simplifying the existing pension regulations. Mr. Kleckner, also a member of the Kemp Commission, submitted a written statement on taxation from the perspective of farmers and ranchers across the nation. He maintained that the current tax code is costly to administer, takes money away that could be reinvested in business, and leaves taxpayers in fear. He endorsed the final report of the Kemp Commission and outlined the main issues of the American Farm Bureau Federation, which include: clearly defined definitions of income and business deductions; simplifying the tax code; addressing tax penalties on savings and investment; and reforming estate tax laws.

The second panel in Mentor included: Robert L. Anderson, Chief Executive Officer, Wiseco Piston, Inc.; Nancy Brown, Owner, Ladies and Gentlemen; Donald E. Pendleton, Owner, Don's Used Cars; Larry Reber, General Manager, Stamco Industries, Inc.; and Richard Selip, President, Grand River Rubber and Plastics. The second panel included a group of area small businessmen and women. Each witness resounded the view that many of the provisions of the current tax code are too complex for small businesses and create disincentives for growth and job creation.

Ms. Brown cautioned, however, that the advantages of a flat tax—including tax simplification and reducing the power of the IRS—may be offset by disadvantages such as the potential loss of deductions, the uncertainty of any new system, and its disparate impact on the accounting and legal professions. Mr. Reber highlighted that small businesses must compete not only with the pitfalls of taxation when hiring new employees, but also with the welfare state, which discourages employment. Specific recommenda-

tions from the panel included: (1) reforming laws concerning the depreciation of capital improvements; (2) allowing the deductibility of more business expenses; (3) eliminating the marriage penalty; (4) allowing senior citizens to continue working while receiving Social Security; (5) stabilizing the tax laws; (6) easing restrictive regulations concerning pensions; (7) expanding the deductibility of health-care costs to shareholder-employees of S corporations; (8) instituting an investment tax credit; and (9) eliminating the alternative minimum tax.

The third hearing was held on April 3, 1996, in Seattle, Washington and was comprised of two panels. The first panel included: Edwin J. Feulner, Jr., Ph.D., President, The Heritage Foundation and Vice Chairman, The National Commission on Economic Growth and Tax Reform; Loretta Adams, President, Market Development, Inc.; Bob Williams, President, Evergreen Freedom Foundation; Kriss Sjoblom, Economist, Washington Research Council; and Meade Emory, Professor of Law and Director, Graduate Program in Taxation, University of Washington School of Law. The first panel, consisting of economists and experts, was almost unanimous in its support for the core recommendations and principles of the Kemp Commission's "Tax Test." They applauded a single-rate tax as a legitimate reform of the current tax system, praising its simplicity, fairness, and potential for creating economic growth for all Americans.

Dr. Feulner outlined the benefits of a flat tax to businesses, which include: (1) a single, low rate of taxation to increase profits; (2) simplicity in compliance; (3) lower interest rates fostered by the freeing of capital for investment; (4) immediate write-offs for all investment spending; (5) easier access to capital; (6) the elimination of capital-gains taxes; and (7) the elimination of estate taxes. He cautioned, nonetheless, that businesses would be hurt by the elimination of deductions for payroll taxes, health-care benefits, and interest payments. Dr. Feulner stressed that, to predict the full potential of a flat tax in its deliberation of the proposal, Congress must study the tax in a dynamic economy taking into account individuals' behavior in response to the tax. Ms. Adams noted that if a flat tax does increase the rate of economic growth, this increased growth will in turn increase the ability of individuals and small businesses to participate in the American model of success.

Mr. Williams reiterated that while tax policy alone cannot create a booming economy, it can create the right climate for a booming economy to exist. Professor Emory, on the other hand, defended the current Federal tax system. He praised its ability to raise revenue and attempted to refute that estate taxes are hurting small businesses. Professor Emory also stressed that a government agency must exist to enforce and administer the nation's tax laws, even if it is called something other than the IRS.

The second panel in Seattle included: Ann Anderson, State Senator, Washington State Legislature; Craig Morrison, President and Chief Executive Officer, CMI Incorporated; Patricia Wilkerson, Proprietor, Enchanted Eagle Gallery; William A. Sherman, Jr., President, William Sherman & Company, representing the Building Industry Association of Washington; Carolyn Logue, State Director, National Federation of Independent Businesses (NFIB); and Pris-

cilla S. Terry, Partner and Managing Broker, Prime Locations, Inc., and President, Lacey/Thurston County Chamber of Commerce.

The second panel consisted of small business owners and representatives. Each witness supported an extensive overhaul of the current tax system. Ms. Logue testified that Washington State NFIB members, who face a gross-receipts tax in addition to other State, local, and Federal taxes, rank taxes as the third most adverse cost for their businesses, right below regulatory and health-care costs. Regarding a single-rate tax, she stressed that its impact is still unknown because of the diversity of the small business population, which might pay more or less under a single-rate tax depending upon the individual situation of each small business owner.

Mr. Morrison, who favored several modifications to the current system, stressed that Congress cannot address taxation policies without curbing government growth. Mr. Sherman approved of a flat tax provided that it retains the mortgage interest deduction and requires a two-thirds vote in Congress to raise taxes. Finally, Ms. Terry, while favoring a flat-rate tax, nevertheless cautioned against a major reform similar to the 1986 tax reform. She strongly advocated paying attention to "the big picture" and transition issues, including grandfather provisions. Other recommendations by the panel included: decreasing or eliminating the burden of capital-gains taxes; instituting investment tax credits; clarifying the status of independent contractors; and eliminating corporate taxes.

For more information on these hearings, refer to Committee publication number 104–60.

7.6.5 THE EFFECTS OF BANK CONSOLIDATION ON SMALL BUSINESS LENDING

Background

On March 4, 1996, the Subcommittee on Taxation and Finance and the Subcommittee on Government Programs held a joint hearing in Boston, Massachusetts, to examine how consolidation affects banks' lending practices toward small businesses in New England and across the country. In recent years, smaller banks in New England have experienced considerable difficulties. Falling asset values, due in large part to the failing real estate market, have led to unstable capital positions. Shaky capital positions preceded defaults, which in turn lead to increased regulatory scrutiny. As a result, troubled banks were required to increase their loan loss requirements and decrease their leverage to capital ratio, which translated into fewer loans for the small banks' customers. New England has been particularly distressed by this situation because the devaluation of the region's real estate market has been particularly severe. Some believe that the troubles of small banks, and consequently small businesses, have been compounded by the recent bank consolidation trend.

The move toward fewer but larger banks can be attributed to several factors. Competition from non-bank firms has forced banks to grow and become more efficient in order to compete in the modern financial market. Additionally, technological innovations have transformed the way banks conduct business and, thus, have given

big banks the advantage in providing advanced products and service. Most important, however, is the regulatory reform outlined in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, which allows bank holding companies to acquire or merge with other banks in any State without authorization from the host State. Beginning in June of 1997, holding companies may consolidate their banks into a branch network, able to open branches across State lines, unless the host State opts out of this reform by passing its own legislation.

Summary

The hearing was comprised of two panels, the first of which included: Christopher C. Gallagher, Esquire, Gallagher, Callahan, and Gartrell; John P. Hamill, President and CEO, Fleet Bank of Massachusetts; David A. Aloise, New England Director of Small Business Banking, Bank of Boston; T. Lincoln Morison, Jr., President, First National Savings Bank of Ipswich; and James G. Zafris, Jr., President, Danvers Savings Bank.

Mr. Gallagher started the panel by providing the Subcommittees with background information on the subject of bank consolidation and how it affects banks' lending practices to small businesses. He noted that the needs of small businesses when seeking capital include close proximity to the financial institution, sophistication of services, flexibility, and reasonable cost of borrowing. Efficiency is the key to enabling banks to attain these attributes and, to the extent that consolidation of banks increases their efficiency, it is beneficial to small business. He stressed that consolidation leading to uncompetitive market power could be detrimental, but that the current consolidations seem to be increasing competition and efficiency, thus strengthening the banks and benefitting small businesses. Mr. Gallagher emphasized that easing excessive regulatory pressures on banks and a healthy economy were more important to small businesses and their access to capital than a trend toward bank consolidation.

The remainder of the panel consisted of representatives of area banks, both large and small, who testified about how bank consolidations affect small businesses. The entire panel praised the small business sector for its contribution to the economy and assured the Subcommittees that as long as small businesses continued to be a healthy and growing part of the economy, they would not have trouble acquiring loans from banks of any size. In fact, they cited evidence that showed the amount of loan capital available to small businesses to be quite substantial and growing. Many of the witnesses, from large and small banks, emphasized the efforts of their banks to attract more small business customers. Like Mr. Gallagher, they agreed that enabling banks to be more efficient and competitive through deregulation and consolidation was good for the entire economy, including small businesses. Mr. Aloise cited a report from the Federal Reserve Bank of New York, which concluded that the current merger activity among banks has had no ill effect on small business lending. He also pointed out that small businesses today also have a great deal more options in acquiring capital from thrifts, savings banks, and non-bank financial institutions, many times at a cost lower than a bank can provide.

Mr. Zafris provided only modest dissent, stating that small and mid-sized banks are better prepared to invest in small businesses because they can form more personal relationships with their customers. This enables them to make judgments on loans based on the character of the borrower as opposed to relying on a financial statement or some sort of credit scoring procedure, which may not be a good indicator of a small business' ability to repay a loan. He went on to praise the Small Business Administration (SBA) and its loan guarantees for opening the doors of capital to more small businesses.

The second panel included: Julie Scofield, Executive Director, Smaller Business Association of New England; Virginia Allen, President, North Suburban Chamber of Commerce; John Gould, President and CEO, Associated Industries of Massachusetts; Frank C. Romano, Jr., President and CEO, Elder Living Concepts, Inc.; and Joyce Plotkin, Executive Director, Massachusetts Software Council, on behalf of David A. Blohm, President, Virtual Entertainment, Inc.

The second panel included representatives of small business and small business owners who expressed some wariness over how recent bank mergers might affect their ability to access capital. While the panel acknowledged that consolidation opened beneficial new avenues of financing to small businesses, they expressed concern over the loss of continuity among loan officers and banks' decreasing involvement in the community. The witnesses maintained that a small business' ability to acquire loans was highly influenced by the relationship its owners had with a bank and a bank's reliance upon the community it serves for success. Many on the panel stressed that a loan officer who did not personally know them or their business would be more likely to refuse a loan application. A major concern was the decline of the "character" loan, one which is made based on the personal relationship between the bank and the borrower, in favor of "credit scoring," a system used in the loan approval process in which banks make loan decisions using a calculated formula looking primarily at an applicant's credit history and his or her income-to-debt ratio.

In addition, Mr. Romano cited an article by Peggy Gilligan, which concluded that if lending trends continue, loans to small businesses will be made increasingly by smaller banks; and if consolidation persists in absorbing smaller banks, small businesses will be faced with a diminishing amount of available capital. Mr. Romano presented this as evidence that bank consolidation is an issue that needs to be closely monitored on behalf of small businesses. He and other witnesses also expressed a strong desire to continue the Federal government's practice of requiring banks to disclose the number and amount of small loans currently on their financial statement. Mr. Romano also recommended amending the Community Reinvestment Act to require banks not to reduce the amount of small business lending; encouraging larger banks to establish small lending groups or departments; expanding SBA loan guarantees beyond the current $750,000 threshold; and increasing the number of bankers approved by the SBA to be direct lenders.

For more information on this hearing, refer to Committee publication number 104–66.

APPENDIX

WHAT A DIFFERENCE A YEAR MAKES

A Review of Actions to Implement
The Recommendations
of
The 1995 White House Conference on Small Business

Prepared by the Majority Staff
Committee on Small Business
U.S. House of Representatives

June 4, 1996

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JAN MEYERS, KANSAS
CHAIR

JOHN J. LAFALCE, NEW YORK

Congress of the United States
House of Representatives
104th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

June 4, 1996

As we commemorate the first anniversary of the 1995 White House Conference on Small Business, my staff has prepared this summary of the actions taken by the Congress and the Administration towards implementing as many of the delegates' recommendations as possible. We hope that it will provide a concise overview of the major efforts and accomplishments with respect to each recommendation.

Small businesses are an integral part of this country's economy as producers of goods and services, providers of jobs for American workers, and creators of new innovative ideas and technologies. In addition, small and family-owned enterprises have vastly exceeded their historic capacity of serving only our local communities with many small firms now transacting business on a global basis. With this tremendous development in the small-business community has also come greater needs for action to facilitate the growth and development of small enterprises, not only at the state and local level but at the Federal level as well.

I believe that the Congress, for its part, has made significant in roads towards addressing the concerns of the small-business community reflected in the 60 recommendations receiving the highest number of votes at the 1995 White House Conference. While our work is certainly not finished, the legislation passed by the Congress as well as its oversight activities have produced substantial results, especially in the areas of capital formation, procurement, regulation and paperwork, and taxation.

It is my hope that before the end of the 104th Congress, we will see many more of these initiatives signed into law, and my colleagues and I on the Committee on Small Business are committed to making this aspiration a reality.

Sincerely yours,

Jan Meyers

Jan Meyers
Chair

EXECUTIVE SUMMARY

The President's veto of prime small business legislation passed by the 104th Congress paints a disturbing picture in light of his comments only one year ago. His veto in eight instances appears to have put politics ahead of sound public policy to renew the spirit of entrepreneurship and tune the economy for the next century.

The vetoed small-business bills -- all of which provided financial and regulatory relief outlined in the top-60 recommendations of the White House Conference -- sharply contradict his pledge to the small-business community to do everything possible to prepare small enterprise to drive the nation into the 21st Century.

Many of the delegates to last year's White House Conference on Small Business were heartened by President Clinton's emphatic remarks, acknowledging his pivotal role in ensuring opportunity for small business. But with the stroke of the pen, the President has repeatedly forfeited his central role in fulfilling that pledge -- in Mr. Clinton's words, "to restore the American dream," and "see that our people and our businesses have the tools they need to meet the demands of the present age and seize the opportunities."

A range of the top-60 issues were affected by the President's veto, including, in order of conference ranking: estate tax repeal; health care reform; pension reform; tort reform; 100% health-care deductibility; increased expensing; broad-based capital gains reform; and small business investment via capital-gains tax reform.

Small-business advocacy groups concur that these bills go to the heart of providing economic vitality for the vast majority of America's small businesses. In main street terms, the President's signature could have meant the difference in enabling hard-working families to pass on a productive small business to their children through estate tax reforms contained in H.R. 9 or in opening new opportunities for small business owners and their employees to increase retirement security by utilizing tax-favored pension plans contained in H.R. 2037.

It should be noted that the White House Conference recommendations virtually mirrored the small-business provisions contained in the "Contract With America" (H.R. 9), which President Clinton vetoed.

Moreover, The White House Conference is by no means a partisan forum. The legislative record of the Republican-led 104th Congress reflects a good faith effort to make many of the conference delegates' top recommendations a legislative reality. No less than 50 of the top-60 recommendations have been introduced, in full or in part, as legislation in the 104th Congress -- yet only 15 of those have become law.

While this Congress' work certainly is not finished, it is clear that the legislative clock is running and that its ability to enact a significantly higher percentage of the top-60 conference recommendations will be compromised if President Clinton continues to use his veto to the detriment of small business.

White House Conference on Small Business Recommendations

Passed by 104th Congress; VETOED by Clinton

ISSUE	ORIGINAL HOUSE LEGISLATION	VETOED AS PART OF
Estate Tax Repeal	Title XII of H.R. 9 and H.R. 2190	Balanced Budget Act of 1995
Health Care Reform	Title III of H.R. 8 and H.R. 2491	Balanced Budget Act of 1995
Pension Reform	H.R. 2037	Balanced Budget Act of 1995
Tort Reform	H.R. 10 and H.R. 956	Common Sense Product Liability Legal Reform Act of 1996
100% Health-Care Deduction for the Self-Employed	H.R. 1034 and H.R. 696	Balanced Budget Act of 1995
Expensing	Title XII of H.R. 9	Balanced Budget Act of 1995
Broad-Based Capital Gains Reform	Title I of H.R. 9	Balanced Budget Act of 1995
Small Business Investment via Capital Gains Reform	H.R. 2491	Balanced Budget Act of 1995

SUMMARY OF THE WHITE HOUSE CONFERENCE RECOMMENDATIONS

(In order of highest votes received)

The top 60 recommendations of the White House Conference on Small Business are listed below in the order of the highest number of votes that each received from the delegates. A brief description of the recommendation follows its National Conference Recommendation Agenda (NCRA) number. The topic listed parenthetically after the description refers to the section of this report where a full discussion of the congressional and administrative action with respect to the recommendation can be found. The full text of each recommendation and an index to all recommendation references appear at the end of this report.

1. NCRA #224 - Definition of an Independent Contractor (Taxation)

2. NCRA #214 - Meals and Entertainment Deduction (Taxation)

3. NCRA #183 - Regulatory Flexibility Act (Regulation and Paperwork)

4. NCRA #218 - Estate and Gift Taxes (Taxation)

5/6.* NCRA #87 - Health-Care Reform (Human Capital)

5/6.* NCRA #63 - Superfund Reform (Environmental Policy)

7. NCRA #91 - Pension Reform (Human Capital)

8. NCRA #265 - Intellectual Property Rights (Technology and the Information Revolution)

9. NCRA #51 - Cost-Benefit Analysis of Environmental Regulations (Environmental Policy)

10. NCRA #200 - Tort Reform (Regulation and Paperwork)

11. NCRA #121 - Export Assistance (International Trade)

12. NCRA #194 - Regulatory Compliance (Regulation and Paperwork)

13. NCRA #406 - Investment Initiatives for High-Tech Firms (Technology and the Information Revolution)

14. NCRA #144 - Government and Non-Profit Competition (Procurement)

15. NCRA #78 - Health-Care Deduction for the Self-Employed (Human Capital)

16. NCRA #5 - Pension Investment in Small Business (Capital Formation)

*Tie Vote.

