# Union Calendar No. 490

105TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 105–849

# SUMMARY OF ACTIVITIES

## A REPORT

OF THE

## COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

JANUARY 2, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

69–006 WASHINGTON : 1999

COMMITTEE ON SMALL BUSINESS

JIM TALENT, Missouri, *Chairman*

LARRY COMBEST, Texas
JOEL HEFLEY, Colorado
DONALD MANZULLO, Illinois
ROSCOE BARTLETT, Maryland
LINDA SMITH, Washington
FRANK LoBIONDO, New Jersey
SUE KELLY, New York
MARK SOUDER, Indiana
STEVE CHABOT, Ohio
JIM RYUN, Kansas
VINCE SNOWBARGER, Kansas
MICHAEL PAPPAS, New York
PHIL ENGLISH, Pennsylvania
DAVID McINTOSH, Indiana
JO ANN EMERSON, Missouri
RICK HILL, Montana
JOHN E. SUNUNU, New Hampshire
JOSEPH R. PITTS, Pennsylvania

NYDIA VELÁZQUEZ, New York
JOHN LaFALCE, New York
NORMAN SISISKY, Virginia
GLENN POSHARD, Illinois
JESSE JACKSON, Jr., Illinois
JUANITA MILLENDER-McDONALD, California
DANNY K. DAVIS, Illinois
ALLEN BOYD, Jr., Florida
CAROLYN McCARTHY, New York
BILL PASCRELL, Jr., New Jersey
RUBÉN HINOJOSA, Texas
DONNA CHRISTIAN-GREEN, Virgin Islands
ROBERT BRADY, Pennsylvania

HARRY J. KATRICHIS, *Chief Counsel*
MICHAEL DAY, *Minority Staff Director*

## STANDING SUBCOMMITTEES

### SUBCOMMITTEE ON EMPOWERMENT

MARK E. SOUDER, Indiana, *Chairman*

FRANK A. LOBIONDO, New Jersey
STEVE CHABOT, Ohio
PHIL ENGLISH, Pennsylvania
JO ANN EMERSON, Missouri
JOSEPH R. PITTS, Pennsylvania

JESSE JACKSON, JR., ILLINOIS
JUANITA MILLENDER-MCDONALD, California
DANNY K. DAVIS, Illinois
WILLIAM PASCRELL, JR., New Jersey
RUBÉN HINOJOSA, Texas

### SUBCOMMITTEE ON GOVERNMENT PROGRAMS AND OVERSIGHT

ROSCOE BARTLETT, Maryland, *Chairman*

DONALD MANZULLO, Illinois
LINDA SMITH, Washington
RICK HILL, Montana
JOHN E. SUNUNU, New Hampshire

GLENN POSHARD, Illinois
ALLEN BOYD, JR., Florida
CAROLYN MCCARTHY, New York
DONNA CHRISTIAN-GREEN, Virgin Islands

### SUBCOMMITTEE ON REGULATORY REFORM AND PAPERWORK REDUCTION

SUE KELLY, New York, *Chairwoman*

LARRY COMBEST, Texas
FRANK A. LOBIONDO, New Jersey
JIM RYUN, Kansas
DAVID MCINTOSH, Indiana
JO ANN EMERSON, Missouri

DANNY K. DAVIS, Illinois
NORMAN SISISKY, Virginia
ALLEN BOYD, Florida

### SUBCOMMITTEE ON TAX, FINANCE, AND EXPORTS

DONALD MANZULLO, Illinois, *Chairman*

LINDA SMITH, Washington, *Vice Chair*
VINCE SNOWBARGER, Kansas
MICHAEL PAPPAS, New Jersey
PHIL ENGLISH, Pennsylvania
JOSEPH R. PITTS, Pennsylvania

JUANITA MILLENDER-MCDONALD, California
RUBÉN HINOJOSA, Texas
DONNA CHRISTIAN-GREEN, Virgin Islands

# LETTER OF TRANSMITTAL

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
*Washington, DC, January 2, 1999.*

Hon. JEFF TRANDAHL,
*Clerk, U.S. House of Representatives,*
*Washington, DC.*

DEAR MR. TRANDAHL: On behalf of the Committee on Small Business of the U.S. House of Representatives, I am pleased to transmit the attached Summary of Activities of the Committee on Small Business for the 105th 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, clauses 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,

JAMES M. TALENT, *Chairman.*

# CONTENTS


| | Page |
|---|---|
| Chapter I—Introduction | 1 |
| 1.1 Historical Background | 1 |
| 1.2 Extracts from the Rules of the House of Representatives | 2 |
| 1.3 Number and Jurisdiction of Subcommittees | 3 |
| 1.4 Disposition of Legislation Referred to the Committee | 4 |
| Chapter II—The Small Business Administration | 7 |
| 2.1 SBA Programs in General | 7 |
| 2.2 SBA Business Loans | 7 |
| 2.3 Disaster Assistance Loans | 8 |
| 2.4 Small Business Investment Companies | 8 |
| 2.5 The 8(a) Program | 9 |
| 2.6 Surety Bond Guarantees | 9 |
| 2.7 Small Business Development Programs | 10 |
| 2.8 Small Business Innovation Research | 10 |
| 2.9 Small Business Technology Transfer | 11 |
| 2.10 Export Assistance | 11 |
| 2.11 Office of Advocacy | 12 |
| Chapter III—Hearings and Meetings Held by the Committee on Small Business and its Subcommittees, 105th Congress | 15 |
| 3.1 Full Committee | 15 |
| 3.2 Subcommittee on Empowerment | 16 |
| 3.3 Subcommittee on Government Programs and Oversight | 16 |
| 3.4 Subcommittee on Regulatory Reform and Paperwork Reduction | 17 |
| 3.5 Subcommittee on Tax, Finance, and Exports | 17 |
| Chapter IV—Publications of the Committee on Small Business and its Subcommittees, 105th Congress | 19 |
| 4.1 Reports | 19 |
| 4.2 Hearings Records | 19 |
| Chapter V—Summary of Legislative Activities of the Committee on Small Business, 105th Congress | 23 |
| 5.1 H.R. 852, The Paperwork Elimination Act of 1997 | 23 |
| 5.2 H.R. 2261, Reauthorization of the Small Business Act | 27 |
| 5.3 H.R. 3412, The Small Business Investment Companies Technical Corrections Act of 1998 | 43 |
| 5.4 H.R. 3853, The Drug-Free Workplace Act of 1998 | 45 |
| 5.5 H.R. 4078, Women's Small Business Expansion Act of 1998 | 47 |
| Chapter VI—Summary of Other Legislative Activities of the Committee on Small Business | 49 |
| 6.1 Committee Meetings | 49 |
| 6.1.1 Organizational Meetings | 49 |
| 6.2 Budget Views and Estimates | 51 |
| 6.2.1 Fiscal Year 1998 Budget | 51 |
| 6.2.2 Fiscal Year 1999 Budget | 51 |
| Chapter VII—Summary of Oversight, Investigations, and Other Activities of the Committee on Small Business | 53 |
| 7.1 Summary of Committee Oversight Plan and Implementation | 53 |
| 7.2 Summaries of the Hearings held by the Committee on Small Business | 53 |
| 7.2.1 Small Business Administration's Budget Request For FY 1998 | 53 |
| 7.2.2 Empowering Our Nation's Low Income Communities | 54 |
| 7.2.3 Tax Burdens Facing Small Businesses, Field hearing St. Peters, MO | 56 |

Page

Chapter VII—Summary of Oversight, Investigations, and Other Activities of the Committee on Small Business—Continued

7.2 Summaries of the Hearings held by the Committee on Small Business—Continued

7.2.4 Proposed Rewrite of Part 15 of The Federal Acquisition Regulations ..... 57
7.2.5 Relieving The Tax Burden On Our Small Family and Home-Based Businesses ..... 59
7.2.6 Small Business Regulatory Enforcement Act (SBREFA) ..... 60
7.2.7 OSHA's Safety and Health Program Standard ..... 62
7.2.8 7(a) and 504 Subsidy Rates ..... 63
7.2.9 Reauthorization of the Small Business Administration's Financial Programs ..... 65
7.2.10 Fairness in Regulatory Enforcement, Field Hearing—Kansas City, MO ..... 67
7.2.11 OSHA's Proposed Revision on Occupational Injury and Illness Recording and Reporting Requirements ..... 68
7.2.12 The Effectiveness of 7(a) and 504 Programs ..... 70
7.2.13 SBA Implementation of the Government Performance and Results Act ..... 71
7.2.14 The SAFE Act: How Third Party Consultations Have Worked Where OSHA Has Failed ..... 73
7.2.15 Federal Agency Compliance With Section 610 Of The Regulatory Flexibility Act ..... 75
7.2.16 Reducing America's Small Business Tax Burden ..... 76
7.2.17 Small Business Administration's Fiscal Year 1999 Budget Submission ..... 78
7.2.18 H.R. 3412, A bill to amend and make technical corrections in title III of the Small Business Investment Act ..... 80
7.2.19 Small Business Administration's Fiscal Year 1999 Budget Submission Regarding The Proposed Increase In Disaster Loan Interest Rates ..... 81
7.2.20 The Expected Impact on Small Businesses and Farmers of the Kyoto Treaty on Global Climate Change, Malden, MO ..... 83
7.2.21 H.R. 3865, The American Community Renewal Act (ACRA) ..... 85
7.2.22 Oversight Hearing on the Kyoto Protocol: The Undermining of American Prosperity ..... 87
7.2.23 Y2K, The Year 2000 Computer Problem ..... 88
7.2.24 Kyoto II ..... 90
7.2.25 Project Labor Agreements ..... 91
7.2.26 Revitalizing America's Economically Distressed Communities ..... 93
7.2.27 H.R. 3659, The Farm and Ranch Risk Management Act ..... 95

7.3 Summaries of the Hearings held by the Subcommittee on Empowerment ..... 96

7.3.1 Urban Empowerment ..... 96
7.3.2 Rural Empowerment ..... 97
7.3.3 Impact of Tax Proposals ..... 99
7.3.4 From Dependency To Self-Sufficiency, Lancaster, PA ..... 100
7.3.5 Urban Problems and Community Self-Renewal, Ft. Wayne, IN ..... 101
7.3.6 Federal Tax Policy and Federal Programs Impacting Small Business Owners, Meadville, PA ..... 102
7.3.7 H.R. 3241, The Charitable Giving Partnership Act ..... 103
7.3.8 Promising Efforts Taking Place In Urban Education ..... 104
7.3.9 How to Best Obtain a Drug-Free Workplace ..... 105
7.3.10 Empowerment Education ..... 107
7.3.11 Programs Empowering Businesses and Communities in Southern New Jersey, Mays Landing, NJ ..... 108
7.3.12 Teen Pregnancy ..... 110

7.4 Summaries of the Hearings held by the Subcommittee on Government Programs and Oversight ..... 112

7.4.1 Joint Oversight Hearing—Federal Agency Compliance With The Regulatory Flexibility Act: Are Federal Agencies Using "Good Science" In Their Rulemaking? ..... 112
7.4.3 How Patent Term & Patent Application Disclosure Issues Effect Small Businesses ..... 114
7.4.4 Small Business Technology Transfer Pilot Program ..... 115
7.4.5 The Impact of SBA and Other Federal Programs to Create Jobs and To Stimulate Economic Growth, Cumberland, MD ..... 117

Page

Chapter VII—Summary of Oversight, Investigations, and Other Activities of the Committee on Small Business—Continued

7.4 Summaries of the Hearings held by the Subcommittee on Government Programs and Oversight—Continued

7.4.6 Joint hearing with the Subcommittee on Regulatory Reform and Paperwork Reduction on H.R. 96, the Small Business Regulatory Assistance Act of 1997 ..... 118

7.4.7 Focus on Women Business Enterprise ..... 121

7.4.8 Making the Federal Government User Friendly, Frederick, MD 123

7.4.9 Joint hearing with the Subcommittee on Regulatory Reform and Paperwork Reduction on Unequal Regulatory Burden Borne By Small Businesses: The Small Business Regulatory Enforcement Act Of 1996 (SBREFA) And The Panel Process As A Forum For Preventing Needless Regulation Of Small Entities ..... 124

7.4.10 Small Business Innovation Program Research Oversight ..... 126

7.4.11 Joint Hearing with the Subcommittee on Benefits of the House Veteran's Affairs Committee with respect to the SBA Programs to Assist Veteran's Businesses ..... 127

7.4.12 HUBZone Program ..... 128

7.4.13 SBA Proposed New Automated Loan Monitoring System ..... 129

7.4.14 Secondary Market for Guaranteed Portions of 7(a) Loans ..... 130

7.5 Summaries of the Hearings held by the Subcommittee on Regulatory Reform and Paperwork Reduction ..... 131

7.5.1 Joint Oversight Hearing—Federal Agency Compliance With The Regulatory Flexibility Act: Are Federal Agencies Using "Good Science" In Their Rulemaking? ..... 131

7.5.3 Congressional Review Act and Its Impact on Small Business .... 133

7.5.4 The Impact of Federal Regulations on Small Business in the Hudson Valley, Mt. Kisco, NY ..... 135

7.5.5 Joint hearing with the Subcommittee on Government Programs and Oversight on H.R. 96, The Small Business Regulatory Assistance Act of 1997 ..... 138

7.5.6 The Impact of Federal Regulations on Small Businesses in Montana, Missoula, MT ..... 140

7.5.7 The First Report To Congress By The Small Business and Agriculture Regulatory Enforcement Ombudsman ..... 143

7.5.8 Joint hearing with the Subcommittee on Regulatory Reform and Paperwork Reduction on Unequal Regulatory Burden Borne By Small Businesses: The Small Business Regulatory Enforcement Act Of 1996 (SBREFA) And The Panel Process As A Forum For Preventing Needless Regulation Of Small Entities ..... 147

7.5.9 Restructuring the Electric Utility Industry and the Impact on Small Business ..... 148

7.6 Summaries of the Hearings held by the Subcommittee on Tax, Finance, and Exports ..... 152

7.6.1 Why Exports Matter ..... 152

7.6.2 Does OPIC Help Small Business Exporters? ..... 153

7.6.3 The Impact of Estate Taxes on Small and Family-Owned Businesses ..... 155

7.6.4 Does Ex-Im Help Small Business Exporters? ..... 156

7.6.5 The First Step: Death Tax Reform ..... 158

7.6.6 IRS Accountability to Small Business and Self-Employed Taxpayers, Vancouver, WA ..... 159

7.6.7 Reducing the Tax Burden on Small Business Owners, Topeka, KS ..... 161

7.6.8 Export Resources for Small Businesses, Overland Park, KS ..... 163

7.6.9 Effect of the Estate Tax on Central New Jersey Farms and Small Businesses, Blawenburg, NJ ..... 165

7.6.10 Pension Reform for Small Business ..... 166

105TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 105–849

# SUMMARY OF ACTIVITIES

JANUARY 2, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TALENT of Missouri, from the Committee on Small Business, submitted the following

# REPORT

# SUMMARY OF ACTIVITIES

## CHAPTER ONE

## INTRODUCTION

This is the twelfth summary report of the standing Committee on Small Business. The action by the House of Representatives in adopting House Resolution 988 on October 8, 1974, providing that the Committee be established as a standing committee, and upgrading 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 the 104th Congresses confirmed this action and continued the process begun on August 12, 1941, when, by virtue of House Resolution 294 (77th Congress, 1st session), the Select Committee on Small Business was created. In January 1971, the House designated the Select Committee as a Permanent Select Committee; and, on October 8, 1974, the 93rd Congress, recognizing the importance of the work performed on behalf of this nation's small businesses, provided that the Committee should thereafter be established as a standing committee.

### 1.1 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 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 35 Members. The following Members were named to constitute the Committee in the 105th Congress:

Republicans included:

Jim Talent (MO), Chairman; Larry Combest (TX); Joel Hefley (CO); Donald Manzullo (IL); Roscoe Bartlett (MD); Linda Smith (WA); Frank LoBiondo (NJ); Sue Kelly (NY); Walter B. Jones (NC) (resigned April 15, 1997); Mark Souder (IN); Steve Chabot (OH); Jim Ryun (KS); Vince Snowbarger (KS); Michael Pappas (NY); Phil English (PA); David McIntosh (IN); Jo Ann Emerson (MO); Rick Hill (MT); John E. Sununu (NH); and, Joseph R. Pitts, (PA) (named July 23, 1997).

Democrats included:

Nydia Velazquez (NY) (named Ranking Minority Member February 28, 1998); John LaFalce (NY); Ike Skelton (MO) (resigned March 11, 1997); Norman Sisisky (VA); Floyd Flake (NY) (resigned November 15, 1997); Glenn Poshard (IL); William P. Luther (MN) (resigned March 21, 1997); John Baldacci (resigned March 27, 1998); Jesse Jackson, Jr. (IL); Juanita Millender-McDonald (CA); Robert Weygand (RI) (resigned July 31, 1997); Danny K. Davis (IL); Allen Boyd, Jr. (FL); Carolyn McCarthy (NY); Bill Pascrell, Jr. (NJ); Virgil Goode, Jr. (VA) (resigned June 24, 1998); Ruben Hinojosa (TX) (named on May 14, 1997); Marion Berry (AR) (named on May 14, 1997)(resigned in May, 1998); Donna Christian-Green (VI) (named May 19, 1998); Robert Brady (PA) (named in June, 1998).

## 1.2 Extracts From the Rules of the House of Representatives

### EXTRACT FROM RULE X,

### RULES OF THE HOUSE OF REPRESENTATIVES

---

RULE X

ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES

The Committees and Their Jurisdiction

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

* * * * * * *

**(o) Committee on Small Business**

(1) Assistance to and protection of small business, including financial aid, regulatory flexibility and paperwork reduction.
(2) Participation of small-business enterprises in Federal procurement and Government contracts.

GENERAL OVERSIGHT RESPONSIBILITIES

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

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

SPECIAL OVERSIGHT FUNCTIONS

* * * * * * *

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

## 1.3 Extracts From the Rules of the Committee on Small Business

---

### 11. NUMBER AND JURISDICTION OF SUBCOMMITTEES

There will be four subcommittees as follows:

—Empowerment (six Republicans and five Democrats)

—Government Programs and Oversight (six Republicans and five Democrats)

—Regulatory Reform and Paperwork Reduction (six Republicans and five Democrats)

—Tax, Finance and Exports (six Republicans and five Democrats)

During the 105th 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:

EMPOWERMENT

Promotion of business growth and opportunities in economically depressed areas.

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

General oversight of programs targeted toward urban relief.

General promotion of business opportunities.

GOVERNMENT PROGRAMS AND OVERSIGHT

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

Federal Government programs that are designed to assist business generally.

Small Business Innovation and Research Program.

Participation of small business in Federal procurement and Government contracts.

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

Oversight and investigative authority generally.

REGULATORY REFORM AND PAPERWORK REDUCTION

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.

TAX, FINANCE AND EXPORTS

Tax policy and its impact on small business.

Access to capital and finance issues generally.

Export opportunities and promotion.

## 1.4 Disposition of Legislation Referred to the Committee

A total of 25 House bills and 1 Senate bill were referred to the Committee on Small Business during the 105th Congress. The Committee reported five bills to the House, four of which passed the House, and three of which were enacted in whole or in part as part of broader legislation. For a summary of the Committee's legislative activities, please refer to Chapter five of this report.

During the first session of the 105th Congress, the Committee continued to consolidate related measures by reauthorizing and amending certain provisions of the Small Business Act and Small Business Investment Act with omnibus legislation. The major legislative effort of the first session of the 105th Congress was H.R. 2261, the Small Business Programs Reauthorization and Amendments Acts of 1997. H.R. 2261 passed the House and was referred to the Senate, where it was added to S. 1139. After negotiations between the House and Senate, S. 1139 was passed by both bodies, and the President signed the final legislation on December 2, 1997 as Public Law 105–135. A summary of H.R. 2261 can be found in section 5.2 of this report.

Early in the first session of the 105th Congress, the Committee considered legislation to further reduce the paperwork burdens imposed on small business by the Federal government. The Committee considered and favorably reported by unanimous consent H.R. 852, the Paperwork Elimination Act of 1997, on March 6, 1997. The House passed the bill on March 13, 1997 by a vote of 395 to 0. The legislation was received in the Senate and referred to the Senate Committee on Governmental Affairs. On October 15, the Senate passed by unanimous consent S. 2107, the Government Paperwork Elimination Act. This legislation contained one provision similar to one that was included in the House-passed version of H.R. 852. The provisions of S. 2107 were subsequently included in H.R. 4328, the Omnibus Appropriations Act, which was signed by the President on October 21, 1998 and became Public Law No. 105–277. Accordingly, the provision of H.R. 852, which required the Director of the Office of Management and Budget to provide direction and oversee the Federal government's acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information

as a substitute for paper, was signed into law. A complete summary of H.R. 852 can be found in section 5.1 of this report.

Early in the second session of the 105th Congress, the Committee considered legislation to make technical amendments to the Small Business Investment Company program. The Committee considered and favorably reported H.R. 3412, the Small Business Investment Company Technical Corrections Act of 1998, on March 17, 1998. The House passed the bill on March 24, 1998 by a vote of 407 to 0. The legislation was received in the Senate and referred to the Senate Committee on Small Business. H.R. 3412 was subsumed into broader legislation and was passed by the Senate. That Senate-passed legislation did not reach the House until late in the second session and included legislative matter not acceptable to the House. Consequently, it was not further considered. A summary of H.R. 3412 can be found in section 5.3 of this report.

In June of 1998, the Committee on Small Business met to consider H.R. 3853, the Drug-Free Workplace Act of 1998. The Committee reported this bill favorably with several amendments on June 11, 1998 by voice vote. It subsequently passed the House on June 23, 1998 by a vote of 402–9. H.R. 3853 was sent to the Senate, where on September 15, 1998 the Senate Committee on Small Business ordered it reported. On September 25, 1998, H.R. 3853 was placed on the Senate calendar. It was subsequently incorporated into H.R. 4328, the Omnibus Appropriation Act for 1999, and was signed into law as Public Law No. 105–277 on October 21, 1998. A summary of H.R. 3853 can be found in section 5.4 of this report.

In June of 1998 the Committee also considered H.R. 4078, the Women's Small Business Expansion Act of 1998. The bill was referred to the Committee on Small Business on June 18, 1998. It was considered and a mark-up session was held on June 25, 1998. H.R. 4078 was ordered reported on the same day. Unfortunately, there was no further action on H.R. 4078 in the 105th Congress.

# CHAPTER TWO

## THE SMALL BUSINESS ADMINISTRATION

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

During the 105th Congress, the Committee conducted a series of legislative and oversight hearings following up on the comprehensive review implemented in the 104th Congress. These hearings resulted in passage of a comprehensive reauthorization bill and a number of significant reforms in the basic operations of the SBA. This legislation is described in Chapter 5 of this report.

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

### 2.1 SBA Programs in General

The SBA operates through 10 Regional offices, 85 District and Branch offices and has a staff of approximately 3,300 permanent employees and a varying number of temporary disaster employees (as many as 1,600 in 1997). It provides loans and loan guarantees, both for business purposes and disaster recovery; assistance to small business in obtaining government contracts; and management and technical assistance through paid and volunteer staff. It also administers a surety bond program for contractors unable to obtain bonds, which are a prerequisite to bidding for, or performing, certain contracts. The SBA also serves as an advocate for all small businesses, conducts economic research, and monitors the implementation of small business legislation and programs at other agencies, such as the Regulatory Flexibility Act and the Small Business Innovation Research Program. The SBA administers a portfolio of more than 463,000 loans for more than $35.2 billion of which $6.9 billion involve loans to disaster victims.

### 2.2 SBA Business Loans

A major function of the SBA is to make capital available for small businesses at terms and conditions that are more favorable than they can normally secure in the private sector. In addition to its general business loan program the SBA also has specialized loan programs designed to help small businesses with equity, long-term asset-based, and forms of specialized financing.

Most SBA financial assistance is provided in the form of guarantees of commercial loans. Such guarantees can be for as much as 80 percent of loans up to $100,000 or 75 percent of loans up to the statutory maximum of $750,000. (Guarantees of up to $1 million can be approved for certain fixed-asset financings that promote public policy objectives set forth in the Small Business Act.) The in-

terest rates on guaranteed loans are negotiated between the borrower and lender subject, in most cases, to a maximum of 2.75 percent above the prime rate. In fiscal year 1996, SBA approved 45,845 7(a) guaranteed loans totaling $7.7 billion and 6,884 504 program loans totaling $2.4 billion; in fiscal year 1997 the agency approved 45,288 7(a) guaranteed loans totaling $9 billion and 4,131 504 program loans totaling $1.4 billion; and in fiscal year 1998 the SBA approved 42,268 7(a) loans totaling $8.53 billion and 4,930 504 program loans totaling $1.77 billion.

Certain applicants who could not obtain commercial loans, even with a government guarantee, were eligible to apply for SBA direct loans. Between October 1, 1985 and September 30, 1994, eligibility for this type of assistance was limited to qualified businesses owned by individuals with low incomes or located in areas of high unemployment, Vietnam-era or disabled veterans, the handicapped or organizations employing them, business certified under the minority business capital ownership development program and certain non-profit intermediary microlenders.

Beginning on October 1, 1994, funding for direct loans was limited to the handicapped and intermediary microlenders as part of the Administration's budget request. Funds for loans to the handicapped were eliminated in 1996 at the Administration's request. The Microloan program was made permanent in 1997 and currently includes over 110 intermediaries. Intermediaries normally borrow approximately $1 million and relend it in amounts not to exceed $25,000. Microloan intermediaries received 31 loans totaling $14.5 million dollars in FY1998.

### 2.3 Disaster Assistance Loans

The SBA provides loan assistance to disaster victims, including homeowners, businesses and non-profit institutions. When a disaster strikes it is important that damaged property be replaced or repaired and businesses be provided with adequate working capital to facilitate their recovery as quickly as possible. SBA disaster loans serve this purpose and minimize disruptions to jobs, business revenues, and taxes. In so doing, they play a vital role in restoring the economic health of disaster stricken communities. Often making the difference in the survival of businesses necessary to that recovery. During fiscal year 1997, 49,515 disaster loans were approved for $1.138 billion dollars to businesses, homeowners and others affected by hurricanes, tornadoes, floods and other disasters. During fiscal year 1998, 30,154 disaster loans were approved for $728.1 million.

### 2.4 Small Business Investment Companies

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

SBICs supply equity capital and long-term financing to small firms for expansion, modernization and initial equity financing of their operations. SBICs also often provide sophisticated technical and managerial advice. They are licensed, regulated and, in part,

financed by the SBA through government backed debentures. An SBIC finances small firms in two general ways—through straight business loans or through venture capital equity type investments. In fiscal year 1997, 300 SBICs, with private capital of $5.1 billion, provided their small business clients with $2.4 billion in 2,733 financing. During fiscal year 1998, 319 SBICs with $6.3 billion in private capital provided $3.2 billion in 3,456 financing.

The SBA also administered the Specialized Small Business Investment Company (SSBIC) Program, which was similar to the SBIC program. SSBICs agree to make investments solely in small business concerns owned by socially or economically disadvantaged individuals. However, the SSBIC program suffered from heavy losses and legislation was passed in the 104th Congress to restructure the SSBIC program. In fiscal year 1997, the SSBIC program was merged into the overall SBIC program and all existing SSBICs became SBICs. Under the combined program each SBIC, regardless of its size, will be required to invest at least 20% of its aggregate dollar investments in "smaller enterprises"—a small business with a net income of $2 million or less and a net worth of $6 million or less. This will enable SBICs to cover the same markets as SSBICs but from a more stable and financially sound basis. A reserve of debenture funding will also be available for smaller SBICs in lieu of the funding mechanism for SSBICs.

### 2.5 THE 8(a) PROGRAM

In addition to financial programs available to businesses owned by socially and economically disadvantaged individuals the SBA also administers a business development program for such concerns, the Minority Small Business and Capital Ownership Development program. Participants in this program are eligible for the preferential award of Federal contracts under the authority of section 8(a) of the Small Business Act, under which SBA acts as a "conduit" by channeling selected federal contracts to firms owned and operated by socially and economically disadvantaged individuals. In fiscal year 1997, 4,733 prime contracts with a value of $3.7 billion were awarded to 8(a) firms. When option years on previous contracts are included the total amount rises to $6.3 billion. In 1998, the Administration released new regulations designed to expand eligibility in the 8(a) program to more individuals, including women. While this action was taken by the Administration in hopes of curing Constitutional questions surrounding the 8(a) program further legal challenges are expected.

### 2.6 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 $1,250,000. The SBA will pay a sur-

ety participating in the Prior Approval Program 90 percent of a loss incurred if: (1) the total amount of the contract is $100,000 or less; and (2) the bond was issued on behalf of a small business owned and controlled by socially and economically disadvantaged individuals. Otherwise, SBA will pay a surety in an amount not to exceed an administrative ceiling of 80 percent of a loss on bonds issued to other than disadvantaged concerns in excess of $100,000. Under the Preferred Surety Bond program, the SBA's guarantee is limited to 70 percent of the bond for all small businesses on contracts that do not exceed a face value of $1,250,000. In fiscal year 1997, 12,292 bid bond guarantees produced 4,021 final bond guarantees for a total contract amount of over $818 million. In fiscal year 1998, 10,445 bid bond guarantees produced 2,860 final bond guarantees, resulting in total bond guarantees of $531 million.

### 2.7 Small Business Development Programs

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

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

An important component of SBA's management assistance capabilities is the Small Business Development Center (SBDC) program. The SBDC program is a cooperative effort by universities, the Federal government, State and local governments and private sector organizations to provide specialized management and technical assistance to small businesses. Originating as a pilot program at one university in 1976, the SBDC program has expanded to include 56 operating SBDCs in all 50 states, Puerto Rico and the Virgin Islands. There are over 900 branch centers located throughout the States at colleges, universities, and local government offices. In fiscal year 1997, the SBDC program received $73.1 million in Federal funds; and in fiscal year 1998, the SBDC program received $77.8 million.

### 2.8 Small Business Innovation Research

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

Through the SBIR program nearly $1 billion was awarded to small firms in fiscal year 1997. For fiscal year 1998, SBIR awards from the 11 participating agencies exceeded $1 billion.

The SBIR program is highly competitive and provides funds for the feasibility testing of innovative ideas with Phase I and Phase II funding grant levels of $100,000 and $750,000 per grant, respectively. Third phase SBIR encourages the commercialization of innovative technology using private follow on funding or government contracts when appropriate. Roughly 40 percent of all SBIR projects result in commercially successful products. The SBA Office of Innovation, Research and Technology monitors the implementation of the program at each participating agency.

### 2.9 Small Business Technology Transfer

The Small Business Technology Transfer (STTR) program was established by Title II of Public Law 102–564, the Small Business Research and Development Enhancement Act of 1992, and authorized for an initial three year demonstration, beginning in 1994. Building upon the established model of the SBIR program, the STTR program provides the basis for structured collaboration between small technology entrepreneurs and non-profit research institutions, such as universities and Federally-funded Research and Development Centers (FFRDCs) to foster commercialization of the results of Federally-sponsored research. The STTR program was made permanent in 1997 as part of the Small Business Act Reauthorization and Amendments Act of 1997.

The STTR program seeks to stimulate technological innovation and increase private-sector commercialization of innovations derived from basic research as well as mission-oriented advanced research and development undertaken by Federal agencies. The program assures that small business is not excluded from the extramural research and development (R&D) activities conducted by Federal agencies, those undertaken by private sector sources and often dominated by Federally-supported institutions such as universities and FFRDCs.

To assure a baseline of small business participation and to maintain stable funding for technology commercialization, like the SBIR program the STTR program requires a participating Federal agency to reserve a small percentage of its external R&D budget for the program. The STTR program also uses the highly competitive three stage process designed to identify and nurture only the most promising technology innovations, seeking to move them to full commercialization under the technical and entrepreneurial leadership of small business owners. Unlike the SBIR program, however, the STTR program requires a small business to collaborate with a nonprofit research institution.

### 2.10 Export Assistance

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

nical assistance to small business concerns that have the potential to become successful exporters.

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

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

The Export Working Capital Program (EWCP) allows a guarantee on private sector loans of up to $750.000 for working capital. The guarantee percentage for loans is 90 percent. Loans made under the EWCP program generally have a 12 month maturity, subject to two twelve-month renewal options. The loans can be for single or multiple export sales and can be extended for pre-shipment working capital and post-shipment exposure coverage, although the proceeds cannot be used to acquire fixed assets. In fiscal year 1997, the SBA approved 400 guaranteed loans under the EWCP, totaling $140.3 million; in fiscal year 1998, the agency approved 413 loans for a total of $158 million.

Through the 7(a) program, the SBA also offers export assistance through guarantees of international trade loans, which provide long-term financing to small businesses engaged in international trade, as well as those businesses adversely affected by import competition. The SBA can guarantee loans up to $1.25 million. In fiscal year 1997, the SBA made 48 international trade loans totaling $18.1 million; in fiscal year 1998, 18 international trade loans were approved for a total of $11.1 million.

### 2.11 Office of Advocacy

The SBA Office of Advocacy was created in 1976, pursuant to Title II of Public Law 94–305, with various stated "primary functions" and other "continuing" duties. The law provides for the President to appoint a Chief Counsel 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 other Federal departments and agencies for the purpose of enhancing small business competitiveness.

The eleven statutorily prescribed "primary functions" of the Office of Advocacy are: (1) examining the role of small business in the American economy; (2) assessing the effectiveness of all Federal subsidy and assistance programs for small business; (3) measuring the cost and impact of government regulations on small business

and making legislative and non-legislative recommendations for the elimination of unnecessary or excessive regulations; (4) determining the impact of the tax structure on small business and making legislative and other proposals for reform of the tax system; (5) studying the ability of the financial markets to meet the credit needs of small business; (6) determining availability and delivery methods of financial and other assistance to minority enterprises; (7) evaluating the efforts of Federal departments and agencies, business and industry to assist minority enterprises; (8) recommending ways to assist the development and strengthening of minority and other small businesses; (9) recommending ways for small business to compete effectively and to expand, while identifying common causes for small business failures; (10) developing criteria to define small business; and (11) advising and consulting with the Chairman of the Administrative Conference of the United States on the amount of fees and other expenses awarded during the fiscal year by the Federal government to plaintiffs who prevail in administrative proceedings before Federal departments and agencies.

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

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

The Office of Advocacy also has Regional Advocates who monitor small business and regulatory activities at the State level and disseminate relevant information about small business issues. In fiscal year 1997, the Office of Advocacy had a budget of $3.7 million to carry out its statutory duties and other activities; in fiscal year 1998, its budget was $4.5 million.

# CHAPTER THREE

## HEARINGS AND MEETINGS HELD BY THE COMMITTEE ON SMALL BUSINESS AND ITS SUBCOMMITTEES, 105TH CONGRESS

### 3.1 FULL COMMITTEE

| Date | Subject and location |
|---|---|
| February 13, 1997 | Committee Organizational Meeting, Washington, DC. |
| March 6, 1997 | Hearing: Small Business Administration's Budget Request for FY 1998; Washington, DC. |
| March 6, 1997 | Markup: H.R. 852, The Paperwork Elimination Act of 1997, was passed favorably by voice vote; Washington, DC. |
| March 11, 1997 | Meeting: To Approve the Adoption of the Views and Estimates of the Small Business Administration's Budget for Fiscal Year 1999 for Submission to the Committee on the Budget; Washington, DC. |
| March 12, 1997 | Hearing: Empowering Our Nation's Low Income Communities; Washington, DC. |
| April 3, 1997 | Hearing: Tax Burdens Facing Small Businesses; St. Peters, MO. |
| April 10, 1997 | Hearing: Proposed Rewrite of Part 15 of the Federal Acquisition Regulations; Washington, DC. |
| April 23, 1997 | Hearing: Relieving the Tax Burden on our Small Family and Home-Based Businesses; Washington, DC. |
| June 5, 1997 | Hearing: Small Business Regulatory Enforcement Act; Washington, DC. |
| June 26, 1997 | Hearing: OSHA's Safety and Health Program Standard; Washington, DC. |
| July 16, 1997 | Hearing: 7(a) and 504 Subsidy Rates; Washington, DC. |
| July 17, 1997 | Hearing: Reauthorization of the Small Business Administration's Financial Programs; Washington, DC. |
| July 30, 1997 | Markup: H.R. 2261, The Small Business Programs Reauthorization Amendments Act of 1997, was passed favorably by voice vote, as amended; Washington, DC. |
| August 19, 1997 | Hearing: Entrepreneurship in America: Fairness in Regulatory Enforcement; Kansas City, MO. |
| September 17, 1997 | Hearing: OSHA's Proposed Revision on Occupational Injury and Illness Recording and Reporting Requirements; Washington, DC. |
| October 22, 1997 | Hearing: The Effectiveness of 7(a) and 504 Programs; Washington, DC. |
| October 29, 1997 | Hearing: SBA Implementation of the Government Performance and Results Act; Washington, DC. |
| January 29, 1998 | Hearing: The SAFE Act: How Third Party Consultations Have Worked Where OSHA Has Failed; Washington, DC. |
| February 12, 1998 | Hearing: Federal Agency Compliance with Section 610 of the Regulatory Flexibility Act; Washington, DC. |
| February 25, 1998 | Hearing: Reducing America's Small Business Tax Burden; Washington, DC. |
| March 3, 1998 | Hearing: Small Business Administration's Fiscal Year 1999 Budget Submission; Washington, DC. |
| March 12, 1998 | Hearing: H.R. 3412, a bill to amend and make technical corrections in Title III of the Small Business Investment Act; Washington, DC. |
| March 12, 1998 | Markup: H.R. 3412, a bill to amend and make technical corrections in title III of the Small Business Investment Act, was passed favorably by voice vote; Washington, DC. |

| Date | Subject and location |
|---|---|
| March 19, 1998 | Hearing: Small Business Administration's Fiscal Year 1999 Budget Submission Regarding the Proposed Increase in Disaster Loan Interest Rates; Washington, DC. |
| April 16, 1998 | Hearing: The Expected Impact on Small Businesses and Farmers of the Kyoto Treaty on Global Climate Change; Malden, MO. |
| May 19, 1998 | Hearing: H.R. 3865 The American Community Renewal Act (ACRA); Washington, DC. |
| June 4, 1998 | Hearing: Oversight Hearing on the Kyoto Protocol: The Undermining of American Prosperity; Washington, DC. |
| June 11, 1998 | Markup: H.R. 3853, The Drug-Free Workplace Act of 1998, passed favorably by voice vote; Washington, DC. |
| June 25, 1998 | Markup: H.R. 4078, a bill to increase funding for the Women's Business Center Program, passed favorably by voice vote; Washington, DC. |
| July 15, 1998 | Hearing: Y2K, The Year 2000 Computer Problem; Washington, DC. |
| July 27, 1998 | Hearing: Kyoto II; Washington, DC. |
| August 6, 1998 | Hearing: Project Labor Agreements; Washington, DC. |
| September 16, 1998 | Hearing: H.R. 3659, The Farm and Ranch Risk Management Act; Washington, DC. |

## 3.2 Subcommittee on Empowerment

| Date | Subject and location |
|---|---|
| May 13, 1997 | Hearing: Urban Empowerment; Washington, DC. |
| May 20, 1997 | Hearing: Rural Empowerment; Washington, DC. |
| July 24, 1997 | Hearing: Impact of Tax Proposals; Washington, DC. |
| September 12, 1997 | Hearing: From Dependency to Self-sufficiency; Lancaster, PA. |
| September 19, 1997 | Hearing: Urban Problems and Community Self-Renewal; Ft. Wayne, IN. |
| October 27, 1997 | Hearing: Federal Tax Policy and Federal Programs Impacting Small Business Owners; Meadville, PA. |
| March 19, 1998 | Hearing: H.R. 3241, The Charitable Giving Partnership Act; Washington, DC. |
| March 26, 1998 | Hearing: Promising Efforts Taking Place in Urban Education; Washington, DC. |
| May 14, 1998 | Hearing: How to Best Obtain a Drug-Free Workplace; Washington, DC. |
| May 21, 1998 | Hearing: Empowerment Education; Washington, DC. |
| June 22, 1998 | Hearing: Programs Empowering Businesses and Communities in Southern New Jersey; Mays Landing, NJ. |
| July 16, 1998 | Hearing: Teen Pregnancy; Washington, DC. |

## 3.3 Subcommittee on Government Programs and Oversight

| Date | Subject and location |
|---|---|
| April 15, 1997 | Joint Hearing: Federal Agency Compliance with the Regulatory Flexibility Act: Are Federal Agencies Using "Good Science" in their Rulemaking?; Washington, DC. |
| April 17, 1997 | Joint Hearing: Federal Agency Compliance with the Regulatory Flexibility Act: Are Federal Agencies Using "Good Science" in their Rulemaking?; Washington, DC. |
| April 24, 1997 | Hearing: How Patent Term & Patent Application Disclosure Issues Affect Small Businesses; Washington, DC. |
| May 22, 1997 | Hearing: Small Business Technology Transfer Pilot Program; Washington, DC. |
| July 2, 1997 | Hearing: How SBA and Other Federal Programs Create Jobs and Stimulate Economic Growth; Cumberland, MD. |
| September 11, 1997 | Joint Hearing: H.R. 96, The Small Business Regulatory Assistance Act of 1997; Washington, DC. |
| October 8, 1997 | Hearing: Focus on Women Business Enterprise; Washington, DC. |
| November 20, 1997 | Hearing: Making the Federal Government User Friendly; Frederick, MD. |

| Date | Subject and location |
|---|---|
| March 18, 1998 | Joint Hearing: The SBREFA Panel Process; Washington, DC. |
| April 22, 1998 | Hearing: Small Business Innovation Research Program; Washington, DC. |
| May 20, 1998 | Hearing: SBA Programs to Assist Veteran's Businesses; Washington, DC. |
| June 24, 1998 | Hearing: HUBZone Program; Washington, D.C. |
| July 16, 1998 | Hearing: SBA's Proposed New Automated Loan Monitoring System; Washington, DC. |
| September 23, 1998 | Hearing: Secondary Market For Guaranteed Portions of 7(a) Loans; Washington, DC. |

## 3.4 Subcommittee on Regulatory Reform and Paperwork Reduction

| Date | Subject and location |
|---|---|
| April 15, 1997 | Joint Hearing: Federal Agency Compliance with the Regulatory Flexibility Act: Are Federal Agencies Using "Good Science" in their Rulemaking?; Washington, DC. |
| April 17, 1997 | Joint Hearing: Federal Agency Compliance with the Regulatory Flexibility Act: Are Federal Agencies Using "Good Science" in their Rulemaking?; Washington, DC. |
| July 10, 1997 | Hearing: Congressional Review Act and Its Impact on Small Businesses; Washington, DC. |
| July 21, 1997 | Hearing: The Impact of Federal Regulations on Small Businesses in the Hudson Valley; Mt. Kisco, NY. |
| September 11, 1997 | Joint Hearing: H.R. 96, The Small Business Regulatory Assistance Act of 1997; Washington, DC. |
| October 15, 1997 | Hearing: The Impact of Federal Regulations on Small Businesses in Montana; Missoula, MT. |
| March 4, 1998 | Hearing: The First Report to Congress by the Small Business and Agriculture Regulatory Enforcement Ombudsman; Washington, DC. |
| March 18, 1998 | Joint Hearing: The SBREFA Panel Process; Washington, DC. |
| July 22, 1998 | Hearing: Restructuring the Electric Utility Industry: The Impact on Small Business; Washington, DC. |

