Union Calendar No. 442

109TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
109–740

SUMMARY OF ACTIVITIES

A REPORT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

JANUARY 2, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, January 2, 2007.

Hon. KAREN HAAS,
Clerk, House of Representatives,
Washington, DC.

DEAR MS. HAAS: On behalf of the Committee on Small Business of the U.S. House of Representatives, I am pleased to transmit the attached Summary of Activities of the Committee on Small Business for the 109th Congress.

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

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

Sincerely,

DONALD A. MANZULLO,
Chairman.

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JANUARY 2, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

SUMMARY OF ACTIVITIES

CHAPTER ONE

INTRODUCTION

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

The adoption of the House rules in the 94th through 109th Congress confirmed this action and continued the process begun on August 12, 1941, when, by virtue of House Resolution 294 (77th Congress, 1st session), the Select Committee on Small Business was created. In January 1971, the House designated the Select Committee as a permanent Select Committee; and, on October 8, 1974, the 93rd Congress, recognizing the importance of the work performed on behalf of this nation's small businesses, provided that the Committee should thereafter be established as a standing committee.

1.1 HISTORICAL BACKGROUND

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

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

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

In recognition of the importance of the Committee, the House of Representatives has established the Committee's membership at 33 Members. The following Members were named to constitute the Committee in the 109th Congress:

Republicans included:

Donald A. Manzullo (IL), Chairman; Roscoe G. Bartlett (MD) Vice Chairman; Sue W. Kelly (NY); Steve Chabot (OH); Sam Graves (MO); W. Todd Akin (MO); Bill Shuster (PA); Marilyn N. Musgrave (CO); Jeb Bradley (NH); Steve King (IA); Thaddeus G. McCotter (MI); Ric Keller (FL); Ted Poe (TX); Michael E. Sodrel (IN); Jeff Fortenberry (NE); Michael G. Fitzpatrick (PA); Lynn A. Westmoreland (GA); Louie Gohmert (TX).

Democrats included:

Nydia M. Velázquez (NY), Ranking Minority Member; Juanita Millender-McDonald (CA); Tom Udall (NM); Daniel Lipinski (IL); Eni F. H. Faleomavaega (AS); Donna M. Christensen (VI); Danny K. Davis (IL); Ed Case (HI); Madeleine Z. Bordallo (GU); Raúl M. Grijalva (AZ); Michael H. Michaud (GA); Linda T. Sánchez (CA); John Barrow (GA); Melissa L. Bean (IL); Gwen Moore (WI).

1.2 Extracts From the Rules of the House of Representatives

RULE X

ORGANIZATION OF COMMITTEES

COMMITTEES AND THEIR LEGISLATIVE JURISDICTIONS

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

* * * * * * *

(o) Committee on Small Business.

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

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

GENERAL OVERSIGHT RESPONSIBILITIES

2. (b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being

implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

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

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

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

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

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

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

SPECIAL OVERSIGHT FUNCTIONS

* * * * * * *

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

1.3 Number and Jurisdiction of Subcommittees

There will be four subcommittees as follows:

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

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

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

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

During the 109th Congress, the Chairman and ranking minority member shall be ex officio members of all subcommittees, without vote, and the full committee shall have the authority to conduct oversight of all areas of the committee's jurisdiction.

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

WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS

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

Promotion of business growth and opportunities in economically depressed areas.

Oversight and investigative authority over regulations and other government policies that impact small businesses located in high risk communities.

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

General oversight of programs targeted toward urban relief.

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

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

Participation of small business in Federal procurement and Government contracts.

REGULATORY REFORM AND OVERSIGHT

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

Regulatory Flexibility Act.

Paperwork Reduction Act.

Competition policy generally.

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

TAX, FINANCE AND EXPORTS

Tax policy and its impact on small business.

Access to capital and finance issues generally.

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

RURAL ENTERPRISES, AGRICULTURE AND TECHNOLOGY

Promotion of business growth and opportunities in rural areas.

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

General oversight of programs targeted toward farm relief.

Oversight and investigative authority for small business technology issues.

1.4 Disposition of Legislation Referred to the Committee

A total of 65 House bills and 1 Senate bill were referred to the Committee on Small Business during the 109th Congress. The Committee acted on 15 bills in some fashion, of which 5 reports were filed. Two bills on which the Committee acted upon were signed into law either individually or as part of broader legislation. The House of Representatives passed two Committee-drafted resolutions to express the sense of the House that American small businesses are entitled to a Small Business Bill of Rights (H. Res. 22) and to honor those who work in the heating, ventilation, and air conditioning (HVAC) industry, celebrating National Indoor Comfort Week (H. Res. 130). These resolutions did not require Senate passage or presidential signature. For a more detailed summary of the Committee's legislative activities, please refer to Chapter 5 of this report.

The Committee expended most of its legislative time and effort in attempting to reach an accommodation to pass a consensus Small Business Administration (SBA) reauthorization bill (H.R. 5352) that had broad support with SBA industry groups and the Administration. Unfortunately, Democrats on the House Small Business Committee decided to be more partisan in the 109th Congress by first refusing to meet with Chairman Manzullo or majority staff to find out their concerns regarding SBA reauthorization. Then, the minority proceeded with their plan to offer over 45 mostly frivolous amendments during the proposed May 17, 2006 mark-up that would have dramatically increased the size and scope of the SBA. For example, Committee Democrats offered 10 different but similar amendments that basically attempted to overturn the zero loan subsidy policy in the 7(a) program.

Instead of going through a contentious mark-up process, Chairman Manzullo extended yet another olive branch by attempting to meet individually with Democrat Members of the Committee who offered amendments to see where there were areas to compromise. However, after an initial few meetings, the Ranking Minority Member banned any more Democrat Members from meeting with Chairman Manzullo, thus complicating efforts to find common ground. Throughout the summer and fall of 2006, the Ranking Minority Member insisted on incorporating controversial provisions into SBA reauthorization and offered no real compromise. Thus, to prevent a major increase in spending, the one major Committee-sponsored bill that was signed into law was simply a long-term temporary extension of SBA programs (P.L. 109–316) until February 2, 2007.

In a more productive direction, the Committee was able to work with the Transportation and Infrastructure Committee to pass a modified version of H.R. 1148, authored by Delegate Madeleine Bordallo (D–GU), which designated the entire insular areas of Guam, the Virgin Islands, America Samoa, and the Northern Mariana Islands, in addition to non-metropolitan areas of Alaska and Hawaii, as Historically-Underutilized Business (HUB) Zones, as an amendment to H.R. 3, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). H.R. 3, with H.R. 1148 as modified as the new Section 10203, was signed into law on August 10, 2005 (P.L. 109–59).

The Committee also passed four bills—two authored by Republicans and two authored by Democrats—that unfortunately did not see timely action by the House (H.R. 230, H.R. 527, H.R. 2981, and H.R. 3207). However, they were incorporated into the Chairman's SBA reauthorization package (H.R. 5352) but that legislation, as mentioned above, was halted by the minority.

The Committee also held 11 hearings on seven bills that were either finalized or still in development (H.R. 682, H.R. 2943, H.R. 3429, H.R. 3939, H.R. 5196, H.R. 5352, H.R. 6204) but these bills saw no further action. Two Subcommittees of the House Judiciary Committee held hearings on two Small Business Committee bills where both committees shared legislative jurisdiction (H.R. 435 and H.R. 682) but they saw no further legislative action.

The Committee was very active on other legislation that was not directly referred to the Committee but had a large impact upon small business. This included the *Tax Increase Prevention and Reconciliation Act* (P.L. 109–222), which provides for a two-year extension of the higher $100,000 small business expensing limit; the *Junk Fax Prevention Act of 2005* (P.L. 109–21), which reversed the Federal Communications Commission (FCC) proposed rule to require written consent prior to a business sending a fax to a recipient; the *Energy Policy Act of 2005* (P.L. 109–58), which aimed to provide adequate, affordable, and reliable energy supplies; the *Transportation Equity Act*: *A Legacy for Users* (P.L. 109–59), which included a provision to prevent public transit agencies from competing with small private bus tour operators; the *Department of Homeland Security Appropriations Act*, 2007 (P.L. 109–295), which provides a 18-month extension to implement the Western Hemisphere Travel Initiative (WHTI); the *Security and Accountability* for Every (SAFE) Ports Act (P.L. 109–347), which eased the proposed burden of the proposed Maritime Transportation Worker Card (TWIC) on small businesses in the transportation sector; the *Export-Import Bank Reauthorization Act of 2006* (P.L. 109–438), which restored a viable Small Business Division within the Bank; and the *Tax Relief and Health Care Act of 2006* (P.L. 109–432), which expanded the reach and scope of Health Savings Accounts (HSAs) to provide more health care choices for small business owners and their employees.

The Committee was also very involved in trying to pass small business friendly legislation into law but was stymied because of a determined minority of Democrat Senators prevented a full debate on the bills. This includes three efforts to either abolish (H.R. 8) or reform the estate tax (H.R. 5638 and H.R. 5970); the *Small Business Health Fairness Act*, which creates Association Health Plans (H.R. 525/S. 1955); and the *HEALTH Act of 2005* (H.R. 5/S. 22) to reform our medical liability system.

Finally, the Committee was heavily engaged in helping to pass other pro-small business bills but they could not be completed in time for final passage into law. These include the *Federal Prison Industries Competition in Contracting Act* (H.R. 2965), which removed the mandatory sourcing preference for FPI; the *U.S. Patent and Trademark Fee Modernization Act* (H.R. 2791), which would continue the lower fee structure for small entities filing patents; and the *Business Checking Freedom Act of 2005* (H.R. 1224), which allows interest on business checking accounts.

CHAPTER TWO

THE SMALL BUSINESS ADMINISTRATION

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

During the 109th Congress, the Committee held a number of hearings and passed several bills that focused on the mission and performance of the SBA. Much of the Committee's effort focused on disaster recovery associated with the SBA's mission to provide disaster loans to homeowners and small businesses. In particular, 2005 was a very active hurricane season that included the devastation wrought by Hurricanes Katrina, Rita, and Wilma. A review of the legislative activities of the Committee appears in Chapter Five and a synopsis of the hearings held by the Committee may be found in Chapter Seven of this report.

The major programs of the SBA are briefly described below.

2.1 SBA PROGRAMS IN GENERAL

SBA was has approximately 5,896 employees in the field (including 3,772 temporary disaster employees) with 692 at the headquarters in Washington, DC. There are currently 10 regional offices, 68 district and 13 staffed branch offices, two commercial loan servicing centers, two liquidation centers, one liquidation and guaranty purchase center, two disaster home loan servicing centers, a disaster processing and disbursement center, a disaster call center, two disaster field operation centers, a headquarters disaster operations center (located in Herndon, VA), 26 field disaster operation centers, six Government Contracting Area Offices, and two commercial loan servicing centers. The SBA provides small business loan guarantees, direct loans for physical damage and economic injury to disaster victims, assistance to small businesses who are seeking to compete in the federal procurement arena and to obtain contracts, as a well as management, marketing and technical assistance provided by Small Business Development Centers (SBDCs) and the Senior Corps of Retired Executives (SCORE). The SBA also administers a surety bond program for small businesses that are not able to obtain bonding elsewhere.

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

2.2 SBA Business Loans

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

SBA's largest business loan guarantee program is the 7(a) program. In Fiscal Year (FY 2005), 88,845 7(a) loans were made in the amount of approximately $14 billion and in FY 2006 there were 90,483 such loans made in the amount of $13.8 billion. Banks and other lending institutions make loans and the SBA guarantees up to $1,500,000 of a private sector loan of up to $2,000,000. Generally, the SBA guarantees up to 85 percent of loans of $150,000 or less and 75 percent of loans greater than $150,000.

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

The 504 loan program was established to encourage economic development, create and preserve job opportunities, and foster growth and modernization of small businesses. A small business may apply to a Certified Development Company (CDC), licensed by SBA, to finance part of a proposed 504 project. The SBA guarantees debentures of up to $1,000,000 ($1,300,000 where certain economic redevelopment objectives are met). The guarantees are for 100 percent of the debenture that represents 40 percent of the total project costs. The balance of the costs is provided by a 10 percent or more contribution by the borrower, and a private sector loan to finance the remaining 50 percent. There are currently 273 licensed CDCs. In FY 2005, CDCs made 8,974 504 loans totaling $4.94 billion and in FY 2006, CDCs made 9,720 504 loans totaling $5.7 billion.

The Small Business Reauthorization and Manufacturing Assistance Act of 2004—(H.R. 5108/S. 2821), that was added to the Consolidated Appropriations Act, 2005 (Division K of P.L. 108–447) also expanded the 504 loan program at no additional expense to the taxpayer. Public Law 108–447 increased the maximum loan debenture size in the 504 program to $1.5 million; $2 million for projects where certain economic redevelopment objectives are met; and $4 million for small manufacturers. It also increased the job requirement test to $50,000 of guarantee for every one job created or retains (up from $35,000); $100,000 in the case of a project of a small manufacturer; and $75,000 for areas generally considered to need greater economic development.

The Microloan program is designed to provide capital to very small enterprises that cannot be served even by the other access to capital programs of the SBA. The program has two types of loans: (1) direct and (2) guaranteed. SBA directly provides loans to 169 intermediaries who in turn make loans of up to $35,000 to small businesses. Also, SBA guarantees 100 percent of loans to the intermediaries by banks. SBA funds grants to intermediaries and other qualified organizations to provide marketing, management, and technical assistance to borrowers. In FY 2005, intermediary lenders made 2,436 loans in the amount of $20,000,000. In FY 2006, intermediary lenders made 2,395 loans in the amount of $19,000,000.

2.3 Disaster Assistance Loans

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

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

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

In FY 2005, SBA approved 41,651 disaster loans totaling $1.27 billion. In FY 2006, SBA approved 137,803 disaster loans totaling $8.79 billion. The increase in the disaster loan program arises from the very active hurricane season in the summer of 2005, including Hurricanes Katrina, Rita, and Wilma.

2.4 Small Business Investment Companies

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

Capital for investment has been raised traditionally by investors in a SBIC and by debentures guaranteed as to both principal and interest by SBA (which usually are equal to two or three times the SBICs private capital). SBICs relying upon debenture leverage primarily invest in debt securities of small businesses that have cash flows sufficient to service the outstanding debentures. For FY 2005, SBA made 1,753 financings totaling $1.084 billion for the debenture SBIC program. In FY 2006, the number of debenture financings dropped (as a result in the reduction in one industry that typically uses debenture SBIC financing—taxicabs) to 1,614 financings with a total dollar value of $1.207 billion.

In 1992, legislation was enacted creating a new SBIC participating securities program. SBA guarantees the principal and pays the purchasers of participating securities the interest as it comes due on behalf of a SBIC. When the SBIC becomes profitable, the SBIC repays SBA the interest advanced and a share of the profits. The participating securities program permits investment in new enterprises that do not have established records of profitability. Under the participating security SBIC program, the SBA provided 1,930 financings in FY 2005 for a total dollar value of $1.568 billion. For FY 2006, the SBA had 1,831 financings for a total dollar value of $1.487 billion.

The New Markets Venture Capital (NMVC) program, enacted into law in 2000, provides capital to small enterprises located in low-income areas. SBA can enter into participation agreements with newly formed venture capital companies and guarantees securities to allow them to make equity investments in small businesses located in low-income areas. In addition, SBA can make grants to NMVC SBICs so that they can provide managerial assistance to small businesses in which they have invested. In FY 2005, the SBA provided 20 financings to NMVCCs and in FY2006, that number grew to 34 financings.

2.5 Procurement Assistance

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

The Small Business Act establishes a goal of providing 23 percent of federal government procurement dollars to small businesses and the following subset of small businesses: small disadvantaged businesses, including those operating pursuant to section 8(a) of the Small Business Act (SDBs); business located in historically underutilized business zones (HUBZones); small businesses owned by women; and small businesses owned by service disabled veterans. According to the FY 2005 data from the Federal Procurement Data System (the latest available), small businesses were awarded 2,302,698 contract actions totaling $79.625 billion dollars or about 25.36 percent of total federal contracting dollars. The dollar amounts for the subset of small businesses were: SDBs, $21.715 billion; HUBZones businesses, $6.103 billion; women-owned businesses, $10.494 billion; and service-disabled veteran businesses, $1.899 billion.

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

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

2.6 Entrepreneurial Development

The SBA's economic assistance programs support those seeking to start a business and those desiring to grow and expand an existing small business by providing individual counseling, management training, procurement and marketing assistance with guidance materials and workshops. Assistance is provided at service locations throughout the United States, Puerto Rico, and the U.S. Virgin Islands, and electronically by means of various Internet sites. The facilities that deliver entrepreneurial development assistance include:

approximately 1,100 SBDCs, 10,844 SCORE volunteers, 86 Business Information Centers (BICs), nine Tribal Business Information Centers (TBICs), four Veterans Business Outreach Centers, and 86 Women's Business Centers (WBCs).

SBDCs are funded by both federal and state appropriations. SBA administers the program through grants generally to state governments and agencies. Most SBDCs are affiliated with state college and university systems. They assist small businesses and aspiring entrepreneurs with business problems concerning personnel, administration, marketing, sales, merchandizing, finance, accounting, business management, and participation in international markets. SBDCs may not charge a fee for counseling services. Modest fees are charged for workshops and business related training and courses. In FY 2005, SBDCs served 706,000 clients. In FY2006, SBDCs served an estimated 703,000 clients.

SCORE has 380 chapter locations (at least one in every state) where volunteer counselors provide practical business advice and training services to about 383,000 clients annually. All counseling is provided free of charge to clients. Annual congressional appropriations are used to reimburse counselors for mileage and incidental expenses. E-mail counseling is provided over the Internet.

WBCs provide assistance and one-on-one counseling to women entrepreneurs with respect to technology, financial and management planning, problem-solving, access to capital, marketing, business administration, and selling to the federal government. The online Women's Business Center provides around-the-clock Internet access to business information to help start a business, resolve business problems, or grow an existing enterprise through federal contracting or exporting opportunities. In FY 2005, WBCs served about 144,000 clients. WBCs counseled and trained 126,305 clients in FY 2006.

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

Veterans Business Outreach Centers counseled 5,796 veterans and trained 5,312 veterans in the five Veterans Business Outreach Centers in FY 2006. These veterans were provided with assistance in gaining access to capital, resolving business and management problems, and starting and growing small businesses. In addition, SBA has entered into agreements with the Association of Small Business Development Centers, the Department of Labor, and works with the Department of Veterans Affairs to provide outreach and needed business administration and entrepreneurial services to veterans and service-disabled veterans.

The current Native American Initiative is not a replacement for other entrepreneurial development programs. Rather, it is an initiative developed because of Congressional appropriations. The SBA's Office of Native American Affairs works closely with American Indian tribal governments, tribal colleges, Indian organizations, other federal agencies and the private sector to supplement and support the Indian nations' plan for economic stimulus in Indian country. In, FY 2005, the SBA's resource partners assisted 12,037 Native American entrepreneurs and 10,507 Native American entrepreneurs in FY 2006.

2.7 Surety Bond Guarantees

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

The SBA will pay a surety participating in the Prior Approval Program 90 percent guarantee for SDBs and HUBZones regardless of contract size up to $2 million, and 90 percent guarantee for all contractors with contracts $100,000 or less. Otherwise, SBA will pay a surety in an amount not to exceed ad administrative ceiling of 80 percent guarantee for all contracts over $100,000 for small businesses other than SDBs and HUBZones. Under the Preferred Surety Bond program, the SBA's guarantee is limited to 70 percent of the bond for all small businesses for all contracts and contractors regardless of contract size. In FY 2005, SBA provided 1,680 final bond guarantees. In FY 2006, SBA provided 1,706 final bond guarantees. In both fiscal years, the total dollar value of contracts exceeded $500,000,000.

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

2.8 Technology and Innovation

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

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

SBA's Office of Technology provides oversight, monitoring, evaluation, and reporting for these programs. No new cooperative agreements have been issued under the Federal and State Technology Partnership program because the authority for the program ended on September 30, 2005. The grants are to provide technical assistance to high-tech small businesses to enhance their market competitiveness. The SBA, due to an absence of appropriations for the program has not made any cooperative agreements for rural states that receive few awards under the SBIR and STTR programs.

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

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

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

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

Phase I is the start-up portion of the project and may be funded up to $100,000. This phase lasts approximately six months and is for the purpose of exploring the scientific, and technical aspects of the project. Phase II may last up to two years and may be funded in an amount up to $750,000. During this period, research and development continues and the commercial potential explored. Only projects that successfully complete Phase I can be considered for funding in Phase II. Phase III is the point in the project that the idea moves from the laboratory to the production facility to the market place. No SBIR funds may be used to pay for Phase III. The funding must come from the private sector or non-SBIR federal funding. In FY2005, 4,144 Phase I funding agreements were awarded totaling $449,582,491 and 1,869 Phase II funding agreements were awarded totaling $1,410,014,373.

The STTR program is independent of the SBIR program with which it is frequently confused. The STTR program requires a cooperative venture between a for-profit small business and a researcher from a university, federal laboratory, or a non-profit research institution for the purpose of developing commercially viable products from ideas spawned in a laboratory environment. For a federal agency to participate in the program, it must have an extramural budget for research or research and development that exceeds $1 billion for any fiscal year. Presently, there are five federal agencies that meet the funding requirement. They are: Department of Defense, Department of Energy, Department of Health and Human Services, National Aeronautics and Space Administration, and National Science Foundation.

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

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

The statute mandates that each award go though three phases. Phase I is the start-up part of a particular project and entails, as may be possible, a determination of the scientific, technical, and commercial merits of the concepts underlying a particular award. Phase II provides an opportunity to further develop the concepts to meet the objectives of the particular award. Only projects that successfully complete Phase I can be considered for funding under Phase II. Phase III is the point at which the project moves from the laboratory to commercial application or further cooperative research and development. No STTR funds may be used to pay for Phase III. The funding must come from the private sector or non-STTR federal funding. For the latest data available, FY 2005, 379 Phase I funding agreements were awarded in the amount of $41,135,227 and 111 Phase II funding agreements were awarded totaling $50,676,227.

2.9 Export Assistance

SBA is authorized to promote increased participation of small businesses in international trade. To assist small businesses in exporting abroad, SBA works with the Department of Commerce and other federal agencies to identify business opportunities and to assist in financing the sale of U.S. made products to foreign buyers. SBA works with the Department of Commerce, the Export-Import Bank, Department of Agriculture, as well as SBDCs and SCORE, in maintaining a network of 16 U.S. Export Assistance Centers

(USEACs) that provide information and counseling with respect to export marketing and financing. USEACs are SBA's primary outlet for delivering export services to small businesses. Small businesses may obtain free consultation through the Export Legal Assistance Network (ELAN) program, which enables those interested in starting export operations to consult with international trade attorneys from the Federal Bar Association, and access to publications on international trade and export marketing.

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

The loans can be for single or multiple export sales and can be expended for pre-shipment working capital and post-shipment exposure coverage, but the proceeds cannot be used to obtain fixed assets. Through the 7(a) loan program, the SBA can provide export assistance by guaranteeing international trade loans, that provide long-term financing to small businesses engaged in international trade, as well as those businesses adversely impacted by import competition. In FY 2005, SBA guaranteed 2,638 export loans worth an estimated $750,000,000. In FY 2006, SBA guaranteed 3,082 export loans in the total amount of approximately $900,000,000.

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

2.10 OFFICE OF ADVOCACY

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

The statutorily prescribed "primary functions" of the Office of Advocacy include: (1) examining the role of small business in the

American economy; (2) assessing the effectiveness of all federal subsidy and assistance programs available to small business; (3) measuring the cost and impact of government regulations on small business and making legislative and non-legislative recommendations for the elimination of unnecessary or excessive regulations; (4) determining the impact of the tax structure on small business and making legislative and other proposals for reform of the tax system; (5) studying the ability of the financial markets to meet the credit needs of small business; (6) determining availability and delivery methods of financial and other assistance to minority enterprises; (7) evaluating the efforts of federal departments and agencies, business and industry to assist minority enterprises; (8) recommending ways to assist the development and strengthening of minority and other small businesses; (9) recommending ways for small business to compete effectively and to expand, while identifying common causes for small business failures; (10) developing criteria to define small business; and, (11) evaluating federal and private industry efforts to assist veterans and service-disabled veterans.

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

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

The statute prescribed 12 categories of data and required an annual report on trends. Although none of these database functions were expressly delegated to the Office of Advocacy by statute, the SBA Administrator has historically assigned these functions to the Office of Advocacy. The Office of Advocacy also has regional advocates who monitor small business and regulatory activities at the State level and disseminate relevant information about small small business; and, (11) evaluating federal and private industry efforts to assist veterans and service-disabled veterans.

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The Office of Advocacy estimates that in 2005 (the latest date for this information), their efforts saved small businesses $6.6 billion in compliance costs by stopping or changing potentially damaging regulations.

CHAPTER THREE

HEARINGS AND MEETINGS HELD BY THE COMMITTEE ON SMALL BUSINESS AND ITS SUBCOMMITTEES, 109TH CONGRESS

3.1 FULL COMMITTEE

Date	Subject
February 10, 2005	The President's FY '06 Budget Request: What Does it Mean for Small Business?
February 17, 2005	Medical Liability Reform: Stopping the Skyrocketing Price of Health Care
March 2, 2005	Prescriptions for Health Care: Solutions to the Problem
March 8, 2005	Small Business Priorities of the 109th Congress
March 16, 2005	The RFA at 25: Needed Improvements for Small Business Regulatory Relief
April 6, 2005	What has Ex-Im Bank Done for Small Business Lately?
April 13, 2005	Private Equity for Small Firms: The Importance of the Participating Securities Program
April 27, 2005	Closing the Tax Gap and the Impact on Small Businesses
May 4, 2005	Anticompetitive Threats from Public Utilities: Are Small Businesses Losing Out?
June 6, 2005	Small Business Access to Health Insurance: Lessons from Nebraska?
June 14, 2005	Are Skyrocketing Medical Liability Premiums Driving Doctors Away from Underserved Areas?
July 13, 2005	Small Business Development Centers: New Offerings for a New Economy
July 25, 2005	Freedom of Conscience for Small Pharmacies
July 27, 2005	Proposed Legislative Remedy for the Participating Securities Program
September 21, 2005	Reforming the Tax Code to Assist Small Businesses
October 7, 2005	Small Businesses and Hurricane Katrina: Rebuilding the Economy
November 1, 2005	Promoting Private Sector Emergency Preparedness
November 17, 2005	Building a Wall Between Friends: Passports to and from Canada?
March 15, 2006	FY '07 Budget and Reauthorization Proposals of the SBA
April 5, 2006	Hearing on the IRS Latest Enforcement: Is the Bulls-eye on Small Business?
April 26, 2006	Cutting Our Trade Deficit: Can the U.S. Muster Its Diverse Trade Promotion Operations to Make an Impact?
May 3, 2006	Sarbanes-Oxley Section 404: What is the Proper Balance Between Investor Protection and Capital Formation for Smaller Public Companies?
May 10, 2006	Bridging the Equity Gap: Examining the Access to Capital for Entrepreneurs Act of 2006
June 7, 2006	Contracting the Internet: Does ICANN Create a Barrier to Small Business?
June 21, 2006	Joint hearing with the Government Reform Committee, Northern Lights and Procurement Plights: The Effect of the ANC Program on Federal Procurement and Alaska Native Corporation
July 25, 2006	Failure to Comply with the Regulatory Flexibility Act: IRS Endangering Small Businesses Yet Again
September 27, 2006	Advancing Security and Commerce at Our Nation's Ports: The Goals are not Mutually Exclusive
November 28, 2006	FEMA's Response to the Rockford Flood

3.2 SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS

Date	Subject
April 21, 2005	Removing Obstacles to Job Creation: How Can the Federal Government Help Small Businesses Revitalize the Economy?
May 24, 2005	Joint Subcommittee hearing with the Veteran's Affairs Committee Subcommittee on Economic Opportunities, How Are Our Veteran-Owned Small Business Owners Being Served?
June 21, 2005	Union Salting—Organizing Against Small Business
June 28, 2005	How the Clean Air Act Affects Auto Repair
August 9, 2005	Small Business Expensing—Job Growth Through the Tax Code
September 8, 2005	Freedom in the Workplace—an Examination of a National Right to Work Law
November 8, 2005	The Small Business Innovation Research Program—Opening Doors to New Technology

Date	Subject
March 2, 2006	Oversight of the Small Business Administration's Entrepreneurial Development Programs
April 27, 2006	Healthcare and Small Business: Proposals That Will Help Lower Costs and Cover the Uninsured
June 27, 2006	Immigrant Employment Verification and Small Business
August 10, 2006	Healthcare and Small Business—Real Options for Colorado Businesses

3.3 Subcommittee on Regulatory Reform And Oversight

Date	Subject
March 17, 2005	Roundtable on Regulatory Reform
April 28, 2005	The Administration's Program to Reduce Unnecessary Regulatory Burden on Manufacturers—A Promise to be Kept?
May 19, 2005	ANWR's Benefits for Small Business
June 21, 2005	Veteran's Access to Capital
September 29, 2005	Entrepreneur Soldiers Empowerment Act
February 8, 2006	The Internet Sales Tax: Headaches Ahead for Small Business?
March 16, 2006	The State of Small Business Security in a Cyber Economy
March 30, 2006	SBA's Procurement Assistance Programs
April 6, 2006	Can Small Healthcare Groups Feasibly Adopt Electronic Medical Records Technology?
May 23, 2006	Data Protection and the Consumer: Who Loses When Your Data Takes a Hike?
June 27, 2006	S Corporations—Their History and Challenges
July 13, 2006	An Update on Administration Action to Reduce Unnecessary Regulatory Burdens on America's Small Manufacturers

3.4 Subcommittee on Tax, Finance and Exports

Date	Subject
April 7, 2005	Joint Subcommittee roundtable on service-disabled veteran-owned small business issues with the Tax, Finance and Exports Subcommittee and the Subcommittee on Economic Opportunity of the House Veterans' Affairs Committee
April 14, 2005	The Estate Tax and the Alternative Minimum Tax—Inequity for America's Small Businesses
May 26, 2005	Joint Subcommittee hearing with the Rural Enterprises, Agriculture and Technology Subcommittee, Does China Enact Barriers to Fair Trade?
February 1, 2006	Joint Subcommittee hearing with the Rural Enterprises, Agriculture and Technology Subcommittee, Transforming the Tax Code: An Examination of the President's Tax Reform Panel Recommendations
March 9, 2006	Oversight of the Small Business Administration's Finance Programs
June 28, 2006	The Effects of the High Cost of Natural Gas on Small Businesses and Future Energy Technologies
July 20, 2006	Joint Subcommittee hearing with the Rural Enterprises, Agriculture and Technology Subcommittee, Chinese Barriers to Trade: Does China Play Fair?

3.5 Subcommittee on Rural Enterprises, Agriculture and Technology

Date	Subject
March 17, 2005	The High Price of Natural Gas and its Impact on Small Businesses: Issues and Short Term Solutions
May 26, 2005	Joint Subcommittee hearing with the Tax, Finance and Exports Subcommittee, Does China Enact Barriers to Fair Trade?
June 29, 2005	Different Applications for Genetically Modified Crops
July 27, 2005	The Importance of the Biotechnology Industry and Venture Capital Support in Innovation
September 15, 2005	The Need for Improvements and More Incentives in the Endangered Species Act
February 1, 2006	Joint Subcommittee hearing with the Tax, Finance and Exports Subcommittee, Transforming the Tax Code: An Examination of the President's Tax Reform Panel Recommendations
March 15, 2006	The Missouri River and its Spring Rise: Science or Science Fiction?
May 3, 2006	The Future of Rural Telecommunications: Is Universal Service Reform Needed?
May 25, 2006	Unlocking Charitable Giving
July 20, 2006	Joint Subcommittee hearing with the Tax, Finance and Exports Subcommittee, Chinese Barriers to Trade: Does China Play Fair?

CHAPTER FOUR

PUBLICATIONS OF THE COMMITTEE ON SMALL BUSINESS AND ITS SUBCOMMITTEES, 109th CONGRESS

4.1 Reports

House Report No.	Title and date
109–208	Report to accompany H.R. 230, To amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a program to provide regulatory compliance assistance to small business concerns, and for other purposes; July 28, 2005.
109–207	Report to accompany H.R. 527, To amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a vocational and technical entrepreneurship development program; July 28, 2005.
109–206	Report to accompany H.R. 2981, To amend the Small Business Act to expand and improve the assistance provided by Small Business Development Centers to Indian tribe members, Native Alaskans, and Native Hawaiians; July 28, 2005.
109–205	Report to accompany H.R. 3207, To direct the Administrator of the Small Business Administration to establish a pilot program to make grants to eligible entities for the development of peer learning opportunities for second-stage small business concerns; July 28, 2005.

4.2 Hearing Records

Serial No.	Date, title and committee
109–1	February 10, 2005, The President's FY '06 Budget Request: What Does it Mean for Small Business?, Full Committee
109–2	February 17, 2005, Medical Liability Reform: Stopping the Skyrocketing Price of Health Care, Full Committee
109–3	March 2, 2005, Prescriptions for Health Care: Solutions to the Problem, Full Committee
109–4	March 8, 2005, Small Business Priorities of the 109th Congress, Full Committee
109–5	March 16, 2005, The RFA at 25: Needed Improvements for Small Business Regulatory Relief, Full Committee
109–6	March 17, 2005, The High Price of Natural Gas and its Impact on Small Businesses: Issues and Short Term Solutions, Subcommittee on Rural Enterprises, Agriculture, and Technology
109–7	March 17, 2005, Roundtable on Regulatory Issues, Subcommittee on Regulatory Reform and Oversight
109–8	April 6, 2005, What has Ex-Im Bank Done for Small Business Lately?, Full Committee
109–9	Note: Errata submitted, No hearing took place.
109–10	April 13, 2005, Private Equity for Small Firms: the Importance of the Participating Securities Program, Full Committee
109–11	April 14, 2005, The Estate Tax and the Alternative Minimum Tax—Inequity for America's Small Businesses, Subcommittee on Tax, Finance and Exports
109–12	April 21, 2005, Removing Obstacles to Job Creation: How Can the Federal Government Help Small Businesses Revitalize the Economy?, Subcommittee on Workforce, Empowerment and Government Programs
109–13	April 27, 2005, Closing the Tax Gap and the Impact on Small Businesses, Full Committee
109–14	April 28, 2005, The Administration's Program to Reduce Unnecessary Regulatory Burden on Manufacturers—A Promise To Be Kept?, Subcommittee on Regulatory Reform and Oversight
109–15	May 4, 2005, Anticompetitive Threats from Public Utilities: Are Small Businesses Losing Out?, Full Committee
109–16	May 19, 2005, ANWR's Benefits for Small Business, Subcommittee on Regulatory Reform and Oversight

Serial No.	Date, title and committee
109–17	May 24, 2005, How are Our Veteran-Owned Small Business Owners Being Served?, Joint hearing of the Subcommittee on Workforce, Empowerment and Government Programs and Veteran's Affairs Subcommittee on Economic Opportunities
109–18	May 26, 2005, Does China Enact Barriers to Fair Trade?, Joint Hearing of the Subcommittee on Rural Enterprises, Agriculture, and Technology and the Subcommittee on Tax, Finance and Exports
109–19	June 6, 2005, Field Hearing, Small Businesses Access to Health Insurance: Lessons From Nebraska?, Full Committee
109–20	June 14, 2005, Are Skyrocketing Medical Liability Premiums Driving Doctors Away from Underserved Areas?, Full Committee
109–21	June 21, 2005, Union Salting—Organizing Against Small Business, Subcommittee on Workforce, Empowerment and Government Programs
109–22	June 21, 2005, Veteran's Access to Capital, Subcommittee on Regulatory Reform and Oversight
109–23	June 28, 2005, How the Clean Air Act Affects Auto Repair, Subcommittee on Workforce, Empowerment and Government Programs
109–24	June 29, 2005, Different Applications for Genetically Modified Crops, Subcommittee on Rural Enterprises, Agriculture, and Technology
109–25	July 13, 2005, Small Business Development Centers: New Offerings for a New Economy, Full Committee
109–26	July 25, 2005, Freedom of Conscience for Small Pharmacies, Full Committee
109–27	July 27, 2005, Proposed Legislative Remedy for the Participating Securities Program, Full Committee
109–28	July 27, 2005, The Importance of the Biotechnology Industry and Venture Capital Support in Innovation, Subcommittee on Rural Enterprises, Agriculture, and Technology
109–29	August 9, 2005, Small Business Expensing: Job Growth through the Tax Code, Subcommittee on Workforce, Empowerment & Government Programs
109–30	September 8, 2005, Freedom in the Workplace—An Examination of the National Right to Work Law, Subcommittee on Workforce, Empowerment and Government Programs
109–31	September 15, 2005, The Need for Improvements and More Incentives in the Endangered Species Act, Subcommittee on Rural Enterprises, Agriculture, and Technology
109–32	September 21, 2005, Reforming the Tax Code to Assist Small Businesses, Full Committee
109–33	September 29, 2005, Entrepreneur Soldiers Empowerment Act, Subcommittee on Regulatory Reform and Oversight
109–34	October 7, 2005, Small Business and Hurricane Katrina: Rebuilding the Economy, Full Committee
109–35	November 1, 2005, Promoting Private Sector Emergency Preparedness, Full Committee
109–36	November 8, 2005, The Small Business Innovation Research Program—Opening Doors to New Technology, Subcommittee on Workforce, Empowerment and Government Programs
109–37	November 17, 2005, Building a Wall Between Friends: Passports to and From Canada?, Full Committee
109–38	February 1, 2006, Transforming the Tax Code: An Examination of the President's Tax Reform Panel Recommendations, Joint Subcommittee Hearing with the Subcommittee on Rural Enterprises, Agriculture, and Technology and the Subcommittee on Tax, Finance and Exports
109–39	February 8, 2006, The Internet Sales Tax: Headaches Ahead for Small Business? Subcommittee on Regulatory Reform and Oversight
109–40	March 2, 2006, Oversight of the Small Business Administration's Entrepreneurial Development Programs, Subcommittee on Workforce, Empowerment and Government Programs
109–41	March 9, 2006, Oversight of the Small Business Administration's Finance Programs, Subcommittee on Tax, Finance and Exports
109–42	March 15, 2006, The Missouri River and its Spring Rise: Science or Science Fiction? Subcommittee on Rural Enterprises, Agriculture, and Technology
109–43	March 15, 2006, FY '07 Budget and Reauthorization Proposals of the SBA, Full Committee
109–44	March 16, 2006, The State of Small Business Security in a Cyber Economy, Subcommittee on Regulatory Reform and Oversight
109–45	March 30, 2006, SBA's Procurement Assistance Programs, Subcommittee on Regulatory Reform and Oversight
109–46	April 5, 2006, Hearing on the IRS Latest Enforcement: Is the Bulls-eye on Small Businesses?, Full Committee
109–47	April 6, 2006, Can Small Healthcare Groups Feasibly Adopt Electronic Medical Records Technology?, Subcommittee on Regulatory Reform and Oversight
109–48	April 26, 2006, Cutting Our Trade Deficit: Can the U.S. Muster its Diverse Trade Promotion Operations to Make an Impact?, Full Committee

Serial No.	Date, title and committee
109–49	April 27, 2006, Healthcare and Small Business: Proposals that Will Help Lower Costs and Cover the Uninsured, Subcommittee on Workforce, Empowerment and Government Programs
109–50	May 3, 2006, The Future of Rural Telecommunications: Is Universal Service Reform Needed? Subcommittee on Rural Enterprises, Agriculture and Technology
109–51	May 3, 2006, Sarbanes Oxley Section 404: What is the Proper Balance Between Investor Protection and Capital Formation for Smaller Public Companies? Full Committee
109–52	May 10, 2006, Bridging the Equity Gap: Examining the Access to Capital for Entrepreneurs Act of 2006, Full Committee
109–53	May 23, 2006, Data Protection and the Consumer: Who Loses When Your Data Takes a Hike, Subcommittee on Regulatory Reform and Oversight
109–54	May 25, 2006, Unlocking Charitable Giving, Subcommittee on Rural Enterprises, Agriculture, and Technology
109–55	June 7, 2006, Contracting the Internet: Does ICANN Create a Barrier to Small Business?, Full Committee
109–56	June 21, 2006, Northern Lights and Procurement Plights: The Effect of the ANC Program on Federal Procurement and Alaska Native Corporation, Full Committee—Joint hearing with Government Reform Committee
109–57	June 27, 2006, S Corporations—Their History and Challenges, Subcommittee on Regulatory Reform and Oversight
109–58	June 27, 2006, Immigrant Employment Verification and Small Business, Subcommittee on Workforce, Empowerment and Government Programs
109–59	June 28, 2006, The Effects of the High Cost of Natural Gas on Small Businesses and Future Energy Technologies, Subcommittee on Tax, Finance and Exports
109–60	July 13, 2006, An Update on Administration Action to Reduce Unnecessary Regulatory Burdens on America's Small Manufacturers, Subcommittee on Regulatory Reform and Oversight
109–61	July 20, 2006, Chinese Barriers to Trade: Does China Play Fair? Joint hearing with the Subcommittee on Tax, Finance and Exports and the Subcommittee on Rural Enterprises, Agriculture, and Technology
109–62	July 25, 2006, Failure to Comply with the Regulatory Flexibility Act: IRS Endangering Small Businesses Yet Again, Full Committee
109–63	August 10, 2006, Field Hearing, Healthcare and Small Business—Real Options for Colorado Businesses, Subcommittee on Workforce, Empowerment and Government Programs
109–64	September 27, 2006, Advancing Security and Commerce at Our Nation's Ports: The Goals are not Mutually Exclusive, Full Committee
109–65	November 28, 2006, Field Hearing, FEMA's Response to the Rockford Flood, Full Committee

CHAPTER FIVE

SUMMARY OF LEGISLATIVE ACTIVITIES OF THE COMMITTEE ON SMALL BUSINESS, 109TH CONGRESS

5.1 H. RES. 22—EXPRESSING THE SENSE OF THE HOUSE OF REPRESENTATIVES THAT AMERICAN SMALL BUSINESSES ARE ENTITLED TO A SMALL BUSINESS BILL OF RIGHTS

LEGISLATIVE HISTORY

1/4/2005: Referred to the House Committee on Small Business.
3/8/2005: Committee hearings held.
4/6/2005: Committee consideration and mark-up session held.
4/6/2005: Ordered to be reported (amended) by voice vote.
4/21/2005: Reported (amended) by the Committee on Small Business. H. Rept. 109–52.
4/21/2005: Placed on the House Calendar, Calendar No. 23.
4/26/2005: Rules Committee Resolution H. Res. 235 reported to House. Rule provides for consideration of H. Res. 22 with 1 hour of general debate. Previous question shall be considered as ordered without intervening motions except motion to recommit.
4/27/2005: Rule H. Res. 235 passed House.
4/27/2005: Considered under the provisions of rule H. Res. 235.
4/27/2005: H.AMDT.100 Amendment reported by the House Committee on Rules. Amended language made in order and considered as adopted pursuant to the provisions of H. Res. 235.
4/27/2005: H.AMDT.100 On agreeing to the Rules amendment (A001). Agreed to without objection.
4/27/2005: The previous question was ordered pursuant to the rule.
4/27/2005: Ms. Velázquez moved to recommit to Small Business.
4/27/2005: The previous question on the motion to recommit was ordered without objection.
4/27/2005: On motion to recommit failed by the yeas and nays: 188–222 (Roll no. 140).
4/27/2005: On agreeing to the resolution agreed to by voice vote.
4/27/2005: Motion to reconsider laid on the table agreed to without objection.

