

CONFERENCE REPORT ON H.R. 4577,  
DEPARTMENTS OF LABOR,  
HEALTH AND HUMAN SERVICES,  
AND EDUCATION, AND RELATED  
AGENCIES APPROPRIATIONS  
ACT, 2001

**HON. JAMES M. TALENT**

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 15, 2000*

Mr. TALENT. Mr. Speaker, the following is a summary and explanation to accompany H.R. 5667, the Small Business Reauthorization Act of 2000. It is essentially the same document as that in the Conference Report to accompany H.R. 2614 (Rpt. 106-1004). Unfortunately, H.R. 2614 was never passed by the Senate. However, we were fortunate enough to achieve some compromise and many of the provisions of H.R. 2614 are included with H.R. 4577.

The conferees met to discuss H.R. 2614 which had passed the House, and after Senate amendment, had been returned to the House. The House objected to the Senate amendment and the Senate then requested a conference. The original purpose of H.R. 2614 was solely to make corrections to the Small Business Administration's Certified Development Company loan program. The conferees agreed to include the provisions of several other bills (e.g. H.R. 2615, H.R. 2392, H.R. 3843, H.R. 3845) affecting the Small Business Administration and its programs in order to facilitate the work of both Houses. The provisions of H.R. 5545 are essentially what is included in H.R. 5667 and certain other sections of the American Community Renewal Act provisions also included in this legislation.

The summary of H.R. 5667 follows:

**TITLE I—SMALL BUSINESS INNOVATION  
AND RESEARCH**

The Small Business Innovation Research Program Reauthorization Act of 2000 (H.R. 2392) was introduced on June 30, 1999, and referred to the House Committees on Small Business and Science. Both Committees held hearings and the House Committee on Small Business reported H.R. 2392 on September 23, 1999 (H. Rept. 106-329). In the interest of moving the bill to the floor of the House of Representatives promptly, the Committee on Science agreed not to exercise its right to report the legislation, provided that the House Committee on Small Business agreed to add the selected portions of the Science Committee version of the legislation, as Sections 8 through 11 of the House floor text of H.R. 2392. H.R. 2392 passed the House without further amendment on September 27. The Science Committee provisions were explained in floor statements by Congressmen Sensenbrenner, Morella, and Mark Udall.

On March 21, 2000, the Senate Committee marked up H.R. 2392 and on May 10, 2000, reported the bill (S. Rept. 106-289). The Senate Committee struck several of the sections originating from the House Committee on Science and added sections not in the House-passed legislation, including a requirement that Federal agencies with Small Business Innovation Research (SBIR) programs report their methodology for calculating their SBIR budgets to the Small Business Administration (SBA) and a program to assist states in the development of small high-technology businesses. Negotiations then

began among the leadership of the Senate and House Committees on Small Businesses and the House Committee on Science (hereinafter referred to as the three committees). The resultant compromise text contains all major House and Senate provisions, some of which have been amended to reflect a compromise position. A section-by-section explanation of the revised text follows. The purposes of this statement, the bill passed by the House of Representatives is referred to as the "House version" and the bill reported by the Senate Committee on Small Business is referred to as the "Senate version."

*Section 101. Short Title; Table of Contents*

The compromise text uses the Senate short title: "Small Business Innovation Research Program Reauthorization Act of 2000." The table of contents lists the sections in the compromise text.

*Section 102. Findings*

The House and Senate versions of the findings are very similar. The compromise text uses the House version of the findings.

*Section 103. Extension of the SBIR Program*

The House version extends the SBIR program for seven years through September 30, 2007. The Senate version extends the program for ten years through September 30, 2010. The compromise text extends the program for eight years through September 30, 2008.

*Section 104. Annual Report*

The House version provides for the annual report on the SBIR program prepared by the SBA to be sent to the Committee on Science, as well as to the House and Senate Committees on Small Business that currently receive it. The Senate version did not include this section. The compromise text adopts the House language.

*Section 105. Third Phase Assistance*

The compromise text of this technical amendment is identical to both the House and Senate versions.

*Section 106. Report on Programs for Annual Performance Plan*

This section requires each agency that participates in the SBIR program to submit to Congress a performance plan consistent with the Government Performance and Results Act. The House and Senate versions have the same intent. The compromise text uses the House version.

*Section 107. Output and Outcome Data*

Both the House and Senate versions contain sections enabling the collection and maintenance of information from awardees as is necessary to assess the SBIR program. Both the Senate and House versions require the SBA to maintain a public database at SBA containing information on awardees from all SBIR agencies. The Senate version adds paragraphs to the public database section dealing with database identification of businesses or subsidiaries established for the commercial application of SBIR products or services and the inclusion of information regarding mentors and mentoring networks. The House version further requires the SBA to establish and maintain a government database, which is exempt from the Freedom of Information Act and is to be used solely for program evaluation. Outside individuals must sign a non-disclosure agreement before gaining access to the database. The compromise text contains each of these provisions, with certain modifications and clarifications, which are addressed below.

With respect to the public database, the compromise text makes clear that propri-

etary information, so identified by a small business concern, will not be included in the public database. With respect to the government database, the compromise text clarifies that the inclusion of information in the government database is not to be considered publication for purposes of patent law. The compromise text further permits the SBA to include in the government database any information received in connection with an SBIR award the SBA Administrator, in conjunction with the SBIR agency program managers, consider to be relevant and appropriate or that the Federal agency considers to be useful to SBIR program evaluation.

With respect to small business reporting for the government database, the compromise text directs that when a small business applies for a second phase award it is required to update information in the government database. If an applicant for a second phase award receives the award, it shall update information in the database concerning the award at the termination of the award period and will be requested to voluntarily update the information annually for an additional period of five years. This reporting procedure is similar to current Department of Defense requirements for the reporting of such information. When sales or additional investment information is related to more than one second phase award is involved, the compromise text permits a small business to apportion the information among the awards in any way it chooses, provided the apportionment is noted on all awards so apportioned.