## 3.5 Subcommittee on Tax, Finance, and Exports

| Date | Subject and location |
|---|---|
| May 1, 1997 | Hearing: Why Exports Matter; Washington, DC. |
| May 15, 1997 | Hearing: Does OPIC Help Small Business Exporters? Washington, DC. |
| June 12, 1997 | Hearing: The Impact of Estate Taxes on Small and Family-Owned Businesses; Washington, DC. |
| July 15, 1997 | Hearing: Does Ex-Im Help Small Business Exporters?; Washington, DC. |
| March 25, 1998 | Hearing: The First Step: Death Tax Reform; Washington, DC. |
| May 15, 1998 | Hearing: IRS Accountability to Small Businesses and Self-employed Taxpayers; Vancouver, WA. |
| June 1, 1998 | Hearing: Reducing the Tax Burden on Small Business Owners; Topeka, KS. |
| June 1, 1998 | Hearing: Export Resources for Small Businesses; Overland Park, KS. |
| June 2, 1998 | Hearing: The Effect of the Estate Tax on Central New Jersey Farms and Small Businesses; Blawenburg, NJ. |
| September 16, 1998 | Hearing: Pension Reform for Small Business; Washington, DC. |

# CHAPTER FOUR

## PUBLICATIONS OF THE COMMITTEE ON SMALL BUSINESS AND ITS SUBCOMMITTEES 105TH CONGRESS

### 4.1 REPORTS

| House report number | Title and date |
|---|---|
| 105–7 (Part 1) | Report to accompany H.R. 852, The Paperwork Elimination Act of 1997; March 6, 1997. |
| 105–246 | Report to accompany H.R. 2261, The Small Business Programs Reauthorization and Amendments Act of 1997; September 8, 1997. |
| 105–450 | Report to accompany H.R. 3412, The Small Business Investment Company Technical Corrections Act of 1998; March 17, 1998. |
| 105–462 (Part 1) | Report to accompany H.R. 3310, The Small Business Paperwork Reduction Act Amendments of 1998; March 24, 1998. |
| 105–584 | Report to accompany H.R. 3853, the Drug-Free Workplace Act of 1998; June 18, 1998. |

### 4.2 HEARING RECORDS

| Serial no. | Held by | Date, Title, and Location |
|---|---|---|
| 105–1 | Full | March 6, 1997, Small Business Administration's Budget Request For Fiscal Year 1998; Washington, DC. |
| 105–2 | Full | March 12, 1997, Empowering Our Nation's Low Income Communities; Washington, DC. |
| 105–3 | Full | April 3, 1997, Tax Burdens Facing Small Businesses; St. Peters, MO. |
| 105–4 | Full | April 10, 1997, Proposed Rewrite of Part 15 of The Federal Acquisition Regulations; Washington, DC. |
| 105–5 | Government & Regulatory. | April 15 and 17, 1998, Federal Agency Compliance With The Regulatory Flexibility Act: Are Federal Agencies Using "Good Science" In Their Rulemaking?; Washington, DC. |
| 105–6 | Full | April 23, 1997: Relieving The Tax Burden on our Small Family and Home-Based Businesses; Washington, DC. |
| 105–7 | Government | April 24, 1997, How Patent Term & Patent Application Disclosure Issues Effect Small Businesses; Washington, DC. |
| 105–8 | Tax | May 1, 1997: Why Exports Matter; Washington, DC. |
| 105–9 | Empowerment | May 13, 1997: Urban Empowerment; Washington, DC. |
| 105–10 | Tax | May 15, 1997: Does OPIC Help Small Business Exporters?; Washington, DC. |
| 105–11 | Empowerment | May 20, 1997, Rural Empowerment; Washington, DC. |
| 105–12 | Government | May 22, 1997, Small Business Technology Transfer Pilot Program; Washington, DC. |
| 105–13 | Full | June 5, 1997, Small Business Regulatory Enforcement Act; Washington, DC. |
| 105–14 | Tax | June 12, 1997, The Impact of Estate Taxes on Small and Family-Owned Businesses; Washington, DC |
| 105–15 | Full | June 26, 1997, OSHA's Safety and Health Program Standard; Washington, DC. |
| 105–16 | Government | July 2, 1997, How SBA and Other Federal Programs Create Jobs and Stimulate Economic Growth; Cumberland, MD. |

| Serial no. | Held by | Date, Title, and Location |
|---|---|---|
| 105–17 | Regulatory | July 10, 1997, Congressional Review Act and Its Impact on Small Businesses; Washington, DC. |
| 105–18 | Tax | July 15, 1997, Does Ex-Im Help Small Business Exporters?; Washington, DC. |
| 105–19 | Full | July 16, 1997, 7(a) and 504 Subsidy Rates; Washington, DC. |
| 105–20 | Full | July 17, 1997, Reauthorization of the Small Business Administration's Financial Programs; Washington, DC. |
| 105–21 | Empowerment | July 24, 1997, Impact of Tax Proposals; Washington, DC. |
| 105–22 | Regulatory | July 21, 1997, The Impact of Federal Regulations on Small Businesses in the Hudson Valley; Mt. Kisco, NY. |
| 105–23 | Government & Regulatory. | September 11, 1997, H.R. 96, The Small Business Assistance Regulatory Act of 1997; Washington, DC. |
| 105–24 | Empowerment | September 12, 1997: From Dependency To Self-Sufficiency; Lancaster, PA. |
| 105–25 | Full | September 17, 1997, OSHA's Proposed Revision on Occupational Injury and Illness Recording and Reporting Requirements; Washington, DC. |
| 105–26 | Full | August 19, 1997, Entrepreneurship in America: Fairness in Regulatory Enforcement; Kansas City, MO. |
| 105–27 | Empowerment | September 19, 1997, Urban Problems and Community Self-Renewal; Ft. Wayne, IN. |
| 105–28 | Government | October 8, 1997, Focus on Women Business Enterprise; Washington, DC. |
| 105–29 | Regulatory | October 15, 1997, The Impact of Federal Regulations on Small Businesses in Montana; Missoula, MT. |
| 105–30 | Full | October 22, 1997, The Effectiveness of 7(a) and 504 Programs; Washington, DC. |
| 105–31 | Empowerment | October 27, 1997, Federal Tax Policy and Federal Programs Impacting Small Business Owners; Meadville, PA. |
| 105–32 | Full | October 29, 1997, SBA Implementation of the Government Performance and Results Act; Washington, DC. |
| 105–33 | Government | November 20, 1997, Making the Federal Government User Friendly; Frederick, MD. |
| 105–34 | Full | January 29, 1998, The SAFE Act: How Third Party Consultations Have Worked Where OSHA Has Failed; Washington, DC. |
| 105–35 | Full | February 12, 1998, Federal Agency Compliance with Section 610 of the Regulatory Flexibility Act; Washington, DC. |
| 105–36 | Full | March 3, 1998, Small Business Administration's Fiscal Year 1999 Budget Submission; Washington, DC. |
| 105–37 | Regulatory | March 4, 1998, The First Report to Congress by the Small Business and Agriculture Regulatory Enforcement Ombudsman; Washington, DC. |
| 105–38 | Full | February 25, 1998, Reducing America's Small Business Tax Burden; Washington, DC. |
| 105–39 | Full | March 12, 1998, H.R. 3412, a bill to amend and make technical corrections in Title III of the Small Business Investment Act; Washington, DC. |
| 105–40 | Government & Regulatory. | March 18, 1998, The SBREFA Panel Process; Washington, DC. |
| 105–41 | Tax | March 25, 1998, The First Step: Death Tax Reform; Washington, DC. |
| 105–42 | Full | March 19, 1998, Small Business Administration's Fiscal Year 1999 Budget Submission Regarding to The Proposed Increase in Disaster Loan Interest Rates; Washington, DC. |
| 105–43 | Empowerment | March 19, 1998, H.R. 3241, The Charitable Giving Partnership Act; Washington, DC. |
| 105–44 | Empowerment | March 26, 1998, Promising Efforts Taking Place in Urban Education; Washington, DC. |
| 105–45 | Empowerment | May 14, 1998, How to Best Obtain a Drug-Free Workplace; Washington, DC. |

| Serial no. | Held by | Date, Title, and Location |
|---|---|---|
| 105–46 | Full | April 16, 1998, The Expected Impact on Small Businesses and Farmers of the Kyoto Treaty on Global Climate Change; Malden, MO. |
| 105–47 | Government | April 22, 1998, Small Business Innovation Research Program; Washington, DC. |
| 105–48 | Full | May 19, 1998, H.R. 3865, The American Community Renewal Act (ACRA); Washington, DC. |
| 105–49 | Government | May 20, 1998, SBA Programs to Assist Veteran's Businesses; Washington, DC. |
| 105–50 | Empowerment | May 21, 1998, Empowerment Education; Washington, DC. |
| 105–51 | Tax | May 15, 1998, IRS Accountability to Small Business and Self-employed Taxpayers; Vancouver, WA. |
| 105–52 | Tax | June 2, 1998, The Effect of the Estate Tax on Central New Jersey Farms and Small Businesses; Blawenburg, NJ. |
| 105–53 | Full | June 4, 1998, Oversight Hearing on the Kyoto Protocol: The Undermining of American Prosperity; Washington, DC. |
| 105–54 | Tax | June 1, 1998, Reducing the Tax Burden on Small Business Owners; Topeka, KS. |
| 105–55 | Tax | June 1, 1998, Export Resources for Small Businesses; Overland Park, KS. |
| 105–56 | Government | June 24, 1998, HUBZone Program; Washington, DC. |
| 105–57 | Empowerment | June 22, 1998, Programs Empowering Businesses and Communities in Southern New Jersey; Mays Landing, NJ. |
| 105–58 | Full | July 15, 1998, Y2K, The Year 2000 Computer Problem; Washington, DC. |
| 105–59 | Government | July 16, 1998, SBA's Proposed New Automated Loan Monitoring System; Washington DC. |
| 105–60 | Empowerment | July 16, 1998, Teen Pregnancy; Washington, DC. |
| 105–61 | Government | July 22, 1998, Restructuring the Electric Utility Industry: the Impact on Small Business; Washington, DC. |
| 105–62 | Full | July 29, 1998, Kyoto II; Washington, DC. |
| 105–63 | Full | August 6, 1998, Project Labor Agreements; Washington, DC. |
| 105–64 | Full | August 19, 1998, Revitalizing America's Economically Distressed Communities; Washington, DC. |
| 105–65 | Tax | September 16, 1998, Pension Reform for Small Business; Washington, DC. |
| 105–66 | Full | September 16, 1998, H.R. 3659, The Farm and Ranch Risk Management Act; Washington, DC. |
| 105–67 | Government | September 23, 1998, Secondary Market for Guaranteed Portions of 7(a) Loans; Washington, DC. |

# CHAPTER FIVE

## SUMMARY OF LEGISLATIVE ACTIVITIES OF THE COMMITTEE ON SMALL BUSINESS

During the 105th Congress, 28 House bills and one Senate bill were referred to the Committee on Small Business. The Committee reported 5 five bills to the House, four of which passed the House. The Committee's major piece of legislation, the reauthorization of the Small Business Act, was enacted into law. Another of these bills, the Paperwork Elimination Act of 1997, was partially enacted into law as part of broader legislation. A third bill, on which the Committee waived legislative jurisdiction, amending the Small Business Technology Transfer & Research (STTR) program, was also enacted into law.

### 5.1 H.R. 852, (S. 2107 AND H.R. 4328); PUBLIC LAW NO. 105–277, THE PAPERWORK ELIMINATION ACT OF 1997

LEGISLATIVE HISTORY

| Date | Action |
|---|---|
| **H.R. 852:** | |
| February 26, 1997 | Referred to the Committee on Small Business. |
| February 26, 1997 | Referred to the Committee on Government Reform and Oversight. |
| February 28, 1997 | Referred to the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the Committee on Government Reform and Oversight. |
| March 6, 1997 | Committee on Small Business Consideration and Mark-up Session Held. |
| March 6, 1997 | Ordered to be Reported by Unanimous Consent. |
| March 6, 1997 | Committee on Government Reform and Oversight Waived Jurisdiction and Deferred to the House Committee on Small Business. |
| March 6, 1997 | Reported to House by House Committee on Small Business Report No. 105–7 (Part I). |
| March 11, 1997 | House Committee on Rules Resolution H. Res. 88 Reported to the House. |
| March 11, 1997 | House Committee on Rules Granted a Open Rule Providing One Hour of General Debate Divided Equally between the Chairman and Ranking Minority Member of the Committee on Small Business; Giving Amendments Preprinted in the Record Priority in Recognition for Consideration; Providing One Motion to Recommit, With or Without Instructions. |
| March 13, 1997 | Rule H. Res. 88 Passed House. |
| March 13, 1997 | Called up by House by Rule. |
| March 13, 1997 | Passed House by Yea-Nay Vote: 395-0 (record Vote No. 50). |
| March 17, 1997 | Received in the Senate. |
| March 17, 1997 | Read Twice and Referred to the Senate Committee on Governmental Affairs. |
| **S. 2107:** | |
| May 21, 1998 | Read Twice and Referred to the Committee on Commerce, Science and Transportation. |
| June 17, 1998 | Subcommittee on Communications Hearings Held. |

LEGISLATIVE HISTORY—CONTINUED

| Date | Action |
|---|---|
| July 15, 1998 | Committee on Commerce, Science and Transportation, Hearings Held. |
| July 29, 1998 | Committee on Commerce, Science and Transportation Consideration and Mark-Up Session Held. |
| July 29, 1998 | Ordered to be Reported (Amended) by Voice Vote. |
| September 17, 1998 | Reported to Senate (Amended) by Committee on Commerce, Science and Transportation Report No. 105–335. |
| September 17, 1998 | Placed on Senate Legislative Calendar under General Orders. Calendar No. 581. |
| October 15, 1998 | Measure Laid before Senate by Unanimous Consent. |
| October 15, 1998 | Passed Senate (Amended) by Unanimous Consent. |
| October 21, 1998 | Referred to House Committee on Government Reform and Oversight. |
| **H.R. 4328** (Omnibus Appropriations Act): | |
| October 19, 1998 | Conferees Agreed to File Conference Report. |
| October 19, 1998 | Conference Report H. Rep. 105–825 Filed in House. |
| October 20, 1998 | Conference Report Passed House by Yea-Nay Vote: 333–95 (Roll No. 538) |
| October 21, 1998 | Conference Report Passed Senate by Yea-Nay Vote: 65–29 (Record Vote No. 314) |
| October 21, 1998 | Cleared for White House. |
| October 21, 1998 | Presented to President. |
| October 21, 1998 | Signed by President. |
| October 21, 1998 | Became Public Law No. 105–277. |

## REASON FOR LEGISLATION

*H.R. 852:*

The Federal Government is lagging behind the rest of the nation in using new technologies to meet its information needs. Individuals and small businesses can now send and receive mail, accomplish personal banking transactions, and even read a newspaper from a personal computer or phone. Individuals and businesses should be able to conduct much of their business with the government electronically, as well. Legislation is needed to seize the opportunity which the Information Age and new information technologies present to reduce the huge cumulative burden of meeting the Federal government's information demands.

In response to this need, the Paperwork Elimination Act was developed. The legislation amends the Paperwork Reduction Act of 1995 (44 U.S.C. 35), by requiring all Federal agencies to provide the option of electronic submission of information, electronic compliance with regulations, and electronic disclosure of information to all who are required to comply with Federal regulations. While the legislation certainly encourages the use of electronic transmission of data, it stresses that opportunities for the public to use electronic technologies for data submission should be optional. The bill in no way hinders the ability of small businesses and individuals without access to computers and modems to comply with Federal paperwork requirements. It merely requires Federal agencies to consider and provide the option to those who wish and are able to use the technology.

*S. 2107:*

This legislation would require Federal agencies to make electronic versions of their forms available online and would allow individuals and businesses to use electronic signatures to file these forms electronically. The intent of the bill is to provide a framework for reliable and secure electronic transactions with the Federal government, while remaining "technology neutral" and not inappropriately favoring one industry over another.

While the main focus of S. 2107 deals with the use of electronic signatures, which are methods of signing an electronic message so that it identifies and authenticates a particular person, it does contain one provision that is nearly identical to a provision of H.R. 852. Both pieces of legislation require the Director of the Office of Management and Budget, in implementing his or her responsibilities under the Paperwork Reduction Act (44 U.S.C. 35), to provide direction and oversee the Federal government's acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper.

## HEARINGS

Although there were no hearings held by the Committee on Small Business on H.R. 852 during the 105th Congress, the legislation does have a significant legislative history that was developed during the 104th Congress, when virtually identical legislation (H.R. 2715) was considered and passed by the House of Representatives. In light of the record that was developed during the 104th Congress, the Chairman of the Committee on Small Business, in consultation with the Committee's Ranking Minority Member, decided to move forward with the consideration of the legislation without any additional hearings.

## SUMMARY OF LEGISLATION

*Purposes*

Section 2 of H.R. 852 stresses the intention of this legislation to advance the use of alternative information technologies and, in so doing, decrease paperwork demands by the Federal government. The intended beneficiaries of this legislation are small businesses, educational and nonprofit institutions, Federal contractors, state and local governments, and others. Of particular importance are the small businesses who face a disproportionate burden in complying with Federal regulations. Alternative technologies suggested as substitutes for paper include electronic maintenance, submission, or disclosure of information. The Paperwork Elimination Act of 1997 intends to assist Federal agencies in fulfilling the purposes and goals of the Paperwork Reduction Act.

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

Section 3(a) of H.R. 852 describes the authority and responsibility of the Director of the Office of Management and Budget (OMB) in providing direction and oversight of the acquisition and use of

new information technology. It compels the Director to consider alternative information technologies when developing a strategy to reduce paperwork. Section 3(b) directs the Director of OMB to promote the use of electronic submission, maintenance, and disclosure of information as an option for entities complying with the regulatory information needs of Federal agencies. The provision is added to §3504(h) of the Paperwork Reduction Act which outlines the Director's obligations to advance the use of information technology.

*Assignment of Tasks and Duties*

Section 4 of H.R. 852 supplements §3505(a)(3) of the Paperwork Reduction Act by requiring the Director of OMB, in consultation with the General Services Administration (GSA), National Institute of Standards and Technology (NIST), National Archives and Records Administration (NARA), and Office of Personnel Management (OPM), to develop and maintain a government-wide strategic plan for information resources management. H.R. 852 amends this section by inserting the requirement to include in this plan a progress report on the extent to which the paperwork burden on small businesses and individuals has been relieved as a result of the use of electronic submission, maintenance, or disclosure of information as a substitute for paper.

*Federal Agency Responsibilities*

Section 5(a) of H.R. 852 requires Federal agencies, when appropriate, to provide respondents with the option of maintaining, submitting, or disclosing information electronically when complying with Federal regulations. Section 5(b) requires each Federal agency to certify and report to the Director of OMB on the extent to which it has relieved the burden of paperwork, particularly on small businesses and individuals, by allowing the maintenance, submission, and disclosure of information electronically. Section 5(c) amends §3506(c)(3)(J) of the Paperwork Reduction Act to specify that, when certifying and reporting on alternative technologies used to collect information, Federal agencies must also consider the ability of respondents to electronically maintain, submit and disclose information. The intent is to reduce burden, improve data quality, and make agencies more efficient and responsive.

*Public Information Collection Activities; Submission to Director; Approval and Delegation*

Section 6 of H.R. 852 prohibits agencies from collecting information until they have first published a notice in the Federal Register describing how the information may, if appropriate, be electronically maintained, submitted, or disclosed by a respondent.

*Response to Congress*

Section 7 of H.R. 852 requires that when responding to Congress annually or at other times, the Director of OMB must report on how the collection of information by electronic means has affected regulatory burdens on small businesses and other persons. This report must specifically include any instance in which the maintenance, submission, or disclosure of information electronically, as

opposed to with paper, increased the regulatory burden on small business. It should also specifically identify instances referring to the information required from small businesses by the Internal Revenue Service (IRS).

*Effective Date*

The provisions of H.R. 852 would take effect on October 1, 1998.

FINAL LEGISLATION

The Omnibus Appropriations Act (P.L. 105–277) included the provisions of S. 2107. Accordingly, the provision of H.R. 852 which required the Director of the Office of Management and Budget to provide direction and oversee the Federal government's acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper, was signed into law.

## 5.2 H.R. 2261 (S. 1139), SMALL BUSINESS REAUTORIZATION ACT OF 1997

LEGISLATIVE HISTORY

| Date | Action |
|---|---|
| **H.R. 2261:** | |
| July 25, 1997 | Referred to the House Committee on Small Business. |
| July 30, 1997 | Committee Consideration and Mark-up Session held. |
| September 8, 1997 | Ordered to be Reported (Amended) by Voice Vote. |
| September 8, 1997 | Reported to House (Amended) by House Committee on Small Business Report No. 105–246. |
| September 8, 1997 | Placed on Union Calendar, Calendar No. 142. |
| September 29, 1997 | Called up by House Under Suspension of The Rules. |
| September 29, 1997 | Passed House (Amended) by Recorded Vote: 397–17 (Roll No. 463). |
| September 29, 1997 | S. 1139 Called Up by Unanimous Consent, House Struck All After Enacting Clause and Inserted Text of H.R. 2261 In Lieu Thereof. |
| September 29, 1997 | Laid on Table in House. For Further Action See S. 1139. |
| **S. 1139:** | |
| June 26, 1997 | Ordered Reported by the Senate Committee on Small Business As An Original Measure. |
| August 19, 1997 | Placed on Senate Calendar. |
| August 19, 1997 | Original Measure Reported to Senate. Senate Report No 105–62. |
| September 9, 1997 | Measure Laid Before Senate. |
| September 9, 1997 | Measure (With Amendment) Agreed to in Senate by Unanimous Consent. |
| September 10, 1997 | Measure Sent to House. |
| September 29, 1997 | Measure Passed House with Amendment. (House Struck All After Enacting Clause and Inserted Text of H.R. 2261 In Lieu Thereof. |
| October 23, 1997 | House Amendment Received in Senate. |
| October 31, 1997 | Senate Agreed to House Amendment with an Amendment. |
| November 9, 1997 | House Agreed to Senate Amendment Under Suspension of the Rules. |
| November 17, 1997 | Enrolled Measure Signed in House. |
| November 18, 1997 | Enrolled Measure Signed in Senate. |
| November 21, 1997 | Measure Presented to the President. |
| December 2, 1997 | Became Public Law 105–135. |

## NEED FOR LEGISLATION

Certain of the SBA's programs require reauthorization, including the important Section 504 loan program, the Small Business Technology Transfer or STTR program and the Microloan program. While several other programs could continue without reauthorization, the majority of the agency's efforts require this legislation.

S. 1139, as amended, contains a number of important provisions which, while not a part of the House version, H.R. 2261, have widespread support. In particular, the bill contains a provision regarding the practice of bundling federal contracts. This language provides protection for small business from misuse of this contracting procedure which has become a matter of increasing concern for small businesses operating in the federal arena.

Finally, the bill contains the HUBZone program authored by Senator Bond, which is designed to encourage small businesses to locate and hire from areas of high unemployment. This language was the subject of much negotiation prior to its acceptance but now represents a program that the SBA can soon begin to implement, with the assistance of additional funding approved by the Committee on Appropriations. However, to fully implement the program, SBA may need an additional increase in funding, possibly $10 to $20 million.

## SUMMARY OF LEGISLATION

### Title I: Authorizations

The bill authorizes appropriations for SBA's several business loan programs for fiscal years 1998, 1999, and 2000. Included are the section 7(a) loan guarantees, the section 504 program, Microloans, and Small Business Investment Company debentures and participating securities. Also included is language authorizing the appropriations of such sums as are necessary for disaster loans and the attendant salaries and expenses. The authorization levels are set forth below:

PROGRAM LEVELS FOR SBA REAUTHORIZATION AS PASSED IN S. 1139

[Amounts in millions]

| Program | FY 1997 appropriations | FY 1997 authorization | Authorized level | | |
|---|---|---|---|---|---|
| | | | 1998 | 1999 | 2000 |
| 7(a) | $10,300 | $13,100 | $12,000 | $13,000 | $14,500 |
| 504 | 2,650 | 3,250 | 3,000 | 3,500 | 4,500 |
| SBIC: | | | | | |
| Debentures | 300 | 300 | 600 | 700 | 800 |
| Participating securities | 410 | 900 | 700 | 800 | 900 |
| Microloan: | | | | | |
| Technical assistance | 13 | 98 | 40 | 40 | 40 |
| Direct loans | 24 | 250 | 60 | 60 | 60 |
| Guaranteed loans | 19 | 40 | 40 | 40 | 40 |
| DELTA 7a/504 | 48/49.6 | 3,250 | 1,000 | 1,000 | 1,000 |
| Surety Bond Guarantee: | | | | | |
| General program | 1,800 | 1,350 | 1,350 | 1,350 | 1,350 |
| Preferred program | | 650 | 650 | 650 | 650 |
| SCORE | 3.3 | 3.9 | 4 | 4.5 | 5 |

PROGRAM LEVELS FOR SBA REAUTHORIZATION AS PASSED IN S. 1139—Continued

[Amounts in millions]

| Program | FY 1997 appropriations | FY 1997 authorization | Authorized level | | |
|---|---|---|---|---|---|
| | | | 1998 | 1999 | 2000 |
| SBDC Base Closure Assistance | 2 | 15 | 15 | 15 | 15 |
| Women's Business Centers | 4 | 4 | 8 | 8 | 8 |

## Title II: Financial Assistance Programs

### *Section 201. Microloan Program*

The bill makes the direct microloan program, including technical assistance grants, a permanent program. It also extends the guaranteed microloan program through the year 2000.

The bill also makes the following changes to the microloan program:

(1) Increases the loan limit from $2,500,000 to $3,500,000 per intermediary.

(2) Changes the loan loss reserve requirement for experienced microloan intermediaries to the greater of twice the historic loss rate or 10 percent of the outstanding loan balance;

(3) Increases from 15 percent to 25 percent the percentage of technical assistance grants intermediaries may use to assist prospective borrowers;

(4) Authorizes up to 25 percent of the technical assistance grants to be used for contracting out to assist microloan borrowers.

### *Section 202. Welfare-to-Work Microloan Initiative*

Establishes a three year initiative to test the feasibility of providing supplemental grants to existing microloan intermediaries specifically targeted at helping some individuals leave public assistance and establish their own businesses. The bill requires an annual evaluation of the effectiveness of the initiative.

The bill also authorizes supplemental grants to be used, at the discretion of the intermediary or technical assistance provider to reimburse all or part of the child care or transportation costs of individuals participating in this initiative. These funds are to be provided only to the extent they do not duplicate funds already made available through state programs. Microloan intermediaries are expected to coordinate these reimbursements with appropriate state agencies.

The bill authorizes the SBA to fund the supplemental microloan technical assistance grants solely through transfers from other federal departments or agencies which have appropriated funds for the purpose of moving individuals from public assistance to work. The SBA is authorized to receive $3 million for fiscal year 1998, $4 million for fiscal year 1999, and $5 million for fiscal year 2000.

*Subtitle B—Small Business Investment Company Program*

*Section 211. Five Year Commitments for SBICs*

The bill gives the Administrator of SBA authority to make five year leverage commitments for SBICs. This new authority is designed to assist SBICs in raising private capital, which is matched with government guaranteed capital and invested in small businesses. By allowing SBA to approve five year commitments, an SBIC will be able to obtain leverage commitments based on its typical investment pattern, which normally allows for all investments to be made during the first five years of the SBIC's life-cycle.

*Section 212. Fees*

The bill includes a provision to permit SBA to collect fees from applicants for a license under the SBIC Program. It permits SBA to retain these funds to offset overhead resulting from SBA's conducting reviews of each applicant.

*Section 213. Small Business Investment Company Reform*

*(a) Bank Investments*

This subsection modifies the Small Business Investment Act of 1958 to allow banks to continue to invest in SBICs, whether the SBIC is organized as a corporation, partnership, or limited liability company. This provision expressly permits banks to invest in entities, such as affiliates, established to invest solely in SBICs, with no requirement that such entities be registered investment companies.

*(b) Leverage Cap*

Section 213 continues the $90 million cap on leverage to an individual SBIC or multiple SBICs under common control but allows an adjustment annually for inflation. Under this subsection, recipients of leverage in excess of $90 million would agree to invest all of that excess leverage obtained above this cap in "smaller businesses," which are defined as small businesses having $2 million or less in revenues and $6 million or less in net worth.

*(c) Tax Distributions*

Because the majority of the SBICs are partnerships, this subsection permits SBICs to make quarterly distributions to its investors (i.e., partners) to meet the investors' tax obligations. This quarterly distribution is designed to cover the situation where investors are making quarterly tax payments to the Federal government. If the SBIC's tax liability is not as great as estimated, the quarterly tax distributions are applied to the following tax year.

*(d) Leverage Fee*

Under this subsection, SBICs will be required to pay a 1 percent commitment fee at the time SBA makes a commitment for leverage, and the balance of 2 percent will be paid on the amount of leverage as it is periodically drawn down by the SBIC. If SBA made no prior commitment to the SBIC for leverage, the entire 3 percent fee is paid at the time that leverage is drawn by the SBIC.

*(e) Periodic Issuance of Guarantees and Trust Certificates*

Subsection (e) will permit SBA to pool and sell debentures to investors not less than every six months. This is a change from current law which requires SBA to pool and sell debentures not less than every three months. Current law has caused difficulties for SBA in producing sufficiently large and diverse pools of debentures that are most attractive to investors. This change will allow for larger pools, which should generate greater investment interest and more favorable interest rates for SBICs. Under this subsection, SBA will retain the discretion to pool and sell debentures more frequently, if there is sufficient demand.

*Section 214. Examination Fees*

This section permits SBA to collect fees from SBICs to defray costs for SBA's periodic examinations of SBICs. It is the intention of the Conferees that these funds be available to SBA solely to cover the costs of the examinations and other related oversight activities.

*Subtitle C—Certified Development Company Program*

*Section 221. Loans for Plant Acquisition, Construction, Conversion, and Expansion*

The bill changes the statute to confer on borrowers the flexibility to lease up to 20 percent of the project property to one or more tenants. This will allow 504 borrowers to attract tenants and create complementary business activity. The bill also permits sellers of property to finance the borrower's required equity position. This is allowed if the seller subordinates their interest to the SBA's interest in the property.

*Section 222. Development Company Debentures*

The bill reauthorizes SBA's collection of a fifteen-sixtenths of 1 percent fee from all 504 borrowers. This fee is the major component in keeping the subsidy rate for the 504 program at zero. The bill also reiterates that the fee should be maintained by SBA at a rate not greater than that necessary to keep the program at a zero subsidy, and should be reduced promptly whenever possible.

*Section 223. Premier Certified Lenders Program*

This section expands the participation in the Premier Certified Lenders Program (PCLP) by repealing the current 15 participant limit. The responsibilities of PCLP participants are also expanded to include authorizing, closing, litigating and liquidating loans in their portfolio. The bill recognizes that the SBA has a duty to oversee conduct of the PCLP borrowers, and may monitor their litigation activities but monitoring should not be construed broadly and does not include any management or control of the litigation.

Congress expects that the SBA will remain informed about PCLP litigation activities but not intervene except in cases of first impression, or in matters of a significant precedent setting nature. The purpose of the PCLP program is to substantially reduce SBA involvement in the 504 loan process allowing them to act autonomously. SBA is reminded that this privilege is to be allowed lati-

tude. The agency is also reminded that they can exercise best discretion by controlling admission to the PCLP program rather than by tightly overseeing the daily activities of PCLP participants.

In addition, the bill extends eligibility for the PCLP Program once a CDC has been an active participant in the accredited lenders program during the 12 month period preceding the date the CDC submits its application. The bill also modifies current law that requires the premier lender to maintain a loss reserve of 10 percent of the CDCs exposure. SBA is directed to review CDCs on a regular basis to confirm that those with loan loss rates greater than 10 percent do not expose the Federal government to an unusual risk of loss.

The bill permits the premier lenders to maintain their loss reserves using segregated funds on deposit in federally insured institutions, or they can provide irrevocable letters of credit in a format acceptable to the SBA. If a loss has been sustained by the SBA, and funds are disbursed from the loss reserve to reimburse SBA for the CDC's share of the loss, the CDC must replenish the reserve account within 30 days.

The bill extends the program through October 1, 2001 and provides that each premier lender is to establish a goal of processing not less than 50 percent of their loan applications under the PCLP. With respect to the processing goal, the Congress intends the goal as a target only, and expects Development Companies to use prudent judgment at all times in determining which applications are appropriate for processing under the streamlined PCLP procedures. This judgment should not be influenced by the 50 percent goal. The bill also requires SBA to promulgate regulations to carry out these changes within 120 days of enactment of this bill. Within 150 days after the date of enactment of this bill, SBA is to issue program guidelines and fully implement changes contained in this section.

*Subtitle D—Miscellaneous Provisions*

*Section 231. Background Check of Loan Applicants*

The bill authorizes SBA to conduct background "name" checks on all prospective 7(a) and 504 borrowers using the best available means possible, including the Federal Bureau of Investigation, National Crime Information Center (NCIC), computer system if it is available. Although the presence of a criminal record does not act as an absolute bar to participation in the SBA's loan programs, the Congress is concerned that persons convicted of fraud, embezzlement, and similar crimes may have access to SBA loans. Congress is also concerned that, in conducting these checks, undue delay in loan approvals will be detrimental to small business borrowers and to the programs' viability. In implementing this authority, the SBA should explore the effectiveness of a sampling methodology provided that all prospective borrowers are required to provide the information necessary to enable such a check to be conducted.

*Section 232. Report on Increased Lender Approval, Servicing, Foreclosure, Liquidation and Litigation of 7(a) Loans*

The bill directs SBA to undertake a study on its efforts to increase lender approval, servicing, foreclosure, litigation, and liq-

uidation of 7(a) loans and to report to the Congress within six months of enactment of this Act. This effort has been a key piece of the Administration's budget proposal for modernization and streamlining the agency, and the Congress wishes to remain fully apprised of the SBA's progress.

*Section 233. Completion of Planning for Loan Monitoring System*

The bill includes a requirement that SBA submit a detailed report to the Congress and the General Accounting Office on its plans for installation of a computerized financial tracking and loan monitoring system. SBA is directed to report on its progress to the House and Senate Committees on Small Business and the General Accounting Office within six months of the enactment of this Act. The Congress intends that the prohibition on spending apply solely to the actual ultimate purchase of the system, not preliminary planning or consulting activities. It would defeat the purpose of the reporting requirement if the SBA were prevented from planning and such a construction would defy common sense. Congress notes that, unfortunately, since the initial submission of the system as a part of the 1998 budget, no planning has taken place.

Title III: Women's Business Enterprises

Title III addresses the non-credit programs that serve women who own or seek to start their own business.

*Section 301. Interagency Committee Participation*

The bill provides that each designee to the Interagency Committee report directly to the head of their respective agency on the status of the Interagency Committee's activities. The bill does not authorize appropriations to support the activities of the Interagency Committee. Instead, agencies and departments on the Interagency Committee are to allocate existing personnel and resources to support participation on the Interagency Committee.

*Section 302. Reports*

The bill directs the Interagency Committee to transmit its annual report to Congress and the President through the SBA. This section deletes the requirement that the Interagency Committee's report include recommendations from the National Women's Business Council and requires that the report address the Committee's efforts to meet its statutory duties.

*Section 303. Duties of the National Women's Business Council*

In order to remove an inconsistency in current law, the bill directs the National Women's Business Council to submit its recommendations and reports to the Administrator of the SBA through the Assistant Administrator for the Office of Women's Business Ownership. The bill requires the Council to report annually to Congress and the President. This report should include a status report on the Council's efforts to fulfill its duties under sections 406 (a) and (d) of the Women's Business Ownership Act.

*Section 304. Council Membership*

Under the bill, the SBA Administrator is to appoint the Council members after reviewing the recommendations of the Chairmen and Ranking Minority Members of the Committees on Small Business in the Senate and House of Representatives. This is to enhance the Council's ability to fulfill its role as an independent advisory body to the Congress, the President, and the Administrator through the Assistant Administrator of the Office of Women's Business Ownership. The bill establishes staggered terms for the Council members.

The bill expands the Council to 14 members, plus a chair who should be a prominent business woman appointed by the President. Under current law, there are nine members (four business owners and five women's business organizations' representatives). The bill increases the number of women business owners to eight and increases the number of representatives of women's business organizations to six and includes language expressly recognizing that this category is to include representatives of local Women's Business Centers. The bill removes the word "national" as a qualifier for the type of organizations that can be represented on the Council. The bill also directs the SBA Administrator to give appropriate consideration to rural versus urban diversity when selecting Council members.

*Section 305. Authorization of Appropriations*

The bill authorizes the appropriation of $600,000 for Fiscal Years 1998 through 2000 with $200,000 targeted for research on women's procurement and finance issues as authorized in section 306 and 307. Funds appropriated under this section are solely for the activities and duties of the Council, and the Council shall review and approve its operating and research budget each year.

*Section 306. National Women's Business Council Procurement Project*

The bill authorizes the National Women's Business Council to conduct a study of issues related to Federal procurement opportunities for businesses controlled and owned by women.

Although women-owned business now represent over one-third of all businesses, they receive a minute share of Federal procurement dollars. In 1994, the Federal Acquisition Streamlining Act (FASA) established a modest government-wide goal of 5 percent for Federal contracts being awarded to women-owned businesses; but they actually received only 2.3% in 1994. The purpose of the study directed by this bill is to gain a greater understanding of the Federal government's poor performance in working with this growing sector. Specifically, the National Women's Business Council is to conduct a study of the Federal government's procurement history in attracting and awarding contracts to women-owned business using existing data collected by agencies. The bill also requires the National Women's Business Council to prepare a report on the best procurement practices of the Federal government and the commercial sector and to recommend policy changes.

The bill provides contract authority to the Council to carry out the research initiatives and resulting reports authorized under sec-

tions 306 and 307. All contracts shall be awarded in accordance with the Federal Acquisition Regulations.

*Section 307. Studies and Other Research*

The Council is also authorized to conduct other research relating to the award of Federal prime contracts and subcontracts to women-owned businesses, and access to credit and investment capital by women entrepreneurs, as the Council determines to be appropriate.

*Section 308. Women's Business Centers*

The bill increases the authorization for Women's Business Centers (previously called Women's Business Demonstration Sites) from $4 million per year to $8 million per year. Grantees awarded funds under this section will be eligible to receive funds for five years rather than three years as provided under current law. Changes to the matching funds requirement as follows:

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|---|---|---|---|---|---|
| Current law | 1 non-Federal; 2 Federal. | 1 non-Federal; 1 Federal. | 2 non-Federal; 1 Federal. | No funds | No funds |
| Reauthorization | 1 non-Federal; 2 Federal. | 1 non-Federal; 2 Federal. | 1 non-Federal; 1 Federal. | 1 non-Federal; 1 Federal. | 2 non-Federal; 1 Federal |

The bill provides that grantees conducting a three year program as of the day before the effective date of this bill may apply to SBA to receive funds for two additional years. Such Centers that were in year 3 of a 3 year project on September 30, 1997 and that are approved to receive funds in years 4 and 5 will be subject to the matching requirements applicable to year 5 under this bill. The Congress intends that Centers which have a demonstrated need and a history of successful operation in this program receive funds to continue for years four and five.

The bill includes language defining "women's business center site" and includes a list of duties and responsibilities of the Assistant Administrator for the Office of Women's Business Ownership, and upgrades this position to the Senior Executive Service.

The bill includes language to codify the practice of allowing Women's Business Center grant recipients to pursue other sources of Federal funds. Accordingly, funds received from other Federal agencies do not qualify as non-Federal funds under the matching funds requirement of this section. In addition, the performance of other Federal contracts shall not hinder the ability of the Women's Business Center grantee from fulfilling its obligations under this section.

The bill amends the criteria for selecting grant applicants under this section to include the "location for the Women's Business Center site." This language is to ensure that preference be given to applications for states without existing Centers.

The bill expressly prohibits the use of the funds appropriated under this section for any purposes other than grant awards, except that, in Fiscal Year 1998 only, up to 5 percent of the funds appropriated under this section are authorized to be used to supplement funds in SBA's salaries and expense budget for the administration of this program. SBA needs to change its practice of using

funds appropriated under this section for personnel and administrative overhead. SBA should include in its Fiscal Year 1999 budget request a line item in the salaries and expenses budget to reflect the actual cost of administering this important program. To assist with Congressional oversight, the SBA is directed to provide the Senate and House Committees on Small Business with a quarterly accounting within 20 days of the end of the Fiscal Year quarter detailing all expenditures for the Women's Business Centers program in Fiscal Years 1998, 1999, and 2000. In Fiscal Year 1998, the report shall identify whether each expenditure was funded by appropriated grant funds or SBA's salaries and expense budget.

## Title IV: Competitiveness Program and Procurement Opportunities

### *Subtitle A: Competitiveness Demonstration Program (Comp Demo)*

*Section 401. Program Term*

S. 1139 makes the Competitiveness Demonstration Program permanent.

*Section 402. Monitoring Agency Performance*

This provision changes the reporting requirement for the program to an annual report.

*Section 403. Reports to Congress*

This provision shifts the responsibility for the annual report on the COMP Demo program to the SBA.

*Section 404. Small Business Dredging Program*

This provision makes the Small Business Dredging Program permanent.

### *Subtitle B: Small Business Procurement Opportunities Program*

*Section 411. Contract Bundling*

Section 411 amends section 2 of the Small Business Act and emphasizes Congressional policy to provide small businesses, to the maximum extent possible, prime and subcontracting opportunities and to eliminate obstacles to their participation and to avoid unnecessary and unjustified bundling of contract requirements.

*Section 412. Definition of Contract Bundling*

Amends section 3 of the Small Business Act to define "bundling of contract requirements", "bundled contracts", and "separate smaller contracts".

*Section 413. Assessing Proposed Contract Bundling*

Amends section 15 of the Small Business Act to create a new subsection (e) which establishes the procedure to be followed by contracting officials to insure that small business concerns are afforded the maximum practicable opportunity to compete for prime contracting and subcontracting opportunities. Specifically, the bill directs that if a requirement could lead to a "bundling" of several areas of work that were or could have been separately solicited in sizes more conducive to small business participation then the agen-

cy must conduct "market research" to determine whether such consolidation is justified and would lead to cost savings and improvements.

Section 413 also encourages small businesses to form teams for the purpose of competing for bundled contracts and provides that such teams will not affect the small business status of individual businesses. In establishing these teaming rules which alter the SBA's regulations regarding affiliation Congress recognizes that some types of affiliation should not disqualify a small business from participating in federal procurements.

The ability of small businesses to team with other small businesses should not be considered justification or an opportunity for procurement officials to bundle requirements. The justification for bundling must be based solely on savings, improvements in delivery and quality, and other enhancements that accrue to the agency and that overwhelm any infringement of small business opportunity. The mere fact that small businesses could or might team does not lower the burden for agency justification of bundling.

The bill also amends section 15 of the Small Business Act to require SBA procurement review procedures if a solicitation involves an unnecessary or unjustified bundling of contract requirements. Nothing in this section is intended to amend or change in any way the existing obligations imposed upon a procurement activity or the authority granted the SBA under section 15(a) of the Small Business Act.

*Section 414. Reporting of Bundled Contract Opportunities*

Requires federal agencies to report through the Federal Procurement Data System all contract actions involving bundled requirements with an anticipated contract award value exceeding $5,000,000.

*Section 415. Evaluating Subcontract Plan Participation in Awarding Contracts*

The bill inserts a substitute for section 8(d)(4) of the Small Business Act requiring that bundled contracts awarded pursuant to the negotiated method of procurement must use the bidders' small business subcontracting plans and past small business subcontracting performance as significant factors in the evaluation of offers.

*Section 416. Improved Notice of Subcontracting Opportunities*

Amends section 8 of the Small Business Act to allow prime contractors and subcontractors (at any tier) to publish subcontracting opportunities in excess of $10,000 in the Commerce Business Daily.

*Section 417. Deadlines for the Issuance of Regulations*

Requires that proposed regulations be published not later than 120 days after the date of enactment and that final regulations be published not later than 270 days after the date of enactment.