NEED FOR LEGISLATION

Over the years, various small businesses have approached Congress with issues that they believe are of great importance. It had been ten years since the last time small businesses gathered together on a nationwide basis to prioritize the top issues facing them as part of the 1995 White House Conference on Small Business. This resolution was needed to highlight the top tier policy issues that must be addressed by the House of Representatives in the 109th Congress—health care, tax relief, litigation reform, and regulatory/paperwork reduction. This is not to say that other small business issues are unimportant. However, this legislation is needed to help Congress prioritize the key issues that affect the largest number of small businesses in the United States.

SECTION-BY-SECTION ANALYSIS

The preamble of the resolution sets forth various facts relating to the state of small business in America. The resolving clause expresses the sense of the House of Representatives that American small businesses are entitled to a "Small Business Bill of Rights" in the following areas: (1) the right to join together to purchase affordable health insurance for small business employees; (2) the right to simplified tax laws that allow family-owned small businesses to survive over several generations and offer them incentives to grow; (3) the right to be free from frivolous lawsuits; (4) the right to be free of unnecessary, restrictive regulations and paperwork; (5) the right to relief from high energy costs; (6) the right to equal treatment, as compared to large businesses, when seeking access to start-up and expansion capital and credit; and (7) the right to open access to the Government procurement marketplace. The main aim of the resolution was not to have specific proscribed policy recommendations but to outline certain key principles that have widespread agreement among the small business community. For example, the access to capital programs at the SBA certainly help in the effort to equalize the treatment of small business, as compared to large business, in their quest for loans and venture capital. But determining which SBA loan program deserves to receive a federal subsidy or not was beyond the scope of this resolution.

5.2 H. RES. 130—RECOGNIZING THE CONTRIBUTIONS OF ENVIRONMENTAL SYSTEMS AND THE TECHNICIANS WHO INSTALL AND MAINTAIN THEM TO THE QUALITY OF LIFE OF ALL AMERICANS AND SUPPORTING THE GOALS AND IDEALS OF NATIONAL INDOOR COMFORT WEEK

LEGISLATIVE HISTORY

3/1/2005: Referred to the House Committee on Small Business.
4/6/2005: Committee consideration and mark-up session held.
4/6/2005: Ordered to be reported by voice vote.
4/20/2005: Mr. Manzullo moved to suspend the rules and agree to the resolution, as amended.
4/20/2005: Considered under suspension of the rules.
4/20/2005: On motion to suspend the rules and agree to the resolution, as amended. Agreed to by voice vote.
4/20/2005: Motion to reconsider laid on the table. Agreed to without objection.

NEED FOR LEGISLATION

This resolution recognizes the contributions of indoor environmental systems, commonly known as heating, ventilation, and air conditioning (HVAC), and the technicians who install and maintain these systems. Heating and air conditioning provide a high quality of life for all Americans. This resolution supports the goals and ideals of National Indoor Comfort Week, which took place on April 17–23, 2005 and was sponsored by the Air Conditioning Contractors Association.

Over 98 percent of HVAC contractors are small businesses. This is an industry that many take for granted, until we call upon them for service. They are responsible for ensuring that in the winter our heating systems work and in the summer our air conditioner hums along without interruption. Refrigeration also takes away most of the concerns we used to have about how our food is preserved, protects vital medicines from contamination, and helps us conquer diseases that have plagued mankind for generations. Children and seniors have cleaner, safer air to breathe. The filtration systems in many HVAC units in our homes, office buildings and factories help purify the air that we breathe, helping to lower the effect of airborne diseases.

This resolution simply salutes the small business men and women who work in the HVAC industry.

SECTION-BY-SECTION ANALYSIS

The preamble of the resolution sets forth various facts relating to the heating, ventilation, and air conditioning industry in the United States. The resolving clause expresses the sense of the House of Representatives that (1) recognizes the contributions that environmental systems have made to the quality of life of all Americans; (2) commends the technicians who install and maintain environmental systems; (3) recognizes that these small business contractors have benefited from the reduced regulatory burden provided as a result of passage of the Regulatory Flexibility Act of 1980 and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA); (4) commends small business air conditioning contractors for participating in the Occupational Safety and Health Administration (OSHA) panels required by SBREFA to better educate regulators on the effect of federal rules on small businesses; (5) recognizes that small business air conditioning contractors have actively supported the Section 7(a) loan guarantee program administered by the Small Business Administration (SBA); and (6) supports the goals and ideals of National Indoor Comfort Week, as proposed by the Air Conditioning Contractors of America.

5.3 H.R. 230—NATIONAL SMALL BUSINESS REGULATORY ASSISTANCE ACT OF 2005

LEGISLATIVE HISTORY

1/4/2005: Referred to the House Committee on Small Business.
7/13/2005: Committee hearings held.
7/14/2005: Committee consideration and mark-up session held.
7/14/2005: Ordered to be reported (amended) by voice vote.
7/28/2005: Reported (amended) by the Committee on Small Business. H. Rept. 109–208.
7/28/2005: Placed on the Union Calendar, Calendar No. 121.

NEED FOR LEGISLATION

During the past 25 years, the Federal Register—the compendium of federal regulatory initiatives and changes—almost doubled in size from 42,000 pages to a record 83,289 pages in 2000. Since President Bush took office in 2001, the growth in regulation has slowed but the regulatory burden continues to be a problem. This crush of federal dictates is particularly troubling to small businesses that find it increasingly difficult to meet these burgeoning regulatory requirements while at the same time trying to successfully operate their businesses in an expanding competitive global environment. Often, small business owners do not learn about their failure to comply with a regulation or that a new regulatory requirement has been imposed until an inspector or auditor walks through the door.

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

In 1996, Congress took action in an effort to alleviate this problem. The Small Business Regulatory Enforcement Fairness Act provided that federal agencies are required to produce plain-English compliance guides for any regulation that would have a significant economic impact on a substantial number of small businesses. In a December 2001 study, the General Accounting Office (now the General Accountability Office) found that agencies did not do a particularly good job in drafting compliance guides. Even if agencies do produce excellent compliance guides, they are of little utility if small business owners do not know about the regulatory changes. Some mechanism must exist to make small businesses more aware of their regulatory obligations.

Even more important than making small businesses aware of the regulations is providing them with assistance needed to understand and comply with the regulations. A regulation may only take up fifteen pages of text, but the explanation for what those pages mean may require sifting through a hundred or more pages of dense, triple-columned, single-spaced pages in the *Federal Register*. See, e.g., Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales and Computer Employees, 69 Fed. Reg. 22,122 (April 23, 2004) (regulations are 14 pages but explanatory text is 138 pages). Most small business owners do not have the time to go through this dense prolixity. And even if they did, they would not understand it unless they were knowledgeable in the field. Greater assistance must be provided to small business owners in helping them comply with complex regulatory issuances. Otherwise, a divide could develop between those businesses, usually large, with the resources to comply and those, usually small, without such resources. The small businesses will be at risk for penalties, fines, and audits while large businesses will not. Success or failure should be determined in the marketplace; not whether the business has the internal resources needed to comply with federal regulatory edicts. A regulatory compliance assistance program operated through the Small Business Development Center (SBDC) network could provide substantial assistance in ensuring such a divide does not occur.

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

SBDCs can also provide an effective mechanism for dispensing regulatory compliance information and advice. However, regulatory compliance, unlike many of the other activities undertaken by the SBDCs, has significant legal consequences and requires resource utilization quite different from that usually offered at SBDCs. Therefore, a program to examine how the regulatory compliance assistance will operate in selected SBDCs is a preferred strategy to simply providing an authorization of additional funding so that the SBDCs can provide regulatory compliance assistance. By initially limiting the number of centers, the SBA can pick the centers that will provide the best regulatory compliance assistance and then transfer the best practices on regulatory assistance to other centers.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designates the bill as the "National Small Business Regulatory Assistance Act of 2005."

Section 2. Purpose

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

Section 3. Definitions

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

Section 4. Small Business Regulatory Assistance Program

This section establishes the program by creating a new Section 36 of the Small Business Act. Since H.R. 230 amends the Small Business Act, the Chairman's mark eliminates definitions of terms already in the Act. Thus, the terms Administrator, Association, Small Business Development Center, and State were deleted as being redundant.

Section 36(a)(1) defines the term "Selected Small Business Development Center" as a SBDC selected to participate in the program established under this section. The Chairman's substituted the term "selected" for the term "participating" because the former more accurately reflects the nature of the involvement of the SBDC.

Section 36(a)(2) defines the term "Program" to mean the program established under this section for the provision of compliance assistance by the Small Business Administration through the utilization of resources of SBDCs.

Section 36(a)(3) defines the term "Regulatory Compliance Assistance" as assistance provided by a participating SBDC to a small business concerning compliance with federal regulations.

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

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

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

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

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

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

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

Section 36(c)(1)(F) directs the SBDCs to provide access to and training on the Internet including the use of the Internet website where SBA has collected and organized regulatory compliance information as described in subsection 36(d)(1)(C).

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

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

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

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

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

Section 36(d)(1)(C) sets out that the website the Administrator shall set up should provide access to federal, state, academic and industry association Internet websites containing industry specific regulation compliance information and give him broad authority to determine which sites should be included. Such a site should be arranged in an industry specific organization so that small businesses can quickly locate the sites that apply to their industry.

Subsection 36(e) requires the Administrator to give the Chief Counsel for Advocacy the list as reported according to section 36(d) for the Chief Counsel to review. The Chief Counsel shall determine if any of the regulations are eligible for review under section 610 of the Regulatory Flexibility Act which would generally be a matter of seeing if the regulation was issued more than 10 years before the date of the review and if a final regulatory flexibility analysis was performed. The Chief Counsel also can determine if the regulation has a significant impact on a substantial number of small businesses and if that impact is substantially different than was estimated in the final regulatory flexibility analysis. Finally, the Chief Counsel can determine if the regulation has a significant impact on a substantial number of small business concerns but no final regulatory flexibility analysis was ever performed. If any of those three situations exist, the Chief Counsel must contact the appropriate federal rulemaking agency and the Office of Information and Regulatory Authority (OIRA) and request a review of such regulation in accordance with § 610 of the Regulatory Flexibility Act if applicable or for any impact the regulation has on small business. The Chief Counsel shall add to his Annual Report on Regulatory Flexibility Act if applicable or for any impact the regulation has on small business. The Chief Counsel shall add to his Annual Report on the Regulatory Flexibility Act the status of any listed regulations. The Committee believes that, in this way, the Chief Counsel and the agencies will receive solid, practical data of the regulation's impact on which to base consideration of better regulatory alternatives. As good as agency and the Chief Counsel's estimates are, they should not replace actual burden information reported from the field when it is available. That was the original intention of § 610.

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

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

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

Section 36(i) establishes the procedures for distributing grants among the selected state programs. The formula is based on the principle that a state which has a smaller population also will have, in absolute terms, fewer small businesses than a larger state. The formula therefore allocates funds according to the relative size of each state. The Committee believes that the minimum funds needed to initiate a state program will be $200,000. Because the Committee has authorized $5,000,000, it is making extra resources available to the larger states which will require more resources to initiate the project.

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

Section 36(k) limits the operation of the program only to the funds appropriated in advance for the program. Section 36(j) provides an authorization of appropriations of $5,000,000 for fiscal year 2006 and each year thereafter. Section 36(j) also prohibits the Administrator from using other funds, including other funds made available for the operation of SBDCs, to operate this program. The Committee authorized the additional appropriations because it determined that funding of the regulatory compliance program should not detract from the available funding for the delivery of other SBDC programs.

Section 5. Promulgation of regulations

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

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

Section 5 also requires the Administrator to develop appropriate standards for ensuring the technical qualifications of experts to whom small businesses will be referred. The Committee does not intend that someone must have a college or advance degree to qualify. For example, a contractor licensed in a state with 20 years experience (who is a high-school graduate) may be as well-equipped to provide advice on compliance with OSHA construction standards as a professor of civil engineering. On the other hand, that same contractor might not be an appropriate individual to provide tax compliance advice. The Committee does not expect that this aspect of the Administrator's regulations shall be all encompassing, i.e., delineate every profession and the appropriate qualifications. However, the Committee does expect that the Administrator will recognize, as qualified, those individuals certified by nationally-recognized accrediting bodies (whose members must demonstrate substantial educational and practical experience), meet educational and work standards established by a federal agency, or are licensed to practice a particular profession or job pursuant to state law. The Committee expects that the regulations will provide the centers selected with enough information that they can determine whether the person providing the advice is competent in the field of regulation.

5.4 H.R. 527—VOCATIONAL AND TECHNICAL ENTREPRENEURSHIP DEVELOPMENT ACT OF 2005

LEGISLATIVE HISTORY

2/2/2005: Referred to the House Committee on Small Business.
7/13/2005: Committee hearings held.
7/14/2005: Committee consideration and mark-up session held.
7/14/2005: Ordered to be reported (amended) by voice vote.
7/28/2005: Reported (amended) by the Committee on Small Business. H. Rept. 109–207.
7/28/2005: Placed on the Union Calendar, Calendar No. 120.

NEED FOR LEGISLATION

Many persons within the United States have technical and vocational skills and have the capability to sell their skills as business owners. However, these same individuals may not have the experience or training needed to start and operate a small business. As a result, these skilled individuals often work for other businesses, including many small businesses. While a certain amount of knowledge on business operations may be absorbed by luck, osmosis, or some combination thereof, fortuity should never be the basis of education. To ensure skilled craftspeople receive appropriate training for entrepreneurship, a more organized system is necessary.

Historically, SBDCs provide services to any person seeking assistance. That resulted, quite logically, in entrepreneurs ready to start businesses or extant owners of small businesses. Seeking out and educating individuals that have the capacity to utilize their skills in starting a small business but who currently work for others, fell outside the remit of the typical SBDC. Certain centers, however, started to share their services and information to vocational students and "future entrepreneurs" while the students continued to learn and hone their skills. Instead of working for another business, these "graduates" have the foundation to start their own businesses.

SBDCs can provide an effective mechanism for dispensing information and advice on providing entrepreneurial education and curricula. Therefore, a program of additional grants for selected SBDCs to provide entrepreneurial training and educational materials is appropriate. A partnership model with secondary schools that provide vocational training, and postsecondary institutions, including vocational and technical schools (whether public or private) is the best mechanism for providing entrepreneurial education to future skilled craftsmen and women. The Committee expects that the best practices from the participants will be adopted by other SBDCs.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The section establishes the short title as the "Vocational and Technical Entrepreneurship Development Act of 2005."

Section 2. Vocational and Technical Entrepreneurship Development Program

This section amends the Small Business Act by adding a new § 37 creating the vocational and technical entrepreneurship program.

Subsection (a)(1) defines the term "Association" to mean the Association of Small Business Development Centers recognized under § 21(a)(3)(A) of the Small Business Act, 15 U.S.C. § 648(a)(3)(A). The Association is the organization authorized by the Small Business Act to represent the collective interests of SBDCs. The Association also provides critical input and assistance to the Small Business Administration's statutory role as manager of the Small Business Development Center program.

Subsection (a)(2) defines the term "program" to mean the program established pursuant to § 37.

Subsection (a)(3) defines the term "small business development center" as the centers established pursuant to § 21 of the Small Business Act.

Subsecton (a)(4) defines the term "State small business development center." These are the SBDCs selected from each state to carry out the program on a statewide basis. In selecting the winning grantees, the Administrator must consult with the Association and give substantial weight to the recommendations of that organization in selecting the winners. Despite the consultation process, the Committee reiterates that the ultimate responsibility is to that of the Administrator based on the applications filed pursuant to subsection (d). Finally, the Committee finds that the consultation process set forth in this subsection does not create a federal advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Subsection (b) requires the Administrator to make grants to State SBDCs in order for them to provide educational materials and curriculum development to providers of vocational and technical education. While H.R. 527 authorizes the provision of educational materials to any provider of vocational and technical education, the Committee expects that winning grantees will focus their attention on secondary schools and postsecondary technical institutions rather than community colleges and universities that can provide entrepreneurial education through existing courses and programs.

To achieve the objectives of the program and recognizing that the development and delivery of educational material is costly, subsection (c) provides that each grant will be at least $200,000. Although the Committee does not specify a maximum and recognizes that the provision of educational materials may be more costly in some states, the Committee intends that the maximum number of qualified State SBDC grantees should be able to utilize the additional funds provided in H.R. 527. To ensure that the winning applicants can commence the program without delay, subsection (c)(2) eliminates any requirement (normally mandated under the Small Business Development program) for matching funds.

Subsection (d) requires the Administrator to design a grant application for State SBDCs seeking additional grant funds (beyond the allocations provided in § 21 of the Small Business Act). The Committee would expect that the Administrator consult with the Association and seek notice and comment as required by its own regulations. The application form must contain information on the applicant's goals and objectives for providing educational assistance to secondary and postsecondary providers of vocational and technical assistance. The Committee expects that the Administrator will select the applicants with the best proposals for offering entrepreneurial education assistance to providers of vocational and technical education.

To ensure that the Administrator and the Associate Administrator for Small Business Development Centers can manage the program, subsection (e) requires the recipients of funds to report on their usage. The requirement is in addition to any reports that are required by § 21 of the Small Business Act or reports mandated by the Office of Management and Budget for federal grantees. The Committee intends that the report provide detailed information on the curriculum materials developed, their delivery to providers of vocational and technical education, and any recommendations on best practices developed with the grant funds.

Section 21 of the Small Business Act authorizes the Small Business Administration to enter into grant and cooperative agreements with SBDCs. Subsection (f) simply extends that authority to the program established under H.R. 527. The Administrator has the authority to attach codicils to the existing agreements or enter into separate agreements under this subsection.

Subsection (g) requires the Administrator to transmit a report to Congress, no later than March 31, 2008, that evaluates the program. The Committee took the approach of requiring the Administrator to submit a report rather than the Comptroller General, because of the Administrator's expertise in providing entrepreneurial assistance to small business owners. The Committee believes that the Administrator is better positioned to evaluate the adequacy of the materials and their utility better than the Comptroller General.

The Association recognized by § 21 of the Small Business Act provides a number of services to SBDCs. It frequently acts as a conduit to provide information to the Administrator and from the Administrator to the SBDCs. Given this role, the Committee determined that the Association should act as a clearinghouse and conduit of information to SBDCs. This role is particularly vital in disseminating best practices developed under the program established by H.R. 527 for offering entrepreneurial education materials to providers of vocational and technical education.

Subsection (i) authorizes $7,000,000 be appropriated for each of the fiscal years 2006, 2007, and 2008. The funds to remain available until expended.

The Committee was concerned that the establishment of this directed program, even with a separate authorization, might result in the Administrator diverting existing funds for the Small Business Development Center program to the program established in H.R. 527. To avoid this problem, the Committee provides in subsection (j) that no funds already committed elsewhere pursuant to the funding formula for the Small Business Development Center program in paragraph (4) of § 21(a) of the Small Business Act shall be used to fund this program. In simple terms, if no dedicated appropriation is obtained for this program, the Administrator is prohibited from operating the program. Nothing in this prohibition is intended to interfere with any services that SBDC grantees provide to the populations described in this paragraph under their current grant agreements.

5.5 H.R. 682—The Regulatory Flexibility Improvements Act

Legislative History

2/9/2005: Referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
2/9/2005: Referred to House Judiciary.
3/2/2005: Referred to the Subcommittee on Commercial and Administrative Law.
7/20/2006: Subcommittee hearings held.
2/9/2005: Referred to House Small Business.
3/16/2005: Committee hearings held.

Need for Legislation

The small business sector is critical to creating jobs in a dynamic economy. Regulations designed for application to large-scale entities have been applied uniformly to small businesses and other small entities even though the problems sought to be solved by such regulations are not usually caused by these small businesses and other small entities. Uniform federal regulatory and reporting requirements in many instances have imposed on small businesses and other small entities unnecessary and disproportionately burdensome demands, including legal, accounting, and consulting costs.

Since 1980, federal agencies have been required to recognize and take account of the differences in the scale and resources of regulated entities but have failed to do so. Alternative regulatory approaches that do not conflict with the stated objectives of the statutes the regulations seek to implement may be available and may minimize the significant economic impact of regulations on small businesses and other small entities. Federal agencies have failed to analyze and uncover less costly alternative regulatory approaches, despite the fact that the chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), requires them to do so.

Federal agencies continue to interpret chapter 6 of title 5, United States Code, in a manner that permits them to avoid their analytical responsibilities. The existing oversight of the compliance of federal agencies with the analytical requirements to assess regulatory impacts on small businesses and other small entities and obtain input from the Chief Counsel for the Office of Advocacy at the Small Business Administration (SBA) has not sufficiently modified the federal agency regulatory culture.

Thus, significant changes are needed in the methods by which federal agencies develop and analyze regulations, receive input from affected entities, and develop regulatory alternatives that will lessen the burden or maximize the benefits of final rules to small businesses and other small entities. It is the intention of the Congress to amend chapter 6 of title 5, United States Code, to ensure that all impacts, including foreseeable indirect effects, of proposed and final rules are considered by agencies during the rulemaking process and that the agencies assess a full range of alternatives that will limit adverse economic consequences or enhance economic benefits. Federal agencies should be capable of assessing the impact of proposed and final rules without delaying the regulatory process or impinging on the ability of federal agencies to fulfill their statutory mandates.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

This Act may be cited as the "Regulatory Flexibility Improvements Act."

Section 2. Findings

This section presents the rationale for amending the Regulatory Flexibility Act (RFA) because of the failure of federal agencies to comply.

Section 3. Clarification and expansion of rules covered by the RFA

This section amends the RFA to require agencies to assess reasonably foreseeable indirect effects on small entities.

The section also requires that land management plans issued by the United States Forest Service and the United States Bureau of Land Management be subject to analysis under the RFA.

This section mandates IRS compliance for interpretative rules without regard to whether the recordkeeping or reporting burden is imposed by the IRS or by Congress.

A definition is added for the term "not-for-profit" organization. Native American tribal organizations are added to the definition of small entity.

Section 4. Requirements for providing more detailed analyses

Section 4 amends the RFA to require a detailed statement rather than simply a statement.

Section 5. Repeal of procedure for waiver and delay

This section eliminates the authority of an agency head to waive or delay compliance with the analytical requirements of the RFA.

Section 6. Procedures for gathering comments

This provision extends the panel process established by the Small Business Regulatory Enforcement Fairness Act to all federal agencies for all significant rules. In addition, the section clarifies who may represent small entities on the panels and how they are selected.

Section 7. Periodic review of rules

This provision amends the periodic review requirement by requiring agencies to develop new plans for periodic review, publishing the results of such reviews, and submitting them to Congress for appropriate oversight.

5.6 H.R. 1148—INSULAR AREAS SMALL BUSINESS DEVELOPMENT ACT—KEY ELEMENTS WERE INCORPORATED INTO PUBLIC LAW 109–59

LEGISLATIVE HISTORY

3/8/2005: Introductory remarks on measure.
3/8/2005: Referred to the House Committee on Small Business.
8/10/2005: Modified provisions of H.R. 1148 were incorporated in Title X (section 10203) of H.R. 3, which became Public Law 109–59.

NEED FOR LEGISLATION

Previously, only those zones in the insular areas or Alaska and Hawaii designated by the United States Department of Housing and Urban Development (HUD) as "qualified census tracts," are recognized by the Small Business Administration (SBA) as HUBZones. Many additional zones particularly in the insular areas would also be designated HUBZones under the program's "qualified 'non-metropolitan county'" criteria, as is the case in the 48 continental States, the District of Columbia, and the Commonwealth of Puerto Rico, if not for technical issues of implementation. A principal factor of eligibility under the "qualified 'non-metropolitan county'" criteria is a high level of unemployment in a given county. In particular, the insular areas do not subdivide into counties, nor does the Bureau of Labor Statistics collect Local Area Unemployment Statistics for territories such as Guam. Therefore, firms located in a number of financially distressed areas in these jurisdictions are deprived of the opportunity to participate in the HUBZone program, as no alternative formula is used for the "qualified 'non-metropolitan county'" criteria in the insular areas.

The purpose of this legislation is to support economic self-sufficiency in the areas outside the continental United States by helping small businesses located in these jurisdictions to effectively compete for federal contract work. Over the past several years, the SBA's HUBZone program has been one of the most successful vehicles for directing federal contracts and subcontracting dollars to locally-owned small businesses. Universal HUBZone designation throughout the areas outside of the continental United States would provide incentives for federal agencies to utilize local firms in these remote areas. Considering the relative geographic isolation and unique economic challenges encountered in these areas, and the problems associated with implementing all provisions of the law in these distant areas, it makes sense to designate the entirety of these jurisdictions as HUBZones.

SECTION-BY-SECTION ANALYSIS

Section 10203. HUBZone program

Section 3(p)(4)(B)(ii) of the Small Business Act is amended to enable all of Alaska, Hawaii, and the insular areas of the United States to be considered as a HUBZone by adding at the end "or there is located a difficult development area, as designated by the Secretary of Housing and Urban Developing in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code of 1986, within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous states."

5.7 H.R. 2981—TO EXPAND AND IMPROVE THE ASSISTANCE PROVIDED BY SMALL BUSINESS DEVELOPMENT CENTERS TO INDIAN TRIBE MEMBERS, NATIVE ALASKANS, AND NATIVE HAWAIIANS

LEGISLATIVE HISTORY

6/17/2005: Introductory remarks on measure.
6/17/2005: Referred to the House Committee on Small Business.
7/13/2005: Committee Hearings Held.
7/14/2005: Committee consideration and mark-up session held.
7/14/2005: Ordered to be reported (amended) by voice vote.
7/28/2005: Reported (amended) by the Committee on Small Business. H. Rept. 109–206.
7/28/2005: Placed on the Union Calendar, Calendar No. 119.

NEED FOR LEGISLATION

It is estimated that approximately 60 percent of the Native American and Alaska Native population live on or adjacent to Federal Indian reservations and lands set aside pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. §§ 1610 and 1615), which suffer from an average unemployment rate of 45 percent. According to the 1997 Economic Census report (the data from the 2002 economic census will not be available until 2006), Native Americans and Alaskan Natives owned over 197,000 businesses, employing almost 300,000 people and generating over $34 billion in revenues. Five out of six Native American and Alaska Native businesses had no paid employees. The service industry accounted for 17 percent (40 percent of which were in business and personal services) of these businesses and 15.1 percent of their total receipts. The next largest was the construction industry (13.9 percent and 15.7 percent respectively). The third largest was the retail trade industry (7.5 percent and 13.4 percent respectively).

However, the number of Native American- and Alaska Native-owned businesses grew 84 percent from 1992 to 1997, and their gross receipts grew by 179 percent. This is compared to all businesses which grew at a rate of 7 percent during the same time period, and total gross receipts grew 40 percent. The majority are located in 12 states: California (13.5 percent), Texas (8 percent), Oklahoma (7.7 percent), Florida (5.3 percent), North Carolina (3.6 percent), New Mexico (3.4 percent), Alaska (3.4 percent), New York (3.2 percent), Michigan (2.9 percent), Arizona (2.8 percent), Ohio (2.6 percent), Pennsylvania (2.6 percent), and Washington (2.4 percent).

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

SBDCs can provide an effective mechanism for assisting Native Americans in building and sustaining businesses in their communities. Unlike the SBDC's proven track record, the U.S. SBA's other program to assist Native Americans, the Tribal Business Information Centers, has had minimal success. In addition, no Administration since the program's inception has requested funding for the program. Minimal funding has been provided year-to-year from the SBA's salaries and expenses budget. Therefore, the Committee believes that a pilot program through an established and proven federal assistance program is a preferred strategy.

SECTION-BY-SECTION ANALYSIS

Section 1. Findings and purposes

This section lists the finding of Congress and the purposes for H.R. 2981.

Section 2. Small Business Development Center assistance to Indian tribe members, Alaska Natives, and Native Hawaiians

This section establishes a program by adding a new paragraph (8) to § 21(a) for additional grant funds to SBDC grantees for providing outreach services to startups and businesses owned by Indian tribe members, Alaska Natives, and Native Hawaiians. Paragraph (A) is designed to provide outreach to businesses on Indian lands. The Committee recognizes that Indian lands do not include lands set aside pursuant to the Alaska Native Claims Settlement Act, see *Alaska* v. *Native Village of Venetie Tribal Government*, 522 U.S. 520, 532 (1998). Since the Committee wants to serve Alaska Natives, the Committee expects that, should the SBDC grantee in Alaska will site service pursuant to this program by locating centers on or near those lands described in the Alaska Native Claims Settlement Act.

Subparagraph (B) specifies the criterion for states in which grantees are eligible to apply. The Committee selected the one percent minimum to ensure that the limited funds are made available to those states with the largest populations of members of Indian Tribes, Alaskan Natives, and Native Hawaiians.

Subparagraph (C) mandates that grant applications must be submitted in a form established by the Administrator. The Committee expects that the responsibility for developing the form will be delegated to the Associate Administrator for SBDCs. Any such form must contain the contents specified in this subparagraph including: the capability of the applicant to provide training and services to Indian tribe members, Alaska Natives, and Native Hawaiians; the sites at which the grantee will provide the services; the amount of grant funding requested; and the extent of consultation with local tribal councils. The Committee expects that the Administrator will select, after review and consultation with the Associate Administrator for SBDCs, those applicants that have the best plan for providing services to members of Indian tribes, Alaska Natives, and Native Hawaiians.

Subparagraph (D) requires that the applicants and grantees must comply with all the provisions of § 21 of the Small Business Act except the matching funds requirements of paragraph (4)(A) shall not apply. The Committee opted not to require matching because the ability to obtain additional non-federal funds undermines the purpose of providing assistance to underserved Indian tribe members, Alaska Natives, and Native Hawaiians.

To maximize the limited funds authorized by H.R. 2981, the Committee determined to limit the size of each grant to $300,000 in any one fiscal year. Discussions with SBDC grantees suggested that the limitation was adequate to provide the services set forth in § 21. In fact, the Committee expects that some grants may be for less than the statutory maximum.

Subparagraph (F) mandates that the Administrator shall write regulations governing the operation of the program established by H.R. 2981. Under the Administrative Procedure Act, the Administrator is not required to promulgate regulations pursuant to notice and comment because the Small Business Development Center program relates to a government grant. The Administrator, by regulation, waives the right to forgo notice and comment rulemaking. See 13 C.F.R. § 101.108. This requirement is subject to change by administrative fiat. Given the fact that the program established by H.R. 2981 involves members of an underserved population, the Committee decided to mandate notice and comment so that the program and subsequent changes will have input from all affected parties, particularly those served by the winning grantees.

Clause (i) of subparagraph (F) requires that the regulations include standards relating to the services provided by winning applicants. The Committee fully expects that the regulations will provide for the full panoply of services already mandated by § 21. In addition, the rules also should contain specific outreach, consulting, and advisory services that will be of most utility to the populations to be served under the program. Clause (ii) of subparagraph (F) requires regulations governing any work plan for grants awarded under this paragraph. The Committee is of the opinion that the quality of the work plans will be of the key component by which the Administrator determines applicants to receive grants under this paragraph.

Clause (i) of subparagraph (G) defines Indian lands in a fairly broad manner in order to offer the widest assistance to businesses owned by members of Indian tribes without regard to whether the business is located specifically on a reservation or an area that used to be a reservation but whose population is predominantly that of Indian tribe members. Section 1151 of title 18, United States Code defines Indian lands by reference to Indian reservations. Section 4 of the Indian Child Welfare Act, 25 U.S.C. § 1903 defines the term Indian reservation. To incorporate those lands upon which a reservation has been disestablished or diminished but still includes a substantial Indian tribal population, the Committee also includes in the definition of Indian land, the definition of reservation set forth in 25 C.F.R. § 151.2 and, in particular, subsection (f) (defining reservations to include lands formerly designated as reservations but no longer reserved).

Clause (ii) of subparagraph (G) adopts the broadest definition of the term "Indian tribe" used by the Secretary of Interior.

Clause (iii) of subparagraph (G) states that an "Indian tribe member" is the member of an Indian tribe. While this definition appears circular, it is used in the Indian Child Welfare Act and has a well-understood meaning under federal Indian law.

Clause (iii) would incorporate Alaska Natives into its definition, but the Committee determined that a more appropriate definition of Alaska Native is the one used in § 3(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1602(b), and adopts that definition in clause (iv) of subparagraph (G).

Clause (v) of subparagraph (G) defines the term "Native Hawaiian by cross-reference to the definition established in 42 U.S.C. § 11711 but excludes from that definition specific requirements of genealogical evidence. Since the program is designed to provide grants to SBDCs rather than individuals, the Committee determined that it only need describe the target populations of the applicants seeking grants.

Clause (vi) of subparagraph (G) defines the term "tribal organization" to have the meaning that term is given in section 4(l) of the Indian Self-Determination and Education Act Assistance Act, 25 U.S.C. § 450b(l). Since one of the key elements of this program is input from members of Indian tribes, Alaska Natives (or their representative corporations should the SBDC grantee and the Administrator find that appropriate), and Native Hawaiians, the Committee determined that use of the definition of tribal organization was appropriate.

Paragraph (H) authorizes $7 million for the program for each fiscal year, 2006, 2007, and 2008. The Committee believes that this represents sufficient funds to provide targeted grant assistance to SBDC grantees wishing to serve members of Indian tribes, Alaska Natives, and Native Hawaiians.

The Committee was concerned that the establishment of this directed program, even with a separate authorization, might result in the Administrator diverting existing funds for the Small Business Development Center program to the program established in paragraph (8). To avoid this problem, the Committee provides in paragraph (I) that no funds already committed elsewhere pursuant to the funding formula for the Small Business Development Center program in paragraph (4) of § 21(a) of the Small Business Act shall be used to fund this program. In simple terms, if no dedicated appropriation is obtained for this program, the Administrator is prohibited from operating the program. Nothing in this prohibition is intended to interfere with any services that SBDC grantees provide to the populations described in this paragraph under their current grant agreements.

Section 3. State consultation with local tribal organizations

This section requires SBDCs participating in the grant program established under this paragraph to request the advice of local tribal organizations on how best to provide assistance to Indian tribe members, Alaska Natives, and Native Hawaiians and where to locate satellite centers to provide such assistance. Since tribal organizations will have a superior knowledge of the types of assistance that is required, the Committee believes such consultation will provide the maximum benefit to members of Indian tribes, Alaska Natives, and Native Hawaiians. Nothing in this legislation is intended to prevent either grant winners or the Administrator from also designating appropriate Native Alaska village or regional corporations or Native Hawaiian organization as additional consultative sources. The Committee expects that the applicants will supply information on the procedures for carrying out the tribal consultations mandated by this section. Since the consultation is between a private organization and a federal grantee, the Committee does not believe such consultation falls within the parameters of the Federal Advisory Committee Act.

5.8 H.R. 3207—SECOND-STAGE SMALL BUSINESS DEVELOPMENT ACT OF 2005

LEGISLATIVE HISTORY

7/12/2005: Referred to the House Committee on Small Business.
7/13/2005: Committee hearings held.
7/14/2005: Committee consideration and mark-up session held.
7/14/2005: Ordered to be reported (amended) by voice vote.
7/28/2005: Reported (amended) by the Committee on Small Business. H. Rept. 109–205.
7/28/2005: Placed on the Union Calendar, Calendar No. 118.

NEED FOR LEGISLATION

Scholars classify various stages of small business development. For purposes of H.R. 3207, the four stages of small business are: new venture, expansion, professionalization, and consolidation. Y. Randle & E. Flamholtz, Growing Pains 32–43 (1990). The expansion phase is frequently referred to as "second-stage entrepreneurship." Second-stage business concerns are growing rapidly and changing their focus from that of the founders to an identifiable culture apart from the founders. These second-stage concerns may be ready for even more rapid expansion, including the hiring of additional personnel. Given their readiness to grow, other scholars refer to them as entrepreneurial growth companies or gazelles. Gazelles are critical to the American economy. According to Dr. David Birch, gazelles represent about three to four percent of all American businesses but are responsible for the vast majority of new employment in the United States (gazelles created net employment of 4 million new jobs from 1990–94). Furthermore, gazelles typically are not found in high-tech industries but rather are spread throughout the American economy, including a surprising number in manufacturing.

Despite the fact that such businesses have overcome significant problems associated with the start-up phase of business, they still face operational obstacles to maximize their potential. Absent taking the right steps with respect to the role of the founders, upgrades to accounting systems, and sales efforts, the gazelles could stumble. Other problems that gazelles may face are capital markets not designed to assist gazelles, the need for appropriate intellectual property protection, proper workforce education and investment in human capital, and development of market opportunities.

The Small Business Administration (SBA) runs a number of programs in which small businesses can learn from other businesses. In the government procurement arena, a mentor-protégé program exists to help small businesses by linking them with large prime contractors. An extension of the program, BusinessLINC, was designed to facilitate meetings among various mentor-protégé participants. While somewhat effective, the mentor-protégé programs have a narrow remit. Learning from peers who have had or are having the same or similar experiences provides useful assistance to small business concerns.

Small Business Development Centers (SBDCs) can provide an effective mechanism for arranging and helping facilitate peer-to-peer learning among gazelles. The Committee believes that a pilot program to demonstrate the effectiveness of small business development center involvement is appropriate. The Committee fully expects that the best practices will be adopted by other small business development centers and the program may be made permanent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The section establishes the short title as the "Second-Stage Small Business Development Act of 2005."

Section 2. Purpose

This section states the Congressional rationale for enactment of the program.

Section 3. Pilot program

Subsection (a) mandates that the Administrator establish the program of peer learning opportunities through SBDCs.

Subsection (b) requires that the Administrator to select eligible entities (SBDCs) that apply pursuant to the pilot program. Eligible entities are defined as those institutions or governmental organizations that currently receive funding pursuant to § 21 of the Small

Business Act. The term "eligible entities" does not refer to the situs at which locations of services are delivered by entities that receive funds pursuant to § 21 of the Small Business Act. Subsection (b) limits the pilot program to twenty grantees, two selected from each of the ten federal regions as delineated in paragraph (4). The Committee recognizes that some states may have more than one SBDC eligible to receive funding pursuant to the funding formula in § 21 of the Small Business Act. For those states, the Committee intends that the Administrator select only one SBDC program from those states with more than one grantee under § 21. Eligible grantees may submit an application to the Administrator with a plan for offering peer learning opportunities and a plan to ensure that these peer learning opportunities will become self-sustaining by the end of the pilot program. The Administrator is required to select the applicants with the best plans for providing the opportunities and ensuring that the peer learning opportunities shall be self-sustaining. Nothing in the bill restricts the Administrator from weighting the factors in favor of the self-sustaining aspects or the quality of the peer learning opportunities. Paragraph (5) of subsection (b) requires the Administrator to consult with the Association recognized pursuant to § 21(a)(3)(A) of the Small Business Act and give the Association's recommendations substantial weight. The Committee intends that the term "substantial weight" not give the Association controlling weight; rather the term "substantial" is used in its administrative law context of more than a scintilla but less than a preponderance. It is not the Committee's intention that this consultation process not fall within the requirements of the Federal Advisory Committee Act. Paragraph (6) of subsection (b) requires completion of the selection process within 60 days after the regulations to implement the pilot program have been promulgated.

Subsection (c) requires that a grantee selected in the pilot program to use the funds solely for purposes of conducting peer learning opportunities. Funds may not be used by the selected grantees for any other purpose, including provision of any other service mandated by § 21 of the Small Business Act or the grantees contract or cooperative agreement with the SBA.

Subsection (d) establishes the procedures for distributing grants among the selected state programs. The formula is based on the principle that a state, which has a smaller population, also will have, in absolute terms, fewer small businesses than a larger state. The formula, therefore, allocates funds according to the relative size of each state. The Committee believes that the minimum funds needed to initiate a state program will be $50,000 and grants the Administrator the authority to modify the grant size calculated by the formula in this subsection to ensure that each SBDC selected under the pilot program will receive a minimum of $50,000.

Subsection (e) requires the applicants to satisfy the matching funds requirements of subparagraphs (A) and (B) of § 21(a)(4) of the Small Business Act. The Committee decided that since these peer learning opportunities would be of sufficient value to the small business community, the selected programs should be able to obtain matching funds, including the payment of attendance fees by the participants. Furthermore, the matching requirement will expand the total resources devoted to the program. Subsection (e) provides an exception for lead centers located at community colleges, historically Black college, Hispanic-serving institutions, and minority institutions in meeting these matching requirements. Where the lead center in a state is housed in any of these centers, such center must only obtain only 50 percent of the matching fund requirements of subparagraphs (A) and (B) of § 21(a)(4) of the Small Business Act. The matching funds requirement shall be calculated based on the amount of the grant made under this pilot program.

Subsection (f) requires each SBDC selected to operate peer learning opportunities must provide a quarterly report to the Administrator with the information set forth in paragraphs (A)–(C). Nothing in this requirement alters any other reporting requirement mandated by the Administrator. The Administrator, for the sake of reductions in paperwork burdens, may combine the report required by this subsection with other quarterly reports. Because the reports mandated by this subsection must be filed electronically, the Administrator should establish an overall electronic reporting system for SBDCs to the extent such a system has not been developed.