The three committees understand that receiving complete commercialization data on the SBIR program is difficult, regardless of any reasonable time frame that could be established for the reporting of such data. Commercialization may occur many years following the receipt of a research grant and research from an award, while not directly resulting in a marketplace product, may set the groundwork for additional research that leads to such a product. Nevertheless, the three committees believe that the government database will provide useful information for program evaluation.

*Section 108. National Research Council Reports*

The House version requires the four largest SBIR program agencies to enter into an agreement with the National Research Council (NRC) to conduct a comprehensive study of how the SBIR program has stimulated technological innovation and used small businesses to meet Federal research and development needs and to make

The compromise text makes several changes to the House text. The compromise text adds the National Science Foundation to the agencies entering the agreement with the NRC and requires the agencies to consult with the SBA in entering such agreement. It also expands the House version, which requires a review of the quality of SBIR research, to require a comparison of the value of projects conducted under SBIR with those funded by other Federal research and development expenditures. The compromise text further broadens the House version's review of the economic rate of return of the SBIR program to require an evaluation of the economic benefits of the SBIR program, including economic rate of return, and a comparison of the economic benefits of the SBIR program with that of other Federal research and development expenditures. The compromise text allows the NRC to choose an appropriate time-frame for such analysis that results in a fair comparison.

The three committees believe that a comprehensive report on the SBIR program and its relation to other Federal research expenditures will be useful in program oversight and will provide Congress with an understanding of the effects of extramural Federal research and development funding provided to large and small businesses and universities. The three committees understand, however, that measuring the direct benefits of the nation's economy from the SBIR program and other Federal research expenditures may be difficult to calculate and may not provide a complete portrayal of the benefits achieved by the SBIR program. Accordingly, the legislation requires the NRC also to review the non-economic benefits of the SBIR program, which may include, among other matters, the increase in scientific knowledge that has resulted from the program. The paragraph in the compromise text calling for recommendations remains the same as the House version, except that the bill now asks the NRC to make recommendations, should there be any.

While the study is to be carried out within National Research Council study guidelines and procedures, the compromise text requires the NRC to take the steps necessary to ensure the individuals from the small business community with expertise in the SBIR program are well-represented in the panel established for performing the study and among the peer reviewers of the study. The NRC is to consult with and consider the views of the SBA's Office of Technology and the SBA's Office of Advocacy and to conduct the study in an open manner that makes sure that the views and experiences of small businesses involved in the program are carefully considered in the design and execution of the study. Extension of the SBIR program for eight years rather than the five being contemplated when the House study provision was initially written has necessitated some adjustments in the study. The report is now required three years rather than four years after the date of enactment of the Act and the NRC is to update the report within six years of enactment. The update is intended to bring current, any information from the study relevant to the reauthorization of the SBIR program. It is not intended to be a second full-fledged study. In addition, semiannual progress reports by NRC to the three committees are required.

#### *Section 109. Federal Agency Expenditures for the SBIR Program*

The Senate version requires each Federal agency with an SBIR program to provide the SBA with a report describing its methodology for calculating its extramural budget for purposes of SBIR program set-aside and requires the Administrator of the SBA to include an analysis of the methodology from each agency in its annual report to the Congress. The House version has no similar provision. The compromise text follows the Senate text except that it specifies that each agency, rather than the agency's comptroller, shall submit the agency's report to the Administrator. The three committees intend that each agency's methodology include an itemization of each research program that is excluded from the calculation of its extramural budget for SBIR purposes as well as a brief explanation of why the agency feels each excluded program meets a particular exemption.

#### *Section 110. Policy Directive Modifications*

The House version includes policy directive modifications in Section 9 and the requirement of a second phase commercial plan in Section 10. The Senate version include policy directive modifications in Section 6. The Senate version and now the compromise text require the Administrator to

make modifications to SBA's policy directives 120 days after the date of enactment rather than the 30 days contained in the House version. The compromise text drops the House policy directive dealing with awards exceeding statutory dollar amounts and time limits because this flexibility is already being provided administratively. Addressed below is a description of the policy directive modifications contained in the compromise text that were not included in both the Senate version and the House version.

Section 10 of the House version requires the SBA to modify its policy directives to require that small businesses provide a commercial plan with each application for a second-phase award. The Senate version does not contain a similar provision. The compromise text requires the SBA to modify its policy directives to require that a small businesses provide a "succinct commercialization plan for each second phase award moving towards commercialization." The three committees acknowledge that commercialization is a current element of the SBIR program. The statutory definition of SBIR, which is not amended by H.R. 2392, includes "a second phase, to further develop proposals which meet particular program needs, in which awards shall be made based on the scientific and technical merit and feasibility of the proposals, as evidenced by the first phase, considering among other things the proposal's commercial potential...", and lists evidence of commercial potential as the small business's commercialization record, private sector funding commitments, SBIR Phase III commitments, and the presence of other indicators of the commercial potential. The three committees do not intend that the addition of a commercialization plan either increase or decrease the emphasis an agency places on the commercialization when reviewing second-phase proposals. Rather, the commercialization plan will give SBIR agencies a means of determining the seriousness with which individual applicants approach commercialization.

The commercialization plan, while concise, should show that the business has thought through both the steps it must take to prepare for the fruits of the SBIR award to enter the commercial marketplace or government procurement and the steps to build business expertise as needed during the SBIR second phase time period. The three committees intend that agencies take into consideration the stage of development of the product or process in deciding whether an appropriate commercialization plan has been submitted. In those instances when at the time of the SBIR Phase II proposal, the grantee cannot identify either a product or process with the potential eventually to enter either the commercial or the government marketplace, no commercialization plan is required.