## Title V: Miscellaneous Provisions

*Section 501. Small Business Technology Transfer Program (STTR)*

S. 1139 reauthorizes the STTR program through fiscal year 2001. SBIR expires after fiscal year 2000. The Managers do not intend this discrepancy in reauthorization timetables to preclude making legislative revisions to the STTR program when the reauthorization of the SBIR program is considered.

Section 501(b)(1)(C) adds a new subsection (s) "Outreach Program" to section 9 of the Small Business Act (15 U.S.C. 638). The new subsection is intended to increase the STTR grant application pool from which STTR grant applications are selected by increasing the number of applications received from states that received under $5,000,000 in awards during fiscal year 1995. The new subsection is not intended to require agencies participating in the STTR program to increase the dollar value or number of STTR awards to those states. Rather, the program is intended to improve the overall number and quality of applications for awards, and to increase geographic distributions.

The authorization contained in section 9(s)(2) shall be taken entirely from funds appropriated for use by the Small Business Administration. No funding derived from STTR agency research funds outlined in section 9(n)(1) may be used for the outreach program under section 9(s).

Section 9(s)(4) specifies that all funds for use the new outreach program are solely for outreach purposes and are not to be used for STTR awards.

Finally, section 9 is further amended by adding a new subsection (t) that requires STTR and SBIR programs to be included as part of the agencies' strategic plan updates required under the Government Performance and Results Act (5 U.S.C. 306(b)).

*Section 502. Small Business Development Centers (SBDCs)*

This legislation authorizes program levels of $85 million in FY 98, $90 million in FY 99, and $95 million in FY 2000. Additionally, it establishes a funding floor of $500,000, if matched by the state and expands authorized counseling activities to specifically include credit practices, business plans, financial packaging, startup, expansion and export planning. This section also allows the participation of Women's Business Centers in the SBDC program and expands authority to provide additional grants to SBDCs to assist minority, veteran and women owned business or in communities impacted by base closings; and rural or underserved communities.

*Section 503. Surety Bond Program*

S.1139 authorizes $1.35 billion in regular surety bond guarantees and $650 million in preferred surety bond guarantees through FY 2000 while extending the Preferred Surety Bond Guarantee program for the same period.

*Section 504. Extension of Cosponsorship Authority*

This section extends until September 30, 2000 the provision allowing the Small Business Administration to work in conjunction

with private sector organizations and corporations in providing assistance to small business.

*Section 505. Asset Sales*

This section requires the SBA to provide the Small Business Committees with the draft and final plans for implementing an asset sale program of loans currently held in the agency's portfolio. The Administration estimates large profits from such sales and the Committee requests this information in order to verify these claims.

*Section 506. Small Business Export Promotion*

This legislation provides for the establishment of on-line computer linkages between SBDCs and an international trade data information network with ties to the Export Assistance Center program.

*Section 507. Defense Loan and Technical Assistance (DELTA) Program*

This section extends the authorization of the DELTA loan program until the funds appropriated for it are exhausted. The bill also changes the guarantee percentage on DELTA loans to 80 percent.

*Section 508. Very Small Business Concerns*

The bill extends authority for the Very Small Business Concern program through the end of FY 2000. Though now due to expire until October 1998 the Congress is compelled to extend this program due to the SBA's failure to begin implementation. The Managers request the SBA to act with diligence in drafting and publishing implementing regulations as soon as possible.

*Section 509. Trade Assistance for Small Businesses Adversely Impacted by NAFTA*

The bill requires SBA to coordinate Federal assistance for providing counseling to small businesses adversely affected by the North American Free Trade Agreement.

## Title VI: HUBZone Program

The bill creates a new program known as the "HUBZone Act of 1997." This program was approved by a vote of 18–0 in the Committee on Small Business in the Senate and subsequently included in S. 1139 as Title VI. After negotiation with the House it was accepted in its current final form.

The purpose of the HUBZone Act of 1997 is to provide relief to urban and rural areas of the United States which have historically been identified as economically distressed areas. The HUBZone Act of 1997 is a jobs program intended to encourage small business concerns to locate in, and employ residents of, HUBZones. One of the principal purposes of this Act is to decrease the unemployment, underemployment, and lack of opportunity that tend to be concentrated in inner cities and some rural areas, including Indian Reservations, throughout the U.S.

Every effort should be made in the implementation of the HUBZone Act by SBA and other Federal agencies to provide an effective opportunity for the contracting preferences to be used as the basis for meaningful levels of contract awards. To that end, the Small Business Administration has been given an additional $2 million in salaries and expenses to help implement the HuBZone Act.

The HUBZone Act of 1997 is designed to bring qualified HUBZone small business concerns and their employees into the mainstream of government contracting at both the prime and subcontract levels by providing procurement preferences and through the establishment of contracting goals. The Act establishes three specific Federal procurement preferences for "qualified HUBZone small business concerns."

*Section 602. Historically Underutilized Business Zones*

This section establishes the framework for implementation of the HUBZone Act of 1997. It defines the terms under which a small business qualifies as a HUBZone small business and specifies the three preferences. First, Section 602 sets forth the authority for a contacting officer for a Federal agency to restrict competition for a contract to a qualified HUBZone small business when he determines there are two or more qualified HUBZone small business concerns that are likely to submit offers and that award can be made at a fair market price. Second, in circumstances where there is only one qualified HUBZone small business concern, the contracting officer is authorized to make a non-competitive award or sole-source award of a contract that does not exceed $3 million for service contracts and $5 million for manufacturing contracts. In this circumstance, the contracting officer must determine that the award can be made at a fair and reasonable price. And third, it provides a pricing preference of up to ten percent in the evaluation of a bid by a HUBZone business as compared to that of a large firm.

Section 602 gives the Small Business Administration new, discretionary authority to appeal a decision of a contracting officer not to award a contract under the HUBZone program. The Administrator would have five days after receiving notice of this adverse decision to notify the contracting officer that SBA may appeal the decision, and within 15 days the Administrator may appeal the decision to the head of the department or agency.

*Section 603. Technical and Conforming Amendments to the Small Business Act*

The bill amends various provisions of the Small Business Act and makes technical and conforming amendments to effectuate the requirements of the program in a manner consistent with other statute.

*Section 604. Other Technical and Conforming Amendments*

This section of the bill, addressing other technical and conforming amendments, is intended to amend the Competition in Contracting Act (10 U.S.C. 2304(b)(2)) and (41 U.S.C. 253(b)(2)) to allow for HUBZone set-aside procedures in Federal prime contract-

ing for contract requirements in excess of the simplified acquisition threshold. The effect of the bill is to amend the Competition in Contracting Act (10 U.S.C. 2304(c)) and (41 U.S.C. 253(c)) to provide HUBZone contracting authority to award HUBZone prime contracts using procedures other than competitive procedures for Federal prime contract requirements greater than the simplified acquisition threshold and not greater than $5,000,000, in the case of manufactured items and $3,000,000, for all other contract opportunities.

*Section 605. Regulations*

The bill requires the Small Business Administration to publish within 180 days of enactment the final regulations to carry out the program. The bill further requires the Federal Acquisition Regulatory Council to publish the HUBZone implementing regulations within 180 days of the date the SBA publishes its final regulations.

*Section 606. Report*

The bill requires the Administrator of the Small Business Administration to submit a report to the Senate and the House of Representatives Committees on Small Business by March 1, 2002. The report is to evaluate the implementation of the HUBZone program, as well as the effectiveness of the program.

*Section 607. Authorization of Appropriations*

The bill amends the Small Business Act to authorize the appropriation of $5,000,000, for the Small Business Administration for implementation of the HUBZone program for each Fiscal Year, 1998, 1999 and 2000.

Title VII: Service Disabled Veterans

This title includes the House language designed to enhance the Small Business Administration's efforts to improve opportunities for service disabled veterans and provide enhanced outreach to that group. The Congress believes strongly that these individuals deserve better consideration from federal agencies than they are currently receiving.

*Section 701. Purposes*

This section outlines the intent of the Congress to enhance entrepreneurial opportunities for service disabled veterans and to promote their efforts to participate in the small business community.

*Section 702. Definitions*

This section defines the terms "eligible veteran" and "small business concern owned and controlled by eligible veterans" for the purposes of this title and the Act.

*Section 703. Report by the Small Business Administration*

This section requires the Small Business Administration to study the needs of small businesses owned by eligible veterans and report to the Committees on Small Business of the House and Senate on the steps needed to improve and enhance the role of service disabled veterans in the small business community and the economic

mainstream of the country. The Congress expects Small Business Administration to provide this information in detail and well within the time allotted. The Congress expects the Small Business Administration to reach out for assistance in this task to the various veterans organizations, State run programs for veterans and other interested groups for assistance in completing this study.

*Section 704. Information Collection*

This section directs the Secretary of Veterans Affairs, in cooperation with the Administrator of the Small Business Administration, to annually identify small businesses owned and controlled by eligible veterans and work to keep them informed concerning federal procurement opportunities available to them.

*Section 705. State of Small Business Report*

This section directs the Small Business Administration to include information concerning small businesses owned and controlled by eligible veterans in its annual report to the President and Congress, "The State of Small Business".

*Section 706. Loans to Veterans*

This section reinforces the Small Business Administration's preexisting authority to make loans to small business concerns owned and controlled by service disabled veterans. The Congress takes this step to cure a lingering misunderstanding that the Administration's requested defunding of the Veteran's direct loan program in no way diminishes the Small Business Administration's responsibility to assist veterans through the 7(a) program.

*Section 707. Entrepreneurial Training, Counseling, and Management Assistance*

This section directs the Administrator to ensure that small business concerns owned and controlled by eligible veterans are given full access to the Small Business Administration's business assistance programs including SCORE, and the Small Business Development Centers.

*Section 708. Grants for Eligible Veterans' Outreach Programs*

This section amends the Small Business Administration's existing authority to include making grants to, or entering into cooperative agreements with organizations that have or may establish outreach and assistance programs for eligible veterans.

*Section 709. Outreach for Eligible Veterans*

This section directs the Administrator of the Small Business Administration, the Secretary of Veterans Affairs, and the Assistant Secretary of Labor for Veterans' Employment and Training to cooperatively develop an outreach and assistance program designed to coordinate the activities of their respective agencies and to disseminate the information about those programs to eligible veterans.

## 5.3 H.R. 3412—THE SMALL BUSINESS INVESTMENT COMPANIES TECHNICAL CORRECTIONS ACT OF 1998

### LEGISLATIVE HISTORY

| Date | Action |
|---|---|
| **H.R. 3412:** | |
| March 10, 1998 | Referred to House Committee on Small Business. |
| March 12, 1998 | Committee Consideration and Mark-Up Held. |
| March 12, 1998. | Ordered to be Reported (Amended) by Voice Vote. |
| March 17, 1998 | Reported to House (Amended) by House Committee on Small Business Report No. 105–450. |
| March 17, 1998 | Placed on Union Calendar, Calendar No. 257. |
| March 24, 1998 | Called up by House Under Suspension of the Rules. |
| March 24, 1998 | Passed House by Recorded Vote: 407–0. Roll No. 66. |
| March 25, 1998 | Received in Senate and Referred to Senate Committee on Small Business. |
| September 15, 1998 | Ordered Reported (Amended) by Senate Committee on Small Business. |
| September 25, 1998 | Reported to Senate with Amendment in Nature of Substitute. Senate Report No. 105–347. |
| September 25, 1998 | Placed on Senate Calendar, Calendar No. 645. |
| September 30, 1998 | Measure Laid Before Senate by Unanimous Consent. |
| September 30, 1998 | Amendment Agreed to in Senate by Unanimous Consent. |
| September 30, 1998 | Passed Senate with Amendment by Unanimous Consent. |
| October 1, 1998 | Measure Returned to House. |

### NEED FOR LEGISLATION

The purpose of H.R. 3412 was to make certain technical amendments to Title III of the Small Business Investment Act of 1958. Title III authorizes the activities of the Small Business Investment Company program. Small Business Investment Companies (SBICs) are venture capital firms licensed by the Small Business Administration that use SBA guarantees to leverage private capital for investment in small businesses. The technical corrections proposed by H.R. 3412 would improve the flexibility of the SBIC program and allow improved access to this program by small businesses.

Congress revamped the SBIC program in the 103d Congress to provide for a new form of leverage geared specifically towards equity investment in small businesses. Over the ensuing years, as the new program has become established, certain deficiencies have come to light; in addition, certain statutory provisions have become obsolete.

Moreover, the nature of the SBIC industry has changed. The result is a participating securities industry made up primarily of smaller SBICs. The fact that these smaller SBICs are dominating the program points to shifting dynamics in the SBIC program. Smaller, start-up investments are more typical and, therefore, the demand for leverage has shifted to smaller individual placements.

H.R. 3412 sought to correct these deficiencies, and remove provisions that may produce confusion due to changes in law and the character of the SBIC program. Under H.R. 3412, a provision in the Small Business Investment Act that reserves leverage for smaller SBICs will be repealed. Changes in SBA policy regarding applications for leverage, statutory changes in the availability of commitments for SBICs, and the makeup of the industry present

the possibility that that provision may, in fact, create conflicts and confusion.

H.R. 3412 modified a test for determining the eligibility of small businesses for SBIC financing. Current statutory language does not account for small businesses organized in pass-through tax structures such as S corporations, limited liability companies, and certain partnerships. Also, H.R. 3412 will allow the SBA greater flexibility in issuing trust certificates to finance the SBIC program's investments in small businesses. Current law allows fundings to be issued every six months or more frequently. This inhibits the ability of the SBICs and the SBA to form pools of certificates that are large enough to generate serious investor interest.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title*

Designates the bill as "The Small Business Investment Company Technical Corrections Act of 1998".

*Section 2. Technical Corrections*

(1) This paragraph removes subparagraph (13) of Section 303(g) of the Small Business Investment Act (15 U.S.C. 683(g)). That provision reserves 50% of participating securities leverage for Small Business Investment Companies with private capital of less than $20 million until the fourth fiscal quarter. While the Committee continues to be interested that all SBICs have access to the funding needed to complete their investments, we also recognize that this provision is no longer necessary. Only 12 of the 60 SBICs in the participating leverage program have more than $20 million in private capital, and the original concern that a few large SBICs would dominate the program has proved unfounded. It appears that most SBIC equity placements are in smaller early-stage businesses and consequently most participating securities SBICs are established as smaller funds.

(2) This paragraph establishes a test for small businesses formed as tax "pass-through" entities such as S corporations, or limited liability companies. Such businesses will have their small business investment eligibility determined by multiplying their net income by the combined federal and state corporate tax rate and then subtracting the result from their net income. That result will serve as the small business' estimated "after-tax income" for the purpose of determining eligibility. This removes an uncertainty in the statute that meant a C corporation with as much as $9 million in pretax income could be a small business but a pass-through S corporation with $6,000,001 in income was ineligible.

The final paragraph changes Section 320 of the Small Business Investment Act to allow issuance of Small Business Administration-backed trust certificates not less than every twelve months rather than the current standard of every six months. SBA would retain the discretion to issue guarantees and trust certificates at shorter intervals if appropriate. The change will give SBA increased flexibility in negotiating the terms and costs associated with the placement of certificates, either by contract or public offering. This will ultimately benefit the small businesses seeking fi-

nancing since the rates sought by SBICs are reflected in the rates charged to small businesses.

## 5.4 H.R. 3853—THE DRUG-FREE WORKPLACE ACT OF 1998

### LEGISLATIVE HISTORY

| Date | Action |
|---|---|
| **H.R. 3853:** | |
| May 13, 1998 | Referred to House Committee on Small Business. |
| June 11, 1998 | Committee Consideration and Mark-Up Session Held. |
| June 11, 1998 | Ordered Reported (Amended) by Voice Vote. |
| June 18, 1998 | Reported to House (Amended) by Voice Vote. |
| June 18, 1998 | Placed on Union Calendar, Calendar No. 328. |
| June 23, 1998 | Passed House (Amended) by Yea-Nay Vote: 402–9. Roll No. 257. |
| June 24, 1998 | Received in Senate. Referred to Senate Committee on Small Business. |
| September 15, 1998 | Ordered Reported by Committee on Small Business With an Amendment in Nature of Substitute. |
| September 25, 1998 | Reported to Senate. Report No. 105–348. |
| September 25, 1998 | Placed on Senate Calendar, Calendar No. 656. |
| October 19, 1998 | Included in Conference Report for H.R. 4328, Omnibus Appropriations Act for 1999. For Further Action See H.R. 4328. |
| **H.R. 4328:** | |
| October 20, 1998 | Conference Report for H.R. 4328 Approved by House by Yea-Nay Vote: 333–95 Roll No. 538. |
| October 21, 1998 | Conference Report for H.R. 4328 Approved by Senate Yea-Nay Vote: 65–29, Roll No. 314. |
| October 21, 1998 | Enrolled Measure Signed in House. |
| October 21, 1998 | Enrolled Measure Signed in Senate. |
| October 21, 1998 | Measure Presented to President. |
| October 21, 1998 | Became Public Law 105–277. |

### NEED FOR LEGISLATION

The abuse of drugs and alcohol in the workplace is a significant hazard to working Americans, and a serious drain on the economy in terms of lost productivity, increased health costs and wasted potential. Small businesses employ the vast majority of American workers. Yet the Institute for a Drug-Free Workplace estimates that a majority of illicit drug users work for organizations of less than 25 people—small businesses. This statistic points to a problem in our society that goes beyond the economic costs. Workplace injuries and lost productivity are often easily quantified. The costs to families and children due to the problem of substance abuse are harder to add up. H.R. 3853 will address both the obvious and hidden damage this problem causes through the encouragement of workplace-based programs of employee assistance and intervention.

H.R. 3853 will initiate a demonstration program designed to aid small businesses in the establishment of drug-free workplace programs. Under H.R. 3853, non-profit intermediaries will be awarded grants to establish drug-free workplace programs for use by small businesses. These programs will encourage employers to offer and use a variety of strategies of employee assistance, training and intervention to reduce substance abuse problems.

### SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title*

Designates the bill as "the Drug-Free Workplace Act of 1998".

*Section 2. Findings, Purposes*

This section details Congressional findings regarding the serious costs in health, safety and productivity that the abuse of alcohol and drugs heaps on the economy and particularly, small business. This section also lays out the fundamental purpose of this bill—to aid working families and the small businesses that employ them in combating the threat of substance abuse.

*Section 3. Sense of Congress*

This section expresses the sense of Congress that businesses should adopt drug-free workplace policies and that the States should encourage them in their efforts through tax and insurance incentives.

*Section 4. Drug-Free Workplace Demonstration Program*

This section establishes the demonstration program permitting the Small Business Administration to offer grants to intermediary organizations who would provide assistance to small businesses in setting up drug-free workplace programs. The intermediaries must be 501(c) (3) or (6) non-profit organizations with a background in assisting small businesses and a specific history of at least two years experience in establishing drug-free workplace programs.

This section, under paragraph (c), also establishes *de minimis* components for any drug-free workplace program. These components are (1) a clear written policy, (2) a minimum of two hours of training for all employees, (3) additional training for working parents, (4) drug testing by a certified institution, (5) access to an employee assistance program, and (6) a continuing drug and alcohol abuse prevention program.

Paragraph (d) requires the Small Business Administration, in conjunction with the Departments of Labor and Health and Human Services, and the "Drug Czar" to evaluate programs of any drug-free workplace programs established. Paragraphs (e) and (f), respectively, define eligible intermediaries to include organizations in the District of Columbia and the territories, and define "employees" as including supervisors, managers and certain owners and officers.

Finally, paragraph (g) makes clear that participation in drug-free workplace training sessions or other program does not require any employer to contract for any services offered as part of a drug-free workplace program, and paragraph (h) authorizes the program for fiscal 1999 at a sum of $10,000,000.

While the Committee did not accept an amendment offered by Ms. Christian-Green regarding the certification of intermediary organizations it does wish to encourage the Administration, when drafting regulations for this program, to use certified intermediaries whenever possible. The Committee recognizes that certification may not be required in all jurisdictions, and does not wish to make it a statutory requirement. However, when required in a jurisdiction, it should also be required for this program. In jurisdictions where certification is not required, the Administration should draft regulations that require intermediaries to have some demonstrated skills and experience. The certification or experience should not necessarily be intrinsic to the intermediary itself, it may be acquired through subcontracting or referral.

*Section 5. Small Business Development Centers*

Section 5 adds providing drug-free workplace assistance and information to the various duties and responsibilities of small business development centers.

*Section 6. Contract Authority*

Authorizes the Small Business Administration to contract with other government agencies or organizations or private organizations for the provision of services under this Act. This provision will allow the Small Business Administration to draw on the resources of other organizations in areas outside their technical competencies.

*Section 7. Collection of Data and Study*

Directs the Small Business Administration to collect data and perform a study on the abuse of drugs in the workplace and its costs to small business.

## 5.5 H.R. 4078—WOMAN'S SMALL BUSINESS EXPANSION ACT OF 1998

LEGISLATIVE HISTORY

| Date | Action |
|---|---|
| **H.R. 4078:** | |
| June 18, 1998 | Referred to House Committee on Small Business. |
| June 25, 1998 | Committee Consideration and Mark-up Session Held. |
| June 25, 1998 | Ordered Reported by Voice Vote. |

There was no further action on H.R. 4078.

NEED FOR LEGISLATION

Women's Business Centers are organizations created to assist women entrepreneurs. They provide this assistance through a variety of services including management training, marketing assistance, and business plan development. H.R. 4078 had only one purpose—to increase the authorization of the Women's Business Center program from $8 million to $9 million annually. This increase would enable the SBA to open approximately 30 more Women's Business Centers in the next two years.

# CHAPTER SIX

## SUMMARY OF OTHER LEGISLATIVE ACTIVITIES OF THE COMMITTEE ON SMALL BUSINESS

### 6.1 COMMITTEE MEETINGS

#### 6.1.1 ORGANIZATIONAL MEETING

On February 13, 1997, the Committee on Small Business held an organization meeting. The purpose of this meeting was three-fold: (1) to consider and adopt the Committee rules for the 105th Congress, (2) to consider and adopt the Committee's oversight plan for the 105th Congress, and (3) to approve the subcommittee assignments for Members of the Committee. The Committee accomplished these three tasks in record time (11 minutes) with little discussion. Both the Committee rules and oversight plan were adopted, without amendment, by voice vote.

The text of the Committee's oversight plan follows:

**OVERSIGHT PLAN FOR THE COMMITTEE ON SMALL BUSINESS**

**105TH CONGRESS**

**U.S. HOUSE OF REPRESENTATIVES**

**CONGRESSMAN JAMES M. TALENT, 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 Oversight and House Oversight 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 105th 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 to determine their effectiveness and possible options for improvements.

**FINANCIAL AND MANAGEMENT/TECHNICAL ASSISTANCE PROGRAMS**

The Committee will conduct hearings on the effectiveness and efficiency of the SBA's major programs. Particular emphasis will be placed on improving the economic efficiency of these programs. A number of the SBA's key programs will be the subject of oversight hearings by the Committee. These include:

**7(a) General Business Loan Programs** (Spring, 1997)

**Certified Development Company Program** (Spring, 1997)

**SBIC/SSBIC Programs** (Summer, 1997)

**Microloan Program** (Summer, 1997)

**SBDC** (Summer, 1997)

**Disaster Loan** (Fall, 1997)

**Surety Bond** (Winter, 1998)

## 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. (Summer, 1997)

## TECHNOLOGY AND RESEARCH ASSISTANCE

### Small Business Innovation Research

The Small Business Innovation Research (SBIR) program aids small businesses in obtaining federal research and development funding for new technologies. (Summer, 1997)

### Small Business Technology Transfer

The Small Business Technology Transfer program authorization will expire on September 30, 1997. 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. (Summer, 1997)

## FEDERAL PROCUREMENT

The Committee will examine changes in federal procurement. The Committee will investigate the implementation of the changes and the effect they are having on small businesses involved in government contracting. (Fall, 1997)

## GOVERNMENT & NON-PROFIT COMPETITION

The Committee will be conducting hearings on the extent to which non-profit organizations and the federal government itself compete with small business. Our focus will include activities in both the private sector and government procurement. (Winter, 1998)

## REGULATORY FLEXIBILITY

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

## 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 second session of the 104th Congress. (Ongoing)

## PAPERWORK REDUCTION

The Committee will continue its oversight of agency implementation of the Paperwork Reduction Act, as amended. (Ongoing)

## GOVERNMENT REGULATION

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

**TAXATION**

The Committee will continue to conduct oversight hearings into ways to reduce the tax burden on small business. These hearings will include not only the fiscal but the paperwork burden of the federal tax system and federal enforcement efforts. (Spring, 1997 through Fall, 1997).

**ELECTRIC UTILITY DEREGULATION**

The Committee will conduct oversight hearings on the potential effects of electric utility deregulation on small business. (Summer, 1997 through Fall, 1997)

**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 under the Government Performance and Results Act. (Ongoing)

**EMPOWERMENT**

The Committee will conduct oversight hearings over regulations and licensing policies that impact small businesses located in high risk communities. Additionally, the Committee will examine the promotion of business growth and opportunities in economically depressed areas, and will examine programs targeted towards relief for low income communities. (Ongoing)

## 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 1999 budget with respect to matters under the Committee's jurisdiction.

### 6.2.1 FISCAL YEAR 1998 BUDGET

The Committee did not submit its views and estimates on the fiscal year 1998 budget.

### 6.2.2 FISCAL YEAR 1999 BUDGET

On March 11, 1998, the Committee submitted its budget views and estimates on the fiscal year 1999 budget in compliance with rule X, clause (4)(g), of the Rules of the House of Representatives. Those views and estimates were based on the President's Budget for FY 1999 as well as the Small Business Administration's budget submission. The President's proposed budget for FY 1999 requested an increase of $8 million over FY 1998 for a total request of $724.8 million .

While the Committee believed that many of the provisions of the budget were reasonable, it could not agree with the direction provided in the current FY 1999 budget proposal. The SBA does provide important services to the small business community. However, SBA's FY 1999 budget was, unfortunately, lacking in a coherent view. There was a troubling increase of nearly $200 million in overall SBA expenses that was masked by proposed changes to the disaster loan program.

The President's FY 1999 SBA budget submission also asked for no appropriations for FY 1999 disaster assistance. The Administration believed that sufficient carryover funds existed to fully fund disasters for FY 1999. This saving of approximately $148 million was based on optimistic assumptions and an increase in the interest rate charged to disaster victims. These changes deliberately shifted SBA financial excesses onto the backs of disaster victims.

In addition, important programs for small business assistance were drastically under-funded based on unrealistic projections of demand and carryover. The FY 1999 SBA proposed budget for small business financial assistance discusses building a twenty-first century financial management organization and providing assistance for small business. The reality was that the Small Business Investment Company program was severely under-funded and the 7(a) program level relied on unsubstantiated savings estimates.

Finally, federal employment was increased rather than decreased, and some programs were increased without thought to cost or efficiency. Streamlining and productivity enhancing technology were proposed to support bureaucratic growth.

Minority views were also submitted.

# 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 13, 1997, an oversight agenda for the 105th Congress. (For a discussion of the Committee's consideration of the oversight agenda and final 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 COMMITTEE ON SMALL BUSINESS

#### 7.2.1 THE SBA'S BUDGET FOR FISCAL YEAR 1998

*Background*

On March 6, 1997 the Committee on Small Business held an oversight hearing on the budget proposal of the Small Business Administration (SBA). In response to the SBA budget request for fiscal year 1998, witnesses were asked to comment on the programs of the SBA, which would be reformed. Witnesses were also asked to justify how specific budget changes would increase the SBA's assistance to small business. Furthermore, witnesses commented on specific SBA programs, such as the 504 Lending Program, the Premier Certified Lenders Program (PCLP), and Small Business Development Centers (SBDC).

*Summary*

The hearing was comprised of two panels. The first consisted of the Honorable Aida Alvarez, Administrator of the U.S. Small Business Administration. She was accompanied by Patricia Forbes, Deputy Administrator for Economic Development, Gregory A. Walter, Acting Assistant Administrator for Congressional and Legislative Affairs, Bernard Kulik, Associate Administrator for Disaster

Assistance; Antonella Pianalto, Associate Deputy Administrator for Management and Administrator; Johnnie Albertson, Associate Administrator for Small Business Development Centers; Ronald K. Hobson, Associate Deputy Administrator for Government Contracting and Minority Enterprise Development; Don Christensen, Associate Administrator for Investment, and Jane Butler, Acting Associate Administrator for Financial Assistance. The panel spoke on behalf of the President's budget request for the Small Business Administration. They supported the funding levels in the proposal for each SBA program. As it was Administrator Alvarez's first hearing before the committee in her new position as head of the SBA, she also outlined her goals for the agency's programs.

The second panel included: Mark Barbash, Executive Director, Columbus Countywide Development Corporation, representing the National Association of Development Companies (NADCO); Keith Fox, General Partner, Exeter Equity Partners, representing the National Association of Small Business Investment Companies (NASBIC); James L. King, State Director, New York Small Business Development Center, representing the Association of Small Business Development Centers; and Richard E. Wise, President, American National Bank on behalf of the National Association of Government Guaranteed Lenders.

Mr. Barbash testified about the funding levels of the SBA 504 program's Certified Development Companies (CDCs). NADCO, which represents 275 CDCs, found the Administration's request for $2.3 billion authorization to be inadequate. His rationale is that FY 1996 authorizations totaled $2.5 billion and FY 1997 loan volume should not exceed that level. NADCO estimates increase in every year thereafter. Furthermore, he said that since the 504 program is self-funded, an increase in the authorization level would not be detrimental to the federal budget.

Mr. Fox, on behalf of NASBIC, said he agreed with the funding levels in the President's budget for Small Business Investment Companies. He also outlined the SBIC program, and why it remains a worthwhile governmental investment.

Both Mr. King and Mr. Wise disagree with proposed SBA funding cuts in Small Business Development Centers (SBDCs). According to the Administration's plan, $16 million are to be cut from SBDCs, a 24% reduction from the previous year. Both witnesses testified that the SBDC program counsels thousands of small businesses annually and deserves support. They also testified to the negative effects of a budget cut to the assistance provided to small business.

For further information on this hearing, refer to Committee publication 105–1.

### 7.2.2 EMPOWERING OUR NATION'S LOW-INCOME COMMUNITIES

*Background*

On March 12, 1997, the Committee held a hearing investigating the invigoration of low-income communities. Chairman Talent, the Honorable Floyd H. Flake, a Representative from New York and the Honorable J.C. Watts, Jr., a Representative from Oklahoma introduced the "American Community Renewal Act" the morning of

the hearing. Instead of offering new governmental programs to our most needy neighborhoods, the Act would work to nurture existing local community organizations. Based on the three themes of moral and family renewal, economic empowerment, and fostering private charities, witnesses testified about existing programs, which exemplify the merits of the proposed legislation. Also they addressed the impact the American Community Renewal Act might have if passed into law.

*Summary*

The hearing consisted of one panel which included: Congressman Watts; Clint Bolick, Vice President and Director of Litigation, Institute of Justice; Tom Lewis, Founder and Executive Director, the Fishing School, Washington, DC; Dr. Stuart Butler, Vice President and Director of Domestic and Economic Policy Studies, the Heritage Foundation; Kathryn Wylde, President, New York City Investment Fund; and Robert L. Woodson, Sr., National Center for Neighborhood Enterprise.

Mr. Watts testified about specific neighborhood ministries, which currently help people living in disadvantaged areas. These organizations assist people in finding work and overcoming drug addiction in order to lead productive lives. He emphasized that these are private religious organizations, which Congress has not financially assisted in the past. However, he urged his colleagues to allow faith-based organizations to become a part of the solution to help ailing communities through passage of the American Community Renewal Act.

Mr. Bolick testified on behalf of the Institute of Justice which helps fight legal battles for people with limited economic means across the United States. He praised the Act for its elimination of unnecessary regulations that impede entrepreneurship in disadvantaged areas and the creation of scholarships for children of low-income families.

Mr. Lewis, a 20-year veteran of the Washington, DC Police Department, an ordained minister and the founder of the Fishing School, an after-school program on one of the toughest streets of the city, testified about his community outreach program. He praised the Act for including incentives to start programs like the Fishing School by letting people spend up to $35,000 tax-free for these programs.

Dr. Butler and Ms. Wylde praised the American Community Renewal Act of 1997 by testifying about how both small business and disadvantaged communities will benefit from the legislation. They said that different provisions in the bill would create higher incentives for small business investment that will, in turn, assist the members of each community.

Mr. Woodson also gave anecdotal information towards the success neighborhood grassroots organizations have had in turning poor and crime-ridden areas into strong, thriving communities. He emphasized that spending money towards conducting different studies and creating massive programs is usually wasteful whereas smaller grassroots programs are thriving.

For further information on this hearing, refer to Committee publication 105–2.

### 7.2.3 SMALL BUSINESS TAX BURDENS

*Background*

On April 3, 1997, the Committee on Small Business held a field hearing in St. Peters, Missouri, on several tax issues affecting small businesses. Small businesses in general, and home-based businesses in particular, are experiencing burgeoning growth throughout the St. Peters region and across the country. Taxes have a broad and significant impact on the ability of small businesses to expand, hire and retain workers, and maintain economic stability. Witnesses were asked to specifically describe how taxes have affected their small businesses and small business in general, with specific focus on the home office deduction, the health insurance deduction, independent contractor status and the estate tax. Further, witnesses explored how H.R. 1145, "The Home-Based Business Fairness Act of 1997," would provide their businesses with tax relief.

*Summary*

The hearing was comprised of three panels, the first of which included: Linda Howard, owner, Oasis Office Automation; Carol Prose, owner, Travel Opportunities; Edith Quick; owner, Quick Tax & Accounting Service and 1995 White House Conference on Small Business Region VII chairperson on taxation; and Valarie Wilson, owner, V. Wilson Associates. The first panel discussed the nature of the home-based business as an efficient, flexible, and highly productive mode of conducting business that affords home business owners and their families an increased quality of life. The unanimous view was that the home office deduction was essential, providing needed capital with which these businesswomen could grow their businesses by updating equipment and improving cash flow. However, the home office deduction was not available to all of the witnesses, most of whom were precluded from taking the deduction by the narrow definition of what qualifies as a home-based business under current tax law. Ms. Quick expressed concerns about the Supreme Court's 1993 ruling in *Commissioner* v. *Soliman,* which severely limited the number of home-based businesses who were able to take the home office deduction. Ms. Howard explained that her business was among the home offices affected; she was unable to take the deduction as a consultant who must perform her duties at the site of her client, even though she performs all of her preparatory and administrative work in her home office.

The second panel examined health insurance deductibility for small businesses and included: Jim Koetting, owner, HealthCare Solutions; Charles Kruse, president, Missouri Farm Bureau; and Thomas Shalberg, owner, TCD Associates. Witnesses discussed the problems with current limitations on health insurance deductions for small businesses. Witnesses agreed that it was highly inequitable to afford corporations 100 percent deductibility for health insurance premiums while restricting the self-employed to 40 percent under current law. Mr. Koetting explained that, as a result, small businesses were not only paying average monthly premiums of $300–400 per month, but, at a tax bracket of 28 percent, they were

also paying $600–$800 per year in taxes. All witnesses remarked that, as a result, people often would forgo health insurance because it was too costly.

The third panel examined independent contractor status and the estate tax, and included: Dale Oestreich, owner, American Delivery Service; Judy Meador, editor, St. Louis Small Business Monthly; Bob Poelker, vice president, BSI Constructors, Inc.; Sandra Wilmoth, owner, Midwest Marble and Granite Corp.; and Mary Ann Zerr, farm owner. Witnesses on the third panel agreed that the lack of clarity as to what constitutes an independent contractor versus an employee affects many businesses negatively, forcing small business owners to guess—often to their detriment—how they will be classified by the Internal Revenue Service. Mr. Oestreich explained that the risk involved in being re-classified by the IRS is so great that he opted for the safest path of classifying all of his workers as employees—a move that almost forced his company out of business. Ms. Meador echoed these concerns and remarked that the "Home-Based Business Fairness Act of 1997" afforded a clearer, more understandable definition of independent contractor status.

The witnesses discussing estate tax were unified in their belief that the estate tax was detrimental to small business. Mr. Poelker explained that nearly $5 million is spent annually on life insurance premiums in order to have the proceeds necessary to pay the death tax in the equipment industry alone. Further, he mentioned that 70% of family businesses do not succeed to the second generation, and that every time a family-owned business closes, an average of 46 workers lose their jobs. Ms. Wilmoth testified that the only option for her—as she cannot afford "death insurance" and does not have the capital necessary to pay the estate tax after her business transfers to her children—is to sell her business, which will result in the loss of jobs for 25 highly skilled employees.

For further information on this hearing, refer to Committee publication 105–3.

### 7.2.4 PROPOSED REWRITE OF FAR PART 15

*Background*

On April 10, 1997, the Committee held a hearing on the Administration's proposed changes to Part 15 of the Federal Acquisition Regulations (FAR), which controls the source selection process for government procurements. Two laws passed in the 103rd and 104th Congresses provoked the changes to the FAR (Federal Acquisition Streamlining Act of 1994 and the Federal Acquisition Streamlining Act of 1996.) Approximately $50 billion in procurements are awarded using Part 15 of the FAR. The proposed reforms affect the full and open competition standards created in the Competition in Contracting Act of 1984. While full and open competition is not eliminated by the reforms, a competing concept of "efficient competition" is introduced by the new standards. Witnesses were asked how the new regulations would affect small business participation in government procurements.

*Summary*

The hearing was comprised of one panel which included: Tom Frana, President, Vion Corporation; Mike Postiglione, President, Avanti Corporation; James R. Klugh, Major General, US Army, Retired, President, Executive Security and Engineering Technologies, Inc., Jere Glover, Chief Counsel for Advocacy, Small Business Administration, accompanied by Jim O'Connor, Assistant Advocate for Procurement Policy; and Steven Kelman, Administrator, Office of Federal Procurement Policy.

Mr. Frana expressed his concern that the Administration's proposal goes too far in regard to small business. The Administration's rationale for the changes is to make the procurement process more efficient by eliminating some of the formalistic procedures in handling contract bids including allowing bidders to remain in the bidding process at their own discretion. The Administration proposal suggested competitive range restrictions and mandatory "down selects" which could eliminate many small business bids. Mr. Frana said that these restrictions on free and open competition, small businesses might lose contracts they normally might have a chance to compete for. Furthermore, in the proposed regulation, small businesses will have no way to appeal a contract. Therefore, there will be no consequences for a contracting officer who willingly excludes small businesses from a procurement opportunity.

Mr. Postiglione said he supported the FAR 15 proposal. Testifying for the American Consulting Engineers Council (ACEC), he noted qualifications-based selection (QBS) has been a function used by the architectural and engineering community for the last 25 years. In his experiences in the industry, he feels QBS works extremely well in the governmental marketplace. Because the new initiative in Part 15 mirror those used in QBS, Postiglione said he was in favor of the reforms.

Gen. Klugh and Mr. Glover testified about their concerns with the FAR 15 proposal. They were skeptical of the assertion that empowerment of contracting officers would not hinder the bidding capabilities of small businesses. Furthermore, Mr. Glover produced statistics which showed small businesses currently earn a much greater share in competitive procurement opportunities than in those procurements which are decided non-competitively.

Dr. Kelman supported the FAR 15 rewrite and spoke on behalf of the Administration. He said the government would be able to get better quality work for what it will pay under the new regulations. He also felt it would improve the over-regulation and bureaucracy embedded in the current system. Providing statistics that the percentage of procurements to small business did not improve during the six years after the passing of the Competition in Contracting Act in 1984, he testified that small business would not be affected by the new reforms.

For further information on this hearing, refer to Committee publication 105–4.

### 7.2.5 RELIEVING THE TAX BURDEN ON OUR SMALL, FAMILY AND HOME-BASED BUSINESSES

*Background*

On April 23, 1997, the Committee on Small Business held a hearing to examine how to relieve small, family, and home-based businesses from onerous tax burdens. The hearing also explored taxes that concern working families and farmers, including the estate or death tax and capital gains taxes. Finally, the Committee members and the witnesses expressed concern over the effect of Internal Revenue Service (IRS) tax regulations on small business.

This hearing followed the introduction by Chairman Jim Talent and Senator Kit Bond on March 20, 1997, of the Home-Based Business Fairness Act (H.R. 1145/S. 460). The bill would allow home-based and self-employed workers to deduct their home office expenses and to deduct the full cost of their health insurance premiums. The bill also would clarify the definition of an "independent contractor" to minimize the threat of crippling IRS penalties and back taxes small businesses face when they use these workers.

*Summary*

The hearing was comprised of one panel which included: Honorable Christopher (Kit) Bond, United States Senator from the State of Missouri; Marcy Bunch, owner-employee, Screening Services, Springfield, Missouri; Doug Horn, Vice President, Martin/Horn, Inc., Charlottesville, Virginia, on behalf of the Associated General Contractors of America; Frank Joseph, Key Communication Group, on behalf of the National Association of the Self-employed; Ann Parker Maust, President, Research Dimensions, Inc., Richmond, Virginia, on behalf of the National Federation of Independent Businesses; Anthony Vest, President, Management Programs Corporation, Duluth, Georgia, on behalf of the U.S. Chamber of Commerce; Erin Maher Weinstein, sole proprietor and independent sales representative on behalf of the Promotional Products Association International and the Small Business Legislative Council.

Senator Bond first outlined the three provisions of H.R. 1145/S. 460 and described how the legislation would relieve the tax burden on small, family and home-based businesses. He discussed the importance of clarifying the status of independent contractors, restoring the home office deduction, and accelerating to 100% the health insurance deduction for the self-employed. He also advocated reducing capital gains and discussed how regulatory burdens of the current tax system hurt small enterprises. Mary Bunch then discussed how an unfair tax burden (the inability of the self-employed to deduct their health insurance costs) hindered her ability to afford health insurance, as she invested all her family's income—including her husband's retirement—in her business. She expressed strong support for H.R. 1145, highlighting the bill would accelerate to 100% the health insurance deduction for the self-employed.

Generally, the panel expressed concerns about the death tax, capital gains, and the need for IRS reform. Specifically, Doug Horn testified that his family business must hire outside accounting and legal advisors for estate planning, spending in excess of $20,000 a

year in insurance and accounting fees. He also described how the death tax hurts small contractors in several ways including business continuity, cost of estate planning, human toll and job destruction.

Because capital gains taxes tax income twice, Doug Horn described how they hurt small construction firms that rely on venture capital and equity investors (often employees, friends and family) to survive. In written testimony as Chairwoman of National Small Business United, Sharon Miller of Midland, Michigan agreed with several witnesses that capital gains taxes discourage long-term investment. Ms. Miller explicitly described how the triple burden of capital gains, death, and payroll taxes plagues small businesses.

The witnesses also described disastrous experiences with the IRS. Mary Bunch testified that the IRS badgered her while she attempted to justify the independent contractor status of her workers under the current 20-factor test. The IRS was trying to reclassify her four workers as independent contractors. Anthony Vest testified business owners must utilize their personal cash, lay off workers, sell assets, or, in the worst case scenario, liquidate or declare bankruptcy to pay assessments when the IRS reclassifies independent contractors as employees.

In support of H.R. 1145, Frank Joseph discussed how the legislation would ease his tax burdens by allowing full deductibility of his health insurance costs. H.R. 1145 would benefit Erin Maher Weinstein who has a home-based business and cannot currently take the home office deduction because she does not sell her products in her home. She strongly supported H.R. 1145 for proposing to restore the home office deduction. Ann Parker Maust recommended permitting the deductibility of payroll taxes, eliminating death taxes, implementing 100% health insurance deductions for the self-employed, restoring the home office deduction, reducing capital gains, clarifying the definition of independent contractors, increasing the expensing limit, and reforming the IRS. Several witnesses offered similar recommendations including allowing the deductibility of payroll taxes in addition to passing the provisions of H.R. 1145. In written testimony, the Small Business Legislative Council fervently supported H.R. 1145 and explained why death tax relief is the top priority of its members for the 105th Congress.