The Association recognized by § 21 of the Small Business Act provides a number of services to SBDCs. It frequently acts as a conduit to provide information to the Administrator and from the Administrator to the SBDCs. Given this role, the Committee determined that the Association should act as a clearinghouse and conduit of information to SBDCs under the terms set forth in subsection (g).

The Committee believes that peer learning will be sufficiently valuable addition to the services provided by SBDCs that they would be able to recoup, after an initial period, the entire cost of providing this service. Thus, the Committee mandates in subsection (h) that the reports required by H.R. 3207 provide the Administrator with progress on making the peer learning opportunities self-sustaining. Such reports shall be filed on annual basis. To ensure that the Administrator has sufficient information to conduct audits and reviews of the program, subsection (h) also requires the grantees to submit, on an annual basis, descriptions of the peer learning opportunities and the number of “second-stage” small business concerns assisted by the pilot program. Finally, the Committee included a requirement that the grantees assess the economic impact of the program but delayed that requirement until one year after the program was established.

Subsection (i) provides the same privacy protections to grantees in the pilot program that currently exist for SBDC clients pursuant to § 21 as added by Division K of H.R. 4818, the Consolidated Appropriations Act of 2005, Pub. L. No. 108–447. This subsection prohibits the disclosure of client information (including the name, address, telephone and facsimile numbers, and e-mail address) of any concern or individual receiving assistance from a SBDC grantee or its subcontractors (who operate service centers that business owners can utilize to obtain advice) unless the Administrator is ordered to make such disclosure pursuant to a court order or civil or criminal enforcement action commenced by a federal or state agency. The Committee expects that SBDC grantees will only respond to formal agency requests, such as civil investigative demands, and subpoenas. The Committee also recognizes that the Administrator has significant management responsibilities to ensure that federal taxpayer dollars are wisely used by grantees and are in compliance with the law, regulations, and the cooperative agreements signed by SBDC grantees. Thus, the Committee authorizes the SBDC grantees to provide client names for the purposes of financial audits conducted by the Administrator or Inspector General and for client surveys to ensure that the SBDC grantees are satisfying certain aspects of their grant agreements. The Committee recognizes that client surveys may be misused and impose restrictions on their use. The Committee expects that the regulations promulgated pursuant to the amendments made to § 21 pursuant to Pub. L. No. 108–447 shall apply to this pilot program, including the regulations about the use of client surveys.

Subsection (j) requires the Comptroller General of the United States to provide a report evaluating the effectiveness of the program three years after establishment. The report also should contain any suggested modifications to the program. Finally, the Comptroller General should provide its opinion concerning whether the program should be continued and expanded to include more SBDCs on self-funding basis. The report shall be transmitted to the Committees on Small Business of the Senate and House of Representatives. The Committee expects that the program will be sufficiently successful to expand the program to other SBDCs without the need for additional federal funds.

Subsection (k) provides for termination of the pilot program on September 30, 2009. The Committee decided not to provide for any authorization contingency if the program does not receive appropriations for the entire authorized length of the pilot program.

Section 4. Promulgation of regulations

Section 4 authorizes the Administrator to promulgate regulations to implement this program no later than 180 days after the enactment of the Act. Such regulations only shall be promulgated after the public has been given an opportunity for notice and comment. The Committee believes that the Administrator can and should accomplish the issuance of regulations within the deadline set by statute. The Committee considers this Act to be some other law for purposes of section 603 of Title 5 of the United States Code.

The regulations shall include the standards relating to conduct of peer learning opportunities, the number of individuals that may participate in a group, determining whether or not a participant constitutes a competitor, various requirements for the facilitators of these peer learning opportunities, and requirements for transitioning these peer learning opportunities to full self-sustaining basis. The Committee expects that the regulations will lay out milestones and other requirements to ensure that this program will become self-funding once the pilot program's authority lapses.

Section 5. Definitions

Paragraph (1) defines the term "Administrator" to be the Administrator of the SBA.

Paragraph (2) defines the term "peer learning opportunities" as formally organized groups, overseen by professional facilitators, of presidents, owners, and chief executive officers of second-stage small business concerns. These groups meet regularly to discuss strategies and tactics and share ideas about operating their businesses. Meetings among business executives may lead to the perception of collusion in violation of the antitrust laws. While the Committee does not believe that second-stage entrepreneurs have sufficient market power to collude, the Committee took the safer approach by prohibiting peer learning among competitors. Thus, peer learning opportunities will be limited to non-competitors. The Committee believes that valuable information, such as capital markets or handling certain workforce issues, will be shared among non-competitors. Furthermore, by eliminating competitors, members of the peer learning groups may be more willing to speak freely without concern about revealing important information to a competitor.

Paragraph (3) establishes the criteria for determining whether a business concern qualifies as a second-stage entrepreneur and, thus, eligible for inclusion in the peer learning opportunities. Any small business that has survived the start-up, or new venture, phase may be considered a second-stage business. However, the Committee's impetus for passing H.R. 3207 is to assist not all second-stage entrepreneurs but those that have shown the potential for accelerated growth, i.e., a gazelle. Additionally, the Committee wished to ensure maximum participation of women, service-disabled, and minority entrepreneurs who were in the "gazelle" category; as such, the legislation provides such ownership as meeting one of the three necessary requirements for qualification under clause (ii). Therefore, the Committee determined that parameters were necessary for circumscribing those second-stage entrepreneurs that are or have the potential for being gazelles. This paragraph establishes those standards and small business concerns must be both a small business as defined by the Administrator's regulations set forth in 13 C.F.R. § 121.201 and meet the criteria set forth in clauses (i) or (ii).

Paragraph (4) defines a small business concern by cross-reference to § 3 of the Small Business Act. The Committee intends that the Administrator shall construe the terms in H.R. 3207 and the Small Business Act in pari materia.

Paragraph (5) defines the term "state" to include all the states, the District of Columbia and the territories of the United States Virgin Islands, Guam, the Commonwealth of Puerto Rico, and American Samoa. Puerto Rico, the Virgin Islands, and Guam all have SBDCs that receive funding pursuant to subsection (a)(4) of § 21. Guam provides the services mandated by § 21 to American Samoa.

Paragraphs (6)–(9) set forth the definitions of those institutions of higher learning that are eligible for the reduced matching requirement pursuant to § 3(e).

Section 6. Authorization of appropriations

Section (6) limits the operation of the program only to the funds appropriated in advance for the program. The Committee provides an authorization of $1.5 million for each four fiscal years starting with the first fiscal year after enactment. Section (6) also prohibits the Administrator from using other funds, including other funds made available for the operation of SBDCs, to conduct this pilot program. The Committee authorized the additional appropriations because it determined that funding of the peer learning opportunities program should not detract from the available funding for the delivery of other services by SBDCs.

5.9 H.R. 6159—To Extend Temporarily Certain Authorities of the Small Business Administration, Public Law 109–316

Legislative History

9/25/2006: Referred to the House Committee on Small Business.
9/26/2006: Mr. Manzullo moved to suspend the rules and pass the bill.
9/26/2006: Considered under suspension of the rules.
9/26/2006: On motion to suspend the rules and pass the bill. Agreed to by voice vote.
9/26/2006: Motion to reconsider laid on the table. Agreed to without objection.
9/27/2006: Received in the Senate, read twice.
9/30/2006: Passed Senate without amendment by Unanimous Consent.
9/30/2006: Message on Senate action sent to the House.
9/30/2006: Cleared for White House.
10/4/2006: Presented to President.
10/10/2006: Signed by President.
10/10/2006: Became Public Law No: 109–316.

Need for Legislation

H.R. 6159 simply extends all the programs, including pilot programs, the authorities or provisions of the Small Business Act and the Small Business Investment Act until February 2, 2007. The programs and authorities of the Small Business Administration (SBA) were set to expire on September 30, 2006.

Many of the programs of the SBA do not operate under a direct appropriation. This includes the 7(a) general business loan guarantee program; the Certified Development Company (CDC) program; and the Small Business Investment Company (SBIC) program. H.R. 6159 made it absolutely certain that there is no legal ambiguity as to whether or not the federal government can continue to guarantee these critical loan and debenture programs during the time period covered by a Continuing Resolution.

In addition, this bill extended the authority of the SBA to operate several smaller programs including grants to Small Business Development Centers (SBDCs) to participate in the Drug-Free Workplace program; sustainability funding for Women Business Centers (WBCs); the pre-disaster mitigation pilot program; the New Markets Venture Capital program; and BusinessLinc. It also extended SBA's co-sponsorship and gift authority, which enables the SBA to accept private donations to help put on events or print publications, thus saving the taxpayer precious dollars. Finally, H.R. 6159 also allowed the SBA's Advisory Committee on Veterans Business Affairs to continue to operate.

SECTION-BY-SECTION ANALYSIS

Section 1.—Temporary extension

Any program, authority, or provision, including any pilot program, authorized under the Small Business Act or the Small Business Investment Act of 1958 as of September 30, 2006, that was scheduled to expire on or after September 30, 2006 and before February 2, 2007, remained authorized through February 2, 2007, under the same terms and conditions in effect on September 30, 2006.

CHAPTER SIX

SUMMARY OF OTHER LEGISLATIVE ACTIVITIES OF THE COMMITTEE ON SMALL BUSINESS

6.1 COMMITTEE MEETINGS

6.1.1 ORGANIZATIONAL MEETINGS

On February 10, 2005 the Committee on Small Business held an organization meeting. The purpose of this meeting was threefold: (1) to consider and adopt the Committee rules for the 109th Congress, (2) to consider and adopt the Committee's oversight plan for the 109th Congress, and (3) approve the subcommittee assignments for Members of the Committee. The Committee rules, oversight plan, and organization of subcommittees were adopted by voice vote. The text of the Committee's oversight plan follows:

6.1.2 OVERSIGHT PLAN FOR THE COMMITTEE ON SMALL BUSINESS 109TH CONGRESS

U.S. HOUSE OF REPRESENTATIVES

DONALD A. MANZULLO, CHAIRMAN

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

The oversight plan of the Committee on Small Business includes areas in which the Committee expects to conduct oversight activity during the 109th Congress. However, this plan does not preclude oversight or investigation of additional matters as the need arises.

OVERSIGHT OF THE SMALL BUSINESS ADMINISTRATION

The Committee will conduct hearings on all the major programs of the Small Business Administration (SBA) to determine their effectiveness and possible options for improvements, as a prelude to reauthorization of the entire SBA to be completed by September 30, 2006.

The Committee will oversee the SBA's performance in carrying out its statutorily mandated roles, including its internal financial management, and will work to ensure that the SBA eliminates any improper payments and receives a green score card under the Administration's Programs Assessment Rating Tool (PART).

The Committee will also monitor the reporting requirements on gifts, co-sponsorships and co-operative agreements received or entered into by the SBA with the private sector.

FINANCIAL AND MANAGEMENT/TECHNICAL ASSISTANCE PROGRAMS

The Committee will conduct hearings on the effectiveness and efficiency of the SBA's major programs. These include: 7(a) General Business Loan Program, the Certified Development Company Program, the Small Business Investment Company (SBIC) Program, the Microloan Program, the Disaster Loan Program, Small Business Development Centers (SBDCs), and New Markets Venture Capital Program. In particular, the Committee will closely examine the participating securities component of the SBIC program with the intention to move legislation to resuscitate the program (April 2005). In addition, the Committee will oversee the Office of Government Contracting to ensure that other Federal agencies meet the minimum threshold of various small business goals in Federal government procurement.

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

ADVOCACY

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

VETERANS

In the 106th Congress, Congress created a new office of Veterans Business Development at the SBA and the National Veterans Business Development Corporation to enhance and improve small business services to our nation's veterans. The Committee will continue to conduct hearings on the implementation of the Veterans Entrepreneurship and Small Business Development Act, including a review of the progress on achieving the service-disabled veterans goal in procurement and the implementation of Executive Order 13360 to "Providing Opportunities for Service-Disabled Veteran Businesses to Increase their Federal Contracting and Subcontracting." (May 2005)

TECHNOLOGY AND RESEARCH ASSISTANCE

Small Business Innovation Research program

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

Small Business Technology Transfer (STTR) program

Committee oversight will focus on the program's success at helping small business access technologies developed at federal laboratories and put that knowledge to work. In 2001, Congress reauthorized the STTR program for eight years. The Committee will monitor agency implementation of PL 107–50.

FEDERAL PROCUREMENT

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

Because there is a direct correlation between the ability of an agency to achieve its goals and contract bundling, the success of Federal agencies in meeting all their small business goals will also be assessed. The Committee will also work to protect the integrity in calculating small business participation in Federal contracting by ensuring that big businesses are not credited as small businesses.

The Committee recognizes that the Federal Procurement Data System (FPDS)—the existing system used by the SBA to evaluate small business participation in government contracts—is not capturing accurate information on small business achievement. The Committee will work to ensure that agencies, including the SBA, are held accountable for any false numbers being used to portray a positive small business environment in the federal marketplace.

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

The Committee will also work to jump-start the women's contracting program to make sure the program is serving the needs of women-owned businesses.

GOVERNMENT COMPETITION

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

REGULATORY FLEXIBILITY

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

The Committee will oversee the implementation of the Truth in Regulating Act.

SBREFA

The Committee will be conducting oversight hearings on agency implementation of the Small Business Regulatory Enforcement Fairness Act (SBREFA), which was enacted during the 104th Congress. The Committee will also examine the need to further amend and strengthen SBREFA. (April 2005)

PAPERWORK REDUCTION

The Committee will hold hearings and work to strengthen the Paperwork Reduction Act. (2005)

GOVERNMENT REGULATION

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

In addition, the Committee will work toward amending the Equal Access to Justice Act to enable small businesses to challenge unfair government actions against them (Summer 2005).

TAXATION

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

ENERGY

The Committee will conduct oversight hearings on the potential effects of any legislative changes in energy policy, including examining the possible effects of deregulation of electricity on small business. (Summer, 2005)

GOVERNMENT PERFORMANCE AND RESULTS ACT

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

EMPOWERMENT

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

WORKFORCE

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

HEALTH CARE

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

PENSION REFORM

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

E-COMMERCE AND TECHNOLOGY

The Committee will continue to conduct oversight hearings into ways to reduce the “digital divide” in order to promote business growth and opportunities in economically depressed areas. These hearings will also examine ways to help the average small businessperson exploit the vast potential of Internet commerce. (On-going)

TELECOMMUNICATIONS

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

INTERNATIONAL TRADE

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

SELF-EMPLOYED

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

MANUFACTURING

The Committee is gravely concerned that nearly 3 million jobs have been lost in manufacturing over the past two years, much of which were in small manufacturing businesses. The Committee will continue to hold hearings to examine the causes of these problems and propose a series of recommendations for both legislative and administrative changes. (On-going)

Specifically, the Committee will examine the costs of the loss of small manufacturers and suppliers critical to our national security and our defense industrial base (Spring 2005).

AGRICULTURAL/RURAL/FARM ISSUES

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

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

REVIEW OF SPECIFIC REGULATIONS

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

Agency	High regulatory reform priorities for small business
All	Small Business Liaisons
Commerce/BIS	Revised "Knowledge" Definition, Revision of "Red Flags" Guidance and Safe Harbor
DOT/FMCSA	Hours of Service
DOT/RSPA	Hazardous Materials Rules (HM–223)
EPA	"Whole Effluent Toxicity" (WET) Methods
EPA	Chemical Inventory Update Rule
EPA	Hazardous Waste Rules Should Be Amended to Encourage Recycling
EPA	Lead Reporting Burdens Under the Toxic Release Inventory Program
EPA	Pretreatment Streamlining Rule Under the Clean Water Act
EPA	Provide More Flexibility in the Management of Wastewater Treatment Sludge to Encourage Recycling
EPA	Regulation of Air Toxics from Area Sources
EPA	Reporting and Paperwork Burden in the Toxic Release Inventory Program
EPA	Spill Prevention Control and Countermeasures (SPCC) Rule
EPA	Method of Detection Limit/Minimum Level (MDL/ML) Procedure under the Clean Water Act
EPA	Reportable Quantity (RQ) Threshold for Nitrogen Oxide and Dioxide at Combustion Sources
EPA	Deferral of Duplicative Federal Permitting
EPA	Reporting of Coincidental Manufactured Compounds under the Toxic Release Inventory Program
EPA	SARA Title III Reporting Requirements
FCC	"Do Not Fax" Rule
HHS	Privacy of Individually Identifiable Health Information
HHS/CMS	HIPAA
HHS/FDA	Use of Term "Fresh" for Baked Goods
Justice	Administration of Federal Prison Industries (FPI)—Guidance
Labor	FMLA/Intermittent Leave
Labor	FMLA/Perfect Attendance Awards
Labor	FMLA/Request for Leave
Labor	FMLA/Serious Health Condition
Labor	FMLA/Health Care Provider Certification
Labor	FMLA/Penalty Provisions
Labor	FMLA/Substitution of Paid Leave
Labor	FMLA/Unable to Perform
Labor/MSHA	Diesel PM Exposure
Labor/OSHA	Hazard Communication
Labor/OSHA	Hexavalent Chromium
Labor/OSHA	Sling Standard
Labor/OSHA	Threshold Limit Values
OMB	Administration of Federal Prison Industries (FPI)—Guidance
Treasury/IRS	"Statutory Employees"—Bakery Drivers
Treasury/IRS	Communications Distance Sensitivity
Treasury/IRS	Election to Expense Certain Depreciable Business Assets

Agency	High regulatory reform priorities for small business
Treasury/IRS	"Statutory Employees"—Bakery Drivers
Treasury/IRS	Bonus Depreciation
Treasury/IRS	Mobile Machinery Exemption
USDA/FSIS	Ready to Eat Meat Establishments to Control for Listeria Monocytogenes
USDA/RUS	Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes (Proposal)

REVIEW OF DUPLICATIVE FEDERAL PROGRAMS

Pursuant to Rule X, clause 2(d)(1)(E), the Committee on Small Business is required to submit to the Committee on Government Reform and the Committee on House Administration an oversight plan that "have a view toward insuring against duplication of Federal programs." The following is an example of Federal programs under the Committee's legislative jurisdiction that the Committee has so far identified for review but should not be considered as an exhaustive list. In part, this review is based on the Committee's legislative jurisdiction to authorize the programs of the SBA.

While the Rural Business Investment (RBI) program, which was created as part of the Farm Security and Rural Investment Act of 2002 (P.L. 107–171) to help provide venture capital to small businesses in struggling rural areas, falls technically within the legislative jurisdiction of the Agriculture Committee and is technically housed at the U.S. Department of Agriculture (USDA), the program mirrors almost word for word sections of the Small Business Investment Act of 1958. The RBI program currently operates as a partnership between the USDA and the SBA and the USDA continues to rely upon the expertise of SBA personnel for advice and help on launching and operating the program.

The RBI program is duplicative of both the SBIC program and the New Markets Venture Capital program (NMVC) since they both invest in low- to moderate-income (LMI) areas, including those located in rural America. The SBIC or the NMVC programs could have been augmented to accomplish the same goals as the RBI program and housed in the agency with the expertise in manage this type of program (i.e., the negative experience of the USDA in managing a similar initiative in the 1990's—the Alternative Agricultural Research and Commercialization Corporation or AARCC—should serve as a warning flag) without having to create a duplicative program at the USDA. However, to legislatively change the RBI program would require an action by the Committee on Agriculture.

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 2006 and 2007 budgets with respect to matters under the Committee's jurisdiction.

6.2.1 FISCAL YEAR 2006 BUDGET PROPOSAL

The views and estimates of the Committee on Small Business on the President's Fiscal Year 2006 budget proposal are outlined in the following paragraphs. In short, the President's proposal budget for the coming year sets forth a sound plan to help small employers continue to create jobs for Americans.

The Committee again applauds the President for endorsing further tax relief proposals that benefit small businesses such as:

(1) Making permanent the tax cuts previously passed by Congress (85 percent of small businesses pay taxes on an individual, not corporate, basis);

(2) Killing the estate or "death tax" for good;

(3) Providing a refundable tax credit for contributions of small employers to employee Health Savings Accounts (HSAs); and 4) Making permanent the research and experimentation tax credit.

We would further encourage the Budget Committee to add more targeted tax relief to small business owners in the budget resolution to include:

(1) Increasing the business meal deduction;

(2) Establishing a standard home office deduction; and 3) Incorporating the deduction for the health insurance costs of self-employed individuals into the calculation of the self-employment tax.

The President's FY '06 budget request for the Small Business Administration (SBA) of $592.9 million represents about a 2.8 percent decrease over last year's level of $610 million. If Congressional earmarks are discounted, the SBA's FY '06 budget request is essentially flat. In this tight fiscal environment, where average non-defense, non-homeland security discretionary spending decreased by one percent, the President's FY '06 budget proposal for the SBA is generally sound and reasonable, with a few exceptions. It is important to also remember that the SBA leads by example on how to do more with less and is not the cause of the growing federal deficit. In FY '01, Congress appropriated $900 million for the SBA and four years later, Congress provided $610 million for the agency in FY '05. During this same time, SBA has served more small businesses than ever in its history.

One major reason for the decrease in spending is due to the fact that Congress agreed with the Administration to eliminate the subsidy for the 7(a) business loan guarantee program of the SBA. In FY '05, this will save the taxpayer somewhere between $70 and $100 million by bringing the 7(a) program to a zero subsidy and requiring the users of the 7(a) program pay sufficient fees to cover the costs of the program. The fee increase has not dampened demand for 7(a) loans. The number of 7(a) loans approved is currently 27 percent higher than during a comparable time in FY '04. There is still some concern about the subsidy rate calculation that was used to further increase fees on lenders in the 7(a) program in the President's FY '06 budget request and the Committee will follow-up with the SBA to seek clarification. With this caveat, the Committee supports the President's FY '06 request for zero funding of the 7(a) program and a robust $16.5 billion program level.

The Committee is pleased that the fees have gone down again in the 504 Certified Development Company (CDC) program and still remains at a zero subsidy rate. However, the Committee remains concerned that the overall program level request of $5.5 billion will not be sufficient to fulfill expected demand for the 504 program in FY '06 and supports a $6 billion program level.

The Committee was disappointed to learn that while an adequate program authority level was requested for the Small Business Investment Company (SBIC) debenture program, the Administration effectively supports shutting down the participating securities portion of the SBIC program. The Committee believes that there can be a middle ground that still supports a zero subsidy for the program while making some structural changes to keep the program alive as a viable source of venture capital for small companies that most private venture firms simply disregard because of their size. The SBIC debenture program also cannot meet the need for "patient" capital required by budding entrepreneurs because the debt service associated with the debenture program drains precious capital from more critical investment needs.

The Committee also remains concerned about the SBA's proposal to eliminate the Microloan program and the accompanying technical assistance. This program reaches various demographic groups that would otherwise not be served by the private sector and even the 7(a) loan program. Combined with the technical assistance, the Microloan program achieves a default rate of less than one percent. Unless the SBA devises some other means to reach this unique market, the Committee opposes eliminating of the Microloan program. However, the Committee supports the SBA's proposal to eliminate the Program for Investment in Microentrepreneurs (PRIME), which is duplicative of existing SBA efforts to reach disadvantaged entrepreneurs.

Many of the previous line-items in the SBA budget were eliminated and folded into the overall increased request for the operating budget of the SBA (i.e., 7(j) and HUBZones into the Government Contracting and Business Development division; Native American Outreach into the Entrepreneurial Development division; SBA's contribution to the U.S. Export Assistance Center network into the Capital Access division; the Office of the Ombudsman; and the Advocacy database into the Office of Advocacy). In the President's FY '05 request, numerous line items were eliminated without increasing the overall operating budget of the SBA. This year's request fortunately avoids that mistake. However, the Committee still has concerns that these programs that were previously highlighted with a line item may still get lost in the shuffle. Thus, the Committee will work to insure that these programs get the full support from SBA that they deserve.

While recognizing the tough budgetary times, the Committee believes that some of these programs at SBA deserve an inflationary increase after years of not receiving much if any increase at all. The Small Business Development Center (SBDC) program, the Women's Business Center (WBC) program, and the SCORE program are cases in point.

Finally, the Committee supports the adequate funding levels for the disaster assistance programs at the SBA, the Office of Inspector General, and the overall salaries and expenses account of the SBA as contained in the President's FY '06 budget request.

In conclusion, the President's FY '06 budget request for small business can be supported, with some exceptions, both in terms of his tax relief proposals and the SBA budget.

6.2.2 FISCAL YEAR 2007 BUDGET PROPOSAL

The views and estimates of the Committee on Small Business on the President's Fiscal Year 2007 budget proposal are outlined in the following paragraphs. In short, the President's proposed budget request for the coming year will help small employers grow our economy and create jobs.

The Committee again applauds the President for endorsing further tax relief proposals that benefit small businesses such as:

(1) Making permanent the tax cuts previously passed by Congress, including estate or "death" tax repeal, in which the average tax savings in 2005 was $3,235 per small business;

(2) Making contributions to Health Savings Accounts (HSAs) tax deductible and increasing the amount that can be set aside for HSAs;

(3) Enacting an even higher and permanent small business (Section 179) expensing limit by increasing the deduction for qualifying property from $100,000 to $200,000 and increasing the phase-out of the deduction from $400,000 to $800,000 and indexing both levels for inflation thereafter;

(4) Making permanent the research and experimentation tax credit;

(5) Combining and making permanent the Work Opportunity and Welfare to Work Tax Credit; and

(6) Extending for one-year individual Alternative Minimum Tax (AMT) relief.

We would further encourage the Budget Committee to add more tax relief for small business owners in the budget resolution to include:

(1) Increasing the business meal deduction;

(2) Establishing a standard home office deduction;

(3) Incorporating the deduction for the health insurance costs of self-employed individuals into the calculation of the self-employment tax; and

(4) Permanently repealing individual AMT.

These and other high priority consensus small business tax reforms are contained in the Small Employer Tax Relief Act of 2005 (HR 3841). This legislation also includes the repeal of the Federal Unemployment Tax Act (FUTA) temporary surcharge of 0.2 percent on employers. This "temporary" surcharge has been in place since 1976. Unfortunately, the President's FY '07 revenue proposal includes yet another extension of this tax. Because the unemployment level has dropped to a low rate of 4.7 percent and the unemployment trust fund has an adequate surplus, it is now time to finally let the "temporary" surcharge or tax expire.

While there are many agencies, programs, and initiatives within the federal government that directly or indirectly benefit or assist small business, the House Small Business Committee has primary legislative responsibility for the Small Business Administration (SBA). The rest of this letter will focus on the President's FY '07 budget request for the SBA, which falls within the broader confines of the 370 Commerce and Housing Credit budget account.

The President requests $624.2 million in spending for the SBA in FY '07. This is about 37 percent less than what was spent on the SBA in FY '01 while, during the same time, the SBA served more small businesses than ever in its history. The SBA certainly knows how to do more with less and it ought to be commended. While the Committee believes the President's FY '07 budget proposal for the SBA is generally sound and reasonable, particularly in context of the overall 2007 budget request that cuts non-security discretionary spending to below last year's level, and should not be cut further, there are a few notable exceptions.

First, the request contains a new proposal to increase fees on all small business loans of over $1 million guaranteed by the SBA over and above what is necessary to keep these programs operating at a zero subsidy rate. The Committee continues to support a zero subsidy rate (no taxpayer financing) for the 7(a), the Certified Development Company (CDC) or 504, and the Small Business Investment Company (SBIC) programs. This proposed fee increase, however, would go beyond what is needed to cover the loan subsidy to apply to some of the administrative expenses associated with providing federal government guarantees on these loans. While relatively modest now, if approved, this $7 million fee increase would set a negative precedent for future budget requests. Subsequent budget proposals could continue to lower the dollar threshold until small business borrowers and/or lenders would eventually have to pay the entire administrative cost of issuing these loans. This has the potential of dampening demand for the various SBA loan guarantee programs.

Plus, the proposal unfairly and disproportionately hits the SBIC program, with a higher fee of 0.64 percent, versus 0.04 percent fee for the 7(a) program and a 0.11 percent fee for the 504 program. It is also not clear who exactly will pay these new fees—small businesses, lenders (banks or individual SBICs) or a combination thereof because the proposal incorrectly gives too much discretion to the SBA Administrator to impose these fees.

Second, the request proposes to amend the interest rate charged on SBA disaster loans. Current law provides a four percent interest rate to disaster loan borrowers who do not have credit elsewhere. Under this proposal, a disaster loan borrower would receive this rate for only the first five years of a disaster loan. After the fifth year, the interest rate would adjust to the Treasury bill rate, which has increased in recent months. The SBA estimates that $41 million can be raised from disaster loan borrowers with this policy change. However, the vast majority of SBA disaster loans have terms greater than five years. This proposal would undoubtedly add a great deal of uncertainty to disaster loan borrowers because they would not know exactly what they will pay over the lifetime of a loan at precisely the worst time, financially, in their life. The Committee strongly opposes this proposal to impose an adjustable interest rate on SBA disaster loans.

Third, the Committee also remains concerned about the SBA's renewed effort to eliminate the $1 million loan subsidy for the Microloan program and the accompanying $13 million in technical assistance. This program reaches various demographic groups that would otherwise not be served by the private sector and even the SBA's 7(a) program. Combined with the technical assistance, the Microloan program achieves a default rate of less than one percent. Unless the SBA devises some other means to reach this unique market, which without the program would not have access to capital, the Committee will continue to oppose the elimination of the modest appropriation for the Microloan program.

Finally, while recognizing the tough budgetary environment, the Committee believes that the programs at SBA deserve an inflationary increase after years of not receiving much, if any, increase at all. The Small Business Development Center (SBDC) program, the Women's Business Center (WBC) program, and the SCORE program, which serve their small business clients very well, are cases in point. This would require about an additional $4 million to the SBA's FY '07 budget request.

In conclusion, the President's FY '07 budget request for small business can be supported, with the above exceptions noted, both in terms of his tax relief proposals and the SBA budget request.

CHAPTER SEVEN

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

7.1 SUMMARY OF COMMITTEE OVERSIGHT PLAN AND IMPLEMENTATION

Pursuant to Rule X, clause 2(d)(1), of the Rules of the House of Representatives, the Committee on Small Business adopted, on February 10, 2005, an oversight agenda for the 109th Congress. (For a discussion of the Committee's consideration of the oversight agenda refer to section 6.1.1 of this report.) The House rule also requires that each Committee summarize its activities undertaken in furtherance of the oversight agenda as well as any additional oversight actions taken by the Committee.

In the following portions of Chapter Seven, the provisions of the oversight agenda are addressed in the hearing summaries of the Committee and its subcommittees. A summary of each hearing conducted by the full Committee appears in section 7.2 of this report and summaries of each subcommittee hearing appear in sections 7.3 through 7.6 of this report. An overview of the Committee's legislative activities appears in Chapter Five of this report.

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

7.2.1 THE PRESIDENT'S FISCAL YEAR 2006 BUDGET

Background

On Thursday, February 10, 2005, the Committee on Small Business held a hearing that focused on the President's Fiscal Year 2006 Budget request, including the funding level for the Small Business Administration (SBA). The SBA provides a variety of services for small businesses—financial assistance, technical assistance, federal government contracting assistance, and disaster relief. The budget request was designed to help the SBA achieve the goals of improving delivery of its services to small business owners and prospective entrepreneurs.

Summary

The participants in the one panel were: The Hon. Hector Barreto, Administrator United States Small Business Administration, Washington, DC; Mr. Tony Wilkinson, President/CEO for the National Association of Government Guaranteed Lenders, Stillwater, OK; Mr. Donald Wilson, President, Association of Small Business Development Centers, Burke, VA; Mr. Christopher Crawford, Executive Director, National Association of Development Companies, McLean, VA; Mr. Stephen Vivian, Partner, Prism Capital, Chicago, IL; and Mr. Daniel Betancourt, President/CEO, Community First Fund, Harrisburg, PA.

Administrator Barreto started his testimony by laying out the success of the SBA loan programs. For example, when the 7(a) loan demand exceeded its budget authority, SBA and the Committee were able to come together with the lending industry partners to provide an additional $3 billion in lending for 7(a) program all at no direct expense to the taxpayer. This allowed the SBA to lift the loan caps and guarantee a record $12.7 billion in small business loans in 2005. Furthermore, the SBA has continued to support the federal government's statutory commitment to provide a fair share of contracting dollars to small businesses and implementing a new policy to accurately monitor contracts when a small business is purchased or merged with a larger business. Consequently, the SBA requested for Fiscal Year 2006 a grand total $592.9 million and $16.5 billion in lending authority for the 7(a) loan program. According to the Administrator, this will ensure an active SBA that can effectively and efficiently meet the demands of its customers, America's entrepreneurs, while minimizing the cost to the taxpayer.

Mr. Wilson encouraged the Committee to work towards increasing the SBDC line-item in the SBA budget for Fiscal Year 2006 in order for them to hire more counselors for the SBDC program.

Mr. Wilkinson stressed the need for the Committee to support a $17 billion 7(a) loan program authority level for FY 2006 from the current $16 billion level to match the authorization amount set in the FY 2005 Omnibus Appropriation bill signed into law last December. Furthermore, Mr. Wilkinson encouraged the Committee to once again review the subsidy calculation for the 7(a) program to prevent fees from going even higher.

Mr. Crawford stated the Fiscal Year 2006 budget authority level for the 504 program should be at $6.5 billion to meet the growth of the program. Since 1997, the 504 program has been at zero subsidy; therefore, there is no cost to the taxpayer. Furthermore, the 504 program needs to address the concern that the Sacramento Loan Processing Center may need to hire additional staff to keep up with the demand for 504 loans.

Mr. Vivian testified that the Participating Securities component of the SBIC program should be continued because it serves overlooked industries and geographic regions of the country, such as small, Midwestern manufacturing businesses. However, the program must be restructured to stem losses the program has experienced.

Finally, Mr. Betancourt stated that the funding for the SBA Microloan program should remain at $17 million, the PRIME program at $5 million, and the Women's Business Centers program at $16.5 million.

In summary, the Committee took the Fiscal Year 2006 SBA budget increase requests under advisement and made its recommendation as part of its budget views and estimates letter to the Committee on the Budget on February 18, 2005. Furthermore, the Committee explored restructuring the Participating Securities program. For further information about this hearing, please refer to Committee publication #109–1.

7.2.2 MEDICAL LIABILITY REFORM: STOPPING THE SKYROCKETING PRICE OF HEALTHCARE

Background

On February 17, 2005, the Committee held a hearing to look at the effect medical malpractice litigation has on health care costs. Small businesses cite the skyrocketing cost of health care insurance as the biggest cost to their business. The ever-escalating cost of medical malpractice has a direct impact on the cost of health care in this country. Also, medical malpractice premiums have dramatically jumped in price, resulting in doctors leaving the practice or medicine.

Thirty years ago, California passed comprehensive medical liability reform. According to the Department of Health and Human Services (HHS), states that have limited non-economic damages have seen premium increases by less than 20 percent. States without limits on non-economic damages have seen premiums increase on average of 45 percent. The President has proposed reforms in our medical liability law that would (1) improve the ability of patients to collect compensation for their economic losses; (2) ensure that recoveries of non-economic damages would not exceed $250,000; and (3) limit punitive damages to $250,000. The House passed this proposal as part of the HEALTH Act of 2005 (H.R. 5) on July 28, 2005 by a vote of 230 to 194.

Summary

The hearing was comprised of one panel of the following witnesses: Donald Palmisano, M.D., New Orleans, LA; Thomas F. Gleason, M.D., Morton Grove, IL; Chad Rubin, M.D., Columbia, SC; Ms. Hilda Heady, President, National Rural Health Association, Kansas City, MO; Mr. Lawrence E. Smarr, President, Physician Insurers Association of America, Rockville, MD; and Ms. Joanne Doroshow, Executive Director, Center for Justice and Democracy, New York, NY.

Dr. Palmisano started the hearing discussions by stating that most physicians operate their practices as small businesses. Dr. Palmisano listed several state in a health care access "crisis" because of the rising cost of medical malpractice insurance. These "crisis states" are losing ob/gyn's, neurosurgeons, and other obstetrics at an alarming rate and cannot recruit any new practitioners to the area because of rapidly rising malpractice insurance premiums.

Dr. Gleason cited the current litigation climate of malpractice suits as the leading cause of the higher insurance rates. He states that doctors have to practice more defensive medicine, and are either no longer performing high-risk procedures or are retiring from practice altogether.

Dr. Rubin testified on how increasing insurance premiums are affecting patient's access to care in South Carolina. Many areas have no ob/gyn coverage, and other physicians limit the scope of their practice so drastically as to necessitate the patient seeking care in other states.

Ms. Heady testified to the crisis situation in health care access in rural and underserved areas. She cited an example of one doctor in rural Mississippi who pays $70,000 in malpractice premiums while his average yearly physician salary is only $72,000. Ms. Heady suggested that the medical, legal, insurance, and consumer interests all need to take responsibility for their part in this crisis.

Mr. Smarr testified about the efforts among medical professionals to independently provide medical malpractice insurance for members of the medical community. Mr. Smarr believes that the source of crisis lies with rising liability cost, not with the insurance companies. The medical insurance liability agencies operate at a loss, and thus must continually increase premiums to offset expenses.

Finally, as the minority's witness, Ms. Doroshow voiced objections to the President's medical malpractice reform proposals. Her main objections were against a "cap" on non-economic losses in malpractice litigation. In addition, she believes the President's proposal would undermine an injured patient's right to a jury trial. She believes the insurance underwriting cycle is responsible for the increasing premium rates, not the legal system.

In sum, the committee concluded that some reform to medical liability laws is needed in order to stem the flow of medical professionals, the vast majority of whom are small business owners, leaving their field of expertise, particularly in underserved areas of our nation. For further information, please refer to Committee publication #109–2.

7.2.3 PRESCRIPTIONS FOR HEALTH CARE: SOLUTIONS TO THE PROBLEM

Background

On March 2, 2005 the Committee on Small Business held a hearing on health care solutions. This hearing served as a forum to discuss and promote innovative solutions to help small businesses meet their health care needs. Roughly 60 percent of the uninsured are small business owners, their employees, and their families. Small business owners face double-digit increases each year to their health care premiums, making it difficult to provide health care to their employees. The ability to offer health care to employees is a competitiveness issue for many small businesses as they seek to attract and retain the best employees to their business.

Several of the ideas that were discussed in this hearing included: (1) enactment of Association Health Plans (AHPs); (2) support for expanding access to Health Savings Accounts (HSAs); and (3) various health care tax incentives, including the deduction of health insurance costs of the self-employed into the calculation of the self-employment tax.

Summary

The hearing consisted of one panel: The Hon. Michael O'Grady, Assistant Secretary for Planning and Evaluation, United States Department of Health and Human Services, Washington, DC; Mr.

Thomas Haynes, Executive Director, Coca-Cola Bottlers' Association, Atlanta, GA; Ms. Holly Stephen Roberts, Madison Insurance Agency, Madison, IN; Robert Hughes, CPA, Hall & Hughes, LLP, Grapevine, TX; Ms. Karen Kerrigan, Chairwoman, Small Business & Entrepreneurship Council, Washington, DC; Mr. Scott Shalek, Owner, Shalek Financial Services, Ringwood, IL; and Maria Welch, Founder and CEO, Respira Medical, Inc., Baltimore, MD.

Assistant Secretary O'Grady testified on the increasing problem faced by small businesses in terms of escalating healthcare costs and rising insurance premiums. Mr. O'Grady described a proposal by the Bush Administration to offer employers incentives to provide health savings accounts (HSAs) to their employees. Mr. O'Grady explained further that the Administration is pushing Congress to pass H.R. 525, which would create federal association health plans (AHPs) that allows small employers to band together to build purchasing power to offer their employees more affordable coverage.

Mr. Haynes also testified in support of H.R. 525. Mr. Haynes explained that the Coca-Cola Bottlers' Association (CCBA) had administered two separate AHP plans: a fully-pooled program for small bottlers under 100 employees and another experience-rated program for those bottlers with over 100 employees. Until recently, CCBA's AHP was able to significantly reduce the cost of insurance by combining over 60 small employers who participated in our fully pooled program with administrative costs of approximately seven percent. This fully pooled program for small employers (under 100 employees) was disbanded at the end of 2000 because of the overwhelming complexity of state small group reform laws and regulations. Since then, health insurance premiums for the smaller member bottlers have increased at about 20 percent to 25 percent annually.

Mr. Roberts testified in favor of HSAs and spoke of his positive personal experience with them, particularly in contrast to the health insurance policy offered to him by a large employer.

Mr. Hughes testified in strong opposition to current inequities in the tax code that against the self-employed. First, the current tax code requires the self-employed to pay the full 15.3 percent Social Security or FICA tax for their business. In addition, C-corporations receive a deduction for health insurance premiums and are not subject to FICA taxes for either the employee or the employer portion of the FICA tax. On the other hand, the self-employed do not receive a business deduction benefit for the same health insurance premiums, causing healthcare plans to become even more expensive for the self-employed. Mr. Hughes spoke in favor of the need to reintroduce and pass legislation to fix this problem.

Ms. Kerrigan testified in support of all proposed solutions to help provide more affordable health care coverage for small businesses, including AHPs, HSAs, tax credits, and the FICA deduction for the self-employed.

In addition to HSAs and Health Reimbursement Accounts (HRAs), Mr. Shalek testified regarding alternatives to high-priced health insurance plans, including GAP plans, flexible-spending accounts, and state-grants funded through state appropriations. Mr. Shalek further added that there is not a one-size-fit-all answer to providing cost-effective health care. Finally, Ms. Welch testified in favor of tax equity for the self-employed and AHPs.

In sum, the committee concluded that there are a variety of legislative solutions that can help mitigate the rising cost of health care insurance premiums and encouraged Congress to act on them expeditiously. For more information, please refer to Committee publication #109–3.

7.2.4 SMALL BUSINESS PRIORITIES FOR THE 109TH CONGRESS—H. RES. 22

Background

On March 8, 2005, the Committee on Small Business held a hearing on H. Res. 22. Over the years, various small businesses have approached Congress with issues that they believe are of great importance. It has been ten years since the last time small businesses gathered together on a nationwide basis to prioritize the top issues facing them as part of the 1995 White House Conference on Small Business. This resolution is needed to highlight the top tier policy issues that must be addressed by the House of Representatives in the 109th Congress—health care, tax relief, litigation reform, and regulatory/paperwork reduction. This is not to say that other small business issues are unimportant. However, this legislation is needed to help Congress prioritize the key issues that affect the largest number of small businesses in the United States.