17. NCRA #9 - Banking-Industry Regulation Reform (Capital Formation)

18. NCRA #385 - Tax Equity for Small Business (Taxation)

19. NCRA #286 - The Future of the Small Business Administration (Unclassified)

20. NCRA #34 - Home-Office Deduction (Community Development)

21. NCRA #129 - Export Financing (International Trade)

22. NCRA #57 - Small-Business Property Rights and Takings (Environmental Policy)

23. NCRA #115 - Intellectual Property Protection (International Trade)

24. NCRA #242 - Small Business Capital-Gains Tax Treatment (Taxation)

25/26.* NCRA #164 - Davis-Bacon and Service Contract Acts (Procurement)

25/26.* NCRA #188 - Regulatory and Paperwork Reduction (Regulation and Paperwork)

27. NCRA #41 - Entrepreneurship Education (Community Development)

28. NCRA #369 - OSHA Reform (Regulation and Paperwork)

29. NCRA #24 - Small Corporate Offering Registration Program (Capital Formation)

30. NCRA #14 - Secondary Capital Markets (Capital Formation)

31. NCRA #130 - Barriers to Franchisees, Dealers and Product Distributors (Main Street)

32. NCRA #233 - Small-Business Equipment Expensing (Taxation)

33/34.* NCRA #250 - Retroactive Taxation (Taxation)

33/34.* NCRA #336 - Job Training (Human Capital)

35. NCRA #153 - Certification for Small and Disadvantaged Businesses (Procurement)

36. NCRA #360 - Small- and Disadvantaged-Business Procurement (Procurement)

37/38.* NCRA #31 - Community Reinvestment Act (Community Development)

37/38.* NCRA #103 - Affirmative Action Programs (Human Capital)

39. NCRA #390 - Capital-Gains Tax Reform (Taxation)

*Tie Vote.

40. NCRA #134 - Barriers to Small-Business Litigation (Main Street)

41. NCRA #288 - Monitoring the Implementation of White House Conference Recommendations (Unclassified)

42. NCRA #280 - Federal Balanced Budget (Unclassified)

43. NCRA #74 - EPA Reform (Environmental Policy)

44. NCRA #167 - Prompt Payment Act (Procurement)

45. NCRA #140 - Disaster and Casualty Insurance (Main Street)

46. NCRA #141 - Antitrust Reform (Main Street)

47. NCRA #324 - Privatization of Social Security (Human Capital)

48. NCRA #161 - Reform of SBA's 8(a) Program (Procurement)

49. NCRA #229 - Tax-System Reform (Taxation)

50. NCRA #25 - Small-Business Loan-Guarantee Programs (Capital Formation)

51. NCRA #437 - Affirmative Action and the *Adarand* Decision (Procurement)

52. NCRA #287 - Future White House Conferences on Small Business (Unclassified)

53. NCRA #252 - Supermajority for Tax Increases (Taxation)

54. NCRA #20 - Small-Business Investment (Capital Formation)

55. NCRA #105 - Labor Law Reform (Human Capital)

56. NCRA #44 - Competition for Jobs and Business (Community Development)

57. NCRA #203 - National Labor Relations Act (Human Capital)

58. NCRA #139 - Small-Business Relief Fund (Main Street)

59. NCRA #253 - Payroll Tax Relief (Taxation)

60. NCRA #28 - Performance of Financial Institutions under the Community Reinvestment Act (Capital Formation)

SUMMARY OF ACTION TO IMPLEMENT THE WHITE HOUSE CONFERENCE RECOMMENDATIONS

CAPITAL FORMATION

1. Pension and Retirement Fund Investment in Small Business (NCRA #5)
Votes received: 1279
Rank: 16
Previous White House Conferences:
1986 - This recommendation received 435 votes making it the Number 49 recommendation.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Small Business has held several hearings on small business pension reform and simplification as well as small business' access to capital.
- In addition, both the House and Senate are considering proposals to reduce impediments to pension fund investment in small business.
- The House also passed legislation prohibiting Economically Targeted Investments (ETIs) due to the increased risk that they pose to the security of pension funds and the drain that this socially engineered policy places on possible investments in small businesses.

Action by the Administration

- The Department of Labor issued regulations that allow pension fund administrators to invest in Small Business Investment Companies.
- The Department also introduced a policy that permits pensions to take part in Economically Targeted Investments despite the potential risk to pension participants. The Administration has focused on this policy of "social" investments but has made no efforts to deregulate small-business investment.

2. Banking-Industry Regulation Reform (NCRA #9)
Votes received: 1275
Rank: 17

Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Small Business held a series of hearings this year on the topic of small business' access to capital. The Committee heard testimony directly from small businesses concerned with this issue, and much of the witness testimony focused on bank lending to small business. As a result, the Committee recently held a hearing dealing specifically with bank lending to small business. The Committee's Subcommittee on Taxation and Finance and Subcommittee on Government Programs also held in March of 1996 a hearing on the effects of bank consolidation on small business.

- The House Committee on Banking and Financial Services passed the Financial Services Competitiveness and Regulatory Relief Act of 1995, which is part of H.R. 2520, sponsored by Rep. Leach (R-IA). This bill contains numerous provisions dealing with bank deregulation to encourage bank lending to small businesses. The bill is expected to be taken up on the House Floor in July of 1996.

Action by the Administration

- The Administration undertook several regulatory initiatives to streamline bank examinations and compliance for small banks, but has still not addressed the regulatory treatment of small-business loans.

3. Small Corporate Offering Registration Program (NCRA #24)
Votes received: 1027
Rank: 29
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Commerce has held hearings on small business' ability to engage in stock offerings. In addition, the Commerce Committee has approved H.R. 3005, sponsored by Rep. Fields (R-TX), which is intended to promote efficiency and capital formation in the financial markets as well as provide more effective and less burdensome regulation. H.R. 3005 would also raise the

reporting requirement for certain small-business stock offerings. The bill currently awaits action by the full House.

- The Senate is currently considering similar legislation to reform the securities laws (S.1815), sponsored by Sen. Gramm (R-TX).

Action by the Administration

- The Securities and Exchange Commission (SEC) began studying small-business offerings in 1992. In 1995, the Commission issued four proposed regulations that would ease registration and filing requirements.

4. Secondary Capital Markets (NCRA #14)
Votes received: 1009
Rank: 30
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The Committees on Small Business in both the House and Senate have held hearings on the privatization of the SBA's Small Business Investment Corporation (SBIC) and Specialized Small Business Investment Corporation (SSBIC) programs and easing the barriers to SBIC and SSBIC investment. For further information on the House Committee's hearings, please refer to Committee publication numbers 104-21 and 104-51.

- In the Senate, Senator Bond (R-MO), Chairman of the Senate Committee on Small Business, introduced the Small Business Investment Company Improvement Act of 1996 (S. 1784) to strengthen, expand, and improve the SBIC program. The Senate Committee on Small Business approved S. 1784 on May 22, 1996.

- The House Committee on Small Business will be considering legislation similar to S. 1784 to strengthen the SBIC program and encourage further small-business investment.

- Representative Torkildsen (R-MA) has introduced the Venture Capital Marketing Association Charter Act (H.R. 2806), which would establish the Venture Capital Marketing Association ("Vickie Mae") as a private, tax-exempt corporation. The

Subcommittee on Government Programs of the House Committee on Small Business held a hearing on H.R. 2806 on April 18, 1996.

- Please see the discussion of NCRA #242 and #390 in the Taxation section, below, for a complete overview of the congressional action concerning capital-gains tax reform.

Action by the Administration

- The Small Business Administration has simplified the SBIC program regulations.

5. Small-Business Loan-Guarantee Programs (NCRA #25)
Votes received: 784
Rank: 50
Previous White House Conferences:
1986 - This recommendation received 390 votes making it the Number 55 recommendation.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The Committees on Small Business in both the House and Senate have held a number of hearings on the 7(a) and 504 loan programs as part of their overall effort on restructuring the SBA for the future. These hearings represent only a small portion of the overall Congressional effort on the loan programs. For more information on the hearings held by the House Committee on Small Business, please refer to Committee publication numbers 104-6, 104-17, 104-37, 104-40, 104-49, and 104-54.

- In response to the hearings, Rep. Meyers (R-KS), Chair of the House Committee on Small Business, introduced H.R. 2150 to reform the 7(a) and 504 programs by lowering their cost and expanding the availability of these loans. H.R. 2150 was approved by the House Committee on Small Business in August of 1995. The bill, which became the Small Business Lending Enhancement Act, was passed by both the House and Senate in September of 1995, and enacted into law on October 12, 1995.

- Congress is currently considering legislation to improve the management and performance of the 7(a) and 504 programs.

Action by the Administration

- Three years of Clinton Administration mismanagement has caused SBA loan-program subsidy costs to soar, thereby threatening their continuance.

Laws Enacted

- Public Law 104-36, the Small Business Lending Enhancement Act, was enacted on October 12, 1995.

6. Small-Business Investment (NCRA #20)
Votes received: 672
Rank: 54
Previous White House Conferences:
1986 - This recommendation received 1075 votes making it the Number 12 recommendation.
1980 - This recommendation received 681 votes making it the Number 7 recommendation.

Congressional Action

- As part of the Balanced Budget Act of 1995, Congress passed significant capital-gains tax reform provisions that would dramatically improve investment in small business.

- Please see the discussion of NCRA #242 and #390 in the Taxation section, below, for a complete overview of the congressional action concerning capital-gains tax reform.

Action by the Administration

- President Clinton vetoed the capital-gains tax reforms that were included in the Balanced Budget Act despite their beneficial effects on small business.

7. Performance of Financial Institutions under the Community Reinvestment Act (NCRA #28)

Votes received: 554

Rank: 60

Previous White House Conferences:

1986 - This recommendation was not included in the top 60 recommendations.

1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Banking and Financial Institutions introduced legislation that would prohibit new Community Reinvestment Act (CRA) regulations from imposing additional recordkeeping requirements on banks. In addition, the legislation would stipulate that CRA loans may not be made on the basis of any discriminatory criteria and that they not jeopardize bank safety and soundness.

Action by the Administration

- Congressionally mandated changes to banking regulations, including requirements that banks keep and collect data on small business lending, were implemented.

COMMUNITY DEVELOPMENT

1. Entrepreneurship Education (NCRA #41)
Votes received: 1035
Rank: 27
Previous White House Conferences:
1986 - This recommendation received 1161 votes making it the Number 6 recommendation.
1980 - This recommendation received 95 votes making it the Number 46 recommendation.

Congressional Action

- The Congress enacted the School to Work Act in 1994, which largely implemented the provisions of this recommendation.
- For fiscal year 1996, the Congress tripled the size of School to Work from previous levels and refused the Administration request to eliminate the Tech Prep program.

Action by the Administration

- President Clinton vetoed the fiscal 1996 appropriations bill for the School to Work Act, forcing the program to be funded on an interim basis under continuing resolutions.
- The Administration has implemented the School to Work Act, but tried to eliminate the Tech Prep program that aids secondary school students in gaining workplace skills.

Laws Enacted

- Appropriation legislation for fiscal year 1996 funding the School to Work Act.

2. Home-Office Deduction (NCRA #34)
Votes received: 1239
Rank: 20

Previous White House Conferences:
1986 - This recommendation received 858 votes making it the Number 21 recommendation.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Early in the 104th Congress, legislation was introduced as part of the Contract With America that would revitalize the home-office deduction after it was narrowed by the U.S. Supreme Court in *Commissioner v. Soliman*, 113 S. Ct. 701 (1993). The legislation, which became part of H.R. 1215, statutorily clarified the definition of "principal place of business" to include a home office used by a taxpayer to conduct administrative or management activities. The special rule permitting the deduction of storage costs for product samples was also clarified.

- As one of its first actions, the House Committee on Small Business held a hearing on the restoration of the home-office deduction and the need for immediate legislative action given the on-going shift in the marketplace to home offices. For further information, please refer to Committee publication number 104-3.

- Similarly, the Senate Committee on Small Business has held several hearings on the issues affecting home-based businesses, including the effects of the *Soliman* decision on businesses operating out of the home.

- Following the hearings, the House passed the home-office provisions from H.R. 1215 as part of the balanced-budget legislation in the Fall of 1995. While the provisions reversing the *Soliman* decision were not included in the presidentially vetoed Balanced Budget Act of 1995, the clarification of the special rule for product samples was included in the Act.

- The Small Business Jobs Protection Act of 1996 (H.R. 3448) also includes provisions to clarify the treatment of product-sample storage costs. H.R. 3448 was passed by the House on May 22, 1996 by a vote of 414-10.

Action by the Administration

- President Clinton vetoed the home-office provisions contained in the Balanced Budget Act of 1995.

- The Clinton Administration's Internal Revenue Service (IRS) continues to aggressively pursue the narrowed home-office deduction created by the *Soliman* decision, thereby denying many small, home-based businesses access to this important incentive.

3. Community Reinvestment Act (NCRA #31)
Votes received: 949
Rank: 37/38 (tie vote with NCRA #103)
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Congress passed several tax-relief measures in the Balanced Budget Act of 1995 to encourage economic growth that would benefit distressed urban and rural areas. These initiatives include the Work Opportunity Tax Credit to replace the expired Targeted Jobs Tax Credit, reform and expansion of the Earned Income Tax Credit, and a reduction in the capital-gains tax rate for businesses and individuals.

- Several legislative proposals have been introduced in the House and the Senate to enhance the presence and creation of small businesses in distressed urban and rural areas by providing, among other things, tax and regulatory incentives for small businesses in such locations. Relevant initiatives introduced in the House include H.R. 1072, sponsored by Rep. Franks (R-CT), and H.R. 2713, sponsored by Rep. Riggs (R-CA), and in the Senate, S. 1574, sponsored by Senator Bond (R-MO), S. 1252, sponsored by Senator Abraham (R-MI), S. 17, sponsored by Senator Specter (R-PA), and S. 743, sponsored by Senator Hutchison (R-TX).

- In May 1996, Reps. Watts (R-OK) and Talent (R-MO) introduced the Saving Our Children: Renewing American Communities Act of 1996 (H.R. 3467). H.R. 3467 would create up to 100 renewal communities to foster economic growth in urban and rural distressed areas through, among other things, Federal, state, and local incentives for small business. The bill also establishes educational choice scholarship programs, fosters private charitable giving, and encourages drug treatment and counseling programs.

- Legislation is pending in both Houses regarding the Community Reinvestment Act.

Action by the Administration

- President Clinton vetoed the small-business development provisions that were included in the Balanced Budget Act.

- The Clinton Administration proposed in its fiscal year 1997 budget submission a new round of 105 Enterprise Zones and Empowerment Communities, and greater funding for the Community Development Financial Institutions Fund.

- The Administration has also endorsed the Community Reinvestment Act to encourage investment in distressed neighborhoods by financial institutions, and the SBA micro-loan program, which serves small minority- and women-owned businesses.

4. Competition for Jobs and Business (NCRA #44)
Votes received: 598
Rank: 56
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Congress has not yet acted on this issue.

Action by the Administration

- The President claims that his Administration is not able to address this issue as it is a legislative matter. Accordingly, there have been no interim regulatory measures to correct abuses.

ENVIRONMENTAL POLICY

1. Cost-Benefit Analysis of Environmental Regulations (NCRA #51)
Votes received: 1342
Rank: 9
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- At the outset of this Congress, H.R. 9 was introduced as part of the Contract With America. Title III of H.R. 9 contained regulatory reform provisions requiring risk assessments and real science analysis of regulatory options.

- After hearings in the House Committee on Commerce and the House Committee on Science, legislation was approved, and the combined efforts of these two committees led to H.R. 1022, which was brought to the House floor and passed.

- Title VII of H.R. 9, which contained cost-benefit analysis requirements patterned after the Reagan Administration executive order on regulatory reform (E.O. 12291), was the subject of two days of hearings before the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary. Title VII of H.R. 9 became Title II of H.R. 926, which was considered by the full House on March 1, 1995, and passed by a vote of 415 to 15. These measures (H.R. 1022 and H.R. 926) were then recombined with other portions of H.R. 9, and H.R. 9, as amended, was passed by the full House on March 3, 1995.

- In the Senate, Senator Dole (R-KS) introduced omnibus regulatory-reform legislation early in the 104th Congress. S. 343 contained provisions addressing risk assessment and cost-benefit analysis similar in many respects to H.R. 1022 and H.R. 926. Unfortunately, S. 343 was the victim of a Democrat-led filibuster in the Senate. After several failed cloture votes during the Summer and Fall of 1995, and the threat of a Presidential veto, further consideration of this legislation was deferred.

Action by the Administration

- President Clinton threatened to veto these legislative initiatives because of objections to the cost-benefit requirements and judicial review provisions (which passed the House by a vote of 415 to 15).

2. **Small-Business Property Rights and Takings (NCRA #57)**
Votes received: 1118
Rank: 22
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- At the beginning of the 104th Congress, H.R. 9 was introduced as part of the Contract With America. Title IX of H.R. 9 addresses most of the issues raised by this recommendation. The Subcommittee on the Constitution of the House Committee on the Judiciary held hearings on Title IX, and, on the basis of those hearings, Rep. Canady (R-FL) introduced H.R. 925. The Committee on the Judiciary approved H.R. 925 in February of 1995, and it was passed by the full House on March 3, 1995.

- In the Senate, Senator Dole (R-KS) introduced the Omnibus Property Rights Act of 1995 (S. 605) early in the 104th Congress. This legislation addresses most of the issues raised by the NCRA #57. The Senate Committee on the Judiciary approved S. 605 on March 1, 1996, and the measure awaits consideration by the full Senate

Action by the Administration

- The Administration opposes these important legislative efforts to protect small businesses' property rights, and President Clinton has threatened to veto any takings legislation.

3. **Superfund Reform (NCRA #63)**
Votes received: 1371
Rank: 5/6 (tie vote with NCRA #87)
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The issue of Superfund reform has been one of the key environmental issues before Congress over the past several years. In October of 1995, the House Committee on Small Business held an oversight hearing on the effects of

superfund liability on small business to further efforts to reform Superfund and reduce its detrimental effects on small business. For further information, please refer to Committee publication number 104-55.

- In the 104th Congress, a number of Superfund reform bills have been introduced in the House, most notably H.R. 2256, sponsored by Rep. Zeliff (R-NH), and H.R. 2500, sponsored by Rep. Oxley (R-OH). On November 9, 1995, H.R. 2500 was approved by the Subcommittee on Commerce, Trade, and Hazardous Materials of the House Committee on Commerce. Full Commerce Committee consideration has not, as yet, been scheduled.

- In the Senate, Senator Smith (R-NH) has introduced S. 1285 to address the needs for Superfund reform. Hearings have been held before the Subcommittee on Superfund, Waste Control, and Risk Assessment of the Senate Committee on Environment and Public Works.

Action by the Administration

- President Clinton has threatened to veto legislation that would reform Superfund and address the significant burdens that Superfund imposes on small businesses.

4. EPA Reform (NCRA #74)
Votes received: 911
Rank: 43
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Senator Bond (R-MO), Chairman of the Senate Committee on Small Business, made regulatory-enforcement reforms a top priority in his creation of the Small Business Regulatory Enforcement Fairness Act (S. 942). That legislation passed the Senate in March of 1996 by a vote of 100 to 0 and was referred to the House. The House passed the Senate measure, with few modifications, as Title II of the Contract With America Advancement Act on March 28, 1996. The Senate approved the House passed version by voice vote the next day, and it was signed into law on the same day, March 29, 1996.