### 7.2.6 SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT

*Background*

On June 5, 1997, the Committee held a hearing to educate members on the Small Business Regulatory Enforcement Fairness Act (SBRFA) and its relevance in the context of the history of the Regulatory Flexibility Act (RFA) of 1980. The main purpose of the RFA was to minimize certain regulatory burdens placed on small businesses. It added a chapter to the Administrative Procedure Act to force government agencies to review and minimize regulatory burdens on small businesses. After President Carter signed the RFA, many government agencies complied, implementing more small business friendly regulations. However, some agencies found loopholes and ignored the law and certain court decisions supported a

looser interpretation of the law than what Congress intended by enacting the RFA. Therefore, this hearing educated members on SBREFA. Passed into law during the 104th Congress, SBREFA amends the RFA to strengthen its importance and reduce the regulatory burden inflicted on small business.

*Summary*

The hearing was comprised of two panels, the first of which included: the Honorable Ike Skelton, a Representative in Congress from the State of Missouri, and the Honorable Thomas W. Ewing, a Representative in Congress from the State of Illinois.

Mr. Skelton, who served as Chairman of the House Small Business Subcommittee on Exports, Tourism and Special Programs when the RFA passed in 1980, gave a chronological history on why the implementation of SBREFA was necessary in order to force certain federal agencies into compliance with the RFA. Some of his observations were based on a 5-year report on the RFA that his Subcommittee completed in 1987.

Mr. Ewing told the history of how former Small Business Committee Ranking Member Andy Ireland, former Small Business Committee Chairman John LaFalce and Mr. Skelton worked with Mr. Ewing at the start of the 102nd Congress to draft amendments to the RFA. Although re-introduced in the 103rd Congress and included in the Republican "Contract with America" at the start of the 104th Congress, Mr. Ewing said it took until 1996 for the President to sign SBREFA and its amendments to the RFA into law. Mr. Ewing said it is the first time in 17 years that federal agencies will have to answer in the courts if they do not keep in mind small business interests in drafting rules or regulations.

The second panel included experts who commented on how to achieve full federal agency compliance with SBREFA: James Morrison, Senior Policy Advisor, National Association for the Self Employed; Keith N. Cole, Principal, Beveridge & Diamond; Todd V. McCracken, President, National Small Business United; Craig Brightup, Director of Government Relations, National Roofing Contractors Association; and Mark W. Isakowitz, Director, Federal Government Relations—House, National Federation of Independent Business.

Mr. Morrison said the drafting of the RFA was necessary when in the 1970's the regulatory activity in the federal register swelled to more than 20,000 pages a year. However, because the RFA restricted judicial review, the courts agreed with the Justice Department that small businesses could not seek judicial review against agencies that refuse to implement the law. He said SBREFA is important because small businesses are now better ensured relief from regulatory agencies.

Mr. Cole testified as the former Regulatory Affairs Counsel to the Senate Committee on Small Business. He talked about the role of the Ombudsman and the regional fairness boards in grading how federal agencies comply with SBREFA. He also urged the Committee to revitalize section 610 of the RFA in the future, which requires an agency to adopt a plan of review of all of its existing regulations and to review those within 10 years of adoption.

Mr. McCracken expanded on Mr. Cole's concern that federal agencies misinterpreted section 610 by only applying a notice a review of new rules. However, he said SBREFA will require agencies to analyze the impact of its current regulations on small business.

Mr. Brightup commented on how the weight of regulations impact the roofing industry. He specifically cited the Occupational Safety and Health Administration, the Environmental Protection Agency and the Department of Transportation for not analyzing their regulatory impacts on small business. He said SBREFA will now help protect small businesses from the impact of certain regulations that hinder their existence.

Mr. Isakowitz said because the cost of a regulation to small business is on average 50 percent higher than on large businesses, it is important for laws like SBREFA to work. However, he is skeptical that it will because it seems that every time the 600,000 members of the National Federation of Independent Business lobby for new regulatory relief, agencies fight the newly passed laws. He said that after climbing a mountain, finding out more mountains rise at the peak is symbolic of this effort for the past three decades.

For further information on this hearing, refer to Committee publication 105–13.

### 7.2.7 OSHA'S SAFETY AND HEALTH PROGRAM STANDARD

*Background*

As mentioned as a top priority in the Occupational Safety and Health Administration's (OSHA's) 1996 Regulatory Agenda, OSHA is presently working on promulgating a comprehensive safety and health program standard that will be applied to businesses of all sizes including most small businesses. Although this draft standard is presently in the pre-proposal stage, this working draft of the rule would force small businesses to write a safety and health program to assess and control all hazards in new equipment, materials, and processes, and prioritize all hazards. Hazards covered by other OSHA standards are to be controlled in accordance with those standards.

OSHA requiring a business to adopt a safety and health program might seem to be a plausible idea, but if one looks into the draft proposal, the definition of terms such as hazard, seriousness, control, and pattern of serious hazards are subjective at best. As the draft proposal is written, the subjective nature of this proposal could allow an inspector to fine a small restaurant for not assessing and controlling a hazard such as a bartender changing a keg of beer. If the safety and health program is deemed to be not up to an inspectors liking, a small business could be fined under this draft proposal.

Due to the priority placed on this draft rule by OSHA, the Committee held a hearing on the draft proposal on June 26, 1997.

*Summary*

The hearing consisted of two panels with the first panel consisting of a sole witness in Greg Watchman, Acting Assistant Secretary for Occupational Safety and Health of the U.S. Department of Labor. The second panel consisted of five witnesses including the

following: Melissa Bailey, Esq., McDermott, Will, and Emery, Earlyn Church, Superior Technical Ceramics Corporation, Katherine Gekker, The Huffman Press, Inc., Brian Landon, Landon's Car Wash and Laundry, and Dr. Gary Rainwater of the American Dental Association.

Mr. Watchman, who was the sole witness of the first panel, used an answer and question format in stating his testimony. Mr. Watchman presented 5 questions which consisted of the following: Why do Americans need a safety and health program rule? What type of rule is OSHA considering? What is the rulemaking process OSHA is using? and What is OSHA doing to address small business concerns? Mr. Watchman basically attempted to validate the rule by giving specific examples of OSHA programs and procedures that are correlated with the process and context of this rule.

The second panel which consisted of four small business owners and an expert witness. This panel was generally critical of the draft rule. The witnesses' main concern was the vagueness of the rule as well as how inspectors would interpret certain provisions of the rule due to its subjective nature. Witnesses also had concerns regarding OSHA using this standard as a way to exempt itself from going through the normal rulemaking process by citing companies under the general duty clause for failure to assess and control ergonomic hazards. The witnesses on this panel all concurred that the vagueness of the draft rule would make the inspector the judge, the jury, as well as the executioner.

Mr. Watchman joined the second panel for questioning as he was allowed to rebut the second panel's testimony. He constructively criticized the witnesses' testimony defending OSHA's position on a variety of factors. Besides Mr. Watchman, the second panel witnesses were questioned generally on the experiences they have had with OSHA as well as their thoughts on this draft rule.

Mr. Watchman was peppered with questions by the Chairman on the subjective nature of the rule as well as certain definitions of key terms such as employee, small business, pattern of serious hazards, etc. The hearing concluded with Mr. Watchman admitting that the draft rule had major flaws, and he also stated that OSHA would have to re-evaluate the rule regarding the concerns brought about by this hearing.

For more information on this hearing, consult committee publication 105–15.

### 7.2.8 7(a) AND 504 SUBSIDY RATES

*Background*

On Wednesday, July 16, 1998 the Committee on Small Business convened a hearing to discuss the system used by the Small Business Administration (SBA) and the Office of Management and Budget (OMB) to determine the credit subsidy rates that control funding of the SBA's guaranteed loan programs.

The witnesses comprised a single panel of four including: the Honorable Aida Alvarez, Administrator of the SBA; Ms. Judy England-Joseph, Director for Housing and Community Development issues for the General Accounting Office (GAO); Mr. John Winchester, an analyst from Merrill Lynch Securities; and Mr. G. Ed-

ward DeSeve, Controller and Acting Deputy Director for Management of the OMB.

Chairman Talent opened the hearing with a brief statement outlining the concerns of the Committee as a result of various problems with the subsidy model over the past two or three years. Specifically, he cited the unexpected change in the subsidy rate for the 7(a) and 504 programs, which occurred in 1996. These dramatic changes effectively eliminated reductions in the subsidy rate crafted by the Committee and necessitated further legislation in order to rescue the programs. Chairman Talent also cited the recent subsidy rate problem which created a presumed shortage in funding for the 7(a) program until the GAO discovered a significant accounting error in the subsidy calculation.

Mr. LaFalce echoed the Chairman's concerns and suggested that much of the problem may arise from the perception that the subsidy rate calculation is performed in a "black box" fashion. Mr. LaFalce suggested that greater transparency in the subsidy calculation process would greatly improve this perception and reduce the tension between the Congress and the Administration.

The first witness to testify was Ms. Judy England-Joseph of the GAO. Ms. England-Joseph commented on the process which the GAO used to discover the error in the subsidy rate calculation. Ms. England-Joseph stated that the error occurred, in part, because insufficient controls existed to verify the calculations performed. She then explained that much of the miscalculation resulted from an error in applying the discount model.

Administrator Alvarez then testified concerning SBA's role in the subsidy calculation process. She explained in detail where the error occurred and informed the Committee that she had requested her Chief Financial Officer scrutinize the entire process and had hired Price Waterhouse to conduct a review of SBA's internal controls. Administrator Alvarez expressed great concern over the error since such mistakes had the potential to create large problems in the management of SBA programs.

The next witness was Mr. John Winchester from Merrill Lynch. Mr. Winchester commented on the securitization and sale of small business loans. He explained the parallel between the subsidy rate and the price calculations established by the markets for SBA-backed loans.

The final witness was Mr. G. Edward DeSeve, Controller and Acting Deputy Director for Management at the Office of Management and Budget. Mr. DeSeve testified concerning the steps that OMB is taking to make sure that errors do not occur in future calculations. He also spoke generally about the changes the SBA and OMB has made over the last few years to improve the data collection for the subsidy model.

Mr. Talent began the questioning by the Committee and asked Administrator to explain why the Committee should not be skeptical of future subsidy calculations coming from the Administration. Administrator Alvarez replied that she believed the new data collection methods, combined with an effort to develop an econometric model would improve accuracy and, she believed, eliminates future discrepancies. She also stressed, and Ms. England-Joseph agreed, that the use of statistical sampling rather than hard data had con-

tributed to the errors. Both Ms. Alvarez and Ms. England-Joseph agreed that the SBA's improvement in the collection and use of hard data would provide more accurate and reliable subsidy estimates.

Ms. Millender-McDonald then asked several questions concerning the development of the econometric model and the new data collection efforts. Administrator Alvarez replied that these efforts were vital and would require additional appropriations to enable SBA to improve its computer capabilities and hire additional staff.

Mr. Boyd then asked Mr. DeSeve about the nature of the models used to calculate the subsidy rate. Mr. Boyd inquired as to whether the OMB had changed the models at any time during the past three years. Mr. DeSeve replied that OMB had not. Mr. Boyd then asked why there had been such a dramatic increase in the subsidy rate if the models had not changed. Mr. DeSeve replied that the problem came as a result of inaccurate data rather than inaccurate modeling.

Mr. Boyd then asked Mr. Winchester to comment on how the private sector arrived at its conclusions on the value and stability of loan portfolios prior to investing. Mr. Winchester replied that they used a system similar to OMB's, but less intricate.

Questioning continued and centered around specific areas of financial standards at the SBA. Both Mr. Weygand and Mr. Hinojosa asked about SBA's efforts to comply with Council on Supporting Organizations (COSO) standards for accounting and the SBA's recent financial audits.

Mr. Talent and Mr. LaFalce then asked Mr. DeSeve and Ms. Alvarez specific questions regarding the 504 and 7(a) programs. They were concerned that the SBA had overestimated recoveries in the 504 program by 100%. Mr. DeSeve explained that while the recoveries were known the OMB had no hard information for earlier loans in the portfolio, and that poor earlier assumptions had resulted in erroneous calculations.

Mr. Talent then questioned Mr. DeSeve regarding the prepayment rates in both the 504 and 7(a) programs. He expressed concern that the OMB had a tendency to place to great a negative emphasis on prepayment. He also expressed concern over the depressive effect that data from the real estate problems of the 1980s was producing in the subsidy rates. Mr. DeSeve replied that he agreed this may have a disproportionate effect in the short term, but that it was difficult to pick when to begin and end economic cycles.

Mr. Talent then asked two specific questions regarding the calculation of interest payments on defaulted 504 loans. The Administrator replied that, while purchases were being handled on a more expedited basis pursuant to statutory changes, she did not have specific answers and would provide them to the Committee.

For further information see Committee report, 105–19.

### 7.2.9 REAUTHORIZATION OF THE SMALL BUSINESS ADMINISTRATION'S FINANCIAL PROGRAMS

*Background*

On July 17, 1997, the Committee held an oversight hearing on the reauthorization of the Small Business Administration (SBA).

Every three years, Congress is required to reauthorize the SBA and the programs it administers by legislation. The hearing sparked debate on the development of new legislation to extend the existence of the SBA from fiscal years 1998 to 2000. Witnesses were asked to support and defend different financial programs that the SBA administers to assist small businesses.

*Summary*

The hearing was comprised of two panels. The first panel included: Paula Klepper, Vice President for Congressional Relations, National Association of Development Companies; C. Walter Dick, from the National Association of Small Business Investment Companies; and Anthony R. Wilkinson, President and Chief Executive Officer, National Association of Government Guaranteed Lenders, Inc., accompanied by Michael Hearne, Executive Director, Touchtone Financial Group.

Ms. Klepper spoke on behalf of the National Association of Development Companies (NADCO), the trade association representing 275 SBA 504 program Certified Development Companies (CDC's.) The 504 program provides loans for small businesses through independent banks and CDC's. It is also completely self-funded and requires no additional funding from appropriations, yet the 504 program will terminate without regular reauthorization.

Ms. Klepper testified that NADCO supported the reauthorization bill in general, particularly in Subtitle (c) of the Senate bill (S. 1139), which she thinks improves the program. She also testified about NADCO's concerns about the SBA's loan collateral valuation policies and she encouraged the reauthorization of the Premier Certified Lender Program (PCLP.)

Mr. Dick testified about the reauthorization of the Small Business Investment Companies (SBIC) Program. SBIC's are privately owned and managed investment firms that make venture capital available to small businesses through investments or loans. He said the program is essential because the SBIC's invest in more "Main Street" businesses than most of the venture capital firms and banks.

Mr. Wilkinson and Mr. Hearne commented on the subsidy rate for the primary lending program of the SBA, the 7(a) program. They questioned the current 13-year analysis cycle of the subsidy rate saying that a shorter study would be a more appropriate analysis. They provided new information to support their claim showing the average term of a 7(a) loan was on 10 years.

Aida Alvarez, Administrator of the Small Business Administration sat on the second panel. SBA Deputy Chief Financial Officer Gregory Walter accompanied her. Ms. Alvarez commented on the success of SBA credit programs and the challenges the Administration faces under her leadership. Because the SBA Inspector General found that 11.6 percent of defaulted SBA loans went to borrowers with criminal backgrounds, she said the Agency will include a privacy waiver on loan applications to allow the Inspector General to conduct a background check on an applicant. She also introduced her plan to expand small business finance programs to more borrowers without an increase in funding. Ms. Alvarez also gave an overview of the history of the Administration's success with the

7(a) lending program, the SBA disaster loan program and the SBIC program.

For further information on this hearing, refer to Committee publication 105–20.

### 7.2.10 ENTREPRENEURSHIP IN AMERICA: FAIRNESS IN REGULATORY ENFORCEMENT

*Background*

On August 19, 1997, the Committee on Small Business held a joint field hearing in Kansas City, MO, with the Senate Committee on Small Business, chaired by Missouri Senator, the Honorable Christopher S. Bond. Chairman Bond opened the hearing and thanked Dean Burnell Powell of the Law School at the University of Missouri-Kansas City, who welcomed the Committees with the school's hospitality. The Small Business Regulatory Enforcement Fairness Act (SBREFA) or "Red Tape Reduction Act" was passed in 1996 to include judicial review of the Regulatory Flexibility Act of 1980, to give small businesses simple guidance on complying with regulations, to create small business regulatory penalty reduction and waiver programs in Federal agencies and to establish a Regulatory Enforcement Ombudsman and Regional Fairness Boards to prepare and publish reports on agencies' responsiveness and fairness in the enforcement of Federal regulations. The hearing was comprised of witnesses from the Kansas City small business community, members of the Regional Fairness Boards, and regulatory agencies who testified on how SBREFA will affect the small business community.

*Summary*

The hearing was comprised of three panels, the first of which included: Bob Spence, Vice President and Chief Financial Officer, Faultless Laundry Company, Kansas City, MO; Sherman Titens, President, Coordination Committee for Automotive Repair (CCAR) and Executive Director, CCAR-GreenLink, Leawood, KS; and Edwin N. Hatfield, Human Resources Director, Cook Brothers Insulation, Inc., Kansas City, MO accompanied by William Denton, Partner, Lathrop & Gage L.C., Kansas City, MO.

The panel of small business owners gave anecdotal evidence to the Committee on how their companies, like other businesses, felt in the past that regulatory agencies treat them like they are guilty until proven innocent. They emphasized that most small businesses want to fully comply with regulations, however, many do not have the time and resources to fully understand and comply with the hefty bulk of regulations passed by Federal agencies. Furthermore, when agencies create burdensome regulations impacting small businesses, the witnesses applauded SBREFA as a helpful way to protect their interests.

The second panel consisted of Scott George, General Manager, Mid-America Dental, Hearing and Vision Center, Mount Vernon, MO, and a member of the Small Business Regulatory Fairness Board, Region VII; and Elaine Demery, President and Chief Executive Officer, Nelson, Coulson, and Associates, Inc., Denver, CO and

Chair of the Small Business Regulatory Fairness Board, Region VIII.

As representatives of the two newly formed Small Business Regulatory Fairness Boards created by SBREFA, the witnesses reported that they are starting to see the culture in certain agencies change to include small business interests. Although they think that some agencies have resisted this change since passage of the Regulatory Flexibility Act, they said the attention given to SBREFA has forced these agencies to not create or maintain regulations detrimental to small business.

Finally, the third panel consisted of Agency representatives: The Honorable Peter Barca, Small Business and Agriculture Regulatory Enforcement Ombudsman and Administrator of Region V, U.S. Small Business Administration (SBA), Chicago, IL; Marcia Drumm, Deputy Regional Administrator, Region VII, the Occupational Safety and Health Administration (OSHA), Kansas City, MO; Art DeCoursey, Small Business Liaison, Occupational Safety and Health Administration, Washington, D.C.; and William Rice, Deputy Regional Administrator, Region VII, U.S. Environmental Protection Agency (EPA), Kansas City, MO.

The panel testified on both the general and specific ways the executive branch is attempting to change its regulatory culture mandated by the Regulatory Flexibility Act and SBREFA. Through new goals and viewpoints, such as OSHA's "reinventing government," the witnesses went on the record to say they are trying to create and sustain a regulatory environment that is sensitive to and supports the needs of small business.

For further information on this hearing, refer to Committee publication 105–26, which is a shared publication with Senate publication S. HRG. 105–250.

### 7.2.11 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S PROPOSED REVISION ON OCCUPATIONAL INJURY AND ILLNESS RECORDING AND REPORTING REQUIREMENTS

*Background*

On September 17, 1997, the Committee on Small Business held a hearing to focus on the Occupational Safety and Health Administration's (OSHA) new proposed recordkeeping regulations. These proposed regulations would require broad new sectors of small business to keep OSHA records that have never had to keep such records before, while exempting certain other segments of the economy from recordkeeping. It would require all businesses to keep records to record a number of minor kinds of injuries like minor swellings or skin irritations that prior to the regulation would not have to be reported. It would also require all businesses to give copies of injury or illness records on all their employees to any parent or former employee who asked for the record. Further, general contractors would be mandated to keep duplicate sets of records for the employees of their subcontractors and to certify the accuracy of those records at pain of potential criminal penalties.

*Summary*

The hearing was comprised of two panels, the first of which included Gregory R. Watchman, Acting Assistant Secretary of Labor for OSHA. Mr. Watchman discussed the proposed record-keeping standard and why it was necessary to move forward with the new regulations. He began by discussing the importance of injury and illness records to the government's effort to protect worker safety and health. For example, Mr. Watchman pointed out that OSHA would not be able to identify new and emerging hazards without such data; further, the Bureau of Labor Statistics relies on this injury and illness data to compile its annual survey. He also cited three advantages to the new proposed recordkeeping regulations: first, the proposal would enable the agency to better-measure results by improving the quality of the data; second, the proposal would expand the small business exemption for general industry, by doubling it from 10 to 20; third, the proposal would simplify the forms used to record injuries and illnesses and clarify the regulation by consolidating all previously-issued interpretive guidance.

Several questions arose, however, regarding what might constitute a reportable situation as well as how the standard would be implemented in general. Congressman Goode (D–VA), for example, had concerns over whether pre-existing conditions (e.g. contracting poison ivy off the job) that were exacerbated by work activity (e.g. sweating on a hot day) would be reportable. Mr. Watchman was unable to definitively answer that question. Other questions were raised regarding the need for OSHA to clarify who would be included in the small business exemption, privacy concerns, and concerns over OSHA's underestimating the burden of this regulation on small businesses in its preliminary economic analysis.

The second panel included Lawrence Halprin, Esq., of Keller and Heckman; Edward Laperouse, President, Edward J. Laperouse Metal Works, Inc.; Alan McComb, Vice President, Harold McComb & Son, Inc.; Kenny Miller, President, Miller Brothers, Inc.; and Eamonn McGeady, President, Martin G. Imbach, Inc. These witnesses universally were concerned with the proposed recordkeeping regulations and how they would materially burden their small business operations. Under the new proposal, injury and illness records would no longer be private; this was of great concern to the witnesses. As stated by Mr. McComb, "While workers are entitled to know what injuries and illnesses have occurred on the work site, they have no right to the personal medical information continued in the incident report as proposed by OSHA." Witnesses were also concerned about OSHA's proposed expansion of what would constitute a recordable incident of a workplace injury or illness. Mr. McComb noted that "the simple application of a band-aid on a small cut or blister would be a recordable incident under the new rule." This fact, witnesses agreed, would require companies to spend a lot more time recording injuries and less time on the job—costing them money without advances in safety. Mr. Miller estimated that the work hours need to comply with this and other provisions in the draft may require him to create a full-time position within his company. Other witnesses agreed that if the standard were to go forward, paperwork burdens would be greatly increased.

For more information on this hearing look at Committee report 105–25.

### 7.2.12 THE EFFECTIVENESS OF 7(a) AND 504 PROGRAMS

*Background*

On October 22, 1997 a hearing was held to explore the effectiveness of the Small Business Administration 7(a) and 504 loan programs in serving economically distressed or disadvantaged areas.

In June 1997, the Woodstock Institute published a report which indicated that the SBA's 504 program failed to work as an economic development tool in economically distressed communities. Evidence such as this report prompted some members of the Committee to question the adequacy of the program. The hearing was a result of a discussion among several Committee members during the mark-up of the Small Business Administration's reauthorization legislation in July 1997.

*Summary*

Harry Alford, President and CEO, National Black Chamber of Commerce; Aida Alvarez, Administrator, Small Business Administration; Charles English, Southern Dallas Development Company; John Gray, Associate Deputy Administrator for Economic Development, Small Business Administration, Daniel Immergluck, Vice President, Woodstock Institute; Richard Turner, South Shore Bank; Barbara A. Vohryzek, National Association of Development Companies.

Administrator Alvarez stated that the hearing, although focused on the Woodstock Report, should also be focused on how the SBA is doing in reaching out to the under-served. She stated that the SBA has increased total lending since 1992 and increased lending to women-owned and minority-owned businesses. Administrator Alvarez explained the progress of the programs through a series of charts. The first chart showed that the loan approvals for the 7(a) Program had grown since 1993. The second chart showed a significant drop in 504 activity. Administrator Alvarez concluded by stating that the SBA agrees with the direction of the report and that the SBA is working vigorously to achieve the intent of the report.

Daniel Immergluck described two reports that the Woodstock Institute published on SBA lending programs focusing on the geographic distribution of loans within metropolitan areas as well as lending to minority-owned businesses. The first study showed that the 7(a) loans in the San Antonio region went to disproportionately higher income zip codes, even after accounting for the number of businesses in such areas. The second study revealed that in Chicago, for three or four primary sectors in which 504 loans are made, loans were skewed away from lower-income zip codes. Mr. Immergluck recommended that the SBA report regularly to Congress on the percentage of loans going to lower and moderate-income areas, and that they seek to increase these percentages at regular intervals.

Harry Alford stated that capital access is clearly the most pressing issue facing Black-owned business. He described further the sad stories about the lending efforts of the SBA from an African-

American perspective. Mr. Alford described the areas that the National Black Chamber of Commerce had termed "brain dead" on SBA outreach. In addition, he listed seven recommendations from the NBCC: First, the SBA needs a policy statement regarding its commitment to African American business. Second, the SBA must sensitize management from the SBA headquarters to the districts on this issue. Third, the SBA should implement a grass roots plan to reach out to African-American communities. Fourth, the Agency should develop a system of public hearings as an oversight tool for the above process. Fifth, diversity must become a rated area in the performance reviews of district directors. Sixth, stabilization of mid-level management personnel at SBA is badly needed. Seventh, Congress must create an opportunity for Black contractors to present testimony concerning their experience with discriminatory activity at the SBA.

Richard Turner's bank, South Shore Bank, has been participating in SBA programs since 1973. He stated that the SBA Program is a good one but that banks fail to see lending to the underserved as a viable market. He suggested that in order to make these loans effective, a credit culture shift is required. Mr. Turner stated that it is impossible to use traditional criteria and traditional ways of reaching out to the underserved in both urban and rural areas.

Barbara Vohryzek of the National Association of Development Companies explained that NADCO agrees with the portion of the Woodstock report that suggests that the increased program cost of 504 loans has made it a less practical tool for economic development. Furthermore, she stated that given the constraints of the 504 program, development companies have in fact delivered the 504 product to the minority business community at rates exceeding their proportion in the economy. Lastly, Ms. Vohryzek explained that although NADCO did not entirely agree with the reports findings about the referral network constraint, they do agree that they can take some measures, such as a stand-alone debenture that allows 504 to act as a sole lending vehicle to target minority-owned businesses. Charles English, also representing a development company, described the success of his business development program. He emphasized that the 504 Program is not exclusive of economic development, that development companies in tandem with all the other programs offer it.

John Gray described three areas by which the SBA can reach the underserved. He stated that the first was through the extensive network of resource partners, such as the SBDC's. Second, he suggested that the SBA should use its financial intermediaries more effectively. Finally, he asserted that efficient utilization of the district offices were key to reaching out to the underserved.

For further information on this hearing, refer to Committee publication 105–30.

### 7.2.13 HEARING ON SBA IMPLEMENTATION OF THE RESULTS ACT

*Background*

On Wednesday, October 29, 1997, the Committee on Small Business met to discuss SBA's compliance with the Government Per-

formance and Results Act. The plan was submitted in compliance with the Government Performance and Results Act, passed as a bipartisan measure during the 103rd Congress. The Results Act requires federal agencies to submit five-year strategic plans as the basis for the agency's annual performance plans.

The SBA submitted its first five-year Strategic Plan draft in March 1997 and its final in September 1997. By 1998, the SBA was to begin using the plans to link its strategic goals to its daily activities and also the President's budget. The Chairman convened the hearing in order to better enable the Small Business Committee to work with the Small Business Administration to improve its plan.

*Summary*

The hearing was comprised of one panel which included: Stanley Czerwinski, Associate Director, Housing and Community Development Issues, Resources, Community, and Economic Development Division, Government Accounting Office; Paula Klepper, Vice President, Congressional Relations, National Association of Development Companies; Maurice P. McTigue, Distinguished Visiting Scholar, Center for Market Processes, George Mason University; Paul Weech, Chief of Staff, Small Business Administration.

Paul Weech described the four major goals outlined in the Small Business Administration's Strategic Plan. In written testimony, he summarized each of these goals. He stated that Administrator Alvarez views the SBA's strategic and annual performance plans as the basis for managing the agency. In addition, Mr. Weech emphasized that strategic planning is an ongoing process. He asserted that a strategic plan is in need of constant review and updating in response to new information and changing external circumstances.

Paula Klepper focused her comments into two categories. First, she addressed how, as an industry, Small Business Development Companies perceive the plan as a method whereby the agency will transform itself. She suggested that SBDC's found strong connections between the goals and execution. Second, she discussed the industry's needs in implementing the plan. She suggested five areas of focus: Increase access to capital and credit; uniform internal control environment; risk management; oversight; excellent customer service. Upon applauding the agency for addressing risk management, she explained that the 504 Program is dependent upon risk controls.

Other witnesses commended the SBA for their effort and identified deficiencies in the plan. Stanley Czerwinski explained what the plan should accomplish. He suggested that the plan should lay out what the agency wants to achieve, describe what resources it is going to need to achieve that goal. According to Mr. Czerwinski it should also address who it wants to work with to achieve its goals. Finally the plan should describe factors beyond the agency's control and a mechanism for assessing the agency's process.

Maurice McTigue stated that the plan was not sufficiently specific. He explained that strategic plans and their evaluation must look outside what it is that the plan states the agency is intending to do and look at the marketplace to evaluate whether or not the agency is actually achieving the objectives.

For further information on this hearing, refer to Committee publication 105–32.

### 7.2.14 THE SAFE ACT: HOW THIRD PARTY CONSULTATIONS HAVE WORKED WHERE OSHA HAS FAILED

*Background*

On January 29, 1998, the Committee on Small Business held a hearing to explore the third party consultation provision in H.R. 2579/S. 1237, the Safety Advancement for Employees ("SAFE") Act. The SAFE Act is a bipartisan, bicameral bill that reflects a new partnership approach to worker safety. The key section in the bill, the third party consultation provision, encourages employers to hire third party safety consultants to inspect and audit their workplaces for compliance with Occupational Safety and Health Administration (OSHA) and safety in general. Those consultants must be certified by OSHA as legitimate safety consultants and will work with employers on an ongoing basis to ensure that the employer is in compliance with OSHA regulations. Once the employer is in compliance, the consultant will issue him a certificate of compliance. Employers who fully utilize third party consultants under the SAFE Act will be exempt for a period of 2 years from any civil penalty prescribed under the OSH Act. Under the SAFE Act, OSHA retains full power to inspect employers who have received such a certificate, to find violations of OSHA regulations, and to order such employers to abate the violation.

At the hearing, witnesses were asked to describe how the current inspection method at OSHA does not adequately meet their safety and health needs, and how the SAFE Act's third party consultation provision would help them achieve compliance and better protect workers from illness and injury.

*Summary*

The hearing was comprised of two panels, the first of which included Congressmen Cal Dooley (D–CA) and Charlie Stenholm (D–TX) and Senator Mike Enzi (R–WY). This first panel of congressional witnesses talked about the virtues of the SAFE Act, and in particular how the SAFE Act would get more employers into compliance with OSHA and bolster worker safety. Rep. Dooley discussed the fact that OSHA was unable to do its job of protecting America's workers adequately; with a ratio of one OSHA inspector to 3,000 worksites, OSHA is currently able to inspect workplaces only once every 167 years. Mr. Dooley also stressed that the SAFE Act was in line with Vice President Gore's Reinventing Government initiatives. Rep. Stenholm's testimony carried the same theme, and also mentioned how small businesses in his Texas district who have complained to him of the unrealistic regulatory burden enforced by difficult inspectors. Additionally, Mr. Stenholm touched on the positive impact that the bill would have on American agriculture. Senator Enzi's testimony highlighted the fact that as a small business owner for 27 years (before he came to the Senate), it was he who had to do everything to keep the business running smoothly, and it is for those businesses that we should design OSHA reform efforts. It was his belief that one of the most effective

means of communicating the importance of safety and how to achieve OSHA compliance was the third party consultation provision in the SAFE Act.

The second panel was comprised of six witnesses, including John Cheffer, CSP, PE, Chairman of the American Society of Safety Engineers (ASSE), National Governmental Affairs Committee; Scott Hobbs, President, Hobbs, Inc.; Eamonn McGeady, Owner, Martin G. Imbach, Inc., Bob Cornell, Director of Dealer Operations, Director of Environmental Regulations, Chairman of the Safety Committee, Mon Valley Petroleum; Victor Tucci, President, Three Rivers Health and Safety; and Salvatore Bonfiglio, Corporate Manager, Environmental, Health and Safety Audit Program, Hoechst Corporation.

The witnesses on the second panel were small business owners, safety and health professionals, and in-house safety manager for a large corporation. All of the small business owners and independent safety professionals agreed that the SAFE Act would achieve better OSHA compliance, would help OSHA better utilize its limited resources, and would protect more workers. John Cheffer, testifying on behalf of ASSE, mentioned that ASSE is a strong supporter of OSHA, and that is why it so strongly supports the SAFE Act; ASSE views the SAFE Act as an important tool in reducing workplace injuries, illnesses and fatalities in a proactive manner. Mr. Cheffer noted that proactive safety and health intervention via the SAFE Act will enable employers to identify and correct hazards before an incident takes place, rather than wait until an accident occurs and then work with an OSHA inspector to correct it. Scott Hobbs discussed how difficult it is as a small business to implement a superior safety program because he could not afford to hire a full time safety expert. The answer for his company was to retain the services of a third party safety consultant; consequently, he has been able to maintain an excellent safety record that he actively markets to his clients. Both Eamonn McGeady and Bob Cornell agreed, and Mr. Cornell noted that after his company hired a consultant (Victor Tucci), their injury rates fell drastically. Victor Tucci was able to confirm this, and mentioned that by passing the SAFE Act, employers would receive an incentive to hire a consultant.

The only witness that did not wholly embrace the SAFE Act was Salvatore Bonfiglio, who primarily talked about his concern that the third party consultant would have a "conflict of interest" because his fees would be paid directly by the employer and he would not have "OSHA looking over [their] shoulder." This concern was responded to, however, by highlighting the fact that OSHA currently is not looking over the shoulders of companies because they simply do not have the resources to. In fact, even Mr. Bonfiglio stated that, "[E]ven OSHA does not have the resources to do their job at this point." The point of the SAFE Act, as stated by Chairman Talent, is to "find a system * * * to allow [small businesses] access to these third-party auditors, encourage them [to use them], encourage OSHA to reconsider its approach and allow OSHA to do that, while preserving our right to go after that thin layer of people who really don't care."

For further information on this hearing, refer to Committee publication 105–34.

### 7.2.15 FEDERAL AGENCY COMPLIANCE WITH SECTION 610 OF THE REGULATORY FLEXIBILITY ACT

*Background*

On February 12, 1998, the Committee heard testimony concerning Section 610 of the Regulatory Flexibility Act (RFA). In 1996, Congress amended portions of the RFA with certain provisions contained in the Small Business Regulatory Enforcement Fairness Act (SBREFA) to allow for judicial review of agency compliance with the law. Section 610 of the RFA requires each agency to establish a plan for review of existing regulations having a significant economic impact on small business.

*Summary*

Two panels of witnesses participated in the hearing. The first consisted of Mr. L. Nye Stevens, Director, Federal Management and Workforce Issues, U.S. General Accounting Office and Keith Cole, Esquire, Beveridge and Diamond.

Mr. Stevens testified about a study about Section 610 the Regulatory Information Service Center (RISC) within the General Services Administration completed. The study concluded that agencies by and large did not comply with Section 610 correctly. The study also concluded that a lack of any index in the RFA made it difficult for the public to find and comment on any agency's compliance with Section 610. Although the RFA included an index in October of 1997, Mr. Stevens concluded that in a similar study most agencies were still mischaracterizing agenda entries as Section 610 reviews, despite OIRA's June 1997 guidance to Federal agencies.

Mr. Cole testified on behalf of the Regulatory Reform Enforcement Guarantee (RREG) Alliance, a coalition of organizations representing small businesses and local governments. He testified about the history of Section 610 and how he hoped tools created by SBREFA, such as judicial review, would incite agencies to comply with the mandate.

Three witnesses testified on the second panel: Dr. Enrique Figueroa, Administrator, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, who was accompanied by Dr. Kenneth Clayton, Associate Administrator, AMS, and Kenneth Vail, Assistant General Counsel for the Marketing Division, Office of General Counsel, AMS; Nancy E. McFadden, General Counsel, U.S. Department of Transportation, who was accompanied by Neil Eisner, Assistant General Counsel for Regulation, U.S. Department of Transportation; and Debra Valentine, General Counsel, Federal Trade Commission.

Dr. Figueroa testified about how the USDA has a number of regulations covered in the RFA; however, that it has no existing rules covered by Section 610. He promised that although the General Accounting Office found an "inappropriate characterization of the [Organic Foods Production Act]," his staff will address the issue.

On behalf of the Department of Transportation, Ms. McFadden testified that the agency provides economic analyses for all of its

rules. Furthermore, she outlined the process within the Department concerning how it handles Section 610 reviews.

Ms. Valentine testified that the Federal Trade Commission not only reviews rules every 10 years as required by the RFA, it annually publishes the impacts of Section 610 reviews on small entities. She also outlined her agency's RFA compliance procedure.

For further information on this hearing, refer to Committee publication 105–35.

### 7.2.16 REDUCING AMERICA'S SMALL BUSINESS TAX BURDENS

*Background*

On February, 25 1998, the Committee on Small Business held a hearing on Reducing America's Small Business Tax Burdens. The purpose of the hearing was to identify the principle tax burdens of small businesses, and to explore their tax legislative priorities in the 105th Congress.

Federal income and payroll taxes on individual and small business Americans are escalating. Consequently, the hearing sought to identify the tax reduction priorities of small businesses, and to elicit their recommendations on how Congress should protect and reform the long-term solvency of Social Security without increasing payroll taxes.

*Summary*

The first panel of witnesses included Jack Faris, President of the National Federation of Independent Businesses; Paul Huard, Senior Policy Vice President for the National Association of Manufacturers; Karen Kerrigan, President of the Small Business Survival Committee; Martin Regalia, Vice President and Chief Economist for the U.S. Chamber of Commerce; and Bennie Thayer, President of the National Association for the Self-employed. The second panel of witnesses included Raymond Arth of Avon Lake, Ohio, Chair of the Taxation Committee of National Small Business United; Terry Neese of Oklahoma City, Oklahoma, Corporate and Public Policy Consultant for the National Association of Women Business Owners; Rich Shavell, certified public accountant from Jenkintown, Pennsylvania, and Chair of the Taxation Committee of the Associated Builders and Contractors.

The testimony of the witnesses raised important recurrent issues and highlighted several new developments. For example, while the witnesses strongly supported fundamental tax reform, they failed to voice unanimous consensus on eliminating the current tax code. The overriding reason for a lingering minority concern over repealing the tax code was a reluctance to give up hard-earned tax deductions for lower taxes that increase historically. Nonetheless, the witnesses unanimously believe Congress should lower income and payroll taxes while making the tax code simpler and fairer.

Following the Taxpayer Relief Act of 1997 (TRA '97), the cardinal concerns of small business are:

1. Payroll tax relief (including reforming Social Security and eliminating the Federal Unemployment (FUTA) surtax);
2. Death tax repeal (including concerns with related Clinton FY 1999 budget proposals);

3. 100% deductibility of health insurance for the self-employed;

4. Lowering tax rates and fundamental tax reform (including S corporation reform); and

5. Independent contractor relief.

Not surprisingly, escalating Federal payroll taxes are the primary burden on small business. Payroll taxes are a tax on jobs affecting predominantly small, labor-intensive businesses. A majority of small businesses pay more in payroll taxes than in any other type of tax. Payroll taxes represent nearly 37% of all Federal revenue collected—second only to income taxes—and an astonishing 7% of gross domestic product (GDP). Since 1970, businesses have received nine Social Security (FICA) increases totaling 60%; three unemployment (FUTA) tax increases totaling 94%; three FUTA base increases totaling 133%; and 19 FICA base increases totaling 677%. Payroll taxes more than doubled for the self-employed since 1982, leaping from 6.9% to 15.3% today (compared to 7.6% today for employers and employees).

Payroll taxes finance three so-called "trust funds": the Old-Age and Survivors Insurance Trust Fund (OASDI), which pays Social Security retirement and survivor benefits; the Disability Insurance Trust Fund (DI), which pays the system's disability insurance payments; and the Hospital Insurance Trust Fund (HI), which pays hospital bills for the elderly under Medicare Part A. Accordingly, reforming Social Security and protecting its long-term solvency is indispensable to genuine payroll tax reform. Several witnesses advocated finding a solution to Social Security without raising taxes and cutting benefits, such as moving toward private retirement accounts. One witness cited its strong support for a recommendation of the Bipartisan Commission on Social Security to allow individuals to invest a portion of their Social Security taxes into personal accounts that are invested in the equity markets.

Since 1976, the Federal Unemployment Tax (FUTA) has a surtax of 0.2% to repay Treasury borrowings from the Federal Unemployment Trust Fund. Even though the Treasury repaid these borrowings in 1987, Congress continues to extend the surtax. At least one witness urged Congress to repeal this surtax.

Nearly all witnesses urged Congress to repeal the death tax. Absent repeal of the death tax, they urged Congress to reduce its high effective rates ranging from 37% to 60% immediately. The death tax severely penalizes small, family, farm and manufacturing businesses that work, save and invest. It is an inefficient, counter-productive tax because it has very high collection and compliance costs, while it accounts for only about 1% of total Federal revenue.

Similarly, most witnesses advocated increasing the health insurance deduction for the self-employed to 100% immediately. They want Congress to end this long-standing inequity in the deductibility of health care costs to increase the availability and affordability of health care to millions of uninsured self-employed American families.

Most witnesses also voiced support for abolishing the current tax code and/or lowering individual income tax rates as soon as possible. High federal taxes are lowering the take-home pay of American workers and slowing the growth of small business—the num-

ber one job-creator in America. Federal revenue as a percentage of GDP is at an all time peacetime high of 19.9% (up from 17.8% just four years ago). The average American family is paying nearly 38% of its hard-earned income in federal, state and local taxes. Individual federal income tax rates have crept up since 1986 from a top rate of 28% to 39.6%. Many witnesses testified that these high rates hurt independent businesses, S corporations, the self-employed, farmers, and other small businesses, and prevent them from expanding.

Several witnesses, including in particular women-owned businesses, continue to seek independent contractor relief to minimize their risk of crippling back taxes and penalties when the IRS subjectively reclassifies their workers as employees.

Finally, one or more witnesses proposed capital gains reform; alternative minimum tax (AMT) reform; increasing the business meal deduction; increasing Simple IRA annual allowable contributions from $6,000 to $9,500 in line with 401(k) contributions; and cash accounting for contractors.

For further information on this hearing, refer to Committee publication 105–38.

### 7.2.17 SMALL BUSINESS ADMINISTRATION FISCAL YEAR 1999 BUDGET

*Summary*

On Thursday, March 19, 1998 the Committee on Small Business convened a second hearing on the Small Business Administration's (SBA) proposed budget for fiscal year 1999. Specifically, the hearing focused on the Administration's proposal to double the interest rate charged on loans provided to small businesses and homeowners who were victims of natural disasters. This proposal had been offered by the SBA, in various forms, in each of the last five years. Each time the proposal has been rejected by the Congress as an inappropriate burden on the victims of natural disasters.