Summary

The Committee received the testimony of six witnesses on one panel: Mr. Jerry Pierce, Owner, Restaurant Equipment World, Orlando, FL; Mr. Giovanni Coratolo, Director, Small Business Policy, United States Chamber of Commerce, Washington, DC; Mr. Todd McCracken, President, National Small Business Association; Ms. Barbara Kasoff, Vice President, Women Impacting Public Policy, Oklahoma City, OK; Ms. Karen Kerrigan, President/CEO of the Small Business & Entrepreneurship Council, Washington, DC; and Ms. Sheila Brooks, President, SRB Productions, Washington, DC.

Mssrs. Pierce and Coratolo, and Ms. Kerrigan testified as to the accuracy of H. Res. 22 in terms of the top nationwide issues facing the small business members as part of their respective organizations. They urged its adoption by the Committee. Each one of these associations recently surveyed their membership and the issues outlined in H. Res. 22—health care, tax relief, litigation reform, and regulatory/paperwork reduction—came back from their rank-and-file members as their top recommendations for change. Mr. McCracken disagreed with the concept of association health plans but agreed that health care, tax relief, and regulatory reform remained the top concerns of small business. He also added that small business access to capital was a top tier issue. Ms. Kasoff listed the priorities of women business owners: health care, energy, Social Security reform, tax reform, and tort reform. Finally, Ms. Brooks testified from her perspective of the importance of open access to procurement opportunities for small businesses and the efficacy of the 8(a) minority business development and set-aside program in particular.

The hearing concluded that H. Res. 22 did have merit by focusing the attention of the top issues facing the vast majority of small business owners nationwide but could be improved to take into account some of the suggestions of the other witnesses dealing with access to capital, energy, and procurement. Eventually, the Committee passed H. Res. 22 by a unanimous voice vote, after further modifications to the resolution based on the input from the hearing, and before the full House of Representatives. For further information, please refer to Committee publication #109–4.

7.2.5 THE RFA AT 25: NEEDED IMPROVEMENTS FOR SMALL BUSINESS REGULATORY RELIEF

Background

On Wednesday, March 16, 2005, the Committee on Small Business held a hearing to examine H.R. 682, the Regulatory Flexibility Improvements Act. The Regulatory Flexibility Act (RFA) requires federal agencies to examine the economic impact of their proposed and final rules on small entities. If they impact is significant on a substantial number of such businesses, the agency is required to assess less burdensome alternatives. When it was first enacted in 1980, the RFA had a number of pitfalls that detracted from full agency compliance. The RFA was amended in 1996 to address some of those pitfalls. While some problems were eliminated, such as boilerplate certification statements, agencies found new interpretations of the RFA to reduce its effectiveness. H.R. 682 was introduced to eliminate, to the extent possible in legislation, all of the interpretive legerdemain practiced by federal agencies in order to avoid their obligations under the RFA.

Summary

The panelists were: The Hon. Thomas Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC; Cecelia McCloy, President, Integrated Science Solutions, Inc, Walnut Creek, CA; Mr. Blair Haas, President, Bud Industries, Willoughby, OH; Mr. Jay Lancaster, President, B.E.S.T., Inc., Galena, MD; Marc Freedman, Esq., Director, Labor Policy, United States Chamber of Commerce, Washington, DC; and Jere Glover, Esq., Of Counsel, Brand Law Group, Washington, DC.

All of the witnesses endorsed the need for strengthening the RFA. Increased regulatory burdens made it harder for small businesses to operate. The RFA, while not the silver bullet solution, was an important step in reducing regulatory burdens on small businesses.

Mr. Sullivan noted that H.R. 682 was a comprehensive bill but believes that certain items within H.R. 682 are of higher priority. Mr. Sullivan cited the need to address indirect effects, improvements to the §610 review process, and agency response to advocacy comments. Mr. Sullivan suggested that H.R. 682 be amended in committee to incorporate responses to the Chief Counsel's comments on certifications, require panel reports be prepared by both the agency and the Chief Counsel, and require the Chief Counsel's consent to size standard modifications rather than have the Chief Counsel approve the size standards.

Ms. McCloy testified about the failure of agencies to consider the indirect costs of their regulatory decisions. She cited to a recent rule by the General Services Administration (GSA) requiring a $2500 connection charge to the Federal Procurement Data System and found that the non-fee site was inadequate to obtain necessary information. Contrary to GSA's conclusion, the fee actually will have a serious impact on any business trying to obtain federal government contracts.

Mr. Haas cited a number of regulatory matters that created difficulty for his small manufacturing company. There are: the complexity of calculating the alternative minimum tax; additional recordkeeping requirements associated with company-sponsored individual retirement accounts; the disparate impact on small businesses of OSHA's method for determining its inspection schedule; exemptions under the Fair Labor Standards Act; and Superfund liability.

Mr. Lancaster noted that when he started his construction business he only had to worry about construction. Now he pays someone in California to update him on regulatory changes and pays an accountant to deal with tax issues. Mr. Lancaster specifically cited problems associated with EPA regulations in which neither EPA nor the states assess the economic consequences of a regulatory action on small businesses.

Mr. Freedman noted that the biggest problem with the RFA was the vagueness of the terminology. He strongly endorsed efforts in the bill to obtain definitions of two key terms "significant economic impact" and "substantial number of small entities." Mr. Freedman concluded that requiring the Chief Counsel to write regulations solves the problem concerning various interpretations of key portions of the RFA.

Mr. Glover requested that the small business community support Advocacy having a line item in the President's budget. Mr. Glover then moved on to suggest that courts defer to Advocacy's interpretation of the RFA. Finally, Mr. Glover recommended that the RFA be amended to require agencies provide greater specificity and detail in their final certifications and regulatory flexibility analyses.

The Committee concluded that changes to the RFA were necessary and worked with the Committee on the Judiciary to move the legislation. A hearing was held in the Committee on the Judiciary's Subcommittee on Commercial and Administrative Law in the spring of 2006.

For further information, please refer to Committee publication #109–5.

7.2.6 WHAT HAS EX-IM BANK DONE FOR SMALL BUSINESS LATELY?

Background

On Wednesday, April 6, 2005, the Committee held a hearing to determine if the Export Import Bank of the United States (Ex-Im) was meeting its obligations to support small businesses. Ex-Im's primary mission is to "aid in financing and to facilitate exports of goods and services, . . . and in so doing to contribute to the employment of United States workers." In carrying out its mission, Congress directed Ex-Im to encourage participation of small business in international commerce as part of a broader federal government effort to protect the interests of small business. To ensure full participation by small businesses, Congress mandated that Ex-Im undertake the following:

(1) Cooperate with Commerce Department and Small Business Administration in order to make small businesses aware of medium-term financing for exports;

(2) Set rates, terms, and conditions of its loans for its small business programs to be fully competitive with those made by foreign countries;

(3) Develop mechanisms to ensure fair consideration is given to applications by small businesses;

(4) Designate an officer answerable to the President of Ex-Im whose responsibility is to address all Bank matters concerning small businesses;

(5) Have at least one Director of the Bank's Board be from the small business community and represent the interests of small business;

(6) Appoint an advisory committee that shall have at least three members who are representatives of the small business community; and

(7) Utilize not less than 20 percent of its annual loan authority to finance exports of small businesses.

Summary

The Committee heard from one panel of witnesses: The Hon. Phillip Merrill, President and Chairman, Export-Import Bank of the United States, Washington, DC; Mr. Michael Vaden, CEO, Rutland Plastics Technologies, Inc., Pineville, NC; and Ms. Victoria Hadfield, President, SEMI North America, Washington, DC.

Chairman Merrill claimed throughout the hearing that Ex-Im was properly and adequately meeting its obligations to small business. His testimony was belied by the other witnesses and by questioning by Members of Congress. Mr. Vaden testified that his company, a small manufacturer in North Carolina, had been denied insurance coverage on a commercial claim from an unscrupulous dealer in China due to a highly restrictive and unfair interpretation of Ex-Im's export loan contract. Ms. Vaden testified in regards to the refusal, by Chairman Merrill, to allow a loan application to be taken to the Board of Directors regarding a $660 million dollar loan guarantee for semiconductor capital equipment to be sold into China.

Testimony was also heard from Ex-Im officials regarding the lack of progress for the Ex-Im's "Fast Track" loan guarantee program and other small business initiatives to assist in the development of foreign dealer distribution networks. Both initiatives were approved by the Board of Directors of Ex-Im Bank but were never implemented in any meaningful way.

Based on its investigation and hearing, the Committee determined that Ex-Im violated its statutory obligation to support American small business. Equally troubling is the Committee's conclusion that Ex-Im's current management structure violates various federal statutes by enabling the Chairman to control the Ex-Im

Board's agenda and thus giving that person de facto control over approval applications that Ex-Im will approve.

For further information about this hearing, please refer to committee publication #109–8.

7.2.7 PRIVATE EQUITY FOR SMALL FIRMS: THE IMPORTANCE OF THE PARTICIPATING SECURITIES PROGRAM

Background

On Wednesday, April 13, 2005, the Committee on Small Business held a hearing to examine the need the participating securities portion of the Small Business Investment Company (SBIC) program. For many years, the Small Business Administration licensed SBICs to issue long-term debt to entrepreneurial enterprises. This program was called the debenture SBIC program. Companies such as Dell, Federal Express, Callaway Golf, Nike, and Outback Steakhouse were beneficiaries of the debenture SBIC program. The structure of the debenture SBIC program does not accommodate the capital needs of startup small businesses. They require greater patient capital than the debenture program provides. In the early 1990s, Congress created the participating security SBIC program to address the needs of startup small businesses. For the first seven years of the program, it was highly successful but, like the rest of the venture capital market, suffered losses during the "dotcom" bust in the stock market. Nevertheless, there remains a strong need for patient venture capital for startup small businesses. To avoid significant losses to the federal taxpayer, the Committee examined changes needed to satisfy the needs of small businesses while reducing the risk to the federal government.

Summary

The panelists were: Mr. Jaime Guzman, Associate Administrator for Investment, United States Small Business Administration, Washington, DC; Colin Blaydon, Ph.D., Director, Center for Private Equity and Entrepreneurship, Tuck School of Business, Hanover, NH; Susan Preston, Esq., Of Counsel, Davis, Wright & Tremaine, Seattle, WA; Mr. Mark Redding, President/CEO, Banner Service Corp., Carol Stream, IL; Redmond Clark, Ph.D., President, Metalforming Controls Corp., Cary, IL; and Mr. Daniel O'Connell, Director, Golder Center on Private Equity, University of Illinois, Champaign, IL.

Mr. Guzman first noted that the participating security SBIC program had projected losses at the end of FY 2004 of $2.7 billion. The number of participating security SBICs that failed to meet their obligations to the federal government rose to 29 percent of those licensed prior to FY 2001. Mr. Guzman then delineated a number of flaws with the participating security program: SBA only receives funds if the SBIC is profitable; SBA defers interest on the money it borrows which cumulates to more than the original investment fund; and the profit share to the SBA is inadequate given the risk. Mr. Guzman concluded by noting that the SBA was implementing improved oversight of participating security SBICs and continued to support the debenture SBIC program.

Dr. Blaydon started by noting that private equity capital markets are very inefficient. Dr. Blaydon went on to testify that private venture capital invests very little in seed capital for startups. Most venture capital is concentrated in a few geographic areas, especially Silicon Valley and the suburbs of Boston, MA. Finally, private venture capital rarely invests in any business other than software or biotechnology.

Ms. Preston focused her testimony on so-called angel investing (friends or relatives of business owners seeking capital). Ms. Preston testified that in calendar year 2004, there were 48,000 angel investment deals with an average size investment of $500,000. Angel investors are very early stage investors willing to wait from 5 to 7 years for a return—a significantly longer period than most venture capital equity funds. Ms. Preston emphasized the need for such patient capital and that the participating security SBIC program provides another critical vehicle for patient capital.

Mr. Redding related his story about the purchase of an office equipment manufacturer that would not have succeeded without the equity investment from a participating security SBIC. Mr. Redding noted that before contacting the SBIC 8 other venture firms turned down his requests for funding. Mr. Redding noted that Banner Service Corp. regrew its revenue, refocused its business, and hired new workers all because of the investment from a participating security SBIC.

Dr. Clark concurred with Dr. Blaydon's conclusion about the lack of seed capital for startup businesses. He noted that while private venture capital investment increased 250 percent over the last decade, seed capital investment dropped by 75 percent. Dr. Clark noted that his company and its business triumphs would not have occurred without the involvement of participating security SBICs. Dr. Clark concluded that the participating security SBIC program is vital to the continued development of small businesses in the American economy.

Mr. O'Connell noted that private venture capital firms, including participating security SBICs continue to specialize in various product niches in which their partners feel comfortable. From Mr. O'Connell's experience, participating security SBICs tend to focus on geographic regions that they understand and those regions tend to be underrepresented by large venture capital or private equity funds. Mr. O'Connell suggested that if participating security SBICs are to make high-risk, low liquidity investments, the capital must be long-term, patient, and tolerate risk.

The hearing showed that private venture firms were not fulfilling the need for seed capital especially in areas outside of certain areas and the participating security SBIC was vital to the equity capital needs of small businesses.

For further information about this hearing, please refer to committee publication #109–10.

7.2.8 CLOSING THE TAX GAP AND THE IMPACT ON SMALL BUSINESS

Background

On April 27, 2005, the Committee on Small Business held a hearing to examine the implications of the announcements by the Internal Revenue Service (IRS) that a greater emphasis will be placed on enforcement to close the so-called "tax gap," i.e., the difference between what taxpayers owe and what they pay. Through its National Research Project, the IRS has attributed a good deal of the estimated $300 billion "tax gap" to small businesses and self-employed individuals. The hearing explored the specific activities the IRS intends to take to close the "tax gap" and how these activities may impact the millions of small businesses and self-employed individuals in the United States.

Summary

The hearing was comprised of two panels. The first panel consisted of: The Hon. Thomas M. Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC; The Hon. Mark Everson, Commissioner, Internal Revenue, Washington, DC. The second panel included John Satagaj, Esq., President and General Counsel, Small Business Legislative Council, Washington, DC; Keith Hall, CPA, Partner, Hall and Hughes, Dallas, TX; Mr. Abraham Schneier, Principal, Abraham Schneier & Associates, Washington, DC; Leonard Steinberg, EA, CMC, The Steinberg Group, Somerville, NJ; and Ronald Hegt, CPA, Hays & Co., LLP, New York, NY.

Chief Counsel Sullivan testified about the need to have a balanced approach to addressing the tax gap. In particular, he emphasized that much of the tax gap can be attributed to complexity in the tax code. He also testified that this complexity adds to the burdens placed on small businesses because it costs small firms more than two times the amount to comply with the tax code as compared to large firms. Rather than increasing IRS enforcement activities, the Chief Counsel testified that the best way to ensure small business compliance is to simplify the tax code, thereby removing the ambiguity taxpayers face when determining what to report, and to increase education and assistance programs aimed at informing small business owners what the IRS expects them to do when preparing their tax returns.

Commissioner Everson testified that preliminary IRS estimates of the tax gap are approximately $300 billion on an annual basis. Of this amount, he testified that individual underreporting makes up about two-thirds of the overall gross tax gap. To address this issue, Mr. Everson testified that a greater emphasis must be placed on enforcement activities, particularly for self-employed individuals and other small businesses. According to Commissioner Everson, the IRS collects more than four dollars in direct revenue for every dollar invested in its total enforcement budget. In addition, he stated that enforcement efforts, such as audits, collection and criminal investigations, have a deterrent effect on those who might be tempted to skirt their tax obligations.

Mr. Satagaj believes that the IRS needs to find the proper balance of enforcement and taxpayer education as it attempts to address the tax gap. According to Mr. Satagaj, no amount of enforcement will ever produce 100 percent compliance with the tax code, and over aggressive enforcement or unfair burdens placed on small businesses will stifle innovation and growth in the small business community.

Mr. Hall said that the complexity of the tax code is particularly troublesome for the self-employed business owner and is a snare for unintentional noncompliance. Further, he testified that efforts to address the tax gap must focus on overall simplification, eliminating issues of inequity within the tax code, and enhancing taxpayer education and outreach.

Mr. Schneier articulated that IRS efforts to decrease the tax gap must be measured against the costs imposed on small businesses. Mr. Schneier stated that too often the IRS uses a one size fits all approach to compliance activities that places an unfair burden on small business owners. Further, he testified that applying common sense rules to limit the burdens placed on small business owners is the only sensible way for the IRS to ensure increased compliance by this segment of taxpayers.

Mr. Steinberg agreed that the tax gap is a multi-faceted problem, which is exacerbated by the complexity of the tax code. To ensure greater compliance by small business owners, Mr. Steinberg stated that the IRS must perform aggressive educational and outreach efforts that build a culture of compliance and help individuals understand the personal consequences of non-compliance.

Finally, Mr. Hegt stated that the IRS could help taxpayers and its own enforcement efforts through administrative simplification. He also emphasized that the IRS should leverage external stakeholders, such as the AICPA, to achieve a more highly compliant taxpayer population.

In sum, the committee concluded that a more balanced approach, which respects the interest of small business, needs to be implemented by the IRS in order to close the "tax gap."

For more information about this hearing, please refer to Committee publication #109–13.

7.2.9 ANTICOMPETITIVE THREATS FROM PUBLIC UTILITIES: ARE SMALL BUSINESSES LOSING OUT?

Background

On Wednesday, May 4, 2005, the Committee on Small Business held a hearing that focused on growing competition from service companies owned and controlled by Investor Owned Utilities and some Municipal Owned Utilities. The utility companies in most every state have their rates fixed by public utility rate commissions and they are essentially guaranteed a profit each year. Their costs are a public record and their rates are fixed with a reasonable profit in mind. Increasingly, the utility companies are creating subsidiaries and affiliate companies that provide other kinds of services apart from the basic power supply delivery such as plumbing services, electrical services, home remodeling and subscription service contracts, appliance sales and rentals. The Committee is concerned that these new companies enjoy unique advantages because of their special status as instruments of a public utility. While direct subsidy from ratepayers is prohibited, there are many ways that these new entrants could get an unfair advantage.

Summary

The one panel consisted of the following witnesses: Mr. Mike Martin, President, F.K. Everest, Inc., Fairmont, WV; Mr. Brian Harvey, President, H & C Heating and Cooling, Laurel, MD; Mr. Hugh Kelleher, Executive Director, Plumbing-Heating-Cooling Contractors Association of Greater Boston, Danvers, MA; Adam Peters, Esq., Research Fellow and Regulatory Counsel, The Progress & Freedom Foundation, Washington, DC; and Ms. Lynn Hargis, Public Citizen, Washington, DC.

Mr. Martin started his testimony by laying out the ways by which public utilities use the same equipment and logos for their unregulated subsidiaries. Thus, the unregulated subsidiary has in essence subsidized equipment and adverting expensed, which undercuts private small business in that particular industry. For example, the unregulated electric utility subsidiary, using the same equipment or manpower provided from its utility operations, is billed only the incremental cost for rental of equipment instead of the fair market price. This constitutes a major unfair advantage for the utility's unregulated venture. Utilities argue that such billing at an incremental cost rate is not cross-subsidization because they bill for all costs incurred for the additional use of the manpower or equipment by the non-regulated entity.

Mr. Harvey stated that his company H & C Heating and Cooling, was greatly harmed by BGE Home, which is a unregulated subsidiary of Baltimore Gas and Electric's (BGE), which focuses on the air conditioning contracting field. BGE Home used BGE trucks, trucks that were paid for with ratepayers' money. These trucks that were originally purchased by Baltimore Gas and Electric to provide the Maryland ratepayers with gas and electric service were now being used by BGE Home to install heating and air conditioning systems.

Mr. Kelleher position reinforced the idea that public utilities use regulated business to unfairly enter new markets. For example KeySpan, which is based in New York, has for years been authorized by the energy regulatory agency in Massachusetts to include in its rate structure a "promotional budget" line item, which costs natural gas customers millions of dollars each year. The revenue generated by the "promotional budget" were used to promote KeySpan's unregulated affiliated businesses, which included a large heating and air conditioning company that competes directly against the small mom-and-pop contractors.

Furthermore, Ms. Hargis argues that public utilities cross-subsidize non-regulated subsidiaries that have more risk than the utility business. Therefore, this cross-subsidization of affiliates by utilities results in great potential harm to electric and natural gas consumers, who have to pay for such subsidies and for lower credit ratings from non-utility business failures, through higher utility bills. Such cross-subsidization also may provide an unfair business advantage to utility owners of such non-regulated businesses over non-regulated competitors, particularly small businesses. Therefore, Ms. Hargis argues for strict federal enforcement pf the Public Utility Holding Company Act of 1935 that effectively ended such affiliate cross-subsidization and other abuses by confining utility owners to the utility business.

Finally, Mr. Peters stated that public utilities that create unregulated subsidiaries, such as broadband providers, may indeed use their regulated public utility business to unfairly compete with private concerns. However, Mr. Peters argues that public utilities can create new competition in the broadband field, especially in rural areas but public utilities need careful oversight by states to ensure a level playing field between these entities and small businesses.

In summary, the Committee did find that there is a very real danger that some large public utilities use their regulated business and their market power to grow unregulated business subsidiaries to unfairly compete directly against small business. Continued House and Senate oversight is certainly necessary to help ensure that this issue is not overlooked by federal regulators.

For further information, please refer to committee publication #109–15.

7.2.10 SMALL BUSINESS ACCESS TO HEALTH INSURANCE: LESSONS FROM NEBRASKA?

Background

On Monday, June 6, 2005, the Committee on Small Business held a field hearing that focused on the affordability of health insurance for small business. Noting that 60 percent of the estimated 45 million Americans without health care insurance either own or work for a small business, this hearing brought in lessons from the heartland of America directly to Washington's doors through a field hearing in Lincoln, Nebraska.

Summary

The hearing was divided into two panels. The first panel was comprised of: Mr. Charlie Janssen, Chairman and CEO, RTG Medical Co., Fremont, NE; Mr. Bob Lanik, President, St. Elizabeth's Hospital System, Lincoln, NE; and Ms. Peggy Green, President/CEO, Green Furnance and Plumbing, Lincoln, NE. The participants in the second panel were: Mr. Robert Moline, President/CEO, HomeServices of Nebraska, Lincoln, NE; Ms. Debi Durham, President, Siouxland Chamber of Commerce, Sioux, City, IA; and Mr. John Miller, President, Oxbow Hay Company, Murdock, NE.

Mr. Janssen's primary concern for small business is affordable heath care for it employees. Furthermore, the issue of affordable health care limits the pool of workers and discourages the creation of small businesses. He suggested that the federal government should provide tax relief for small business, such as expanding the tax advantage status of health savings accounts.

Mr. Lanik then stated that health care costs are increasing due to the following factors: labor, supplies, pharmaceuticals, technology, regulation, defensive medicine, and cost shifting by insurance companies which directly impact the premiums paid by employers. For instance, the primary expense for hospital is wages for its employees, which comprise 42 percent. The American Hospital Association states that there is an 8.1 percent vacancy rate for registered nurses. This shortage has forces hospitals to provide higher wages.

Ms. Green started gave a first-hand account of the health care crisis by explaining the background in which her company, Green's Plumbing, Heating, Cooling, and Remodeling, once offered family medical insurance but because of increased insurance premiums, currently provides only single employee insurance coverage. She testified as to the potential value of association health plans (AHPs), which would enable her to fund other employee benefits.

Mr. Moline also agreed with Ms. Green's suggestion to create AHPs, which would provide small businesses and the self-employed access to the same health benefits that labor unions and large corporations enjoy under federal law. For example, small business businesses could band together through their professional or trade organizations to either purchase coverage from established insurance companies or if they cover enough participates, they could self-insure.

Ms. Durham further reinforced this point by testifying that the business that provides employee health insurance coverage enhances their recruiting efforts and maintains a more stable work force. She urged the Congress to allow for the creation of purchasing pools for small business to band together through AHPs as a purchasing block to lower premium cost.

Finally, Mr. Miller's primary concern is that double-digit growth in health insurance premiums will force him to either eliminate health insurance coverage for his employees or force him to close his 40-employee business. He also suggested Congress look at various tax incentives, particularly those aimed to help the very smallest of companies purchase health care insurance.

In summary, the Committee found that innovative legislative solutions—most particularly AHPs—are needed to address the need for affordable health care insurance for small business owners and employees in the heartland of America.

For further information about this hearing, please refer to Committee publication #109–19.

7.2.11 ARE SKYROCKETING MEDICAL LIABILITY PREMIUMS DRIVING DOCTORS AWAY FROM UNDERSERVED AREAS?

Background

On Tuesday, June 14, 2005, the Small Business Committee held a hearing to exam the skyrocketing rates in medical liability premiums and its impact on doctors, particularly in underserved areas. The ever-escalating cost of medical malpractice insurance has a direct impact on the cost of health care in this country. Medical malpractice premiums have doubled, tripled and even quadrupled yearly. As a result, doctors are no longer practicing medicine; they are retiring. The remaining doctors practice defensive medicine.

Thirty years ago, California passed comprehensive medical liability reform. According to the Department of Health and Human

Services (HHS), states that have limited non-economic damages have seen premium increases by less then 20 percent. States without limits on non-economic damages have seen premiums increase on average of 45 percent. The purpose of the hearing was to examine the efficacy of enacting the medical liability reforms supported by the President. Major elements of this reform proposal include: improving the ability of patients to collect compensation for their economic losses; ensuring that recoveries of non-economic damages would not exceed $250,000; and limiting punitive damages to $250,000.

Summary

The hearing was comprised of one panel of five witnesses: Delorise Brown, M.D., Cleveland Medical Center, Cleveland, OH; Larry S. Fields, President, American Academy of Family Physicians, Ashland, KY; Winston Price, M.D., President, National Medical Association, Brooklyn, NY; Elena Rios, M.D., President/CEO, National Hispanic Medical Association, Washington, DC; and Wilbur (Will) O. Colom, Esq., Senior Partner, The Colom Law Firm, Columbus, MS.

Dr. Brown spoke of her practice of internal medicine in East Cleveland, Ohio. She explains that many of her patients are from underserved areas and that many of them live below the poverty line. She stated further that more and more, she is forced to practice defensive medicine and limit her patient load, which includes cutting back on "high-risk" patients and patients within nursing homes. Still, she has seen her medical liability insurance skyrocket from $5,266 in 2001 to over $100,000 in 2004.

Dr. Fields is a family practitioner in rural, Eastern Kentucky. He explained that his malpractice carrier dropped his coverage after 22 years, even when they had never had to pay out any money in claims against him. He faced the possibility that he would have to close his practice and his 18,000 patients would be forced to find a new doctor in the rural and underserved part of the state that he resides. He told of a colleague, Dr. Julie Wood, who after six years of practice in rural Missouri as an OB/GYN, her medical liability insurance increased from $19,000 to $71,000 in six years. She subsequently was forced to close her practice and move two hours away to a larger city where she is part of a large practice. Half of her practice was Medicaid patients.

Dr. Price stated that many of his members work in poor and minority areas and cannot pay the escalating rates of medical liability insurance, which forces them to close their doors. When this happens, there are frequently no other doctors to take their place. He told of Dr. Ronald V. Myers who practiced medicine in the Mississippi Delta for close to two decades and who still made house calls. Dr. Myers had five clinics that he ran and he was forced to close all five when he had a dispute with his insurance provider. Dr. Myers never had a single malpractice suit filed against him.

Dr. Rios focused on three major points regarding medical liability and its impact on Hispanics: (1) Hispanic physicians are unique to the medical delivery system and need to be protected from the malpractice crisis; (2) Hispanic patients suffer from increased disparities in health and require increased access to care; and (3) there is a need to increase research on Hispanics and disparities in health.

Mr. Colom stated that limiting the rights of the underserved will not help America's small businesses thrive and will not help underserved communities get access to quality healthcare. He explained that in Mississippi, his home state recently adopted a $500,000 cap on non-economic damages in medical malpractice cases. His firm already has turned away many cases because expert and other expenses make the case economically unfeasible with such a cap. In his opinion, caps on non-economic damages—which are designed to compensate people for their injuries—hurt people who are not in the workforce, such as children and senior citizens, and those who do not have high lost wages or salary (economic loss).

In sum, the Committee concluded that the medical liability insurance premiums are skyrocketing out of sight and something needs to be done before more doctors close their small business and retire, which disproportionately harms the underserved areas of our nation.

For more information on this hearing, please refer to Committee publication #109–20.

7.2.12 SMALL BUSINESS DEVELOPMENT CENTERS: NEW OFFERINGS FOR A NEW ECONOMY

Background

On Wednesday, July 13, 2005, the Committee on Small Business held a hearing to examine four bills that will authorize new services to be provided by grantees that operate small business development centers (SBDCs). Over 1,100 SBDCs operate throughout the United States, mostly co-located in an institution of higher education, to provide management and technical assistance and educational programs to prospective and existing small business concerns.

Four bills were introduced in the House to authorize SBDCs to provide targeted assistance to small business owners and entrepreneurs interested in starting a business. H.R. 230, the National Small Business Regulatory Assistance Act, establishes a program to provide small business concerns regulatory compliance assistance by awarding competitive grants to 20 SBDC grantees (two in each of the ten federal regions). H.R. 527, the Vocational and Technical Entrepreneurship Development Act, creates a program to provide technical assistance to secondary, postsecondary vocational and technical schools for the development and implementation of curricula to teach entrepreneurship skills by awarding competitive grants to SBDCs. H.R. 2981 targets, through the use of competitive grants, the provision of additional managerial and technical assistance on Indian lands to small business concerns owned by Indian tribe members, Alaska Natives or Native Hawaiians. H.R. 3207, the Second-Stage Small Business Development Act, establishes a pilot program for selected SBDC grantees in the ten federal regions to offer peer learning opportunities to those small business concerns, variously called second-stage small businesses or gazelles, that are poised to grow rapidly.

Summary

The hearing was comprised of one panel, which included: Mr. Rich Gangi, President, American Trim, Durham, NY; Ms. Norma Naranjo, Owner, The Feasting Place, Fairview, NM; Mr. Christian Conroy, Associate State Director, Pennsylvania Small Business Development Center, Philadelphia, PA; Ms. Erica Kauten, State Director, Wisconsin Small Business Development Center, Madison, WI; and James Chrisman, Ph.D., Professor of Management, Mississippi State University, Mississippi State, Mississippi.

Mr. Durham testified about the services that the New York SBDC provided to his business. While noting that he has substantial experience in dealing with inspectors from the New York Department of Environmental Management and the federal Occupational Safety and Health Administration (OSHA), many other businesses do not. Increased resources for regulatory assistance at SBDCs would prove invaluable in helping these businesses survive federal and state regulatory oversight. Mr. Durham concluded that H.R. 230 should be enacted into law.

Ms. Naranjo started her testimony with a description of her business providing meals and demonstrations of Native American cooking. She then noted that her business would never have gotten off the ground without the assistance of the SBDC. However, she noted her good fortune in being located about five miles from a SBDC. Many Native Americans are very isolated from these types of resources and H.R. 2981 would go a long way in providing assistance to Native American business owners that are isolated from SBDCs. She concluded by urging Congress to enact H.R. 2981.

Mr. Conroy noted that small businesses play a vital role in the American economy. Level funding of SBDCs has occurred and makes it difficult for SBDCs to offer new services. Mr. Conroy noted that one center operated at Kutztown University cannot meet the demand for its educational program services from graduates of technical schools and community colleges. Counselors at the University of Scranton SBDC are frequent speakers to graduates of technical colleges in the area about self-employment. According to Mr. Conroy, H.R. 527 would give the SBDCs sufficient additional resources to develop teaching curriculum that maximizes the limited resources available to SBDCs. Mr. Conroy urged favorable action on H.R. 527.

Ms. Kauten began her testimony by revealing that most of the growth in the small business sector comes not from all small firms but only from a small percentage of companies commonly known as "gazelles." Ms. Kauten noted that the Wisconsin SBDC worked closely with the Lowe Foundation on issues related to "gazelles" (second-stage small business concerns that have been in existence for a certain number of years and are primed to grow rapidly). Ms. Kauten related how learning from one's peers constituted an extremely effective mechanism for many of these "gazelles." However, the Wisconsin SBDC did not have the resources to market or otherwise expand these peer learning opportunities. Ms. Kauten concluded by asking Congress to pass H.R. 3207.

Dr. Chrisman, a noted expert on the economic return associated with investment in SBDCs, testified that his research reveals that the overall benefits of the SBDC program substantially outweigh the costs of the program. The benefits come from increases in employment and sales revenue that would not have occurred but for the timely intervention and advice received from a SBDC. Dr. Chrisman supported the various programs. He concluded by noting that SBDCs provide the following benefits: assist minorities and women-owned small businesses; give the appropriate mix of strategic, administrative, and operating assistance to small business concerns; and increase the survivability of small businesses.

In sum, all the witnesses supported the enactment of the four bills being considered by the Committee. For further information, please refer to Committee publication #109–25.

7.2.13 FREEDOM OF CONSCIENCE FOR SMALL PHARMACIES

Background

On Monday, July 25, 2005, the Small Business Committee held a hearing on the implications of the emergency rule issued by Illinois Governor Rod Blagojevich last April to require pharmacies in Illinois that sell contraceptives to accept and fill prescriptions for all FDA approved contraceptives "without delay." Luke Vander Bleek, a pharmacy owner located in Morrison, Illinois, filed a lawsuit challenging the Governor's rule. Although he does fill prescriptions for traditional birth control, he is morally opposed to filling prescriptions for the morning-after pill because of his understanding of how the drug can affect an embryo.

The purpose of the hearing was to explore the effects that "duty-to-fill" legislation such as the Illinois rule will have on small pharmacies. The hearing also discussed alternatives to ensure that women have access to the medicine they desire while also preserving the beliefs of the pharmacist.

Summary

The hearing consisted of one panel with five witnesses: Luke Vander Bleek, R.Ph., Morrison, IL; Ms. Shelia Nix, Senior Policy Advisor to the Governor of Illinois, The Hon. Rod Blagojevich, Springfield, IL; Mr. J. Michael Patton, M.S., CAE, Executive Director, Illinois Pharmacists Association, Springfield, IL; Linda Garrelts MacLean, R.Ph., CDE, Clinical Assistant Professor, Pharmacotherapy, Washington State University, Pullman, WA; and Ms. Megan Kelly, Geneva, IL.

Mr. Vander Bleek explained his moral and professional reasons for opposing the Illinois rule. He also described the effects that this rule will have not only on his pharmacies but also on the surrounding communities and under served markets. Mr. Vander Bleek stated that he would be forced to close his pharmacies if the rule becomes permanent because he could not operate a business against his moral beliefs. If his pharmacies in rural Illinois are forced to close, residents in those towns will have to find another pharmacist in another town to fill their prescriptions. If a resident leaves his town to find another pharmacist, he may also purchase goods and services from other vendors in the neighboring community. This will cause the businesses located in the resident's community to suffer and eventually close as well.

Ms. Nix stated that the Illinois Department of Financial and Professional Regulation received two complaints regarding pharmacists who refused to fill a prescription for emergency contraception, which prompted the Illinois rule. She testified that the rule applies only to those pharmacies who stock contraceptives, and the pharmacy must order the drug if it is not in stock. She also stated that although pharmacies are required to dispense emergency contraception, physicians are not required to prescribe it.

Mr. Patton testified that the reference to "health care personnel," as cited in the Illinois Health Right of Conscience Act, must be amended to specifically include "pharmacist" to protect a conscientious objection. He also stated that many of the Illinois pharmacies do not stock emergency contraception simply because there is no demand for it. Mr. Patton testified that most of the pharmacies that do not carry emergency contraception have some method of referral for the drug. He also explained that individuals are testing select pharmacies to discern the willingness of a pharmacy to fill their prescription. This has caused concern and fear for many rural pharmacies because they believe they maybe targeted in this effort to coerce pharmacies into compliance; thereby creating the need for many pharmacies to carry emergency contraception in case they are tested.

Ms. MacLean testified that the vast majority of pharmacists dispense the vast majority of prescriptions. Much of her testimony focused on alternative systems that could be developed that would balance a pharmacist's moral or religious objections and a patient's needs. One possible alternative would be to develop a list of pharmacies that will dispense the morning-after pill similar to the websites and organizations that allow patients to find a provider of emergency contraception. Ms. MacLean suggested granting pharmacists prescriptive authority for emergency contraceptives. In order to accommodate women in rural communities who do not have a choice of pharmacies, it may be the prescriber who chooses to dispense the product. Ms. MacLean stressed the importance of creating a system that would address any concerns a pharmacist may have before a pharmacist is presented with a prescription to which he or she objects.

Ms. Kelly testified regarding her negative experience in a suburban community where the pharmacist objected to filling her prescription for emergency contraception. The pharmacist told her that she would have her prescription transferred to another pharmacy, which caused her to drive 20 minutes across town to have the prescription filled. Ms. Kelly testified that the drug store where her prescription was refused was in violation of the Illinois rule.

In summary, the hearing exposed serious problems with the Illinois "duty to fill" rule. The Committee concluded that these concerns should be communicated with the state legislators as they consider making the rule permanent.

For further information about this hearing, please refer to Committee publication #109–26.

7.2.14 PROPOSED LEGISLATIVE REMEDY FOR THE PARTICIPATING SECURITIES PROGRAM

Background

On Wednesday, July 27, 2005, the Committee on Small Business conducted a hearing to explore legislation, H.R. 3429, amending the Small Business Investment Act of 1958 to establish a Small Business Investment Company (SBIC) Participating Debentures program to assist small businesses in gaining access to capital. The hearing examined structural flaws identified in the original Participating Securities program, including an estimated loss of over $2 billion since the inception of the program, and considered the framework and manner in which the revised participating debentures program would facilitate small business equity investment and operate within the overall venture capital marketplace. This hearing, in part, was a follow-up to a previous committee hearing held in April 2005, where the existing equity gap between angel investors and venture capitalists was identified.

Summary

The hearing was comprised of one panel with two witnesses present: Mr. Jaime A. Guzman-Fournier, Associate Administrator for Investment, U.S. Small Business Administration and Lee Mercer; President; National Association of Small Business Investment Companies. The final witness, Josh Lerner, Ph.D., Jacob A. Schiff, Professor of Investment Banking, Harvard Business School, Cambridge, MA had his testimony read into the record.

Mr. Mercer testified that the current Participating Security program did not meet the requirements of the Credit Reform Act, was structurally flawed, and placed significant risk of loss on the government. Mr. Mercer applauded the committee for taking steps to remedy the program by introducing HR 3429. He believes that the participating debentures legislation meets the requirements of credit reform and responsibly addresses the flaws found in the participating securities program.

Mr. Guzman-Fournier also bore witness that the current Participating Securities program was riddled with serious flaws. He stated a willingness to work with this committee and industry to develop a workable solution, starting with HR 3429.

Professor Lerner noted the need for risk capital, but was unsure of whether the participating securities or participating debentures program was the better option.

Mssrs. Guzman-Fournier and Mercer agreed that the legislative proposal to create an SBIC Participating Debentures program to replace the current Participating Security program could prove to remedy the current program's structural problems and may very well stimulate equity investments in U.S. small businesses, particularly in regions underserved by other resources.

Each testified to the need for a federal program that stimulates equity investment; however both witnesses also agreed that since the structure of the current program produced so much risk, careful consideration of all aspects of the proposed program is warranted. Mr. Guzman-Fournier very specifically asked that all aspects of the new SBIC Participating Debentures program be examined, to include program structure, funding mechanism, distribution framework, and other features of the proposed participating debentures initiative, to ensure that the failures and losses of the current program are not repeated.

The hearing concluded with witnesses essentially agreeing that small business investment is a valuable tool to strengthen the foundation of the economy and that a new SBIC Participating Debentures program could ensure that early stage small businesses across the country and across various industry sectors have access to much needed capital to ensure their place in and contributions to the economy. Witnesses expressed interest and commitment to collaboratively work with the Committee to address the proposed Participating Debentures program details and mechanics to ensure benefits to small business, investors, and the taxpayer.

For further information about this hearing, please refer to Committee publication #109–27.

7.2.15 REFORMING THE TAX CODE TO ASSIST SMALL BUSINESSES

Background

On Wednesday, September 21, 2005, the Committee on Small Business held a hearing to examine provisions of the current tax code that are detrimental to small businesses. The hearing focused on HR 3841, the Small Employer Tax Relief Act of 2005, authored by the Hon. Donald Manzullo, Chairman of the Committee on Small Business which provides several, targeted reforms to the current tax code for small businesses.

Summary

The hearing was comprised of two panels. The first panel consisted of The Hon. Jeff Fortenberry, United States House of Representatives (R–NE). The second panel included The Hon. Thomas M. Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC; Nina E. Olson, National Taxpayer Advocate, Internal Revenue Service, Washington, DC; Ms. Thala Rolnick, Senior Accountant, Price, Kong & Company, CPAs of Phoenix, AZ; Ms. Marilyn Landis, President, Basic Business Concepts, Pittsburgh, PA; Ms. Kristie Darien, Executive Director, Legislative Offices, National Association for the Self-Employed; and Mr. John Irons, Director—Tax and Budget Policy, Center for American Progress, Washington, DC.

Representative Fortenberry talked about two legislative proposals he planned to introduce to assist small businesses. His first proposal would allow individuals to roll over portions of their retirement accounts into health savings accounts. His second legislation proposal would allow small business investors to take loans from traditional Individual Retirement Accounts. Congressman Fortenberry explained that these legislative proposals addressed two key areas of concern for small businesses: (1) providing increased access to insurance coverage and (2) gaining access to capital.

Chief Counsel Tom Sullivan testified that decreasing the complexity of the tax code and lowering marginal tax rates are the best methods to drive entrepreneurship in our nation. Mr. Sullivan also testified that several of the provisions in HR 3841 would materially assist the success of small businesses, particularly, the permanent extension of small business expensing under section 179, the deductibility of health insurance premiums for self employment taxes, and the temporary elimination of the alternative minimum tax for individuals.