The compromise text also adds new provisions that were not contained in either the Senate version or the House version. Current law (Section 9(j)(3)(C) of the Small Business Act) require that the Administrator put in place procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development or production of a technology developed by a small business concern under an SBIR program enter into follow-on, non-SBIR funding agreements with the small business concern for such research, development, or production.

The three committees are concerned that agencies sometimes provide these follow-on activities to large companies who are in incumbent positions or through contract bundling without written justification or without the statutorily required documentation of the impracticability of using the small business for the work. So that the SBA and

the Congress can track the extent of this problem, the compromise text requires agencies to record and report each such occurrence and to describe in writing why it is impractical to provide the research project to the original SBIR company. Additionally, the compromise text directs the SBA to develop policy directives to implement the new subsection (v), Simplified Reporting Requirements. This subsection requires that the directives regarding collection of data be designed to minimize the burden on small businesses; to permit the updating the database by electronic means; and to use standardized procedures for the collection and reporting of data.

Section 103(a)(2) of P.L. 102-564, which reauthorized the SBIR program in 1992, added language to the description of a third phase award which made it clear that the third phase is intended to be a logical conclusion of research projects selected through competitive procedures in phases one and two. The Report to the House Committee on Small Business (H. Rept. 102-554, Pt. I) provide that the purpose of that clarification was to indicate the Committee's intent that an agency which wishes to fund an SBIR project in phase three (with non-SBIR monies) or enter into a follow-on procurement contract with an SBIR company, need not conduct another competition in order to satisfy the Federal Competition in Contracting Act (CICA). Rather, by phase three the project has survived two competitions and thus has already satisfied the requirements of CICA, set forth in section 2302(2)(E) of that Act, as they apply to the SBIR program. As there has been confusion among SBIR agencies regarding the intent of this change, the three committees reemphasize the intent initially set forth in H. Rept. 102-554, Pt. 1, including the clarification that follow-on phase III procurement contracts with an SBIR company may include procurement of products, services, research, or any combination intended for use by the Federal government.

#### *Section 111. Federal and State Technology Partnership Program*

This section establishes the FAST program from the Senate version, which is a competitive matching grant program to encourage states to assist in the development of high-technology businesses. The House version does not contain a similar provision. The most significant changes from the Senate version in the compromise text are an extension of the maximum duration of awards from three years to five and the lowering of the matching requirement for funds assisting businesses in low income areas to 50 cents per federal dollar, as advocated by Ranking Member Velazquez of the House Small Business Committee. The compromise text combines the definitions found in the Senate version of this section and the mentoring networks section.

#### *Section 112. Mentoring Networks*

The Senate version sets forth criteria for mentoring networks that organizations are encouraged to establish with matching funds from the FAST program and creates a database of small businesses willing to act as mentors. The compromise text, except for relocating the program definitions to Section 111, is the same as the Senate text. The House version did not contain a similar provision.

#### *Section 113. Simplified Reporting Requirements*

This section is not in either the House or the Senate versions. It requires the SBA Administrator to work with SBIR program agencies on standardizing SBIR reporting requirements with the ultimate goal of making the SBA's SBIR database more user friendly.

This provision requires the SBA to consider the needs of each agency when establishing and maintaining the database. Additionally, it requires the SBA to take measures to reduce the administrative burden on SBIR program participants whenever possible including, for example, permitting updating by electronic means.

#### *Section 114. Rural Outreach Program Extension*

This provision, which was not in either the House or the Senate versions, extends the life and authorization for appropriations for the Rural Outreach Program of the Small Business Administration for four additional years through fiscal year 2005. It is the intent of the three committees that this program be evaluated on the same schedule and in the same manner as the FAST program. Among other things, the evaluation should examine the extent to which the programs complement or duplicate each other. The evaluation should also include recommendations for improvements to the program, if any.

#### **TITLE II—GENERAL BUSINESS LOANS**

The purpose of Title II is to amend the general business loan program at the Small Business Administration, commonly known as the 7(a) loan program. Title II of H.R. 2392 contains a variety of technical and substantive changes to improve the program and correct problems brought to the Committee's attention through the oversight process and originally passed by the House as H.R. 2615.

Title II will increase the maximum guarantee amount of a 7(a) loan to \$1 million from the current limit of \$750,000 in order to keep pace with inflation. The guarantee amount was last increased in 1988. It also institutes a cap prohibiting loans with a gross amount in excess of \$2 million.

The bill will also remove a provision which reduced SBA's liability for accrued interest on defaulted loans since the provision's intended savings failed to materialize.

Title II also includes three changes designed to encourage the making of smaller loans. The guarantee rate will be expanded to 85% from loans under \$100,000 to loans under \$150,000. Likewise, the two percent guarantee fee will now apply to loans up to \$150,000, which represents a significant savings for these small borrowers.

Finally, for small loans, Title II of H.R. 2392 includes a provision allowing lenders to retain one quarter of the guarantee fee on loans under \$150,000 as an incentive to make these loans.

The last part of Title II modifies an SBA regulatory restriction which prohibit loans for passive investment. Title II will permit the financing of projects where no more than 20% of a business location will be rented out provided the small business borrower in question occupies at least 60% of the business space.

#### *Section 201. Short Title*

#### *Section 202. Levels of Participation*

Increases the guarantee percentage on loans of \$150,000 or less to 85%. The current guarantee level of 80% extends only to loans of \$100,000 or less. This guarantee increase is one of the changes proposed to encourage the availability of smaller loans.

#### *Section 203. Loan Amounts*

This provision will increase the maximum guarantee amount to \$1 million. The maximum gross loan amount will be capped at \$2 million. The language would prohibit SBA from placing a guarantee on any loan over \$2 million regardless of the guaranteed amount. Consequently, the largest loan available would be a \$2 million loan with a 50% guarantee.