- Subtitle B of the Small Business Regulatory Enforcement Fairness Act (Title II of Public Law 104-121) contains the key provisions that address regulatory-enforcement reforms. The legislative history for Title II of Public Law 104-121

can be found in the April 19, 1996 edition of the *Congressional Record* starting at page E571.

- On April 24, 1996, Rep. Gekas (R-PA) introduced the Regulatory Fair Warning Act (H.R. 3307). Among other things, H.R. 3307 would preclude an agency or court from imposing civil or criminal sanctions for the violation of a rule if it is found that the rule and other related policy statements published in the *Federal Register* failed to give the regulated person or entity fair warning of the conduct that the rule prohibits. H.R. 3307 is based in part on an amendment offered by Senator Hutchison (R-TX) during the consideration of S. 343 on the Senate floor in July of 1995. Senator Hutchison's amendment passed by a vote of 80 to 0. Unfortunately the full Senate did not act on S. 343 due to a Democrat-led filibuster.

- The Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary held hearings on H.R. 3307 on May 2, 1996, at which the Administration stated that it opposes this legislation.

Action by the Administration

- The Contract With America Advancement Act (containing the Small Business Regulatory Enforcement Fairness Act) was signed by the President on March 29, 1996.

- The Administration opposes H.R. 3307 and, for the most part, every other regulatory-reform measure currently pending before Congress.

Laws Enacted

- Public Law 104-121 (specifically, Subtitle B of Title II).

HUMAN CAPITAL

1. Health-Care Reform (NCRA #87)
Votes received: 1371
Rank: 5/6 (tie vote with #63)
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The Republican-led House and Senate recognize that individual taxpayers are best equipped to manage their own affairs. Accordingly, a provision was included in the presidentially-vetoed Balanced Budget Act of 1995 to provide for so-called "Medical Savings Accounts," or MSAs, which allow individuals to make tax-deductible contributions to their accounts and qualified tax-free withdrawals for medical payments.

- In the Spring of 1996, Congress passed legislation to provide market-based reforms to make health insurance more affordable and accessible. The Health Coverage Availability and Affordability Act (H.R. 3103) and the Health Insurance Reform Act of 1995 (S. 1028) each include provisions to make health insurance more portable and incentives for small businesses to purchase and provide affordable health insurance for their employees. Both measures also include provisions to guarantee coverage for individuals with pre-existing conditions.

- The House also included in H.R. 3103 provisions for MSAs to once again give individual taxpayers the opportunity to manage their own health-care. The Senate narrowly defeated an amendment to provide MSAs in their measure. S. 1028, however, includes language encouraging the future consideration and implementation of MSAs. A House-Senate conference is currently underway to resolve the differences between H.R. 3103 and S. 1028.

- The House Committee on Small Business, and several other Congressional committees, have held detailed hearings on health-reform issues, such as the deductibility of health insurance by the self-employed. For further information on the hearings held by the House Committee on Small Business, please refer to Committee publication 104-4.

- The House and Senate measures (H.R. 3103/S. 1028) also contain provisions to raise the deductibility of health-insurance by the self-employed. Please refer to NCRA #78 in this section, below, for a more detailed discussion of this issue.

Action by the Administration

- President Clinton vetoed the medical-savings-account provisions in the Balanced Budget Act.

- President Clinton has threatened to veto these popularly supported health-reform measures as contained in H.R. 3103, even though he vowed to support S. 1028 during his State of the Union address before Congress in January, 1996.

- President Clinton supports his own bureaucracy-laden plan that scraps the most effective health-care delivery system in the world with an untested, comprehensive, and very expensive alternative.

2. Pension Reform (NCRA #91)
Votes received: 1369
Rank: 7
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Small Business has taken a leading role in efforts to enact pension reform and simplification legislation that will facilitate small businesses that want to provide pension benefits to their employees and that will foster greater retirement savings for all Americans. Towards that end, the Committee held a hearing in the Fall of 1995 on the various pension reform and simplification proposals under consideration in both houses of Congress. For further information, please refer to Committee publication number 104-48.

- As part of the balanced budget legislation, the House Committee on Ways and Means approved, and the House passed, significant portions of the Pension Simplification Act of 1995 (H.R. 2037/S. 1006), sponsored by Reps. Portman (R-OH) and Cardin (D-MD) in the House and Senators Pryor (D-AR) and Hatch (R-UT) in the Senate.

- In the Fall of 1995, the Republican-led Congress passed, and President Clinton vetoed, the Balanced Budget Act, which included among other provisions:
  * a simplified small-business pension plan known as SIMPLE (Savings Incentive Match Plans for Employees),
  * voluntary safe-harbors for 401(k) plans,
  * repeal of the family-aggregation rules,

* expansion of the deductibility limits for IRAs,
* a simplified definition of highly compensated employees, and
* repeal of the minimum participation rules for defined contribution plans.

- The House also passed pension-simplification provisions similar to those included in the vetoed Balanced Budget Act as part of the Small Business Job Protection Act of 1996 (H.R. 3448) on May 22, 1996.

Action by the Administration

- President Clinton vetoed the small-business pension-reform provisions included in the Balanced Budget Act.

- The Clinton Administration has offered a pension-simplification proposal, a majority of which consists of provisions introduced by the Republican-led Congress that were vetoed by President Clinton in the Balanced Budget Act as well as provisions that result in new employer mandates on small business.

3. Health-Care Deduction for the Self-Employed (NCRA #78)
Votes received: 1283
Rank: 15
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Small Business held hearings on deductibility of health-insurance premiums by the self-employed during the Spring of 1995. For further information, please refer to Committee publication number 104-4.

- Early in the 104th Congress, Rep. Meyers (R-KS), Chair of the House Committee on Small Business, introduced legislation that served as the basis for the law that was ultimately enacted to make permanent the deduction for health-insurance premiums for the self-employed. The law also increased the deduction to 30% beginning in 1995.

- A number of bills have been introduced in both the House and the Senate that would further increase the deductibility of health insurance by the self-employed, including H.R. 1034, sponsored by Rep. Meyers (R-KS), which would increase the deduction limitation from the current level to 100 percent over the next four years. Several similar measures to raise the deductibility limit have also been

introduced in the House such as H.R. 2435, sponsored by Rep. Kelly (R-NY), and H.R. 696, sponsored by Rep. Bartlett (R-MD). In the Senate, such measures include S. 18, sponsored by Senator Specter (R-PA), and S. 262, sponsored by Senator Grassley (R-IA).

- In the Fall of 1995, the Congress passed, and President Clinton vetoed, the Balanced Budget Act, which would have raised the limitation on the amount that self-employed individuals can deduct with respect to their health-insurance premiums to 50% over seven years.

- Currently, a House-Senate conference committee is resolving differences between the House's Health Coverage Availability and Affordability Act (H.R. 3103) and the Senate's Health Insurance Reform Act of 1995 (S. 1028), both of which include much needed provisions to raise the limit on health-insurance deductibility for the self-employed -- the House bill would raise the limit to 50% while the Senate bill would raise it to 80%.

Action by the Administration

- The act passed by the Congress to make permanent the health-insurance deduction for the self-employed and raise the limit to 30% was signed by the President.

- President Clinton vetoed the increase to 50% in the health-insurance deduction limit included in the Balanced Budget Act.

- The Clinton Administration has threatened to veto the current health-insurance reform legislation (H.R. 3103/S. 1028), which includes increased deductibility of health-insurance costs.

Laws Enacted

- Public Law 104-7 made permanent the deduction for health-insurance premiums for the self-employed and raised the limitation to 30% beginning in 1995.

4. Affirmative Action Programs (NCRA #103)

Votes received: 949

Rank: 37/38 (tie vote with NCRA #31)

Previous White House Conferences:

1986 - This recommendation received 413 votes making it the Number 52 recommendation.

1980 - This recommendation received 472 votes making it the Number 14 recommendation.

Congressional Action

- The Committee on Small Business has held hearings regarding reform of the SBA's 8(a) program to prevent abuse and to increase opportunities for all small businesses in government procurement. The Committee's Subcommittee on Regulation and Paperwork has also held a hearing on regulatory barriers to minority entrepreneurs. For further information, please refer to Committee publication numbers 104-32 and 104-59.

- Please refer to NCRA #161 in the Procurement section, below, for a complete discussion of congressional action with respect to the 8(a) program.

Action by the Administration

- The Administration suspended the Department of Defense minority business set-aside program and implementation of the civilian agency set-aside program. The Administration is also promoting the elimination of many small business contracting provisions that would have a direct negative effect on women and minority business.

5. Labor Law Reform (NCRA #105)
Votes received: 655
Rank: 55
Previous White House Conferences:
1986 - This recommendation received 395 votes making it the Number 54 recommendation.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Early in the 104th Congress, Senator Faircloth (R-NC) introduced the National Right to Work Act (S. 581). Among other things, this legislation gives an individual the right not to join a union and prohibits discrimination against those who choose not to join a union. A hearing was held on S. 581 before the Senate Committee on Labor and Human Resources on March 15, 1996. Further activity on this legislation has yet to be scheduled.

- On the same day that S. 581 was introduced in the Senate (March 21, 1995), Rep. Goodlatte (R-VA) introduced a companion bill in the House, H.R. 1279, which is also entitled the National Right to Work Act. H.R. 1279 has been referred to the

Committee on Economic and Educational Opportunities and the Committee on Transportation and Infrastructure for consideration.

Action by the Administration

- The Clinton Administration is opposed to right-to-work legislation.

6. National Labor Relations Act (NCRA #203)
Votes received: 591
Rank: 57
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- In the House, H.R. 743 was introduced by Rep. Gunderson (R-WI) early in the 104th Congress. Companion legislation, S. 295, was introduced by Senator Kassebaum (R-KS) in the Senate. These measures seek to clarify that teams of managers and employees can work together to resolve issues involving terms and conditions of employment in non-unionized companies. H.R. 743 was passed by the House on September 27, 1995. Hearings have been held on S. 295 by the Senate Committee on Small Business and the Senate Committee on Labor and Human Resources.

- In the Fall of 1995, Rep. Hoekstra (R-MI) introduced H.R. 2497, which would prohibit union solicitation on company property, while allowing for solicitations by charitable, civic and religious groups.

- In addition to these measures, Rep. Fawell (R-IL) introduced H.R. 3211 on March 26, 1996. This bill is designed to curb the practice of "salting," whereby union organizers apply for jobs with non-union employers with the intent of organizing workers from within the company. Both H.R. 2497 and H.R. 3211 have been referred to the House Committee on Economic and Educational Opportunities.

- A joint field hearing was held on the issue of "salting" in Kansas City, Kansas in April of 1996 by the House Committee on Small Business and the House Committee on Economic and Educational Opportunities. The Committees heard from a number of small businesses about the detrimental effects of "salting" both in terms of disruption to the small business' production efforts as well as the significant legal costs required to defend against frivolous litigation that often ensues.

Action by the Administration

- The Clinton Administration is opposed to all of these efforts to make meaningful reforms to the National Labor Relations Act.

7. Privatization of Social Security (NCRA #324)
Votes received: 818
Rank: 47
Previous White House Conferences:
1986 - A recommendation to reform Social Security received 1152 votes making it the Number 8 recommendation.
1980 - This recommendation received 675 votes making it the Number 8 recommendation.

Congressional Action

- In the House, the Social Security Individual Retirement Account Act of 1996 (H.R. 2971) and the Individual Social Security Retirement Account Act of 1995 (H.R. 2952) have been introduced by Reps. Thomas (R-CA) and Porter (R-IL), respectively. In general, both bills amend the Internal Revenue Code of 1986 and the Social Security Act to provide for the establishment of individual retirement accounts (IRAs) funded by Social Security payroll deductions.

- The Strengthening Social Security Act of 1995 (S. 825) has been introduced in the Senate by Senators Simpson (R-WY) and Kerry (D-MA). Like H.R. 2971 and H.R. 2952, this bill provides for the establishment of IRAs funded by Social Security payroll tax deductions.

Action by the Administration

- The Social Security Advisory Council, the members of which are appointed by President Clinton, is currently in a state of gridlock over what changes to recommend regarding the program. A report from the Council was due on January 1, 1995 but has yet to be submitted. The report is now expected to be released in mid-June of 1996.

8. Job Training (NCRA #336)
Votes received: 974
Rank: 33/34 (tie vote #250)

Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Both the House and the Senate passed comprehensive legislation (H.R. 1617 and S. 143) to consolidate and provide block grants to the states, or provide individual vouchers, for many of the existing bureaucratic and inefficient Federal education, training, and employment-assistance programs. The House and the Senate are working on a final bill to be sent to and signed by the President.

- The House and the Senate included a provision in the Balanced Budget Act of 1995, which was vetoed by President Clinton, that would have reformed and replaced the Targeted Jobs Tax Credit with the Work Opportunity Tax Credit to provide incentives to employers to assist disadvantaged individuals with finding meaningful employment.

- The Work Opportunity Tax Credit is also included in the Small Business Job Protection Act of 1996 (H.R. 3448), which the House passed on May 22, 1996.

Action by the Administration

- The Administration made several recommendations in its fiscal year 1996 budget submission such as the "GI Bill for American Workers." However, President Clinton never submitted a specific, formal legislative proposal to be seriously considered by Congress.

- As noted above, President Clinton vetoed the Balanced Budget Act, which included the Work Opportunity Tax Credit.

INTERNATIONAL TRADE

1. Export Assistance (NCRA #121)
Votes received: 1329
Rank: 11
Previous White House Conferences:
1986 - This recommendation received 1173 votes making it the Number 5 recommendation.
1980 - This recommendation received 68 votes making it the Number 52 recommendation.

Congressional Action

- Included in the Balanced Budget Act of 1995 were provisions to consolidate and streamline Federal trade functions under the United States Trade Representative's office. However, this language was removed by the Senate in its version of the budget reconciliation bill.

- Language to accomplish this goal was also included in the debt-extension measure (H.R. 2586) that was approved by the House in November of 1995.

- Several hearings were held by the House Committee on Small Business' Subcommittee on Procurement, Exports and Business Opportunities, and other Congressional committees, reaffirming the positive contribution and efficacy of Federal export and trade promotion programs and agencies. For further information on the House Committee on Small Business' and its Subcommittee's hearings, please refer to Committee publication numbers 104-22, 104-28, 104-30, 104-34, 104-49, and 104-53.

Action by the Administration

- Since 1994, the Administration has created 15 U.S. Export Assistance Centers (USEAC) nationwide that offer export-promotion services.

2. Export Financing (NCRA #129)
Votes received: 1181
Rank: 21

Previous White House Conferences:
1986 - This recommendation received 1173 votes making it the Number 5 recommendation.
1980 - This recommendation received 53 votes making it the Number 54 recommendation.

Congressional Action

- The Republican-led Congress is committed to ensuring that better global opportunities exist for American small businesses. To this end, Congress has consistently provided funding for Federal export assistance and trade promotion programs. The 103rd Congress also passed, with crucial Republican support, both NAFTA and GATT, comprehensive trade acts to enhance economic growth and export opportunities.

- The Balanced Budget Act of 1995, which was vetoed by the President, included a two-year retroactive extension of the Generalized System of Preferences (GSP) until 1998. Legislation is currently pending in both Houses to extend the GSP.

- Congress recognizes the concern of the small-business community with respect to the Export-Import Bank of the U.S. and will seek to ensure that Ex-Im provides adequate and expanded assistance to American small businesses.

- To maintain fiscal integrity, Congress was forced to lower the subsidy level for the Export Working Capital Fund (EWCF) program. However, Congress included language to ensure the careful monitoring of this program by the SBA.

Action by the Administration

- President Clinton vetoed the retroactive extension of the Generalized System of Preferences that was included in the Balanced Budget Act of 1995.

3. **Intellectual Property Protection (NCRA #115)**
Votes received: 1080
Rank: 23
Previous White House Conferences:
1986 - This recommendation received 1034 votes making it the Number 15 recommendation.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Several patent bills are currently pending in the House and Senate. H.R. 359, introduced by Rep. Rohrabacher (R-CA), appears to capture the primary concerns of this recommendation with respect to patent terms and disclosure issues. H.R. 359 has been the subject of hearings by at least four House committees (or their subcommittees), including the House Committee on Small Business. On May 15, 1996, the Subcommittee on Courts and Intellectual Property of the House Committee on the Judiciary voted against approval of H.R. 359.

- The Subcommittee on Courts and Intellectual Property did, however, approve a modified version of H.R. 1733 (introduced by Rep. Moorhead (R-CA)), along with four other patent bills -- H.R. 1659, H.R. 1732, H.R. 2235, and H.R. 2419, each sponsored by Rep. Moorhead. These five bills have been combined into a new legislative measure -- H.R. 3460 -- in anticipation of the imminent consideration of these patent issues by the full House Committee on the Judiciary.

- Several copyright issues of importance to small business, in addition to a number of trademark issues, are also pending before the House and Senate at this time.

Action by the Administration

- None.

MAIN STREET

1. Barriers to Franchisees, Dealers and Product Distributors (NCRA #130)
Votes received: 997
Rank: 31
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- In the House, Rep. LaFalce (D-NY) introduced H.R. 1717 in May of 1995. It is similar to legislation that he introduced in the 103rd Congress. The bill was referred to the House Committee on the Judiciary.

Action by the Administration

- The Administration has not officially taken a position on H.R. 1717.
- The Federal Trade Commission's Trade Regulation Rule concerning franchising is currently under review by the Commission.
- The Chief Counsel for Advocacy of the Small Business Administration has been giving speeches throughout the country promoting the underlying issues connected with this recommendation.

2. Barriers to Small-Business Litigation (NCRA #134)
Votes received: 930
Rank: 40
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Certain provisions contained in H.R. 1717 address this issue. Please see the discussion of NCRA #130 in this section, above.

Action by the Administration

- Please see the discussion of NCRA #130 in this section, above.

3. Disaster and Casualty Insurance (NCRA #140)
Votes received: 841
Rank: 45
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The Bipartisan Congressional Task Force on Disasters is completing its work to develop a final legislative proposal that addresses this recommendation.

Action by the Administration

- None.

4. Antitrust Reform (NCRA #141)
Votes received: 829
Rank: 46
Previous White House Conferences:
1986 - This recommendation received 347 votes making it the Number 23 recommendation.
1980 - This recommendation received 138 votes making it the Number 40 recommendation.

Congressional Action

- A number of legislative proposals concerning the antitrust laws have been introduced in both houses of Congress and are currently pending before the committees of jurisdiction.

Action by the Administration

- The Federal Trade Commission held a series of conferences during late 1995 that focused on many antitrust issues, including some of concern to the small-business community.

5. **Small-Business Relief Fund (NCRA #139)**
Votes received: 590
Rank: 58
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- This issue has not been addressed by the Congress.

Action by the Administration

- The Administration has not taken any action with respect to this recommendation.