Taxpayer Advocate Olson testified that many common sense proposals can help lessen the regulatory burdens faced by small businesses through the tax code. She stressed that many of the provisions in HR 3841 would materially lessen the regulatory burdens on small businesses, including the elimination of the need for married co-owners of unincorporated businesses to file partnership returns and the liberalization of the election and revocation rules for S corporations. She also testified that one of the most serious problems facing small business taxpayers is the individual alternative minimum tax, and she encouraged Congress to repeal the individual AMT as soon as possible. Ms. Olson concluded her testimony by encouraging Congress to enact one time penalty abatement for taxpayers that historically have been in compliance but failed for whatever reason to meet their tax compliance obligations.

Ms. Rolnick explained that small business taxpayers face new challenges from the IRS in the form of increased audits. In particular, she explained that the IRS has embarked on a nationwide program to audit the first and second tax years of S corporations. Ms. Rolnick testified further that this increased enforcement activity only adds to the overwhelming administrative burdens faced by small business taxpayers. Ms. Rolnick also emphasized the need for tax reform to stimulate and enhance small businesses, including the repeal of the individual and corporate alternative minimum tax.

Ms. Landis complained that small business owners spend a disproportionate amount of time and money complying with the tax code. She explained that several of these inequities in the tax code were addressed by HR 3841, particularly, the deductibility of health insurance premiums for self employment taxes and changes that enable small business owners to place more funds in tax-deferred pension plans. Finally, to address inequities in the long term, Ms. Landis testified that the elimination and replacement of the income tax code with a national sales tax should be a legislative priority for Congress.

Ms. Darien believes that the complexities and inequities in the tax code place a significant burden on self-employed individuals and micro-business owners. She explained that certain provisions in HR 3841 would materially lessen this burden, including the deductibility of health insurance premiums for self employment taxes and the allowance of an annual standard home office deduction of $2,500.

Mr. Irons agreed that the goal of tax policy should be to get out of the way of private activity while still raising adequate revenues for government programs. He explained that three goals should drive tax reform: (1) simplicity, (2) fairness, and (3) economic growth. Mr. Irons testified that keeping a progressive rate structure and preserving incentives for taxpayers to add value to the economy can best meet these goals.

In sum, the Committee concluded that further work needs to be done to amend the tax code to help small businesses, which can be accomplished by passing into law the provisions contained in Chairman Manzullo's small business tax relief and reform bill (HR 3841). For more information about this hearing, please refer to Committee publication #109–32.

7.2.16 SMALL BUSINESS AND HURRICANE KATRINA: REBUILDING THE ECONOMY

Background

On Friday, October 7, 2005, the Committee on Small Business held a hearing to assess the needs of small businesses in the aftermath of Hurricanes Katrina and Rita. Early Monday, August 29, 2005, Hurricane Katrina made landfall in the Gulf Coast region of Mississippi. The strength of the Hurricane devastated the Gulfport and Biloxi areas. The storm caused substantial breeches to levees protecting New Orleans. Nearly 80 percent of the city was flooded, forcing the greatest mass migration in this country since the dust storms of the Great Depression, and washing away thousands of small businesses that formed the backbone of the Louisiana and Mississippi's deltas economy. Making matters even worse was the landfall of Hurricane Rita in Southwest Louisiana and eastern Texas less than three weeks after Katrina. The Small Business Administration (SBA) issues physical disaster loans to homeowners and small businesses when structures are destroyed by a disaster. The SBA also offers small businesses economic injury disaster loans when their businesses are affected by a disaster but the structures themselves were not destroyed.

Summary

The panelists were: The Hon. Hector V. Barreto, Administrator, United States Small Business Administration, Washington, DC; Mr. Ralph Brennan, Owner, Brennan Restaurant Group, New Orleans, LA; Ms. Rae Ann Ryan, President, Travel Affiliates, Gulfport, MS; Mr. Randy Perkins, Owner, Perkins Productions, Covington, LA; and Mr. Guy T. Williams, President, Gulf Coast Bank and Trust, New Orleans, LA.

Administrator Barreto provided details on the SBA's response to Hurricanes Katrina and Rita by noting that the agency hired 2,000 temporary employees immediately after Katrina and rented an additional 40,000 square feet of office space in Fort Worth, TX. The Administrator noted that this was the most extensive disaster in SBA's history. The processing center was working 22 hours a day, received 61,000 applications for assistance in two weeks, and received over 700,000 requests for disaster loan information. Administrator Barreto also explained the SBA's new Gulf Opportunity Zone loan program proposal, which increases disaster loan size from $1.5 million to $10 million. The Administrator also noted that it was increasing the size of disaster mitigation loans, surety bonds, and authorizing deferment of principal and interest payments for 12 months on disaster loans.

Mr. Brennan testified that two of his three restaurants were open but had limited staffs, needed to boil water, lacked natural gas supplies, and worked with the Louisiana Department of Health to modify regulations concerning restaurants. Mr. Brennan noted that his biggest problems were staffing the restaurants and finding adequate housing for his employees. Other problems cited by Mr. Brennan included difficulty dealing with insurance carriers and uncertainty over whether there will ever be an adequate customer base. He concluded that the entire Gulf region needed rebuilding to ensure the revival of the key tourism industry.

Ms. Ryan testified that, five weeks after Katrina, Gulfport remained a highly troubled area. Many of the roads remained impassable, bridges were out, and there was a complete absence of telephone service which is vital to a travel agency business. She noted that while her business survived relatively unscathed, the same could not be said for many other businesses in the Mississippi Gulf Coast. Ms. Ryan also mentioned that infrastructure needs to be rebuilt quickly because without it the area's economy, heavily reliant on tourism, will not rebound. She concluded with support for increasing the size of SBA disaster loans.

Mr. Perkins testified that he ran a video production company from his home in Covington, LA. His company provided services to filmmakers using New Orleans for their films. Absent a reconstructed New Orleans, his business could not survive. He then recounted his story of trying to obtain a small business loan from the SBA and the frustration that he faced. He concluded that time was critical in getting assistance and it was time that was running out.

Mr. Williams began his testimony by relating the fact that more than 25 percent of his employees lost their homes in Katrina but the one bright spot was that the bank's main offices were not heavily damaged. Mr. Williams noted that small businesses were the fulcrum of the New Orleans economy and those businesses needed immediate help. Mr. Williams suggested that private banks be authorized to originate SBA disaster loans because the agency simply did not have the resources needed to respond to a disaster of this magnitude. He also suggested that various loan conditions be eased, including collateral requirements.

In sum, the hearing demonstrated that SBA, like all federal agencies, needed better preparation and resources to respond to major catastrophic events.

For more information about this hearing, refer to Committee publication #109–34.

7.2.17 PROMOTING PRIVATE SECTOR EMERGENCY PREPAREDNESS

Background

On Tuesday, November 1, 2005, the Committee on Small Business held a hearing that focused on the significance of emergency preparedness for the business community. Businesses today, both large and small, are increasingly connected to broader networks of economic activity, meaning greater potential for vulnerability resulting from disruptions in these networks. From the terrorist attacks of September 11, 2001 to the devastating hurricanes of the summer and fall of 2005, emergency preparedness has become an elevated priority for many sectors of society. For businesses, however, this priority has not resonated to a great extent. It is the position of many crisis management and emergency preparedness experts, as well as academics, that businesses are not taking the necessary measures that would substantially alleviate the costs that arise in the wake of an emergency. This hearing was held to provide a platform for this discussion.

Summary

The panel of witnesses consisted of: Michael Czinkota, Ph.D., Associate Professor, McDonough School of Business, Georgetown University, Washington, DC; Gary Knight, Ph.D., Associate Professor of Marketing, College of Business, Florida State University, Tallahassee, FL; Neil Livingstone, Ph.D., Chief Executive Officer, GlobalOptions, Inc., Washington, DC; Mr. Barry Scanlon, Senior Vice President, Witt Associates, LLC, Washington, DC.

Dr. Czinkota focused his testimony on business preparedness for the direct and indirect consequences of terrorism. Dr. Czinkota, along with Dr. Knight and others, conducted extensive research to get a sense of the top concerns in the business community. Energy costs, exchange rates, and terrorism, in this order, were issues at the top of the list. In addition, their research sought information about the measures being taken by these firms to deal with their concerns. Dr. Czinkota advocated for more public/private coordination in terms of education and training.

Dr. Knight spoke to a broader perspective, conveying the implications of their research for all disasters. He also focused on the different challenges faced by small and medium enterprises (SMEs), in contrast to larger firms. He asserted that private consulting firms are well capable of providing proper counsel for SMEs in terms of disaster avoidance/recovery, crisis management, etc., but SMEs will often find these firms' services cost prohibitive. He added that the public information and education that is offered by federal agencies has little to say regarding the business dimensions of emergency preparedness, and thus does not address some of the most important aspects of private sector emergency preparedness. Dr. Knight called for better marketing and expansion of the Small Business Administration (SBA) disaster loan program and more federal government engagement in strengthening the information and communication infrastructure through private sector research and development initiatives.

Dr. Livingstone echoed the aforesaid witnesses by testifying that although businesses have an incentive to protect their assets and employees, small businesses often lack the resources to take the necessary preparedness measures to act on these incentives. He believes government has a role in bridging this gap but is falling short. The SBA's preparedness literature, for instance, is not very helpful for a small business in acquiring useful suggestions for disaster preparation, crisis management, and business continuity plans. Beyond his advocacy for public/private cooperation in compiling and disseminating information, Dr. Livingstone specified some cost-effective measures he believes are relevant for small businesses. He said that every firm should perform some kind of risk assessment and then develop plans consistent with the identified risks. Dr. Livingstone mentioned the Department of Homeland Security's www.ready.gov to be helpful in this regard. In addition, he suggested developing systems for contacting employees in the wake of a crisis, storing copies of all pertinent files offsite, purchasing a satellite phone, purchasing an electric generator, and developing survival kits. He provided examples of survival kits at the hearing for Members and staff to peruse.

Mr. Scanlon outlined a broader level of engagement on the side of the federal government. First, he said that all disasters should be addressed together because from a business's perspective, the effects are generally the same. Second, the federal government should provide grants and other incentives to businesses to prepare more effectively for emergencies because the costs to society are so high when they do not. In Mr. Scanlon's opinion, small investments in targeted programs that encourage and facilitate business emergency preparedness can have a major impact. Third, he outlined an administrative restructuring that included adding economic and business recovery as a category in the federal government's Emergency Support Functions (ESF). Fourth, Mr. Scanlon said that the SBA disaster loan program should be strengthened and improved and included officially as part of the federal government's ESF.

In sum, the Committee concluded that private sector emergency preparedness, particularly on the part of small businesses, is severely lacking and that lack of available resources is a major contributor to this deficiency.

For further information about this hearing, please to Committee publication #109–35.

7.2.18 BUILDING A WALL BETWEEN FRIENDS: PASSPORTS TO AND FROM CANADA?

Background

On Thursday, November 17, 2005, the Committee on Small Business held a hearing regarding the border-crossing plan entitled the Western Hemisphere Travel Initiative (WHTI). Specific focus was given to the impact of the WHTI on small businesses along the U.S.-Canadian border. Additionally, the impact upon supply chain management for small and medium manufacturers was detailed.

As recommended by the 9/11 Commission, the federal government set national standards for the issuance of identification documents per the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). A provision of the IRTPA mandated the Secretaries of State and Homeland Security to implement a plan "to require a passport or other document, or combination of documents . . . for all travel into the United States . . ." The response to this mandate was the WHTI, announced in April 2005.

WHTI will affect all U.S. citizens and certain foreign nationals, specifically, "most Canadian citizens, citizens of the British Overseas Territory of Bermuda and Mexican citizens." Currently, the implementation of the Initiative is scheduled to begin on December 31, 2006, applying the requirements to all air and sea travel to or from Canada, Mexico, Central and South America, the Caribbean and Bermuda. The second phase of implementation is to be December 31, 2007, applying the requirements to all land border crossings as well as air and sea travel. Both the Department of State and Homeland Security (DHS) are working to create and determine acceptable alternative documents other than a passport.

Summary

The witnesses present at this hearing included: The Hon. Louise Slaughter, United States House of Representatives (D–NY); The Hon. John Engler, President/CEO, National Association of Manufacturers, Washington, DC; Mr. Ken Staub, Vice President, Riverside Service Corporation, Buffalo, NY; Mr. William Cook, Senior Manager, Worldwide Transport Design & Procurement, DaimlerChrysler Corp., Detroit, MI; Mr. H. Thomas Chestnut, CEO, AAA of Western and Central New York, Williamsville, NY; Janice L. Kephart, Esq., Former Counsel to the 9/11 Commission, Alexandria, VA; and Mr. Howard Zemsky, Managing Partner, Taurus Partners, LLC, Buffalo, NY.

Representative Slaughter acknowledged the importance of this review process of the implementation of the WHTI and its potential economic affects on tourism and small businesses. She noted five recommendations necessary to consider when evaluating the proposal: DHS and State must conduct a complete economic analysis of the WHTI; DHS must expand existing pre-enrollment programs like NEXUS, FAST and SENTRI; the Border Crossing Card (BCC) must be inexpensive, easy to obtain, and marketed across the United States, DHS and State should also consider additional alternative documents; Merge the two provisions for implementing sea/air and land crossings; and finally, form a Northern and Southern border strategy team to advise DHS and State on implementation.

Governor Engler testified to the extreme detriment the WHTI will have on small and medium manufacturers in border towns and beyond unless a more simplified and uniform system be put in place. He noted the identification requirements should be more accommodating for frequent travelers crossing borders like that of airports, where it is clearly established what documentation airport security requires of travelers, and people can provide it.

Mr. Staub indicated the costs of the current identification requirements could be quite significant, especially for small businesses, where the truck drivers themselves must shoulder the costs of documentation. He further urged State and DHS to consider the needs of frequent travelers, in the guise of tourists and commercial travelers, when developing alternative, acceptable substitutes to passports.

Mr. Cook testified to the far-reaching affects of the proposed requirements in the WHTI on the supply chain in manufacturing, and all businesses. He drew on the Just-in-Time (JIT) manufacturing process employed at DaimlerChrysler, a management technique implemented to reduce waste and increase efficiency. Mr. Cook noted that such a philosophy would be even more difficult were the stringent requirements of the WHTI imposed on the supply chain. DaimlerChrysler alone is responsible for over 700 truckloads and 50 railcars of production material per day between Windsor, Ontario and Detroit. He testified that programs that establish relationships for consistent and predictable customs processes are imperative for an efficient and functional supply chain.

Mr. Chestnut illustrated the importance of tourism on the US/Canadian border town economies and the ramifications strictly scrutinized identification processes would have on this industry. He emphasized the example of casual travel in the region by noting 12 to 18 percent of attendance at a home game of the NFL's Buffalo Bills, and 18 to 22 percent of fans of the National Hockey League's Buffalo Sabers, are Canadian. He urged the agencies to work with existing forms of identification that are identified by the REAL ID Act.

Ms. Kephart stressed the importance of border security and the ongoing threat of future terrorist attacks so long as our borders remain unprotected. She testified that the WHTI is an essential step to fulfilling the first and foremost requirement of border security—to provide security at our borders against terrorist entry and embedding and cross-border terrorist travel traffic. Ms. Kephart noted that the WHTI allows for the creation of frequent traveler programs, similar to the ones in existence, and emphasized that these programs help facilitate commerce in the border towns and beyond.

Mr. Zemsky sought to impress upon the Committee the seamless integration of the Canadian and US economies and compared the need for commercial crossing of the Niagara River to D.C. residents crossing the Potomac River to enter Virginia.

In sum, the committee concluded that at a minimum, the Departments of State and DHS must conduct a proper regulatory flexibility economic analysis to determine the effect this proposal would have on small business and to propose a rule that would limit the negative impact upon small business.

For further information on this hearing, refer to Committee publication #109–37.

7.2.19 FISCAL YEAR '07 BUDGET AND REAUTHORIZATION PROPOSALS OF THE SBA

Background

On Wednesday, March 15, 2006, the Committee on Small Business held a hearing on the President's proposed FY 2007 budget as it affected small business. The Congressional Budget Act of 1974 requires the Committee to recommend budget levels and report legislative plans within the Committee's jurisdiction to the Committee on Budget.

The hearing focused on whether the proposed budget adequately addressed the needs of small businesses of this nation. The Committee was interested in determining if the Administration's proposed budget adequately addressed the needs of the small business community, while taking into account real budgetary constraints. In addition, the Committee wanted to hear about any suggested legislative changes needed in the Small Business Act or Small Business Investment Act of 1958. Overall, the Committee was seeking views concerning the past performance of the Small Business

Administration (SBA) and the its plans for future service to America's small business community.

Summary

The hearing consisted of two panels. The first panel was The Hon. Hector Barreto, Administrator, United States Small Business Administration, Washington, DC. The second panel consisted of one private sector witness—Ms. Patricia Smith, Co-owner, PEMBA Lighting and Automation, New Orleans, LA.

Administrator Barreto started off his testimony by noting that the primary goal of the FY 2007 budget was to continue efficient delivery of services to small businesses. Among the examples of this efficiency was the record growth in the small business loan program despite a 37 percent reduction in the SBA's budget since FY 2001. Other efficiencies cited by the Administrator include increased returns on liquidations of loans, office consolidations, and improved oversight functions. The Administrator also reviewed the response by the agency to Hurricane Katrina and detailed plans for increasing the disaster loan funds available without a concomitant rise in the subsidy rate for the program. The Administrator concluded that the budget was adequate for serving America's small businesses.

Ms. Smith noted that her business prior to Hurricane Katrina was successful and growing. After Katrina, the building in which her business was located suffered severe flood damage and lacked electricity for a month. Communication services were disrupted for months. Ms. Smith then detailed the travails she faced in trying to obtain a disaster loan from the SBA which ultimately decided that she had insufficient collateral to obtain a loan. She ended her testimony with a request that the SBA provide assistance to the thousands of small businesses in the Gulf Coast region that need it.

In sum, the Committee needed to further examine the resources and procedures used by the SBA in providing disaster assistance.

For more information, refer to Committee publication #109–43.

7.2.20 HEARING ON IRS LATEST ENFORCEMENT: IS THE BULLS-EYE ON SMALL BUSINESSES?

Background

On Wednesday, April 5, 2006, the Committee on Small Business held a hearing to examine the activities of the Internal Revenue Service (IRS) to close the so-called "tax gap." Through its National Research Project, the IRS has attributed a good deal of the estimated $300 billion "tax gap" (i.e., the difference between what taxpayers owe and what they pay) to small businesses and self-employed individuals. This hearing explored the specific activities the IRS is taking to close the "tax gap" and how these activities impact the millions of small businesses and self-employed individuals in the United States. In addition, the Committee examined the impact on small businesses of the new proposals in the FY 2007 budget to close the "tax gap."

Summary

The hearing consisted of two witness panels. The first panel included: The Hon. Mark W. Everson, Commissioner, Internal Revenue Service, Washington, DC; and The Honorable Thomas Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC. The second panel was comprised of: Mr. Kevin Brown, Commissioner, Small Business/Self-Employed Division, Internal Revenue Service, Washington, DC; Ms. Nina Olson, National Taxpayer Advocate, Washington, DC; John Satagaj, Esq., President and General Counsel, Small Business Legislative Council, Washington, DC; Keith Hall, CPA, Partner, Hall and Hughes, PLLC, Dallas, TX; Mr. Michael Fredrich, President, Manitowoc Custom Molding, LLC, Manitowoc, WI; and Max Sawicky, Ph.D., Economist, Economic Policy Institute, Washington, DC.

Commissioner Everson testified that the best way to address the "tax gap" is to increase funding for IRS enforcement efforts and to enact the targeted "tax gap" proposals in the President's FY2007 budget request. Chief Counsel Sullivan testified that a balanced approach of service and enforcement is necessary to reduce the "tax gap." He also stated that the information and withholding proposals in the FY2007 budget may result in many unintended consequences for small businesses.

Mr. Brown testified that more must be done by the IRS to enforce compliance among small businesses while ensuring that a high level of service is provided. Ms. Olson testified that a balanced approach of education and enforcement is necessary to reduce the "tax gap". She also testified that one approach to greater compliance could be enactment of a voluntary withholding regime for payments made to independent contractors.

Mr. Satagaj testified that the "tax gap" has not changed significantly over the past three decades. Further, he testified that the "tax gap" proposals in the FY2007 budget are unclear proposals targeted at small businesses. Mr. Hall testified that, short of major simplification of the tax code, IRS education efforts are the best way to obtain greater small business tax compliance. Mr. Fredrich testified that small businesses face a high burden as they attempt to comply with current federal, state, and local tax obligations. He further testified that enactment of new withholding proposals and/or greater IRS enforcement activities would only add to these burdens. Mr. Sawicky testified that part of the solution to reducing the "tax gap" is simplification of the current tax system.

The Committee concluded that many of the current proposals to close the "tax gap" would have a detrimental effect on small businesses and that future proposals to close the "tax gap" must be examined closely.

For further information on this hearing, refer to the Committee publication #109–46.

7.2.21 CUTTING OUR TRADE DEFICIT: CAN THE U.S. MUSTER ITS DIVERSE TRADE PROMOTION OPERATIONS TO MAKE AN IMPACT?

Background

On Wednesday, April 26, 2006, the Committee on Small Business held a hearing to examine U.S. trade promotion operations and the effectiveness of the Trade Promotion Coordinating Committee (TPCC), housed within the United States Department of Commerce. The purpose of this hearing was to conduct a general oversight on the effectiveness of the TPCC in discharging its legislated objectives with particular attention to:

—Assessing the adequacy of the institutional placement of the TPCC to insure its most efficient operation;

—Reviewing the adequacy of the assigned TPCC authorities to achieve its objectives; and

—Appraising the extent to which oversight activities are carried out of the annual National Export Strategy to facilitate small business trade expansion.

Summary

The hearing was comprised of one panel: The Hon. John L. Mica, United States House of Representatives (R–FL); The Hon. Franklin L. Lavin, Under Secretary for International Trade, United States Department of Commerce, Washington, DC; Loren Yager, Ph.D., Director, International Affairs and Trade, Government Accountability Office, Washington, DC; Ms. Kathy M. Hill, President, State International Development Organizations, Washington, DC; the Hon. Amb. J. Anthony Holmes, President, American Foreign Service Association (AFSA), Washington, DC; James Morrison, Ph.D., President, Small Business Exporters Association, Washington, DC; and Mr. Robert E. Scott, Director of International Programs, Economic Policy Institute (EPI), Washington, DC.

Representative Mica began by making reference to his private business experience in dealing with U.S. trade development and promotion assistance and labeled both national and international efforts as dysfunctional at the very best. He further observed that the TPCC had no teeth and in reviewing the National Export Strategy report it prepared, he found it to be just a compilation of a few things the 19 member organizations have going on, at the time. The document has no strategic business plan or plan to promote American business in a coordinated fashion.

Undersecretary Lavin stated that the overriding priority for the Commerce Department and TPCC is simply reaching out to a wider community of American small and potential exporters through private partnership with United States firms in such industries as logistics and banking.

Dr. Yager noted the TPCC strategies do not identify or measure progress toward member agency goals in relation to federal trade promotion priorities and agencies have not articulated measurable goals in support of these priorities. He observed that TPCC has little influence over agencies' allocation of resources to support TPCC goals or priorities. He questioned whether the TPCC, in its current structure, could achieve the fundamental objectives associated with defining goals and aligning resources and if the TPCC move within the Commerce Department will help it achieve those goals.

Ms. Hill commented that ironically various state trade programs provide export promotion grants to small businesses that helps cover a lot of the program fees that are charged by federal programs. She endorsed the needed for greater coordination and a strengthened role for the White House in these coordination efforts.

Ambassador Holmes recommended that the Administration and Congress work together to raise the priority of commercial diplomacy. Ambassador Holmes believes that a more unified, authoritative TPCC would be both desirable and logical.

Dr. Morrison observed that the assigned TPCC responsibilities for trade coordination were not being matched by adequate authorities. The Office of International Trade at the Small Business Administration also needed reform and he endorsed reform legislation introduced by Chairman Manzullo, the Small Business Trade Promotion Enhancement Act of 2006, H.R. 5196.

Mr. Scott questioned the assertion that simply approving free trade agreements will improve export performance. He recommended the value of the dollar be reduced, increases in non-defense research and development funding, and reduced health care costs for businesses.

In conclusion, the Committee received expert testimony documenting the shortfalls in the operations of the TPCC and establishing the need for corrective legislation, such as that set forth in H.R. 5196.

For further information about this hearing, refer to Committee publication #109–48.

7.2.22 SARBANES-OXLEY SECTION 404: WHAT IS THE PROPER BALANCE BETWEEN INVESTOR PROTECTION AND CAPITAL FORMATION FOR SMALLER PUBLIC COMPANIES

Background

On Wednesday, May 3, 2006, the Small Business Committee held a hearing to review the impact of the Public Company Accounting Reform and Investor Protection Act of 2002, Pub. L. No. 107–204, commonly referred to as the Sarbanes-Oxley Act (or SOX), on small businesses. SOX was passed in July 2002 in response to several high profile large corporate scandals. Section 404 of SOX requires the management of all publicly-traded companies to assess the strength of their companies' internal controls and also requires that each public company's external auditor attest to the accuracy of that assessment. In March 2005, the Securities and Exchange Commission (SEC) established the Advisory Committee on Smaller Public Companies (Advisory Committee) to examine the impact of SOX on smaller public companies and to make recommendations to the SEC. On April 23, 2006, the Advisory Committee recommended that the SEC implement full and partial exemptions from section 404 for certain small public companies. This hearing analyzed the recommendations of the Advisory Committee and explored generally the impact of section 404 on our nation's smaller public companies.

Summary

The hearing consisted of one panel of six witnesses: Herbert S. Wander, Esq. Partner, Katten, Muchin, Chicago, IL and Chairman, SEC Advisory Committee on Smaller Public Companies; Mr. Bill Broderick, CFO, Analytical Graphics, Inc., Exton, PA; Mr. Keith Crandell, Managing Director, ARCH Venture Partners, Chicago, IL; Mr. Woodie Neiss, CFO, FLAVORx, Inc., Bethesda, MD; Mr. Mark A. Schroeder, President/CEO, German American Bancorp, Jasper, IN; and Mr. James Burns, President/CEO, EntreMed, Inc., Rockville, MD.

Mr. Wander testified that small public companies face tremendous burdens when attempting to comply with section 404 of SOX. He further stated that, based on his work as Chairman of the Advisory Committee, a revised framework should be put in place for assessing whether small public companies have complied with section 404. Mr. Broderick testified that section 404 disproportionately affects smaller companies and that smaller companies need a new system of scaled or proportional securities regulations that reflects the Advisory Committee's recommendations. Mr. Crandell testified that section 404 has stifled the emerging growth companies in our nation by draining capital and resources from these companies. Mr. Neiss testified that section 404 is a deterrent to smaller companies accessing the public markets and that section 404 should be scaled to the complexity of an organization. Mr. Schroeder testified that section 404 creates extremely onerous burdens on companies that must currently comply with the law. In addition, he testified that it is important for the SEC and PCAOB to scale regulations to address the disproportionate costs and burdens of section 404 on small companies by adopting the Advisory Committee's recommendations. Mr. Burns testified that the implementation of section 404 has imposed tremendous costs on smaller companies and urged the SEC and PCAOB to adopt the reform framework in the Advisory Committee's recommendations.

The Committee concluded that the recommendations made by the Advisory Committee would materially assist small public companies comply with section 404.

For further information on this hearing, refer to the Committee publication #109–51.

7.2.23 BRIDGING THE EQUITY GAP: EXAMINING THE ACCESS TO CAPITAL FOR ENTREPRENEURS ACT OF 2006

Background

On Wednesday, May 10, 2006, the Committee on Small Business held a hearing to analyze H.R. 5198, the Access to Capital for Entrepreneurs Act of 2006. The bill provides a mechanism for our nation's small businesses to obtain equity funding by establishing a tax credit for angel investment in these businesses. Currently, more than 20 states have similar tax credit programs for investment in small businesses. The hearing examined the angel investor market and the effect H.R. 5198 would have on this market. In addition, the hearing examined the success of state tax programs in generating additional equity funding for small businesses.

Summary

The hearing consisted of one panel of witnesses: The Hon. Earl Pomeroy, United States House of Representatives (D–ND); Susan Preston, Esq., Partner, Davis Wright Tremaine LLP, Seattle, WA; Ian Sobieski, Ph.D., Founder & Managing Director, Band of Angels, Menlo Park, CA; Ms. Lorrie Keating-Heinemann, Secretary, Wisconsin Department of Financial Institutions, Madison, WI; Mr. Dan Loague, Executive Director, Capital Formation Institute, Reston, VA; Mr. Luis Villalobos, Founder and Board Member of Tech Coast Angels, Orange County, CA.

Mr. Pomeroy testified that the tax incentive in H.R. 5198 will address the equity funding gap for small companies by promoting greater investment in our nation's small businesses. Ms. Preston testified that H.R. 5198 is a simplistic, self-executing federal income tax credit that will provide critically needed growth funds to young companies. Mr. Sobieski testified that, if enacted, H.R. 5198 would generate more angel investment into startup companies, generating more jobs and opportunities for small companies in the marketplace. Ms. Keating-Heinneman explained that, based on her experience in Wisconsin, tax credits are an important way to generate additional angel investment in new and emerging companies. Mr. Loague testified that H.R. 5198 would greatly expand seed stage capital for start-up and growing U.S. companies. Mr. Villalobos testified that it is important to narrowly tailor tax incentives for the angel marketplace and to also provide support to existing angel networks.

The Committee concluded that the tax incentive in H.R. 5198 would encourage angel investors to provide additional equity funding to our nation's small businesses.

For further information on this hearing, refer to the Committee publication #109–52.

7.2.24 CONTRACTING THE INTERNET: DOES ICANN CREATE A BARRIER TO SMALL BUSINESS?

Background

On Wednesday, June 7, 2006, the Committee on Small Business held a hearing to explore and review the proposed settlement of private litigation between the Internet Corporation for Assigned Names and Numbers (ICANN) and VeriSign. While the agreement is between two private corporations, the aim of the hearing was to let all sides in this debate air their views and to examine the potential affect of this agreement on small businesses that have websites on the Internet.

In 2004, VeriSign and ICANN entered litigation related to their mutual obligations under the terms of the current .com registry agreement. In 2005, a settlement between the two parties was negotiated. ICANN cannot execute the new .com registry agreement without the Commerce Department's prior approval. Any other agreements that are contained within the settlement of the litigation between VeriSign and ICANN are not the responsibility of the Department of Commerce and the Department has no legal authority to review those other sections.

Summary

The hearing was comprised of one panel of six witnesses: Beckwith Burr, Esq., Partner, Wilmer Hale, Washington, DC; John Jeffrey, Esq., General Counsel & Secretary, ICANN, Marina Del Ray, CA; The Hon. Richard White, United States House of Representatives (Ret.), Member, VeriSign's Internet Advisory Board, Poulsbo, WA; Mr. W.G. Champion Mitchell, Chairman and CEO, Network Solutions LLC, Herndon, VA; Mr. Steven DelBianco, Executive Director, NetChoice, Washington, DC; and Mr. Craig Goren, CEO, Clarity Consulting, Chicago, IL.

Ms. Burr summarized the Department of Commerce process that created ICANN and transfer of "control" of the Internet. Ms. Burr further described her role during the Clinton Administration when she was integral in the establishment of the Department of Commerce as the "honest broker" between ICANN and VeriSign.

Mr. Jeffrey gave a history of the contract between ICANN and VeriSign as well as a brief summary of the October 25, 2005 settlement between the two groups part of which the contract in question emerged. Former Representative White focused the discussion from a historical review to the present public issue of the renewed the agreement between ICANN and VeriSign and the suitability of that agreement for the continued good of the Internet and America's small businesses.

Mr. Mitchell attempted to assign negative implications and antitrust concerns to the contract between ICANN and VeriSign. Mr. DelBianco pointed out the Network Solutions is not a small business and merely is attempting to disrupt a legitimate contract in an effort to maximize his own companies profit margins. Mr. Goren described the minimal impact to real small businesses and their effort to utilize the Internet as part of their business.

In sum, the Committee concluded that that there was more to this settlement that originally thought and encouraged other committees of legislation jurisdiction to delve into this matter more.

For more information about this hearing, please refer to Committee publication #109–55.

7.2.25 THE AWARD OF CONTRACTS BY FEDERAL AGENCIES TO ALASKA NATIVE CORPORATIONS

Background

On Wednesday, June 21, 2006, the Committees on Government Reform and Small Business held a joint hearing to review the award of contracts by federal agencies to Alaska Native Corporations (ANCs) participating in the Small Business Administration's (SBA) 8(a) program. ANCs have been permitted since 1986 to participate in the SBA 8(a) program. Under the 8(a) program, federal agencies are allowed to award contracts without competition to small businesses that are certified by the SBA as 8(a) firms. For most 8(a) firms, these sole-source awards are limited to $5 million for manufacturing and to $3 million for other goods and services. Acquisitions above these thresholds must be competed among eligible 8(a) certified small businesses. These limitations do not apply to ANC firms participating in the 8(a) program. ANCs are subject to different requirements than other 8(a) firms in a number of different respects. For example, ANCs are not subject to the "affiliation rule" which requires other 8(a) small businesses to count affiliates or subsidiaries of the business to determine whether the business concern is "small."

Summary

The hearing was comprised of three panels. The first panel had one member, the Hon. Don Young (R–AK), Chairman of the Committee on Transportation and Infrastructure, United States House of Representatives. The second panel consisted of: Mr. David Cooper, Director, Acquisition and Sourcing Management, Government Accountability Office, Boston, MA; Mr. Calvin Jenkins, Deputy Associate Deputy Administrator, Office of Contracting and Business Development, United States Small Business Administration, Washington, DC; Mr. Frank Ramos, Director, Office of Small Business Programs, United States Department of Defense, The Pentagon, Arlington, VA; Ms. Melodee Stith, Associate Director, Acquisition and Financial Assistance, United States Department of the Interior, Washington, DC. The last panel had the following members: Mr. Harry Alford, President/CEO, National Black Chamber of Commerce, Washington, DC; Ms. Ann Sullivan, President, Madison Services Group, Inc., Washington, DC; Mr. Chris E. McNeil, Jr., President/CEO, Sealaska Corporation, Juneau, AK; Ms. Helvi Sandvik, President, NANA Development Corp., Anchorage, AK; Mr. Bart Garber, President, Tyonek Native Corporation, Tyonek, AK; Ms. Julie Kitka, President, Alaska Federation of Natives, Washington, DC; and Mr. Charles Totemoff, President/CEO, Chenega Corporation, Anchorage, AK.

Representative Young expressed support for the award of contracts to ANCs and that they were doing right by the federal government, the U.S. taxpayers, and communities within Alaska that need economic support. Mr. Jenkins provided the history of the 8(a) program that was started in the 1960s to assist small business owners that were socially and economically disadvantaged and to provide economic benefits to their communities. While ANCs benefited from the 8(a) program in increasing federal contract dollars so did other small business groups. Mr. Cooper stated that in 2004, ANCs accounted for approximately 13 percent of the 8(a) federal contract dollars. The revenues from these contracts benefited villages in Alaska through such means as dividend payments, educational scholarships, assistance for the elderly, and cultural preservation. Mr. Ramos stated small businesses should be accorded every privilege that they are entitled to under the laws that Congress has passed. Ms. Stith expressed the opinion that the Department of Interior has a distinct interest in providing economic opportunities for Alaska natives in the form of federal contacts to ANCs.

Mr. Alford expressed the view that ANCs that are not small businesses should not be in the 8(a) program. He doubted that the revenues generated by ANCs were ultimately finding their way back home to benefit Native Alaskans. Ms. Sullivan stated that the federal government had only awarded three percent of contracts to women-owned businesses rather than the required five percent.

Further, the set-aside program for women-owned businesses had never been implemented, even though mandated by law. Mr. McNeil stated that Congress intended to benefit Native Alaskans no matter where they lived. Ms. Helvi stated that economic conditions in remote parts of Alaska were severe and that the NANA Corporation had distributed almost 100 percent of its profits to shareholders and had been successful in providing employment to its shareholders. Mr. Garber stated that the Tyonek Native Corporation had grown from three employees in 1995 to revenues of almost $50 million and profit before taxes of between $1.5 and $2 million. The corporation had about 300 employees located in seven states and it provided manufacturing, engineering, and aircraft maintenance services to the federal government. Mr. Totemoff was of the opinion that the present criticism of ANCs came from their success in obtaining federal contracts and in expertise that has been acquired. Ms. Kitka stated that the size of Alaska and the lack of infrastructure makes it hard to create sustainable economies.

In sum, the Committee concluded that exemptions in the 8(a) program that allow ANC participation regardless of size provided unique challenges in addressing reforms that satisfy the small business community and also insured continued economic development for Native Alaskans.

For further information on this hearing, refer to Committee publication #109–56.

7.2.26 FAILURE TO COMPLY WITH THE REGULATORY FLEXIBILITY ACT: IRS ENDANGERING SMALL BUSINESSES YET AGAIN

Background

On Tuesday, July 25, 2006, the Small Business Committee held a hearing to examine proposed regulations released by the Internal Revenue Service (IRS) and the Department of Treasury (Treasury) that would change the rules governing taxation of escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property under section 1031 of the Internal Revenue Code. Recognizing that these proposed regulations would affect small businesses in the qualified intermediary industry, the IRS and Treasury included an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act (RFA) as part of the regulations. This hearing explored the adequacy of the IRFA and the effect of the proposed regulations on small qualified intermediaries.

Summary

The hearing consisted of one panel of witnesses: Mr. Eric Solomon, Acting Deputy Assistant Secretary for Tax Policy and Deputy Assistant Secretary for Regulatory Affairs, Department of the Treasury, Washington, DC; The Hon. Donald Korb, Chief Counsel, Internal Revenue Service, Washington, DC; The Honorable Thomas M. Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC; Mr. Louis Weller, Principal, National Director for Like-Kind Exchange Planning, Deloitte Tax LLP, San Francisco, CA; Mr. Michael Halloran, President/CEO, Nationwide Exchange Services, Cupertino, CA; and Mr. Howard Levine, Partner, Roberts & Holland LLP, Washington, DC.

Mr. Solomon did not testify at the hearing. Mr. Korb testified that the IRFA in the proposed regulations was not sufficient and agreed that a revised IRFA should be completed by the IRS. Mr. Sullivan testified that the IRFA in the proposed regulations was not adequate because it fails to detail the complete economic impact on small businesses in the qualified intermediary industry. Mr. Weller testified that the proposed regulations favor large, qualified intermediaries owned by financial institutions. Mr. Halloran testified that the proposed regulations would have a detrimental effect on small businesses to the advantage of a few, large bank-owned qualified intermediaries. Mr. Levine testified that the proposed rules are valid from a substantive tax perspective.

The Committee determined that the IRFA included in the proposed regulations did not meet the requirements of the RFA and should be revised by the IRS and Treasury.

For further information on this hearing, refer to the Committee publication #109–62.

7.2.27 ADVANCING SECURITY AND COMMERCE AT OUR NATION'S PORTS: THE GOALS ARE NOT MUTUALLY EXCLUSIVE

Background

On Wednesday, September 27, 2006, the Committee on Small Business held a hearing to discuss the proposed Maritime Transportation Worker Security Credential (Maritime TWIC) rule and its affect on small business. In 2002, Congress passed the Maritime Transportation Security Act (MTSA) which mandated the Maritime TWIC for all workers employed in the maritime industry. The law, if properly implemented, will provide for an additional layer of safety and security while at the same time improve the flow of people and goods at our nation's ports. However, small businesses assert that the Maritime TWIC rule is not being properly implemented by the Transportation Security Administration (TSA) and the Untied States Coast Guard. They believe it creates unnecessary redundancies, is too costly, requires onerous recordkeeping requirements, will impede labor flows in the transportation sector, and is not in keeping with Department of Homeland Security Secretary (DHS) Chertoff's goal of a risk based strategy to secure our homeland.

Summary

The hearing was comprised of one panel. Admiral Brian Salerno, Assistant Commandant for Inspection and Compliance, United States Coast Guard, Washington, DC; Mr. Steve Sadler, Director, Maritime and Surface Credentialing, Transportation Security Administration, United States Department of Homeland Security, Washington, DC; Mr. Philip L. Byrd, Sr., President/CEO, Bulldog Hiway Express, Charleston, SC; Ms. Debbie Gosselin, President, Chesapeake Marine Tours, Annapolis, MD; Mr. George Leavell, Executive Vice President, Wepfer Marine, Inc., Memphis, TN; and Mr. Danny R. Schnautz, Operations Manager, Clark Freight Lines, Pasadena, TX.

Mr. Sadler and Admiral Salerno discussed the joint rulemaking by the Coast Guard and TSA to implement the MTSA while strengthening security and facilitating commerce. Mr. Sadler discussed the feedback that TSA and the Coast Guard received from small businesses through comments addressed to the docket and through the four public meetings that were held. Admiral Salerno said that Coast Guard and TSA greatly value industry's input and that Coast Guard and TSA will continue to work closely with industry to provide a safe and secure maritime transportation system.

Mr. Byrd described the detrimental effects of the proposed TWIC rule on his small trucking company and the minimal security benefits that will be provided through its implementation. Mr. Byrd discussed the unnecessary duplicative costs and requirements of the Hazardous Materials Endorsement (HAZMAT) and TWIC background checks. He discussed the TWIC's failure to preempt state and local transportation security background checks and programs. Mr. Byrd said that there was already a shortage of truck drivers and that the TWIC regulation would exacerbate this current labor shortage to a much greater degree.

Ms. Gosselin outlined the costs that small companies such as hers are shouldering to secure the maritime sector. She stated that her small business has paid approximately $55,000 over the past two years to implement the MTSA alone. Ms. Gosselin said that TWIC will not provide any additional security measures for small companies such as hers and that it will only increase her overall regulatory burden.

Mr. Leavell discussed the importance of a good security program for barge operators around the country and the industry's willingness to work collaboratively with the DHS to facilitate safety and security in the transportation of maritime cargo. He discussed his grave concerns with the TWIC program outlining its detrimental effects on hiring new crewmembers. Mr. Leavell also discussed the importance of a risk based approach for any regulatory regime implemented in the maritime transportation security sector.