The Committee heard from two panels during the hearing. The first panel consisted of Ms. Minta Herrin, a resident of New Richmond, Ohio; Mr. Dennis Iaquinta, a resident of Erie, Pennsylvania; and Mrs. Vera Mae Cimino, a resident of Ocean City, New Jersey. Ms. Herrin testified first and spoke about the devastation visited upon her hometown by flooding in 1997. Ms. Herrin told the committee that, at the time, her husband was ill and that only the low interest rate offered by the SBA disaster loan program enabled her family to rebuild their home. She also stated that many of her friends and neighbors were in similar situations because New Richmond is a town populated with primarily low- and middle-income families.

Mr. Iaquinta testified next and focused on his frustration with many of the paperwork burdens placed on borrowers under the disaster assistance program. He also testified that any increase in the interest rate would have a more significant impact than the Administration expected. When combined with flood insurance and other cost, Mr. Iaquinta stated, this increase could easily ruin a small business and is fundamentally unfair to people who are injured by unexpected natural disasters.

The final witness on the first panel was Mrs. Vera Mae Cimino. Ms. Cimino testified about the difficulties faced by her and her husband after the severe Nor'Easter that struck New Jersey in February of 1997. Tidal flooding severely damaged her home and required major repairs to fix it. Mrs. Cimino testified that both she and her husband are insulin dependent diabetics and that an increase in the disaster loan interest rate could easily have resulted in them having to choose between medicine and fixing their home.

The panel was then asked by the chairman to comment on the SBA's assertion that the increase in the interest rate would have only a minimal fiscal effect on borrowers. Ms. Herrin replied that she already had problems making ends meet with her husband's medical problems and that even fifteen dollars could mean the difference between obtaining preventive care or medicine or not. Mr. Iaquinta responded that such increases have an overall cumulative negative effect on a small business' viability. He also added that such changes tend to add to a sense in the community that the government is insensitive.

Mr. English and Mr. LoBiondo then commented on the effect disasters had on communities in their districts over the past several years and stated that they believed such a proposal was an unnecessary attempt to balance the budget at the expense of those least able to bear the cost. These sentiments were echoed by Ms. Velázquez and Mr. Goode at which point the Committee recessed briefly.

Upon reconvening the Committee called the second panel. This panel consisted of the Honorable Aida Alvarez, SBA Administrator, and Mr. Jack Lew, Deputy Director of the Office of Management and Budget (OMB). Administrator Alvarez testified first and spoke of her sympathy for the victims of disasters and discussed the areas she has toured in her capacity as Administrator of the SBA. However, she said that she believed that this Administration proposal was sensitive and fiscally responsible.

Mr. Lew then testified that the Administration had a history of generous response to disaster victims but that he felt that the benefits accruing from a balanced budget have done more for small business than any program and that we should not turn our backs on fiscal discipline. He also argued that the Administration was forced to make decisions on how to expand certain programs such as the Women's Business Center program and the Minority Enterprise program and simultaneously achieve fiscal restraint.

Chairman Talent then questioned the witnesses as to whether this was an OMB or an SBA proposal. The witnesses stated in various fashions that this was a joint decision arrived at through a process of deciding between competing priorities. Chairman Talent also asked whether Mr. Lew considered it appropriate to send a budget proposal to the Congress containing such a clearly unpalatable proposal and not provide for any alternatives to finding the $125 million difference. Mr. Lew responded that he appreciated the argument but that OMB was also faced with the problem of living within the budget caps.

Ms. Velázquez then asked where the SBA planned to come up with the funding to make of the shortfall if the proposal was not

enacted. Ms. Alvarez replied that she believed a discussion with the Congress was necessary to provide an answer.

Mr. English then questioned whether the Administration's entire budgeting process was suspect. He based this question on a number of proposals that the Administration must know would not be accepted by either party in Congress, and Mr. English cited the abolition of the Appalachian Regional Commission as an example.

Mr. Sununu then questioned Mr. Lew as to why it was imperative that this interest rate increase be done now. Mr. Sununu cited an article in which Berkie Kulik, Associate Administrator of the SBA for Disaster Assistance, stated that the rate had not been raised since 1984. Mr. Sununu questioned what had changed significantly since 1984. Mr. Lew responded that the discretionary caps had been lowered. Mr. Sununu then suggested that perhaps changes in FTEs, or the removal of number of other programs, might provide a better basis for savings considering the Administration's proposal to spend an additional $120 billion over the next five years, 1000 times the cost of the disaster loan program.

For further information on this hearing, refer to Committee publication 105–42.

### 7.2.18 HEARING TO CONSIDER H.R. 3412

*Background*

On Thursday, March 12, 1998, the House of Representatives Committee on Small Business met to discuss H.R. 3412, a bill which provides technical amendments to the SBIC program. SBICs are the venture capital aspects of the SBA which offer a broad range of opportunities for small business financing, such as equity investment and long-term loans. The bill in consideration presented three technical changes to the Small Business Investment Act. The first of these changes was a removal of the reserve, which held 50 percent of participating securities leverage for SBICs with less than $20 million in private capital until the fourth fiscal quarter. The second change offered in the bill would offer guidance to SBA in the determination of SBIC assistance to small businesses, ensuring that a company's structure (such as sub-chapter System corporations) would not inhibit its SBA financing. The last change lengthened the time frame available for the issuance of the trust certificates that fund SBIC debentures from every 6 months to every 12 months. This would allow more flexibility for SBA in their sale of their trust certificates. There was only one witness, Mr. Lee Mercer, President, National Association of Small Business Investment Companies

*Summary*

One witness testified at the hearing: Mr. Lee Mercer, president of the National Association of Small Business Investment Companies in Washington, DC. Mr. Mercer testified in favor of H.R. 3412 and discussed the technicalities involved in the bill. Mr. Mercer explained that the first provision in the bill is beneficial because current law, requiring the SBA to reserve 50 percent security leverage for SBICs with less than $20 million in capital until the fourth quarter, is unnecessary. Mr. Mercer believed that this measure was

at one time necessary, but that it is evident that the SBA equitably distributed money and loans. Mr. Mercer also explained that there were only 12 SBICs out of the 60 total participants that had more than $20 million in private capital, so the cutoff seemed artificial in nature.

Mr. Mercer then praised the second part of the bill, which helped clarify and solidify the ideas behind the current statute. Under H.R. 3412, small businesses would be subject to an assumed tax rate if they were pass-through entities when considering size under income limits. This new provision was an adoption of assumed tax rates that had been used in other parts of the Small Business Investment Act. Mr. Mercer believed that it would help to clarify ambiguities found within the law.

Finally, Mr. Mercer explained the part of H.R. 3412 concerning changing the requirements for the SBA's issuance of guaranteed certificates from twice a year to once a year. The SBA, along with the Congress and with the industry, believed once a year to be an optimal amount of time for selling the certificates into private markets so as to realize the lowest possible interest rates on them.

In response to both Chairman Talent and Ranking Member Velazquez, Mr. Mercer explained that the industry was working on the issue of minority- and women-owned businesses, and how to achieve more funding for these types of small businesses. Mr. Mercer stated that the industry had urged the SBA to consider measures to increase their dealings with venture capitalists. He also explained that a subcommittee had been instituted in the Board of Governors to research why venture capitalists did not see deals from these types of small businesses. One last thing Mr. Mercer described to help women- and minority- owned businesses is the act of finding success stories to highlight, and he explained their success in this endeavor.

Mr. Mercer's testimony led Mr. Talent to adjourn the hearing until markup of this bill.

### 7.2.19 SMALL BUSINESS ADMINISTRATION'S FISCAL YEAR 1999 BUDGET SUBMISSION

*Summary*

On Tuesday March 3, 1998 the Committee on Small Business convened a hearing to discuss the Administration's proposed 1999 budget for the Small Business Administration (SBA). During his opening statement Chairman Talent expressed concern over the structure of the budget proposal. While he was supportive of the SBA's plans to adhere to their five-year strategic plan, and their requests for funding of major programs, he had grave concerns over the SBA proposal to change the disaster loan program.

In their 1999 budget submission the SBA proposed to double the interest rate for loans to disaster victims, resulting in a savings of 150 million dollars. However, Chairman Talent noted that despite these significant savings the SBA budget request would increase by 8 million dollars. In addition, proposals of a similar nature had been sent to Congress previously and had always been soundly rejected.

The only witness invited to testify at the hearing was SBA Administrator Aida Alvarez. Administrator Alvarez began by outlining the basics of the proposed budget: $11 billion for the 7(a) business loan program, $3 billion for the 504 loan program, and $1.1 billion for the Small Business Investment Company program. The Administrator also discussed several new Administration initiatives regarding lending to Hispanic-American and African-American businesses, and Memorandum of Understanding with the "Big Three" automobile manufacturers regarding subcontracting opportunities for minority-owned businesses.

The Administrator also testified regarding several new administrative, legislative, and funding requests. The Administration budget requested that the Committee consider legislation making the microloan program permanent, and to begin a new disaster mitigation pilot program. The budget proposal also requested $18 million for upgrading the SBA's financial management systems, $3 million to help the agency comply with COSO accounting standards, an increase for Women's Business Centers to $9 million, and an increase to $9.5 million for technical assistance through the 7(j) program.

Ms. Velázquez, the ranking minority Member, opened questioning by the Committee and inquired about expansion of the Small Business Development Centers (SBDCs). She also expressed concerns over placement of SBDCs in inner city areas. Administrator Alvarez deferred to Johnnie Albertson, the Associate Administrator in charge of the SBDCs, who explained the selection criteria for SBDCs and also the methods used for data collection at SBDCs.

Mr. Pascrell then continued the questioning and focused on the funding level for SBDCs. He expressed concern that SBDC funding had been essentially flat over the last few years, despite the program's record of job and business creation. Administrator Alvarez responded that despite limited resources the SBA did consider the SBDC program a priority.

Ms. McCarthy then questioned Ms. Alvarez regarding the SBA's efforts regarding aiding small businesses with child care. The Administrator replied that the SBA has been working through the Microloan program to aid in establish child care businesses, and to provide assistance through the Women's Business Center system.

Mr. Boyd then questioned Administrator Alvarez regarding the proposed changes to the disaster loan program. Specifically, he inquired about the shortfall that would exist if the Administration's proposed interest rate increase was not enacted. The Administrator deferred to Berkie Kulik, Associate Administrator for Disaster Assistance, who replied that, assuming an average annual demand of $901 million, the SBA would have a shortfall of roughly $125 million.

Chairman Talent then questioned Administrator Alvarez regarding the request for additional fund for computer system upgrades. The Administrator replied that a spending plan had been submitted and a formal plan would be forthcoming in June. Chairman Talent then expressed his concerns over the budget's reliance on significant amounts of carryover in order to achieve the 1999 program levels for the SBIC program. Chairman Talent pointed out that the budget request assumed that fully half of the 1998 funds would have to be carried over into 1999 in order to fund the pro-

gram. Ms. Alvarez admitted to concerns over the availability of sufficient carryover but stated that the figures were difficult to calculate due to the new five-year funding capability for SBICs.

Mr. Talent then closed his questioning with a strong statement opposing the plan to double interest rates on disaster victims. He stated that, while it would save significant amounts of money, it was inappropriate to attempt fund savings or spending increases in other programs on the backs of disaster victims.

Ms. Millender-McDonald supported the Chairman's statement and then proceeded to question the Administrator on implementation of the HUBZones program. The administrator replied that the SBA planned to have regulations drafted and approved by June and expected implementation by early in 1999.

Mr. Davis then discussed the SBA's welfare to work proposals and their relationship to the microloan program, which he viewed as an excellent method for breaking the cycle of dependency. The administrator echoed his support for the microloan program and continued the conversation with Ms. Velázquez. Ms. Velázquez expressed some concern that the amounts of funding requested by the SBA ($401,000) may be inadequate. Administrator Alvarez responded that the Microloan program has a significant multiplier effect that enables it to work at low cost levels. Ms. Velázquez then concluded with a request that the SBA study the effect that the NAFTA agreement has had on small businesses.

The hearing concluded with a discussion between Chairman Talent and Greg Walters, Deputy Chief Financial Officer of the SBA, and John Gray, the Associate Administrator for Finance. The Chairman questioned Mr. Walters about the approximately 200 employee increase at the SBA and the way such new hires are often hidden as mid-year hires which count for only one-half of a full-time employee (FTE) and then appear on the following year's budget as an FTE.

The Chairman then questioned Mr. Gray regarding the mechanics of the Microloan program and the loss reserve required for microloan intermediaries, and their cooperation with the SBDCs. The hearing was then gaveled to a close.

For further information on this hearing, refer to Committee publication 105–36.

### 7.2.20 THE EXPECTED IMPACT ON SMALL BUSINESSES AND FARMERS OF THE KYOTO TREATY ON GLOBAL CLIMATE CHANGE

*Background*

On April 16, 1998 the Committee on Small Business convened in Malden, MO to discuss the anticipated costs to small businesses and farmers of implementing the changes prescribed by the Kyoto Treaty. This agreement proposes that industrialized nations reduce their greenhouse gas emissions by seven percent below the levels measured in 1990, while developing nations will not be burdened with these requirements. In a similar situation, the 1987 Montreal protocol on the reduction of chlorofluorocarbons (CFCs), resulted in the near elimination of CFCs in the United States, while CFC production in developing countries almost doubled. Many cite faulty

data gathered by non-scientists as a reason to doubt the disastrous environmental consequences predicted if nations do not conform to the Kyoto Treaty. Business owners and industry experts worry about the viability of their enterprises once the financial burden of the Kyoto Treaty is passed along to their customers.

*Summary*

The hearing consisted of two panels. The first panel included Mr. Paul Agathen, of Ameren; Mr. Steve Heddle, President, Noranda Aluminum; Mr. Duane Highley of Associated Electric Cooperative; Ed Throop of the Board of Municipal Utilities; and Mr. Bob Stagner of the M&A Electric Power Cooperative.

Mr. Agathen testified about the ruinous effects the Kyoto Treaty will have on businesses in the electrical industry and on their customers. According to him, replacing coal with natural gas to produce electricity will result in a 54-percent increase in electric rates for the Missouri area, a stark contrast to the four percent increase calculated by the Chair of the Council of Economic Advisors, Dr. Janet Yellen.

Mr. Heddle criticized the Kyoto Treaty for attempting to remedy problems whose solutions are not scientifically proven. He stated that while carbon dioxide is a natural bi-product of aluminum production, aluminum is very environmentally friendly and that nearly 38 percent used in the United States is recycled. Additionally, the use of lightweight aluminum in the production of automotive parts reduces the carbon dioxide emissions of cars.

In his statement, Mr. Highley pointed out that the hypothetical findings concerning global warming should not be accepted as fact. He emphasized that other plausible explanations to a rising global temperature, such as increased solar output, should be investigated before the burden of resolving an unproved crisis is placed on American industry. He also called for stricter scrutiny of the presumed cause and effect relationship between an increase in $CO_2$ protection and global warming. He concluded that a treaty responding to conjectured findings is a premature action and one that may force American plants to move overseas.

Mr. Troop outlined the costs to Missouri if the Kyoto Treaty is passed and the amount of coal able to be burned is reduced. They include, among others, a loss of nearly 43,000 jobs, a 50 cent increase in gasoline prices per gallon, and a residential electric rate increase of 70 percent. These are projected consequences, resulting from compliance with the Kyoto Treaty, that will prevent his company from accomplishing their goal of "providing electricity at the lowest possible cost" to consumers.

Mr. Stagner testified that he too was concerned with the lack of scientific evidence substantiating the Treaty that could potentially damage the U.S. economy. He also pointed out that the Treaty places an unfair burden on industrialized nations while ignoring developing nations where the "most rapid increases in greenhouse gases are occurring."

The second panel was comprised of Mr. Steven Wallace, representing the National Federation of Independent Business, and Vice President, Wallace and Owens Stores, Inc.; Mr. Mike Kasten,

representing the Missouri Cattleman's Association; and Mr. Charlie Kruse, President, Missouri Farm Bureau.

Mr. Wallace testified on the effects the Kyoto Treaty will have on the supermarket business. He confirmed that since his industry survives on a 1.8–2 percent profit margin, businesses like his could never absorb the extra costs that would be levied on them and they would have to pass these costs on to consumers. He noted that complying with these guidelines would especially harm the food industry since so much electricity is used for refrigeration and so much fuel is used to ship products.

Mr. Kasten lauded agricultural technology for its environmental benefits, such as improving beef production so that fewer cows are needed for the same amount of beef, and high crop production so that less land can be used. He added that since the U.S. exports ten percent of its beef, he is unable to pass along the cost of Kyoto compliance because if he did, countries importing U.S. beef would seek a more economical source. He argued that a small group of environmentalists with more conviction than proof should not be able to preside over a decision which could have such disastrous consequences.

Mr. Kruse reiterated concern over the validity of scientific evidence of the greenhouse effect. He reported calculations of senior economists at the American Farm Bureau, who found that the Kyoto Treaty would cause a 24–48 percent decrease in net farm income. It would also stifle competition by mandating compliance for some countries but not others.

For more information on this hearing, see Committee publication 105–46.

### 7.2.21 REVITALIZING AMERICA'S ECONOMICALLY DISTRESSED COMMUNITIES

*Background*

Despite today's burgeoning economy, many of America's communities are in a state of economic distress. A recently commissioned General Accounting Office (GAO) study has identified rural and urban communities across the country whose economic prospects lag behind the rest of the nation's. The American Community Renewal Act (ACRA), introduced by Committee Chairman Jim Talent (R–MO) and Reps. Danny Davis (D–IL) and J.C. Watts, Jr. (R–OK), is designed to help these communities by creating jobs, reducing burdensome regulation, increasing home-ownership, encouraging savings, and strengthening the institutions in these communities that have already begun to make a difference.

*Summary*

On Tuesday, May 19, 1998, the Committee held a hearing to discuss strategies to revitalize economically distressed communities. The hearing consisted of two panels. The first panel consisted of two witnesses, Rep. J.C. Watts. Jr. (R–OK) and Reverend Floyd Flake, Pastor, Allen AME, Jamaica, NY. The second panel consisted of five witnesses: Stanley Czerwinski, Associate Director, Resources, Community, and Economic Development Division, General Accounting Office; Michael Murphy, President, Renewal Atlanta,

Atlanta, GA; Theo "Doc" Benson, Minister-Director, The Education and Employment Ministry, Oklahoma City, OK; Dr. Avis Vidal, Principal Research Associate, Urban Institute, Washington, DC; and Michael Brown, Chairman, Sable Bancshares, Chicago, IL.

Rev. Flake testified that the homeownership provisions in ACRA are the most important for revitalizing distressed communities. He testified that home-ownership provides many opportunities for community redevelopment. Rev. Flake testified, that when an area has a strong homeowner base businesses are more likely to relocate into that neighborhood. Rev. Flake also testified that the drug and alcohol treatment provisions of ACRA are quite important . He testified that the issue should not be whether one goes to a faith-based treatment program or a secular one, but the issue should be whether this country is doing enough to help people who are addicted to drugs.

Rep. Watts testified that if Congress does nothing to revitalize the pockets of poverty in this country, within ten years the United States will be on the brink of a social and economic crisis in low-income communities. Rep. Watts testified that ACRA will provide low-income families with an incentive to save—Family Development Accounts (FDA's). FDA's allow people who receive the Earned Income Tax Credit to put part of their credit into their FDA.

Mr. Czerwinski testified regarding the methodology that GAO used to identify the poorest communities in this country. GAO was asked to identify census tracts that have poverty rates of 20 percent and unemployment rates at least 1.5 times the national average. Mr. Czerwinski testified that about 9,000 of the nation's 59,000 tracts met the poverty and unemployment criteria of ACRA.

Mr. Murphy testified that he established his company, Renewal Atlanta, in order to take advantage of the economic development incentives offered by Atlanta's Empowerment Zone. He stated that Renewal Atlanta has its sights set on expansion into other cities and he hopes they will become renewal communities.

Mr. Benson testified that it is an absolute necessity to help people help themselves in this country. He testified that his organization, The Education and Employment Ministry, rebuilds the unemployed and underemployed through a program of self-help so that they will take responsibility for their lives.

Dr. Vidal was the only witness who had reservations about ACRA. She testified that the incentives within the bill are structured in ways that make it highly unlikely to increase economic activity in the identified communities. Dr. Vidal testified that the bill needs to contain housing subsidies in order to make its housing components effective, a point that was contested by several members of the Committee.

Mr. Brown testified that a key component of ACRA is the provision permitting HUD to sell certain properties to local community development corporations (CDC's). He testified that this provision will enable CDC's to serve as advocates for rehabilitation. Mr. Brown testified that the tax benefits offered in ACRA would succeed in developing a community business base.

For more information on this hearing, consult committee publication 105–48.

## 7.2.22 THE KYOTO PROTOCOL: THE UNDERMINING OF AMERICAN PROSPERITY

### *Background*

Negotiations on the Kyoto Protocol to the United Nations Framework Convention on Climate Change were completed December 11, 1997, committing the industrialized nations to specified, legally binding targets for emissions of six "greenhouse gasses." The treaty will be open for signature from March 15, 1998, until March 15, 1999. The United States has agreed to a target of reducing greenhouse gasses to 7% below the 1990 levels during the commitment period of 2008 to 2012.

For the United States to ratify the Protocol, the treaty must be submitted to the U.S. Senate for advice and consent. Ratification requires a two thirds majority vote in the Senate for approval. Specific provisions in the protocol cannot be changed until the next conference of the parties which will be in November 1998 in Buenos Aires, Argentina.

The Administration has indicated that until developing countries such as Mexico, China, and Brazil also make commitments to participate in greenhouse gas limitations, it will not submit the protocol to the Senate for advice and consent. This is attributable to Senate Resolution 98, which opposed any treaty that does not include emissions limitations for developing countries or would result in serious harm to the economy of the United States. S. Res. 98 passed by a vote of 95 to 0 on July 25, 1997.

### *Summary*

On Thursday June 4, 1998, the Committee on Small Business held its second hearing on the economic effect the Protocol will have on the small business community. The hearing was comprised of two panels with the first panel being solely occupied by Dr. Janet Yellen, Chair, Council of Economic Advisors for the Clinton Administration.

Dr. Yellen's lengthy testimony hinged on the precautionary principle as well as the Kyoto Protocol being a work in progress. The precautionary principle as applied to the protocol would be in the following terms. The use of energy might be warming the earth. That warming might produce catastrophic events. The speed of this change might require immediate action. Governments might be able to prevent that warming by an aggressive global withdrawal policy. We must take action now to reduce emissions. Dr. Yellen was grilled by Committee members on the point that the precautionary principle should also be applied to the economy in that this treaty might destroy the U.S. economy. Dr. Yellen was also asked in detail about the economic savings that the administration claimed in her testimony. Much of the assumptions were based on supposive meaningful participation by developing countries which the developing countries themselves did not even agree to. Dr. Yellen was also peppered with questions on the treaty's effect on energy prices as she was unable to give the committee a definitive answer claiming that the Administration's cost savings from the treaty were based on the assumptions. Dr. Yellen testified for over

two and half hours due to extensive cross-examination by Committee members.

The second panel consisted of the following six witnesses: Harry C. Alford, President and CEO, National Black Chamber of Commerce, Washington, DC, C. Frederick Dahlberg, Jr., President, St. Mary Galvanizing Company, Morgan City, LA, Howard Geller, Executive Director, American Council for an Energy Efficient Economy, Washington, DC, Raymond J. Keating, Chief Economist, Small Business Survival Committee, Washington, DC, Marlo Lewis, Jr., Vice President for Policy and Coalitions, Competitive Enterprise Institute, Washington, DC and Terry F. Steinbecker, President and CEO, St. Joseph Light and Power Co., St. Joseph, MO.

Besides Mr. Geller, the second panel was in general accord about the economic effect of the protocol on the economy. The panelists argued that the treaties' most detrimental effect would be on energy prices. One of the panelists, Dr. Keating, testimony included estimates from the prestigious economic forecasting firm, WEFA. This company did a detailed economic analysis on the effect of the Kyoto Protocol on the U.S. economy. In his testimony, Dr. Keating cut the cost estimates from this study in half. Under the Kyoto Protocol, by 2010, commercial establishments, again taking half of WEFA's estimates, face price hikes on distillate fuel oil of 37%, 29% for natural gas, and 26% for electricity. Industrial facilities would be confronted by price increases of 70% on residual fuel oil, 46% on natural gas, 37% on electricity, and, finally, trucking and rail firms would face a 21% increase in the price of diesel. All of these estimates are WEFA's cut in half.

The hearing concluded with the Committee finding that the Kyoto Protocol would have a detrimental impact on the small business sector as well as the U.S. economy as a whole. Some of the democrat members argued about the grave environmental problem that global warming could pose to the planet. Chairman Talent assured the members of another hearing on the science behind the Kyoto Protocol, which was held on July 27, 1998. For more information on this hearing, refer to Committee publication 105–53.

### 7.2.23 THE YEAR 2000 (Y2K) COMPUTER PROBLEM: ARE SMALL BUSINESSES READY FOR THE TURN OF THE CENTURY

*Background*

The Year 2000 (Y2K) computer problem involves the inability of many computers and embedded chips to process dates beyond December 31, 1999. In the 1960's and 1970's computer programmers created year date formats with two digits to conserve expensive storage space—for instance: 98 or 99 for 1998 or 1999. When the year becomes 00 the year 2000 is indistinguishable from the year 1900. This problem could cause computers to stop running or to start generating erroneous data.

According to a recent NFIB/Wells Fargo study titled "Small Business and the Y2K Problem," most small business owners see Y2K as a small inconvenience that will have either modest or non-existent consequences to their business. With the widespread reliance on computer systems by businesses and government, it is essential

that small business owners be apprised of what dangers face them if their computers and embedded chips are not Y2K compliant. The Committee held a hearing on Wednesday, July 15, 1998 to discuss the potential impacts of Y2K on small businesses.

*Summary*

The hearing comprised of two panels, with the first panel consisting of a sole witness, Fred Hochberg, Deputy Administrator of the Small Business Administration. The second panel consisted of five witnesses: Allen Burgess, President, Data Integrity, Inc., Waltham, MA; Debra Taufen, Global Small and Medium Business Initiatives, IBM, White Plains, NY; Harris N. Miller, President, Information Technology Association of America, Arlington, VA; Robert Wagman, Executive Editor, Millennium Information Services, Washington, DC; and William J. Dennis Jr., Senior Research Fellow, National Federation of Independent Business, Washington, DC.

Mr. Hochberg testified that SBA, which began its Y2K project in 1996, is taking an aggressive approach to solving its Y2K issues. According to Mr. Hochberg, SBA is on schedule to complete its assessment and renovations by the end of 1998 and will begin testing its systems in the first quarter of 1999. He also testified that SBA has taken several steps to inform the small business community about the dangers of Y2K. These efforts include developing aY2K web page on SBA's web site; producing a public service announcement regarding Y2K; and establishing a toll-free number where businesses can receive information regarding Y2K. Mr. Hochberg testified that he is confident that SBA will achieve Y2K compliance well before the year 2000 because SBA started its conversion process early. During the question period, Larry Barrett, Chief Information Officer, SBA, testified that SBA is confident that its costs for achieving Y2K compliance will be zero in fiscal year 2000 even though the costs for technicians who provide Y2K solutions are growing exponentially as we approach 2000.

The second panel consisted of various members of the information technology sector who agreed that the Y2K Computer problem will have profound effects on small businesses if they don't act to correct this error swiftly. Mr. Dennis conducted the NFIB/Wells Fargo study regarding small businesses and Y2K. He testified that his study found that one-fifth of the small businesses surveyed knew nothing about Y2K; another fifth is aware of the problem and is taking action or has taken action; another fifth plans to take action, but has not taken any steps yet; and the last two-fifths plan no action whatsoever. Mr. Dennis also testified that 15 percent of the business owners surveyed said that they would lose 70 percent or more of their sales or production for that day if computers were to malfunction on the first business day of 2000.

Many of the panelists suggested roles that the Federal government can take to help remedy the Y2K problem. Mr. Burgess suggested that Congress should provide more forums that enable technicians to discuss the Y2K problem with business owners. Ms. Taufen testified that Congress should focus its energies on solving the problem, rather than trying to legislate a solution. Mr. Miller and Mr. Wagman suggested that low-interest loans should be made to small businesses so that they may be able to afford the costs of

Y2K remedies. Mr. Dennis, though, testified that tax credits and loan programs are inappropriate solutions to Y2K. He suggested that the Committee, and the entire Congress, focus on the issue of liability. Mr. Dennis testified that larger corporations may be willing to offer leadership in sharing Y2K technology, but they are hesitant to do so for liability reasons.

For more information on this hearing, consult committee publication 105–58.

### 7.2.24 THE KYOTO PROTOCOL: THE UNDERMINGING OF AMERICAN PROSPERITY—THE SCIENCE

*Background*

On July 29, 1998, the Committee invited scientists to debate the global warming issue on its scientific merits. This was the third in a series of hearings intended to study the impacts of the Kyoto Protocol on small business. Vice President Gore signed the Protocol in December of 1997 to reduce the production of carbon dioxide to levels 7% lower than what was measured in 1990. At the time of the hearing, the Administration had not sent the Protocol to the Senate for ratification. Chairman Talent opened the hearing with statistics from independent energy studies that said if the Senate ratifies the agreement, Americans might face increases in gas prices by as much as 65 cents per gallon, natural gas prices for industry might increase by 90 percent and the gross domestic product might decline by 2 1/2 percent. The hearing did not debate the economic figures; however, it allowed the panelists to debate the Protocol's premise: that greenhouse gases were causing the Earth to warm at catastrophic rates unsafe to the planet. Mr. Talent thanked the one panel of witnesses for attending the hearing after postponing it in the aftermath of the fatal shootings of two Capitol police officers, Jacob Chestnut and Josh Gibson.

Five climatologists and one economist appeared on the panel: Dr. Robert T. Watson, Chairman, Intergovernmental Panel on Climate Change (IPCC); Dr. Daniel A. Lashof, Senior Scientist, National Resources Defense Council; Dr. Patrick J. Michaels, Senior Fellow in Environmental Studies, CATO Institute; Dr. Fred S. Singer, President, The Science & Environmental Policy Project; Dr. John R. Christy, Associate Professor of Atmospheric Science at the University of Alabama, Huntsville; and Dr. Marlo Lewis Jr., Vice President for Policy and Coalitions of the Competitive Enterprise Institute.

*Summary*

Dr. Watson testified as the new chair of the United Nations' Intergovernmental Panel on Climate Change (IPCC), an international group of climate and economy experts that try to collaborate on their work to brief policymakers on the issues of global warming. He briefed the Committee on some of the beliefs of certain IPCC contributors that by continuing to emit carbon dioxide into the atmosphere, "on balance, there will be a number of adverse effects: human health, heat-stress mortality and increase in vector-borne diseases such as malaria; changes in ecological systems, particularly forested systems and coral reefs; and, indeed, changes in

socioeconomic sectors such as agriculture, forestry, fisheries, water resources, and human settlements."

Dr. Lashof provided several recent natural disasters such as heat waves, severe storms and droughts to illustrate what he thinks might become more severe and frequent if carbon dioxide emissions are not reduced.

Dr. Michaels disagreed with Dr. Watson and Dr. Lashof on the severity of the global warming theory. He cited the research of Dr. James Hansen of NASA, who over-predicted an increase in temperature for the past decade by a factor of four. Similarly, he stated that the first IPCC report in 1990 predicted a median warming of 3.2 degrees. The IPCC lowered this prediction in each of its following reports, in 1992 and 1995. He said that as science improves, the proponents of the global warming theory are starting to look more like its original skeptics.

Dr. Singer continued along the lines of Dr. Michaels testimony that current global warming climate models are not validated by actual observations. He said that accurate data going back 200,000 years shows natural climate fluctuations and that recent history does not suggest any dramatic changes from the past.

Dr. Christy introduced his tropospheric temperature data from the past twenty years that shows no negligible increase in temperature. He said his data is supported by plotting several independent balloon measurements on the same chart. Since climate modelers cannot account for this phenomenon, he said any scientific consensus is premature.

Dr. Lewis attacked the same precautionary principle cited in Dr. Lashof's testimony. Using the same logic of Dr. Lashof that humans should not gamble with their only environment by taking steps to reduce carbon dioxide emissions, Dr. Lewis introduced the precautionary principle for the economic perils risked by implementing the Kyoto Protocol: should humans gamble with the only economy they have?

For further information on this hearing, refer to Committee publication 105–62.

### 7.2.25 HOW UNION-ONLY PROJECT LABOR AGREEMENTS ARE HARMING WOMEN- AND MINORITY-OWNED SMALL BUSINESSES

*Background*

President Clinton issued an Executive Memorandum on June 5, 1997 which encouraged departments and agencies to consider the use of project labor agreements (PLAs) on all Federal construction projects. The President's Memorandum stated that a PLA was to be negotiated between the Government and the unions before putting the work out to bid, which caused work rules and wage rates to be locked in before small businesses could even negotiate. Following the President's lead, Department of Transportation Secretary Slater issued a April 22, 1998 Memorandum for the Heads of Operating Administrations which asked for implementation of the President's Executive Memorandum within DOT.

Small businesses, and women- and minority-owned businesses in particular, have raised concerns about this memorandum because

most of them are not unionized, and thus they will not have input into negotiations of the PLA. Also, in order to win Federal contracts, women- and minority-owned businesses are forced to obtain most of their workers from union hiring halls, and usually only allowed to use between three and five of their own workers. Women- and minority-owned businesses are also forced to pay the unions' pension and health and welfare plans in addition to their own plans, thus paying at least twice the amount they already pay for their own workers. Thus, many women- and minority-owned businesses simply do not even attempt to be a part of PLAs, as the requirements and expenses are too much to handle. The Committee held a hearing on August 6, 1998 to examine these and other concerns with PLAs.

*Summary*

The first panel at the hearing consisted of one witness: Ms. Nancy McFadden, General Counsel for the Department of Transportation. Ms. McFadden explained that the DOT supported PLAs because of the guarantee they provide against strikes, lockouts, and any other work-delaying disruptions. She stated that many Federal projects are covered by PLAs, such as the Savannah River site in South Carolina and the Boston Harbor Project, and that many state and local governments have also made successful use of PLAs. Ms. McFadden also made the point that neither the President's Memorandum nor Secretary Slater's implementation memorandum required the use of PLAs, and rather simply encouraged them.

Ms. McFadden made six main points in her testimony regarding the use of PLAs and why they do not discriminate against women- and minority-owned businesses. She stated that all contractors and sub-contractors have the ability to compete for a contract, whether or not they are union. Also, she stated that all workers are eligible to work on PLA projects, even if they are not in a union. The third point Ms. McFadden highlighted was that out of the 1,457 subcontractors on the Boston Harbor Project, 381 (26%) were minority businesses and 278 (19%) were women-owned businesses. Her fourth point was that each PLA is negotiated separately, and hence there is not one universal PLA imposed on all projects. The fifth point Ms. McFadden made is that PLA parties are attempting to craft PLAs with small businesses in mind. And lastly, Ms. McFadden stated that the President's memorandum applies to a project exceeding $5 million, which is such a large contract that smaller contractors and subcontractors would not even be impacted. Ms. McFadden reiterated the point that PLAs are useful tools for contracting officers in ensuring higher quality work in a more timely manner.

The first witness on the second panel was Michael D'Antuono of Parson Constructions, which is one of the world's largest construction companies. Mr. D'Antuono refuted each anti-PLA argument with anecdotal evidence from his company, and ultimately stated his support for PLAs. Mr. D'Antuono explained that he has not seen any instances of discriminatory measures with PLAs, and that they seem to only enhance opportunities for small businesses.

The remaining witnesses on the second panel—all of which owned or were employed by women and minority-owned small businesses—were all strongly opposed to PLAs due to their discriminatory nature. Rose Girard, owner of Phoenix Construction Services in Riverside, CA was the first witness. The second witness was Barbara Hoberock, the president and founder of the Companies, Inc. in Union, MO. The third witness was Michael La Point, Vice President of J.L. Steele, Inc. in Roanoke, Texas. And the last witness was Phyllis Hill Slater, the founder, owner, and president of Hill Slater, Inc. in Great Neck, Long Island, and the immediate past President of NAWBO. These witnesses testified regarding specific instances of discrimination they have suffered because of PLAs; they said that they eliminated the contractor's right to choose because of the different nature of the contracts under PLAs. Ms. Girard noted that on one PLA job that she worked on, she was forced to abandon her own employees for a stranger work force. These employees were not as skilled as hers, and she found working with unions to be too limiting and inflexible for her type of work. Ms. Hoberock reiterated the fact that PLAs are inherently discriminatory, as 8 out of 10 workers are non-union. She stated from personal experience that open-shop contractors are forced to perform like unionized companies under PLAs, and that is detrimental to their work.

Mr. La Point believed the support of PLAs to be in conflict with the open bidding statute in a DOT mandate. He also noted that the President's memorandum is not as optional as one might think, as states' reimbursement for projects could be considerably less depending on its use of PLAs. He cited the May 1998 GAO report that stated that the efficiency, quality and stability of the work under PLAs could not be proven, and that this argument is therefore invalid. Ms. Hill Slater repeated the aforementioned statements from her personal experience, saying that PLAs are inflexible and therefore detrimental to small businesses, and particularly those owned by women and minorities.

For further information on this hearing, refer to Committee publication 105–63.

### 7.2.26 REVITALIZING AMERICA'S DISTRESSED COMMUNITIES

*Background*

One of the biggest challenges facing our nation is the breakdown of low-income communities in both urban and rural parts of America. These communities are distressed, demoralized and devastated by increasing social problems and decreasing economic resources. For the last three years, Members of Congress concerned about the hardships facing these communities have been exploring what changes the government should make to help create a structure of order, decency, and opportunity for every American. The result of these efforts is the American Community Renewal Act (ACRA), introduced by Committee Chairman Jim Talent (R–MO) and Reps. J.C. Watts, Jr. (R–OK) and Danny Davis (D–IL).

ACRA will help communities by creating jobs, reducing burdensome regulations, increasing home-ownership, encouraging savings and strengthening the institutions in these communities that have

already begun to make a difference. To help identify communities in economic despair the Congressmen asked the General Accounting Office (GAO) to research those areas with the greatest number of people living in poverty. The study found that more than 9,000 communities in rural and urban areas are living in poverty. Cook County, IL, which comprises the Chicago area, was the second largest county identified by the GAO study. The Committee held its second hearing regarding ACRA on August 19, 1998, in Chicago, to discuss how ACRA can help spur economic growth in communities like Cook County.

*Summary*

The hearing consisted of two panels. The first panel consisted of four witnesses: Rep. J.C. Watts, Jr. (R–OK); Stanley Czerwinski, Associate Director, Resources Community and Economic Development Division, General Accounting Office; John Stroger, President, Cook County Board of Commissioners, Chicago, IL; and Avery Goodrich, Executive Director, Chicago Empowerment Zone.

Rep. Watts testified that the American Community Renewal Act seeks to level the playing field in America and help economically distressed communities realize the full promise of the American Dream. ACRA, by bringing new businesses into these communities, will not only expand job opportunities, but will also allow residents of these communities to spend their money within their neighborhoods. He testified that ACRA cannot promise success to every American, but it promises every man, woman and child the opportunity for success.

Mr. Czerwinski testified about the methodology used by GAO in its study identifying rural and urban communities that are suffering from economic distress. In addition, GAO surveyed federal, state and local participants in the EZ/EC program to find out what factors have helped or hindered them as they tried to implement the program. Mr. Czerwinski testified that what helped these efforts was community representation on the governance board of an EC or EZ. He stated that what hindered these efforts included: a difficulty in selecting an appropriate governance board structure; lack of federal funding; and unrealistic expectations from local leaders, the public and the media.

Mr. Stroger testified that Cook County is home to a human crisis caused by poverty, joblessness and crime. Mr. Stroger testified that ACRA would be helpful to his community because it gives tax incentives to businesses, promotes intergovernmental cooperation and encourages savings by low-income families.

Mr. Goodrich testified that the strategic plan for Chicago's Empowerment Zone has unified a larger community vision and is working to confront obstacles and create solutions to meet immediate and long term needs. Mr. Goodrich testified that the housing provisions in ACRA will allow communities to develop the housing stock needed to sustain urban areas.

The second panel consisted of four witnesses: James Compton, President, Chicago, IL; Consuelo Miller Pope, Executive Director, Cosmopolitan Chamber of Commerce, Chicago, IL; Michael Brown, Chairman, Sable Bancshares, Inc. Chicago, IL; and Dr. Calvin Morris, Executive Director, Community Renewal Society, Chicago, IL.

Mr. Compton testified that the Chicago Urban League believes that one of the keys to redevelopment of low-income communities in Chicago is the growth of a locally owned and operated business community. Mr. Compton testified that eliminating state and local taxes, abating site clean-up costs, creating opportunity by waiving license requirement, reducing capital gains taxes and encouraging hiring from within renewal communities are tools within ACRA that would spur economic development.

Ms. Pope testified that ACRA would place a security net under impoverished communities. She testified that ACRA's emphasis on strengthening families and addressing the scourge of addiction make it an attractive legislative package to help distressed communities.

Mr. Brown testified that ACRA takes a holistic approach to community development. He testified that no single solution is going to cure the problems of urban markets. Mr. Brown testified that allowing financial institutions to receive Community Reinvestment Act credit for investments or loans within renewal communities would help to stimulate an increase in lending and development activities within these areas.

Rev. Morris testified that if ACRA were passed into law, it would move America toward the creation of a society where people are not forced to choose between such basic necessities as food or housing.

For more information on this hearing, consult committee publication 105–64.

### 7.2.27 H.R. 3659, THE FARM AND RANCH RISK MANAGEMENT ACT

*Background*

On September 16, 1998, the Committee on Small Business held a hearing to explore H.R. 3659, the Farm and Ranch Risk Management Act. The purpose of this bill is to give America's farmers the opportunity to more efficiently manage the unique and often-severe risks associated with farming by allowing them to establish farm and ranch risk management (FARRM) accounts. FARRM Accounts are one of the most supported risk management tools for farmers because they allow eligible farmers to contribute up to 20 percent of their taxable income into tax-deferred savings accounts. Contributions may remain in the account for a maximum of five (5) years, during which period farmers would be encouraged to save a portion of their income during the good years, allowing those savings to supplement income during bad years.

*Summary*

The hearing was comprised of two panels, the first of which included Senator Charles Grassley (R–IA), Congresswoman Karen Thurman (D–FL) and Congressman Kenny Hulshof (R–MO). This first panel of congressional witnesses highlighted the very risky nature of the farming business and discussed the important features contained in the FARRM Accounts legislation that would provide farmers relief from severe swings in weather or trade situations. As noted by Sen. Grassley, while FARRM Accounts would be a very important part of the long-term solution to the farm economy, they

would also be very helpful in the short term. He went on to explain that when prices are high, farmers often pay so much of their income in taxes that they are unable to save anything; when prices drop again, farmers then face liquidity problems. Rep. Thurman agreed, and explained how FARRM Accounts would provide farmers with an alternative to what is considered the "boom and bust" cycles of farming. Rep. Hulshof added that FARRM Accounts could be described as a cousin to income averaging, because what FARRM Accounts do is to help farmers prepare in the down years.

The second panel included Charlie Kruse, President, Missouri Farm Bureau; Guy Donaldson, President, Pennsylvania Farm Bureau; and Steve Verrett, Chief Staff Officer, Plains Cotton Growers Association. The witnesses were unanimous and strong advocates of the legislation because it would help farmers help themselves by giving them the tools to save during good years for use during bad years. The witnesses mentioned that this theme was especially relevant this year when so much of the country has experienced weather severely averse to farming. Chairman Talent mentioned that south Texas, for example, has only received about 8 percent of its normal precipitation during the current year's drought; Rep. Hinojosa added that the district in south Texas that he represents has only received about 4 percent of its normal precipitation this year. Mr. Kruse noted how different things would be currently if FARRM Accounts had been signed into law five years ago so that farmers could be using their savings now. Other witnesses and Committee members echoed this message. Mr. Donaldson mentioned that his home state of Pennsylvania—unlike many other areas in the country—is currently experiencing high profit margins in the dairy industry and that many Pennsylvania producers might put away in 1998 monetary reserves to use during the next downturn in prices. Mr. Verrett added that FARRM Accounts are compatible with the new farm policy, which provides fixed, predictable, declining payments, as well as being compatible with more sophisticated hedging and forward contracting tools which allow farmers to lock in a price.