PROCUREMENT

1. Government and Non-Profit Competition (NCRA #144)
Votes received: 1285
Rank: 14
Previous White House Conferences:
1986 - This recommendation received 1267 votes making it the Number 3 recommendation.
1980 - This recommendation received 352 votes making it the Number 24 recommendation.

Congressional Action

- Legislation was introduced early in the 104th Congress that addresses this recommendation, including the Freedom from Government Competition Act (H.R. 28), sponsored by Rep. Duncan (R-TN).

- The National Defense Authorization Act for fiscal year 1996 (H.R. 1530) also included a series of provisions fostering contracting-out of various services required by the Department of Defense.

- The House Committee on Small Business is currently preparing legislation that addresses the detrimental competition to small business created by the Federal Prison Industries.

Action by the Administration

- The Administration has completed a revision of OMB Circular A-76 (Reliance on the Private Sector), which was severely criticized by the Business Coalition for Fair Competition (BCFC) as creating substantial new barriers to future contracting-out of commercial and industrial activities being undertaken by Federal agencies that could be better performed by private-sector firms, including small businesses.

Laws Enacted

- Public Law 104-106, the National Defense Authorization Act for Fiscal Year 1996, contains a number of provisions from the House bill fostering private-sector performance of specific services now being performed by Department of Defense personnel as well as broad policy direction to the Secretary of Defense regarding reliance on the private sector to meet Defense Department needs for products and services.

2. Davis-Bacon and Service Contract Acts (NCRA #164)

Votes received: 1046

Rank: 25/26 (tie vote with NCRA #188)

Previous White House Conferences:

1986 - This recommendation received 1156 votes making it the Number 7 recommendation.

1980 - This recommendation received 441 votes making it the Number 16 recommendation.

Congressional Action

- Early in the 104th Congress, Rep. Ballenger (R-NC) introduced H.R. 500, which would repeal the Davis-Bacon Act. The Subcommittee on Workforce Protections of the House Committee on Economic and Educational Opportunities approved the bill on March 2, 1995. The legislation currently awaits action by the full House Committee on Economic and Educational Opportunities.

- In the Senate, S. 141 was introduced by Senator Kassebaum (R-KS), which would also repeal the Davis-Bacon Act. The Senate Committee on Labor and Human Resources approved the bill on March 29, 1995, and it is currently pending before the full Senate.

- Repeal of the Service Contract Act is addressed by H.R. 246, sponsored by Rep. Fawell (R-IL). H.R. 246 was approved by the Subcommittee on Workforce Protections of the House Committee on Economic and Educational Opportunities on March 2, 1995, and is currently pending before the full House Committee on Economic and Educational Opportunities.

Action by the Administration

- The Clinton Administration has expressed support for H.R. 967, sponsored by Rep. Clay (D-MO), to reform the Davis-Bacon Act. This legislation is vigorously opposed by the small-business community as an expansion of the reach of the Davis-Bacon Act.

- The Administration also vigorously opposes a simple increase in the thresholds of the Davis-Bacon Act ($2,000) and the Service Contract Act ($2,500) to the new Simplified Acquisition Threshold ($100,000), which President Clinton otherwise supported as part of the Federal Acquisition Streamlining Act of 1993 (S. 1587) to simplify the procedures for the solicitation and award of smaller dollar value contracts.

3. Certification for Small and Disadvantaged Businesses (NCRA #153)
Votes received: 968
Rank: 35
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- An amendment offered by Senator Hutchison (R-TX) was included in the Federal Acquisition Streamlining Act (S. 1587), which established an interagency task force to conduct a comprehensive review, with extensive opportunities for public participation, and then make recommendations that should provide the analytical framework for implementation of this recommendation.

Action by the Administration

- The Administrator for Federal Procurement Policy in the Office of Management and Budget is required to submit the report and recommendations required by the Federal Acquisition Streamlining Act to the Committees on Small Business in both the House and Senate during May of 1996.

Laws Enacted

- The Hutchison Amendment was included as Section 7107 of Public Law 103-355, the Federal Acquisition Streamlining Act of 1994.

4. Small- and Disadvantaged-Business Procurement (NCRA #360)
Votes received: 954
Rank: 36
Previous White House Conferences:
1986 - This recommendation received 948 votes making it the Number 18 recommendation.
1980 - This recommendation received 472 votes making it the Number 14 recommendation.

Congressional Action

- The Committees on Small Business in both the House and Senate strongly advocated that the concerns of the small-business community be addressed during the consideration of the bills that ultimately became Public Law 103-355, the

Federal Acquisition Streamlining Act of 1994. For further information on the House Committee on Small Business' oversight activities in this area during the 104th Congress, please refer to Committee publication number 104-41.

- Senators Hutchison (R-TX) and Mosley-Braun (D-IL) offered an amendment to the Federal Acquisition Streamlining Act of 1993 (S. 1587) to establish a 5% goal for the participation in Federal prime-contract and subcontract opportunities by small-business concerns owned and controlled by women.

- During the first session of the 104th Congress, the House Committee on Small Business conducted two hearings to provide the small-business community with the opportunity to express its deep concerns with the Federal Acquisition Reform Act of 1995 (H.R. 1670), and subsequently helped to foster some significant modifications in the bill before it was enacted as part of the National Defense Authorization Act for Fiscal Year 1996. The Committee and its Subcommittee on Government Programs also held hearings to review more broadly the SBA's procurement assistance programs and barriers to small business' participation in Federal procurement opportunities. For further information, please refer to Committee publication numbers 104-14, 104-36, 104-44 and 104-46.

- The House Committee on Small Business has also actively pursued the Administration's "contract bundling" actions, especially with respect to Federal contracts for air-freight shipping, moving household-goods of military personnel, and office-supply purchases. As part of these efforts, the Committee on Small Business has held hearings on the detrimental effects of contract bundling on small business and ways to achieve the governments cost-reduction goals without forcing small enterprises out of business. For further information, please refer to Committee publication number 104-52.

Action by the Administration

- In furtherance of recommendations from the career bureaucracy incorporated in the Vice President's National Performance Review, the Clinton Administration's Administrator for Federal Procurement Policy has advanced "procurement streamlining" initiatives through legislative proposals and regulatory changes that make the Federal procurement process easier for the Government's contracting officers, but generally less open and less fair for firms seeking to market goods and services to the Government, especially small firms.

- The Clinton Administration has encouraged agency initiatives at contract bundling, which eliminate small firms as prime contractors, while undercutting existing statutory requirement to foster small-business participation as subcontractors.

Laws Enacted

- Public Law 103-355, the Federal Acquisition Streamlining Act of 1994, which included Section 7106 (Procurement Goals for Small Business Concerns Owned by Women) that established a 5% goal for prime contract and subcontract participation by small businesses owned and controlled by women.

- Public Law 104-106, the National Defense Authorization Act for Fiscal Year 1996, which modified the Federal procurement process.

5. Prompt Payment Act (NCRA #167)
Votes received: 846
Rank: 44
Previous White House Conferences:
1986 - This recommendation received 652 votes making it the Number 32 recommendation.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The Federal Acquisition Streamlining Act of 1993 (S. 1587) included provisions that: (1) provide some additional payment protections to non-construction subcontractors, related to those extended to construction subcontractors by the Prompt Payment Act Amendments of 1988 (Public Law 100-496); and (2) require payment within 15 days of performance (instead of 30 days) for purchases below the Simplified Acquisition Threshold ($100,000) that were awarded through so-called Simplified Acquisition Procedures.

Action by the Administration

- The Clinton Administration vigorously opposed the provisions in S. 1587 that provide non-construction subcontractor additional payment protections and "fast pay" for purchases made through Simplified Acquisition Procedures.

Laws Enacted

- Public Law 103-355, the Federal Acquisition Streamlining Act of 1994, includes Section 2091 (Government-wide Application of Payment Protections for Subcontractors and Suppliers), which provided some additional payment protections for non-construction subcontractors.

6. Reform of SBA's 8(a) Program (NCRA #161)

Votes received: 806

Rank: 48

Previous White House Conferences:

1986 - A similar recommendation received 413 votes making it the Number 52 recommendation.

1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Small Business has conducted oversight hearings on fundamental systemic problems that have persistently afflicted the SBA's 8(a) Program for almost two decades and that have resisted the sweeping reforms of the Program, which were adopted in Public Law 100-656, the Business Opportunity Development Reform Act of 1988. For further information on the hearings held by the full Committee and its Subcommittee on Regulation and Paperwork on this issue, please refer to Committee publication numbers 104-32 and 104-59.

- In light of continuing abuses of the limited and permissive authority granted to the SBA Administrator to make sole-source awards under the authority of Section 8(a) of the Small Business Act, Rep. Meyers (R-KS), Chair of the House Committee on Small Business, requested on December 13, 1995 that SBA Administrator Lader impose a moratorium on further sole-source 8(a) contract awards.

Action by the Administration

- In June of 1995, SBA published revised regulations addressing some of the most glaring loopholes opened by the SBA's 1989 regulations that implemented Public Law 100-656.

- SBA in cooperation with the Department of Justice is reviewing the 8(a) Program to determine what changes need to be made if the Program is to meet Constitutional muster in light of the 1995 Supreme Court decision in *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097 (1995), which requires all Federal raced-based preferential contracting programs to meet strict judicial scrutiny standards.

- In January of 1996, Administrator Lader refused Chairwoman Meyers' request for a moratorium on further sole-source 8(a) contracts.

- On May 23, 1996, the Department of Justice issued for public comment its "Proposed Reforms to Affirmative Action in Federal Procurement."

7. Affirmative Action and the *Adarand* Decision (NCRA #437)
Votes received: 751
Rank: 51
Previous White House Conferences:
1986 - There was no comparable recommendation.
1980 - There was no comparable recommendation.

Congressional Action

- The Committees on the Judiciary of both the House and Senate have held three hearings regarding the U.S. Supreme Court's 1995 decision in *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097 (1995), in which the Court held that Federal race-based preferential contracting programs would be measured against the same standard of strict judicial scrutiny as the Court previously applied to such preferential contracting programs of state and local governments in its 1989 decision in *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

- Please also see the discussion under NCRA #161 in this section, above.

Action by the Administration

- On March 7, 1995, President Clinton directed a White House Task Force to catalog and evaluate the performance of all the Federal Government's affirmative action programs. On July 19, 1995, a report on the Affirmative Action Review was submitted to the President.

- The Clinton Administration announced on July 19, 1995 that its position is "to mend, not end" Federal affirmative-action programs in response to the *Adarand* decision, including race-based preferential contracting programs. The Administration also directed the heads of all Executive Departments and agencies to conduct a review of all programs under their respective jurisdictions that "use race, ethnicity, or gender as a consideration" in light of the *Adarand* decision.

- On May 23, 1996, the Department of Justice issued for public comment its "Proposed Reforms to Affirmative Action in Federal Procurement."

REGULATION AND PAPERWORK

1. Regulatory Flexibility Act (NCRA #183)
Votes received: 1398
Rank: 3
Previous White House Conferences:
1986 - This recommendation received 1137 votes making it the Number 10 recommendation.
1980 - This recommendation received 471 votes making it the Number 15 recommendation.

Congressional Action

- At the outset of the 104th Congress, H.R. 9 (part of the Contract With America) was introduced, and Title VI of the bill contained specific legislation to strengthen the Regulatory Flexibility Act (RFA), including a provision for judicial review of agency compliance with the Act. Legislation to amend and strengthen the RFA was also introduced in the 102nd and 103rd Congresses. However, movement of those measures was consistently blocked by the Democratic Leadership of the House Committee on the Judiciary.

- Early in the 104th Congress, the House Committee on Small Business held two hearings on amending and strengthening the RFA. For further information, please refer to Committee publication numbers 104-5 and 104-10. Additionally, the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary held hearings on amending the RFA on February 3 and 6, 1995.

- As a result of their respective hearings on strengthening the RFA and other regulatory reform issues, Rep. Meyers (R-KS), Chair of the House Committee on Small Business and Rep. Gekas (R-PA), Chairman of the House Judiciary Subcommittee on Commercial and Administrative Law, introduced similar legislation (H.R. 937 and H.R. 926, respectively) modifying the RFA proposal contained in H.R. 9. On February 15, 1995, the Committee on Small Business approved H.R. 937, and the following day the Committee on the Judiciary approved H.R. 926. H.R. 937 was subsumed into H.R. 926 for consideration by the Committee on Rules. On March 1, 1996, H.R. 926 was considered by the full House and passed by a vote of 415 to 15.

- The Senate's consideration of amendments to the RFA was more attenuated than that in the House. Amendments to the RFA were originally contained in S. 343, the omnibus regulatory reform initiative sponsored by Senator Dole (R-KS). Hearings on strengthening and amending the RFA were held during the first

session of the 104th Congress by both the Senate Committee on Small Business and the Senate Committee on the Judiciary. Floor consideration of S. 343, however, was blocked by Senate Democrats, who threatened a filibuster in the Senate. After several failed cloture votes, S. 343 was placed on hold.

- Senator Bond (R-MO), Chairman of the Senate Committee on Small Business, continued to emphasize the need to strengthen the RFA. He introduced the Small Business Regulatory Enforcement Fairness Act (S. 942) and actively sought the assistance of the Senate Leadership in moving it through the Senate Committee on Small Business and on to eventual floor consideration. Senator Bond's efforts were successful, and by early March of 1996 his Committee approved S. 942.

- Senate floor consideration soon followed, and S. 942 passed by a vote of 100 to 0. S. 942 as passed was immediately sent to the House, and with some modifications, the measures originally contained in S. 942 were attached as one of the titles of the Contract With America Advancement Act (H.R. 3136). H.R. 3136 passed the House on March 28, 1996 and was sent back to the Senate, which passed the measure without changes on March 29, 1996.

Action by the Administration

- H.R. 3136, the Contract With America Advancement Act, passed by the Senate on March 29, 1996 (after House passage on March 28, 1996) was signed by President Clinton on March 29, 1996.

Laws Enacted

- The Small Business Regulatory Enforcement Fairness Act (part of the Contract With America Advancement Act) was enacted on March 29, 1996 and is Title II of Public Law 104-121. The amendments to the Regulatory Flexibility Act can be found in Subtitle D of Title II of the law. The legislative history for this new law can be found in the April 19, 1996 edition of the *Congressional Record* beginning at page E571.

2. Tort Reform (NCRA #200)

Votes received: 1332

Rank: 10

Previous White House Conferences:

1986 - This recommendation received 1419 votes making it the Number 1 recommendation.

1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- H.R. 10 was introduced at the outset of the 104th Congress as part of the Contract With America. Meaningful tort reform, particularly product-liability reform had been the subject of consistent Congressional interest for as far back as the 97th Congress.

- Ultimately, both the House and the Senate passed different forms of tort-reform legislation during the 104th Congress. The House bill, H.R. 956, became the core measure during the House/Senate Conference on tort reform. The House-Senate conference committee focused on delivering product-liability reform instead of the more expansive tort-reform measures originally contained in H.R. 10. The Conference Report to H.R. 956 was the result of considerable bipartisan and bicameral effort and passed both the House and the Senate by impressive margins.

- On May 9, 1996, the House attempted to override the President's veto of product-liability reform. Unfortunately, many House Democrats chose to support the President in his veto instead of supporting the interests of small business. The veto override was not successful.

Action by the Administration

- President Clinton vetoed the tort-reform legislation during the first week of May of 1996 despite its critical importance to small business.

3. Regulatory Compliance (NCRA #194)

Votes received: 1328

Rank: 12

Previous White House Conferences:

1986 - This recommendation received 1137 votes making it the Number 10 recommendation.

1980 - This recommendation received 564 votes making it the Number 12 recommendation.

Congressional Action

- The Small Business Regulatory Enforcement Fairness Act (S. 942), introduced by Senator Bond (R-MO), Chairman of the Senate Committee on Small Business, included several provisions to change the culture of agencies by requiring agencies to establish programs to reduce or waive fines for small businesses. S. 942 also contained provisions requiring agencies to set forth regulatory requirements in plain English so the regulated community (and primarily small

businesses) would more fully understand what was required of them. S. 942 also contained amendments to the Equal Access to Justice Act, which places small businesses on a better footing to recover legal fees in the event that they are victimized by regulators.

- The legislative activity and final passage of S. 942 are discussed under NCRA #183 in this section, above.

Action by the Administration

- H.R. 3136, which contained the regulatory-reform provisions of S. 942 as modified by the House, was signed into law by the President on March 29, 1996.

Laws Enacted

- Public Law 104-121 was enacted when the Contract With America Advancement Act was signed on March 29, 1996. Title II (particularly Subtitles A, B and C) of the law addresses many of the issues raised by NCRA #194.

4. Regulatory and Paperwork Reduction (NCRA #188)
Votes received: 1046
Rank: 25/26 (tie vote with NCRA #164)
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation received 471 votes making it the Number 15 recommendation.

Congressional Action

- Near the beginning of the 104th Congress, Rep. McIntosh (R-IN) introduced the Regulatory Sunset and Review Act of 1995 (H.R. 994). This innovative and much needed legislation was viewed by the business community as a watershed in bringing common sense to the regulatory process. H.R. 994 was approved by both the House Committee on Government Reform and Oversight and the House Committee on the Judiciary. However, no floor action was scheduled during the first session of the 104th Congress.

- Legislation similar to H.R. 994 was considered in the Senate by way of an amendment to S. 343 offered by Senator Abraham (R-MI) during floor debate of S. 343. Unfortunately, S. 343 was stalled by Senate Democrats who threatened a filibuster. After several failed cloture votes, further consideration of S. 343 was deferred.

- In late February of this year, the House was prepared to take up floor consideration of H.R. 994 as modified by the Committees referred to above. In proceedings before the House Committee on Rules, Regulatory Flexibility Act amendments and provisions addressing the Congressional review of major rules were added to the core provisions of H.R. 994. The new legislation, as shaped by the House leadership and the Rules Committee, was titled the Small Business Growth and Administrative Accountability Act. This legislation was slated for floor consideration during the first week of March of 1996. However, because of a Presidential veto threat, coupled with filibuster threats from Senate Democrats and a strong misinformation campaign by House Democrats, action on this important small business legislation was deferred.

- Also early in the 104th Congress, H.R. 9 was introduced, which contained provisions of the Contract With America, and Title V of the bill addressed the issue of paperwork reduction. The House Committee on Small Business held an oversight hearing on this critical issue for small business in January of 1995. For further information, please refer to Committee publication number 104-8.

- The House Committee on Government Reform and Oversight included many of the provisions of Title V of H.R. 9 when it approved the Paperwork Reduction Act of 1995 (H.R. 830), sponsored by Rep. Clinger (R-PA). H.R. 830 was passed by the House and Senate in the Spring of 1995 and signed into law on May 22, 1995.