Mr. Schnautz discussed the impact of the TWIC regulation on truckers who derive their earnings through the use of a single truck. He went on to describe the process and entities involved in moving a load at a port and the potential for supply chain disruption if the TWIC regulation is not properly promulgated.

In sum, the Committee concluded that TSA and Coast Guard need to execute a comprehensive Economic Impact Analysis that contains a proper Final Regulatory Flexibility Analysis that adequately considers the adverse impact of the proposed regulations on small entities prior to the implementation of the final rule.

For further information about this hearing, please refer to Committee publication #109–64.

7.2.28 FEMA'S RESPONSE TO THE ROCKFORD FLOOD

Background

On Tuesday, November 28, 2006, the Committee on Small Business held a field hearing the response by the Federal Emergency Management Agency (FEMA) to the Rockford flood that occurred on September 4, 2006. On that day, the City of Rockford, Illinois and parts of Winnebago County, Illinois were beset by catastrophic flash flooding. More than 700 homes and small businesses were damaged, initially displacing 1,400 residents, many of which are poor and elderly. More than two months later, 213 damaged homes were still not repaired and recovery was well beyond the City's means. Illinois claimed that there was no individual assistance available for recovery and requested a federal declaration to help repair and rebuild the devastated areas. FEMA, State, and City officials conducted a joint preliminary damage assessment and City officials declared that FEMA rushed through the assessment and were not inclined to make a declaration from the outset. The Committee scheduled the hearing to investigate the process by which FEMA makes disaster declarations and determine whether declarations are made in an arbitrary manner.

Summary

The hearing was comprised of one panel of official witness and an open microphone whereby affected residents were invited to tell their individual story. The official witness panel was comprised of the following witnesses: The Hon. Lawrence J. Morrissey, Mayor, City of Rockford, Rockford, IL; Ms. Jennifer Jaeger, Community Services Director, Human Services Department, City of Rockford, Rockford, IL; Mr. Dave Smith, Chief, Bureau of Planning, Illinois Emergency Management Agency, Springfield, IL; Major General John R. D'Araujo, Jr., Director, Recovery Division, Federal Emergency Management Agency, United States Department of Homeland Security, Washington, D.C.; and Mr. Edward Buikema, Director, Region V, Federal Emergency Management Agency, United States Department of Homeland Security, Chicago, IL.

Mayor Morrissey discussed the events immediately preceding the Labor Day Flood. He described what the City and local community were doing to assist the affected individuals. Mayor Morrissey explained that despite all of the combined recovery assistance efforts, many of the affected individuals are still without safe and permanent housing. Mayor Morrissey went on to discuss the corrected facts contained in the appeal that justify a major disaster declaration.

Ms. Jaeger discussed the role the Department of Human Service plays following a disaster. Ms. Jaeger described the personal contact her department had with the flood victims and the challenges the victims faced immediately following the flood. Ms. Jaeger went on to say that the damage was vastly underestimated by FEMA and that the recovery was well beyond the resources of the City and volunteers assisting in the recovery effort.

Mr. Smith explained the Illinois Emergency Management Agency's (IEMA) responsibility in conducting a joint preliminary damage assessment of the flood affected areas with FEMA. Mr. Smith said that the State Disaster Relief Fund cannot be used to provide individual assistance.

General D'Araujo summarized FEMA's emergency response process and provided an overview of FEMA's efforts in relation to the Labor Day Flood in Rockford. General D'Araujo said that FEMA would consider all of the information submitted by the Governor in the appeal but that FEMA must operate within the parameters imposed by the Stafford Act.

In sum, the Committee concluded that FEMA's declaration process could be arbitrary and lacked transparency.

For further information about this hearing, please refer to Committee publication #109–65.

7.3 SUMMARIES OF THE HEARINGS HELD BY THE SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS

7.3.1 REMOVING OBSTACLES TO JOB CREATION: HOW CAN THE FEDERAL GOVERNMENT HELP SMALL BUSINESSES REVITALIZE THE ECONOMY?

Background

On April 21, 2005 the Subcommittee on Workforce, Empowerment, and Government Programs held a hearing on removing obstacles to job creation. Small businesses are the driving force behind our economy. They represent 99 percent of all employers; more than half of all U.S. employees work for small firms; and they generate between 60 and 80 percent of all new jobs America.

Running a small business is not easy, and what Congress must do is relieve some of the burden that comes directly from Washington, DC. Unfortunately, Congress and the federal government have been fond of passing new laws and imposing mandates and regulations on business. Congress has been working in recent years to diminish that burden—legislation such as the Small Business Paperwork Relief Act, the Small Business Regulatory Enforcement Fairness Act, and more recently, the Jobs and Growth Tax Relief Reconciliation Act of 2003. However, even with the passage of these bills, federal regulatory, tax, and compliance burdens continue to be cited by many owners as the most significant problems facing their businesses. The Subcommittee aimed to examine what obstacles to job creation still remain, and explore policy options designed to alleviate them.

Summary

The hearing was comprised of one panel: John McClelland, Ph.D., Vice President, Government Affairs, American Rental Association, Moline, IL; Mr. Richard Dean, Principal, Environmental Systems Assocs., Columbia, MD; Mr. David Pressly, President, Pressly Development Co., Inc., Statesville, NC; and, Mr. Donald Wilson, President, Association of Small Business Development Centers, Burke,VA.

Dr. McClelland began the testimony highlighting three specific examples of barriers that impede the growth of the rental industry in the United States. First, he highlighted the high cost of health care. Large companies have the advantage of greater economies of scale, which lowers the costs associated with providing health insurance. Small employers simply cannot compete with large ones in this regard. Dr. McClelland suggested association health plans (AHPs) as a way to expand health coverage among small businesses. The second point he touched on was the abolishment of the federal estate or "death" tax. This is particularly burdensome on a capital-intensive industry such as the rental business. When owners pass away, heirs often must sell assets of the business simply to pay the tax. Finally, Dr. McClelland stated the American Rental Association supports caps for non-economic damages (except in particularly egregious cases) in liability cases.

Mr. Dean, testifying on behalf of the Air Conditioning Contractors of American stated that the most pressing issue facing his industry is the lack of qualified technicians. Mr. Dean suggested that the federal government, through the Departments of Education and Labor, work with his industry to remove the negative stigma that training to be a heating, ventilating, and air conditioning (HVAC) technician seems to have acquired. He also believes that the Departments of Labor and Education could do a much better job of educating school guidance counselors on the benefits of becoming and HVAC technician. Finally, Mr. Dean suggested an additional government-sponsored program to train displaced workers from the manufacturing sector.

Mr. Pressly, testifying on behalf of the National Association of Home Builders, stated that Environmental Protection Agency (EPA) regulations concerning stormwater runoff are particularly onerous on his industry. On average, EPA stormwater regulations add an additional six percent cost in developing land. The regulations require building managers to prepare a stormwater pollution prevention plan and file a notice of intent, and the EPA's guidance for preparing this document is over 40 pages long. To make matters worse, many states and local municipalities have similar regulations, requiring two or three permits to comply with essentially the same regulations from various jurisdictions.

Mr. Wilson commented on the high regulatory burden, and despite the significant progress made by the Administration (most notably Dr. John Graham at the Office of Information and Regulatory Affairs and Tom Sullivan at the Small Business Administration's Office of Advocacy) and Congress, the Federal Register still contains about 70,000 pages each and every year. Mr. Wilson supports H.R. 230, the "National Small Business Regulatory Assistance Act of 2005" as a way to help ease this burden. Introduced by Representative John Sweeney of New York, H.R. 230 would establish a program to provide regulatory compliance assistance, through the nation's Small Business Development Centers (SBDCs), to small businesses. Mr. Wilson also testified that additionally funding for SBDCs would increase their ability to reach out to new and established businesses, and create new jobs.

In summary, the Subcommittee concluded that much more work needed to be done to (1) amend or abolish unneeded or counterproductive regulations and taxes and (2) deal with the problem of lack of a qualified workforce, particularly among the small business trades. Also, some in the small business community believe that there needs to be a greater contribution to federal programs could help spur small business job creation.

For further information about this roundtable, please refer to Committee publication #109–12.

7.3.2 HOW ARE VETERAN-OWNED SMALL BUSINESS OWNERS BEING SERVED?

Background

The Subcommittee on Workforce, Empowerment, and Government Programs of the Committee on Small Business and the Subcommittee on Economic Opportunity of the Committee on Veterans' Affairs held a joint hearing on Tuesday, May 24, 2005 focusing on recent legislation enacted into law to assist veterans. In August 1999, the President signed into law the Veterans Entrepreneurship and Small Business Development Act, Pub. L. No. 106–50. This Act created the National Veterans Business Development Corporation (more commonly known as the "Veterans Corporation") "to assist veterans, including service-disabled veterans, with the formation and expansion of small business concerns by working with and organizing public and private resources." However, on September 30, 2005, federal funding for the Veterans Corporation ends and the corporation must become self-sustaining.

Section 308 of the Veterans Benefits Act of 2003, Pub. L. No. 108–83, established a procurement program for small business concerns owned and controlled by service-disabled veterans. The procurement program permits federal agencies to sole source contracts and restrict competition to service-disabled veterans. One of the reasons that the program was established was because buyers for federal agencies expressed the view that they needed a set-aside program to meet the three percent statutory contracting goal contained in the Small Business Act. As of the date of the hearing, no major department or agency of the federal government had met the goal.

Summary

The hearing was comprised of one panel, as follows: Mr. Walter G. Blackwell, President/CEO, National Veterans Business Development Corporation, Washington, DC; Mr. Arthur Salus, President, Duluth Travel, Inc., Atlanta, GA; Mr. John K. Lopez, Chairman, Association for Service Disabled Veterans, Washington, DC; Mr. Frank M. Ramos, Director, Office of Small and Disadvantaged Business Utilization, United States Department of Defense, The Pentagon, Arlington, VA; Mr. Scott F. Denniston, Director, Office and Small and Disadvantaged Business Utilization, United States Department of Veterans Affairs, Washington, DC; Mr. Paul Murphy, President, Eagle Eye Publishers, Inc., Fairfax, VA; and Mr. Richard Weidman, Director, Government Relations, Vietnam Veterans of America, Silver Spring, MD.

Mr. Blackwell stated that the Veterans Corporation was providing the services required by law, but that it could not continue to exist without federal funding. To sustain the corporation, he reported that requests for foundation grants in the amount of $30 million had been submitted and that $20 million in grant applications were being prepared. To cut costs the overhead was being reduced.

Mr. Salus was of the view that federal agencies were reluctant to contract with small business concerns, but favored large companies. He called upon Congress to ensure that the small business goals with respect to federal procurement be met.

Mr. Lopez emphasized the frustration that service-disabled veterans were experiencing with respect to the federal agencies' failure to provide sole source opportunities and set aside contract opportunities for service-disabled veterans. The contracting initiatives for service-disabled veterans are moral and ethically commensurate with the sacrifice made for the country by service-disabled veterans.

Mr. Ramos stated that there were 7,000 service-disabled firms listed in the Central Contractor Registry (CCR) database. He outlined a five-point program for increasing contacting opportunities for service-disabled veterans.

Mr. Denniston stated that in FY 2004 1.25 percent of the Department of Veterans' Affairs total procurement dollars went to service-disabled veterans, and that this was unacceptable since it was below the 3 percent goal. He referred to a cooperative venture with the Defense Contract Management Agency (DCMA) to develop a model to increase contract opportunities for veterans.

Mr. Murphy stated that federal agencies missed the statutory goal for service-disabled veterans by $8.5 billion. Five federal agencies accounted for 80 percent of the spending with service-disabled companies, i.e.: Departments of Defense, Veterans Affairs, and State; National Aeronautics and Space Administration (NASA) and General Services Administration (GSA).

Mr. Weidman pointed out that the only option for a profoundly disabled veteran maybe self-employment. He suggested that there be a mechanism for reaching out to returning veterans to provide employment and entrepreneurial assistance.

In summary, the Subcommittees concluded that while progress was being made to assist veteran-owned small business owners, much more work needed to be done, particularly to help service-disabled veterans obtain federal contracts.

For further information, please refer to Committee publication #109–17.

7.3.3 UNION SALTING—ORGANIZING AGAINST SMALL BUSINESS

Background

On Tuesday, June 21, 2005, the Subcommittee on Workforce, Empowerment, and Government Programs held a hearing on union "salting." The term "salting" is used for the act of deliberately inserting a union member into a non-union company (of which the vast majority are small businesses) with the goal of eventually unionizing that non-union company. This paid union organizer or "salt" aims to establish a wellspring of support for the union effort within the company. Fellow employees often do not know that their new co-worker is also a paid union organizer. In an effort to curb this practice, Representative Steve King of Iowa, a member of the Small Business Committee, introduced H.R. 1816 the Truth in Employment Act of 2005. This legislation, as well as the detrimental effects salting can have on small businesses, was discussed thoroughly at the hearing.

Summary

The hearing consisted of two panels. The first panel was comprised of The Hon. Steve King (R–IA). The second panel was made up of: Mr. Mark Mix, President, National Right to Work Committee, Springfield, VA; Mr. Ray Issac, Chief Operating Officer, Owner of Isaac Heating and Air Conditioning, Inc., Rochester, NY; Laurence J. Cohen, Esq., Sherman, Dunn, Cohen, Leifer, and Yellig, Washington, DC; Mr. Michael Aldi, Owner, Aldi Electric, Niskayuna, NY; Ms. Anita Drummond, Director of Legal and Regulatory Affairs, Associated Builders and Contractors, Arlington, VA; and Michael Avakian, Esq., General Counsel, Center on National Labor Policy, Inc., Springfield, VA.

Representative King began the hearing defining salting as a union tactic designed to put unfair economic pressure on non-union employers. H.R. 1816, the Truth in Employment Act of 2005, provides an employer a level of reassurance that someone coming to work for them is truly motivated to be an employee, and not someone primarily seeking to destroy or work against the interests of the employer. Under this bill, if a job applicant's primary purpose in seeking a job is to further the interests of another, then they are not a bona fide applicant and it would not be an unfair labor practice for the employer not to hire them.

Mr. Mix began his testimony examining the plight of employers faced with a salting campaign. Calling it a catch-22, Mr. Mix explained that if the employer hires the "salt," union officials instigate a quick snap National Labor Relations Board representation election. If they fail at that, they begin to sabotage their employer's business and manufacture a blizzard of unfair labor practice charges to bury the employer with the legal fees until he signs over his employees. If the employer does not hire the union-planted applicants, the union plants go straight to unfair labor practice charges and again the employer is faced with huge legal fees. Mr. Mix expressed his unyielding support for H.R. 1816.

Both Mr. Isaac, testifying on behalf of the Air Conditioning Contractors of America, and Mr. Aldi, speaking for himself and other businesses killed by the practice, told similar stories of salting abuse. Both encountered a campaign by the local union to put them out of business. Unfortunately, Mr. Aldi lost his business due the campaign against him. Both Mr. Isaac and Mr. Aldi expressed support for H.R. 1816.

The dissenting view came from Mr. Cohen believes that H.R. 1816 would deprive union organizers of the protection of the National Labor Relations Act (NLRA) and permit employers to engage in what has been deemed unlawful discrimination. Mr. Cohen maintained that salting is a legitimate organizing tool and that "salts" understand that when they apply for work that they will be expected to fulfill the employer's legitimate employment expectations.

Ms. Drummond supported H.R. 1816 in her testimony. Going through the various court cases that have, in fact, legitimized salting as a legal recruitment tool, Ms. Drummond criticized the NLRB whom she believes has placed a heavy burden on contractors to defend even the most neutral hiring policies that union salts can routinely force contractors to spend thousands of dollars to defend completely innocent activity.

As General Counsel for the Center on National Labor Policy, Inc., Mr. Avakian brought 30 years of experience in labor relations activity to the panel. Mr. Avakian surmised that federal labor law should attempt to ensure the identification and expression of employee rights while protecting the ability of labor organizations and employers to present their messages to employees. He states that salting is a process that serves no useful purpose. It promotes litigation and disharmony in the workplace. For these reasons, legislation, such as H.R. 1816, which places the focus on the process of employee organizational rights versus union agent access to gather the cloak of employee rights, should be enacted.

In sum, the Subcommittee found deplorable acts of salting has cost many small business owners their livelihoods. H.R. 1816 must be enacted in order to restore sanity and accountability in employer-employee relations.

For further information about this hearing, please refer to Committee publication #109–21.

7.3.4 HOW THE CLEAN AIR ACT AFFECTS AUTO REPAIR

Background

On Tuesday, June 28, 2005, the Workforce, Empowerment and Government Programs Subcommittee held a hearing on the effect of the Clean Air Act on the automobile repair industry. Passage of the Clean Air Act Amendments in 1990 inadvertently created hurdles for consumers by mandating that all vehicles manufactured after the 1994 model year utilize an on-board computer diagnostic system to monitor emissions. As a result, it is much more difficult for consumers and independent repair shops to get the information necessary for safe vehicle repairs. As cars have become more technologically advanced, the amount of information and expertise needed to diagnose and repair them has increased dramatically. Today, automobiles have numerous computer systems that control braking, ignition, security, steering, emissions, safety, and climate-control systems. This hearing focused on H.R. 2048, The Motor Vehicle's Owner Right to Repair bill introduced by the Chairman of the Committee on Energy and Commerce, the Hon. Joe Barton (R–TX). This bill would protect the rights of consumers to diagnose, service, and repair motor vehicles.

Summary

The hearing was comprised of two panels. The first panel consisted of The Hon. Joe Barton, Chairman, Committee on Energy and Commerce, United States House of Representatives. The second panel was: Mr. Dennis Houska, President, Houska Automotive Service, Fort Collins, CO; Mr. Fred Bordoff, Owner, New York Center for Automotive Technology, Long Island City, NY; Mr. Eddie Ehlert, Owner of MazdOnly, Chamblee, GA; Mr. Aaron Lowe, Vice President, Government Affairs, Automotive Aftermarket Industry Association, Bethesda, MD; Mr. John M. Cabaniss, Jr., Director, Environment and Energy, Association of International Automobile Manufacturers, Inc., Arlington, VA; and Ms. Kathleen Marvaso, Managing Director, Government Affairs, American Automobile Association, Washington, DC.

Chairman Barton introduced the Motor Vehicle's Owner Right to Repair because he feels that consumers need to have choice in auto repair and that they should be able to choose where they have the vehicle repaired. According to Chairman Barton, the legislation has one main purpose: put vehicle owners in the driver's seat when it comes to choosing where to have their car repaired. It is not about gaining proprietary information or trade secrets, as some suggest.

Mr. Houska testified for The Coalition for Auto Repair Equity (CARE). Mr. Houska runs a family automotive repair shop and he explains that he has a problem getting timely information to repair his customer's cars. He explains that there are many challenges to running his business but an unnecessary one is the problem of accessing all the information in all the model lines of all the different manufacturers. This challenge he explained can be overcome by the passage of the Motor Vehicle Owner's Right to Repair Act.

Mr. Bordoff also represents the Service Station Dealers Association. He explains that because his facility is engaged to perform repairs for a major dealership in New York, he is granted some access to information that allows his shop to perform repairs but in general the average independent technician often cannot tend to a customer's repair needs. Manufacturers have two information systems, and for a fee, they will allow independent repair shops to access the technician information system. The other system is the dealer information system, which is not the same. According to Mr. Bordoff, the dealer system is much more informative and timely to use.

Mr. Ehlert represented the Automotive Service Association and owns an independent auto repair shop. He explains that there is a viable industry solution already in place for service information. In September 2002, the ASA and the automakers were successful in signing a voluntary industry service information agreement that assures independent repairers the same service, tool, tool information and training provided franchised new car dealers, including both emissions and non-emissions information. He further states that of the 451 million repairs in 2004, the National Automotive Service Task Force (NASTF) only had 48 complaints, less than a fraction of 1 percent of all repairs. Of these complaints, all were resolved in 2004.

Mr. Lowe testified on behalf of the Automotive Aftermarket Industry Association. Mr. Lowe believes that passage of H.R. 2048 is critical not only to the thousands of small businesses that comprise the automotive repair industry but also their customers who depend on local repair shops to keep their vehicle operating safely, cleanly and dependably. He further stated that the goal of the "right to repair" legislation is not to unfairly advantage independents over dealers, but to preserve competition and thus ensure that car owners continue to have a choice in where they bring their second largest investment for maintenance and repair.

Mr. Cabaniss runs the National Auto Service Task Force for the Association of International Automobile Manufacturers, Inc. He says that automakers are doing all that they reasonably can to make the same service information, training materials, and factory tools available to independent shops as to dealers. All automakers have established service websites that contain service and training information, available 24 hours per day/7 days per week.

Ms. Kathleen Marvaso testified that AAA has a strong interest in Mr. Barton's legislation because it is necessary to ensure the safety of their members, and their access to high quality, convenient, and competitively priced auto repair. She stated that AAA strongly supports the "Right to Repair" bill for three important reasons: consumer choice, vehicle safety, and the right of car owners to access the data generated by their vehicle.

In summary, the Subcommittee concluded that on balance, passage of H.R. 2048 is important for small independent automobile repair shops.

For more information about this hearing, please refer to Committee publication #109–23.

7.3.5 SMALL BUSINESS EXPENSING—JOB GROWTH THROUGH THE TAX CODE

Background

On Tuesday, August 9, 2005, the Subcommittee on Workforce, Empowerment, and Government Programs held a field hearing in Fort Collins, Colorado on small business' use of the increased expensing limits contained in Section 179 of the Internal Revenue Code. Section 179 allows small businesses to expense the full value of their new capital equipment purchased in the year it is put into service. This results in higher demand, benefiting manufacturers and equipment sellers. It also means small business owners have extra money in their hands to hire more employees and put the new equipment to use immediately.

Current law, as signed by President Bush in 2003, establishes the Section 179 expensing limits at $100,000 and an investment of $400,000. Unfortunately these limits will return to $25,000 and $200,000 respectively when the expensing limits expire in 2007. This increase in expensing limits provides two primary benefits: it reduces the high cost of the newest capital equipment and provides up-front additional cash flow to help finance the purchase.

Summary

The hearing consisted on one panel: Mr. Jim Henderson, Regional Advocate, Office of Advocacy, United States Small Business Administration, Denver, CO; Ms. Linda Jones, Owner, Area Rent-Alls, Westminster, CO; Mr. Craig Hau, Commercial Broker, The Group, Inc., Fort Collins, CO; Mr. Ron Lautzenheuser, Owner, Big O Tires, Fort Collins, CO; and Mr. Rob Pehkonen, Owner, Appliance Solutions, Inc., Fort Collins, CO.

Mr. Henderson began the hearing expressing the Office of Advocacy's strong support for extending the increased expensing limits beyond the mandated 2007 expiration date. He recounted a conversation he recently had with Mark Patterson, a tax accountant with the firm Stockman Kast Ryan and Company in Colorado Springs, when he was told that he has many clients that have taken advantage of increased expensing. Specifically, he cited a new medical clinic that started in 2003. The clinic used the higher expensing limits in Section 179, which increased its working capital allowing it to hire two key employees, and increased its chances of success because it was able to have the latest equipment and technology from the first day of operation.

Ms. Jones, testifying on behalf of herself and the American Rental Association (ARA), echoed Mr. Henderson's support for extending the current expensing limits. She stated that approximately 90 percent of ARA's membership reinvests less than the $400,000 annually allowed under Section 179, thereby giving each of those small businesses the opportunity to fully utilize the provision. In 2003, Ms. Jones was able to use $57,000 of the allowable expensing for purchased equipment permitted within Section 179, which equaled a tax savings $7,360. That same year Ms. Jones incurred a 30 percent increase in health insurance premium rates. Tax savings meant that her employees maintained health coverage. In 2004, Ms. Jones was able to use $64,000 of the allowable Section 179 expensing. Again, these savings were immediately reinvested into her employees' healthcare benefits, and replacement equipment in my rental inventory.

Mr. Hau explained that due to Section 179, one of his client partners was able to develop a parcel of land that they otherwise would not have been financially possible. Approximately $14 million worth of construction was completed on the land, providing construction jobs, and close to 100 new jobs in the building after it opens.

Mr. Lautzenheiser credited Section 179 as a mitigating factor in his decision to open two new automotive centers in 2003 and 2005. Additionally, Mr. Lautzenheiser credited Section 179 for his decision to acquire new capital equipment for use in his existing centers in 2004 and 2005. The new equipment allows Mr. Lautzenheiser to produce a higher quality product or service, usually with less repair and maintenance cost. As with all previous witnesses, Mr. Lautzenheiser expressed strong support for extending the increased limits beyond 2007.

Mr. Pehkonen echoed all of the previous testimony, citing the increased expensing limit as a major factor in his decision to open three new appliance stores in northern Colorado. These three new stores created 13 new jobs, with five more jobs on the way. Opening a new store costs roughly $150,000. The revision of the tax code allowed him to expense more of these expenses in the year he incurred them versus over the next five to 37 years under various depreciation schedules.

In summary, the Subcommittee found that the many small businesses across the nation took advantage of the increased expensing limits contained in Section 179 of the Internal Revenue Code and support extending these limits past their current 2007 expiration date in order to provide a boost to the economy and provide more jobs in the thriving and dynamic small business sector.

For further information about this hearing, please refer to Committee publication #109–29.

7.3.6 FREEDOM IN THE WORKPLACE—AN EXAMINATION OF A NATIONAL RIGHT TO WORK LAW

Background

On Thursday, September 8, 2005, the Subcommittee on Workforce, Empowerment and Government Programs convened a hearing to discuss the benefits of H.R. 500, the National Right to Work Act. Introduced by the Hon. Joe Wilson (R–SC), H.R. 500 would repeal provisions in the National Labor Relations Act (NLRA) that authorize the firing of a worker for failure to pay fees to a union as a condition of employment. Forced unionism is an action, currently allowed by certain provisions of federal law, that require workingmen and women to pay union dues in order to keep their job, which many believe is unconstitutional.

Summary

The hearing consisted of two panels. The Hon. Joe Wilson, United States House of Representatives (R–SC) participated in the first panel. The second panel was comprised of Mr. Mark Mix, President of the National Right to Work Committee, Springfield, VA; Charles Baird, Ph.D., Professor of Economics, California State University—East Bay, Hayward, CA; Fred Feinstein, Esq., Senior Fellow, University of Maryland School of Public Policy, College Park, MD; Mr. George Galley, Electro-Mechanical Technician Colt Manufacturing, Manchester CT; Mr. Michael Butcher, Engineer, Boeing Corp., Issaquah, WA; Mr. John McNicholas, CEO, Penloyd LLC, Tulsa, OK; and Mr. George Leef, Executive Director, John William Pope Center for Higher Education Policy, Raleigh, NC.

Representative Wilson began the hearing outlining the reasoning behind H.R. 500. Congressman Wilson believes compulsory unionism violates the fundamental principle of individual liberty. HR 500 simply repeals those sections of the NLRA and the Railway Labor Act that authorize the imposition of forced-dues contracts on working Americans.

Mr. Mix expressed strong support for H.R. 500. Mr. Mix argued that ending compulsory unionism would be beneficial not only to our economy and individuals who do not want to join a union but are forced to, but also the rank-and-file union members themselves. With the end of compulsory unionism, it would create an environment where labor leaders would have to compete for membership, be held accountable for their decisions, and better represent the interests of its members.

Dr. Baird testified that one of the common defenses for forced unionism (i.e., prevents “free riders”) is false. Free riders are defined as individuals who choose not to pay union dues, yet would still reap the benefits of representation. The issue itself creates the problem of free riders because under the NLRA, a union cannot bargain just for its voluntary members, it must bargain for all workers in the bargaining unit. Individual workers are forbidden to represent themselves. Passing H.R. 500 would eliminate these problems.

Mr. Galley is an electrician and was a member of the United Auto Workers from 1961 to 1985. He renounced his membership during a four-year strike of his place of employment that began in 1985. He continually refused to pay dues, was never informed of his Beck rights, and was fired because of his refusal to pay dues. Following seven years and a successful appeal later, Mr. Galley got his job back and is now a Beck objector. He still must pay 72 percent of his dues. He expressed strong support for H.R. 500.

Mr. Butcher endured a process similar to Mr. Galley. When he was hired, he was not forced to join the Society of Professional Engineering Employees in Aerospace (SPEEA). Mr. Butcher testified that in August 2000, SPEEA aligned with the AFL-CIO and the chief negotiator stated that regardless of the wage and benefit package put together by Boeing, no agreement would be reached unless Boeing agreed to force all employees to pay union dues. He pursued his case under his Beck rights, but his case languished several years and due to immense paperwork and schemes put forward by the union. He gave up on the process and is now on the job as a religious objector.

Mr. McNicholas invested in a fixture company in Tulsa Oklahoma in 2003. He stated that if Oklahoma were not a right to work state, he probably would not have invested in the company. Since 2003, 250 new jobs have been added to his growing company.

While expressing his support for H.R. 500, Mr. Leef recounted the history of labor law in the United States, including the NLRA that he believes takes freedoms away from both workers and employers in order to assist union officials in organizing and maintaining their unions.

Mr. Feinstein represented the only dissenting view on the panel, stating that nobody is ever forced to join a union. He also argued that unions are the ones under stress because they are forced to represent everyone, even if a worker does not vote for that union. He opposed H.R. 500 because he feels it would restrict unions from representing their membership in a manner they are accustomed to.

In summary, the Committee found that although 79 percent of Americans support the establishment of a National Right to Work Act, passing the bill would be a difficult challenge. It appeared clear, however, that the passage of H.R. 500 would benefit the American economy, restore freedom of association among individual workers, and establish accountability for the nation's unions. For further information about this hearing, please refer to Committee publication #109–30.

7.3.7 THE SMALL BUSINESS INNOVATION RESEARCH PROGRAM—OPENING DOORS TO NEW TECHNOLOGY

Background

On Tuesday, November 8, 2005, the Subcommittee on Workforce, Empowerment, and Government Programs held a hearing examining the Small Business Innovation Research (SBIR) program. Established in 1982, the SBIR program was established within the major federal research and development (R&D) agencies. The intent of this effort was to increase government funding of small, high technology companies for the performance of R&D with commercial potential. Federal departments with an R&D budget of

$100 million or more are required to set aside 2.5 percent of this amount to finance SBIR activity.

From its inception, over $15.2 billion in awards have been made for more than 76,000 projects. The Small Business Administration (SBA) established broad policy and guidelines under which the current 12 individual Federal agency departments operate their SBIR programs.

Summary

The hearing consisted of one panel of public sector witnesses: Mr. Calvin Jenkins, Acting Associate Deputy Administrator for Government Contracting and Business Development, United States Small Business Administration, Washington, DC; Mr. Frank Ramos, Director, Office of Small and Disadvantaged Business, United States Department of Defense, The Pentagon, Arlington, VA; James Decker, Ph.D., Principal Deputy Director, Office of Science, United States Department of Energy, Washington, DC; Norka Ruiz Bravo, Ph.D., Deputy Director, Extramural Research, National Institutes of Health, Bethesda, MD; Colien Hefferan, Ph.D., Cooperative State Research, Education & Extension Service, U.S. Department of Agriculture, Washington, DC; and Joseph Hennessey, Ph.D., Senior Advisor, Industrial Innovation Program, National Science Foundation, Arlington, VA.

Mr. Jenkins began by providing the history and structural framework of the SBIR Program. He testified that while each participating agency is responsible for administering and management of its SBIR Program, each agency must provide a detailed annual report to the Small Business Administration containing complete records of their awards. Currently, the agencies evaluate over 30,000 proposals, and make over 6,000 awards to about 3,000 small companies each year.

Mr. Ramos stated that the broad mission of the DOD SBIR program is to advance technology development for the warfighter and the nation. The DOD represents over 50 percent of the total federal SBIR budget, which exceeds $2 billion. Mr. Ramos emphasized that many of their awardees are start-up firms, with 39 percent of all awards going to first-time DOD contractors, and 19 percent of all awardees were minority or women-owned firms. Dr. Decker testified that the DOE provides over $100 million each year to small businesses to small businesses to help entrepreneurs take their ideas from conception to reality. Of the Phase I, or initial awards, about 12 percent are awarded to socially and economically disadvantaged small businesses, and about of third are first-time awardees with DOE. In return, these companies have earned more than $3 billion in sales and additional development funding.

Dr. Ruiz Bravo focused her testimony on two areas: (1) the role the SBIR program plays in the NIH research agenda and (2) several of the benefits of the program within NIH and the country. Through a competitive phased award system, the SBIR program supports a wide array of innovative biomedical and public health projects that are designed to encourage commercialization of promising technologies.

Dr. Hefferan began her testimony with a brief overview of the USDA process for determining awards. She then focused her testimony on the USDA's post-award management. Most of the effort is directed toward Phase II projects that have demonstrated technical feasibility in their first phase, including a commercialization assistance program for first-time Phase II winners, and outreach and site visits to ensure the USDA and its small business partners work closely.

Dr. Hennessey spent the majority of his allotted time to the NSF's Phase IIB Program by telling the story of Investics, a small company in Georgia. Investics developed software through the SBIR program that was later used by Bristol-Myers Squibb, a large pharmaceutical company to improve performance at a plant they were originally going to close.

In sum, the Subcommittee found that the SBIR program is an integral part of each of these agencies R&D strategies, and that it is an excellent example of a highly successful federal initiative to encourage economic growth and innovation within the small business community by assisting in the funding of critical startup and development stages of a company.

For further information about this hearing, refer to Committee publication #109–36.

7.3.8 ENTREPRENEURIAL DEVELOPMENT PROGRAMS OF THE SBA

Background

On Thursday, March 2, 2006, the Subcommittee on Workforce, Empowerment, and Government Programs held an oversight hearing of the Small Business Administration's (SBA) entrepreneurial development programs. The purpose of this hearing was to conduct general oversight of the SBA entrepreneurial development programs, with particular emphasis on improvements made to the programs over the past two years. Additionally, because the SBA will need to be reauthorized before Fiscal Year 2007 begins, the Subcommittee received testimony on legislative changes the witnesses would recommend being included in the SBA reauthorization legislation.

Summary

The hearing consisted of one panel witnesses: Ms. Cheryl Mills, Associate Deputy Administrator of Entrepreneurial Development, United States Small Business Administration, Washington, DC; Mr. Donald Wilson, President, Association of Small Business Development Centers, Burke, VA; Ms. Amanda Zinn, President/CEO of E$^{\text{Cubed}}$ (Essential Entrepreneurial Expertise), Owings Mills, MD; Mr. Jim Pyles, Chairman SCORE, Elkhart, IN; Ms. Elizabeth Maneval, Owner & Publisher of We Magazine, Inc., Lancaster, PA; and Carol Law, Ph.D, President of Drug Free Workplaces, Inc., Pensacola, FL.

Ms. Mills outlined the responsibilities of the Office of Entrepreneurial Development (OED), which manages a distribution channel of service centers for small businesses through the country, including assistance in preparing business plans, loan applications', responding to procurement inquires, and providing export advice. OED serves these clients primarily through their three resource partners: Small Business Development Centers (SBDCs), Women's Business Centers (WBC), and SCORE.

Mr. Wilson stated that SBDCs are the largest resource partners and are a network of state lead centers primarily located on university and community college campuses and local chambers of commerce. SBDCs served 707,000 clients in Fiscal Year 2005. Mr. Wilson stressed the vital role that SBDCs can play in disaster relief efforts.

Ms. Zinn testified that there are 125 WBCs who provide long-term in-depth training and counseling to their clients and target socially and economically disadvantaged women. WBCs counseled and trained over 144,000 clients in Fiscal Year 2005.

Mr. Pyles confirmed that since its inception in 1964, SCORE has helped more than seven million clients from idea to start up to success. SCORE relies on both public and private money to fund their services, which also include disaster relief efforts.

Ms. Maneval focused her testimony on the SBAs Microloan program. Ms. Maneval expressed concerns regarding the Administrations plan to restructure the SBA loan programs by assimilating it into the existing 7(a) program.

Dr. Law testified that the Paul D. Coverdell Drug-Free Workplace grants that were instituted in 1999 have helped 709 small businesses implement a drug-free workplace program.

In sum, the committee found that the OED is an integral part of the success for millions of American small business that have used its vast network of services and took into consideration the recommendations of these industry representatives during the development of the committee's SBA reauthorization proposal.

For further information about this hearing, refer to Committee publication #109–40.

7.3.9 HEALTH CARE PROPOSALS TO HELP LOWER THE COST TO SMALL BUSINESS

Background

On Thursday, April 27, 2006 the Subcommittee on Workforce, Empowerment, and Government Programs held a hearing examining various proposals aimed at lowering the cost of health care for small business employers and employees alike that would help lower the number of uninsured Americans.

More than 45 million Americans are uninsured, with nearly 60 percent of those employed by small businesses. In order to reduce the number of uninsured, Congress and the President have proposed a series of reforms designed to reduce health care costs, expand health care coverage, and improve the quality of care, specifically, the establishment of Association Health Plans (AHPs), the introduction of Health Savings Accounts (HSAs), and medical liability reform.

Additionally, the Subcommittee examined the Health Care Choice Act of 2005, H.R. 2355, introduced by Representative John Shadegg (R–AZ). This bill would allow individuals to purchase health insurance coverage over state lines.

Summary

The hearing consisted of two panels. Witnesses on the first panel were: the Hon. John Shadegg, United States House of Representatives (R–AZ); and Mr. Robert J. Carroll, Deputy Assistant Secretary for Tax Analysis, United States Department of Treasury, Washington, DC. Panel two consisted of: Mr. Ed Lawler, Realtor, ReMax Alliance, Fort Collins, CO; Mr. Cecil B. Wilson, M.D., Chair-Elect of the Board of Trustees, American Medical Association, Chicago, IL; Merrill Matthews, Ph.D., Director, Council for Affordable Health Insurance, Alexandria, VA; Mr. Paul Hense, President, Hense and Assocs., Grand Rapids, MI; and Mr. Dan Perrin, President, HSA Coalition, Washington, DC.

Representative Shadegg began his testimony detailing the provisions of H.R. 2355. Under this legislation, consumers would no longer be limited to purchasing policies dictated by their state's regulations and mandated benefits. Instead, consumers could decide among a variety of insurance policies qualified in one state but offered for sale in multiple states. On average, Mr. Shadegg testified that should this bill become law, the cost of health insurance could drop as much as 12 percent.

Mr. Carroll outlined President Bush's Health Care Initiative. At the core of this initiative is a set of tax proposals that puts the health care consumer more in control of his or her health care and places health care purchased directly by individuals with high deductible plans on equal footing with employer-provided health insurance. The initiative also includes a refundable tax credit to cover the cost of high deductible health plan insurance premiums that is targeted to the lowest income Americans.

Mr. Lawler testified that because the vast majority of real estate agents are independent contractors and therefore, must purchase their own health insurance. Mr. Lawler vigorously supports legislation that would create association health plans, or small business health plans.

Dr. Wilson focused his testimony on the dire need for medical liability reform. He testified that the Department of Health and Human Services estimates that runaway medical liability costs, primarily physicians practicing defensive medicine (ordering tests and procedures that may not be necessary to protect themselves from liability down the road), adds $70 billion to $126 billion each year in extra medical costs. Dr. Wilson stated that 21 states are currently in crisis, with physicians leaving or limiting their practice to avoid high-risk procedures.

Dr. Matthews testified in support of expanding health savings accounts (HSAs). He pointed out that roughly 3.2 million Americans are now covered by HSAs and that 31 percent of those in the individual market purchasing HSAs were previously uninsured. In the small group market, one-third of the HSA plans where to previously uninsured companies. Dr. Matthews also expressed strong support for H.R. 2355.

Mr. Hense centered his testimony in support of H.R. 4961, the Self Employed Health Care Affordability Act of 2006, legislation introduced by Representative Hart (R–PA) and Chairman Manzullo.

The bill would not subject payments make to purchase health insurance to the 15.3 percent Social Security or Medicare tax.

Mr. Perrin detailed several statistics showing the continued growth and popularity of HSAs. Perhaps the most telling argument presented is that HSAs not only offer a way out of the current health insurance problems, but they also give people the opportunity to build up funds during their working years.

In sum, the Subcommittee found that by expanding the use and ease of HSAs, the establishing AHPs, reforming America's medical liability system, and passing reforms like H.R. 2355 and H.R. 4961, Congress can make health care more affordable, more reliable, and easier to use for small business.

For further information about this hearing, refer to Committee publication #109–49.

7.3.10 IMMIGRANT EMPLOYMENT VERIFICATION AND SMALL BUSINESS

Background

On Tuesday, June 27, 2006, the Subcommittee on Workforce, Empowerment, and Government Programs held a hearing on the issue of immigrant employment verification. Because of the growing problem of illegal immigration, the House of Representatives passed H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act in December 2005. Additionally, the Senate passed S. 2611, the Comprehensive Immigration Reform Act of 2006 in May, 2006. Both bills make numerous significant changes to our immigration law and border security efforts. Contained in H.R. 4437 is a provision that would establish an employment eligibility verification system within 18 months that builds on the current voluntary pilot program, known as the Basic Pilot Program. The purpose of this hearing was to focus on those provisions establishing the employment eligibility verification system, specifically examining how these reforms would have affect our nation's small business community.

Summary

The hearing consisted of two panels. The first panel consisted of: The Hon. Ken Calvert, United States House of Representatives (R–CA); Mr. Robert Divine, Acting Deputy Director, U.S. Citizenship and Immigration Services, Department of Homeland Security, Washington, DC. The second panel's members were: Mr. Jack Shandley, Senior Vice President, Swift & Co., Greeley, CO; Mr. Angelo Amador, Director, Immigration Policy, United States Chamber of Commerce, Washington, DC; Mr. Mark Krikorian, Executive Director, Center for Immigration Studies, Washington DC; Mr. Toby Malara, Government Affairs Counsel, American Staffing Association, Alexandria, VA; and Monte Lake, Esq., Partner, McGuiness, Norris, & Williams, LLP, Washington, DC.

Congressman Calvert testified that businesses need to use this program in order to regain confidence in their workforce. Because most small business owners are not document experts, Representative Calvert proposed to make the Basic Pilot Program mandatory for all businesses but phased in over time.

Mr. Divine stated that although neither H.R. 4437 nor S. 2611 has yet become law, the USCIS is already planning for the expansion on the program, explaining that the President's Fiscal Year 2007 budget requests $110 million to expand and improve the Basic Pilot.