For more information on this hearing, consult committee publication 105–66.

## 7.3 Summaries of the Hearings Held By the Subcommittee on Empowerment

### 7.3.1 Urban Economic Empowerment

*Background*

On May 13, 1997 the Subcommittee on Empowerment held a hearing to identify solutions to both urban unemployment and blight. Onerous federal, state economic and environmental regulations, a weak internal tax structure and the migration of corporations have inflicted harm on many urban areas. This hearing gave a public airing of Representative Jerry Weller's bill encouraging the redevelopment of brownfields.

*Summary*

The hearing consisted of one panel which included The Honorable Paul Helmke, Mayor of Fort Wayne, Indiana, and President, U.S. Conference of Mayors; The Honorable Victor Ashe, Mayor, Knoxville, Tennessee; Luanne Cunningham, President and CEO, Southeast Chicago Development Commission; and Congressman Weller.

The main topic of discussion was how brownfields exert a negative impact upon small business and local economies. Business taxes and burdensome government regulations pose disincentives for private investors to develop these areas. The results are a shrinking economic base, population loss, and an eroding tax base. All of the witnesses agreed that redevelopment of the brownfields is essential to restore economic vitality and reduce social blight.

The Honorable Jerry Weller spoke about the economic impact of his two bills, H.R.'s. 996, and 997. H.R. 997 provides an environmental redemption tax deduction for qualified taxpayers wishing to develop brownfields. H.R. 996 allows state and local jurisdictions with bond authority to utilize a new category of tax-exempt bonds called a "qualified contamination remediation bond."

Mayor Ashe testified about the need for Environmental Protection Agency to reduce the amount of regulations that currently force local governments to increase the amount of resources spent on redevelopment of the brownfields. Additionally, he stated that the increased tax burden on the population has forced a reliance upon private community investment opportunities, designed to assist recessed areas regain their economic vitality by empowering local residents to create small businesses and teach capital management skills.

Mayor Helmke spoke on the need to redevelop the brownfields to restore economic vitality to the small business sector. He reported that these blighted areas are the cause of billions of dollars in lost tax revenue in urban areas, which prevent the small business community from expanding. Additionally, Mayor Helmke testified that a three part brownfield redevelopment agenda be implemented to protect the small business owners: local initiatives to strengthen the city core, preserve prime agricultural land, or existing greenfields, and encourage development patterns that are more efficient and economically sustainable.

Both mayors were critical of the federal "empowerment zone" program. They said that their cities were too small to be likely contenders for such designations and that they lacked the personnel and a location to apply for federal assistance. For more information on this hearing, consult committee publication 105–9.

### 7.3.2 RURAL EMPOWERMENT

*Background*

On May 20, 1997, the Subcommittee on Empowerment held a hearing investigating rural poverty and ways to reduce it, while empowering both communities and small businesses. Some of the pressing issues these communities face is a lack of financial re-

sources, high inheritance tax, population migration, restructuring of the urban economy, and an aging population.

*Summary*

There were two panels of witnesses. The first panel consisted of: The Honorable Richard G. Lugar, a Senator from Indiana; Bob Paciocco, Executive Director, Mid-East Commission; and Angie Tooley, Executive Director, Northeastern Beufort County Economic Development Corporation.

The main discussion of this panel was the negative impact high taxes have on the agricultural community. Senator Lugar spoke about his legislative efforts to reduce barriers to passing along family farms from one generation to the next.

Senator Lugar spoke about how burgeoning inheritance and estate taxes impede farmers from meeting increasing food supply demands. Under the current tax code, farmers are six times more likely to face inheritance taxes than other Americans. When compared to other estates, commercial farms are fifteen times as likely to face these same taxes. Senator Lugar also discussed the future of agricultural research, and the importance of the revitalization of land based programs. Allocating funds to these local entities he said, empowers both local farmers and community planners to reduce the problems of poverty and accelerate job creation. Additionally, he reported how non-land competitive grants are used in both university laboratories and in cooperation with international organizations to develop specialized agriculture technology on a non-patent basis. These technological advancements enable farmers around the globe to purchase future agriculture products for less than a commercial entity.

The second panel consisted of: Franklin Bobrow-Williams, CEO, Boggs Life Center; James Gimpel, Assistant Professor of Government, University of Maryland; Michael Irwin, Professor, Duquesne University; Kimberly Warker, Director, Economic Development, Millville, New Jersey; and Jean Wyont; National Family Farm Coalition.

The second panel testified on the uniqueness of rural poverty, and how local solutions empower small businesses and communities to revitalize economic prosperity. These programs range from developing a rural based strategy to increase tourism, implementing Foreign Trade Zones, to reliance on various community development entities. These witnesses agreed that the best way to stimulate local economies is through enhanced education. This includes increased education reform and a greater awareness of opportunities and programs the state Small Businesses Administration offers to first time businesses owners.

Mr. Bobrow-Williams testified how to reduce the amount of poverty and blight by combining human and financial resources of the SBA, Departments of Agriculture, Defense, Education and Labor to form a "Rural Connection Collaborative." This entity can assist and collaborate with local governments to develop economic growth strategies.

For more information on this hearing, consult committee publication 105–11.

### 7.3.3 IMPACT OF TAX PROPOSALS ON MINORITY HELD SMALL BUSINESSES

*Background*

On July 24, 1997 the Subcommittee on Empowerment held a hearing investigating the impacts of various tax proposals on minority owned small businesses. There were two panels present at the hearing. The first panel discussed issues ranging from the inheritance tax to the benefits and disadvantages of a flat tax. The second panel was comprised of local minority small business owners testifying on their personal experiences and frustrations of owning a business.

*Summary*

The first panel consisted of: Herman Cain, CEO and President of the National Restaurant Association; Susan Au Allen, President of the United States Pan Asian Chamber of Commerce; Paul L. Pryde, Jr., President of Capital Access Group; Dr. Max Sawicky, Economist, Economic Policy Institute; and Charles Kadlec, Managing Director and Chief Investment Strategist, J&W Seligman & Company.

Mr. Cain gave a description how the current inheritance tax levied on small business owners prevents small business owners from transferring ownership from one generation to another. The current tax code allows approximately 30% of family owned farms to make it through the second generation, while 13% survive into and past the third generation. Mr. Pryde concurred with Mr. Cain, stressing his objections to the current inheritance tax structure and how it is detrimental toward the future of minority owned businesses. He elaborated on the advantages of a capital gains tax reduction in stock sold by the SBA owned Small Business Investment Companies (SSBIC).

Ms. Allen testified on the advantages of implementing a flat tax. She advocates using a system similar to Hong Kong's by implementing a 15% personal tax, and a maximum corporate tax of 16.5%. Ms. Allen believes that a flat tax creates a greater opportunity for minority held businesses to survive into future generations.

The second panel consisted of: Soni Kim, Korean American Communications Services; Jorge G. Lozano, President, Condortech; Thomas Ahart, President, A and M Group, Inc.; Jerry V. Curry, President and CEO, Victoria International, Ltd.; and Dr. Samuel Matters, CEO and Chairman of the Board, Metters Industries, Inc.

The main focus of this panel is how the estate tax, and how various tax cuts impacts small business owners and their families. Mr. Lozano spoke on the benefits of the Higher Education tax credit and its influence on the electronic service industry. He said he favored tax credits to assist small businesses. Mr. Curry testified in favor of cutting capital gains tax to assist must be instated. Mr. Metters concurred and gave support for increasing the inheritance tax limit from $600,000 to $1 million, while indexing this figure on a yearly basis for maximum effectiveness.

For more information on this hearing, consult Committee publication 105–21.

### 7.3.4 FROM DEPENDENCY TO SELF SUFFICIENCY

*Background*

On September 12, 1997, the Subcommittee on Empowerment held its first field hearing in Lancaster, Pennsylvania at the Water Street Rescue Mission. It investigated the effectiveness of sectarian based organizations to remove chemically and financially dependent individuals from public assistance and into the work force.

*Summary*

The hearing consisted of two panels. The first panel included: The Honorable Ron Ford, Lancaster County Commissioner; The Honorable Colin Hannah, Chester County Commissioner; Dr. Sherry Heller, Deputy Secretary for Income Maintaince, Pennsylvania Department of Public Welfare; and John Keeney, President, WeatherCraft Windows, Inc.

This panel discussed some of the socio-economic issues surrounding state and local political initiatives to remove those receiving public assistance into the work force. The main topic was the ability of Pennsylvania's state and local government's to galvanize local sectarian organizations to greater assist with welfare reform efforts. Dr. Heller testified how Pennsylvania's Temporary Assistance for Needy Families (TANF) program combines with a series of Request for Proposals (RFP's) localizes the welfare reform efforts by allowing community and sectarian organizations to work with local governments to successfully transition welfare recipients to the work force. This program provides a personalized cost effective alternative to the government administered programs, resulting in greater long term results.

The second panel included: Dick McMillen, President and CEO, Water Street Mission; Edith Yoder, Executive Director, Bridge of Hope; Howard Good, Assets Program, MEDA; Samantha London, Graduate of the Assets Program; and Mike Weaver, Executive Director, Tabor Community Services.

This panel gave testimony regarding the success of their respective organizations in weaning persons away from chemical dependence. The witnesses unanimously concurred that the based method to remove and keep persons free from chemical dependency, is through a faith based agenda. They explained that the way to offer marginalized persons the opportunity for redemption, is to heal the soul. Once these vices are removed, the organization works with the individual, teaching them job and personal related skills, such as: resume writing, how to prepare for an interview, basic financial management, computer skills and other job related skills. An additional area where these organizations excel, is in secondary services. Community and sectarian based organizations can also provide services such as child care, transportation, follow up support systems, food stamps, and business contacts that allow an easier transition into both society and the work force.

For more information on this hearing, consult Committee publication 105–24.

## 7.3.5 URBAN PROBLEMS AND COMMUNITY SELF RENEWAL

### *Background*

On September 19, 1997 the Subcommittee on Empowerment held a field hearing in Fort Wayne, Indiana at the South Side High School. It investigated the effectiveness of local and national efforts to empower individuals, communities and create economic opportunities in low income urban areas. The two panels of witnesses, were composed of members from grass roots faith based organizations, and a panel of mayors from the U.S. Conference of Mayors.

### *Summary*

The first panel consisted of: Dr. Joseph Jones, Department of Criminal Justice, Taylor University; Reverend Mike Nickelson, Senior Pastor, Mount Calvary Baptist Church; Kathy Dudley, President, Dallas Leadership Foundation; David Earl Bates, Executive Director, Olive Branch Mission; Dr. Larry Lloyd, President, Memphis Leadership Foundation; Dr. Robert Lupton, President, FCS Urban Ministries; and Dr. William E. Pannell, Fuller Theological Seminary.

The main topic discussed was the ability of the sectarian community to heal social ills and reverse the effects of addiction and other maladies. Empowering them to do even more is an opportunity to provide an expedient cost effective approach for urban renewal. By addressing the dynamic, social, physical, mental, emotional, and spiritual needs of both the families and individuals, such entities have compiled impressive records. The efforts of Dr. Lupton in the Summerhill community of Atlanta, Mr. Bates in Chicago, Ms. Dudley in Dallas, and Dr. Lloyd in Memphis, have restored economic vitality in these metropolitan areas by strengthening the economic and spiritual foundations of individuals, communities, neighborhoods and small businesses.

The second panel consisted of four mayors: The Honorable Scott King, Mayor, Gary, Indiana; The Honorable Nancy Graham, Mayor, Palm Beach, Florida; The Honorable Wellington Webb, Mayor, Denver, Colorado; and the Honorable Dennis Archer, Mayor, Detroit, Michigan.

Mayor King discussed how the gaming industry has had positive socio-economic impacts on the local economy. It has reduced the unemployment rates, while providing employment for local contractors and vendors. Additionally, Mayor King described a local grant program that enlists the religious community in efforts to enhance with welfare to work programs.

Mayor Graham testified how a new amphitheater, and a redeveloped waterfront have reduced unemployment rates and stimulated the local economy in her city. She also spoke about how community policing efforts (with an emphasis on reducing juvenile crime,) and rebuilding dilapidated affordable housing have reduced crime, urban blight and hopelessness.

Mayor Webb reported how he reduced the amount of crime and blight through a three point agenda. This includes a $40 million to revitalize parks, and river fronts efforts to enhance quality education, and a ten point anti-gang program.

Mayor Archer illustrated how the use of economic enterprise zones, new housing developments, and the development of brownfields have assisted the revival of Detroit. In the past two years economic enterprise zones generated $2.2 billion in revenues. The Mayor called for a partnership with Congress in the fight against drugs. He called for greater cooperation in reducing both supply and demand.

For more information on this hearing, consult Committee publication 105–27.

### 7.3.6 HOW TAXES IMPEDES SMALL BUSINESSES PRODUCTIVITY

*Background*

On October 27, 1997, the Subcommittee on Empowerment held a field hearing in Meadville, Pennsylvania at Allegheny College. It investigated how the current federal tax codes impedes small businesses productivity and ways the government can ease the tax burden on such enterprises.

*Summary*

The hearing consisted of two panels. The first panel included: Charles Anderson, President, Meadville Chamber of Commerce; Dennis Frampton, President, C&J Industries; Gregory Antoun, President, ChipBlaster; and William DeArment. President, Channellock, Inc.

This panel discussed methods to reduce the loss of tool and die manufactures to foreign competition. The witnesses concurred that some of the main reason their industry is continuing to decline both physically and financially, is due to high capitol gains and estate taxes, lack of locally administered training facilities, and frivolous law suits. Mr. Frampton testified how the federal government's technical training facilities are not adequately preparing students for future business demands. He suggested that the federal government support state initiatives, where both financial and training management are traditionally more efficient. The panel agreed that the current inheritance tax code needs to be reformed to assure the future of small businesses.

The second panel consisted of: Ernest Post, Director, Gannon University Small Business Development Center; Rick Novotny, Corry Redevelopment Center: Victor Leap, Executive Director, Crawford County Development Center; and Stanley Shelly, President, Flexible Manufacturing.

This panel spoke about methods to advance the interests of the small businesses and the communities. The witnesses unanimously agreed that the most effective ways to assist the prosperity of the small business community is to reduce the amount of burdensome taxes, provide assistance with compliance and empower the small businesses in trade issues. Mr. Post testified about the benefits of H.R. 96 and how employees of IRS, OSHA and EPA agencies can be used as an cost saving, invaluable resource to both the small business development centers (SBDC's), and small business owners. Having members of these agencies in the SBDC's allows small business owners the opportunity to ask common questions and receive assistance with various compliance, tax and other issues. Mr.

Novotny spoke on the benefits of reinstating tax credits as a method to increase productivity returning prosperity to the small business owner. Additionally, Mr. Shelly, relayed how the Crawford County business community has developed brownfields and how these efforts have restored economic vitality and reduced unemployment levels.

For more information on this hearing, consult Committee publication 105–31.

### 7.3.7 H.R. 3241, THE CHARITABLE GIVING PARTNERSHIP ACT

*Background*

On March 19, 1998, the Subcommittee on Empowerment held a hearing to discuss H.R. 3241, The Charitable Giving Partnership Act. The bill authored by Mr. Souder amends the Housing and Community Act of 1974 to authorize states to use community development block grant amounts provided for non-entitlement areas to offset the cost of state charity tax credits. There were four panels at the hearing.

*Summary*

The first witness was The Honorable Dan Coats, a U.S. Senator from the state of Indiana. Senator Coats testified how the decentralization of the federal welfare program, by returning both fiscal and administrative responsibility to the state and localities is more cost efficient, and allows for greater quality care. He stated that the proposed tax credit allows for the opportunity for problems associated with teen pregnancy, drug abuse, homelessness, urban decay and youth violence to be a transition from government to the realm of the sectarian community and volunteer groups. Once regarded as "obstacles," by the "Great Society," these entities can be used as valuable assets in this healing process, by encouraging local control. The proposed benefits of the program allow for an increase in aggregate charitable donations, and greater use of resources. To buttress this statement, he cited a Beacon Hill Institute at Suffolk University that found when government reduced the cost of giving by 1%, charitable giving increases by .12% Most importantly, he stated that the tax credit gives tax payers a choice with their contributions, without violating the First Amendment.

The second panel consisted of The Honorable Sue Myrick, a Representative in Congress from the state of North Carolina; The Honorable Matt Salmon, a Representative in Congress from the state of Arizona; and The Honorable David Long, a State Senator, State of Indiana.

Congresswoman Myrick, a former Mayor of Charlotte, North Carolina, testified how moral/family renewal, personal economic empowerment and the need to foster private charity combined with greater deregulation and tax relief are essential components in the urban revitalization process. Additionally, Mrs. Myrick elaborated on the need for greater local control in distributing charitable contributions and how increases in monetary donations are needed to balance the number of volunteers.

Congressman Salmon testified on the success of two welfare reforms implemented by the Arizona State legislature. He told how

a $200 charitable tax credit, and a program that allows the state to "cash out the value of food stamps and the AFDC and give to an employer to subsidize that employee so that they will have the value of a job" are yielding reductions in the amount of welfare recipients. He also spoke on the flexibility of donating funds to a preferred charity.

Mr. Long testified about a proposed legislation called the Indiana Compassionate Tax Credit Act. The legislation allows for a tax credit who makes a cash contribution to a charity dealing with poverty-related matters. To insure that funds are properly allocated for poverty matters, the receiving entity must pass a two pronged establishment test. He also elaborated how the goals of the legislation are aimed to empower private charities and to encourage the creation of new charities.

The third panel consisted of Ms. Betty Lou Ward, President-Elect, National Association of Counties; Mr. Peter Barwick, Policy Analyst, Commonwealth Foundation of Pennsylvania; Mr. Joe Laconte, Deputy Editor, Policy Review, The Heritage Foundation; and Mr. Don Elberly, Director, Civil Society Project.

Ms. Ward testified on her opposition to the Charitable Tax credit because it would "dilute the already limited CDBG resources" allocated for empowerment efforts at the local levels. She also stated that CDBG set-asides dilute formula grants to State and local governments, and that individuals' charitable contributions are not likely to track the type of activities jurisdictions fund with CDBG, and that it is impossible to ensure that the funds will be properly allocated to the most needy organizations.

Mr. Barwick testified on the inability of the federal government to provide quality social care, and the reliance of. He stated that "the government bureaucracy is limited to address the complex factors which underlie chronic poverty." He continued to state that the private sectors removed from the dependence of federal funding can provide the type of "human caring, moral and spiritual challenge, and the sense of hope" which are vital in the healing process.

For more information on this hearing, consult Committee publication 105–43.

### 7.3.8 URBAN EDUCATION

*Background*

On March 26, 1998, the Subcommittee on Empowerment held a hearing identifying successful education programs at urban area schools. This hearing was an opportunity for six educators, from both public and religiously affiliated schools, to share their insight into successful approaches to urban education. The hearing consisted of two panels.

*Summary*

The first included Mr. Thaddeus Lott, Principal, Acre Homes Charter School, Houston, Texas; and Ms. Vera White, Principal, Thomas Jefferson High School, Washington, DC.

Mr. Lott testified about the attributes of the DISTAR (Direct Instruction System for Teaching and Reading) program as an intense and successful method of teaching children to read. To increase the

probability of long term academic success, he advocates grouping students according to their ability level, rather than their age or grade level. Mr. Lott also addressed the difficulty of finding adequately prepared and devoted teachers. Additionally, he stressed the need for improved teacher training programs.

Ms. White testified about the financial and technological benefits resulting from a comprehensive partnership between her school and the COMSAT corporation. She also discussed the need to set high academic and social goals for pupils and continue tracking them through high school and post-secondary education. This allows for a more accurate measurement of the teaching methods at the secondary level. She continued to state that parental and community support combined with a dedicated teaching staff are essential to academic improvement.

The second panel included Dr. Oscar J. Underwood, Headmaster, Cornerstone Christian College Preparatory School, Ft. Wayne, Indiana; Mr. William Elliot, Headmaster, Timothy Academy, Philadelphia, Pennsylvania; and Ms. Leah White, Administrator, New Psalmist Christian School, Baltimore, Maryland.

Mr. Elliot outlined his educational proposal, the Viable Alternative, in which state appropriated education funds per child would be incorporated into the budget of the school chosen by the child's parent, regardless if it is a public or private school. He contended that these funds would allow the better private and public schools to "survive and get better," while affording parents increased choice in school selection. Mr. Eliot urged Congress to enact a GI bill for elementary and high school students similar to the existing one for college students.

Ms. White testified on the necessity of parental support, in both the home and school, and its critical role in the success education of students. She asserted that a positive attitude, beginning with the belief that all children can learn, must be instilled in both the children and the teachers. She also spoke on the difficulty of finding good teachers and the need for a zero tolerance policy on violence.

Mr. Underwood spoke on establishing hope in students that they can improve their lives through education. He stated that this hope, coupled with the setting of high goals and tough discipline standards, enables education to take place.

For more information on this hearing, consult Committee publication 105–44.

### 7.3.9 HOW TO BEST OBTAIN DRUG-FREE WORK PLACES

*Background*

On May 14, 1998 the Subcommittee on Empowerment held a hearing investigating the merits of drug free workplaces create to small businesses. This hearing was held in correlation with H.R. 3853, a bill authored by Mr. Portman called the Drug-Free Workplace Act. There were three panels at the hearing.

*Summary*

The first panel consisted of: Mr. Thomas Donohue, President, U.S. Chamber of Commerce and Ms. Barbara Thomas, President, Consumer Health Care, Warner-Lambert Company.

Mr. Donohue testified on the negative economic impact drug abuse has on our nation and small business owners alike. Currently, drug abuse costs employers approximately $200 billion per year, while loss in productivity costs an average of $640 per American. To effectively ebb the costs inflicted by drug abuse, Mr. Donohue advocates comprehensive "split tests" urine tests. He cited successful testing programs implemented by U.S. Navy, airline and trucking associations, which resulted in lower accidents rates. Ms. Thomas spoke on the benefits of active participation in drug education for children, employees, and employers.

The second panel consisted of: Mr. Richard Manfredi, President, Manfredi Motor Company, and Chairman, ATA Safety & Engineering Committee; Ms. Beth Lindamood, Great American Insurance Company, Senior Analyst and Coordinator for the Drug-Free Workplace Program; Mr. Raymond C. Soldavin, Vice President Phoenix House; and Mr. Scott Sutton, W.M. Jordan, Newport News, VA.

The main focus of this panel was the positive effects of drug testing and drug education programs in the work place. Mr. Manfredi spoke about the correlation between drug testing and the reduction in drug related accidents in the trucking industry. He cited a study by the Federal Highway Association in 1995 that illustrates the effectiveness of a random drug testing policy in the trucking industry. When compared to car drivers, the study found that .02% of 1% of tested drivers were found to be legally intoxicated, and that 2.2% were found with an illicit chemical in their system while on the job. Ms. Lindamood spoke on how drug education programs reduce worker compensation costs. On the average, drug free work places reduce compensation costs by 5.6%, a reduction of 4.1% in frequency, and a 1.5% reduction in severity. Mr. Soldavin testified on the positive effects that drug education has on youths. Mr. Sutton spoke about how on-site random drug testing produces lower accident rates, higher company morale, and greater benefits, including a 401K program.

The third panel consisted of Mr. Rudy Guzman, President, L&R Guzman; Mr. Lawrence T. Bennett, Katzman, Logan, Halper & Bennett; Mr. Charles Krehbiel, Jr., The C.J. Krehbiel Co.; and Ms. Sloange Bitol, American Civil Liberties Union.

Mr. Guzman testified on how random drug tests resulted in higher productivity, lower theft rates. He also noted that profit margins grew ten fold and company size tripled. Mr. Bennett spoke about how random drug testing and employee assistance resulted in a 50% decline in the amount of OSHA recordable accidents, and a 63% decline in workers compensation. Ms. Bitol testified on the constitutionality of drug testing, and said it violates employee rights. She stated that random drug testing violates the First and Fourth Amendments and is both unfair and unnecessary to the worker.

For more information on this hearing, consult Committee publication 105–45.

### 7.3.10 EMPOWERMENT EDUCATION

*Background*

On May 21, 1998, the Committee on Small Business held a hearing identifying various methods of providing entrepreneurial education, organizations that sponsor such programs, and ways of expanding these initiatives. These programs, provide an overview of our free enterprise system and an introduction to many facets of self-employment, while empowering residents of economically disadvantaged areas to enrich both their financial futures and fortify their communities. There were two panels at the hearing.

*Summary*

The first panel included The Honorable Kweisi Mfume, President of the NAACP; Mr. Damon Williams, a student at George Washington University; Mr. James Hayes, President of Junior Achievement; Dr. Marilyn Kourilsky, Vice President of the Kauffman Center for Entrepreneurial Leadership.

Mr. Mfume testified that the NAACP promotes the entrepreneurial spirit through its Community Development Resource Center (CDRC), by providing both funding and education to aspiring business owners. He then spoke about the NAACP's juvenile endeavor, the Youth Entrepreneurial Institute, a summer enrichment program whose theme is "Planting the Seed of Entrepreneurship; Harvesting Future Economic Growth." The curriculum teaches young students practical business skills such as marketing, management, bookkeeping, accounting, finance, turning hobbies into business, patents, and copyrights. Mr. Mfume stressed that this type of programming is especially necessary for minority students, because the unemployment rate among minorities exceeds the national percentage.

Mr. Hayes spoke about the advantages of introducing to entrepreneurship in kindergarten. He described a new program, Building Achievement through Sports and Entertainment (BASE), designed to capture the interest of students and channels it to a practical and potentially profitable application. Mr. Hayes credits volunteers from the business community for making possible Junior Achievement's mission of "[ensuring] that every young person in America has a fundamental understanding of the free enterprise system." He was accompanied by two participants in Junior Achievement classes.

Kenneth Martin, the 12 old year President of a Junior Achievement Company called Metro Stick Together, testified that his participation in this program resulted in his knowledge of the democratic process, product marketing, and group dynamics. Emily Ochoa, a 14 year old Junior Achievement participant, credits the program with transforming her scholastic career from apathetic to inspired. She praised the program for imparting courage and self esteem to underprivileged youths by teaching them to "create, organize, and accomplish."

Mr. Williams testified how structured entrepreneurial education and corporate sponsored internship programs are an effective way of exposing college-age students to the business environment. Dr.

Kourilsky spoke on how his business seeks to stimulate entrepreneurship by ensuring that individuals have the foresight and courage to recognize and capitalize on their innovative ideas.

The second panel was comprised of Ms. Julie Silard, Divisional Director, National Foundation for Teaching Entrepreneurship; Mr. James Kaddaras, Executive Director, Working Capital; and Ms. Lynn Karlson, Vice President of Program and Product Development, Independent Means, Inc.

Ms. Silard testified that entrepreneurial education allows poverty stricken students to improve their future earning potential by learning business skills and strategies and by receiving hands on experience operating their own companies. She cited that a partnership with public schools and both local and national companies has contributed to the success of her organization.

Mr. Kaddaras spoke on the efforts of Working Capital to aid entrepreneurs in economically disadvantaged areas by providing them with business credit, training, and networking opportunities. He then presented a new endeavor to aid "existing business, social, and faith-based organizations," which promotes more permanent improvements in economically distressed communities.

Ms. Karlson testified on her organization's ability to promote the financial independence of young women through formal business instruction and a mentoring program. She described the need for single sex female entrepreneurial education as resulting from the inferior amount of exposure to business that girls receive in childhood compared to their male counterparts. Additionally, she seeks to remedy the discrepancy between the number of women owned businesses and the amount of available venture capital received by female owners, by educating and empowering young girls to become future business leaders of America.

For more information on this hearing, consult Committee publication 105–50.

### 7.3.11 PROGRAMS EMPOWERING BUSINESSES AND COMMUNITIES IN SOUTHERN NEW JERSEY

*Background*

On June 22, 1998, the Subcommittee on Empowerment met in Mays Landing, New Jersey, to discuss various programs contributing to the economic solvency of Southern New Jersey, a region which boasts many small businesses, but few Fortune 500 companies. A major goal of this hearing was to explore and determine successful assistance to small businesses in this community, as often Congressional legislation lumps all small business aid together without considering specific regional needs.

*Summary*

The first panel included Susan R. Rose, Executive Director, New Jersey urban Enterprise Zone Program; Francisco A. Marrero, New Jersey District Director, Small Business Association; and Joanne R. Yard, President, New Jersey Association of Women Business Owners and Owner, Ideal Management and Bookkeeping Services, Absecon, NJ.

Ms. Rose testified about New Jersey's Urban Enterprise Zone (UEZ) program which helps revitalize distressed communities by granting incentives such as tax exemptions and low interest loans to businesses opened in the Zones. She added that the UEZ creates jobs since an increase in entry-level employment is required to qualify for incentives. She also stated that the UEZ program is the "penicillin needed to cure urban ills" and cited as a major accomplishment of the Zones the fact that, of $234 million in revenues collected in the there, $214 million was returned to these areas in the form of community enhancement projects.

Mr. Marrero spoke about methods the New Jersey District Office of the Small Business Administration employs to empower local businesses. He outlined goals such as facilitating access to capital through lending programs, involving more minority businesses in loan programs, providing more business counseling and training, and expanding marketing and outreach efforts to publicize the availability of SBA assistance. He pointed out that New Jersey's involvement in the Brownsfields Initiative and the HubZone Empowerment Contracting Program will help the State's existing small businesses and encourage entrepreneurship.

Ms. Yard testified that access to capital is the major impediment to women-owned businesses, which in New Jersey, constitute 33% of all firms and 25% of the workforce. She contrasted these numbers with figures showing that only 1.7% of government contracting dollars were awarded to women-owned businesses and further, only 20 out of 6,000 companies receiving 8(a) contracts were owned by women. She credited the SBA Women's Prequalification Loan Program with facilitating the loan procurement process, but nonetheless, concluded that "the growth of women owned businesses in the economy is far outdistancing the Government's use of their products and services."

The second panel consisted of Dr. Bruce Getzan, Vice President of Life Long Learning; Gloucester County College; Ms. Patricia D. Knobloch, Director, Salem County Department of Economic Development; Ms. Kelly Burgess-Boone, Owner, Boone Enterprises and Distributions Systems, Inc., Millville, NJ; Mr. John F. Huber III, Atlantic County Economic Development Corporation 2000.

Mr. Getzan spoke about the role of community colleges in providing continuing education, such as computer classes and safety training, which facilitates the functioning of small businesses by informing employees of technological advances and other innovations. He praised programs, such as the Business and Industry Training Center, which provide small business owners with a reliable information source.

Ms. Knobloch testified that her county, New Jersey's most rural, utilizes many government programs in order to sustain and expand its local businesses. She emphasized the importance of the Small Business Development Center in providing counseling to entrepreneurs, as well as that of the Business Revolving Loan Fund, funded by Rural Development, as providing easier access to capital. She noted other agencies such as the Economic Development Agency, Housing and Urban Development, as well as the Intermodal Surface Transportation Efficiency Act Program, which "enhance, empower, and strengthen local businesses". She expressed concern,

however, that her county, because of its small population, was not eligible for funds which are made available to the surrounding, larger counties. Ms. Knobloch also predicted that the tax code changes which allow 100% deduction for health care expenditure and modification of the bankruptcy laws will benefit the self-employed.

Ms. Burgess-Boone spoke of the difficulty of procuring long term, low interest loans and highlighted access to capital as a major concern of small business owners. She added that incorporation exacerbates the tax burden placed on small businesses and that the current tax exemptions only help those businesses with healthy profit margins.

Mr. Huber testified about the importance of counseling and referrals to those trying to start businesses. He also encouraged partnerships between the public and private sectors, which he suggested would result in the greatest benefits for both the small business and the community.

For more information on this hearing, consult Committee publication 105–57.

### 7.3.12 THE SOCIAL AND ECONOMIC COSTS OF TEEN PREGNANCY

*Background*

On July 16, 1998, the Subcommittee on Empowerment held a hearing to identify the social and economic strains teen pregnancy places on society. The issues discussed were the causes, consequences, and possible solutions to the problems accompanying teenage pregnancy.

*Summary*

The first panel included Mr. Patrick Fagan, William H.G. Fitzgerald Fellow in Family and Culture Studies, Heritage Foundation; Professor David Popenoe, Co-Director, National Marriage Project, Rutgers University; Hon. Val Stevens, Washington State Senate; Pat Funderburk Ware, President/CEO, PFW Consultants, Inc.

Mr. Fagan testified about the correlation between children born to unwed mothers and both poor infant health and an increased mortality rate. He cited retarded cognitive development, behavioral abnormalities, childhood poverty, and increased incidence of sexual abuse as other consequences of single parenthood. He attributes a surge in the crime rate among children born to single mothers, to the lack of a masculine role model. He sees marriage and regular religious worship as remedies to better the lives of children born to single mothers. Mr. Fagan believes the government is responsible for providing quantitative data concerning these issues and of supporting the institutions of family and religion.

Dr. Popenoe contrasted historical and modern perspectives on childbirth, noting that historically it was acceptable for girls to give birth as soon as they became sexually mature. He also noted that in developed nations such as the United States, educational expectations and a lack of large familial resources, further tax the time of single women raising a child. He attributed the rise in teen pregnancy to the fact that teens are having sex at earlier ages because

the age of puberty has slowly been declining. He advocated reestablishing a moral code urging teenagers to postpone sex until adulthood and regards marriage the ultimate solution to the problem of unwed teenage births.

Senator Stevens advocates abstinence-based education in schools as a means of combating teen pregnancy. She cites programs in his own state which violate that Congressional definition of abstinence education by allowing contraception demonstrations. In order to ensure that educational initiatives reflect Congressional intent, Ms. Stevens suggested that Congress audit the Federal Department of Health and Human Services and after that, the Department of Health and Human Services audit the State grant applications.

Ms. Funderburk Ware testified that the recent reduction in teen sexual activity is a result of pregnancy prevention programs that target high-risk regions of the United States. She cited the necessity of breaking the cycle of single parent households by improving the level of bonding and trust existing between parent and child, so that the child will be better prepared for a future long term relationship, such as marriage.

The second panel consisted of Mr. Kevin Begatta, Executive Director, Real Alternatives, Inc., Harrisburg, PA; Mr. Julian Irving Grante, J. Irving & Draper, Judicial Advocates, Spotsylvania, VA; Ms. Sherry Saylor, Student Counselor, Buckeye Elementary School, Buckeye, AZ; and Ms. Lakita Garth, Garth Dominion Enterprises, Lakewood CA.

Mr. Bagatta testified about the States' need to combat the deleterious effects teen or unwed pregnancy imposes on both mother and child. The program, Project Women in Need, is funded by Real Alternatives, a contractor subsidized by the Department of Public Welfare. These maternity homes lend physical and emotional support to women who are pregnant or think they are as well as to women whose family income is 185% below the Federal poverty line. This assistance helps women to abandon hopelessness and to realize and achieve their potential.

Mr. Grante spoke on the need to empower youths through employment training, an initiative which promotes responsibility and confidence, and thus lessens the tendency toward crime and teenage sexual activity. As a judicial advocate, Mr. Grante cites cases where intervention in the life of an at-risk teenager can steer him toward a productive life where drugs, crime, and promiscuity are not present. He advocates that issues of morality be first addressed at home, but realizes the need for community programs to cater toward those children who are not properly instructed at home.

Ms. Saylor championed the promotion of abstinence, noting a successful program in her area, Teens Are Saying KNOW (TASK), which is sponsored by Crisis Pregnancy Centers Services. Ms. Saylor credits this program with teaching her students to value sex as an unique experience accompanying the commitment of marriage. She credits educational programming in school with convincing teens that abstinence is a viable alternative to promiscuity.

Ms. Garth testified that abstinence must be a universally taught alternative to sex before marriage. She claims that, not only will this bring a decrease in the rate of teen pregnancy, it will equip teens with self-control and discipline, which will aid them in all of

their pursuits. Ms. Garth also believes that to make abstinence culturally acceptable, the community must promote it via role-modeling and mentoring.

For more information on this hearing, consult Committee publication 105–60.

## 7.4 Summaries of the Hearings Held by Subcommittee on Government and Oversight

### 7.4.1 The Regulatory Flexibility Act: Are Federal Agencies Using "Good Science" in Their Rulemaking?

*Background*

On April 15 and 17, 1997, the Subcommittee on Government Programs and Oversight held a joint hearing together with the Subcommittee on Regulation Reform and Paperwork Reduction, on the need for good science in rulemaking and the use of cost-benefit and risk analyses as essential management tools in the regulatory process. The hearing also focused on the impact upon small businesses caused by Federal agencies' failure to use good science or common sense when promulgating and enforcing regulations.

Sound science is too often omitted in rulemaking because an agency starts with a fixed agenda of what a regulation should be and then works backward to find some scientific basis to justify the result the agency desires. Such an approach is distinctly unscientific and contrary to logic. Logic dictates beginning with a sound premise, then testing that premise to produce a conclusion—not vice versa. Small businesses of this nation have suffered from agencies failure to follow good science that is reflected in higher costs, in more paperwork and in having to cope with illogical requirements.

The Subcommittees exercised Congress' oversight powers to examine the implementation and performance of the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Small Business Administration (SBA), Chief Counsel for Advocacy, of the statutory requirements of paragraphs (b) through (e) of Section 609 of Title 5 of the United States Code, as added by the Small Business regulatory Enforcement Fairness Act of 1996 (SBREFA). The new provisions added by SBREFA to the Regulatory Flexibility Act require EPA and OSHA to implement a panel process for considering and responding fairly to the advice and recommendations of small businesses concerning the impact and efficacy of proposed regulations.

*Summary*

The hearing was comprised of four panels, the first of which included: Dr. Gary Smith, Director, Applied Physics Laboratory; Dr. Aviva Brecher, Senior Analyst, John A. Volpe National Transportation Systems Center; Dr. George Gray, Deputy Director, Harvard Center for Risk Analysis: and Dr. James Harless, President, Techna Corporation; Dr. George Wolff, Principal Scientist, General Motors Corporation. The witnesses emphasized the need for good science in rulemaking and the availability of scientific expertise in the United States, leaving the agencies without any excuse that

good science was not available. There was consensus that scientific regimen such as risk and cost benefit analyses do fit rulemaking and should be routinely followed. Examples were provided of failure of agencies to adhere to sound science in promulgating regulations and the costly and sometimes ridiculous consequences that follow from such failure.

The second panel included: Bennie Bixenman, President, Benco Sales, Inc.; Barney Deden, President, Martinizing Dry Cleaning; Victor Tucci, President, Three Rivers Health and Safety, Inc.; Michael Kerr, Director of Government Affairs, Circuit Center, Inc.; and Jim Quinly, President, Country Club Remodelers, Inc. The witnesses on the panel represented small businesses that had first hand knowledge of the consequences of agencies failure to use common sense and good science in rulemaking. It was clear from the testimony that agencies still persist in ignoring sound science in the regulatory process. Concern was also expressed for the added costs and paperwork burden resulting from needless regulations and agencies' ineptitude in foreseeing the practical consequences of their rulemaking efforts.

The third panel was comprised of: G. Stephen Robins, President, G.S. Robins and Company; John Hexter, President, Hexter and Associates; G. Jeffrey Haber, President, Board of Directors, National Association of Towns and Townships; Eamonn McGready, President, Martin Imbach, Incorporated; and Gretchen Zierich, Assistant to the President, Zierick Manufacturing Corporation. There was universal agreement among members of the panel for maintaining safe work places and preserving clean air and water. However, all of the witnesses underscored the adverse economic impact that unsound science and unnecessary regulations can have on small businesses. One witness gave an example of EPA's failure to consult an industry association or its members before issuing a regulation that erroneously attributed a number of manufacturing functions to the industry. Whereas, in actual fact, the industry is basically engaged in warehousing activities. Another witness testified that the regulatory process has gotten out of hand and that there are almost one thousand pages of OSHA regulations applicable to his small business.

The fourth panel included: Jere Glover, Chief Counsel for Advocacy, SBA; Thomas Kelly, Chair, Small Business Advocacy, EPA; Robert Burt, Office of Regulatory Analysis, U.S. Department of Labor; and Keith Cole, member of the law firm, Beverage & Diamond. There was testimony that government agencies were learning about SBREFA and were taking steps to comply with the requirement of this statutes. Another witness expressed the view that the main thrust of SBEFA was not the process, but listening and responding to the concerns of small businesses. One agency testified that the SBREFA and the panel process strengthened the Regulatory Flexibility Act. An SBA report was cited that concluded that Federal regulations cost small firms on average 50 percent more per employee than large firms and 90 percent more on a per dollar of sales basis than large firms.

For further information on this hearing, refer to Committee publication number 105–5.

### 7.4.3 THE IMPORTANCE OF PATENT TERM AND PATENT APPLICATION DISCLOSURE ISSUES TO SMALL BUSINESSES: WHAT IMPACT WILL PROPOSED CHANGES IN THE PATENT LAWS HAVE ON SMALL BUSINESSES?

*Background*

On April 24, 1997, the Subcommittee on Government Programs and Oversight held a hearing to explore the importance of patent term and patent application disclosure issues to small businesses raised by pending legislation. A prior hearing held in the 104th Congress reviewed similar issues. (See House of Representatives, Committee on Small Business, Serial No. 104–74, 104th Cong., 2d Sess. (April 25, 1996)). Two bills were filled in the 104th Congress that addressed the term and publication issues. H.R. 1733, introduced by Congressman Moorhead, would have U.S. patent laws more in line with the patent laws in other GATT nations. Congressman Rohrbacher introduced a bill, H.R. 359, that would have again made the patent term 17 years after issuance of a patent and would have required publication of a patent application only under certain circumstances. The bill filed by Congressman Moorhead would have required publication of the contents of patent application 18 months after filing. Neither bill came up for a floor vote.

In the 105th Congress, Congressman Coble was the sponsor of H.R. 400, a bill similar to the Moorhead bill filed in the 104th Congress. The bill would have permitted the publication of patent information after 18 months. Congressman Rohrbacher was the sponsor of H.R. 811, similar in content to H.R. 359, filed in the 104th Congress. The Rohrbacher bill was tabled in the Committee on the Judiciary. H.R. 400 was reported favorably out of that Committee and was passed by the House of Representatives on April 23, 1997, by a vote of 280 to 133. The bill was amended to exempt small business, independent investors, and universities from publication of patent application information until the patent is granted.

*Summary*

The hearing was comprised of two panels, the first of which included: Dennis J. Kucinich, Member of Congress, and Dana Rohrbacher, Member of Congress, who both spoke against the changes in the U.S. patent system proposed in the original provisions of H.R. 400. Both panel members agreed that there was little reason to make radical changes in a system that had served this Nation well for over 200 years. It was the consensus of the panel that adoption of the proposed changes would lead to a loss of business to overseas competitors. It was the view of both Congressmen that early publication of patent information before a patent issued would expose inventors to the pirating of U.S. technology. Congressman Rohrbacher argued that the proposed changes in the patent laws might violate the Constitution (Article I, Section 8) which secures to authors and inventors an exclusive right to their respective writings and discoveries for a limited period of time.

The second panel included: Michael Kirk, Executive Director, the American Intellectual Law Property Association; B.N. Kramer, Vice President, Alliance for American Innovation; James T. Woo, Presi-

dent, Interscience, Inc.; Salvatore J. Monte, President, Kenrich Petrochemical, Inc.; William D. Budinger, President, Rodel, Inc.; and Raymond Damadian, President, Fonar Corporation. The panel was evenly divided between those who favored the changes to the U.S. patent laws contained in H.R. 400 and those who oppose any such changes. There was a vigorous discussion as to the pros and cons of the proposed legislation.