- In December of 1995, Rep. Torkildsen (R-MA) introduced the Paperwork Elimination Act of 1995 (H.R. 2715), which would further strengthen the Paperwork Reduction Act, especially with respect to electronic filing of paperwork requirements. The Subcommittee on Government Programs of the House Committee on Small Business held hearings on the bill in March of 1996, and the full House Committee on Small Business unanimously approved the bill on March 29, 1996. The House unanimously passed H.R. 2715 on April 24, 1996, and the bill currently awaits action in the Senate.

- The House and Senate Committees on Small Business held a joint hearing in the Fall of 1995 to review the overall level of regulatory burdens on small business. For further information, please refer to House Committee on Small Business publication number 104-57.

- The House Committee on Small Business has also held a series of oversight hearings to take a critical look at the Administration's initiatives to reduce the regulatory burdens on small businesses. In particular, the Committee has focused on the minimal results of the Administration's efforts to reduce such burdens by eliminating or reinventing regulations in each Department and agency. For further

information, please refer to Committee publication numbers 104-39, 104-42. and 104-56.

Action by the Administration

- The President and others within the Administration have stated on several occasions that the Administration is strongly encouraging regulatory agencies to review existing regulations and eliminate or modify those regulations that require it. Thus far, this approach to the serious business of meaningful regulatory reform can be described as illusory at best.

- As previously mentioned, President Clinton threatened to veto H.R. 994 as it was about to be considered on the House floor in early March of 1996 thereby stalling this important legislation for small business.

- The Paperwork Reduction Act of 1995 was signed by the President.

Laws Enacted

- Public Law 104-13, which contains important paperwork-reduction provisions for small business, was signed into law on May 22, 1995.

5. OSHA Reform (NCRA #369)
Votes received: 1030
Rank: 28
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Legislation introduced in the House, H.R. 3234, would rein in Occupational Safety and Health Administration (OSHA) regulators and allow penalties to be waived on owners of small businesses for violations that pose no threat to worker safety if corrected within a certain time. This legislation was approved by the Subcommittee on Workforce Protections of the House Committee on Economic and Educational Opportunities and awaits action by the full Committee.

- Legislation revising certain OSHA standards has been introduced in the Senate, which seeks to reward employers who establish effective health and safety programs. The legislation also reduces penalties for minor violations and calls for warnings instead of fines for certain infractions.

- The House Committee on Small Business and its Subcommittee on Regulation and Paperwork have held several hearings on OSHA and the adverse effects that OSHA regulations often have on small businesses. For further information, please refer to Committee publication numbers 104-27, 104-33, and 104-42.

Action by the Administration

- All that the Administration has advanced thus far for meaningful OSHA reform is a veto threat.

- Clinton Administration officials within OSHA have been promoting administrative reforms that are apparently underway within that agency. These are evidently being advanced within the rubric of the Administration's reinventing government effort.

Laws Enacted

- Certain aspects of Public Law 104-121 (see discussion of NCRA #183 and #194 in this section, above) may serve to alleviate some of the problems that small businesses face in their interaction with OSHA and its enforcement practices.

TAXATION

1. Definition of an Independent Contractor (NCRA #224)
Votes received: 1471
Rank: 1
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- As one of its first endeavors, the new Republican-led House Committee on Small Business and its Subcommittee on Taxation and Finance held a number of hearings on the status of independent contractors and the devastating effects of the IRS' current audit practices on small businesses and independent contractors. For further information, please refer to Committee publication numbers 104-1, 104-43, and 104-45.

- Reps. Meyers (R-KS) and Smith (R-WA), the Chairs of the House Committee on Small Business and its Subcommittee on Taxation and Finance, respectively, submitted extensive comments in April 1996 on the draft training manual on worker classification circulated by the Internal Revenue Service ("IRS"). The Chairs identified a number of corrections that must be made to the manual in order for it to achieve the intended purpose of educating IRS examiners and fostering uniformity of results.

- In the House, two bills have been introduced concerning the status of independent contractors. The Independent Contractor Tax Fairness Act of 1995 (H.R. 582) was introduced by Rep. Kim (R-CA) on January 19, 1995, and the Independent Contractor Tax Simplification Act of 1995 (H.R. 1972) was introduced by Rep. Christensen (R-NE) on June 30, 1995. Both bills are currently under consideration by the House Committee on Ways and Means.

- In the Senate, Senators Bond (R-MO) and Bumpers (D-AR) introduced the Independent Contractor Tax Simplification Act of 1996 (S. 1610) on March 13, 1996. The bill is currently under consideration by the Senate Finance Committee.

Action by the Administration

- The Clinton Administration's IRS continues to pursue small businesses aggressively through audits reflecting its bias towards classifying workers as employees rather than independent contractors. The IRS also continues to misapply the law by denying small businesses the protection accorded by Section

530 of the Revenue Act of 1978 without first completing the burdensome classification under the twenty-factor common-law test.

- The IRS has circulated a complex 125-page draft training manual designed to instruct examiners how to apply the twenty-factor common-law test and Section 530 of the Revenue Act of 1978.

- The IRS has instituted the Classification Settlement Program and a procedure under which a worker-classification audit issue can be transferred from the District Office directly to the IRS Appeals Office. These procedural changes are intended to expedite audit controversies surrounding worker classification.

2. Meals and Entertainment Deduction (NCRA #214)

Votes received: 1444

Rank: 2

Previous White House Conferences:

1986 - This recommendation was not included in the top 60 recommendations.

1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- A number of legislative proposals have been introduced in the House that would fully restore the deduction for meals and entertainment expenses, including H.R. 662, sponsored by Rep. Vucanovich (R-NV), and H.R. 2734, sponsored by Rep. Zimmer (R-NJ).

- A bill introduced in the Senate by Senator Inouye (D-HI), S. 216, would increase the deductibility of meals and entertainment but to only 80%.

Action by the Administration

- The IRS has modified the record-keeping rules with respect to certain business expenses. Under the new rules, for travel and entertainment expenditures incurred after October 1, 1995, taxpayers would be required to retain receipts only if the expenditure amounted to $75 or more, up from the previous $25. The new rule, however, does not change the requirement that a business must maintain receipts for all lodging expenses regardless of the amount.

3. Estate and Gift Taxes (NCRA #218)

Votes received: 1385

Rank: 4

Previous White House Conferences:

1986 - This recommendation received 774 votes making it the Number 24 recommendation.

1980 - This recommendation received 799 votes making it the Number 4 recommendation.

Congressional Action

- The House Committee on Small Business actively promoted the estate-tax reform provisions that were included in the Contract With America and that were ultimately passed by the Congress in the budget legislation. The Committee's efforts included a hearing, as part of its series on tax reform, that focused exclusively on the estate tax and its detrimental effects on the family business. For further information, please refer to Committee publication number 104-9.

- The House Committee on Ways and Means has also held a significant number of hearings on estate-tax reform and the provisions in the Contract With America designed to achieve much needed relief from the Federal estate and gift tax for all American taxpayers and businesses.

- The House and the Senate adopted a provision in the Balance Budget Act of 1995 that would have increased the amount exempt from Federal estate and gift taxes from $600,000 to $750,000 for each person.

- The Balanced Budget Act also included special treatment for family-owned businesses, which would have excluded from estate tax the first $1.0 million of value of a qualified family-owned business and 50% of the value of the business between $1.0 million and $2.5 million.

Action by the Administration

- President Clinton vetoed the estate-tax reform provisions in the Balanced Budget Act, thereby stalling efforts to reduce the economic damage to small business caused by estate taxes and to permit more small-business owners to pass their businesses on to their children and grandchildren.

- The Clinton Administration's proposal for estate-tax reform would only extend the time that taxpayers may pay the tax due on an estate, rather than reduce or eliminate the estate tax, which can be as high as 55%.

4. Tax Equity for Small Business (NCRA #385)
Votes received: 1258
Rank: 18
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Small Business has addressed the broad issue of tax equity for small business in a number of respects, including hearings on deductibility of health-insurance premiums by the self-employed and pension reform and simplification to provide equal access to pension plans for small businesses. For further information, please refer to Committee publication numbers 104-4 and 104-48.

- Early in the 104th Congress, Rep. Meyers (R-KS), Chair of the House Committee on Small Business, introduced legislation that served as the basis for the law that was ultimately enacted to make permanent the deduction for health-insurance premiums for the self-employed. The law also increased the deduction to 30% beginning in 1995.

- A number of bills have been introduced in both the House and the Senate that would further increase the deductibility of health insurance by the self-employed, including H.R. 1034, sponsored by Rep. Meyers (R-KS), which would increase the deduction limitation from the current level to 100 percent over the next four years. Several similar measures to raise the deductibility limit have been introduced in the House such as H.R. 2435, sponsored by Rep. Kelly (R-NY), and H.R. 696, sponsored by Rep. Bartlett (R-MD). In the Senate, such measures include S. 18, sponsored by Senator Specter (R-PA), and S. 262, sponsored by Senator Grassley (R-IA).

- In the Fall of 1995, the Republican Congress passed, and President Clinton vetoed, the Balanced Budget Act, which would have raised the limitation on the amount that self-employed individuals can deduct with respect to their health-insurance premiums to 50% over seven years. The Act also included significant portions of the Pension Simplification Act of 1995 (H.R. 2037/S. 1006), including one that would have allowed small businesses to establish simplified pension plans known as SIMPLE (Savings Incentive Match Plans for Employees). In addition, the Balanced Budget Act contained a number of important provisions that would simplify the S corporation rules, both for new and currently classified businesses.

- Currently, a House-Senate conference committee is resolving differences between the House's Health Coverage Availability and Affordability Act (H.R. 3103) and the Senate's Health Insurance Reform Act of 1995 (S. 1028), both of which include much needed provisions to raise the limit on health-insurance deductibility for the self-employed -- the House bill would raise the limit to 50% while the Senate bill would raise it to 80%.

- The House also passed pension-simplification provisions and S-corporation reforms similar to those included in the vetoed Balanced Budget Act as part of the Small Business Job Protection Act of 1996 (H.R. 3448) on May 22, 1996.

Action by the Administration

- The act passed by the Congress to make permanent the health-insurance deduction for the self-employed and raise the limit to 30% was signed by the President.

- President Clinton vetoed the 50% increase in the health-insurance deduction limit, the pension reform provisions, and the S-corporation reforms included in the Balanced Budget Act.

- The Clinton Administration has threatened to veto the current health-insurance reform legislation (H.R. 3103/S. 1028), which includes increased deductibility of health-insurance costs.

- The Clinton Administration has offered a pension-simplification proposal, a majority of which consists of provisions introduced by the Republican-led Congress that were vetoed by President Clinton in the Balanced Budget Act as well as provisions that result in new employer mandates on small business.

- The IRS has developed a simplified entity-classification (*e.g.*, partnership, corporation) procedure.

Laws Enacted

- Public Law 104-7 made the deduction for health-insurance premiums for the self-employed permanent and raised the limitation to 30% beginning in 1995.

5. Small Business Capital-Gains Tax Treatment (NCRA #242)
Votes received: 1054
Rank: 24

Capital-Gains Tax Reform (NCRA #390)

Votes received: 944

Rank: 39

Previous White House Conferences:

1986 - These recommendations received 1075 votes making them the Number 12 recommendation.

1980 - These recommendations received 681 votes making them the Number 7 recommendation.

Congressional Action

- The House Committee on Small Business held several hearings on the critical need for capital-gains tax reform to enable small businesses to grow and expand as well as to facilitate the availability of capital for small and start-up enterprises. For further information, please refer to Committee publication numbers 104-2, 104-7 and 104-11.

- A significant number of hearings on capital-gains tax reform were also held by the House Committee on Ways and Means. These hearings focused particularly on the 50% reduction in the capital-gains tax rate for individuals and critical capital-gains tax reforms for businesses that were contained in the Contract With America.

- The Balanced Budget Act would have reduced the capital-gains tax rate by 50% for individuals on gains from property owned for at least one year; reduced the capital-gains tax rate to 21% for corporations on gains from small-business stock; reduced the capital-gains tax rate to a 14% maximum effective rate for individuals on gains from qualified small-business stock held for at least 5 years. The Act also would have expanded the definition of a "qualified small business" to include corporations with gross assets of up to $100 million -- doubling the current limit for qualification of $50 million in gross assets.

Action by the Administration

- President Clinton vetoed the generous and necessary capital-gains tax reform provisions that were included in the Balanced Budget Act.

6. **Small-Business Equipment Expensing (NCRA #233)**
   Votes received: 990
   Rank: 32
   Previous White House Conferences:
   1986 - This recommendation received 972 votes making it the Number 16 recommendation.
   1980 - This recommendation received 818 votes making it the Number 2 recommendation.

Congressional Action

- As part of its oversight hearings on the tax provisions set forth in the Contract with America, the House Committee on Small Business held hearings on expansion of the small-business equipment expensing provision of section 179 of the Internal Revenue Code. The witnesses testified that efforts to increase the amount that small businesses can expense, rather than depreciate, with respect to purchases of capital assets would greatly benefit small business and increase capital for growth and expansion. For further information, please refer to Committee publication number 104-2.

- The House Committee on Ways and Means, as part of its review of the tax and savings and investment provisions in the Contract With America, held hearings on the increase in the small-business equipment-expensing limitations and the benefits that such an expanded deduction would have for small and family-owned businesses.

- The House version of the budget legislation would have doubled the small-business equipment expensing limit from the current $17,500 to $35,000. The presidentially-vetoed Balanced Budget Act, by 2002, would have raised the limit to $25,000 over seven years.

- The Small Business Job Protection Act of 1996 (H.R. 3448), which the House passed on May 22, 1996, would steadily increase the amount that can be expensed from $18,500 for 1996 to $25,000 for 2003 and each year thereafter.

Action by the Administration

- President Clinton vetoed the generous increase in the small-business equipment-expensing limitation that was included in the Balanced Budget Act.

7. Retroactive Taxation (NCRA #250)

Votes received: 974

Rank: 33/34 (tie vote with NCRA #336)

Previous White House Conferences:

1986 - This recommendation received 597 votes making it the Number 36 recommendation.

1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Several bills have been introduced in both houses of Congress that would preclude legislation that would retroactively increase the tax rate. In the House, these bills include H.R. 152, sponsored by Rep. Solomon (R-NY), H.R. 788 and H.J. Res. 48, sponsored by Rep. Royce (R-CA), and H. Res. 6, sponsored by Rep. Armey (R-TX). In the Senate, Senator Coverdell (R-GA) has introduced similar legislation (S. 94).

- The House version of the balanced-budget legislation included a provision that would have prevented the IRS from issuing temporary or proposed regulations with an effective date earlier than the date that the regulation was published in the Federal Register or IRS notice to the public.

- A provision limiting retroactive regulations is contained in the Taxpayer Bill of Rights II (H.R. 2337), which was unanimously adopted by the House on April 17, 1996. This bill is currently awaiting consideration by the Senate.

Action by the Administration

- None.

8. Tax-System Reform (NCRA #229)

Votes received: 801

Rank: 49

Previous White House Conferences:

1986 - This recommendation was not included in the top 60 recommendations.

1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Small Business has held hearings on alternative tax systems to replace the current tax code including a hearing in April of 1996 to

review the recommendations made by the National Commission on Economic Growth and Tax Reform (also known as the Kemp Commission) as they pertain to small business. The Committee heard from several of the commissioners that a simple, fair, and flat-tax system would not only greatly reduce the tax burdens on small business, but would also dramatically reduce the cost of paperwork and regulatory compliance that currently overwhelm many small enterprises. For further information, please refer to Committee publication number 104-29.

- The Subcommittee on Taxation and Finance of the House Committee on Small Business also held a series of field hearings to review the effects of the Kemp Commission's recommendations. The Subcommittee heard from small businesses and other tax experts about the benefits that a simplified, reduced-rate tax system would have for small companies as well as recommendations for implementation of a new system.

- The Committee on Ways and Means is currently conducting an entire series of hearings to examine all aspects of a substitute tax system. Rep. Meyers (R-KS), Chair of the House Committee on Small Business, testified before the Ways and Mean's April 24, 1996 hearing on tax reform and small business, and stressed the need for a simple, easily understood system based on full expensing of capital-asset acquisitions and the elimination of double taxation in all areas of the tax law.

- In the Senate, the Finance Committee has also held hearings to review the recommendations of the Kemp Commission and the alternatives for replacing the current tax system.

- A number of bills have been introduced in the House and Senate that would replace the current tax system with a flat tax, including the Freedom and Fairness Restoration Act of 1995 (H.R. 2060/S. 1050), sponsored by Rep. Armey (R-TX) and Senator Shelby (R-AL), respectively.

- Representatives Schaefer (R-CO) and Tauzin (R-LA) have also introduced the National Retail Sales Tax Act of 1996 (H.R. 3039) that would replace the existing individual and corporate income taxes, the estate and gift tax, and all non-trust fund dedicated excise taxes with a 15% tax on the sale of goods and services, subject to a refund to protect individuals at the poverty level.

- In the Senate, the USA Tax Act of 1995 (S. 722), sponsored by Senators Domenici (R-NM) and Nunn (D-GA), would replace the current personal income tax with a three-rate tax structure that would allow individuals to reduce their tax by the amount that they save each year.

Action by the Administration

- The Clinton Administration has taken the ambiguous position that it would be better to "reform" the existing complexities of the tax laws rather than replace them with a simplified tax system.

9. Supermajority for Tax Increases (NCRA #252)
Votes received: 681
Rank: 53
Previous White House Conferences:
1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- On the first day of the 104th Congress, members of the House voted to amend the rules of the House of Representatives to include a new rule in favor of the American taxpayer and small-business owners requiring that any increases in the nation's income tax rate be approved by three-fifths of the members voting.

- The House also considered a measure (H.J. Res. 159), sponsored by Rep. Barton (R-TX), to provide a constitutional amendment that would require a two-thirds majority vote in each House of Congress to increase taxes. A similar measure (S.J. Res. 49), sponsored by Senator Kyl (R-AZ), is pending in the Senate.

Action by the Administration

- The Clinton Administration opposes a constitutional amendment requiring a supermajority vote of Congress to raise taxes. The Administration, however, has offered no alternatives to address this important issue for all American taxpayers.

Laws Enacted

- While no statutory provisions have been enacted, the new rule applicable to the House of Representatives (see *Congressional Action*, above) will help ensure that tax increases will be subject to a supermajority vote.

10. Payroll Tax Relief (NCRA #253)
Votes received: 571
Rank: 59
Previous White House Conferences:

1986 - This recommendation was not included in the top 60 recommendations.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- During the Spring of 1995, the Subcommittee on Taxation and Finance of the House Committee on Small Business held a hearing on the burden of payroll taxes on small business. The subcommittee heard from a number of small enterprises that payroll taxes are not only onerous, but often amount to more than the business pays in Federal income taxes. For further information, please refer to Committee publication number 104-35.