The largest loan available at the maximum guarantee of 75% would be \$1,333,333. The cap

on loans over \$2 million will effectively remove a number of large loans that have been made with only a minimal guarantee, loans which use up loan authority at a disproportionate rate. In 1998, roughly thirty loans over \$2 million were made.

#### *Section 204. Interest on Defaulted Loans*

This will remove the provision that reduced SBA's liability for accrued interest on defaulted loans. This provision was added to the program in 1996 as a method of reducing the subsidy cost of the program. It has come to the Committee's attention that the expected savings have not materialized.

#### *Section 205. Prepayment of Loans*

This provision will reduce the incentive for early prepayment of 7(a) loans. It will assess a fee to the borrower for early prepayment of any loan with a term in excess of 15 years. Early prepayment will be defined as any prepayment within the first three years after disbursement. The prepayment fee will be determined by the date of the prepayment—5% in the first year, 3% in the second year, 1% in the third year. The fee will be based on "excess prepayment" which is defined as prepayment of more than 25% of the outstanding loan amount. In the event of an excess prepayment the fee would be assessed on the entire outstanding loan amount.

#### *Section 206. Guarantee Fees*

This section changes the guarantee fee for loans of \$150,000 or less to 2%. Currently, the guarantee fee of 2% is only for loans under \$100,000. Loans over \$100,000 currently have a guarantee fee of 3%. The section also provides for an incentive for lenders to make smaller loans (under \$150,000) by allowing them to retain ¼ of the guarantee fee.

#### *Section 207. Lease Terms*

Under existing 7(a) rules, loan proceeds may not be used for investment purposes. This includes purchase or construction of property to be leased to others. Currently, 7(a) loans may be used to construct property which will be used solely by the borrower.

In 1997, Congress modified this rule for the 504 program to allow for projects where a small portion of a property might be rented out permanently, but the borrower's main focus was the construction of a permanent location. This provision would allow the same authority for 7(a) loans. Borrowers would be allowed to lease up to 20% of a property in which they will occupy at least 60% of the business space.

#### **TITLE III—CERTIFIED DEVELOPMENT COMPANIES**

The purpose of Title III of H.R. 2392 is to amend the Small Business Investment Act to make changes in the Certified Development Company (CDC) loan program at the Small Business Administration (SBA), commonly known as the 504 loan program. Title III is the substance of H.R. 2614 which passed the House earlier this Congress and contains a variety of technical and substantive changes to improve the program and correct problems brought to the Committee's attention through the oversight process.

Title III will increase the maximum amount of a 504 loan, and its underlying debenture, to \$1 million from the current limit of \$750,000 in order to keep pace with inflation. The maximum amount for loans with specific public policy purposes (low-income, rural, and minority owned businesses) is increased to \$1,300,000. The loan amount was last increased in 1988. Title III will also reauthorize the fees which support the 504 program.

Title III will also add women-owned businesses as a specific public policy goal for the 504 program. Title III will make permanent two pilot programs begun by SBA in 1997 in

response to a Congressional mandate. The first pilot program, the Liquidation Pilot Program, enables certain qualified Certified Development Companies to liquidate their own loans rather than enduring the usual process of SBA controlled liquidation. The second, the Premier Certified Lenders Program, enables experienced CDCs to use streamlined procedures for loan making and liquidation.

#### *Section 301. Short Title*

#### *Section 302. Women-Owned Businesses*

Women-owned businesses are added to the list of concerns eligible for the higher debentures available for public policy purposes. Current policy goals include lending to low-income and rural areas, and loans to businesses owned by minorities.

#### *Section 303. Maximum Debenture Size*

Maximum loan/debenture size is increased from \$750,000 to \$1,000,000 for regular debentures. Public policy loan/debentures are increased from \$1,000,000 to \$1,300,000 for public policy debentures. This increase is commensurate with inflation since the current debenture levels were established.

#### *Section 304. Fees*

Currently, the 504 program levies fees on the borrower, CDC, and the participating bank. The bank pays a one-time fee whereas the borrower and CDC pay a percentage of the outstanding balance annually in order to provide operational funding for the 504 program. Currently these fees sunset on October 1, 2000. This legislation would continue the fees through October 1, 2003.

#### *Section 305. Premier Certified Lenders Program*

The Premier Certified Lenders Program (PCLP) is granted permanent status. The current demonstration program terminates at the end of FY 2000.

#### *Section 306. Sale of Certain Defaulted Loans*

SBA is required to give any certified lender with contingent liability 90 days notice prior to including a defaulted loan in a bulk sale of loans. No loan may be sold without permitting prospective purchasers to examine SBA records on the loan.

#### *Section 307. Loan Liquidation*

Section 510 is added to the Small Business Investment Act of 1958 in order to create a program permitting CDCs to handle the liquidation of defaulted loans. This program replaces the pilot program authorized by PL 105-135, the Small Business Reauthorization Act of 1997. A permanent program would permit OMB to score savings achieved by the program when computing the subsidy rate for the 504 program.

In order to participate in the liquidation program, a CDC must have made at least 10 loans per year for the past three years and have at least one employee with 2 years of liquidation experience or be a member of the Accredited Lenders Program with at least one employee with 2 years of liquidation experience. Both groups are required to receive training. PCLP participants and current participants in the pilot program automatically qualify.

CDCs have the authority to litigate as necessary to foreclose and liquidate, but SBA could assume control of the litigation if the outcome might adversely affect SBA's management of the program or if SBA has additional legal remedies not available to the CDC.

All Section 510 participants are required to submit a liquidation plan to SBA for approval, and SBA has 15 days to approve, deny, or express concern with the plan. Further SBA approval of routine liquidation activities is not required.

CDCs are able to purchase indebtedness with SBA approval, and SBA is required to respond to such a request within 15 days.

Likewise, CDCs are required to seek SBA approval of any workout plan, and SBA must respond to that request within 15 days. With SBA approval, a CDC may compromise indebtedness. Such approval must be granted, denied, or explained within 15 days of receipt by SBA.