Those in favor of H.R. 400 were of the view that the patent term of 20 years after filing would not, as a practical matter, result in an invention being protected for a shorter period than if the original patent term of 17 years after issuance were retained. It was argued that adoption of the 20-year period ensures that U.S. patent law conforms in this respect with most of the other countries and would also help to eliminate the problem of submarine patents. As to the feasibility of publishing patent information contained in an application prior to issuing the patent, it was argued that failure to publish early could result in small businesses incurring needless research and development expenses that could be avoided if the information contained in applications on file were known.

Those who opposed H.R. 400 were of the view that the U.S. patent system, as presently constituted, protects the inventor and helps to spawn small businesses. The changes proposed in H.R. 400 were viewed as radical and detrimental to small entities. Publication of patent information before issuance of full patent protection was perceived as an invitation to infringers to copy an inventor's ideas and to capitalize on another's labors. It was also viewed as an opportunity for large businesses to prey on small businesses who, unlike their larger competitors, frequently need new capital to market an invention.

For further information on this hearing, refer to Committee publication No. 105–7.

### 7.4.4 REAUTHORIZATION AND OVERSIGHT OF THE SMALL BUSINESS TECHNOLOGY TRANSFER PILOT PROGRAM (STTR)

*Background*

On May 22, 1997 the Subcommittee on Government Programs and Oversight held a hearing that focused on the performance and reauthorization of STTR. A prior hearing in the 104th Congress focused on similar issues. (See House of Representatives, Committee on Small Business, Serial No. 104–63 (March 6, 1996)). This program was authorized by the Small Business Research and Development Enhancement Act of 1992 for three fiscal years, 1994, 1995, and 1996. STTR authorization was extended in 1996 for one additional year. If the program was not reauthorized it would terminate on September 30, 1997. (P.L. enacted after the hearing was held reauthorizes STTR for fiscal years 1998, 1999, 2000, and 2001.)

The program is funded through Federal agencies that have extramural budgets for research, or research and development, in excess of $1,000,000,000 for a particular fiscal year. The agencies that qualify for the program are the Department of Defense, the National Aeronautics and Space Administration, the National Institutes of Health, the National Science Foundation and the Department of Energy. These agencies are authorized to expend not less

than 0.15 percent of their extramural budget specifically in connection with STTR.

Too often, STTR is confused with the Small Business Innovation Research Program, SBIR. STTR is a distinct and separate program. Unlike SBIR, STTR 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. Again, in contrast with SBIR, where the principal researcher would have to leave the research facility, jeopardizing academic tenure, and join the business entity, STTR lets a scientist remain with the research institution and at the same time work with a small business on a commercially promising idea.

*Summary*

The hearing was comprised of two panels, the first of which included: Dr. Carol Pontzer, Assistant Professor, University of Maryland; Dr. Floyd Taub, President, Dovetail Technologies, Inc.; Dr. William T. Joines, Professor of Electrical Engineering and Computer Engineering, Duke University; Richard Carroll, President, Digital System Resources, Inc.; Dr. Barry Stein, Professor and Chairman, Department of Neurobiology and Anatomy, Wake Forest University; Robert M. Pap, President and CEO, Accurate Automation, Inc. All of the panelists were participants in the program. One of the witnesses expressed the view that STTR provided a critical link between the academic community and small businesses. Another witness valued the program because it provided a meaningful incentive for small businesses and researchers to work together to move ideas from the laboratory to the marketplace, foster high-tech economic development, and bolster U.S. competitiveness. All of the witnesses were of the view that STTR has had a positive impact and should be continued. One witness recommended that STTR and SBIR be reauthorized through 2002.

The second panel included: Susan D. Kladiva, Acting Associate Director, General Accounting Office; Daniel O. Hill, Assistant Administrator for Technology, Small Business Administration; Dr. Kesh Narayan, Director, Industrial Innovation Group, National Science Foundation; and, Robert L. Neal, Director, Office of Small and Disadvantage Business Utilization, Department of Defense. The witness for GAO stated that the STTR Program appeared favorable at the time of the report, although it was too early to make a conclusive judgment about the commercial potential of the research. The witness from SBA reported that during the first three years of the program, 674 Phase I awards valued at $63.3 million were issued and 110 Phase II awards were issued at a value of $52.5 million, and that for fiscal year 1997, $1.1 billion under SBIR and $60 million under STTR will be awarded. The two witnesses responsible for administering STTR programs spoke favorably of the program and its reauthorization.

For further information on this hearing, refer to Committee publication 105–12.

### 7.4.5 IMPACT OF SBA AND OTHER FEDERAL PROGRAMS TO CREATE JOBS AND TO STIMULATE ECONOMIC GROWTH IN CITIES LOCATED IN PREDOMINATELY RURAL AREAS

*Background*

On July 2, 1997, the Subcommittee on Government Programs and Oversight held a field hearing at Allegheny College in Cumberland, Maryland, the second in a series, to determine the impact of Government programs on Main Street America. (For first hearing see: House of Representatives, Committee on Small Business, Serial No. 105–5 (April 15, and 17, 1997)). The first hearing extended over two days and examined the impact of Federal regulations, especially those promulgated by the Environmental Protection Agency and the Occupational Safety and Health Administration upon small businesses. The prior hearing gave the Federal Government a mixed report card. However, there was universal agreement that Federal Government over-regulation and meddlesome approaches to regulation was detrimental to small businesses.

The hearing explored the impact of programs administered by the Small Business Administration (SBA) on creating jobs and stimulating economic growth in cities such as Cumberland and Frostburg, Maryland that are located in predominately rural areas. The needs of these cities and the adjacent rural communities are too often forgotten. Frequently, SBA administered programs are associated with stimulating economic growth in large cities such as New York, Chicago, and Los Angeles which are located in urban corridors. The hearing also focused on the broader issue of the impact of federal programs generally in stimulating or deterring job growth and economic development.

*Summary*

The hearing was comprised of five panels, the first of which included: Edward C. Athey, Mayor, Cumberland, Maryland; Michael Wagoner, Director, Tri-County Council, Western Maryland; and, John J. Hafer, Senator, State of Maryland. One witness spoke of the need of small businesses to have access to operating capital in order to survive in starting a new venture. Another witness pointed out that the Appalachian Regional Commission was funding an entrepreneur program and that a meeting was scheduled with state officials to determine how best to spend the funds. There was discussion about the overwhelming burden placed on small businesses by the proliferation of regulations by both state and federal agencies.

The second panel included: John Korpela, President, Kreative Plastics, Inc.; Don Morin, President, Garrett Container Systems, Inc.; R. Sam Griffith, President, National Jet Company; and, Douglas Metz, Vice President, Home Federal Savings Bank. The panel was comprised of small business executives from the Cumberland, Maryland area. One witness testified to the success of SBA programs in helping small businesses and the multiplier effect that business growth can have in providing jobs and helping to revitalize a community. Another witness expressed concern about the reg-

ulatory burden created by new laws and the ability to keep abreast of additional regulatory requirements generated by new laws. Dissatisfaction was expressed with the 504 loan program and the costs of that program borne by the borrower.

The third panel included: James Graham, Director for Maryland, Small Business Development Centers (SBDCs); Sam LaManna, Executive Director, Small Business Development Center Network, Western Maryland; and, John S. Andrews, Regional Director, SCORE. Those on the panel were involved in federal government sponsored programs providing services to small businesses. The witnesses explained the extent of the counseling, training, technical assistance, and, marketing services provided by SBDCs and SCORE. The need for services that are compatible and use advances in computer technology were emphasized.

The fourth panel included: Douglas Hafer, Funeral Director, Hafer Funeral Homes; David Summerfield, President, Summerfield Aviation; Patrick McCormick, Commercial Loan Officer, First United National Bank and Trust Company; and, Edward Mason, Owner, JB Steak Cellar and Mason's Barn. One witness expressed the view that changes to regulations are so numerous that small businesses do not have time to keep up with what is current. Another witness stated that the SBA told him that he must first be turned down by a bank before he could be eligible for an SBA loan program. A witness expressed the opinion that SBA loan programs permit banks to make loans to small businesses that they would not otherwise make because of the inherent risk. The 504 loan program was criticized for the excessive expense to the small business.

The fifth panel included: Bernard Kulik, Associate Administrator for Disaster Assistance, SBA; Don A. Christensen, Associate Administrator for Investment, SBA; Thomas Tolan, Acting Regional Administrator, SBA; Robin Douglas, Regional Manager for Western Maryland, Maryland Department of Business and Economic Development; and, Julie Moore, Owner of Curly "M" Stables. The witnesses from the SBA provided information relative to the venture capital, 7(a), 504 and disaster loan programs. One witness expressed the view that Federal business assistance programs don't work that reward bureaucratic paper work over quality business assistance. Another witness complained of difficulties dealing with the SBA.

For further information on this hearing, refer to Committee publication number 105–16.

### 7.4.6 H.R. 96, THE SMALL BUSINESS REGULATORY ASSISTANCE ACT OF 1997

*Background*

On January 7, 1997, Congressman Jerry Solomon, along with Reps. Gary Condit, Joel Hefley, and Floyd Flake, introduced H.R. 96, The Small Business Regulatory Assistance Act of 1997. H.R. 96 is designed to establish a system of confidential voluntary compliance assistance with Federal regulations.

Under the proposed legislation, the existing Small Business Development Center (SBDC) network would be partnered with the Environmental Protection Agency, the Department of Labor

(OSHA), and the Internal Revenue Service, as well as the private sector and other compliance assistance resources, to make non-punitive regulatory compliance assistance accessible to small businesses.

In order to provide such help, the SBA, each participating agency, and representatives of the SBDCs would develop five-year compliance assistance plans that could be revised annually. Each compliance assistance plan would contain: the regulatory compliance objectives and priorities of the participating agency; identification of the types of services, materials, and resources to be used by the participating agency; identification of the resources of the participating agency available to the SBA and to SBDCs; and standards to be used by the participating agency in determining the effectiveness of the system of voluntary compliance.

The voluntary compliance program is to be funded from moneys appropriated to the Department of Labor, EPA and IRS. A percentage of each agency's annual appropriation through 2003 is earmarked for use of the voluntary compliance program. The amounts set aside are significant and amount to millions of dollars. Funding of SBDCs is to be on a state-by-state basis according to the population that a particular state bears to the population of the United States as a whole. However, no state's share would be less than $300,000. No state matching funds would be required. No more than 2 percent of the amounts made available for the voluntary compliance system may be spent on SBA administrative expenses.

To examine the impact of this legislation on both the small business community, as well as the government agencies that are involved, the Subcommittee on Regulatory Reform and Paperwork Reduction and the Subcommittee on Government Programs and Oversight held a joint hearing. The Subcommittees heard testimony from the legislation's sponsor, Mr. Solomon. Testimony was also provided by a panel of experts who had an interest in H.R. 96.

*Summary*

The first panel of the hearing was comprised solely of Mr. Solomon. He testified about the need and the purpose of the legislation. He indicated that regulations on all levels of government are suffocating small businesses, the most important sector of our economy. As a result, fewer jobs are being created and economic growth is being impeded. However, there is often no one a small business owner can turn to in order to find out what regulations he or she needs to comply with, and how to do so. That is what H.R. 96 is designed to do. It is designed to link the Federal government and its compliance programs with the small business community in a manner that is user-friendly so that more businesses comply with applicable regulations.

Mr. Solomon also addressed some of the concerns that had previously been made about the legislation. He described why small business development centers were the appropriate vehicles to deliver the compliance assistance. He explained the funding of the program, particularly how the cost to small business owners, will be nothing. He also indicated that the administrative agencies that this bill would cover should not oppose the legislation because increased compliance assistance will lead to increased compliance

with their regulations, which, after all, should be their ultimate goal. The bottom line, Mr. Solomon indicated, is that small business owners are not trying to find loopholes to avoid complying with the laws. Rather, they are law-abiding citizens that in many cases do not know how to comply with the law. H.R. 96 will assist them in this process.

The second panel was comprised of a number of experts. They included: Ms. Johnnie Albertson, Associate Administrator of Small Business Development Centers, U.S. Small Business Administration; Mr. Sam Males, State Director, Nevada Small Business Development Center; Ms. Pamela Christenson, Technical Assistance Director, Wisconsin Small Business Clean Air Assistance Program; Mr. Jim King, State Director, New York Small Business Development Center, and President-Elect of the National Association of Small Business Development Centers; and Mr. Jeff Burton, President, American Industrial Hygiene Association.

Ms. Albertson testified in opposition to the legislation. She indicated three main areas of opposition to the bill. First, was the funding mechanism. Because H.R. 96 would divert a small percentage of the budgets of the Department of Labor, EPA, and IRS, she indicated that would seriously impair those agencies' oversight activities. She felt that it would be more appropriate for Congress to directly fund any compliance assistance program that it decides to establish through SBA and its resource partners. The second concern had to do with the way that the compliance assistance in H.R. 96 would be provided. She indicated that existing provisions could potentially shield companies who act in bad faith from criminal liability. Finally, she felt that the bill might create a new privilege for companies that might be in violation of existing regulations. This could lead to new litigation, possibly directed towards the SBDCs.

Mr. Males and Mr. King both represented the viewpoint of small business development centers. They made several points in favor of H.R. 96. First, because SBDCs have already developed an extensive network throughout the country, they are well situated to provide assistance to a large number of small businesses. No other existing network can reach the number of businesses that SBDCs can reach. Second, SBDCs have developed a level of trust with the small business community that no other Federal agency or program can match. Throughout the course of their assistance, SBDCs have always operated with the best interests of the small business in mind. Finally, SBDCs have a proven track record of working with other professionals like lawyers, CPAs, industrial hygienists, and other private consultants. This should help to address the concerns that some have expressed regarding the claim that SBDCs do not have the requisite expertise to deal with the technical nature of regulatory compliance.

Ms. Christenson recognized and supported the goal of H.R. 96, which is to assist small businesses in complying with Federal regulations, but felt that the bill created unnecessary and duplicative services for environmental compliance assistance. She cited the program mandated by section 507 of the Clean Air Act, which requires that states maintain a program designed to help small businesses understand and comply with air pollution regulations. These

programs, commonly referred to as 507 Programs, provide free, confidential, and user-friendly compliance assistance to small businesses. She notes that in times of dwindling resources, it is important that any type of duplication of activities be avoided. She also notes that becoming knowledgeable and skilled about the regulations dealing with three separate and distinct agencies is an extremely challenging task, one that may not be possible with the limited resources that SBDCs have. In conclusion, she feels that it makes more sense to build on existing, cost-effective, environmental programs like the 507 Program, rather than using H.R. 96 to start from square one with another entity not accustomed to providing such service.

Mr. Burton is a certified industrial hygienist, registered professional engineer, and a certified safety professional. He is also President of the American Industrial Hygienist Association (AIHA), the world's largest society of occupational and environmental health professionals. The goal of AIHA members is to create a healthy and safe workplace, thereby reducing illnesses, injuries, and fatalities. Mr. Burton testified that he supported the goal of H.R. 96 for many reasons, and offered a few suggestions on how it might be improved. First, because of related experiences that AIHA has had, Mr. Burton firmly believed that the regulatory agencies should not be involved with the delivery of compliance assistance. Small businesses tend to believe that they will be targeted for inspection should they approach the agency for help. By having a third party provide the assistance, in this case the SBDCs, this problem is avoided. Second, H.R. 96 should make clear that SBDCs should make referrals to experts should they find that the type of assistance that is being sought is too technical for them to handle. This would ensure that only competent, qualified individuals will be involved in providing training and assistance to the small businesses.

For further information on this hearing, refer to Committee publication number 105–23.

### 7.4.7 THE IMPACT OF FEDERAL PROGRAMS AND REGULATIONS ON WOMEN BUSINESS ENTERPRISES

*Background*

On October 8, 1997, the Subcommittee on Government Programs and Oversight held a hearing, the third in a series of hearings, to determine the impact of Federal Programs on main street America and various segments of the small business community. The subcommittee was interested in learning how small business owners have succeeded, whether by reliance solely upon the private sector or with some assistance by Federal Programs, in order to assist others to become, or continue to be, successful small business owners.

This and the other two hearings served as a forum to voice problems encountered by small businesses with Federal Government over-regulation and needless paperwork requirements with a view to addressing these problems where feasible with remedial legislation. The first hearing extended over 2 days and examined the impact of Federal regulations, especially those enforced by the Environmental Protection Agency and the Occupational Health and

Safety Administration upon small businesses. The second hearing explored the impact of programs administered by the Small Business Administration (SBA) on creating jobs and stimulating the economic growth in cities such as Cumberland and Frostburg, Maryland, that are located in predominantly rural areas.

This, the third hearing, focused on a very important segment of the small business community, women's business enterprises. The hearing examined the ability of women to obtain capital, to develop a good idea into a viable small business. The hearing assisted Congress in the evaluation of Federal programs designed to assist women to start new businesses or to sustain or grow an established business.

*Summary*

The hearing was comprised of two panels, the first of which included: Charlotte Taylor, President, Venture Concepts, Inc.; Jylla Foster, Vice President for Small and Medium Business, IBM Corporation; Victoria Nelson, Chief Executive Officer, Jarnel Iron and Forge; Georgia Patrick, President, Communicators, Inc.; Terry Neese, Corporate and Public Affairs Liaison, National Association of Women Business Owners; and, Mickie Siebert, President and Chairwoman, Muriel Siebert & Company, Inc. There was testimony that women in business have made progress in overcoming barriers to becoming entrepreneurs, but there still remains a disparity in the level of revenues of male and female firms. The revenue gap was attributed to the fact that women owned businesses were concentrated in lower earning industries, services and retail, have younger companies that are newer to the marketplace or operate more part-time businesses.

There was testimony from the first panel that women bring characteristics to business that are different from men. It was suggested that the SBA build a closer relationship with organizations that represent women entrepreneurs as a way of raising from 3 percent the number of all government contracts awarded to women. It was further suggested that to increase the number of government contracts awarded to women-owned businesses a better method needs to be devised to match up small businesses who can do a good job with the government agency seeking the goods or services. One of the witnesses stated that women-owned firms with 100 or more employees have expanded 6 times faster than for all firms in the economy and that revenues from women-owned businesses were more than twice the total of the entire United States automobile industry.

The second panel included: Katherine Hoelscher, Assistant State Director, the Florida Small Business Center Network; Geri Swift, President, Women's Business Development Center; Beatrice A. Checket, Executive Director, Women's Business Institute, Inc.; Susan Bari, President, Women Business Enterprise National Council; Jane Palsgrove Butler, Acting Associate Administrator, SBA; and, Amy Millman, Executive Director, National Women's Business Council. One witness testified that the Small Business Development Centers (SBDCs) see approximately 570,000 potential people a year and that SBDCs in Florida provide assistance to 15,000 women business owners a year. Another witness stated that the

Service Core of Retired Executives (SCORE) had established a Women's Advisory Council and that SCORE had sponsored Women's Business Roundtables throughout the country. It was reported by another witness that there were 8 million women business owners in the United States. The Chairman concluded with the hope that the hearing would focus public attention on the fact that the fastest growing part of the economy was women's businesses and that women's businesses have grown at twice the rate of the general economy.

For further information on this hearing, refer to Committee publication number 105–28.

### 7.4.8 MAKING THE FEDERAL GOVERNMENT USER FRIENDLY

*Background*

On November 20, 1997, the Subcommittee on Government Programs and Oversight held a hearing to determine the impact of Federal Programs on Main Street America and various segments of the small business community. The goal was to learn how small business owners have succeeded, whether by reliance upon the private sector or with some assistance by Federal programs, in order to help others to become, or to continue to be, successful small business owners. The hearing was held in Winchester Hall, Frederick, Maryland.

This was the fourth in a series of hearings that was begun in April 1997. The first hearing was held over a two-day period and examined the impact of Federal regulations, especially those enforced by the Environmental Protection Agency, the EPA, and the Occupational Safety and Health Administration, OSHA, upon small businesses. The second hearing explored the impact of programs administered by the Small Business Administration (SBA) on creating jobs and stimulating economic growth in cities such as Cumberland and Frostburg, Maryland, that are located in predominantly rural areas. The third hearing focused upon a very important segment of the small business community, women owned businesses and examined the ability of women to obtain capital to develop a good idea into a viable small business.

*Summary*

The hearing was comprised of four panels, the first of which included: James Grimes, Mayor of Frederick, Maryland; Edmond B. Gregory, Linton, Schafer & Company; Michael Menzies, CEO, First Bank of Frederick; Ilona Hogan, County Commissioner. One witness attributed the growth of his business to the availability of funding from local banks and not Federal Government programs. Another witness stated that it was the State of Maryland economic loans that made possible a significant and a successful investment in downtown Frederick. A local banker testified the small business loans have real risks and are generally illiquid, require intense individual underwriting, on-going knowledge about rapidly changing industries, regular care and maintenance, patience, perseverance, and just plain guts. Hope was expressed that SBA would focus resources on those few small businesses which are entrepreneurial firms with substantial growth potential.

Panel two was comprised of: George Dredden, Publisher, County Globe Newspaper; Arthur Lyons, President, Lyons Associates; and, Harry Johnson, Principal, Select Benefit Service. The view was expressed that regulations and guidelines should ensure a reasonable reinvestment into the community in proportion to the dollars being extracted and that economic growth has to embrace all segments of our society. One witness expressed gratitude for the hearing as a means of helping small businesses grow to the level that they can participate fully in the growth of the community. Another witness pointed out that small business owners have a hard time keeping up with new laws and regulations and that there was no Federal resource center to advise businesses how to comply with these new laws and regulations.

Panel three included: Richard Wise, President and Chief Executive Officer, American National Bank, Parma, Ohio; Kathy Walters, Senior Commercial Loan Officer, FCNB, Frederick, Maryland; Jack Goldstein, President and CEO, First Bank of Frederick, Frederick, Maryland; and, Arnold S. Rosenthal, Assistant Administrator for Borrower and Lending Services, SBA. This panel discussed the efforts of the SBA to turn over the originating, servicing, and liquidating functions of the 7(a) loan programs to its private center lending partners. It is announced administration policy stated in both the SBA's budget submission and on the record in testimony before the House Committee on Small Business.

The last panel included: Early Monroe, Member, Frederick County Planning Commission; Kenneth McCombs, President, Miscellaneous Metals; Diane Wirth, President, The Solution Works; Nick Rebro, President, Matthews Moving; and Michael Smith, President, M.R. Smith & Co. One witness pointed out that it was difficult to obtain funding for developing industries that use new methods or technology. Another witness testified to the harm to small businesses who are subcontractors caused by general contractors who engage in "bid shopping." One witness recounted the fact that small businesses can be a positive economic impact in the community through job creation, residual business development and broadening tax base. A witness spoke favorably of the 504 loan program and that which permitted plant expansion and business growth. One witness spoke of the problems faced by small businesses due to the plethora of Federal Government regulations especially those promulgated by OSHA and the Internal Revenue Service.

For further information on this hearing, refer to Committee publication number 105–33.

### 7.4.9 THE SMALL BUSINESS ADVOCACY REVIEW PANELS

*Background*

On March 18, 1998, the Subcommittee on Government Programs and Oversight and the Subcommittee on Regulation Reform and Paperwork Reduction held a joint hearing which examined the implementation by the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) of the statutory requirements of paragraphs b through e of Section 609 of title 5 of the United States Code, as added by the Small Business

Regulatory Enforcement Fairness Act of 1996, referred to as SBREFA.

The new provisions added by SBREFA to the Regulatory Flexibility Act require EPA and OSHA to implement a panel process for considering and responding fairly to the advice and recommendations of small businesses as to the impact of proposed regulations upon small entities.

The hearing was also a continuation of the joint hearing by the same subcommittees held on April 15 and 17, 1997. (See Committee publication No. 105–5). This hearing, as did the prior hearing, focused on the need for good science and common sense in rulemaking and the unfair financial burdens borne by small businesses all over this Nation as a result of unscientific, impractical, and unnecessary regulations.

*Summary*

The hearing was comprised of three panels, the first of which included: Donald L. Struminger, President, Virginia Linen Services, Inc.; Honorable Jay Gullo, Mayor, New Windsor, Maryland; James Wordsworth, President, J.R. Steakhouse; and, Ken Boehm, Chairman, National Legal and Policy Center. One witness complained that one of the problems with the panel process was that EPA failed to provide representatives of small entities with sufficient details about a proposed rule. Another witness underscored the regulatory burden faced by small businesses who had to conform to 60 Federal requirements imposed by 11 Federal agencies and 41 State requirements imposed by 8 State agencies. A witness provided examples of small businesses driven out of business by heavy-handed and unfair regulatory enforcement.

The second panel included: Douglas I. Greenhaus, Director, National Automobile Dealers Association; David F. Hobson, President, Uniform and Textile Service Association; Matthew Hickham, Director, American Health Care Association; John J. Huber, Vice President, Petroleum Marketers Association; and, William Kilmer, National Association of Home Builders. There was consensus that the many tiers of regulations imposed by local, State, and Federal governments as well as needless and overly burdensome regulations are of great concern and costly to small businesses. There was testimony that OSHA had ignored scientific and medical evidence as well as current, relevant industry specific evidence in weighing the impact of proposed regulations on small entities. Concern was voiced that EPA and OSHA had bypassed the panel process in promulgating rules which small businesses considered significant, but which the agencies treated as not meeting the criteria for invoking the panel process.

The third and last panel included: L. Nye Stevens, Director, U.S. General Accounting Office (GAO); Hon. Jere W. Glover, Chief Counsel for Advocacy, Small Business Administration; Thomas E. Kelly, Small Business Advocacy Chair, EPA; and, Greg Watchman, Deputy Assistant Secretary, Department of Labor. GAO reported that the panel process was working fairly well but that there was a good deal of controversy associated with the process. The office of Advocacy, SBA, was of the view that the panel process provided new leverage in its efforts to ensure that the regulatory culture

among the executive agencies fully understood the problems caused small businesses by arbitrary and ill-conceived regulations. Both EPA and OSHA found merit in the panel process.

For further information on this hearing, refer to Committee publication number 105–40.

### 7.4.10 SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM OVERSIGHT

*Background*

On April 22, 1998, the Subcommittee on Government Programs and Oversight of the Committee on Small Business held a hearing to review the success of SBIR—a federally-funded research and development small business set-aside program established in 1982. SBIR was scheduled to expire on October 1, 1988. However, Congress initially extended the program to September 30, 1993. The reasons given for extending SBIR were that the program creates new jobs, increases productivity and economic growth, helps combat inflation, and stimulates exports. In extending the program, Congress acknowledged that small businesses had not been receiving a fair share of Federal research and development dollars. In 1992 Congress enacted the Small Business Research and Development Enhancement Act which again extended SBIR, this time through December 30, 2000. President Bush signed the bill into law on October 28, 1992.

The statute that established the program requires that each Federal agency with an extramural budget for research and development in excess of $100 million set-aside a percentage, presently 2.5 percent, of that budget for projects awarded to small businesses. Unlike the Small Business Technology Transfer Program (STTR) with which it is often confused, SBIR does not require, but permits a cooperative venture between a for-profit small business and researchers at a university, Federal laboratory, or a nonprofit research institution. From the inception of the SBIR program through the end of the FY 1996, in response to 187 solicitations, 261,421 proposals were received and 41,351 contracts worth $6.5 billion were awarded according to the Small Business Administration (SBA).

*Summary*

The hearing had two panels, the first of which included: Mr. Douglas P. Taylor, President, Taylor Devices, Inc.; Ms. Alisa Rogers, Vice President, SELF Corporation; Dr. Charles Kojabashian, President, Foster-Miller, Inc.; Dr. Jeanne Dietz-Band, Oncor, Inc.; Dr. Catherine A. Ricks, Vice President, Embrex, Inc.; and, Dr. Carl J. Johnson, Chairman, II–IV Incorporated. There was consensus that SBIR was a successful program for the performance of important research leading in many instances to the development of viable products. For some small companies, SBIR projects have been a ready source of capital with relatively low financial risk to the participants. Examples were given of technological advances that benefited the Federal agency sponsoring the project as well as the nation as a whole. The view was expressed that it was not always possible in advance to determine with certainty the most beneficial

commercial application of research, but that the pursuit of new ideas does contribute to this nations body of scientific knowledge and enhances our international competitiveness.

The second panel included: Ms. Susan D. Kladiva, Associate Director, U.S. General Accounting Office (GAO); Ms. Susan E. Haley, Deputy Director, Department of Defense; Mr. Kesh Narayanan, Director, National Science Foundation; Dr. Wendy Baldwin, Deputy Director, National Institutes of Health; Dr. Charles F. Cleland, Director, Department of Agriculture; and, Mr. Daniel O. Hill, Assistant Administrator, U.S. Small Business Administration. GAO reported that the program appeared to be targeting the participation of women-owned small businesses and economically disadvantaged small businesses and to be including critical technologies. One agency stated that it employed rigorous peer review in selecting program participants and that the reviewers were drawn primarily from universities and government laboratories. One witness was of the view that SBIR ensures that the best and brightest researchers in the nation will be a part of the Federal research and development efforts that benefit our national defense, build safer highways and airports and contribute to our public health and safety. There was consensus that the program was a success and should be continued.

For further information on this hearing, refer to Committee publication number 105–47.

### 7.4.11 PERFORMANCE OF THE SMALL BUSINESS ADMINISTRATION (SBA) IN PROVIDING FINANCIAL AND ENTREPRENEURIAL SERVICES TO VETERANS

*Background*

On May 20, 1998, The Subcommittee on Government Programs and Oversight of the Committee on Small Business and the Subcommittee on Benefits of the Committee on Veterans' Affairs held a joint hearing which reviewed the performance of SBA in providing assistance to veterans desiring to start or expand an existing small business. The hearing was held because of past complaints that SBA and other agencies were ignoring the needs of veterans. SBA is required to provide special consideration to veterans in the administration of its programs. Failure to keep promises to those who served this nation faithfully and bravely impacts not only those who are presently veterans, but those in who are now in uniform and those who will serve this country in the future.

Government programs to assist veterans to start or grow an existing business dates back to the Service Men's Adjustment Act, better known as the "GI Bill" which was passed in 1944. The hearing served as a reminder to the administration that the needs of veterans were not being addressed. Also the Small Business Reauthorization Act of 1997 directed that service disabled veterans be provided with improved services and greater outreach. The hearing provided the first opportunity for Congress to review SBA's plan for complying with the new requirements for improving services to those who have been disabled in the service of their country.

*Summary*

The hearing had two panels, the first of which included: Paul R. Camacho, Director of Special Projects, University of Massachusetts; William D. Elmore, Veterans' Advocacy, Data Force Associates; and, Paul Hanley, President, D.C. Incorporated. There was consensus that federal agencies had neglected the needs of veterans. It was the view of one witness that all the groups, with the exception of veterans, get special treatment at SBA. Another witness was of the opinion that there was a limit to what the federal government could do to help veterans' who aspired to start a small business and that the very nature of small business was individuality, flexibility and unique approach. It was noted that helping veterans also meant assisting women and minorities since both women and minorities were well represented in the Armed Forces.

The second panel included: Emil Naschinski, Assistant Director, The American Legion; William Crandell, AMVETS; W. Kenneth Yancey, Jr., Executive Director, SCORE; and, Clifton Toulson, Jr., Assistant Administrator, SBA. The SBA was hopeful that in the future the agency would be responsive to the statutory requirements with regard to providing services to veterans. SCORE was of the view that it could recruit enough veterans to provide services that were designed specifically for those who had served in the Armed Forces. The veterans' service organization expressed dissatisfaction with the failure of SBA to follow the congressional mandate to provide special considerations to veterans.

For further information on this hearing, refer to Committee publication number 105–49.

### 7.4.12 HUBZONE PROGRAM

*Background*

On June 24, 1998, the Subcommittee on Government Programs and Oversight held a hearing to examine the planning being done by the Small Business Administration (SBA) and the other Federal Government agencies for implementing the HUBZone Program. This program provides promise for creating new jobs and fostering welfare-to-work. It was important to determine whether this new program would be implemented in a timely manner. Additionally, it was important to make sure that the program was administered in a manner that would meet the needs of American workers and families who live in areas as geographically diverse as Appalachia and the inner city.

The HUBZone Act of 1997 was introduced in the Senate in January 1997 and was incorporated into the Senate version of the Small Business Reauthorization Act of 1997. The program was approved by a 18–0 vote in the Senate Committee on Small Business and was included in the reauthorization act approved by the Conference Committee. The Conference Committee report was passed in the House by a 397 to 17 vote. The program is designed to provide economic relief to areas of this Nation, such as Appalachia and our inner cities that have historically suffered from high rates of unemployment and low income levels. The program is designed to encourage the location of small businesses in these economically dis-

tressed areas and to provide stable employment to those who live in these areas. The program assists small businesses in HUBZones to enter the mainstream of Federal Government contracting by streamlining the contracting process.

*Summary*

The hearing had two panels, the first of which included: Hon. Jesse L. White, Jr., Federal Cochairman of the Appalachian Regional Commission and Mr. Robin Douglas, Regional Manager for Western Maryland, State of Maryland Department of Business and Economic Development. It was pointed out that the HUBSZone Program is an important tool in the creation of small businesses in rural and small-town America which also include, i.e., access to capital, technical start-up assistance, technology transfer and commercialization, more business oriented training and education in public schools, and creating a network of readily available services. Concern was expressed that program money would be spent on administrative matters to the detriment of encouraging participation by businesses and areas that could benefit from the program.

The second panel included: Ms. Jacqueline M. Jenkins, Director, Small Business Development Center, The Wharton School of Business, University of Pennsylvania; Mr. Ralph C. Thomas III, Associate Administrator, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration; Mr. Lloyd C. Alderman, Director, Office of Small and Disadvantaged Business Utilization, Defense Logistics Agency; Ms. Tracey L. Pinson, Director, Office of Small and Disadvantaged Business Utilization, Office of Secretary of the Army; and, Richard L. Hayes, Associate Deputy Administrator, Government Contracting and Minority Business Development, SBA. It was acknowledged that the purpose of the program was to stimulate private sector investment and to increase employment opportunities in distressed communities by increasing Federal government contracts awarded to businesses located and employing persons living in those areas. The program targeted the inner city pockets of unemployment and underemployment as well as unemployment and underemployment areas all across our country. There was consensus that thorough advance planning was essential to the success of the program.

For further information on this hearing, refer to Committee publication number 105–56.

### 7.4.13 SBA—PROPOSED NEW LOAN MONITORING SYSTEM

*Background*

On July 16, 1998, the Subcommittee on Government Programs and Oversight held a hearing to examine the Small Business Administration's (SBA) proposed new automated loan monitoring system for the 7(a) loan program. The Small Business Committee, in its report accompanying the Small Business Reauthorization Act of 1997, expressed approval for upgrading the SBA's computerized financial tracking and loan monitoring system. The Committee expressed grave concern over SBA's ability to spend money wisely for this project. The lack of effective management by SBA had previously manifested itself in disturbing instances, such as a substan-

tial error in the subsidy rate that precipitated a needless crisis in the 7(a) loan program until detected by the U. S. General Accounting Office (GAO).

Section 233 of the Reauthorization Act required that SBA complete eight mandated planning actions before it obligated or expended any funds for the development and implementation of the proposed new 7(a) loan monitoring system. It had been hoped that SBA would have completed the mandated planning, or at least be well underway to completing the planning by June 2, 1998, the date the statute required SBA to report its progress to Congress. The GAO reported that SBA had failed to do its homework and to complete the planning for the automated loan monitoring system. Instead of doing the required planning, SBA in its report to Congress, provided a plan to do a plan.

*Summary*

The hearing had one panel, which included: Mr. Joel Willemssen, Director, Accounting and Information Management Division, GAO; Mr. James T. Parks, Vice President and Comptroller—Multifamily, Fannie Mae; Mr. David T. Kresge, Senior Vice President and Chief Economist, The Dun & Bradstreet Corporation; Mr. Peter DelCOL, Chairman of the Board, Colson Services Corp.; Mr. John L. Gray, Associate Deputy Administrator and Mr. Lawrence E. Barrett, Chief Information Officer, SBA. GAO was of the view that SBA should complete all of the eight mandated planning tasks before buying hardware or systems. One witness was of the view that the new loan monitoring system should: (1) provide continuous automatic monitoring of the entire loan portfolio, (2) quantify risk by use of such tools as credit scoring, and (3) be driven by a wide range of data inputs. SBA testified that the eight planning steps required by Congress would be completed by August 1999, or sooner. SBA had not evidenced a lack of money to complete the planning. Also, SBA testified that it needed to consider the option of contracting out the loan monitoring system as the most cost-effective method of operating this system. The total cost of the system as estimated by SBA was $18.4 million, well in excess of the amount contemplated by Congress.

For further information on this hearing, refer to Committee publication number 105–56.

### 7.4.14 SECONDARY MARKET FOR GUARANTEED PORTIONS OF 7(a) LOANS

*Background*

On September 23, 1998, the Subcommittee on Government Programs and Oversight held a hearing to examine the performance of the Small Business Administration (SBA) in overseeing the sale in the secondary market of the Federal Government guaranteed portion of its 7(a) loan portfolio. A major focus of the hearing was an interim report of the U.S. General Accounting Office (GAO) which had been asked to undertake a study of the secondary market in the guaranteed portion of loans made under the authority of section 7(a) of the Small Business Act. GAO had studied the sec-

ondary market in the unguaranteed portion of 7(a) loans for the Senate Committee on Small Business.

GAO was asked, inter alia, to review first, the structure of the SBA secondary market as compared to the other secondary markets in Federal Government guaranteed paper, and second, the efficiency of the SBA secondary market in achieving the objectives established for it in comparison with comparable markets. In addition to the GAO, the Subcommittee and the full Committee sought the views of those involved in the SBA secondary market as to the market's operation, administration, and usefulness. Also, the Subcommittee sought recommendations for legislation that might strengthen or improve the market.

*Summary*

The hearing had one panel, which included: Mr. Thomas McCool, Director, Financial Institutions and Market Issues, GAO; Ms. Donna Faulk, Vice President, Prudential Securities; Mr. Clarke Ulmer, President, Colson Services Corporation; Mr. Richard Wise, President and CEO, American National Bank; Mr. Arthur Johnson, President and CEO, United Bank of Michigan; and Ms. Jane Butler, Acting Associate Administrator, SBA. There was testimony that 3,000 lenders participated in the secondary market and that, during fiscal years 1996–1997, lenders sold approximately 12,000 loans each year, representing slightly less than 25 percent of the number of loans approved, and approximately 40 percent of the dollars approved.

One of the witnesses pointed out that a secondary market allows a lender to sell a loan it originates rather than holding the loan on its balance sheet and that such a market provides a lender with a funding alternative to deposits, lines of credit, and other debt sources. The view was expressed that the efficiency and liquidity of the of the SBA secondary market are vital elements in the continued success of the 7(a) loan program. For small banks the secondary market provided these institutions an opportunity to leverage their lending capabilities. There was consensus that the secondary market was generally beneficial and operating efficiently.

For further information on this hearing, refer to Committee publication number 105–67.

## 7.5 Summaries of the Hearings Held by the Subcommittee on Regulatory Reform and Paperwork Reduction

### 7.5.1 The Regulatory Flexibility Act: Are Federal Agencies Using "Good Science" in Their Rulemaking?

*Background*

On April 15 and 17, 1997, the Subcommittee on Government Programs and Oversight held a joint hearing together with the Subcommittee on Regulation Reform and Paperwork Reduction, on the need for good science in rulemaking and the use of cost-benefit and risk analyses as essential management tools in the regulatory process. The hearing also focused on the impact upon small businesses caused by Federal agencies' failure to use good science or common sense when promulgating and enforcing regulations.

Sound science is too often omitted in rulemaking because an agency starts with a fixed agenda of what a regulation should be and then works backward to find some scientific basis to justify the result the agency desires. Such an approach is distinctly unscientific and contrary to logic. Logic dictates beginning with a sound premise, then testing that premise to produce a conclusion—not vice versa. Small businesses of this nation have suffered from agencies failure to follow good science that is reflected in higher costs, in more paperwork and in having to cope with illogical requirements.

The Subcommittees exercised Congress' oversight powers to examine the implementation and performance of the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Small Business Administration (SBA), Chief Counsel for Advocacy, of the statutory requirements of paragraphs (b) through (e) of Section 609 of Title 5 of the United States Code, as added by the Small Business regulatory Enforcement Fairness Act of 1996 (SBREFA). The new provisions added by SBREFA to the Regulatory Flexibility Act require EPA and OSHA to implement a panel process for considering and responding fairly to the advice and recommendations of small businesses concerning the impact and efficacy of proposed regulations.

*Summary*

The hearing was comprised of four panels, the first of which included: Dr. Gary Smith, Director, Applied Physics Laboratory; Dr. Aviva Brecher, Senior Analyst, John A. Volpe National Transportation Systems Center; Dr. George Gray, Deputy Director, Harvard Center for Risk Analysis: and Dr. James Harless, President, Techna Corporation; Dr. George Wolff, Principal Scientist, General Motors Corporation. The witnesses emphasized the need for good science in rulemaking and the availability of scientific expertise in the United States, leaving the agencies without any excuse that good science was not available. There was consensus that scientific regimen such as risk and cost benefit analyses do fit rulemaking and should be routinely followed. Examples were provided of failure of agencies to adhere to sound science in promulgating regulations and the costly and sometimes ridiculous consequences that follow from such failure.

The second panel included: Bennie Bixenman, President, Benco Sales, Inc.; Barney Deden, President, Martinizing Dry Cleaning; Victor Tucci, President, Three Rivers Health and Safety, Inc.; Michael Kerr, Director of Government Affairs, Circuit Center, Inc.; and Jim Quinly, President, Country Club Remodelers, Inc. The witnesses on the panel represented small businesses that had first hand knowledge of the consequences of agencies failure to use common sense and good science in rulemaking. It was clear from the testimony that agencies still persist in ignoring sound science in the regulatory process. Concern was also expressed for the added costs and paperwork burden resulting from needless regulations and agencies' ineptitude in foreseeing the practical consequences of their rulemaking efforts.

The third panel was comprised of: G. Stephen Robins, President, G.S. Robins and Company; John Hexter, President, Hexter and As-

sociates; G. Jeffrey Haber, President, Board of Directors, National Association of Towns and Townships; Eamonn McGready, President, Martin Imbach, Incorporated; and Gretchen Zierich, Assistant to the President, Zierick Manufacturing Corporation. There was universal agreement among members of the panel for maintaining safe work places and preserving clean air and water. However, all of the witnesses underscored the adverse economic impact that unsound science and unnecessary regulations can have on small businesses. One witness gave an example of EPA's failure to consult an industry association or its members before issuing a regulation that erroneously attributed a number of manufacturing functions to the industry. Whereas, in actual fact, the industry is basically engaged in warehousing activities. Another witness testified that the regulatory process has gotten out of hand and that there are almost one thousand pages of OSHA regulations applicable to his small business.

The fourth panel included: Jere Glover, Chief Counsel for Advocacy, SBA; Thomas Kelly, Chair, Small Business Advocacy, EPA; Robert Burt, Office of Regulatory Analysis, U.S. Department of Labor; and Keith Cole, member of the law firm, Beverage & Diamond. There was testimony that government agencies were learning about SBREFA and were taking steps to comply with the requirement of this statutes. Another witness expressed the view that the main thrust of SBEFA was not the process, but listening and responding to the concerns of small businesses. One agency testified that the SBREFA and the panel process strengthened the Regulatory Flexibility Act. An SBA report was cited that concluded that Federal regulations cost small firms on average 50 percent more per employee than large firms and 90 percent more on a per dollar of sales basis than large firms.