- Several bills, including the Working Americans Wage Restoration Act (H.R. 3427/S. 1741), sponsored by Rep. Nethercutt (R-WA) and Senator Ashcroft (R-MO), have been introduced in both the House and Senate that would permit individuals to deduct their share of payroll taxes withheld from their wages, and self-employed persons would be permitted to deduct a portion of their self-employment taxes.

Action by the Administration

- None.

TECHNOLOGY AND THE INFORMATION REVOLUTION

1. Intellectual Property Rights (NCRA #265)
Votes received: 1358
Rank: 8
Previous White House Conferences:
1986 - This recommendation received 1034 votes making it the Number 15 recommendation.
1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Early in 1996, Congress passed the Telecommunications Act of 1996 to promote competition and reduce regulation in several telecommunications sectors in order to secure lower prices and higher quality services for telecommunications consumers and to encourage the expeditious development of new telecommunications technologies.

- For a complete review of the patent-term and patent-disclosure issues, please see the discussion under NCRA #115 in the International Trade section, above.

- Please see the discussion with respect to the Small Business Innovation Research program under NCRA #406 in this section, below.

- Congress has been actively attempting to address the myriad issues raised by efforts to develop the National/Global Information Infrastructure (NII/GII). On September 28, 1995, Senator Hatch (R-UT) introduced S. 1284, which specifically addresses the promotion of private-sector development of the NII. On September 29, 1995, Rep. Moorhead (R-CA) introduced H.R. 2441, which also addresses development of the NII by the private sector. Hearings have been held on both S. 1284 and H.R. 2441.

- On May 15, 1996, a Chairman's mark of H.R. 2441 was brought up for consideration by the Subcommittee on Courts and Intellectual Property of the House Committee on the Judiciary. Unfortunately, consideration of that copyright measure along with two others could not be completed because of objections by the Democratic minority. The Subcommittee is expected to consider H.R. 2441 again in the near future.

Action by the Administration

- The Telecommunications Act of 1996 was signed by the President.

Laws Enacted

- Public Law 104-104, the Telecommunications Act of 1996, was enacted into law on February 8, 1996.

2. Investment Initiatives for High-Tech Firms (NCRA #406)

Votes received: 1292

Rank: 13

Previous White House Conferences:

1986 - This recommendation received 1043 votes making it the Number 14 recommendation.

1980 - This recommendation received 746 votes making it the Number 6 recommendation.

Congressional Action

- The Subcommittee on Government Programs of the House Committee on Small Business held oversight hearings on the SBA's Small Business Innovation Research (SBIR) Program in the Spring of 1995 and heard from a number of witnesses about the importance of this program for small business. For further information, please refer to Committee publication number 104-25.

- The full House Committee on Small Business held hearings on the Pilot Small Business Technology Transfer Program (STTR) on March 6, 1996. Following the hearing, Rep. Meyers (R-KS), Chair of the House Committee on Small Business, introduced the Pilot Small Business Technology Transfer Program Extension Act of 1996 (H.R. 3158) to extend the STTR Program. On March 29, 1996, the House Committee on Small Business approved H.R. 3158 by a unanimous voice vote. The bill is currently under consideration by the House Committee on Science.

- Please see the discussion of NCRA #242 and #390 in the Taxation section, above, for a complete overview of the congressional action concerning capital-gains tax reform. In addition, please refer to the discussion of NCRA #5 in the Capital Formation section, above, for a review of the incentives for investment in small business.

- For information on actions to create new source of capital for small business, please see the discussion in the Capital Formation section, above.

Action by the Administration

- The Administration supports the extension of Pilot STTR through September 30, 2000, which is the current sunset date for the SBIR Program, as set forth in H.R. 3158.

- President Clinton vetoed the generous and necessary capital-gains tax reform provisions that were included in the Balanced Budget Act.

UNCLASSIFIED

1. The Future of the Small Business Administration (NCRA #286)
Votes received: 1249
Rank: 19
Previous White House Conferences:
1986 - This recommendation received 1051 votes making it the Number 13 recommendation.
1980 - This recommendation received 188 votes making it the Number 38 recommendation.

Congressional Action

- The House Committee on Small Business held extensive hearings both in Washington and in local communities to review the Small Business Administration and to perform a program-by-program analysis of SBA's programs and policies. These 24 hearings have provided the small-business community with an opportunity for its individual and collective voices to be heard by policy-makers and to address concerns that effect the viability of this critical part of the nation's economic success. For a complete listing of the Committee's hearings, please refer to House Committee on Small Business' Legislative Calendar.

- The Republican-led Congress passed legislation strengthening and improving the SBA's 7(a) and 504 loan programs in 1995. The Congress also passed H.R. 2076, which appropriated funds for the Small Business Administration for fiscal year 1996. Despite President Clinton's veto of H.R. 2076, the Congress recognized its commitment to small business and continued to fund the SBA throughout the year under continuing resolutions.

- Currently, the Committees on Small Business in both the House and the Senate are considering legislation to strengthen the Small Business Investment Company (SBIC) program to help provide more investment capital for small business.

- The House Committee on Small Business continues to monitor SBA's economic-development and management-assistance programs to ensure that they provide quality training and counseling services to the small-business community in an efficient manner and in compliance with program missions. The severe operational and management problems uncovered at the Small Business Development Center in Puerto Rico, for example, were of grave concern to the Committee and will continue to be an area that the Committee evaluates.

Action by the Administration

- President Clinton vetoed H.R. 2076, requiring SBA to be funded through interim appropriations legislation until early in 1996 when he finally agreed to permanent funding.

- The Administrator of the SBA was made a member of the President's Cabinet.

- President Clinton's fiscal year 1996 budget submission for the SBA included the elimination of $87 million for a number of programs and projects previously funded through the SBA, including the Tree Planting Program, 502 Program, Small Business Institutes, Handicapped Direct Loans, Procurement Automated Source System (PASS), Central European Commission, and the Earmarked Grants Program.

Laws Enacted

- Public Law 104-36, the Small Business Lending Enhancement Act, became law in October 1995.

2. Monitoring the Implementation of White House Conference Recommendations (NCRA #288)

Votes received: 916

Rank: 41

Previous White House Conferences:

1986 - This recommendation was not included in the top 60 recommendations.

1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- The House Committee on Small Business has held extensive hearings on various recommendations from the 1995 White House Conference on Small Business including, among others, hearings on clarifying the status of independent contractors, small business pension reform and simplification, superfund, and each of the SBA's programs. For a complete listing of hearings and activities of the Committee, please refer to House Committee on Small Business' Legislative Calendar.

- The Senate Committee on Small Business also has aggressively monitored efforts to implement the White House Conference recommendations through a wide variety of hearings.

- The House Committee on Small Business has prepared this progress report on the implementation of the recommendations from the 1995 White House Conference on Small Business.

- The Senate is also monitoring and reporting the results of the White House Conference on Small Business

Action by the Administration

- The SBA's Office of Advocacy prepared a progress report on the recommendations in December of 1995.

3. Federal Balanced Budget (NCRA #280)
Votes received: 913
Rank: 42
Previous White House Conferences:
1986 - This recommendation received 1175 votes making it the Number 4 recommendation.
1980 - This recommendation received 807 votes making it the Number 3 recommendation.

Congressional Action

- Under the Republican-led Congress, the nation was presented with future-thinking leadership to balance the Federal budget by the year 2002, which alleviated the burden of debt and reversed the legacy of fiscal irresponsibility.

- As one of its first acts, the House passed by a vote of 300-132 H.J. Res. 1, which provided for a constitutional amendment requiring a balanced budget. The Senate was but one vote shy of the constitutionally required two-thirds needed for passage of this important constitutional amendment.

- In the Fall of 1996, the House and the Senate passed the Balanced Budget Act of 1995 (H.R. 2491/S. 1357). This comprehensive legislation provided much needed tax relief for families, saved Medicare, closed tax loopholes, and reduced or eliminated funding for many bloated and inefficient Federal programs.

- Both the House and the Senate passed legislation to provide the President with line-item veto authority to strike certain tax provisions.

Action by the Administration

- President Clinton vetoed the Balanced Budget Act of 1995. In return, he offered several other alternatives that were unbalanced and retained the status-quo of massive deficit spending.

- The line-item veto legislation was signed by the President on April 9, 1996.

Laws Enacted

- Public Law 104-130 was enacted on April 9, 1996 and included the Line-Item Veto Act, which will become effective on January 1, 1997.

4. Future White House Conferences on Small Business (NCRA #287)

Votes received: 730

Rank: 52

Previous White House Conferences:

1986 - This recommendation received 431 votes making it the Number 50 recommendation.

1980 - This recommendation was not included in the top 60 recommendations.

Congressional Action

- Congress is continuing to review the feasibility of this recommendation and has not yet acted on legislation.

Action by the Administration

- None.

FULL TEXT OF THE WHITE HOUSE CONFERENCE RECOMMENDATIONS

(In order of highest votes received)

1. NCRA #224 - Definition of an Independent Contractor (Taxation)
(1471 votes received -- 86.4%)

The definition of an independent contractor must be clarified. Congress should recognize the legitimacy of an independent contractor.

(a) The 20 factor test is too subjective. The number of relevant factors should be narrowed with more definition guidelines for implementation. Realistic and consistent guidelines which require one of four criteria plus a written agreement. The criteria are:

(1) realization of profit or loss;

(2) separate principle place of business;

(3) making services available to the general public; or

(4) paid on a commission basis.

(b) Safe harbor provisions should be established which would protect the hiring business from the burdensome penalties currently being assessed by the IRS. De Minimis rules based on dollars paid, hours worked, years in business, and/or specified closed end projects should be established.

(c) The IRS should eliminate back taxes for misclassification when Form 1099's are filed and there is no evidence of fraud.

(d) Congress should specifically allow employers and independent contractors to provide joint technical training and to jointly utilize major specialized tools without jeopardy of reclassification of the independent contractor to employee status.

(e) Changes and implementation processes should be formulated by a joint committee of legislators and small business people.

2. NCRA #214 - Meals and Entertainment Deduction (Taxation)
(1444 votes received -- 84.8%)

Small businesses typically rely on close personal relationships and customer service to compete for sales rather than expensive advertising campaigns. Expenditures for meals and entertainment are often an important part of this effort. The recent changes in the tax laws to disallow 50% of these expenditures for tax purposes has disproportionately increased the selling costs for many small businesses. Accordingly, Congress and the President shall

enact legislation which will allow a **tax deduction for 100% of the expenditures for meals and entertainment**.

3. NCRA #183 - Regulatory Flexibility Act (Regulation and Paperwork)
(1398 votes received -- 82.1%)

Congress should **amend the Regulatory Flexibility Act**, making it applicable to all federal agencies, including the Internal Revenue Service and the Department of Defense, to include all of the following:

(a) Require cost benefit analysis, scientific benefit analysis and risk assessment on all new regulations and Internal Revenue Service interpretations.

(b) Grant judicial review of regulations, providing courts the ability to stay harmful and costly regulations and to require agencies to rewrite them.

(c) Require small business representation on policy making commissions, federal advisory and other federal commissions or boards, whose recommendations impact small businesses. Input from small business representatives should be required in any future legislation, policy development and regulation making and affecting small business.

(d) With respect to all regulations involving small business, require negotiated rule making proceeding for adoption of all rules, with small business representing 50% of the negotiating panel.

4. NCRA #218 - Estate and Gift Taxes (Taxation)
(1385 votes received -- 81.3%)

Congress should **repeal the Federal Estate, Gift and Generation Skipping tax laws**. There is currently legislation before the 104th Congress known as the Family Heritage Preservation Act as H.R. 784/S. 628 that would accomplish this. The negative effect on small business, and others, far exceeds the net income to government when all administrative costs to individuals, businesses, and government are considered.

5/6.* NCRA #87 - Health-Care Reform (Human Capital)
(1371 votes received -- 80.5%)

Congress should pass a **health care package** that:

(a) Creates tax deductible medical savings accounts.

*Tie Vote.

(b) Allows the formation of voluntary competitive health insurance purchasing cooperatives.

(c) Eliminates discriminatory health insurance practices such as redlining of cancellation of coverage for reasons other than non-payment or fraud.

(d) Allows for insurability once pre-existing conditions have been satisfied.

(e) Provides for portability of health insurance.

(f) Provides a full 100% deductibility of health care costs for all purchasers or limit the deduction to the same percentage for all purchasers.

(g) Provides medical malpractice reform.

(h) Prohibits any mandated coverage.

(i) Permits choice of health care insurer.

5/6.* NCRA #63 - Superfund Reform (Environmental Policy)
(1371 votes received -- 80.5%)

Congress should **enact reformation** of the Comprehensive Environmental Response, Compensation and Liability Act **(CERCLA)**, to apply prospectively as well as retroactively to clean up sites in progress:

(a) Eliminate retroactive and strict liability prior to January 1, 1987 to prohibit liability for conduct that was not negligent, illegal, or in violation of regulations or permits at the time.

(b) Require sound science and realistic risk assessments and cost/benefit analysis in assessing health and environmental hazards at waste sites.

(c) Require sound science and realistic risk assessments and cost/benefit analysis in establishing cleanup standards. This would include realistic consideration of future uses of the site and actual environmental and health risks associated with such use.

(d) Eliminate "re-openers" -- disallowing the reopening of the remediation process at a site or a company's contribution to the cleanup, after it has been closed.

(e) Offer alternative funding strategies for cleanups.

(f) Make greater use of de minimis and de micromis exemptions, requiring USEPA to identify all contributions to a site within a reasonable time period and making de minimis settlements available prior to litigation or enforcement actions.

*Tie Vote.

(g) Eliminate liability of fiduciaries and lending institutions who hold indicia of ownership primarily to protect security interest in property which is subject to the Act.

(h) Eliminate joint and several liability for contamination.

(i) Require potentially responsible parties (PRP's) to inform non-PRP's (parties not named by the US EPA) in contribution actions of availability of de minimis and/or de micromis settlements within a reasonable time period.

7. NCRA #91 - Pension Reform (Human Capital)
(1369 votes received — 80.4%)

Congress should **repeal** current **disincentives** and burdensome regulations on qualified retirement plans and IRAs, and encourage adequate retirement savings and capital accumulation, including:

(a) The adoption of a pension simplification bill, which contains the voluntary 401(k) safe harbors, such as H.R. 13 and H.R. 3419.

(b) Raise compensation and benefit levels to 1992 limits and index for inflation.

(c) Provide an exclusion from estate tax for retirement plan and IRA assets to avoid double taxation (they are already subject to income tax).

(d) Eliminate the 15% Excise Tax of IRC Section 4980A.

(e) Repeal the family aggregation rules of IRC Section 414(q)(6).

(f) Reinstate deductible IRAs and expand to include non-employed spouses in full.

(g) Expand SARSEPs to employers with up to 100 employees.

(h) Repeal the minimum participation rules of IRC Section 401(a)(26) for defined contribution plans.

(i) Lower the Qualified Separate Line of Business exception to 15 employees.

(j) Increase the exceptions to the affiliated service group rules and include a minimum 20% ownership test for "A" organizations.

(k) Repeal all defined benefit plan rules enacted after 1985.

(l) Pension Plan Loans: Congress should amend section 72(p) of the IRC on plan loans to:

(1) allow for plan loans by proprietorships and partnerships;

(2) increase the plan loan balance to $100,000; and
(3) allow for balloon payments in lieu of quarterly payments if the loan is secured by the participant's account balance.

8. NCRA #265 - Intellectual Property Rights (Technology and the Information Revolution)
(1358 votes received -- 79.7%)

Congress and the Executive Branch should promote the rapid private-sector development of the **National/Global Information Infrastructure** (NII/GII) and protect all intellectual property transmitted over it. Congress and the U.S. Patent Office should also implement an enforceable and universal Intellectual Property (patent, trademark, and copyright) application with all members of World Trade Organization (GATT), while **maintaining "First to Invent."** This must also include the ability to police existing laws and treaties more judiciously, and to update definitions of Intellectual Property on a continuing basis. Said branches of government should enact the following:

(a) Ensure that legal protection of intellectual property rights, as well as fair access, is fully accorded with respect to products over the National Information Infrastructure (NII) and the Global Information Infrastructure (GII).

(b) Incorporate the responsibility for Trademark and Copyright Appeals Litigation with the Federal Circuit Court of Appeals, as was done in the mid 1980's with patents.

(c) Prevent premature disclosure through Freedom of Information Act (FOIA) access to proprietary Small Business Innovation Research (SBIR) technologies.

(d) Expeditiously and simultaneously open all telecommunications markets to full and fair competition.

(e) Make it possible for all providers to equally compete in offering one-stop shopping for telecommunications products and services; legislation should provide universal access.

(f) Ensure privacy to all users from all parties, including the government (for example, the Clipper Chip or its successor), and security of the infrastructure.

(g) Promote open and affordable access to all small business, including underserved communities, rural communities, and minority and women-owned businesses.

(h) Provide technology education and training by redirecting existing federal programs through private sector small businesses.

(i) Include small business representation on all NII/GII-related federal commissions and committees.

(j) Require government agencies utilizing EC/EDI technology to use a standard technology accessible and affordable to small businesses.

(k) Create an on-line one-stop electronic clearinghouse service coordinated by SBA/SBDC to provide access via the information superhighway, for example the World Wide Web, etc. to technical, legal, patent, regulatory, environmental, commerce and government procurement/bidding opportunity information.

(l) The Economic Classification Policy Committee should review and revise SIC codes every three to five years to reflect economic advancements of American society, for example the definition of "manufacturer" to include "knowledge-based manufacturing" and "technology consulting."

9. NCRA #51 - Cost-Benefit Analysis of Environmental Regulations (Environmental Policy) (1342 votes received -- 78.8%)

Congress shall **mandate a complete review of current laws and regulations** relating to public health and safety, energy and the environment, such as the Resource Conservation and Recovery Act, Clean Water Act, and Clean Air Act, Endangered Species Act, and National Environmental Policy Act. This mandated review shall be completed within 6 months. Before Congress passes laws to be regulated through the EPA and any other agency, which require specific technology and/or procedures for protecting the environment, the agency(s) must conduct a cost-benefit analysis on a dynamic basis model and ensure that the particular regulation is based on sound science. For any proposed regulation said agency shall have 6 months to complete the cost-benefit analysis prior to implementation. In addition, regulations shall include a funding mechanism which will facilitate compliance and be enforceable on a site specific basis. All costs shall be allowed to be expensed within the current year. The regulated community shall be included in any cost-benefit analysis. Where natural conditions exist, compliance based on technical expertise should be accepted as conforming to the intent of the regulation. Regulations should take into consideration site-specific conditions or future use. Any disputes about implementation must be subject to a non-governmental peer group review board. Voluntary environmental audit privilege and disclosure shall release the party(s) from administrative, civil, and or criminal penalties (so long as non-compliance is not caused by gross negligence or willful misconduct) when the disclosing entity initiates actions to comply within a reasonable time. No fines can be used to fund the fining agency.