#### TITLE IV—SMALL BUSINESS INVESTMENT COMPANIES

The purpose of Title IV is to amend the Small Business Investment Act (the Act) to make changes in the Small Business Investment Company (SBIC) program at the SBA. Title IV contains the language from H.R. 3845 which passed the House earlier this Congress and contains four technical changes to improve the program and correct problems brought to the Committee's attention through the oversight process.

H.R. 3845 modifies the definition of control for SBIC investment in small businesses, eliminating a cumbersome five prong test and setting a clear statutory standard. H.R. 3845 will also modify the definition of long term investment under the Act, changing it from five years to one year, in order to harmonize that definition with accepted business practice and the tax and banking laws. Third, the bill allows the Administration to adjust the subsidy fee for the SBIC program to maintain the subsidy rate of the program at zero. Finally, the bill makes a change to the distribution language in the Act, allowing SBICs more flexibility in making distributions to their investors and will simplify the accounting and tax procedures at SBICs.

#### Section 401. Short Title Section 402. Definitions

(a) Small Business Concern.—Inserts the following language in section 103(5)(A)(i) of the Small Business Investment Act—"regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment". This phrase clarifies that a venture capital investment agreement from an SBIC may cause a change in control of a small business, but that such a change will not affect the eligibility of the small business concern. The Committee does not intend that SBICs become holding companies hence the language references the period of the investment agreement. Further, the Committee retains the authority for SBA examinations to inquire into "illegal control" by SBICs, though the committee expects such control to be that exercised outside an investment agreement.

(b) Long term.—Inserts the following paragraph in section 103 of the Small Business Investment Act,

"(17) the term long term, when used in connection with equity capital or loan funds invested in any small business concern or smaller enterprise, means any period of time not less than 1 year." The language changes the definition of a long term investment to harmonize it with the tax and banking laws.

#### Section 403. Investment in SBICs

This provision allows federal savings associations to invest in SBICs.

#### Section 404. Subsidy Fees

This provision amends sections 303(b) and 303(b)(2) of the Small Business Investment Act to allow the Administration to adjust the fee assessed on debentures and participating securities up to a maximum of one percent. The fee will be adjusted to keep the subsidy cost of the programs at zero or as close as possible to zero.

#### Section 405. Distributions

This section amends section 303(g)(8) of the Small Business Investment Act in order to

allow SBICs to make distributions at any time during a calendar quarter based on the maximum estimated tax liability.

#### Section 406. Conforming Amendment

#### TITLE V—REAUTHORIZATION OF SMALL BUSINESS PROGRAMS

The purpose of Title V is to reauthorize the programs and operations of the SBA. Title V contains the language from H.R. 3843 which contained the authorization levels for SBA for fiscal year 2001, 2002, and 2003. It contains no technical or substantive changes to any of the programs. The SBA provides a variety of services for small business—financial assistance, technical assistance, and disaster assistance.

#### Financial Assistance

The SBA provides approximately \$11 billion in financing to small business annually. This financing is made available through a variety of programs.

SBA's largest financial program is the Section 7(a) general business loan program. The 7(a) program offers loans to small businesses through local lending institutions. These loans are provided with an SBA guarantee of up to 80 percent and are limited to a maximum of \$750,000. The 7(a) program has a subsidy rate of 1.16% for fiscal year 2000 and an appropriation of \$107 million, permitting \$9.8 billion in lending.

The Section 504 loan program provides construction, renovation and capital investment financing to small businesses through CDCs. These CDCs are SBA licensed, local business development organizations which provide loans of up to \$750,000 for small businesses, in cooperation with local banks. CDCs provide 40% of the financing package, while the bank provides 50%, and the small business provides a 10% down payment. CDC funding is obtained through issuance of an SBA guaranteed debenture. The 504 program currently operates at no cost to the taxpayer but does require authorization.

The microloan program provides small loans of up to \$25,000 to borrowers in low-income areas. In fiscal year 1999 the program provided \$29 million in loans. In addition, the program has a technical assistance aspect that provides managerial and business expertise to microloan borrowers. Microloans are made by intermediary organizations that specialize in local business development. The program has a subsidy rate of 8.54%.

The Small Business Investment Company (SBIC) program provides over \$1.5 billion in long term and venture capital financing for small businesses annually. SBICs are venture capital firms that leverage private investment dollars with SBA guaranteed debentures or participating securities. The SBIC debenture program currently operates at a zero subsidy rate and requires no taxpayer subsidy. The participating securities program has a 1.8% subsidy rate.

#### Technical Assistance

The SBA provides technical and managerial assistance to small businesses through four primary programs—Small Business Development Centers (SBDCs), the Service Corps of Retired Executives (SCORE), the 7(j) technical assistance program, and the Women's Business Center program.

SBDCs are located primarily at colleges and universities and provide assistance through 51 center sites and approximately 970 satellite offices. Through a formula of matching grants and donations SBDCs offer small businesses guidance on marketing, financing, start-up, and other areas. The program currently receives \$84 million in appropriations.

SCORE provides small business assistance on-site through the volunteer efforts of its members. SCORE volunteers are retired

business men and women who offer their expertise to small businesses. SCORE volunteers are reimbursed for their travel expenses and SCORE receives funding as well for a website and offices in Washington, DC.

The 7(j) program provides financing for technical assistance to the minority contracting community primarily through courses and direct assistance from management consultants. In addition, the program provides assistance for participants to attend business administration classes offered through several colleges and universities.

The Women's Business Center program provides five year grants matched by non-federal funds to private sector organizations to establish business training centers for women. Depending on the needs of the community, centers teach women the principles of finance, management and marketing as well as specialized topics such government contracting or starting home-based businesses. There are currently 81 centers in 47 states in rural, urban and suburban locations.