Mr. Shandley stated that Swift and Co. supports balanced and comprehensive immigration reform and has voluntarily participated in the Basic Pilot since 1999. Although the program has been effective in helping maintain a legal workforce at Swift, Mr. Shandley suggested that significant policy tension exists between the Department of Homeland Security's Immigration and Customs Enforcement branch, which is charged with enforcing verification provisions, and the Department of Justice's Office of Special Counsel, which enforces anti-discrimination provisions. Mr. Shandley suggested that this dichotomy must be eliminated for this program to work correctly.

Mr. Amador stated that the Chamber supports a new employment verification system, but only in the context of comprehensive immigration reform. Any verification system must be fast, accurate, and reliable in practical real-work conditions. Of the two versions, the Chamber supports the Senate bill, S. 2611 over the House bill, H.R. 4437.

Mr. Krikorian expressed enthusiastic support for making the Basic Pilot Program mandatory. He testified that last year, approximately 56 million hiring decisions were made in the United States, an average of 200,000 per day. To put that in perspective, VISA processes 500 times that many credit card transactions each day. Mr. Krikorian stated that with adequate support from the Congress and the Executive Branch, there should be no reason this program would not work practically, accurately, and efficiently.

Mr. Malara also stated the American Staffing Association supports Congressional efforts on comprehensive immigration reform. He also stated that two provisions are critical to the staffing industry's survival. First, staffing firms should have the flexibility in using any new electronic employment verification system. Second, Mr. Malara expressed concerns regarding provisions in the House bill that could force staffing firms to comply.

Finally, Mr. Lake stated that American agriculture would support electronic verification of employment eligibility, as long as the process is simple, manageable, and provides clear-cut compliance responsibilities.

In summary, the Subcommittee found that the vast majority of American small businesses are in favor of implementing commonsense immigration reform, including implementation of a new employee verification system, as long as the process is free, easy to use, understand, phased-in over time, and provides quick, accurate results.

For further information about this hearing, please refer to Committee publication #109–58.

7.3.11 HEALTH CARE AND SMALL BUSINESS: REAL OPTIONS FOR COLORADO BUSINESSES

Background

On Thursday, August 10, 2006, the Subcommittee on Workforce, Empowerment, and Government Programs held a field hearing in Loveland, Colorado examining various proposals aimed at lowering the cost of health care for small business employers and employees to reduce the number of uninsured Americans. The Honorable John Shadegg (R–AZ) joined the hearing with Subcommittee Chairman Marilyn Musgrave (R–CO).

More than 45 million Americans are uninsured, with nearly 60 percent of those employed by small businesses. In order to reduce the number of uninsured, Congress and the President have proposed a series of reforms designed to reduce health care costs, expand health care coverage, and improve the quality of care, specifically, the establishment of association health plans (AHPs), the introduction of health savings accounts (HSAs), medical liability reform, H.R. 2355, the Health Care Choice Act of 2005, and H.R. 4961, the Self-Employed Health Care Affordability Act of 2006.

Summary

The hearing consisted of one panel: Mr. Matt Fries, President/CEO of Professional Document Management, Fort Collins, CO; Mr. Dale Roberts, Chairman, Loveland Chamber of Commerce, Loveland, CO; Ms. Chris Boesch, Exodus Moving and Storage, Fort Collins, CO; Mr. Fred Liske, General Manager, American Eagle Distributing Company, Loveland, CO; Mr. Mark Hillman, former Colorado State Senator, Burlington, CO; Jack Cletcher, M.D., Berthoud, CO; Ms. Deb Tamlin, Real Estate Broker, ZTI Group, Fort Collins, CO; Mr. Allen Jensen, Colorado Association of Health Underwriters, Englewood, CO; and, Ms. Gail Snyder, Agent, Snyder Insurance Agency, Loveland, CO.

Nearly all of the witnesses expressed some manner of support for each of the topics on the agenda. Mr. Fries believes that allowing individuals shopping in a more competitive insurance market is the best way to contain costs and lower the number of uninsured. Mr. Roberts stated that the Loveland Chamber is currently trying to become a bona-fide association because, under Colorado law, they are allowed to participate in AHPs. Ms. Boesch stated that her moving company is unable to provide health insurance for their 60 employees because the quotes they have received for coverage are right around $50 per person per month. Ms. Boesch suggested abolishing insurance companies and instead, working directly with the hospitals and doctors as a way to lower costs. Mr. Liske had just renewed his policy for his 120 employees, and he saw a 9.7 percent increase over his 2002 health care expenditures. He stated that increasing the options for employers, such as in H.R. 2355, and the potential of larger pooling through association health plans, would be "absolutely phenomenal for us." Mr. Hillman expressed sincere reservations about the federal government's ability to fix to the current problems in the health care marketplace because of the problem of mandated coverage. Mr. Hillman suggested allowing health insurance premiums to be fully tax deductible for everyone. Dr. Cletcher focused his testimony on the need for medical liability reform. Ms. Tamblin, speaking on behalf of the National Association of Realtors (NAR), stated that both she and the NAR are in strong support of AHPs. Mr. Jensen stated that he opposed the establishment of unregulated association health plans because these plans would have a pricing advantage over the fully insured small group markets already operating in the states, thus, creating a distorted playing field. Mr. Jensen did support, however, HSAs and medical liability reform. In rounding out the panel, Ms. Snyder expressed support for HSAs as she has seen numerous clients purchasing the qualifying high-deductible plans along with HSAs, with many employers providing this as a way of saving both themselves and their employees money.

In sum, the Subcommittee found that by expanding the use and ease of HSAs, the establishing AHPs, reforming America's medical liability system, and passing reforms like H.R. 2355 and H.R. 4961, Congress can make health care more affordable, more reliable, and easier to use for small business.

For further information about this hearing, refer to Committee publication #109–63.

7.4 Summaries of the Hearings Held by the Subcommittee on Regulatory Reform and Oversight

7.4.1 THE ADMINISTRATION'S PROGRAM TO REDUCE UNNECESSARY REGULATORY BURDEN ON MANUFACTURERS—A PROMISE TO BE KEPT

Background

The Regulatory Reform and Oversight Subcommittee held a hearing on Thursday, April 28, 2005 that focused on the Administration's announced program to curb the regulatory burden on businesses, especially small businesses, in the manufacturing sector. The promise to help free manufacturers in the United States from the burden of needless regulations is much anticipated, and it is a promise that needs to be kept.

In March of 2005, the Administration announced that federal agencies will take practical steps to reduce the cost burden on manufacturing firms operating in the United States by acting on 76 public nominations to reform federal regulations. It was further announced that the Office of Management and Budget (OMB) directed agencies to take the most appropriate action to ease the excessive burden for the manufacturing industry while maintaining, health, safety, and environmental protections for the public. The hearing examined the Administration's commitment, both on the part of the OMB and the agencies, to reduce the regulatory burden on the manufacturing sector as promised.

Summary

There was one panel comprised of: The Honorable John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC; The Hon. Veronica Vargas Stidvent, Assistant Secretary for Policy, United States Department of Labor, Washington, DC; The Hon. Thomas M. Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC; Ms. Stephanie Daigle, Acting Associate Administrator, Policy, Economics and Innovation, United States Environmental Protection Agency, Washington, DC; Mr. Howard Will, President, Caldwell Group, Inc., Rockford, IL; Mr. Drew Greenblatt, President, Owner, Marlin Steel Wire Products, Baltimore, MD; and Mr. Robert Schull, Director of Regulatory Policy, OMB Watch, Washington, DC.

Dr. Graham announced that the Administration had reduced the growth of regulations by 70 percent, but since 1981 there were 115,000 new regulations adopted. He pointed out that the European Union was employing an aggressive campaign to reduce red tape and unnecessary laws. Reducing the regulatory burden on U.S. manufacturers was essential to maintaining competitiveness. Mr. Will pointed out that Associated Wire Rope Fabricators has the testing capability and technical expertise to develop industry wide standards for such items as web slings and that the American Society of Mechanical Engineers (ASME) is the recognized safety standard for slings. Despite this fact, the Occupational Safety and Health Administration (OSHA) standard was outmoded and had not been changed for 30 years. Ms. Stidvent expressed the view that advances in science and technology had made a number of agency regulations outdated. She underscored the approach taken by OSHA to reform regulations, provide compliance assistance, and to enforce regulations to maintain health standards and prevent accidents.

Mr. Greenblatt stated that the cost per employee of regulations have a greater impact on small manufacturers as compared to large manufacturers. The cost for firms with fewer than 20 employees was $17,000 per employee as compared with $7,000 for manufacturers with more that 500 employees. Ms. Daigle pointed out that EPA had a new strategy to help small businesses by making regulations understandable and practical to implement. She provided an example of how the panel process under the Regulatory Flexibility Act (RFA) had resulted in the final rule being less burdensome to small businesses. Mr. Sullivan indicated that nearly 99 percent of all manufacturers were small businesses and that they were more innovative than large businesses, i.e., producing 13 to 14 more patents for each employee. He was in agreement that the U.S. must maintain its competitiveness and not burden small manufacturers with needless regulations. Mr. Schull was of the view that the emphasis should be on providing small manufacturers with compliance assistance rather than reducing the regulatory burden.

In summary, the Subcommittee concluded that the Administration is to be commended for embarking on this regulatory reform initiative and encourages quicker progress on making these 76 regulatory changes become reality in the effort to help in the recovery of our nation's manufacturing sector.

For further information, please refer to committee publication #109–14.

7.4.2 ANWR'S BENEFITS FOR SMALL BUSINESS

Background

On Thursday, May 19, 2005, the Subcommittee on Regulatory Reform and Oversight held a hearing to discuss the benefits of drilling for oil and natural gas in Alaska's National Wildlife Reserve (ANWR). Congress set a very small part of ANWR, labeled as area "1002," aside for natural energy exploration in the Alaska National Interest Claims Act of 1980. The subcommittee's hearing explored the various sectors of small business that would benefit from proceeding with drilling in area "1002."

Summary

The hearing consisted of two panels. The lone witness on the first panel was: The Hon. Steve King (R–IA). The witnesses on the second panel were: Mr. Gerald Hood, Government Affairs Consultant, Arctic Power, Anchorage, AK; Ms. Karen Wright, President/CEO, Ariel Corp., Mt. Vernon, OH; Eban Goodstein, Ph.D., Professor of Economics, Lewis and Clark College, Portland, OR.

Representative King spoke in support of drilling in ANWR, sighting how Iowa's "Corn Belt" is being strangled by rising fuel, oil, and natural gas prices. He went on to point out that drilling in Alaska will yield enough to supplant nearly 30 years of imports from the Organization of the Petroleum Exporting Countries (OPEC). This drilling, he felt, would alleviate a good deal of the financial burden placed upon the nation's farmers, as well as create opportunity for our nation's manufacturers building and maintaining the critical pipeline.

Mr. Hood represented the energy industry, as well as native Alaskans, and testified to the benefits of drilling in area 1002 of ANWR for small businesses both in Alaska and throughout the nation. Mr. Hood testified that oil exploration and extraction in area 1002 of ANWR could create 735,000 jobs throughout the United States, according to a study conducted by the Wharton Econometrics Institute at the University of Pennsylvania. Ms. Wright testified that small manufacturers that supply the oil industry would benefit from the opening of ANWR—small business manufacturers who supply the energy industry with critical parts and services. Professor Goodstein opposed drilling in ANWR because the economics of drilling and the potential supply from ANWR would not outweigh the environmental costs.

In summary, the members of the Subcommittee concluded that drilling in area 1002 of ANWR would have significant direct and indirect benefits for small businesses not only in Alaska but also in every state of the union.

For any further information, please refer to Committee publication #109–16.

7.4.3 VETERAN'S ACCESS TO CAPITAL

Background

On Tuesday, June 21, 2005, the Small Business Subcommittee on Regulatory Reform and Oversight held a hearing to focus on the needs of veteran entrepreneurs, particularly those called up for service in the National Guard or Reserves. The subcommittee explored the primary barriers self-employed reservists face in maintaining financially solvent businesses back home during deployment and discussed what, if any, legislative changes may be made to ensure that these veterans have a business to come back to after their tour of duty.

Summary

The hearing consisted of one panel with four witnesses: Mr. Bill Elmore, Associate Administrator for Veterans Business Development, United States Small Business Administration, Washington, DC; Mr. Donald Wilson, President, Association of Small Business Development Centers, Burke, VA; Ms. Patricia Kerr, Missouri State Veterans Ombudsman, Jefferson City, MO; Mr. Harry Alford, President/CEO, National Black Chamber of Commerce, Washington, DC.

Mr. Elmore the programs the Small Business Administration presently has in place to assist those deployed overseas. He stated that there are several loan and assistance programs in place but they are not fully utilized.

Mr. Wilson explained that the association recognizes that the Department of Defense relies more and more upon reservists and is concerned about addressing the needs of small business owners who also serve as soldiers upon their return home. Reserve call-ups have increased sharply since the terrorist attacks of September 11, 2001. One-third of the troops deployed in Iraq and Afghanistan in November 2004 were reservists.

Ms. Kerr believes Congress needs to assist with federal funds for a Veterans Ombudsman in each state's veterans' commission with sufficient support staff to provide a single point of contact; eliminate federal business taxes for Global War veteran entrepreneurs during their mobilization and deployment; provide more federal support for community based organizations such as the St. Louis Veterans Business Resource Center; and keep deployments in the Army at a shorter duration, similar to the Marines, Air Force, and Navy.

Finally, Mr. Alford elaborated on how, although, programs may be in place, they do not reach all those who need them. Many loyal and patriotic soldiers come back from deployment and have no idea of the resources available to them.

In summary, the Subcommittee concluded that further legislation is needed to address the present and unique needs of these small business owners who also choose to serve our nation in times of need.

For any further information on this hearing, please refer to Committee publication #109–22.

7.4.4 ENTREPRENEUR SOLDIERS EMPOWERMENT ACT

Background

On Thursday, September 29, 2005, the Subcommittee on Regulatory Reform and Oversight held a hearing to review the need for legislation to assist those in uniform, principally members of the

National Guard and the Reserves, who were small business owners and who had been called to active duty. This was a follow-on hearing to the one held by the Subcommittee in June concerning veteran's access to capital and the challenge that members of the National Guard and Reserve face in keeping their businesses solvent when they are called to active duty. It is estimated that of the 860,000 reservist 18 percent are employed by small businesses and approximately 9 percent are self-employed.

H.R. 3898, the Entrepreneur Soldiers Empowerment Act, was introduced by Subcommittee Chairman Todd Akin (R–MO) for the purpose of providing some solutions to this problem. H.R. 3898 would establish a Veterans Outreach Centers in each regional office of the Small Business Administration (SBA) and establish Technical Mentoring Assistance Committees in each SBA regional districts.

Summary

The hearing had one panel comprised of Mr. William Elmore, Associate Administrator, Veterans Business Development, United States Small Business Administration, Washington, DC; John Winkler, Ph.D., Deputy Assistant Secretary of Defense for Reserve Affairs, United States Department of Defense, The Pentagon, Arlington, VA; and. Douglas Holtz-Eakin, Ph.D., Director, Congressional Budget Office, Washington, DC.

Mr. Elmore stated that the Small Business Administration (SBA) had opened four Veterans Business Outreach Centers in 1999. The four centers are located in California, Florida, Texas, and New York. A fifth center was scheduled to be opened soon in Pennsylvania. It was SBA's position that opening new centers beyond these five would not be cost effective. Also, SBA did not support the provisions in H.R. 3898 that would establish technical and mentoring assistance committees that would recruit volunteers to be business mentors to veterans, preferring to work instead through existing SBA technical assistance partners such as Small Business Development Centers (SBDCs) and SCORE.

Dr. Winkler stated that the Department of Defense (DOD) tries to mitigate the impact of call-ups on reservists by (1) using reservist only when needed, (2) limiting the period of call-ups to 24 consecutive months, and (3) providing as much advanced notice as possible. DOD is cooperating with SBA and developing a closer working relationship with SBA to determine what is needed to assist reservist that are small business owners and encounter business hardships when called to active duty.

Dr. Holtz-Eakin stated that call-up of reservists do not have a significant impact on the economy generally but do have a material effect on those who are required to serve on active duty. There are 50,00 persons in the reserves that are self-employed and 120,000 who are employed by small businesses. In the past four years, approximately 455,000 reservist have been mobilized and about 36 percent of the troops in Afghanistan and Iraq are reservist. Dr. Holtz-Eakin suggested that the economic hardship encountered by reservist when called to active duty might be compensated through tax credits, loans, or insurance.

The Subcommittee concluded that SBA and the Defense Department needed to focus on providing some additional remedies to this growing problem, particularly as more and more Reservists and Guardsmen serve for longer tours of duty abroad.

For further information on this hearing, refer to the Committee publication #109–33.

7.4.5 THE INTERNET SALES TAX: HEADACHES AHEAD FOR SMALL BUSINESS?

Background

On Wednesday, February 8, 2006, the Subcommittee on Regulatory Reform and Oversight held a hearing that focused on recent federal and state efforts to impose a responsibility to collect state sales and use taxes on out-of-state Internet vendors.

Currently, 45 states and the District of Columbia have a sales tax. Each of these states also has a use tax, which is a tax on use, storage, or consumption of a taxable item in which a sales tax was not collected. States claim a substantial loss of revenue ($4 billion to $20 billion annually, depending on the study) because use tax remittance is based on the honor system and many people do not comply with the law. States have been looking for ways to lay claim to this lost revenue for many years. In Quill v. North Dakota, the Supreme Court ruled in 1992 that a state could not impose the burden of use tax collection on businesses that do not have substantial presence in their state. In March 2000, 40 states began to work on the Streamlines Sales and Use Tax Agreement (SSUTA). The SSUTA seeks to make the task of paying state sales and use taxes across borders sufficiently easy enough to win the favor of Congress and the courts. The SSUTA is a voluntary system for businesses unless federal legislation is enacted. There are currently two Senate bills under consideration that are nearly identical in language. The bills differ only in how they determine the size of business that would be exempt from collecting this use tax.

Summary

The hearing consisted of one panel comprised of the following five witnesses: Walter Hellerstein, Distinguished Professor of Law, University of Georgia, Athens, GA; Mr. Brian Bieron, Senior Director of Federal Government Relations, eBay, Inc., Washington, DC; Mr. Paul Misener, Vice President, Office of Global Public Policy, Amazon.com, Washington, DC; Mr. Ernest Perry, Owner, Perry's at Southpark, Charlotte, NC; and Mr. Rory Rawlings, Founder and Chief Tax Automation Officer, Avalara, Inc., Seattle, WA.

Mr. Hellerstein gave a legal summary of state and federal taxation law. He discussed the roles that Congress and the courts play regarding this issue.

Mr. Bieron stated that complying with the tax law for every local jurisdiction could be very challenging for small businesses and requires the use of a third party. Mr. Misener discussed the importance of companies operating on a level playing field. He stated that third party service providers could easily help small businesses comply with interstate sales tax law. He said that the Streamlined Sales and Use Tax Program (SSTP) has simplified sales tax law but the states still had quite a distance to go. Mr. Bieron and Mr. Misener both discussed the small business exception found in both Senate bills, S. 2152 and S. 2153. Although they differed wildly in their opinion of the size of business that should qualify for the small business exception, both were favorable to the language of Senator Byron Dorgan's bill, S. 2153.

Mr. Perry talked about how the internet has helped to expand his retail business. Mr. Perry went on to discuss the danger of the SSTP for small businesses and the possibility that not all costs would be covered in the future.

Mr. Rawlings discussed the ease of using a Certified Service Provider (CSP). He went on to say that CSPs assumed all liability and states paid for the cost of their service.

In sum, the Subcommittee concluded that while there is disagreement on the benefits or detriments of the SSTP and the pending Senate legislation, there is agreement that more needs to be done to streamline the sales and use tax laws to reduce the regulatory compliance burden for small businesses.

For further information about this hearing, refer to Committee publication #109–39.

7.4.6 THE STATE OF SMALL BUSINESS SECURITY IN A CYBER ECONOMY

Background

On March 16, 2006, the Subcommittee on Regulatory Reform and Oversight held a hearing that focused on the cyber threats that affect small business and the economy as a whole. There is a growing economic risk associated with information technology security lapses for the U.S. economy as small businesses become more dependent on emerging technologies. Criminals realize that small businesses do not employ adequate security measures and have shifted their focus to small and medium sized businesses. As this threat landscape has changed, small businesses have been slow to adapt to the changing environment. Because the Internet creates a complex web that connects critical infrastructure to home users to large businesses to the federal, state and local governments to small businesses, all stakeholders agree that more must be done to insure the security of this important medium. Industry and government have collaborated to form many public/private partnerships to train and increase awareness among businesses and consumers.

Summary

There were two panels of witnesses that testified at the March 16, 2006 hearing. The first panel consisted of: Ms. Cita M. Furlani, Acting Director, Information Technology Laboratory, National Institute of Standards and Technology, United States Department of Commerce, Gaithersburg, MD; Ms. Lydia Parnes, Director of Bureau of Consumer Protection, Federal Trade Commission, Washington, DC; Mr. Larry D. Johnson, Special Agent in Charge, Criminal Investigative Division, United States Secret Service, Department of Treasury, Washington, DC; and Mr. Steven M. Martinez, Deputy Assistant Director, Cyber Division, Federal Bureau of Investigation, Washington DC. The second panel was comprised of:

Mr. Ari Schwartz, Deputy Director, Center for Democracy and Technology, Washington, DC; Mr. Enrique Salem, Senior Vice President, Security Products & Solutions, Symantec Corporation, Cupertino, CA; Burton S. Kaliski, Jr., Ph.D., Vice President of Research, RSA Security, Bedford, MA; Mr. Roger Cochetti, Group Director—U.S. Public Policy, Computing Technology Industry Association, Arlington, VA; and Mr. Howard Schmidt, President/CEO, R & H Security Consulting LLC, Issaquah, WA.

Both panels of witnesses agreed that the key to creating a more secure cyber environment was by educating and raising awareness among technology users. The government witnesses began by describing their agencies/departments roles in combating cyber crime. Ms. Furlani discussed the National Institute of Standards and Technology's role in setting cyber security standards and the various programs that are designed to educate Internet users. Ms. Furlani stated the importance of small businesses protecting their information technology (IT) infrastructure from not only an economic viewpoint but a national security perspective as well. Ms. Parnes focused her testimony on the Federal Trade Commission's efforts to foster a culture of security for Internet users through its OnGuard Online program and Safeguards Rule. She explained that by following best practices, businesses can keep consumers sensitive information safe. Mr. Johnson discussed the three statutes that authorize the Secret Service to investigate technology crimes. He discussed the Secret Service's collaborative efforts with the Computer Emergency Response Team located in Pittsburgh, PA at Carnegie Mellon University. Mr. Martinez discussed the importance of e-commerce in our society. He explained that small businesses are an important link in the security of the internet not only because they sell products online but because many small businesses provide support for the Internet and IT operations for large businesses. Mr. Martinez concluded by explaining the partnership building efforts the FBI is currently engaged in and the importance of education in combating cyber crime.

The second panel focused their testimony on current cyber security threats and the industry oriented solutions that are available for small businesses with limited resources. Ari Schwartz described the Internet as a powerful force for good and that electronic criminal activity can undermine user confidence in the Internet, which can ultimately have a negative impact on the spread of democracy and capitalism. Mr. Salem discussed the findings in Symantec's latest Internet threat assessment. He spoke of how small businesses are the third most targeted group on the internet for criminal activity and how attacks are targeted to a greater degree. Mr. Kaliski discussed ways small businesses can protect themselves from attacks. Not all businesses need to employ the same level of security measures. Companies that hold a great deal of sensitive data should utilize greater security measures than those that do not handle as much sensitive information. Mr. Cochetti focused his testimony on the ability of Value-Added Resellers (VARs) to meet the security needs of small businesses. Finally, Mr. Schmidt described some of the steps that have been taken by the government and industry to create a more secure electronic infrastructure. He divided small businesses into three categories: (1) those that use their home system, (2) those with a dedicated computer system for their business, but limited staff to oversee it; and (3) those that have an IT department dedicated to maintaining the security of their information technology infrastructure.

In sum, the Subcommittee concluded that the most important step in creating a secure cyber environment was raising the level of awareness among technology users. Furthermore, more focus was needed on the small business sector of our economy and that the Small Business Administration was not doing enough to aid small businesses in creating a secure cyber environment.

For further information about this hearing, refer to Committee publication #109–44.

7.4.7 THE SMALL BUSINESS ADMINISTRATION'S PROCUREMENT PROGRAMS

Background

On Thursday, March 30, 2006 the Subcommittee on Regulatory Reform and Oversight held a hearing to conduct oversight of Small Business Administration's (SBA's) procurement programs, with particular emphasis on improvements made to the programs over the past two years. The SBA is responsible for working with federal agencies in setting small business procurement goals for individual agencies and with assisting each agency in meeting these goals. The SBA is also tasked with providing procurement assistance to small businesses in order to maximize their participation in the federal marketplace. Federal agencies are responsible for setting-aside procurement opportunities to ensure that a fair share of their contracts is awarded to small firms and that contracting goals are achieved. In the past, small businesses have expressed concern that SBA and other federal agencies were providing neither sufficient nor effective procurement assistance. In addition, in preparation for reauthorizing certain SBA programs before the beginning of fiscal year 2007, the hearing served as a forum for proposed program changes that might be included in SBA reauthorization legislation.

Summary

The hearing was comprised of one panel of six witnesses: Mr. Anthony Martoccia, Associate Deputy Administrator, Office of Government Contracting and Business Development, United States Small Business Administration, Washington, DC; Mr. Rafael Collado, Chairman & CEO, Phacil Inc., Camden, NJ; Mr. Kurt Heckman, President, Sycamore.US, Inc., Frederick, MD; Mr. John Lopez, Chairman, Association for Service Disabled Veterans, Washington, DC; Ms. Catherine Giordano, CEO, Knowledge Information Solutions, Inc., Virginia Beach, VA; and Ms. Christina Schneider, CFO, Purcell Contracting Corporation, Watertown, NY.

Mr. Martoccia first discussed the President's Fiscal Year 2007 budget request for the SBA. He was of the view that SBA has become more efficient through the use of technology and has been able to operate on a leaner budget while being able to offer more services with greater results. He noted that the amount of procurement dollars going to small businesses had significantly increased by $20 billion since FY 2000 and subcontracting opportunities going to small businesses also increased by $10 billion. In Fiscal Year 2004, small businesses received approximately $69 billion in prime contract awards or about 23 percent out of a total of $300 billion prime contract awards.

Mr. Collado expressed concern over the lack of progress in the 8(a) and Historically Underutilized Business Zone (HUBZone) programs. He advocated Congress play an active role in seeing that small businesses deal with the federal procurement arena on a level playing field and are treated fairly in acquiring contracts in the federal marketplace.

Mr. Heckman commented on the experience of his company that small businesses that are subcontractors do not get proper credit for their success. As a participant in the HUBZone program, Mr. Heckman stated that his company had grown three-fold.

Mr. Lopez was of the view that bureaucratic bungling had led to unsuccessful attainment of the three percent government-wide procurement goal for service-disabled veteran-owned small businesses. The President's Executive Order No. 13360 calls for vigorous and immediate implementation of actions leading to meeting or exceeding the statutory goal. He advocated passage of H.R. 3082, The Veterans Owned Small Business Promotion Act, to clarify and strengthen the present law.

Ms. Giordano recommended various improvements including implementation of the law providing for set-asides for women-owned small businesses, clarification of the criteria for 8(a) certification, and a continuing Administration support for unbundling contracts.

Ms. Schneider made various recommendations for changes in the HUBZone program, including limiting construction projects to within 150 miles of the HUBZone in which the HUBZone small business contractor is located. Also, she recommended a smaller price preference to HUBZone small businesses in bidding on construction projects.

In sum, the subcommittee concluded that the SBA needed to improve the implementation of their procurement assistance programs.

For further information about this hearing, please refer to Committee report #109–45.

7.4.8 ELECTRONIC MEDICAL RECORDS

Background

On Thursday, April 6, 2006 the Subcommittee on Regulatory Reform and Oversight held a hearing on electronic medical records technology. The purpose of this hearing was to discuss the feasibility of the adoption of electronic medical records (EMR) technology by small medical practitioners. The subcommittee explored the challenges small healthcare clinics face in adopting such technology, including, but not limited to, economic costs in light of increasing liability costs and subsequent Medicare payment reductions. In addition, the Subcommittee wanted to determine the benefits of adopting this technology, such as paperwork reduction and the lessening of medical errors.

Summary

The hearing was comprised of two panels of witnesses. The first panel was: Mr. Jack Price, Vice President, Services, HIMSS Analytics, Milford, DE; Christopher Normile, M.D., St. Charles, MO; and Ms. Joan Magruder, Vice President, Development and Planning, BJC Healthcare, St Louis, MO. The second panel consisted of The Hon. Phil Gingrey, United States House of Representatives (R–GA).

Ms. Magruder began by describing what BJC is doing to help local healthcare facilities adopt EMR technology. She discussed the importance of a holistic approach to the adoption of this technology throughout the health care community, not only as a matter of aggregate cost savings but also to insure better health care for the consumer.

Dr. Normile discussed his experiences in adopting EMR and the implications for his small two doctor practice. He discussed some of the hidden costs of adopting EMR technology, predominantly in the additional time necessary to run his practice that is not billable because it is not covered by insurance or Medicare payments. He explained that the economic costs of adoption have been steep totaling an initial payment of $50,000 and an additional $10,000 per year.

Mr. Price discussed a survey he is conducting regarding the quality and cost of patient care. He found that only 26 percent of the facilities surveyed had an EMR system and the remaining facilities did not plan on purchasing an EMR system in the next two years. To explain why so few practices were adopting EMR technology while the benefits seemed obvious, Mr. Price stated that startup costs were high and because many physician practices do not have IT support staff, there can be tremendous fear in adopting new technology.

Representative Gingrey talked about the adoption of health information technology (HIT) as a way to offset sky rocketing healthcare costs. According to a RAND study, if HIT is implemented correctly and widely adopted, the American healthcare system could save over $162 billion annually. He then stated that in order to realize these savings the government would need to incentivize physicians to adopt HIT because of the high initial cost of adoption. Representative Gingrey concluded by urging Congress to pass HR 4641, which would provide tax credits to medical care providers to adopt HIT.

In sum, the subcommittee concluded that although the adoption of EMR could eventually result in healthcare savings for consumers, the initial adoption costs for small practices can currently be prohibitive for small healthcare practices. Because the economic benefits of adoption increase on an individual basis and society as a whole as more medical practitioners adopt EMR, there may be a role for government to play in helping practitioners adopt this technology.

For further information about this hearing, please refer to Committee report #109–47.

7.4.9 DATA PROTECTION REGULATIONS AND SMALL BUSINESS

Background

On Tuesday, May 23, 2006, the Subcommittee on Regulatory Reform and Oversight held a hearing on the regulatory burdens associated with state and federal data protection laws. As notices of data breaches pervade the media, states are quickly enacting data breach notification and data protection laws. As of May 23, 2006, 30 states had enacted various data breach notification laws to protect the interests of their constituents. While privacy and consumer groups applaud the efforts of the states, businesses are clamoring for uniformity and protection from burdensome regulation. Businesses asked Congress to preempt existing state law to create uniform standards for what is essentially a component of interstate commerce. Three major data security bills were introduced in the United States House of Representatives in the 109th Congress. As the House seeks to address the need for additional consumer data protection practices with the enactment of a singular data security law, the purpose of the hearing was to determine the effect, if any, data security regulation has on small business.

Summary

The hearing was comprised of two panels. The first panel of witnesses was comprised of: Mr. Paul Kurtz, Executive Director, Cyber Security Industry Alliance, Arlington, VA; Lisa J. Sotto, Esq., Partner, Hunton & Williams LLP, New York, NY; and Mr. Mark MacCarthy, Senior Vice President, Public Policy, Visa USA, Inc., Washington, DC. The second panel was: Mr. Tomas M. Lenard, Vice President, Research, Progress & Freedom Foundation, Washington, DC; Mr. Steve DelBianco, Vice President, Public Policy, Association for Competitive Technology, Washington, DC; and Mr. Harry Dinham, President-elect, National Association of Mortgage Brokers, McLean, VA.

Mr. Kurtz discussed the additional challenges small businesses face because of increased cyber threats. He went on to recommend ways for the government to mitigate this amplified risk. His first recommendation was the enactment of a national data security bill that pre-empts state law. His second recommendation was an increased role for the Small Business Administration in cyber-security matters on behalf of small businesses.

Ms. Sotto discussed the disparate nature of state notification laws, current information security laws that apply to businesses, and recommendations for a federal data breach and security law. She discussed the importance of enacting a federal law that preempts existing state law.

Mr. MacCarthy discussed Visa's role in creating a more secure cyber environment through its participation in the payment card industry security standard. He explained Visa's zero liability policy and the many fraud protection procedures that Visa provides for its customers. He advocates a national data security standard that is risk based and that allows sufficient flexibility for the needs of small businesses.

Dr. Lenard discussed the need to evaluate data security and data breach notification laws, like any other regulatory program, by weighing their intended benefits against their projected costs. He also said that in any form of breach notification regulation, the costs are likely to outweigh the benefits for consumers. He advocated a targeted approach to the notification requirement.

Mr. DelBianco focused his testimony on the detrimental affects of regulation on small businesses. He stressed that new regulations should be flexible but at the same time provide best practice standards for small business.

Mr. Dinham stated that identity theft is one of the fastest growing crimes in America and efforts to protect against this threat are necessary and commendable. He articulated the need for a national standard to protect interstate commerce. Mr. Dinham then focused on the credit freeze provision found in many state laws. He said that this was particularly onerous for mortgage brokers because it inhibits the access of consumers' credit reports in time sensitive transactions.

In sum, the subcommittee concluded that data security legislation should be carefully crafted to minimize any adverse affects of the implementation by small businesses of new data security standards. Small businesses could be forced to cope with significant and increased costs that would be incurred to comply with proposed data security legislation. Imposition of these additional costs will place small businesses in a competitive disadvantage because their per unit cost of compliance will be greater than those for large business.

For further information about this hearing, please refer to Committee publication #109–53.

7.4.10 S CORPORATIONS—THEIR HISTORY AND CHALLENGES

Background

On Tuesday, June 27, 2006, the Subcommittee on Regulatory Reform and Oversight held a hearing to review the history of subchapter S corporations, their impact on the American economy, and the challenges they face in the 21st Century.

The S corporation allows for limited liability and a single layer of taxation for small closely held businesses. Today, S corporations are the most popular corporate entity. The IRS estimates that there were 3.2 million S corporation owners in the United States in 2003. But while the S corporation community has grown and matured, the rules governing S corporations have remained largely the same. The number of shareholders is still limited, an S Corporation may have only a single class of stock, and the rules still limit who or what may own shares in an S corporation.

Summary

The hearing consisted of one panel comprised of the following four witnesses: The Honorable Thomas M. Sullivan, Chief Counsel for Advocacy, United States Small Business Administration, Washington, DC; Donald C. Alexander, Esq. Partner, Akin, Gump, Strauss, Howard, & Feld, Washington, DC; James Redpath, CPA, Partner, HLB Tautges Redpath, Ltd., White Bear Lake, MN; and

Gregory Porcaro, CPA, American Institute of Certified Public Accountants, Warwick, RI.

Mr. Sullivan described the important role small business plays in the U.S. economy. Mr. Sullivan then said that S corporations are the cornerstone of the small business economy. The SBA Office of Advocacy supports legislation that will enhance the growth of S corporations. Mr. Sullivan is concerned about the close scrutiny of S corporations by the IRS that many small businesses claim is unfair. He stated that the IRS audits faced by S corporations can be incredibly burdensome and should only be done with great care.

Mr. Alexander discussed the history of the subchapter S corporation and the reasoning behind their creation in 1958. He said that most of the changes to the S corporation have been positive, but a more recent focus to simplify the S corporation would entail the creation of a more ridged structure. Mr. Alexander said that S corporations are now competing against other more favorable entities like the Limited Liability Corporation (LLC). Newer entities like the LLC do not have many of the restrictions that limit the S corporation.

Mr. Redpath expounded upon the outdated rules governing S corporations that are in great need to be updated. He discussed his experience in creating business entities and described how very few newly created business entities are S corporations. Mr. Redpath affirmed his support for H.R. 4421 and H.R. 2239, two S corporation reform bills that were authored by Representatives Clay Shaw (R–FL) and Jim Ramstad (R–MN) respectively, stating that they would help to put S corporations on a more even footing compared to other types of entities favored by small businesses.

Mr. Porcoro described the importance of modernizing the rules that govern the S corporate structure. He made specific recommendations regarding needed statutory changes for subchapter S. Mr. Porcoro also expounded on the threats that are facing S corporations that were proposed by the Joint Committee on Taxation.

In sum, the Subcommittee concluded that S corporations play a vital role in the growth and development of small business. Any adverse change in the rules governing the subchapter S corporation ultimately equates to an adverse effect on small business.

For further information about this hearing, please refer to Committee publication #109–57.

7.4.11 AN UPDATE ON ADMINISTRATION ACTION TO REDUCE UNNECESSARY REGULATORY BURDENS ON AMERICA'S SMALL MANUFACTURERS

Background

On July 13, 2006 the Subcommittee on Regulatory Reform and Oversight held a hearing on the Administration's promise to reduce regulatory burdens on America's manufacturers. This promise was made in 2004 when the Office of Management and Budget (OMB) asked for public nominations of regulatory reforms with particular emphasis on easing regulatory burden for small and medium enterprises in the manufacturing sector. Industry answered by delivering 189 nominations to the federal government for the reduction of unnecessary regulation through rulemaking. Ultimately, 76 nominations were selected to reform unnecessary regulatory burden. On April 28, 2005, this Subcommittee held its first hearing on this subject. Nearly 15 months had passed since the initial hearing and the Subcommittee sought an update regarding the progress the Administration has made in implementing the 76 regulatory reform nominations.

Summary

The hearing consisted of one panel comprised of the following five witnesses: The Hon. Veronica Vargas Stidvent, Assistant Secretary for Policy, United States Department of Labor, Washington, DC; Mr. Steve Aitken, Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC; Mr. Richard D. Otis, Jr., Deputy Associate Administrator, Policy, Economics, and Innovation, United States Environmental Protection Agency, Washington, DC; Mr. Lawrence A. Fineran, Vice President Legal and Regulatory Reform Policy, National Association of Manufacturers, Washington, DC; and Mr. William Kovacs, Vice President, Environment, Technology, and Regulatory Affairs, United States Chamber of Commerce, Washington, DC.

Mr. Aitken outlined the role the Office of Information and Regulatory Affairs (OIRA) plays in the regulatory reform process. He went on to say that the most recent information available states that 36 of the 76 nominations selected for reform have been completed. Mr. Aitken ended by saying that OIRA remains dedicated to seeing this process to a successful conclusion by the end of 2008.

Mr. Otis stated that the Environmental Protection Agency (EPA) has made significant strides by completing more than half of their nominations for reform. He discussed the EPA's internal management and tracking system of the reform nominations and the EPA's commitment to completing their 42 nominations selected for reform.

Mr. Fineran discussed the National Association of Manufacturers' (NAM) initial hope in seeing a time table and action plan for the 2005 manufacturing nominations selected for reform. He stated that NAM entered this process with some skepticism based upon OIRA's track record surrounding the nominations solicited in 2002. But while NAM had hoped for accountability in the 2005 nominations they have been sorely disappointed with an opaque process.

Ms. Stidvent discussed the Department of Labor's progress in reforming the 11 nominations assigned to them from OMB. She stated that the Department had fulfilled most of its obligations, most of the time by filing a report or doing a study.

Mr. Kovacs discussed the importance of the regulatory laws Congress has passed and the efforts of the federal government in complying with those laws. He went on to say that there were major problems with the processes the federal government uses, principally a lack of transparency and accountability.

In sum, the Subcommittee concluded that many of the nominations to reduce the regulatory burden on manufacturers have not been completed. The Office of Management and Budget must do more to insure transparency and do a better job of keeping the regulatory agencies accountable for agreed upon regulatory reform.

For further information about this hearing, please refer to Committee report #109–60.

7.5 Summaries of Hearings Held by the Subcommittee on Tax, Finance and Exports

7.5.1 The Estate Tax and the Alternative Minimum Tax-Inequity for America's Small Businesses

Background

On Thursday, April 14, 2005, the Subcommittee on Tax, Finance, and Exports held a hearing on the subject of the estate tax and the Alternative Minimum Tax (AMT). The federal estate or "death" tax affects all Americans, especially small-business owners, who have consistently identified permanent repeal of the estate tax as one of their most pressing concerns. Working with President Bush in 2001, Congress enacted bipartisan legislation to provide immediate relief through rate reduction and an expanded exemption, with complete repeal occurring in 2010. Unfortunately, the bill's provisions expire in 2011, requiring Congress to pass additional legislation to make death tax elimination permanent.

Similarly, the AMT is a complex provision in the tax code that requires taxpayers to calculate their taxes twice, and then pay the larger amount. Initially a method to ensure the wealthiest Americans paid their "fair" share of taxes, the combined effects of inflation and individual rate cuts has resulted in the AMT reaching into the checking and savings accounts of many middle-income taxpayers. The AMT also unfairly penalizes businesses that invest heavily in capital assets by significantly increasing the cost of capital and discourages investment in productivity-enhancing assets by negating many of the capital formation incentives provided under the "regular" tax system.

Summary

The hearing was comprised of one panel: Mr. Jeff Vukelic, Executive Vice President, Try-It Distributing, Lancaster, NY; Mr. Thomas C. Pitrone, Principal, Integrity Group, Willoughby, OH; Paula Calimafde, Esq., Principal, Paley Rothman, Bethesda, MD; Ms. Jenell Ross, Dealer/Principal, Ross Motor Cars, Centerville, OH; Mr. Paul Zittel, VP, Linholm Dairy, LLC, Eden, NY; and Mr. William W. Beach, Director, Center for Data Analysis, Heritage Foundation, Washington, DC.

Mr. Vukelic began the testimony by stating that because of uncertainty in the tax code, particularly within the estate tax statue, small businesses are forced to pay estate planners, lawyers, and accountants to navigate them through the uncertainties of the current tax structure. Permanent repeal of the estate tax would free up that time, money and energy. Both he and the National Beer Wholesalers Association supports full estate tax repeal.