Congress shall mandate EPA and any other agencies to review existing and new regulations to ensure that they adhere to the same standards as outlined in this document. All existing and proposed regulations must not create duplication of enforcement. There shall be no retroactive liabilities. Additionally, the fining ability of the EPA shall be revoked.

Federal agencies regulating environmental matters must make sure that current science, realistic risk assessments, net health analysis and cost benefit analysis shall apply in order to reduce, condense and/or eliminate regulations, prohibit abuse, allow adequate time to correct, and hold government and its employees accountable.

10. NCRA #200 - Tort Reform (Regulation and Paperwork)
(1332 votes received -- 78.2%)

Congress and the President should propose and enact legislation that **reforms civil justice and product liability legislation** to accomplish the following:

(a) Return to a fault-based standard of liability.

(b) Eliminate joint-and-several liability in cases where the defendants have not acted in concert.

(c) Limit non-economic damages (such as pain and suffering, and mental anguish) to three times the economic damages or $250,000, which ever is greater.

(d) Restrict punitive damages to cases of willful and malicious conduct. The amount awarded should be split between the plaintiff and a judicial system trust.

(e) Reduce awards in cases where a plaintiff can be compensated by collateral sources, to prevent windfall double recovery.

(f) Impose a uniform reasonable statute of limitations and repose in all civil actions, and hold defendants to a state-of-the-art in existence at the time the product was manufactured or a service performed, unless willful abuse is proven. There is no defense in drug or alcohol abuse.

(g) Provide for periodic, instead of lump sum payments for future medical or lost income, administered by a court appointed trustee.

(h) The prevailing party in a legal action should have a statutory right to recover costs and attorney fees from the non-prevailing party. (British Code)

11. NCRA #121 - Export Assistance (International Trade)
(1329 votes received -- 78.1%)

Small business owners are calling for the implementation of global "**One-Stop Shopping**" one-entity access to all government information and resources. Congress and the administration should create a pilot program that leverages private-sector resources to assist associations (private and public, particularly existing public/private partnership) in helping their small business members trade internationally (examples which would require no new funding include: model training programs, on-line database services, electronic learning networks, trade incubators - including those in U.S. and Foreign Commercial Service locations around the world, international trading cooperatives, trade missions, second- and third-tier exporting programs, niche market development programs and marketing-development cooperative programs.)

The Administration should appoint small business representatives to all advisory or dispute settlement bodies as part of the private-sector representation (example: the World Trade Organization dispute settlement panels.)

Congress and the Administration should maintain effective programs (eliminating ineffective programs) of the U.S. Department of Commerce International Trade Association that assist all American small business in entering and/or expanding export sales emphasizing emerging markets as a part of public/private partnership efforts to increase U.S. exports, U.S. jobs and U.S. economic vitality.

Note: No part of this issue shall be interpreted to be in conflict with GATT and/or other existing international trade agreements.

12. NCRA #194 - Regulatory Compliance (Regulation and Paperwork)
(1328 votes received -- 78%)

Congress shall enact legislation and appropriate enforcement to include all of the following:

(a) Require that all agencies provide a **cooperative/consulting regulatory environment** that follows due process procedures and that they be less punitive and more solution oriented in dealing with unintentional regulatory violations.

(b) Require that fines take into account severity of infraction, size and type of company, past safety record and the frequency and severity of the violations.

(c) Allow proposed fines to be used toward correcting violations.

(d) Prohibit fines either for violations identified during a consulting visit requested by the company, or by an agency investigator and brought to the attention of the employer for the first time specific violation or if the company is found to be in substantial compliance; the employer and inspector should negotiate a reasonable time table for compliance and fines should be levied only for failure to comply within that time table.

(e) Allow small business the option of binding arbitration to resolve any dispute with any federal agency.

(f) Require that regulatory agencies put the fines that they impose and collect into the general treasury fund toward retiring the national debt; said agencies should be prohibited from receiving credit or usage of such monies.

(g) Require that the liability of the employer and the employee be relative to their respective culpability.

(h) Require enforcement actions to comply with American due process concepts: notice and opportunity to be heard, innocent until proven guilty, and an impartial judge.

13. NCRA #406 - Investment Initiatives for High-Tech Firms (Technology and the Information Revolution)
(1292 votes received -- 75.9%)

Congress should **enact legislative programs that expand the availability of technology commercialization funding and investment capital** for small, rapidly growing innovative companies including, as a minimum:

(a) Expand, improve and make permanent the SBIR/STTR programs by:

(1) Excluding cost-sharing in proposal evaluation and scoring for either Phase I or Phase II and prohibit agencies from imposing artificial ceilings on indirect and R & D expenses.

(2) SBA directives to agencies to budget an appropriate portion of administrative overhead and committing adequate personnel to managing the SBIR program.

(b) Encourage investment in small companies by:

(1) Retaining and expanding targeted capital gains, including mutual fund and institutional investments in small business.

(2) Allowing tax-free rollovers for direct investments by all investors in small business.

(3) Providing additional incentives and reducing inhibiting regulations for investments in small companies by pension funds, institutional and/or corporate investors.

(4) Amending tax loss rules for NOL carry forward.

(5) Expanding and making permanent the R & E tax credit.

(c) Develop new public markets and instruments for small firm's securities.

(d) The Congress should support flexible manufacturing through the promotion of partnerships between small business and existing resources to create more efficient and flexible manufacturing processes, and nurture the growth of U.S. manufacturing industries.

(e) Direct the establishment of a temporary multi-agency task force to quickly address and solve the impediments to the above.

14. NCRA #144 - Government and Non-Profit Competition (Procurement)
(1285 votes received -- 75.4%)

Support **fair competition**: Congress should enact legislation that would prohibit government agencies, tax- and antitrust-exempt organizations from engaging in commercial activities in direct competition with small businesses.

15. NCRA #78 - Health-Care Deduction for the Self-Employed (Human Capital)
(1283 votes received -- 75.3%)

Congress shall enact a **100% deduction for health care premiums** for all business entities so that there is equity in taxation for the: Self-employed, Partnerships, S Corporations Limited Liability Corporation, and C Corporations. This benefit shall continue to be excluded for tax purposes from the income of employees of all small businesses regardless of form, including from the income of the **self-employed**.

16. NCRA #5 - Pension and Retirement Fund Investment in Small Business (Capital Formation)
(1279 votes received -- 75.1%)

In order to increase the availability of capital for small business, Congress shall:

(a) Authorize the SEC or an appropriate entity to create or streamline regulations and vehicles for public and small and large private company pensions, profit sharing, 401(k) plans, individual IRAs, Keogh, and SEP Plans to invest in small businesses by accessing the private capital markets and encouraging **development of viable markets for small business loans**.

(b) Modify current legislation to facilitate the ability of an individual to **invest up to 50%** of his or her own self-directed and/or **managed qualified plans** including profit sharing, 401(k) plans, individual IRAs, Keogh, and SEP Plans in specific small business(es) of is/her own choice. These funds could be used as a direct investment or as collateral to obtain debt financing.

17. NCRA #9 - Banking-Industry Regulation Reform (Capital Formation)
(1275 votes received -- 74.9%)

Increased Availability of Small Business Loans--Banks are too highly regulated and restrictions on lending to small businesses are too severe. To increase the amount of small business lending (and create thousands of jobs) we propose:

(a) Small business loans should be reviewed collectively based on institutions' overall loan delinquency ratios, and

(b) Relaxing of collateral and income to debt ratio requirements allowing banks to make smaller loans based on character, personal background and credit worthiness, such as those loans permitted pursuant to the loan basket guidelines under the capital availability program.

Also, Congress should enact or amend legislation to direct the Comptroller of the Currency and other examining authorities to **allow banks**, especially community banks, **to invest more readily in small business through no-cost, low-cost incentives**, such as:

(a) Directing bank regulatory agencies to reduce paperwork commensurate with loan size;

(b) Reduce the number of federal agencies regulating banking through consolidation and coordination;

(c) Allow government deposits to be placed in a bank based on the percentage of that bank's portfolio that is placed in small business loans.

18. NCRA #385 - Tax Equity for Small Business (Taxation)
(1258 votes received -- 73.9%)

Congress and the President shall enact legislation which shall place large and small businesses on a level playing field for tax purposes -- that is provide tax equity -- in situations where small businesses are currently at a disadvantage. This should be done by uniformly applying the tax law to all forms of business (i.e., Proprietorships, Partnerships, C Corporations, S Corporations, Limited Liability Companies) with regard to tax rates, deductions, and exclusions as follows:

(a) That all forms of business entities be allowed to take deductions for 100% of the medical insurance premiums, dependent care, and other fringe benefits not currently deductible by self-employed individuals, partnerships, S Corporations, and Limited Liability Companies on behalf of all of their employees who are owners, partners shareholders, and/or members. As long as fringe benefits continue to be excluded from the income of employees of large C Corporations, then such benefits should be excluded from the income of employees of all small businesses, regardless of form, as well as from the income of self-employed individuals.

(b) That pension plan benefits currently available to employees of large businesses be made available to self-employed and employees of small businesses, as provided in Recommendation #91.

(c) That all C Corporations be taxed using the same graduated tax rate schedule. Section 11(b)(2) of the Internal Revenue Code, taxing the income of qualified personal service corporations at a flat 35% tax rate, should be repealed.

The privilege of deducting legitimate business expenses should no longer be based upon the entity chosen to operate such business. The choice of an entity within which one will operate a business should be a legal issue, not a tax issue.

19. NCRA #286 - The Future of the Small Business Administration (Unclassified)
(1249 votes received -- 73.3%)

The U.S. Small Business Administration is vital to the growth of small business in America. Efforts to make the SBA's programs more cost effective and efficient should be continued and encouraged. The SBA's "independent" agency role as the primary supporter of small business within the Federal Government should be enhanced by:

(a) Elevation of the U.S. Small Business Administration to a congressionally approved cabinet level position.

(b) Budget allocations to maintain, increase, and enhance the 7(a) Loan Guaranty Program.

(c) Budget allocations to maintain, increase, and enhance the 504 Loan Program.

(d) Budget allocations to make permanent the Small Business Development Center Program which provides business assistance to small businesses nationwide.

(e) Permanent maintenance of the "independent role" of the U.S. Small Business Office of Advocacy.

(f) All other SBA programs should be reviewed with substantial input from the private sector. Any programs deemed to be ineffective should be eliminated.

20. NCRA #34 - Home-Office Deduction (Community Development)
(1239 votes received -- 72.7%)

Congress should further legitimize home-based business and restore the home office tax deduction by reversing the effect of the 1993 *Soliman* decision which requires that:

(a) Clients physically visit a home office; and,

(b) Business income be generated within the home office.

This would again allow essential administrative, operational and/or management tasks to qualify a home office as the "principal place of business."

21. NCRA #129 - Export Financing (International Trade)
(1181 votes received -- 69.3%)

Congress and the President shall authorize and encourage the **Ex-Im Bank and the SBA to sponsor revitalized fund programs** designed to foster the financing of international trade (goods and services) including the new Export Working Capital Program to:

(a) Provide pre-export financing, unsecured working capital loans, transaction-based loans and pooled loans, rather than balance sheet and asset-based loans;

(b) Provide educational programs for regional and local banking and financial institutions on the methods to finance exports of small businesses;

(c) Educate and inform the small business community on available programs to finance exports;

(d) Coordinate the efforts of various federal agencies that attempt to provide financing for exports; and

(e) Provide credits and other incentives for small business to develop and expand into foreign markets.

22. NCRA #57 - Small-Business Property Rights and Takings (Environmental Policy)
(1118 votes received -- 65.6%)

Federal policy regarding **use of private property** within the context of environmental issues should be **reviewed** and substantially **revised**. EPA and state-related penalties should be reviewed to confirm that the real potential for environmental harm, risk assessment, and cost-benefit analysis are used in land use decisions. The issues of takings, wetlands, and brownfields should receive special attention, as articulated below.

Takings

Any governmental action, law, or regulation that deprives a property owner of value or benefits of his or her private property shall constitute a "Taking" for which said property owner shall be entitled to full "Fair market value" compensation. Specifically, government should examine the economic impact before property is taken and prohibit the taking of property without just compensation.

Wetlands

Congress should direct the following changes in wetlands laws and regulations:

(a) If regulations affect a property use after it is acquired, the property owner should be compensated.

(b) The Army Corps of Engineers should have exclusive jurisdiction over section 404.

(c) Use-based regulations should be encouraged based on relative importance of a wetland to the local environment.

(d) A statutory definition of wetlands should be adopted using saturation at start of a growing season as a criterion.

Brownfields

Congress should enact legislation to encourage reuse of industrial land as follows:

(a) Direct EPA to specify the circumstances under which it would or would not sue a business that is involved with a state approved reclamation project.

(b) For brownfield projects in which cleanup is commensurate with the intended use, EPA should be required to enter into binding agreements with the parties that no future federal action will be taken.

23. NCRA #115 - Intellectual Property Protection (International Trade)
(1080 votes received -- 63.4%)

The President shall direct the U.S. Trade Representative to lead an international effort to protect the **ownership of intellectual property** and to ensure adoption of reciprocal uniform standards, centralized filing and an efficient international dispute resolution procedure for registration and enforcement of trademarks and trade names, working with NAFTA, GATT and other treaty partners. We further recommend that Congress protect international patent rights in a way that takes into account the needs of small business, including retaining the patent term to run for twenty years from date of application or seventeen years from date of issue, whichever is longer, that patent application remain unpublished until the patent is granted, and that the patent remains with the first to invent rather than first to file.

24. NCRA #242 - Small Business Capital-Gains Tax Treatment (Taxation)
(1054 votes received -- 61.9%)

Congress should **modify and expand the 50% capital gains exclusion for small business stock** passed in the 1993 Revenue Reconciliation Act so that it provides a front-end, as well as a back-end incentive for investment in small businesses. Specific Recommendations:

(a) Allow investors to sell funds in any investment and roll the investment into a small company, as defined by the current law, within two years. Capital gains tax on assets sold would by deferred (using the same methods as like-kind exchanges). Taxes would be payable at the favorable small business rate if held for the specified period.

(b) Phase in the preferential tax treatment over a five-year holding period. For example, an investor with a three-year holding period would pay: 28% - (28% x 50% x 60%) = 19.6%.

(c) Amend Code Section 1202 to extend its benefits to S Corporations, partnerships, and sole proprietorships by defining a "qualified small business" to include all such business entities and extend the definition of a qualified trade or business under Section 1202 to all types of businesses.

25/26.* NCRA #164 - Davis-Bacon and Service Contract Acts (Procurement)
(1046 votes received -- 61.4%)

The **Davis-Bacon Act** of 1931 and The Service Contract Act of 1965 should be completely **repealed**.

25/26.* NCRA #188 - Regulatory and Paperwork Reduction (Regulation and Paperwork)
(1046 votes received -- 61.4%)

Congress shall enact legislation and appropriate enforcement provisions to include all of the following:

(a) Require all **agencies** to **simplify language** and forms required for use by small business and that only the English language be required.

(b) Require all agencies to **sunset** and reevaluate all regulations every five years, using the same standards required for new regulations, with the goal of reducing its total paperwork burden by at least five percent each year for the next five years.

(c) Require agencies to assemble information through a single source on all small business related government programs, regulations, reporting requirements, and key federal contact's names and phone numbers, with as much as is feasibly available by on line computer access.

(d) **Eliminate duplicate regulations** from multiple government agencies.

27. NCRA #41 - Entrepreneurship Education (Community Development)
(1035 votes received -- 60.8%)

The U.S. Department of Education in cooperation with the U.S. Small Business Administration should work constructively to encourage the future growth of small business enterprises by **promoting entrepreneurship education** across America's school systems (K - Adult Education). It would be accomplished in the following manner:

(a) Develop and implement a comprehensive school-based youth entrepreneurship program that creates real world business exposure and mentorships.

(b) The program would be under the auspices of the Department of Education and funded by grants through public/private partnerships.

(c) All funds would be matched 1-1 in the community served by the program.

*Tie Vote.

(d) Businesses would receive tax incentives for financially supporting the entrepreneurship training programs in their area.

28. NCRA #369 - OSHA Reform (Regulation and Paperwork)
(1030 votes received -- 60.5%)

Small business and OSHA must work together in a non-adversarial, supportive relationship to attain public policy safety goals. To accomplish this, Congress must pass legislation as follows:

(a) Require that voluntary compliance audits be performed within sixty days of a request by a small business. Such audits must be educational and non-threatening with written results and no fines issued.

(b) Businesses which have completed a voluntary inspection and have corrected any deficiencies within the time allotted, will not be fined at a subsequent inspection for deficiencies which were missed or interpreted differently by the first inspector.

(c) Require that all enforcement inspections, no matter how limited the scope of the inspection, will result in an overall inspection score or grade to be issued in writing by the inspector. On the basis of that grade, no fines or penalties may be issued for deficiencies found if the facility, (or that portion of the facility inspected), has been found to be in substantial compliance. In addition, in those cases where at least 90% of the entire facility has been inspected and the overall grade indicated that the company is in substantial compliance, OSHA will issue a letter of commendation recognizing the company for its efforts. If needed, a definition of substantial compliance would include:

(1) limited number of violations/deficiencies found vs. number of items inspected.

(2) company has an active safety committee or program and demonstrates commitment to safety by management.

(3) major programs, i.e., right-to-know, confined space, lock out/tag out, training, etc., in place.

(d) Amend regulations to assign responsibility for regulatory compliance to the employee as well as the employer.

(e) Amend OSHA regulations to require that when an employer and/or employee notifies OSHA officially that compliance has been achieved, OSHA must confirm that compliance has occurred within seventy-two hours of notification.

(f) Amend regulations to require OSHA not to make any inspections (unless voluntary) on any small business workplace and/or worksite unless an accident has been recorded and reported.

(g) Amend OSHA regulations to require a review and the development of construction standards that reflect the needs of industry-use groups.

29. NCRA #24 - Small Corporate Offering Registration Program (Capital Formation)
(1027 votes received -- 60.3%)

The Small Corporate Offering Registration (SCOR) was meant to be a means for self reliant small business owners to raise equity capital with a minimum of professional assistance (legal and accounting services) and the lowest origination costs. To facilitate the use of SCORs, we proposed that the SEC/Congress **raise the $1 million per year ceiling to $5 million**, remove limits on the number of investors, allow for "tombstone advertising" of stock offerings and fund educational programs for investors and issuers to be administered at state and local levels. A greater degree of uniformity of state laws or reciprocity between state would be encouraged by the SEC through granting educational grants to states that accomplish this goal.