#### Disaster Assistance

The Small Business Administration also provides disaster loan assistance to homeowners and small businesses nationwide. This program is a key component of the overall Federal recovery effort for communities struck by natural disasters. This assistance is authorized by section 7(b) of the Small Business Act which provides authority for reduced interest rate loans. Currently the interest rates fluctuate according to the statutory formula—a lower rate, not to exceed four percent is offered to applicants with no credit available elsewhere, while a rate of a maximum of eight percent is available for other borrowers.

#### Section 501. Short Title

#### Section 502. Reauthorization of Small Business Programs

This section provides the authorized appropriation levels for the following programs: Section 7(a) general business loans, Section 504 Certified Development Company loans, direct microloans, guaranteed microloans, microloan technical assistance, Defense Transition (DELTA) loans, Small Business Investment Company debentures, Small Business Investment Company participating securities, Surety Bonds guarantees, SCORE, disaster loans, and salaries and expenses.

The following are the authorizations levels for the financial programs:

(In millions of dollars)

	2001	2002	2003
7(a) .....	14,500	15,000	16,000
504 .....	4,000	4,500	5,000
Microloan .....	60	80	100
Microloan TA .....	45	60	70
Microloan gty. ....	50	50	50
SBIC debentures .....	1,500	2,500	3,000
SBIC part. Securities .....	2,500	3,500	4,000
Surety bonds .....	4,000	5,000	6,000

This Title also authorizes the Service Corps of Retired Executives (SCORE). SCORE will be authorized at 5, 6, and 7 million dollars for fiscal years 2001, 2002, and 2003, respectively.

Title V also contains provisions authorizing funding for salaries and expenses at the Small Business Administration. These authorizations are established as "such sums as may be necessary".

#### Section 503. Additional Reauthorizations

This section reauthorizes five programs:

(a) SBDC funding—Increases the authorization from \$95,000,000 to \$125,000,000.

(b) Drug Free Workplace—Extends authorization through fiscal year 2003 at \$5,000,000 per year.

(c) HUBZones—Authorizes appropriations of \$10,000,000 per year through fiscal year 2003.

(d) National Women's Business Council—Increases authorizations to \$1,000,000 per year and extends authorization through fiscal year 2003.

(e) Very Small Business Concerns—Extends authorization through September 30, 2003.

(f) SDB Certification—Extends authorization through September 30, 2003.

#### TITLE VI—HUBZONE PROGRAM

The HUBZone program aims to direct portions of Federal contracting dollars into areas of the country that in the past have been out of the economic mainstream. HUBZone areas, which include qualified census tracts, poor rural counties, and Indian reservations, often are relatively out-of-the-way places that the stream of commerce passes by, and thus tend to be in low or moderate income areas. These areas can also include certain rural communities and tend, generally, to be low-traffic areas that do not have a reliable customer base to support business development. As a result, business has been reluctant to

The HUBZone Act seeks to overcome this problem by making it possible for the Federal government to become a customer for small businesses that locate in HUBZones. While a small business works to establish its regular customer base, a Federal contract can help it stabilize its revenues and remain profitable. This gives small business a chance to get a foothold and provides jobs to these areas. New business and new jobs mean new life and hope for these communities.

Since the HUBZone Act was adopted in the Small Business Reauthorization Act of 1997, the Small Business Administration has been implementing the program. On March 22, 1999, SBA began accepting applications from interested firms. Experience to date has revealed several difficulties with implementation, which the Senate Committee has sought to rectify in this legislation. The House receded to provisions put forth by the Senate to rectify problems in the HUBZone program.

#### Subtitle A—HUBZones in Native America Act

Sections 601-04 attempt to resolve problems associated with the operation of HUBZones in regions subject to control of Native Americans and Alaska Native corporations.

One such problem was an unintended consequence of wording in the 1997 legislation that inadvertently excluded Indian Tribal enterprises and Alaska Native corporations from participation. The definition of "HUBZone small business concern" specified that eligible small businesses must be 100% owned and controlled by U.S. citizens. This provision sought to insure that HUBZone benefits, financed by the American taxpayer, should be available only for U.S. beneficiaries.

However, since citizens are "born or naturalized" under the Fourteenth Amendment, ownership by citizens implies ownership by individual flesh-and-blood human beings. Corporate owners and Tribal government owners are not "born or naturalized" in the usual meanings of those terms. Thus, the Small Business Administration found that it had no authority to certify small businesses owned wholly or partly by Alaska Native Corporations and Tribal governments.

Since Native American communities were always intended to benefit from HUBZone opportunities, the Committee has included language to make such firms eligible. On many reservations, particularly the isolated ones, the only investment resources available are the Tribal governments. Excluding those governments from investing in their own reservations means, in practical terms, excluding those reservations from the

HUBZone program entirely. Similarly, Alaska Native Corporations have corporate resources that are necessary to make real investments in rural Alaska and to provide jobs to Alaska Natives who currently have no hope of getting them.

The Senate Committee was guided by three broad principles in crafting this legislation. First, no firm should be made eligible solely by virtue of who it is. For example, Alaska Native Corporations will not be eligible solely because they are Alaska Native Corporations. Instead, Alaska Native Corporations and Indian Tribal enterprises should be eligible only if they agree to advance the goals of the HUBZone program—job creation and economic development in the areas that need it most.

Second, the Senate Committee sought to make the HUBZone program conform to existing Native American policy. The Committee is aware of controversy over whether to change Alaska Native policy so that Alaska Natives exercise governmental jurisdiction over their lands, just like Tribes in the Lower 48 States do on both their reservations and trust lands. The Alaska Native Claims Settlement Act (ANCSA) of 1971 deliberately refrained from creating Alaska Native jurisdictions in Alaska, and this Committee's legislation is intended to conform to existing practice in ANCSA.