Mr. Pitrone, and estate tax practitioner, stated that for the vast majority of small businesses, the estate tax is a tax on capital. For the majority of small business owners, their major asset is their business, and it is hard to get cash out of a company. The estate tax often forces dependents to sell a portion or all of the business just to pay the tax bill.

Ms. Calimafde was opposed to permanent repeal. Instead, she favored an increase in the exemption level to $3.5 million next year instead of 2009, as is the current law.

Ms. Ross and her family became the principal owner of Ross Motor Cars following her father's death. Shortly thereafter, she was sent a tax bill for more than half the total value of the business. The shock of the bill was compounded by the fact that nearly 90 of the dealership's net worth was tied up in land, building, equipment, inventory and parts—assets that could not be easily liquidated without seriously damaging their ability to function. Both she and the AIADA support full repeal of the estate tax.

Mr. Zittel testified that both he and the American Farm Bureau favor total repeal because roughly twice the number of farmers paid the federal estate tax in the late 1990's compared to other estates. Moreover, the average estate tax is also larger than the tax paid by most other estates, and because farms are capital-intensive businesses their assets cannot be easily converted to cash.

Mr. Beach concentrated his testimony on the AMT, whose filers generally pay higher taxes than regular income tax filers. Another problem the AMT causes is that it is not indexed to inflation, unlike the regular tax brackets. This essentially raises the taxes each year on taxpayers who must pay the tax just from the effects of inflation. Yet another problem encountered by AMT filers is that tax payments to state and local governments are not deducted. Currently, 1.9 million Americans pay the AMT. If nothing is done to fix this problem, up to 6.4 million Americans will pay the AMT next year.

In summary, the Subcommittee concluded that the vast majority of small business owners are in favor of permanent repeal of the estate tax and of significant reform to the AMT in order to bring certainty and fairness to the tax code.

For further information about this hearing, please refer to Committee publication #109–11.

7.5.2 DOES CHINA ENACT BARRIERS TO FREE TRADE?

Background

On Thursday, May 26, 2005, the Subcommittee on Rural Enterprises, Agriculture and Technology and the Subcommittee on Tax, Finance, and Exports held a joint oversight hearing on Chinese trade practices. Over the past two decades China has emerged as a strong international competitor in a wide range of products and has proven to be a critical market for U.S exports. China's emergence as a leading world economy has provided significant new opportunities for American exporters and U.S. exports to China have risen sharply in recent years.

Unfortunately, there has been a downside to the unprecedented growth in China's economy as well. The deficit for trade in goods with China stands was $176 billion in 2004. Having increased rapidly in recent years, it now is the single largest bilateral deficit America has with any nation in the world. The purpose of this hearing was to examine whether or not China is playing fair with international trade laws and what remedies, if any, could be proffered to alleviate the trade deficit.

Summary

The hearing consisted of two panels. The first panel was: Stephen Pinkos, Esq., Deputy Undersecretary for Intellectual Property and Deputy Director, United States Patent and Trademark Office, United States Department of Commerce, Alexandria, VA. The second panel was comprised of: Mr. Tom Goodpasture, President, Pride Manufacturing Co., Inc., Liberty, MO; Mr. Bruce Iglauer, President/CEO, Alligator Records, Chicago, IL; Mr. Al Lubrano, President, Technical Materials, Inc., Lincoln, RI; Mr. Dave Blackburn, President/CEO, Thomas G. Faria Corp., Uncasville, CT; and Mr. Thomas Stallings, owner of Funston Gin Co., Funston, GA.

Mr. Pinkos' testimony focused on intellectual property (IP) protection. Mr. Pinkos began by stating that all U.S. companies, large and small, have a difficult time protecting their IP overseas, particularly in China. He stated that while the both the U.S. and China both have strong laws on IP protection, China does not enforce them as rigidly as we do in the United States. Some progress has been made in recent years, but China must do better to comply with trade agreements and with World Trade Organization (WTO) obligations.

Mr. Goodpasture stated that in addition to sever IP protection concerns with China, his company faces an automatic 35 percent cost differential versus Chinese firms due to the lack of enforcement of labor, environmental and safety laws. Mr. Goodpasture hypothesized that if the Chinese currency was correctly valued, China would no longer be a competitive in the world market of manufacturing.

Mr. Iglauer recounted his problems with piracy of copyrighted materials; namely, music. In rough terms, he estimates that Alligator Records has lost 35 percent of its sales because of global physical piracy, Internet piracy, and illegal CD burning. Mr. Iglauer requested that the U.S. government to press China harder to strengthen their anti-piracy enforcement regimes.

Mr. Lubrano testified that many of his peers, customers, and supply chain companies have adopted one of two policies: either buy solely from Chinese manufacturers because of the lower cost, or pick up and shift their own production to China. Some of his customers have told him that they will only pay the "Chinese price," which puts unreachable demands on his company and his American suppliers. Mr. Lubrano stated that the U.S. government must continue to work with China to end the manipulation of their currency.

To show the extent of Chinese piracy, Mr. Blackburn displayed photos of his product, and the Chinese counterfeit—they appeared identical. Mr. Blackburn stated that the visual quality of Chinese counterfeits are so good that even he had trouble telling them apart from the real thing. However, when the item was tested, it was grossly inaccurate. Mr. Blackburn stressed not only the economic impact of this theft, but also the public safety aspect. His company is the sole supplier of every instrument panel installed in

100 percent of the combat ready Humvees now serving in Iraq and around the world.

Although he touched less on IP protection, Mr. Stallings echoed much of what had previously been said. As a cotton grower, he is excited to see exports of cotton to China almost double. At the same time, however, he is concerned that the U.S. cotton growers' largest customers, U.S. textile manufacturers, are facing an uphill battle when trying to compete with Chinese imports of finished textile goods. He emphasized the cotton industries concerns over the Chinese government's use of tax rebates for exports, widespread use of subsidized or forgiven loans, and the continued existence of the undervalued Chinese currency as significant problems that must be addressed in order to ensure free and fair trade exists between our two nations.

In summary, the subcommittees concluded that the U.S. government must continue to put pressure on China to let its' currency float, stop direct and indirect subsidization on its businesses, and enforce labor, safety, and environmental laws in accordance with WTO standards. Progress has been made in recent years, however, much still needs to be done in order to ensure free and fair trade between the U.S. and China. For further information about this hearing, please refer to Committee publication #109–18.

7.5.3 EXAMINING THE PRESIDENT'S TAX REFORM PANEL RECOMMENDATIONS

Background

On Wednesday, February 1, 2006, the Subcommittee on Tax, Finance and Exports and the Subcommittee on Rural Enterprises, Agriculture and Technology held a joint hearing to examine the President's Tax Reform Panel Recommendations. On January 7, 2005, President George W. Bush established the Tax Advisory Panel on Federal Tax Reform (the Panel) via Executive Order. The Panel published its report on November 1, 2005.

In general, the Panel offered two alternatives to the present tax code: (1) streamline the current income tax and (2) replace the tax code with a progressive tax on consumption. Both plans would require Congress to institute broad and sweeping statutory changes to current federal tax law. The purpose of the hearing was to discuss the recommendations of the Panel with a particular emphasis on small business concerns.

Summary

The hearing was comprised of two panels of witnesses. The first panel consisted of: The Hon. John Breaux, United States Senate (Ret.), Vice-Chairman, President's Advisory Panel on Federal Tax Reform, Washington, DC; The Hon. Michael Castle, United States House of Representatives (R–DE); and The Hon. Scott Garrett, United States House of Representatives (R–NJ). The second panel consisted of Mr. Todd McCracken, President, National Small Business Association, Washington, DC; Daniel Mitchell, Ph.D., McKenna Senior Fellow in Political Economy, The Heritage Foundation, Washington, DC; Mr. David Burton, Americans for Fair Taxation, Lorton, VA; Mr. Jim Hausman, Hausman Metal Works and Roofing, Inc., St. Joseph, MO; Mr. Andy Loftis, Owner, Keller-Williams Realty, Athens, GA; and Leonard Burman, Ph.D., Senior Fellow, Urban Institute, Washington, DC.

Senator Breaux described the challenges put before the Advisory Panel in attempting to formulate recommendations for simplifying the tax code. He further noted the general unanimity on the issue of tax reform among all taxpayers and politicians.

Representative Castle remarked on the tremendous cost, especially to small businesses, of tax code compliance, indicating that for every $7 of federal income taxes, $1 is spent on complying with the tax system.

Representative Garrett expressed his dismay that there were not more sweeping changes to the tax code proposed in the Panel's recommendations. He specifically noted that ideas such as the Fair Tax and the Flat Tax are concepts which should be considered before this Congress.

Mr. McCracken supported some of the Panel's recommendations but advocated more sweeping reform—a national sales tax.

Dr. Mitchell suggested that tax policy be based on some form of low single-rate consumption tax.

Mr. Burton furthered the proposition of a national sales tax in the guise of the FairTax legislation, deeming it as extraordinarily pro-growth.

Mr. Hausman spoke of his personal experience and grievances with the estate or "death" tax, arguing that it is a major detriment to small business and family farms continuing into the second generation.

Mr. Loftis submitted that if one of the Panel's recommendations dealing with limiting the home mortgage deduction were enacted, it would be disastrous to the real estate industry.

Dr. Burman supported the Panel's rejection of a national sales tax, or FairTax, pointing out that such a tax system would, among other things, undermine state tax systems.

In conclusion, the Subcommittees recognized the contributions and the significance of the recommendations of the President's Advisory Panel on Federal Tax Reform, noting there is much to be done to help simplify the current tax code for small businesses.

For further information about this hearing, refer to Committee publication #109–38.

7.5.4 SMALL BUSINESS ADMINISTRATION FINANCE PROGRAMS

Background

On Thursday, March 9, 2006 the Subcommittee on Tax, Finance and Exports held an oversight hearing on the Small Business Administration's (SBA) finance programs in preparation for reauthorization.

The hearing focused on the various changes made to the programs over the past two years. Additionally, because the SBA needed to be reauthorized before fiscal year 2007 begins, the hearing presented an opportunity for witnesses to provide any legislative suggestions to be included in the SBA reauthorization legislation. Furthermore, comments on President Bush's Fiscal Year 2007 budget request were discussed.

Summary

The hearing was comprised of six witnesses on one panel: Mr. Michael Hager, Associate Deputy Administrator for Capital Access, United States Small Business Administration, Washington, DC; Mr. Lee Mercer, President, National Association of Small Business Investment Companies, Washington, DC; Mr. Anthony Wilkinson, President/CEO, National Association of Government Guaranteed Lenders, Stillwater, OK; Mr. Kurt Chilcott, Chairman of the Board, National Association of Development Companies, McLean, VA; Mrs. Lynn Schubert, President, Surety Association of America, Washington, DC; and Ms. Grace Y. Mayo, President/CEO, Telesis Community Credit Union, Northridge, CA.

Mr. Hager described the continued growth in the SBA loan programs over the last two years, all accomplished at zero additional cost to subsidy rates to taxpayers. Mr. Mercer spoke of his dissatisfaction with the Administration's desire to eliminate the Participating Security component of the Small Business Investment Companies (SBIC) program. Mr. Wilkinson detailed a proposal to increase the maximum 7(a) loan size from $2 million up to $3 million and an increase in the maximum guaranty amount up to $2.25 million. Mr. Chilcott expressed concern over the authorization ceiling of the SBA budget for the 2007 fiscal year set at $7.5 billion. Mrs. Schubert sought to raise awareness of the SBA's surety bond program and spoke of its critical importance to small businesses. Ms. Mayo conveyed the support of credit unions to reduce fees for the 7(a) lending program.

In sum, the Subcommittee acknowledged the growth in the SBA's finance programs and took into consideration the recommendations of those industry representatives during the development of the Committee's SBA reauthorization proposal.

For further information about this hearing, refer to Committee publication #109–41.

7.5.5 THE EFFECTS OF THE HIGH COST OF NATURAL GAS ON SMALL BUSINESS AND FUTURE ENERGY TECHNOLOGIES

Background

On Wednesday, June 28, 2006, the Subcommittee on Tax, Finance and Exports held a hearing to examine the effects of the high cost of natural gas on small businesses and other future energy technologies. The hearing focused not only on the high cost of natural gas to small businesses and manufacturers but also illustrated the importance of natural gas to the research and development of alternative fuels, such as hydrogen fuel cells, which store hydrogen chemically separated from its existing forms using natural gas.

Summary

The hearing was comprised of two panels. Panel one consisted of: Mr. James Kendell, Director, Natural Gas Division, Energy Information Administration, United States Department of Energy, Washington, DC; Mr. Walter Cruickshank, Deputy Director, Minerals Management Service, United States Department of the Interior, Washington, DC; and Mr. Thomas Lonnie, Assistant Director, Minerals Management Service, United States Department of the Interior, Washington, DC. Panel two consisted of Mr. Richard Goodstein, Washington Representative, Air Products and Chemicals, Inc., Allentown, PA; Mr. Jeff Uhlenburg, President, Donovan Heat Treating Company, Philadelphia, PA; Mr. Paul Wilkinson, Vice-President, Policy Analysis, American Gas Association, Washington, DC; and Mr. Lowell Ungar, Senior Analyst, Alliance to Save Energy, Washington, DC.

Mr. Kendell discussed the major forces affecting current high natural gas prices and the outlook for 2007. Mr. Cruickshank spoke of off-shore production of natural gas and its expected continued growth in the Outer Continental Shelf. Mr. Lonnie testified about domestic production of natural gas on-shore and its increase over the past three years, focusing on expectations of increased demand through 2007.

Mr. Goodstein detailed the promise of hydrogen as a fuel of the future, the importance of natural gas in pursuit of a hydrogen economy, and the challenges posed by high and volatile prices for natural gas. Mr. Uhlenburg shared his personal experiences as an owner of a small manufacturing company and the effects of the high cost of natural gas on his business. Mr. Wilkinson urged the ending of the absolute moratorium on off-shore drilling for natural gas as a solution to natural gas price volatility. Mr. Ungar advocated energy conservation and efficiency as the quickest, cheapest, and cleanest way to help small businesses manage natural gas prices.

In sum, the Subcommittee concluded that more needed to be done to keep down the rising cost of natural gas by increasing production and conservation.

For further information about this hearing, refer to Committee publication #109–59.

7.5.6 CHINESE BARRIERS TO TRADE

Background

On Thursday, July 20, 2006, the Subcommittees on Rural Enterprises, Agriculture and Technology Subcommittee and Tax, Finance and Exports held a joint hearing on Chinese barriers to trade. The hearing discussed the affect of unfair trade practices by China, specifically currency manipulation and theft of intellectual property rights, has on small businesses in the United States.

Summary

There was one panel that consisted of: Mr. Tom Goodpasture, President, Pride Manufacturing Co., Inc, Liberty, MO; Mr. George E. Russell, Corporate Legal Administrator, Auto Meter Products, Inc., Sycamore, IL; Mr. Brian Duggan, Director of Trade and Commercial Policy, Motor & Equipment Manufacturers Association, Washington, DC; Tom Duesterberg, Ph.D., President/CEO, Manufacturers Alliance/MAPI, Washington, DC; and Mr. James W. "Will" Coley, Savannah Warehouse Services, Garden City, GA.

Mr. Goodpasture believes that the United States must find a way to make its relationship with China as non-adversarial as possible in order to not miss out on significant export opportunities. He stated that he believes China competes unfairly through currency manipulation and other strategies, but that China also offers tremendous market potential.

Mr. Russell explained the problems his company faces in term of intellectual property theft from Taiwan and China. Auto Meter's products are used in automotive racing as well as in certain marine and other high performance applications. Auto Meter has spent well over a million dollars protecting itself against imports that infringe upon Auto Meter's trademark through the federal courts, Executive Branch agencies, and trade associations. Yet these products continue to enter the U.S. market, and every year Auto Meter loses tens of thousands of dollars in sales to these illegal products.

Mr. Duggan explained the dangers posed by trafficking of counterfeit auto parts. He further stated that the damage done is disproportionately serious for small businesses because they can least afford the lost sales on a limited number of brands and product lines and have fewer if any resources to protect their trademarks and patents, especially in China.

Dr. Duesterberg projected China will soon overtake the United States as the leading exporting nation for manufacturers, both low-value as well as high-tech products. He went on to detail the many reasons for this phenomenon, including an undervalued Chinese currency.

Mr. Coley, representing the National Cotton Council, discussed his concerns with specific unfair Chinese trade practices in cotton. The primary objection has been China's allocation of a significant portion of the cotton Tariff Rate Quota (TRQ) to the "processing trade." By allocating cotton quotas to the processing trade, China requires apparel made from U.S. cotton be re-exported. Thus, the processing trade category by China is not true market access as required by the terms of the United States-China World Trade Organization (WTO) accession agreement.

In sum, the Subcommittees concluded that there are still a wide ranging set of Chinese trade barriers, which disproportionately impacts American small businesses, and encourages our government officials to press China for reform.

For more information, refer to Committee publication #109–61.

7.6 SUMMARIES OF THE HEARINGS HELD BY THE SUBCOMMITTEE ON RURAL ENTERPRISES, AGRICULTURE AND TECHNOLOGY

7.6.1 THE HIGH PRICE OF NATURAL GAS AND ITS IMPACT ON SMALL BUSINESSES: ISSUES AND SHORT TERM SOLUTIONS

Background

On March 17, 2005, the Rural Enterprises, Agriculture, and Technology Subcommittee held a hearing on the high price of natural gas. The purpose of this hearing was to discuss the affect of rising natural gas prices on the 60 million homes, farms, businesses, and industries that are dependent on energy source. While supplies are abundant, America's access and distribution has been limited, causing prices to be two to three times above historic averages. Shortages began in mid-2000 and, by some estimates, prices have increased over 80 percent.

In addition, natural gas accounts for more than 37 percent of industrial energy consumption. The federal government encouraged many industries to turn to natural gas to comply with clean air laws and pitched the energy as an inexpensive source of power, but now they are being squeezed by high costs. The manufacturing sector has been hard hit by the recession and, while it is slowly turning around, soaring energy prices threaten its recovery. High natural gas prices have even increased the cost of producing fertilizers, which is passed along to the farmer who relies on it for their crops.

Summary

The first panel consisted of: The Hon. Lee Terry (R–NE). The second panel was comprised of seven witnesses: Mr. Charles Kruse, President, Missouri Farm Bureau Federation, Jefferson City, MO; Mr. Terry Hilgedick, Chairman, Missouri Corn Merchandising Council, Jefferson City, MO; Mr. J. Billy Pirkle, Managing Director, Environmental Health and Safety, Royster-Clark, Inc., Norfolk, VA; Thomas J. Duesterberg, Ph.D., President/CEO, Manufacturers Alliance/MAPI, Washington, DC; Mr. Paul Cicio, Executive Director, Industrial Energy Consumers of America, Washington, DC; Mr. Peter Jones, President, Wexco Corp., Lynchburg, VA; and Mr. Ben Boyd, a farmer from Sylvania, GA.

Representative Terry testified as to the benefits to small business owners in their need of natural gas and the increased usage of Liquefied Natural Gas (LNG). He and Representative Gene Green introduced legislation called the LNG Act (H.R. 359), which would eliminate state and federal conflicts by explicitly giving the Federal Energy Regulatory Commission jurisdiction over the location, construction, expansion and operation of onshore LNG import terminals.

Mssrs. Kruse, Pirkle, and Hilgedick focused the Subcommittee's attention as to the causes of the rising cost of natural gas and its affect on farmers. The American Farm Bureau estimated that increased energy input prices during the 2003 and 2004 growing seasons cost U.S. agriculture over $6 billion in added expenses. Natural gas is especially important to agriculture because it is used to produce nitrogen fertilizers and farm chemicals as well as electricity for lighting, heating, irrigation, and grain drying.

Dr. Duesterberg expressed support for building more LNG terminals to increase gas reserves domestically. While extending the Alaskan pipeline should be the goal to maximize natural resources, it is a longer-term solution. Manufacturers need effective short-term policy changes now so they will not continue to be hampered with rising natural gas prices while trying to fulfill increasing demand.

Mr. Cicio stated that the United States is the only country not fully utilizing its supply of natural gas. One solution to rising natural gas prices is to increase U.S. supply, coupled with improved demand policies. One specific recommendation he had is for Congress to treat the energy and natural gas crisis with the same priority given to the agricultural market in limiting futures prices to reduce volatility.

Mr. Jones pointed out the contradiction between the government's encouragement of the use of natural gas as the cleaner fuel alternative and at the same time, restricting access to domestic resources of natural gas. While the use of natural gas is a cleaner-fuel alternative, the depleting supply of natural gas will be a major factor in the manufacturing industry's ability to comply with environmental regulations.

The last witness put a human face behind the statements and statistics cited by the previous witnesses. Mr. Boyd, a farmer from Georgia, calculated that because of higher natural gas prices, the price of his nitrogen fertilizer rose extra $54,000 last year alone. Mr. Boyd testified to the crucial need for nitrogen fertilizer for small and large production farmers alike, and how increasing costs for natural gas are driving some small farmers off their farms.

In summary, the Subcommittee concluded that the high price of natural gas would impose an unsustainable burden on America's farmers and manufacturers unless policies were enacted to increase supply and conservation. For further information, please refer to Committee publication #109–6.

7.6.2 DOES CHINA ENACT BARRIERS TO FREE TRADE?

Please refer to the hearing summary set forth in part 7.5.2, supra.

For further information on this hearing, refer to Committee publication 109–18.

7.6.3 DIFFERENT APPLICATIONS FOR GENETICALLY MODIFIED CROPS

Background

On Wednesday, June 29, 2005, the Rural Enterprises, Agriculture and Technology Subcommittee held a hearing on genetically modified crops (GMOs). Farmers have always modified plants and animals to improve growth rates and yields, create varieties resistant to pests and diseases, and infuse special nutritional or handling characteristics. Now, using DNA techniques, scientists can genetically modify plants by selecting individual desirable traits. Currently, thirteen different plants are approved for commercial use in the United States and at least 60 percent of all U.S. foods contain some genetically engineered material.The growth of biotech has become pervasive within this country for several crops. In 2004, 85 percent of the soybean acres were planted with biotech seeds, followed by 75 percent of cotton and half of all corn. The United States leads all other countries in the development of biotech crops with 59 percent of the global acreage. The use of genetically modified crops continues to grow and their different applications are growing fasters. This hearing explored the expanding GMO industry and all of its benefits.

Summary

The hearing was comprised of one panel of five witnesses: Ms. Dawn W. Parks, Manager, Public, Industry and Government Affairs, ArborGen, Public, Industry, and Government Affairs Manager of Arborgen, Summerville, SC; Mr. Delan Perry, President, Hawaii Papaya Industry Association, Hilo, HI; Mr. Scott Deeter, President/CEO, Ventria Bioscience, Sacramento, CA; Mr. Samuel Huttenbauer, CEO, Agragen, Cincinnati, OH; and Mr. Thomas H. Dollar, II, President, Decatur Gin Co. and Dollar Farm Products, Bainbridge, GA.

Ms. Parks explained that ArborGen uses breeding techniques, including biotechnology, to improve the sustainability of forestry. As the worldwide population increases, so does the demand for wood and paper products. Rather than expanding the forested acreage under management to meet the wood and paper requirements in the future, ArborGen develops faster-growing trees that will improve the productivity of plantations. ArborGen also develops trees with modified lignin. Lignin is a component of wood fibers that is removed during the pulping process to obtain the cellulose needed to make quality paper.

Mr. Perrytold the "Papaya Story." In 1992, a virus decimated Hawaii's papaya industry and the livelihood of those who farm that fruit. For decades, papayas have been grown in Hawaii. Papayas, in contrast with pineapples, are primarily grown on hundreds of family farms. There is no doubt that the transgenic papaya saved the papaya industry in Hawaii and now constitutes about 60 percent of all papayas grown in Hawaii. Currently, the transgenic papaya can be marketed to Canada and the mainland U.S.A. However, it cannot be marketed to Japan, which is a major market for the Hawaiian papaya.

Mr. Deeter explained that his company is a plant-based pharmaceutical company that utilizes rice and barley as a "factory" to make biological products. One product has been developed for children suffering from acute diarrhea. The World Health Organization (WHO) estimates that 1.9 million children under the age of five die annually because of diarrhea. To address this crisis, Ventria added Lactiva and Lysomin to an oral rehydration solution, which is a common first line therapy given to children suffering from diarrhea. Ventria is also exploring the use of Lactiva and Lysomin for the prevention of diarrhea in the military. During Operation Iraqi Freedom, 70 percent of deployed troops suffered a diarrhea attack and 43 percent reported decreased job performance as a result of this attack.

Mr. Huttenbauer explained that Agragen is a biotech company working on the development of plant made pharmaceuticals (PMPs). Agragen was started three years ago with the express purpose of manufacturing pharmaceuticals utilizing the natural protein manufacturing capability of plants. The overall thrust of this technology is to insert genes into the plant to permit it to make and store the protein of interest in the seed, where it can be stored indefinitely until it is purified. Plant-made pharmaceuticals (PMPs) are the result of a breakthrough application of biotechnology to plants to enable them to produce therapeutic proteins that will be used by the medical community to combat life-threatening illnesses. In this process, plants themselves become "factories" that manufacture therapeutic proteins.

Mr. Dollar spoke of how he now grows genetically modified cotton with the Roundup Ready and Bt genes. Roundup Ready cotton has been genetically enhanced to provide herbicide tolerance that allows Roundup herbicide to be applied directly over the top of the crop in the field. Only the weeds are killed while the cotton plants live. Because of this technology, Roundup has replaced the multiple herbicides that were previously used. The result is four to six total applications of pesticide on any given field, versus the 20 to 25 applications required on other cotton. Farming with genetically modified crops has significant cost reductions.

In summary, the Subcommittee concluded that GMOs offers promising benefits not just to small businesses but also for human health and safety.

For more information about this hearing, please refer to Committee publication #109–24.

7.6.4 THE IMPORTANCE OF THE BIOTECHNOLOGY INDUSTRY AND VENTURE CAPITAL SUPPORT IN INNOVATION

Background

On Wednesday, July 27, 2005, the Rural Enterprises, Agriculture and Technology Subcommittee held a hearing on the importance of the biotechnology industry and venture capital (VC) support in innovation. The Small Business Administration (SBA) helps struggling small high-technology firms through the Small Business Innovation Research (SBIR) program, which allocates 2.5 percent of all federal research and development grants from 12 federal agencies to qualified small business applicants. The SBIR program allows for cutting-edge research that may not, in its earliest stages, attract funding from other sources. SBA eligibility regulations require that a small company must be at least 51 percent owned by one or more individuals. The SBA recently clarified the definition of "individuals" to include only actual human beings, and excludes other forms of investment such as VC. This hearing examined this new SBA clarification and legislation that was written to attempt to address this issue (H.R. 2943, the Save America's Biotechnology Innovation Research Act (SABIR), authored by the Hon. Sam Graves (R–MO) who also is the Chairman of the Subcommittee on Rural Enterprises, Agriculture and Technology.

Summary

The hearing consisted of one panel: Mr. Barry Michael, President, B.A. Michael Consulting, Clifton, VA; Mr. Douglas A. Doerfler, President/CEO, MaxCyte, Inc., Gaithersburg, Maryland; Jere W. Glover, Esq., Executive Director, Small Business Technology Council, Washington, DC; Mr. Daniel J. Broderick, Managing Director, Mason Wells, Milwaukee, WI; and Mr. Anthony P. Cruz, Senior Vice President, Finance & Administration, AviGenics, Inc., Athens, GA.

Mr. Michael testified that from his personal experience, he was against expanding the SBIR program to include VC companies. He believed that allowing VC firms to invest in SBIR companies would divert needed money from truly needy companies.

Douglas A. Doerfler spoke against a recent interpretation by the SBA regarding the eligibility requirements for the SBIR program that he claims has prevented the majority of BIO members from participating in the program. He believed that both SBIR and VC funding is necessary to support the lengthy and costly clinical development process for biotech products.

Mr. Glover testified against H.R. 2943 because it would bring about a fundamental shift, in his view, of the SBIR program to potentially have large VC firms benefit from the SBIR program.

Mr. Broderick testified on behalf of the National Venture Capital Association in support of HR 2943. He explained the role of VC firms in biotech companies. He stated that VC investors do not participate in setting the strategic direction of the biotech firm, and they take no role in making day-to-day decisions.

Mr. Cruz testified that the SBIR program allows development of early-stage technologies that can lead to novel human drugs to fight diseases. SBIR funding combined with VC funding can lead to creation of new biotechnology clusters and high-skilled, high-pay jobs within geographic areas not traditionally associated with the pharmaceutical or biotechnology industries.

In sum, the Subcommittee concluded that the role of VC in biotech companies interested in participating in the SBIR program is complex and more work needs to be done prior to HR 2943 becoming law because this is an issue that divides the small business high-tech community.

For more information, please refer Committee publication #109–28.

7.6.5 THE NEED FOR IMPROVEMENTS AND MORE INCENTIVES IN THE ENDANGERED SPECIES ACT

Background

On Thursday, September 15, 2005, the Rural Enterprises, Agriculture and Technology Subcommittee held a hearing on the need to improve the Endangered Species Act (ESA). The purpose of this hearing was to discuss the concerns of landowners as they struggle comply with provisions of the ESA. Since its enactment in 1972, the ESA has pitted private landowners against the federal government. If an endangered or threatened species is identified on their property, the landowner could lose all rights to their privately held lands. With farmers and ranchers owning and operating nearly 80 percent of the land on which these species dwell, incentives for landowners to participate in species protection will lead to much higher recovery rates of our endangered and threatened species. The hearing focused on H.R. 3300, the Endangered Species Improvement Act, which was introduced by the Hon. Sam Graves (R–MO) who also serves as the Chairman of the Rural Enterprises, Agriculture, and Technology Subcommittee. The bill would clarify the responsibilities of both the landowner and the government and allow for compensation of landowners.

Summary

The hearing consisted of two panels. The Hon. Richard Pombo (R–CA), Chairman, Committee on Resources, United States House of Representatives testified on the first panel. The second panel was comprised of: Mr. Mike Wells, Deputy Director, Missouri Department of Natural Resources, Jefferson City, MO; Ms. Nancy Macan McNally, Executive Director, National Endangered Species

Act Reform Coalition, Washington, DC; Mr. Bob Peterson, President, Ohio Farm Bureau Federation, Columbus, OH; Mr. Laurence Wiseman, President/CEO, American Forest Foundation, Washington, DC; and John Kostyack, Esq., Senior Counsel, National Wildlife Federation, Reston, VA.

Chairman Pombo explained that he was moving a package of reform measures to add such incentive components to the current ESA. Research shows that the ESA has created perverse incentives that prompt landowners to actually destroy species habitat to rid their property of the liability that comes with endangered species. This package, entitled the Threatened and Endangered Species Recovery Act of 2005 (H.R. 3824) eventually passed the House on September 29, 2005 by a bipartisan vote of 229 to 193, with 36 Democrats in support.

Mr. Wells gave firsthand knowledge of the prescriptive mandates that the ESA can bring as it applied to the pallid sturgeon. In 2003, the Fish and Wildlife Service (FWS) mandated a summer low flow and a spring rise on the Missouri River even though scientists showed that this would produce minimal benefits for the species.

Ms. McNally testified that a new approach is needed to change the focus of the debate from a clash over existing terms and programs to the development of new tools that improve the ESA. The ESA should also encourage recovery of listed species through voluntary species conservation efforts and the active involvement of States.

Mr. Peterson testified that cooperation of private landowners is essential if the ESA is to succeed. Speaking on behalf of the American Farm Bureau, Mr. Peterson emphasized that many landowners would like to protect listed species, but the ESA, as currently written, makes that task difficult.

Mr. Wiseman testified on behalf of forest landowners who have each pledged to practice environmentally sound, sustainable and productive forestry. Families are the “majority” owners of our nation’s forests—not the federal government, not the States, nor industry. According to Mr. Wiseman, more than $4 billion in applications for conservation incentives went unfunded last year, further complicating the problem.

Finally, Mr. Kostyack testified that the ESA had been a success. The longer species enjoy the protection of the ESA, the more likely the condition of the species will stabilize or improve. While the National Wildlife Federation was supportive of adding incentives to the ESA, he offered suggestions to improve H.R. 3330.

In sum, the Subcommittee concluded that the ESA was in fundamental need of reform and that efforts of Chairman Pombo and Subcommittee Chairman Graves, through his introduction of H.R. 3300, go a long way in that direction. Many of the key concepts and principles contained in H.R. 3300 were folded into Chairman Pombo’s ESA reform bill (H.R. 3824), which passed the House on September 29, 2005.

For more information, please refer to the Committee publication #109–31.

7.6.6 EXAMINING THE PRESIDENT'S TAX REFORM PANEL RECOMMENDATIONS

Please refer to the hearing summary set forth in part 7.5.3, supra.

For further information on this hearing, refer to Committee publication #109–38.

7.6.7 THE MISSOURI RIVER AND ITS SPRING RISE: SCIENCE OR SCIENCE FICTION

Background

On Wednesday, March 15, 2006, the Rural Enterprises, Agriculture and Technology Subcommittee held a hearing to examine the effect of the mandated "spring rise" along the Missouri River and its impact on those who live along the river and on small businesses. The U.S. Fish and Wildlife Service (USFWS) mandated a "spring rise and summer draw down" in order to protect the endangered interior least tern, threatened piping plover and threatened pallid sturgeon. The USFWS has asserted that this will mimic the natural hydrology of the river and return it to its natural flow.

Farmers and others who live along the river already face the prospect of natural floods and that risk only increases with an artificial spring rise. Additionally, many dispute the science used to formulate the spring rise. The Missouri Department of Natural Resources has itself called the science behind these assertions into question and suggested less draconian methods to preserve these threatened species.

Summary

The hearing consisted of three panels. The first panel was: The Hon. James M. Talent, United States Senate (R–MO). The second panel was comprised of: Brig. Gen. Gregg F. Martin, Commander and Division Engineer, Northwestern Division, United States Army Corps of Engineers, Department of Army, Portland, OR; Mr. Mitch King, Regional Director, Mountain-Prairie Region, Fish and Wildlife Service, United States Department of the Interior, Lakewood, CO; and Mr. Mike Wells, Deputy Director, Missouri Department of Natural Resources, Jefferson City, MO. The third panel was comprised of: Mr. Charlie Kruse, President, Missouri Farm Bureau Federation, Jefferson City, MO; Mr. Steve Taylor, Chairman, Coalition to Protect the Missouri River, Jefferson City, MO; Mr. Tom Waters, Waters Farms, Orrick, MO; Ms. Lynn M. Muench, Vice President, The American Waterways Operators, St. Louis, MO; and Mr. David Sieck, Past President, Iowa Corn Growers Association, Johnston, IA.

Senator Talent testified his complete opposition to the planned spring rises by the Fish and Wildlife Service. He said that that needs of Missourians should not place second fiddle to a fish.

Brigadier General Martin explained that the Corps operates the Missouri River Mainstem Reservoir System as directed by the Congressionally authorized purposes of flood damage reduction, commercial navigation, hydropower, irrigation, recreation, water supply, water quality, and fish and wildlife. The Missouri River basin is currently experiencing an extended drought, and system storage is at unusually low levels and therefore the spring pulse has been rescinded.

Mr. King explained the history of the river, saying that the construction of dams and the regulation of the river for flood control had altered the natural rhythms of the river, which have been the key contributing factors to the decline of the pallid sturgeon.

Mr. Wells of the Missouri Department of Natural Resources testified that his department was extremely disappointed to see the federal government move forward with a man-made spring rise on the Missouri River that would intentionally increases the risk of flooding.

Mr. Kruse of the Missouri Farm Bureau testified that there are many who do not believe the science behind the government's decision and are worried about the consequences on farmers and ranchers. This was amplified by Mr. Taylor of the Missouri Corn Growers when he reminded the Subcommittee that the U.S. Institute for Environmental Conflict Resolution discovered a lack of science regarding pallid sturgeon recovery and therefore the group could not make any informed recommendations.

Mr. Waters believes that these man-made spring rises are in direct conflict with the Corps mission of flood control. Building on that theme, Ms. Muench testified barge owners oppose the spring rise because it will decrease the navigational reliability of the Missouri and Mississippi rivers and it will harm a key customer of the barge and towing industry—the Midwest farmer.

Mr. Sieck of the Iowa Corn Growers explained that he was representing individual farmers who may be negatively impacted by the federal government's plan to implement a forced flooding of the Missouri River. Mr. Sieck reminded the Subcommittee that few years ago, there was discussion about the need for a spring rise for two birds, the piping plover and the least tern, but these populations have increased without a spring rise.

In sum, the Subcommittee concluded that the federal government should not proceed with the spring rise of the Missouri River.

For more information, refer to Committee publication #109–42.

7.6.8 THE FUTURE OF RURAL TELECOMMUNICATIONS: IS UNIVERSAL SERVICE REFORM NEEDED?

Background

On Wednesday, May 3, 2006, the Subcommittee on Rural Enterprises, Agriculture and Technology held a hearing on the future of telecommunication services in rural America, with a particular focus on universal service.

A decade after the passage of the Telecommunications Act of 1996, the Universal Service Fund (USF) has experienced spiraling growth that threatens its long term sustainability and the continuity of rural service. Universal service has afforded rural America the same technology and service as urban centers. This hearing specifically looked at H.R. 5072, the Universal Service Reform Act of 2006 introduced by Representatives Lee Terry (R–NE) and Mr. Rick Boucher (D–VA).

Summary

The hearing was comprised of two panels. The first panel consisted of: The Hon. Lee Terry, United States House of Representatives (R–NE). The second panel was comprised of Mr. Robert Williams, President, Oregon Farmers Mutual Telephone Company, Oregon, MO; Mr. Johnie Johnson, Chief Executive Officer/GM, Nex-Tech Wireless, Hays, KS; Mr. Raymond Henagan, CEO/Manager, Rock Port Telephone, Rock Port, MO; Mr. Don Schulte, Teacher, Pattonville High School, Maryland Heights, MO; Mr. Edward Merlis, Government and Regulatory Affairs, United States Telecom Association, Washington, DC; and Mr. Ed Black, President/CEO, Computer and Communications Industry Association, Washington, DC.

Representative Terry described the importance of H.R. 5072 because it would continue ensuring service to rural America while allowing for the spread of broadband in these same areas.

Mr. Williams, on behalf of the Organization for the Promotion and Advancement of Small Telecommunications Companies, and Mr. Henagan, on behalf of the National Telecommunications Cooperative Association, testified in favor of the Terry/Boucher bill, particularly on the expansion of the pool of providers and services that pay into the fund. However, Mr. Williams disagreed with the cap on the USF because it will inhibit the bill's goal of 100 percent broadband deployment.

Mr. Johnson testified on behalf of CTIA—The Wireless Association and the Rural Cellular Association that under the current system, rural wireless consumers who contribute to the fund are not seeing the benefits that they deserve. Any legislation drafted on this topic should rectify this problem.

Mr. Schulte, speaking on behalf of the Missouri National Education Association, supports the E-Rate Fund within the current USF. He explained that his school district receives roughly $71,000 per year in E-Rate funds which helps to pay for various advanced technologies.

Mr. Merliss of the US Telecom Association testified that current funding system for the USF is broken and needs to be fixed. Mr. Merliss supports the comprehensive approach in H.R. 5072, as well as imposing greater accountability for use of the funds.

Finally, Mr. Black, President/CEO of the Computer and Communications Industry Association, supports the Terry/Boucher bill, saying it is the most comprehensive bill designed at reforming the USF. He concluded that as the House moves forward in crafting Universal Service reform legislation, H.R. 5072 should serve as the framework for more extensive reform.

In sum, the Subcommittee concluded that H.R. 5072 merits the support of Congress. For further information about this hearing, refer to Committee publication #109–50.

7.6.9 UNLOCKING CHARITABLE GIVING

Background

On Thursday, May 25, 2006, the Subcommittee on Rural Enterprises, Agriculture and Technology held a hearing on charitable giving. This hearing specifically looked at H.R. 3908, the Charitable Giving Act of 2005 introduced by Representatives Roy Blunt (R–MO) and Harold Ford (D–KY). The bill would provide tax incentives and other measures to encourage charitable giving by individuals and corporations.

Summary

The hearing was comprised of two panels. The first panel consisted of: The Hon. Roy Blunt, United States House of Representatives (R–MO). The second panel included Mr. Benny Lee, CEO, Top Innovations, Inc., Kansas City, MO; Mr. Michael W. Halterman, CEO, Catholic Charities of Kansas City, Kansas City, MO; Ms. Diana L. Aviv, President/CEO, Independent Sector, Washington, DC; and Ms. Paulette Maehara, President/CEO, Association of Fundraising Professionals, Washington, DC.

Representative Blunt explained that three years ago, similar bills passed Congress by near unanimous votes in the House and the Senate on separate tracks. Unfortunately, these bills were not reconciled to be enacted. It was hoped that in this Congress, H.R. 3908 could cross the finish line.

Mr. Lee testified that H.R. 3908 would be particularly helpful to the approximately 86 million Americans who file for the standard deduction on their federal income tax returns. While many of these 86 million non-itemizers donate to charity, Mr. Lee believes they should receive a deduction for their contributions.

Mr. Halterman used research data from the United Way to show the Subcommittee that allowing taxpayers who do not itemize to deduct their charitable contributions under $250 could raise an additional $1 billion for the non-profit sector.

Ms. Aviv spoke favorably of the provision in H.R. 3908 to permit tax-free distributions from individual retirement accounts for charitable contributions, thus removing a barrier that prevents many older Americans from making substantial charitable gifts during their lifetime from retirement holdings.

Ms. Maehara also testified in support of all the provisions of H.R. 3908 because it would create powerful new charitable giving incentives that would greatly assist the altruistic endeavors of charities throughout the country. He particularly focused on provisions dealing with the rollover of IRAs and the enhanced deductions for contributions of food inventories and books.

In sum, the Subcommittee concluded that H.R. 3908 was an important piece of legislation to help all charities, particularly for smaller non-profits.

For more information, refer to Committee publication #109–54.

7.6.10 CHINESE BARRIERS TO TRADE

Please refer to the hearing summary set forth in part 7.5.6, supra.

For further information on this hearing, refer to Committee publication #109–61.

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