30. NCRA #14 - Secondary Capital Markets (Capital Formation)
(1009 votes received -- 59.2%)

To increase the availability of growth capital to invest in small businesses, Congress should:

(a) **Further privatize** the Small Business Investment Company **(SBIC) program**, now administered by the SBA, by **creating** a new, government sponsored, but privately managed, corporation named Venture Capital Marketing Association or **"Vickie Mae"**) which would function similar to the Federal National Mortgage Association. (Fannie Mae);

(b) Extend the **capital gains tax deferment** currently afforded investments rolled into Specialized Small Business Investment Companies (SSBICs) to include investments in SBICs to encourage more investment in new SBICs;

(c) **Remove barriers** to pension funds, foundations and endowments wishing to invest in SBICs and SSBICs; **eliminate** the "unrelated business taxable income" **(UBTI) tax** on all such activities; and

(d) **Reduce the minimum capital size requirements** for establishing SBICs owned by regulated financial institutions, thereby encouraging them to provide equity to small businesses provided that no leverage is utilized by such SBICs until current minimum capitalization for leverage is achieved.

31. NCRA #130 - Barriers to Franchisees, Dealers and Product Distributors (Main Street)
(997 votes received -- 58.5%)

Congress must remove the barriers that prevent franchisees, dealers and product distributors from exercising their basic legal and constitutional rights by **enacting H.R. 1717**, now before the 104th Congress.

32. NCRA #233 - Small-Business Equipment Expensing (Taxation)
(990 votes received -- 58.1%)

Congress should **permit deductions of expenses up to $250,000 annually** for the purchase of new or used equipment for use in a small business and should remove the cap of $200,000 and have no upper qualifying limit on the Section 179 election.

33/34.* NCRA #250 - Retroactive Taxation (Taxation)
(974 votes received -- 57.2%)

Congress should enact legislation that would **prevent** it from **raising taxes retroactively**.

33/34.* NCRA #336 - Job Training (Human Capital)
(974 votes received -- 57.2%)

The President and Congress to enact legislation that **consolidates** the current **federal workforce programs** into state block grants that:

(a) Provides local control of specific skills training based on local needs.

(b) Requires states to allow participation by small businesses with fewer than 500 employees for on-the-job training of new and existing workforces.

(c) Provides tax incentives to small businesses that fund their own workforce training programs.

(d) To encourage public-private partnerships of job training.

*Tie Vote.

35. NCRA #153 - Certification for Small and Disadvantaged Businesses (Procurement)
(968 votes received -- 56.8%)

Congress should enact legislation to designate a **national certification organization**. This organization will be initially funded by Congress to establish a database of certified small business, small disadvantaged business, and small business owned by women. It will serve as a one-stop clearinghouse that will assist all Federal Agencies by disseminating information in conjunction with their outreach efforts. To assure the credibility of federal procurement procedures:

(a) Congress will endorse one set of criteria for all local, city, state, and national agencies, adopted by a task force utilizing purchasing agents and small business owners, for uniform certification of small business, small disadvantaged business and small business owned by women where contracts involve federal funds.

(b) All Federal Agencies must establish standardized monitoring and compliance procedures;

(c) Independent, decentralized advisory boards should be established.

(d) States and local communities should be encouraged to recognize this certification on a reciprocal basis.

(e) All federal agencies should sponsor training to increase contracting/procurement officer awareness and use of reciprocal certification and database.

36. NCRA #360 - Small- and Disadvantaged-Business Procurement (Procurement)
(954 votes received -- 56%)

Increase Procurement Opportunities: Increase the opportunities for all small businesses to equitably participate in federal procurement. Require that:

(a) Not less than 35 percent of all government procurement monies (35% of prime and 35% of subcontracts) be awarded to small firms, such that at least:

(1) 10% of prime and 10% of subcontract monies be awarded to minority businesses;

(2) 5% of prime and 5% of subcontract monies be awarded to women-owned businesses; and

(3) 10% of the government's total R & D budget be awarded to small businesses.

(b) Small businesses be provided FREE and easy access to the government's electronic commerce system, FACENET, which profiles federal procurement opportunities;

(c) Competition not be stifled by permitting federal agencies to "bundle" contract requirements beyond the reach and capability of many small firms; and,

(d) Government agencies and tax exempt entities not allowed to unfairly compete with private firms by strengthening and expanding OMB circular A-76 to apply to all federal monies used directly or indirectly in the provision of goods and services and by increasing the scope and improving the enforcement of the unrelated business income tax (UBIT).

(e) On sole source purchases above $100,000, a query of PASS must be done by Federal agencies and prime contractors.

(f) Require strict enforcement of the "Rule of Two" which requires federal agencies to restrict competition when two or more small businesses are capable and available to compete in price, quality and product/service for contracts of $100,000 or more.

(g) Require the Department of Defense and the Small Business Administration to sponsor EDI training through the already established network of small business procurement assistance centers located nationwide.

(h) Require the SBA to review and revise the size criteria downward to reflect the "true" small business.

37/38.* NCRA #31 - Community Reinvestment Act (Community Development)
(949 votes received -- 55.7%)

Congress should enact legislation and the Administration should implement a process so that community and economic development programs could be maximized in distressed urban and rural areas by:

(a) Creating a **"most favored" community status**;

(b) Continuing and enhancing the **SBA micro loan program**;

(c) Vigorously enforcing the Community Reinvestment Act with special efforts placed on elimination of redlining;

(d) Providing economically oriented incentives such as abatement of federal income taxes to encourage the service/retail industry and other small businesses to locate and expand in these areas;

(e) Continuing to emphasize small, non-traditional financial institutions, women and minority-owned business participation.

*Tie Vote.

37/38.* NCRA #103 - Affirmative Action Programs (Human Capital)
(949 votes received – 55.7%)

The President and Congress must support the principle of **Equal Opportunity** which is provided for in the U.S. Constitution. Small, Women-owned and Minority-owned companies are entitled to equal consideration in banking, lending, bonding, contracting and hiring. Laws designed to address these disparities cannot be abolished or restricted.

Congress and the President should adopt the following principles under the recommendations of the White House Conference on Small Business:

(a) Government policy should be oriented toward diversity and fair economic opportunity that stimulates competition, increases productivity, creates jobs, and saves taxpayer dollars, thereby benefiting all Americans.

(b) There should be rigorous enforcement of this policy, including sanctions against fraud and abuse.

(c) There should be periodic review to ensure compliance with this policy.

39. NCRA #390 - Capital-Gains Tax Reform (Taxation)
(944 votes received – 55.4%)

Congress should enact a comprehensive policy on **capital gains that encourages the long-term investment in productive assets**. This policy should include the following provisions.

(a) Indexing of the cost basis of assets held more than one year.

(b) A targeted capital gains exclusion of 50% of the indexed gain for an investment in a qualified small business held more than three years. A qualified small business should include all forms of business entities including passthroughs.

(c) A maximum tax of 10% on the sale of a majority interest in a qualified small business held for more than 15 years.

(d) A deferral of the gain on the sale of an interest in a qualified small business if the gain is reinvested in another qualified small business within two years.

(e) The non-taxes portions of gains should be exempt from the alternative minimum tax calculations.

(f) The capital loss reduction limitation of $3,000 should be eliminated.

*Tie Vote.

(g) Reinstate the "General Utilities Doctrine" to eliminate the double taxation of proceeds from the sale of a business.

40. NCRA #134 - Barriers to Small-Business Litigation (Main Street)
(930 votes received -- 54.6%)

Congress must **remove the barriers** imposed on small business people in their relationship with large national and multi-national corporations, which prevent these small business people from mediating, arbitrating, or **litigating** in their own home state.

41. NCRA #288 - Monitoring the Implementation of White House Conference Recommendations (Unclassified) (916 votes received -- 53.8%)

Congress should develop a **tangible process for monitoring the implementation progress** of the recommendations that emerge from the WHCSB National Conference in June 1995. This monitoring process should be developed to make Congress and the President accountable to the WHCSB participants, and should be achieved specifically by doing the following:

(a) Periodic updates to WHCSB participants by SBA's Office of Advocacy on the progress of implementation; and

(b) Annual summit of state WHCSB chairs, or their representatives, to discuss and evaluate the progress of implementation.

42. NCRA #280 - Federal Balanced Budget (Unclassified)
(913 votes received -- 53.6%)

Deficit spending continuing year after year poses a grave threat to our freedom as the world's leading economic power and to our free enterprise system. The President and Congress must take immediate steps to **bring the Federal budget into balance** by eliminating or reducing appropriate programs, commissions, agencies and departments and by instituting all other measures available to them.

43. NCRA #74 - EPA Reform (Environmental Policy)
(911 votes received -- 53.5%)

Congress should adopt changes in environmental statutes and regulations to assure that they are internally consistent for all requirements of the acts across all regions. Congress should require the EPA to demonstrate that enforcement of environmental laws and regulations is substantially equal in all areas of the country. The **Clean Air Act**, the **Clean Water Act**, the **Endangered Species Act** and other such acts should be **enforced equitably across all regions.**

44. NCRA #167 - Prompt Payment Act (Procurement)
(846 votes received -- 49.7%)

Prompt Payment Act: The Office of Management and Budget must penalize Federal agencies and/or their grantees for incurring interest debt generated through delayed bill payment. Congress should modify this Act to include subcontractors. In cases of dispute between the government and a prime contractor, the subcontractor's payment must be promptly released as long as the subcontractor is not part of the dispute.

45. NCRA #140 - Disaster and Casualty Insurance (Main Street)
(841 votes received -- 49.4%)

Congress should introduce and pass the National Disaster Protection Act which would include a **Private Sector "All Risk" Property Insurance Program** offered through a newly created private non-profit organization to reinsure catastrophic losses. (Referenced in Report of Bipartisan Task Force on Disasters Recommendation #1 and #2, U.S. House of Representatives, December 14, 1994.)

46. NCRA #141 - Antitrust Reform (Main Street)
(829 votes received -- 48.7%)

Small business cannot compete with large businesses who use their economic power to extract unfair competitive pricing from manufacturers and service providers. **Antitrust laws should be strengthened and enforced** to prohibit abuses including unfair vertical integration, tying of pricing and product purchases, and predatory pricing tactics. The President should appoint a Presidential Commission on competition to study the enforcement and impact of the federal antitrust laws on ensuring the survival and diversity of small businesses.

47. NCRA #324 - Privatization of Social Security (Human Capital)
(818 votes received -- 48%)

Social Security Privatization: Congress should **privatize Social Security** by adopting a graduated phase-out and giving full disclosure to the American People on the solvency of the fund and the amount of money they, as individuals, have paid into the fund. Adopting a minimum 15 year graduated phase-out schedule for government funding of Social Security for all new retirees; continue funding existing and "phase-out" retirees from the Employer's 6.2% (allow up to 15%) FICA portion and allowing for the employee's 6.2% FICA portion to be paid into their personal COMPULSORY-IRA/401K (CIRA) style account. Require all "CIRA's" to buy disability and survivor's insurance benefits equal to that of Social Security.

48. NCRA #161 - Reform of SBA's 8(a) Program (Procurement)
(806 votes received -- 47.3%)

The President and Congress should continue to **support the Minority Small Business Capital Ownership and Development Program, SBA 8(a)**, and should enact legislation to make improvements with particular emphasis on:

(a) Increase length of time.

(b) All federal minority procurement policies and procedures must be incorporated and applied to any recipient of federal funds and become mandatory.

(c) Increase utilization of 8(a) contractors by enforcing accountability of federal agencies in achieving their 8(a) goals.

(d) The establishment of procedures for immediate relief in the event of catastrophic circumstances including but not limited to:

(1) total dissolving of government agencies;

(2) natural disasters;

(3) base closures.

(e) Relief to be in the form of extended participation in the 8(a) program for a reasonable time to recover from the catastrophic circumstance.

All of the above will follow the intent of the SBA 8(a) program to raise 8(a) businesses to a threshold allowing them to graduate to the open competitive market.

49. NCRA #229 - Tax-System Reform (Taxation)
(801 votes received -- 47%)

To promote a fair and equitable system of taxation, to encourage greater citizen participation and understanding, and to totally abolish the complicated present system, Congress should enact legislation that replaces the present system with **a simple tax for individuals and businesses.**

50. NCRA #25 - Small-Business Loan-Guarantee Programs (Capital Formation)
(784 votes received -- 46%)

Comprehensive Federally Guaranteed Financing Reform: Congress shall continue to appropriate funds for the **Small Business Administration Loan Guarantee programs,** while focusing on the following:

(a) Prohibit excessive abuses in the over-collateralization of all federally guaranteed loan programs.

(b) Establish criteria which would allow greater access to all federally guaranteed loan programs.

(c) Increase the SBA loan guarantee programs from its current level of $750,000 to $1,000,000.

(d) Only primary owners (not passive investors) should be required to make personal guarantees on federally guaranteed loans.

(e) Increase the number of non-bank lenders (SBLC) eligible to process SBA loans.

(f) Require all federally guaranteed loans be processed in a timely manner.

51. NCRA #437 - Affirmative Action and the *Adarand* Decision (Procurement)
(751 votes received -- 44.1%)

In rendering a decision on Adarand v. Peña, the U.S. Supreme Court has potentially dealt the Minority and Women Business Community a severe and in some cases potentially fatal blow. While we recognize the separation of functions between the three branches of government, we are compelled out of an immediate and overwhelming sense of concern to recommend the following:

The President and Congress should proactively and aggressively respond to support the minority and women business community, and not use this decision in any way to influence any legislative action that would reduce support for our country's long standing commitment to promote fair and equitable opportunity for all of its citizens regardless of race, color, or gender.

52. NCRA #287 - Future White House Conferences on Small Business (Unclassified)
(730 votes received -- 42.8%)

Congress should authorize and the President convene a **White House Conference on Small Business every four (4) years** to provide a continuing forum for owners and entrepreneurs to promote and work for the betterment of small business and ensure that they remain a vital part of the American economy.

53. NCRA #252 - Supermajority for Tax Increases (Taxation)
(681 votes received -- 40%)

Congress should enact legislation that requires a **2/3 supermajority vote** be required in both houses of Congress to enact legislation resulting in a tax increase.

54. NCRA #20 - Small-Business Investment (Capital Formation)
(672 votes received – 39.4%)

Congress should support the investment in small businesses by:

(a) Establishing a **tax free rollover provision** for the gains on sale of assets or ownership interests in a small business that are reinvested or rolled over into another small business within one year.

(b) Congress should **amend Code Section 1202**, which is legislation excluding 50% of all capital gains from income, to extend its benefits to S Corporations and Limited Liability Companies by defining a "qualified small business" to include C Corporations and the other two entities, and **extend the definition of a "qualified trade or business"** under Section 1202 to all businesses.

(c) Congress should enact tax legislation to allow a **tax deduction** against ordinary income for investments in small business.

55. NCRA #105 - Labor Law Reform (Human Capital)
(655 votes received – 38.4%)

Congress should pass legislation assuring that, no business or worker would be discriminated against on any contract based solely on their choice not to be affiliated with a labor union or organization, and ensure the competition of trained qualified labor pool without **undue union pressures** and privileges by passing and enactment of:

(a) The Open Contracting Act;

(b) National Right to Work Legislation;

(c) Never prohibit the hiring of permanent replacement workers during or following an economic strike. This includes taking whatever steps are necessary to override President Clinton's executive order which prohibits government contracting with firms who have replaced striking workers; and

(d) Revise the Hobbs Act and the Federal Criminal Code along with other applicable legislation which would:

(1) Reverse the *Enmons* ruling and eliminate other special privileges such as: union exemption from prohibitions against libelous and violent speech; union officials' legally-sanctioned power to force workers to pay union dues to an unwanted union;

(2) Require union officials and unions to bear full responsibility for their violence and extortion and criminal acts just like everyone else;

(3) Make union pensions and benefit trusts applicable to the same regulations as another commercial or employer provider plans;

(4) Make unions subject to all discriminatory and civil rights provisions the same as all businesses, and liable for the blackballing of members who exercise their first amendment rights in opposition to the union leadership;

(5) Use the RICO Act against Union Organizations involved in extortion and the commission of criminal acts; and

(6) Strictly prohibit compulsory union membership.

56. NCRA #44 - Competition for Jobs and Business (Community Development)
(598 votes received -- 35.1%)

Efforts of an individual state or municipality to benefit its local economy should not be made at the expense of other states or municipalities and at the peril of the strength of the entire economy. It should be the interest of the Congress to benefit the economic security of all the citizens of the United States by working to provide the resources to expand the economy nationwide. Therefore, Congress should **ban the direct or indirect utilization of Federal funds** of any kind, including subsidies, grants bonds or tax exempt financing that funds, in whole or in part, any special tax, infrastructure improvement and/or financing incentive by any state or municipality **to lure existing jobs and businesses from one location to another**.

57. NCRA #203 - National Labor Relations Act (Human Capital)
(591 votes received -- 34.7%)

Congress should **amend the National Labor Relations Act** to:

(a) Protect small businesses from abuses and intimidation practices by organized labor.

(b) Allow small businesses and their employees to discontinue relationships with labor organizations by simply writing a termination letter.

(c) Seek fair and equitable resolution between labor and management.

(d) Encourage cross training of craftsmen for greater productivity and efficiency.

(e) Prevent the use of taxpayer funds to sue on behalf of multimillion dollar unions.

(f) Encourage labor organizations to permit compensation based on productivity and quality of work.

(g) Restore employers' ability to establish and use employee involvement committees by repealing the impact of the Electromation Case 309 NRLB No. 163 and the Dupont Case, 311 NRLB No. 88.

58. NCRA #139 - Small-Business Relief Fund (Main Street)
(590 votes received -- 34.6%)

Congress should legislate the creation of a **Small Business Relief Fund** to economically assist small businesses that are displaced by the establishment of a big business in their localities where the big business will contribute an annual fee for the fund.

59. NCRA #253 - Payroll Tax Relief (Taxation)
(571 votes received -- 33.5%)

A cap must be placed on the employer's portion of payroll taxes. Congress should reject all proposals to raise payroll taxes in its effort to repair the Medicare program. Payroll taxes are regressive and discriminate against small businesses.

60. NCRA #28 - Performance of Financial Institutions under the Community Reinvestment Act (Capital Formation) (554 votes received -- 32.5%)

Congress should require that federal agencies evaluate the performance of financial institutions under the **Community Reinvestment Act ("CRA")** on the basis of such institution's efforts to meet the credit and banking needs of small businesses in their communities. In making such evaluations, those financial institutions which extend credit to small businesses without the support of government loan guarantees should be rated higher than those institutions which simply participate in SBA, FaHA and other guarantee programs, and/or purchase government insured loans and loan pools. Further, Congress should direct such federal agencies to issue a separate rating of each financial institution's CRA performance relative to small business (as opposed to the current practice of issuing one rating for overall CRA performance with respect to the entire community).

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