The third principle underlying this bill is that Alaska Natives and Indian Tribes should participate on as even a playing field as possible. Exact equivalence is not possible because the Federal relationship with Alaska Natives differs significantly from the relationship with Indian Tribes, and also because Alaska is a very different State from the Lower 48. However, ANCSA provided that Alaska Natives should be eligible to participate in Federal Indian programs "on the same basis as other Native Americans."

#### Subtitle B—Other HUBZone Provisions

Subtitle B contains several technical changes to clarify interpretive issues concerning the original HUBZone Act, as well as new language to correct an unforeseen situation regarding procurement of commodities. Subtitle B makes a further amendment to the categories of eligible HUBZone firms, to include the HUBZone program as one of the tools Community Development Corporations can use in rebuilding their communities and neighborhoods.

#### Section 611. Definitions

Subtitle B includes a technical correction to the definition of "qualified census tract." It also makes two major substantive changes to the definition of "qualified nonmetropolitan county."

First, the definition is clarified to ensure that nonmetropolitan counties in the HUBZone program are those that were considered to be such as of the time of the last decennial (10 year) census. The HUBZone program relies on census tracts selected in metropolitan areas based on the last census, so that a metropolitan county—in order to have such census tracts—must have been considered metropolitan at that time. A nonmetropolitan county may be eligible as a HUBZone based on income data collected during the census or on unemployment data produced annually by the Bureau of Labor Statistics.

During the ten-year period between each census, some counties become so integrated into the commercial activities of a metropolitan area that they are moved from the nonmetropolitan category to the metropolitan category. Such counties would become ineligible for HUBZone participation. They would not have been metropolitan counties at the time of the last census, so no qualified census tracts would have been selected there.

They would also no longer be nonmetropolitan counties, so the income and unemployment tests available to such counties would no longer apply. Thus, counties that change from nonmetropolitan to metropolitan, in the period between each census, would become ineligible until the next census is taken. Subtitle B corrects this problem by freezing, for HUBZone purposes, the categories of metropolitan and nonmetropolitan counties as they stood at the time of the last census.

#### Section 612. Eligible Contracts

In 1999, the Senate Committee became aware of potential implementation problems in HUBZone procurements of certain commodities, particularly food-aid commodities purchased by the Department of Agriculture (USDA), that could lead to unintended and anti-competitive results. Because bids for commodities generally tend to fall within a narrow range of prices, the 10% price evaluation preference that currently exists could be overwhelmingly decisive. In such purchases, a handful of HUBZone firms could secure significant portions of these markets. This, in turn, could prompt other vendors to abandon these markets, thus reducing USDA's vendor base and reducing competition. These are results that would be contrary to the goals set forth in 2 of the Small Business Act.

To prevent irreparable harm to USDA's vendor base until the matter could be addressed more comprehensively in this legislation, Senator Bond sponsored a proviso in the Fiscal 2000 Agriculture Appropriations Act. As adopted in the conference report, 751 of that Act limited the price evaluation preference to 5% for up to half of the total dollar value of each commodity in a particular tender (solicitation). It also prohibited contract awards to a HUBZone firm that would be of such magnitude as to require the firm to subcontract to purchase the commodity being procured, since such a scenario would imply allow these firms to purchase commodities from subcontractors and in turn sell them to the Government at inflated prices.

Section 612 seeks to address this issue on a more permanent basis. The Senate and House Small Business Committees are aware that USDA relies upon a complex computer program to evaluate commodities bids, and thus Section 612 seeks to set a long-term policy that will not require frequent and expensive changes to this software. Although the legislation reduces the level of HUBZone program incentives that otherwise would be available under the HUBZone Act, Section 612 still seeks to ensure substantial awards to HUBZone concerns, while protecting existing incentives available to other types of small business concerns. The House and Senate Small Business Committees intend that these incentives help commodities procurements contribute their fair share toward achieving the Government-wide goal of 23% of prime contract dollars to small business concerns, but

#### Section 613. HUBZone Redesignated Areas

The second major change to the definition of "qualified nonmetropolitan county" is the addition of a grandfathering clause. Because the Bureau of Labor Statistics (BLS) issues new county-level unemployment data annually, nonmetropolitan counties may shift into and out of eligibility on a yearly basis. The Committee believes that this type of movement is too fluid for a program that should be stable in its first few years. Companies will be confused about the merits of

the program if firms lose and gain eligibility from year to year. A company will not want to invest in such a county only to have it suddenly become ineligible, due to new BLS data, before the company has even had the opportunity to recoup its investment by participating in the HUBZone program.

Section 613 seeks to stabilize this situation by looking at the unemployment picture over a three-year period for nonmetropolitan counties. It also provides that companies in such a county will have a one year period to pursue HUBZone opportunities and wrap up its activities under the program, after such a county becomes ineligible due to new BLS data. A similar one year period is provided for changes that may result due to enactment of this legislation.

#### *Section 614. Community Development*

For reasons similar to the problems preventing HUBZone program participation by Indian Tribal enterprises and Alaska Native Corporations, small businesses owned by Community Development Corporations were also inadvertently made ineligible by the original HUBZone Act. The Conference Report has included a provision to correct this problem. As with Tribal enterprises and Alaska Native Corporations, addressed in Subtitle A of this Title, Community Development Corporations are not made automatically eligible. These firms must agree to advance the job-creation goals of the HUBZone program. Specifically, as other businesses must do, these enterprises must maintain their principal office in a HUBZone and employ 35% of their workforce from one or more HUBZones.

#### *Section 615. Reference Corrections*

#### **TITLE VII—NATIONAL WOMEN'S BUSINESS COUNCIL REAUTHORIZATION**

Title VII reauthorizes the National Women's Business Council for three years, from FY 2001 to 2003, and to increase the annual appropriation from \$600,000 to \$1 million. The increase in funding will allow the Council to: support new and ongoing research; produce and distribute reports and recommendations prepared by the Council; and create an infrastructure to assist states in developing women's business advisory councils, coordinate summits and establish an interstate communication network.

The increase will also be used to assist Federal agencies meet the procurement goal for women-owned businesses established by Congress in 1994 under section 15(g) of the Small Business Act. By law, Federal agencies must strive to award women-owned small businesses at least 5 percent of the total amount of Federal prime contract dollars. The House and Senate Small Business Committees feel strongly that Federal agencies should meet the five-percent goal, and it supports the Council's plan to expand its efforts to increase the percentage of prime contracts that go to women-owned businesses. Based on current data, women are not receiving awards proportionate to their presence in the economy. For example, women-owned businesses make up 38 percent of all small businesses, yet women-owned businesses received only 2.42 percent of the \$189 billion in Federal prime contracts in FY 1999.

According to the National Foundation for Women Business Owners, over the past decade the number of women-owned businesses in this country has grown by 103 percent to an estimated 9.1 million firms. They generate almost \$3.6 trillion in sales annually and employ more than 27.5 million workers. With the impact of women-owned businesses on our economy increasing at an unprecedented rate, Congress relies on the Council to serve as its eyes and ears as it anticipates

the needs of this burgeoning entrepreneurial sector. Since it was established in 1988, the Council, which is bi-partisan, has provided important unbiased advice and counsel to Congress.

Title VII allows the Council to continue to perform its duties at the level it has done so far, as well as expand its activities to support initiatives that are creating the infrastructure for women's entrepreneurship at the state and local level.

#### **TITLE VIII—MISCELLANEOUS PROVISIONS**

Title VIII contains several miscellaneous authorizations and programs.

#### *Section 801. Loan Application Processing*

This section requires a study of the time required for SBA to process loan applications.

#### *Section 802. Application of Eligibility Requirements*

This section clarifies that women-owned business, socially and economically disadvantaged business, and veteran owned business status is to be determined without regard for the possible application of state community property laws. Certain SBA offices have been denying loan applications based upon the possibility that qualified individuals may divorce resulting in joint ownership of the small business.

#### *Section 803. Subcontracting Preference for Veterans*

This clarifies that the language included in subcontracting plans for small business concerns owned and controlled by veterans and used for the purpose of data collection also includes small business concerns owned and controlled by service disabled veterans.

#### *Section 804. Business Development Center Funding*

This section reforms the formula for funding Small Business Development Centers.

#### *Section 805. Surety Bonds*

Reauthorizes the Surety Bond financing program.

#### *Section 806. Size Standards*

Clarifies the treatment of size standards under the North American Industry Classification system established by NAFTA. Also increases agricultural size standards to \$750,000 in gross annual receipts.

#### *Section 807. Native Hawaiian Organizations under Section 8(a)*

Clarifies the standards for participation of Native Hawaiian Organizations in the 8(a) contracting program.

#### *Section 808. National Veterans Business Development Corporation Correction*

Extends and corrects the authorization language for the NVBDC to correct for a missed appropriation cycle.

#### *Section 809. Private Sector Resources for SCORE*

Permits the SCORE program to solicit and expends funds donated by private sector organizations.

#### *Section 810. Data Collection*

This provision requires the SBA to develop a database of bundled contracts. The Administrator is then required to assess whether contracts whose terms have expired but will be recompeted as part of bundled contracts have achieved the savings or improvements in quality that the procuring agency anticipated when it initially consolidated the contract requirements. This analysis also will be used by the Administrator in determining the number of small businesses that have been displaced as prime contractors as a result of contract bundling. The provision requires the Administrator to report annually to the House and Senate Small Business

Committees on the cost savings from contract bundling and the number of small businesses displaced as prime contractors. The Administrator is required to use the definition of bundled contract set forth in section 3(o) of the Small Business Act to build the database and report to Congress.

The annual report of the Administrator of the Small Business Administration must contain data on the number of small businesses displaced as prime contractors, the number of contracts bundled by agencies, the total dollar value of the bundled contracts, the justification for each bundled contract, the total cost savings realized by the bundled contracts, the Small Business Administration's estimates of whether those total cost savings or other benefits will continue to be achieved under bundled contracts, the total dollar value of contracts previously awarded to small business prime contractors, the total dollar value of contracts awarded by the prime to small business subcontractors, the effect of bundling on the ability of small businesses to compete as prime contractors, and the effect on the industry including the reduction in the number of small businesses in the particular industrial classification.

#### *Section 811. Procurement Program for Women-owned Small Business Concerns*

Gives Federal agencies the authority to restrict competition for any contract for the procurement of goods or services by the Federal government to small businesses owned and controlled by women who are economically disadvantaged.

#### **HONORING SENATOR SPENCER ABRAHAM**

#### **HON. FRED UPTON**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 15, 2000*

Mr. UPTON. Mr. Speaker, today I recognize my good friend from the other body, Senator SPENCER ABRAHAM.

Senator ABRAHAM is a good American and a great Michigander. Over the years, I have gotten to know Senator ABRAHAM well and I can truly say his family has lived the American dream. His maternal grandfather came to America from Lebanon, began a new life in America as a peddler and eventually opened his own grocery store. His paternal grandfather was also a Lebanese immigrant who worked in the West Virginia coal mines before seeking a better life in Michigan as an auto-worker and grocery store owner. SPENCE's dad was also an autoworker, and with his wife, owned a small shop in downtown Lansing.

As Michigan's U.S. Senator, SPENCER put the strong values he learned from his family into action. He worked hard and lived his dream. SPENCE was the first member of his family to attend college and went on to earn his law degree. Prior to serving as our Senator, SPENCER served as Michigan's Republican Chairman and in the Reagan Administration.

Since Senator ABRAHAM's election in 1994, I have had the distinct opportunity to work with him on a host of issues of importance both to the people of our state and the nation. And, his record speaks for itself. As a United States