For further information on this hearing, refer to Committee publication number 105–5.

### 7.5.3 THE CONGRESSIONAL REVIEW ACT AND ITS IMPACT ON SMALL BUSINESSES

*Background*

The Congressional Review Act (CRA) was enacted as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) in March of 1996. It provides Congress with a formal mechanism to review new regulations, and prevent those that it deems too burdensome or inconsistent with Congressional intent from taking effect. This hearing examined how this powerful oversight tool, if implemented effectively, could provide relief from burdensome new regulations for small businesses across the nation.

This hearing also examined H.R. 1704, legislation that Chairwoman Kelly has introduced which would establish a Congressional Office of Regulatory Analysis (CORA). H.R. 1704 is designed to facilitate the implementation of the Congressional Review Act.

*Summary*

This hearing was comprised of one panel. Witnesses included: Angela Antonelli, Deputy Director for Economic Policy Studies, The Heritage Foundation; Todd McCracken, President, National Small

Business United; Jack Block, President, Food Distributors International; Lewis Freeman, Vice President of Government Affairs, The Society of the Plastics Industry; Stephen King, President and CEO, Tomah Products, Inc.; Jim Morrison, National Association for the Self-Employed; Gary Bass, Executive Director, OMB Watch.

Ms. Antonelli testified that the Congressional Review Act (CRA) is one of the "good government" reforms that was enacted during the 104th Congress. However, while the CRA could produce "dramatic" results, Congress appears to have little interest in using it. As a result, CRA runs the risk of becoming little more than a bureaucratic hurdle that agencies need to meet. While Ms. Antonelli feels that H.R. 1704 is a good concept, she does not feel that it will address the primary problem, which is a legislative branch that does not want to act. Instead, she offers three suggestions: (1) establish within Congress a centralized review mechanism for identifying, prioritizing, and challenging agency rulemaking; (2) provide Members of Congress with more information that allows them to deliberate more carefully about the need for new regulations; and (3) enact comprehensive regulatory reform to force agencies to make more sensible regulatory decisions to begin with.

Messrs. McCracken, Block, and Freeman, all representatives of small business organizations, agreed on the need for Congress to implement the Congressional Review Act. The companies that make up their membership are all impacted by the burdensome, and in many cases unnecessary, regulations that they are forced to comply with. Having Congress prevent some, or even a few, onerous regulations with the CRA would be very welcome. All three also endorsed H.R. 1704, feeling that a Congressional Office of Regulatory Analysis would give Congress information that it could use to better assess the impact that new regulations would have, and allow more informed decisions about whether use of the Congressional Review Act is warranted.

Mr. Morrison, also a representative of a small business organization, echoed some of the points that the other small business witnesses made with respect to H.R. 1704. However, he also offered some suggestions about how the legislation could be improved. First, CORA should be able to access and use information that is already produced by other government sources as a way to save time and resources. Second, a statement that clarifies CORA's missions, not just its duties, would be useful in answering questions that may arise. Third, in order to address concerns about CORA growing unacceptable large, staff ceilings should be considered. For this, the model of the Office of Information and Regulatory Affairs (OIRA) might be useful.

Mr. King agreed with the need to implement CRA and also endorsed H.R. 1704. As an actual small business owner, his comments were based on the experiences he gained from running his company. He was also testifying on behalf of the Synthetic Organic Chemical Manufacturers Association (SOCMA).

Mr. Bass focused most of his testimony on H.R. 1704, and was the only witness who opposed the legislation. He opposed the bill for a number of reasons: (1) it would create a costly now government apparatus that would duplicate functions already performed by OIRA; (2) it runs counter to current efforts to streamline the

government; (3) it contains no language requiring CORA to operate in the sunshine; (4) it raises Constitutional questions over the separation of powers; (5) it contains the unreasonable expectation that CORA conduct its own cost-benefit analyses for all major rules; (6) it would politicize the rulemaking process; (7) it contains a regulatory accounting provision that could be an attempt to create a congressional regulatory budget; and (8) it assumes that agencies never issue the most cost-effective regulatory alternative.

For further information on this hearing, refer to Committee publication number 105–17.

### 7.5.4 THE IMPACT OF FEDERAL REGULATIONS ON SMALL BUSINESSES IN THE HUDSON VALLEY

*Background*

With many of the larger employers that have historically provided jobs in New York's Hudson Valley having substantially downsized in recent years, small businesses are now more vital to the local economy than ever. Unfortunately, Federal regulations often place a burden on small businesses that prevent new or existing small business growth. As a result, the Subcommittee held a field hearing in Mt. Kisco, New York to hear directly from small business owners about the impact that regulations are having on them.

*Summary*

The Subcommittee heard testimony from two panels of small business owners. Panel one included: Harold Vogt, County Chamber of Commerce, Inc.; David Feldman, Feldman Cleaners; Solomon Steiner, Ph.D., Pharmaceutical Discovery Corporation; Jack Fedigan, L & E Lighting Company; and Dick Crabtree, Crabtree's Kittle House. Panel two included: Gretchen Zierick, Zierick Manufacturing Corporation; William Binns, Liberty Home Inspection & Appraisal; Robert Hankin, Pre-Fab City, Inc.; Dr. Abe Levy, Mt. Kisco Medical Group; Jack Freeman, Aremco Products, Inc.; and Robert Spolzino, Office of New York State Senator Nicholas Spano.

The topics that the witnesses on both panels discussed in their testimony were varied. While all of the witnesses agreed on the need to keep all Federal regulation to a minimum, the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the IRS were three Federal agencies that were specifically mentioned as particularly problematic for small businesses.

Mr. Vogt testified about the likely impact that EPA's new National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter would have on small businesses in Westchester County, New York. He feels that the new standards would pose "serious economic consequences in terms of new business investment and growth, and business retention and expansion" in places like Westchester County, which is already in non-compliance with the current standards.

Mr. Feldman discussed the complimentary roles that both the government and the private sector must play. The government must always remember that the private sector is responsible for

creating jobs and providing a solid tax base. Therefore, it must keep regulation and paperwork to a minimum. On the other hand, the private sector must recognize that the government has an obligation to protect the public. As a result, it must assist in this process by acting responsibly. An example of this relationship working properly can be seen in the area of volunteerism. Volunteers deliver vital services to their communities, but can only thrive if government cooperates and does not discourage involvement.

Dr. Steiner had a number of particularly interesting comments to make about OSHA. He related an instance when he was fined by OSHA for having eye-wash bottles instead of an eye-wash fountain, although his design is at least as effective as what OSHA requires. As someone who has made a career of working in laboratories developing treatments designed to help individuals who are sick, he is upset with the fact that OSHA can issue fines for such minor technical violations. Dr. Steiner also feels that OSHA's regulations are "purposely vague" so that if an OSHA inspector wants to find a violation, he or she can.

Mr. Fedigan testified about the challenges that he and his brother faced in trying to expand an industrial park that they owned. Because of the park's success, they wanted to expand it to provide additional space to other businesses. In order to do this, however, they needed to build a second access bridge to the park. After obtaining approval and funding from the New York State Department of Transportation's Industrial Access Program, they encountered obstacles from other agencies, particularly at the Federal level. He summarized the experience this way: "The Federal government is involved in every phase of business enterprise, from the small company to the largest; however, the smaller companies who lack economies of scale * * * are hard pressed to meet the letter of the law of all the Federal requirements that are involved with business development."

Mr. Crabtree discussed the difficult, and often arbitrary, process of reporting gratuities to the IRS that waiters and waitresses who work at his restaurant receive. This is a very important process because it is upon that figure which unemployment, Social Security, and Medicare taxes are based. However, it is also a very arbitrary number since the money is given directly to the waiters and waitresses in the restaurant, and is never seen by the owner.

Ms. Zierick testified about the burden that new health care regulations place on small businesses. In particular, she mentions the new exclusions that are contained in both the Health Insurance Portability and Accountability Act (HIPAA) and the Newborns and Mothers Health Protection Act. Ms. Zierick's company had always tried to offer a generous health benefits plan. However, continued governmental mandates is making it much more difficult to do so.

Mr. Binns pointed out that Federal agencies usually do a poor job of informing small businesses about regulations with which they need to comply. Because small business owners have neither the time nor the resources to review the Federal Register regularly, it is very difficult for them to remain informed about new regulations that will apply to their businesses. One remedy he offered to this problem was for each agency to develop a SIC guidance document which lays out the regulatory requirements for each industry.

Mr. Hankin discussed the difficulties that regulations pose for companies that are in the construction business. There are a number of reviews that home builders must complete before construction can begin. These reviews, however, are often time-consuming and burdensome. As a result, they often delay the planning and development of new projects, costing businesses time and money. One remedy to this problem would be to establish a Congressional Office of Regulatory Analysis that would review new regulations before they are established to ensure that they are not too burdensome.

Dr. Levy testified about his experiences as a physician dealing with Federal regulations. Perhaps his most interesting comments were about the Occupational Safety and Health Administration. He indicated that when he was younger and had heard an employer or corporation complain about OSHA, he had assumed that they were trying to evade their responsibility for worker safety or health. However, over the years, he has learned better. He recognizes the accomplishments that OSHA has made, but also sees that their goals could be achieved in much less onerous ways. Dr. Levy also made a number of useful observations about the difficult task of complying with Medicare regulations.

Mr. Freeman discussed the difficulties that he had with regulators from the Westchester County Department of Health. He described a situation where Department of Health officials, accompanied by police, swarmed his business and, essential, forced his business to come to a standstill. While Mr. Freeman understands the need for government officials to investigate potentially dangerous situations, he was shocked at the manner in which they carried out their duties. Essentially, he felt that he was guilty of wrongdoing before any investigation could be completed. And while this was a local government agency he was dealing with, Mr. Freeman felt that this was the mindset that dominated most regulatory agencies on all levels (federal, state, and local).

Mr. Spolzino appeared before the Subcommittee as a representative of New York State Senator Nicholas Spano. He discussed concerns he had with the regulatory environment related to residential mortgage lending, which affects everyone who buys a home. What has happened in the residential lending environment is that a series of well-intended regulations have imposed an increasing burden on home buyers, usually in the form of paying attorney's fees to ensure compliance with the myriad of regulations imposed by laws like the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the Residential Lead-Based Paint Hazard Reduction Act. They are problematic because, like other regulatory burdens, no one has ever taken the time to coordinate the different regulations so they can be handled in an efficient manner. Second, some of them are so confusing that it becomes impossible for them to serve their purpose. He suggests that Congress review these regulations to see if they can be applied in a less-burdensome, more efficient, and more comprehensible manner.

For further information on this hearing, refer to Committee publication number 105–22.

### 7.5.5 H.R. 96, THE SMALL BUSINESS REGULATORY ASSISTANCE ACT OF 1997

*Background*

On January 7, 1997, Congressman Jerry Solomon, along with Reps. Gary Condit, Joel Hefley, and Flody Flake, introduced H.R. 96, The Small Business Regulatory Assistance Act of 1997. H.R. 96 is designed to establish a system of confidential voluntary compliance assistance with Federal regulations.

Under the proposed legislation, the existing Small Business Development Center (SBDC) network would be partnered with the Environmental Protection Agency, the Department of Labor (OSHA), and the Internal Revenue Service, as well as the private sector and other compliance assistance resources, to make non-punitive regulatory compliance assistance accessible to small businesses.

In order to provide such help, the SBA, each participating agency, and representatives of the SBDCs would develop five-year compliance assistance plans that could be revised annually. Each compliance assistance plan would contain: the regulatory compliance objectives and priorities of the participating agency; identification of the types of services, materials, and resources to be used by the participating agency; identification of the resources of the participating agency available to the SBA and to SBDCs; and standards to be used by the participating agency in determining the effectiveness of the system of voluntary compliance.

The voluntary compliance program is to be funded from moneys appropriated to the Department of Labor, EPA and IRS. A percentage of each agency's annual appropriation through 2003 is earmarked for use of the voluntary compliance program. The amounts set aside are significant and amount to millions of dollars. Funding of SBDCs is to be on a state-by-state basis according to the population that a particular state bears to the population of the United States as a whole. However, no state's share would be less than $300,000. No state matching funds would be required. No more than 2 percent of the amounts made available for the voluntary compliance system may be spent on SBA administrative expenses.

To examine the impact of this legislation on both the small business community, as well as the government agencies that are involved, the Subcommittee on Regulatory Reform and Paperwork Reduction and the Subcommittee on Government Programs and Oversight held a joint hearing. The Subcommittees heard testimony from the legislation's sponsor, Mr. Solomon. Testimony was also provided by a panel of experts who had an interest in H.R. 96.

*Summary*

The first panel of the hearing was comprised solely of Mr. Solomon. He testified about the need and the purpose of the legislation. He indicated that regulations on all levels of government are suffocating small businesses, the most important sector of our economy. As a result, fewer jobs are being created and economic growth is being impeded. However, there is often no one a small business owner can turn to in order to find out what regulations he or she

needs to comply with, and how to do so. That is what H.R. 96 is designed to do. It is designed to link the Federal government and its compliance programs with the small business community in a manner that is user-friendly so that more businesses comply with applicable regulations.

Mr. Solomon also addressed some of the concerns that had previously been made about the legislation. He described why small business development centers were the appropriate vehicles to deliver the compliance assistance. He explained the funding of the program, particularly how the cost to small business owners, will be nothing. He also indicated that the administrative agencies that this bill would cover should not oppose the legislation because increased compliance assistance will lead to increased compliance with their regulations, which, after all, should be their ultimate goal. The bottom line, Mr. Solomon indicated, is that small business owners are not trying to find loopholes to avoid complying with the laws. Rather, they are law-abiding citizens that in many cases do not know how to comply with the law. H.R. 96 will assist them in this process.

The second panel was comprised of a number of experts. They included: Ms. Johnnie Albertson, Associate Administrator of Small Business Development Centers, U.S. Small Business Administration; Mr. Sam Males, State Director, Nevada Small Business Development Center; Ms. Pamela Christenson, Technical Assistance Director, Wisconsin Small Business Clean Air Assistance Program; Mr. Jim King, State Director, New York Small Business Development Center, and President-Elect of the National Association of Small Business Development Centers; and Mr. Jeff Burton, President, American Industrial Hygiene Association.

Ms. Albertson testified in opposition to the legislation. She indicated three main areas of opposition to the bill. First, was the funding mechanism. Because H.R. 96 would divert a small percentage of the budgets of the Department of Labor, EPA, and IRS, she indicated that would seriously impair those agencies' oversight activities. She felt that it would be more appropriate for Congress to directly fund any compliance assistance program that it decides to establish through SBA and its resource partners. The second concern had to do with the way that the compliance assistance in H.R. 96 would be provided. She indicated that existing provisions could potentially shield companies who act in bad faith from criminal liability. Finally, she felt that the bill might create a new privilege for companies that might be in violation of existing regulations. This could lead to new litigation, possibly directed towards the SBDCs.

Mr. Males and Mr. King both represented the viewpoint of small business development centers. They made several points in favor of H.R. 96. First, because SBDCs have already developed an extensive network throughout the country, they are well situated to provide assistance to a large number of small businesses. No other existing network can reach the number of businesses that SBDCs can reach. Second, SBDCs have developed a level of trust with the small business community that no other Federal agency or program can match. Throughout the course of their assistance, SBDCs have always operated with the best interests of the small business in

mind. Finally, SBDCs have a proven track record of working with other professionals like lawyers, CPAs, industrial hygienists, and other private consultants. This should help to address the concerns that some have expressed regarding the claim that SBDCs do not have the requisite expertise to deal with the technical nature of regulatory compliance.

Ms. Christenson recognized and supported the goal of H.R. 96, which is to assist small businesses in complying with Federal regulations, but felt that the bill created unnecessary and duplicative services for environmental compliance assistance. She cited the program mandated by section 507 of the Clean Air Act, which requires that states maintain a program designed to help small businesses understand and comply with air pollution regulations. These programs, commonly referred to as 507 Programs, provide free, confidential, and user-friendly compliance assistance to small businesses. She notes that in times of dwindling resources, it is important that any type of duplication of activities be avoided. She also notes that becoming knowledgeable and skilled about the regulations dealing with three separate and distinct agencies is an extremely challenging task, one that may not be possible with the limited resources that SBDCs have. In conclusion, she feels that it makes more sense to build on existing, cost-effective, environmental programs like the 507 Program, rather than using H.R. 96 to start from square one with another entity not accustomed to providing such service.

Mr. Burton is a certified industrial hygienist, registered professional engineer, and a certified safety professional. He is also President of the American Industrial Hygienist Association (AIHA), the world's largest society of occupational and environmental health professionals. The goal of AIHA members is to create a healthy and safe workplace, thereby reducing illnesses, injuries, and fatalities. Mr. Burton testified that he supported the goal of H.R. 96 for many reasons, and offered a few suggestions on how it might be improved. First, because of related experiences that AIHA has had, Mr. Burton firmly believed that the regulatory agencies should not be involved with the delivery of compliance assistance. Small businesses tend to believe that they will be targeted for inspection should they approach the agency for help. By having a third party provide the assistance, in this case the SBDCs, this problem is avoided. Second, H.R. 96 should make clear that SBDCs should make referrals to experts should they find that the type of assistance that is being sought is too technical for them to handle. This would ensure that only competent, qualified individuals will be involved in providing training and assistance to the small businesses.

For further information on this hearing, refer to Committee publication number 105–23.

### 7.5.6 THE IMPACT OF FEDERAL REGULATIONS ON SMALL BUSINESSES IN MONTANA

*Background*

The importance of small business to the state of Montana cannot be overstated. From 1992 to 1996, small businesses (fewer than 500 employees) created all of the net new jobs. In 1997, 97.8 per-

cent of the businesses in Montana were small businesses. A large proportion of these small businesses were also owned by women. According to The National Foundation for Women Business Owners, there were 34,100 women-owned businesses in Montana in 1996, and this number is growing. Between 1987 and 1996, the number of women-owned businesses increased 76.7 percent. Because of the prominent role that small businesses play in the Montana economy, the Subcommittee convened a field hearing in Missoula, Montana to assess the impact that Federal regulations have on small businesses in that state. Congressman Rick Hill, Montana's sole representative, also participated in the field hearing.

The Subcommittee heard testimony from two panels, both comprised of small business owners from Montana. The first panel included: Dr. Douglas Hadnot, Family Dentist Group, Missoula, Montana; J.R. Chipman, Benefit Innovations, Missoula, Montana; Dean Randash, NAPA Auto Parts, Helena, Montana; and Loren Smith, KOA Campgrounds and Prairie Craft Specialties, Great Falls, Montana. The second panel included Jeff Peterson and Jim MaCabee, Automotive and Industrial Distributors, Missoula, Montana; Mick Ringsack, Millers Western Apparel, Butte, Montana; Jim Ramsay, Bob's Pizza Plus/Neon Pretzel Company, Missoula, Montana; Tim Wilkens, Bitterroot Flower Shop, Missoula, Montana; Ron Keeney, Keeney Construction, Missoula, Montana; and John Maxness, Executive Air Montana, Helena, Montana.

*Summary*

Dr. Hadnot testified about the impact that OSHA has on dental practices, the vast majority of which are small businesses. He cited several proposed regulations that would be very problematic for dental offices if they were to go into effect. They include the Tuberculosis Standard, the Safety and Health Program Standard, and the Ergonomics Standard. He also mentioned two current regulations that are difficult for dental offices: the Hazard Communication Standard and the Bloodborne Pathogen Standard. They are accompanied by a very heavy-handed enforcement approach by OSHA that includes random inspections and heavy fines. Importantly, he cited a study by the American Dental Association which found that the cost of compliance with the Bloodborne Pathogen Standard was twenty-seven times greater than what OSHA had estimated.

Mr. Chipman discussed how Federal laws and regulations make it more difficult for small businesses to offer benefit programs to their employees. He mentions a wide variety of issues, including day-care programs, tax code provisions, and medical benefits programs, and others. For example, a large number of small businesses are not formed as C corporations, but as S corporations, proprietorships, and partnerships. The owners of these entities cannot participate in many of the benefit programs that could be available to their employees. As a result, an owner is less likely to offer his or her employees a benefits program in which he or she could not participate.

Mr. Randash is the owner of two NAPA Auto Parts Stores and described the impact that OSHA's Hazardous Communications Standard has on his business. He pointed out that OSHA mandates that he have on file a Material Data Safety Sheet (MSDS) for each

product that he sells. For his business, he is required to keep over 3000 MSDSs on file. He described the administrative burden that maintaining an accurate file of MSDSs places on a business owner. Explaining that the requirements for commercial and private customers are different, Mr. Randash recommended that a standardized rating system be developed that displays exposure to health, safety, and fire risks. This would convey more information to both private and commercial consumers, and would be easier to maintain administratively.

Mr. Smith testified about the general impact that government regulation is starting to have on the business climate. First, he pointed out that the biggest impediment to the creation of new jobs is regulation. He indicated that when he talks with students, he tells them that their biggest challenge to opening a business of their own will be government regulation. Second, he explained that excessive regulation is beginning to undermine respect for the law. With so many regulations, business owners recognize that they are unable to comply with all of them, so they begin to look for ways to avoid compliance. He recommended government regulation-free zones, modeled along the lines of free trade zones, as a way to demonstrate what life would be like without regulation.

Mr. Peterson and Mr. Macabee discussed MSDSs as well, but presented the problems they cause from a slightly different perspective. The type of business that they operate provides other businesses, not individual consumers, with the products that they sell. As a result, they are technically responsible for providing a copy of the MSDS to each business they distribute to. This would essentially require an employee to stay at the photocopying machine full time. While they did not offer a solution to the problem, they recognized and agreed that something needed to be done.

Mr. Ringsack spoke generally about government regulation. He cited statistics that describe the overall burden that regulations place on the economy and small businesses, and pleaded that something be done to begin to lower that burden. He complemented the 104th Congress for the passage of the Small Business Regulatory Enforcement Fairness Act and the Congressional Review Act, but felt that more needed to be done. He pointed out that even with these new laws on the book, the executive branch continues to develop thousands of new regulations. He recommended that one way to combat this effort was to "put some teeth" into the Congressional Review Act.

Mr. Ramsay continued the theme that had developed in the hearing that regulations stifle the ability of small businesses to create jobs and remain competitive. He cited several government agencies that make his ability to succeed in the restaurant business more difficult. They include OSHA, the Department of Justice, the Immigration and Naturalization Service, and the IRS. He cited OSHA's Bloodborne Pathogen Standard as one example of the challenges that regulation creates for him. Under that regulation, if an employee, as part of his or her job, was designated to provide first aid, then the employer would have to provide him or her a Hepatitis B vaccination and protective gear, and fill out piles of records whenever the employee provided first aid. He felt that this was sound practice for health personnel and EMTs, but was needless

bureaucratic paperwork for the waiter or waitress that wanted to maintain a CPR certification. The end result was that most restaurants did not ask employees to perform first aid, including bandaging a cut finger, because of the red tape that was involved.

Mr. Wilkens touched on two main issue areas in his testimony. First, tax regulations were of great concern to him. He believed that the tax code itself probably is not all that problematic. Rather, it is all the exceptions that come out of it that create most of the problems. He cited the alternative minimum tax as an example. Because it has never been indexed, the number of people who now qualify has greatly expanded. The second major issue that he mentioned was the ergonomics standard currently being developed by OSHA. Although he had never received one complaint from any of his employees for a repetitive motion injury, he was concerned about the cost and administration of such a standard, were it to be implemented.

Mr. Keeney testified about the costly and time consuming process that his construction company had to endure in order to comply with the Electronic Funds Transfer Payment System (EFTPS) required by the IRS. Because his bank was not prepared to deal with this payment system, and ended up declining participation, he was forced to open a separate account with another bank to deal with it. Rather than providing guidance and technical assistance to both small businesses and the banking industry, the IRS simply said that if you fail to comply, you will be fined. The entire ordeal ended up costing his business over one thousand dollars. Mr. Keeney also discussed the Disadvantaged Business Enterprise (DBE) program that is administered by the Department of Transportation. He described how the DBE program prevents him from winning highway construction contracts because it awards work to contractors based on the race and gender of their ownership. He pointed out that national statistics show that 65 to 75 percent of all highway subcontracts go to DBEs.

For further information on this hearing, refer to Committee publication number 105–29.

### 7.5.7 THE FIRST REPORT TO CONGRESS BY THE SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT OMBUDSMAN

*Background*

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established the Small Business and Agriculture Regulatory Enforcement Ombudsman ("Ombudsman") and the Regional Small Business Regulatory Enforcement Fairness Boards ("Regional Fairness Boards"). The Ombudsman's primary responsibilities are to solicit and record comments about regulatory enforcement actions from small businesses and compile an evaluation, similar to a "customer satisfaction" rating, of each agency's performance. A "report card" of these agency ratings is to be published annually.

The Regional Fairness Boards, composed of five small business owners in each of the Small Business Administration's ten regions, provide small businesses with an opportunity to review and assess

government agencies' enforcement activities involving small businesses. The Regional Fairness Boards may hold hearings, gather information, and offer recommendations and comments on agency enforcement policies and practices to the Ombudsman for inclusion in his annual report. The Ombudsman is the federal official designated to assist the Regional Fairness Boards by coordinating their independent activities. The Ombudsman is directed by statute to include their advice and recommendations in his report to Congress.

Each agency that has regulatory authority over small businesses is also required to work with the Ombudsman to ensure that small business concerns are provided with a means to comment on the enforcement activity which that agency might conduct. Small businesses that wish to comment on a federal agency's compliance or enforcement action may obtain a Federal Agency Appraisal Form directly from a Regulatory Fairness Board member, from the RegFair page of the SBA website (www.sba.gov/regfair), from the toll-free telephone number (1–888–REG–FAIR or 734–3247), or from the National Ombudsman's office. Major national trade associations are also distributing the Form.

On December 31, 1997, the Ombudsman presented his first annual Report to Congress on the Regulatory Fairness Program. This report details the administrative activities of the Ombudsman and the Regional Fairness Boards, and more fully explains how the program operates. The Subcommittee on Regulatory Reform and Paperwork Reduction held a hearing to more fully examine this report, as well as to search for ways in which the program could be improved in the future.

The Subcommittee heard testimony from two panels of witnesses during the hearing. The first panel was comprised solely of Mr. Barca. The second panel was comprised of small business owners and representatives of small business organizations who had experience dealing with the Regulatory Fairness Program. They included: Dr. Ann Parker Maust, President of Research Dimensions; Mr. Mike Van Zeeland, Vice President of Paul Van Zeeland Heating, Inc.; Ms. Gretchen Mathers, Operating Partner of Gretchen's of Course; Mr. Todd McCracken, President of National Small Business United; and Mr. David Voight, Director of the Small Business Center for the U.S. Chamber of Commerce.

*Summary*

Mr. Barca testified about the progress that he and his staff had made over the previous year in implementing the Regulatory Fairness Program. He summarized a program that had three primary goals: first, simplicity of use for small businesses; second, easy accessibility to Fairness Boards and the National Ombudsman; and third, assurance that the Boards and the Ombudsman receive high quality feedback from small businesses on the regulatory environment.

There are a variety of ways in which small business owners can provide feedback to the Regulatory Fairness Program. Small businesses can attend a Fairness Board Hearing in their region and formally present their concerns; they can submit a Federal Agency Appraisal Form to the National Ombudsman's office; they can call

a toll-free number and speak with a representative of the National Ombudsman's office; or they can visit the Regulatory Fairness Program's Internet website.

At the time of the hearing, the Regulatory Fairness Program had received a total of 735 calls on the toll-free telephone line, averaging 74 calls per month. On the Regulatory Fairness Internet website, there had been approximately 56,000 "hits" received. For the first seven months of website operation, hits averaged over 3,600 per month. However, during the three months prior to the hearing, website hits have averaged over 7,500 per month, with a high of 8,851 in January, 1998. Mr. Barca thought this trend would continue to increase as awareness of the program continued to grow.

Through feedback from small businesses, Fairness Board Hearings, and interaction with the small business community, the Regulatory Fairness Program had collected a broad base of information on which to build a good understanding of federal regulatory enforcement activities. Comments received and testimony offered by small businesses showed that many of the same issues with agency regulations and compliance activities were surfacing across the country and across industries. The National Ombudsman and the Regional Fairness Boards identified four common themes in the regulatory environment that were faced by small businesses. These themes were the following: first, agencies change their rules in the middle of the game; second, agencies disregard the economic or other consequences of their actions on small businesses; third, small businesses often get ensnared in conflicting regulatory requirements when two federal agencies' jurisdictions overlap; and fourth, small businesses fear agency retaliation.

Mr. Barca felt that the progress and results shown by the Regulatory Fairness Program over the past months of actual operation were very encouraging. The Regulatory Fairness Program was receiving steadily increasing numbers of Federal Agency Appraisal Forms. Press and media coverage was rising, especially for the Regional Fairness Board public hearings. The biggest challenge they faced was to continue to increase public awareness of SBREFA and the Regulatory Fairness Program, as most small businesses in America were still not aware of their new rights.

Dr. Maust is the President of Research Dimensions, a small analytical services company. She testified on behalf of the National Federation of Independent Business, of which she is a member. She also served on the Small Business Regulatory Enforcement Fairness Board for the South Atlantic States. In general, she made three main points during her testimony. First, although it had been roughly eight months since the Regulatory Fairness Program had been fully implemented, she felt that they had only scratched the surface of how it could be implemented. That is why she felt the Ombudsman's report appeared lacking in certain respects. Second, she felt that there was a vast communication gap between the professionals who are disseminating information about the program and the average small business owner who is experiencing regulatory burdens in the field. As a result, the average small business owner still did not understand how the program could help his or her business. Finally, she felt that small business owners may be

unwilling to take the time that is required to fully participate in the Regulatory Fairness Program. They think that the time and cost involved is simply not worth the effort.

Mr. Van Zeeland is the Vice President of sales and marketing of Paul Van Zeeland Heating, Inc. He testified on behalf of the Associated Builders and Contractors. He has also applied to be a member of the Regional Fairness Board in his region. He focused much of his testimony on the Federal Agency Appraisal Form that the Regulatory Fairness Program uses. He felt that it, as it is currently written, does not provide adequate confidentiality because it requires disclosure of an individual's name and company to the National Ombudsman and Regional Fairness Boards. His experience has shown that most small business owners do not want their company name and address associated with "blowing the whistle" on government agency officials who overstep their authority. He felt that with government intrusion in the workplace at an all-time high, small businesses may not wish to file appraisal forms unless there are adequate confidentiality measures.

Ms. Gretchen Mathers is the operating partner of Gretchen's of Course, a business that involves catering, box lunches, and a bakery. She has been an elected delegate to the 1986 and 1995 White House Conferences on Small Business, and was chairman of the region 10 Regulatory Fairness Board. Ms. Mathers explained that many small businesses have long complained that the Federal government does not keep them in mind when it develops new regulations. She reminded the Subcommittee that the SBA estimates that small businesses spend 50 percent more per employee than large businesses complying with Federal regulation. The passage of SBREFA and the implementation of the Regulatory Fairness Program was welcome news to many small business owners, because it provides a venue for them to communicate their thoughts—both positive and negative—to someone who is sympathetic. She firmly believed that the program should continue, because, at the very least, it gives small business owners the opportunity to know that someone was listening to their concerns.

Mr. McCracken is the President of National Small Business United, the oldest national small business organization in the country, representing about 65,000 small businesses across the country and in all 50 states. A number of NSBU members have served on Regional Fairness Boards and have testified at Regulatory Fairness Program hearings. As a result, NSBU has been quite committed to having the Regulatory Fairness Program succeed. There were three main issues that Mr. McCracken covered in his testimony. First, he felt that there needed to be greater public awareness that the program exists. One of the most effective ways to do this is to get small business associations like NSBU to publicize the program to its membership. Second, he felt that there was a chilling effect on small businesses, because they were reluctant to put their name, address and phone number on a form that is submitted to the Federal government. They do not yet fully trust that their confidentiality will be protected from the regulatory agencies. Finally, he felt that the annual report that the Ombudsman submits to Congress should not hesitate to be critical of Fed-

eral agencies, when criticism is warranted. One of the best ways to motivate agencies' behavior is to provide honest criticism.

Mr. Voight is the Director of the Small Business Center for the U.S. Chamber of Commerce. The Chamber is the world's largest small business federation, representing more than three million members and organizations, with over 96 percent of the members having 100 or fewer employees. While Mr. Voight thought that Mr. Barca deserved significant credit for getting the Regulatory Fairness Program moving, he offered three points of "constructive criticism". First, he felt that the Ombudsman should not lose sight of his overall mission, which is to foster changes in agency cultural attitudes so that they better take into account how their regulations impact small businesses. He was concerned that the Ombudsman was instead trying to correct the circumstances of every Federal Agency Appraisal Form that is filed. This could become an impossible task as the program continued to grow and more people began to use it. Second, he felt that the Ombudsman should have taken a more critical approach in his report in pointing out the regulatory agencies who were not being as cooperative as they should be. He felt that while it was appropriate to point out agencies who do good work, it was perhaps more important to identify those who do not, and that was something that the Ombudsman failed to do in his report. Finally, more effort needed to be made to get more small businesses involved in the program. High small business participation was key to the success of the program.

For further information on this hearing, refer to Committee publication number 105–37.

### 7.5.8 THE SMALL BUSINESS ADVOCACY REVIEW PANELS

*Background*

On March 18, 1998, the Subcommittee on Government Programs and Oversight and the Subcommittee on Regulation Reform and Paperwork Reduction held a joint hearing which examined the implementation by the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) of the statutory requirements of paragraphs b through e of Section 609 of title 5 of the United States Code, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, referred to as SBREFA.

The new provisions added by SBREFA to the Regulatory Flexibility Act require EPA and OSHA to implement a panel process for considering and responding fairly to the advice and recommendations of small businesses as to the impact of proposed regulations upon small entities.

The hearing was also a continuation of the joint hearing by the same subcommittees held on April 15 and 17, 1997. (See Committee publication No. 105–5.) This hearing, as did the prior hearing, focused on the need for good science and common sense in rulemaking and the unfair financial burdens borne by small businesses all over this Nation as a result of unscientific, impractical, and unnecessary regulations.

*Summary*

The hearing was comprised of three panels, the first of which included: Donald L. Struminger, President, Virginia Linen Services, Inc.; Honorable Jay Gullo, Mayor, New Windsor, Maryland; James Wordsworth, President, J.R. Steakhouse; and, Ken Boehm, Chairman, National Legal and Policy Center. One witness complained that one of the problems with the panel process was that EPA failed to provide representatives of small entities with sufficient details about a proposed rule. Another witness underscored the regulatory burden faced by small businesses who had to conform to 60 Federal requirements imposed by 11 Federal agencies and 41 State requirements imposed by 8 State agencies. A witness provided examples of small businesses driven out of business by heavy-handed and unfair regulatory enforcement.

The second panel included: Douglas I. Greenhaus, Director, National Automobile Dealers Association; David F. Hobson, President, Uniform and Textile Service Association; Matthew Hickham, Director, American Health Care Association; John J. Huber, Vice President, Petroleum Marketers Association; and, William Kilmer, National Association of Home Builders. There was concensus that the many tiers of regulations imposed by local, State, and Federal governments as well as needless and overly burdensome regulations are of great concern and costly to small businesses. There was testimony that OSHA had ignored scientific and medical evidence as well as current, relevant industry specific evidence in weighing the impact of proposed regulations on small entities. Concern was voiced that EPA and OSHA had bypassed the panel process in promulgating rules which small businesses considered significant, but which the agencies treated as not meeting the criteria for invoking the panel process.

The third and last panel included: L. Nye Stevens, Director, U.S. General Accounting Office (GAO); Hon. Jere W. Glover, Chief Counsel for Advocacy, Small Business Administration; Thomas E. Kelly, Small Business Advocacy Chair, EPA; and, Greg Watchman, Deputy Assistant Secretary, Department of Labor. GAO reported that the panel process was working fairly well but that there was a good deal of controversy associated with the process. The office of Advocacy, SBA, was of the view that the panel process provided new leverage in its efforts to ensure that the regulatory culture among the executive agencies full understood the problems caused small businesses by arbitrary and ill-conceived regulations. Both EPA and OSHA found merit in the panel process.

For further information on this hearing, refer to Committee publication number 105–40.

### 7.5.9 ELECTRIC UTILITY RESTRUCTURING: THE SMALL BUSINESS PERSPECTIVE

*Background*

The regulation of electric utilities is pervasive. All aspects of a utility's rates, services to its customers, geographic area of operation, safety, environmental and emission compliance, general ex-

penditures, and corporate structure and governance are overseen by federal and state regulators.

However, the electric power industry is starting to move from a highly regulated business to one where the generation and wholesale power markets are more competitive. Additionally, an increasing number of states are moving forward with reforms of retail electric services. Because electricity plays a critical role in every American home, business, and industry, it is essential that competition in electricity markets benefits all electric consumers, including small businesses.

The Subcommittee on Regulatory Reform and Paperwork Reduction held a hearing to more fully examine how electric utility restructuring will impact the small business community. The Subcommittee received testimony from two panels during the hearing. The first panel was comprised of a number of individuals who had been involved with and studied the electric utility industry for a number of years. The second panel was comprised of actual small business owners who had legitimate interests in how the restructuring debate was progressing.

*Summary*

The first panel was comprised of: Mr. Alan J. Statman, Managing Partner, Wright & Talisman, P.C.; Mr. Robert A. O'Neil, Managing Partner, Miller, Balis & O'Neil, P.C.; Mr. John Wilson, President, J.W. Wilson & Associates; Jon Hockenyos, TXP—Texas Perspectives; Dr. John N. O'Brien, President & CEO, Wheeled Electric Power Company; and Dr. Arthur A. Fletcher, Chairman of the Board, National Black Chamber of Commerce.

Mr. Statman is a Managing Shareholder of Wright & Talisman, P.C., a Washington, DC law firm specializing in energy law. He discussed some of the reasons why electric utility restructuring is such a complicated issue, both technically and legally, and how restructuring might take place. First, jurisdiction over the industry is basically split between the Federal government and the States. As a result, no one body can act unilaterally to effectuate restructuring. Second, as restructuring goes forward, utilities should not be excluded from competing in certain markets. Competition, not competitors are the ones that should be protected. Third, mergers do not necessarily lack merit, because they can often help competitive forces. Besides, regulatory and antitrust agencies have tools at their disposal to deal with anti-competitive actions. In conclusion, Mr. Statman felt that because of the complexity of the issue, a "slow and steady" approach to the issue was more appropriate than a "fast and cataclysmic" one.

Mr. O'Neil is a partner in the law firm of Miller, Balis, & O'Neil, P.C., located in Washington, DC. He felt that four main principles should be kept in mind when dealing with this issue. First, it is important to remember that the purpose of deregulation should be to assist or provide benefits to consumers. Second, deregulation of the electric utility industry should be allowed only where real, as opposed to theoretical, competition exists. Third, geographic realities produce markets. Electricity cannot be manufactured in advance, inventoried, and propositioned to meet market demand. As a result, differing geographic markets must be kept in mind. Fi-

nally, care should be exercised to avoid handicapping or eliminating existing small players in the market. Congress should seek to preserve and enhance an environment where these small systems can continue to operate.

Dr. O'Brien is President, Chairman, and Chief Executive Officer of Wheeled Electric Power Company located in Uniondale, New York. He testified that historically, regulation of the electric industry has not been beneficial to small businesses. Residential consumers have had consumer advocates paid by States, State's attorneys general, and others to favorably influence the price of residential electric rates. Similarly, industrial consumers, through large cash-flows, have been able to finance a tremendous effort designed to lower electric rates. He stated that small businesses had no such advocates for their interests. As a result, small business consumers end up subsidizing both residential and industrial consumers. Deregulation or restructuring would not change this. Therefore, Dr. O'Brien felt that small businesses need some type of advocate to be established, perhaps at the SBA, to represent their interests before State regulatory bodies.

Dr. Wilson is President of J.W. Wilson & Associates, a consulting firm in Washington, DC. He indicated that there were two ways in which small businesses would be affected by restructuring and deregulation in the electric utility industry. First, in the way in which restructuring and deregulation may affect the businesses that they are in. Second, the extent to which it influences the prices that small businesses pay for their electric power. Historically, small businesses have paid higher prices for electricity than other classes of consumers, primarily because they have not had sufficient advocates to represent their views. Additionally, they are relatively captive customers. Unlike industrial customers who can exercise a certain amount of leverage by choosing to expand or contract their operations at one location or another, most small businesses do not have that type of flexibility. As a result, small businesses can benefit from deregulation only if real competition exists in the deregulated marketplace.

Mr. Hockenyos is the Managing Director of Texas Perspectives located in Austin, Texas. He testified on behalf of the Small Business Survival Committee. He discussed a study that his company completed that examined the potential impacts of restructuring on the small business community. The study found that in the near term, there would be immediate benefits in states in the Northeast, California, and a few States in the Midwest. These states tended to have high urban populations and, consequently, the highest rates. On the other hand, States in the mountain region, where there are fairly dispersed populations and relatively low rates, benefits would be much slower in materializing. Therefore, since each State's circumstances were relatively unique, there should be some flexibility in any restructuring proposal that allows them to set their own course.

Dr. Fletcher is Chairman of the National Black Chamber of Commerce, located in Washington, DC. He testified that the National Black Chamber of Commerce is in favor of electric utility deregulation. He felt that it would lead to greater competition, development of new technologies, and above all, public exposure, which would

lead to lower prices for consumers and vast market opportunities for small business growth. He felt that the buying power that would result from decreased prices and increased jobs through business growth would have a cyclical nature and provide the greatest form of economic infusion in the history of urban neighborhoods.

The second panel was comprised of the following individuals: Mr. Cliff McCourt, Day & Night Heating; Mr. Charles H. Vernon, Vice President, Newport Harbor Company; Mr. John Bishop, Gurnee Heating & A/C Corporation; Mr. Donald J. Deless, President, Deless Associates; and Ms. Laurie Crigler, L & D Associates.

Mr. McCourt is the owner of Day and Night Heating and Cooling, located in Novi, Michigan. He testified on behalf of the Air Conditioning Contractors of America. He discussed the negative impact that cross-subsidization has had on small businesses in the air conditioning contracting industry. He stated that there is a need for Federal legislation to provide relief from cross-subsidization.

Mr. Vernon is the Vice President of the Newport Harbor Corporation, of Newport, Rhode Island. He testified on behalf of the National Restaurant Association. He felt that small- and mid-sized businesses could save billions of dollars per year if the nation's electric utility industry were restructured to allow greater competition. However, in order for this to happen, all utility customers must be treated fairly. Therefore, he felt that fairly resolving the issue of stranded costs and providing for aggregation were the keys to any legislation that might be considered.

Mr. Bishop is with the Gurnee Heating & Air Conditioning Corporation from Closter, New Jersey. He testified on behalf of the Associated Builders and Contractors. He also discussed the issue of cross-subsidization. He showed the Subcommittee a number of advertisements that utilities had placed in various media outlets that described various unregulated services that they offer. He was concerned that funding for these advertisements might be coming from funds that were generated from the regulated part of the business. As a result, he felt that some sort of protection from cross-subsidization was needed.

Mr. Deless is the President of Deless Associates Energy, located in Wayne, Pennsylvania. He testified on behalf of the National Association of Home Builders. He stated that he supported electric utility deregulation, provided that it was done in a fair and comprehensive manner. However, he also made the point that the current electric utility system has served consumers well over the years by offering consistent and reliable service. Any plans to change this system should, at a minimum, maintain a few specific qualities. First, residential consumers should not pay higher rates. Second, housing affordability must not be negatively impacted. Third, residential customers should not bear unfair burdens in stranded asset recovery. And fourth, programs offered by utility companies that are beneficial to home buyers should not be eliminated.

Ms. Crigler is the owner of L & D Associates, Inc., of Aroda, Virginia. She testified on behalf of the Plumbing, Heating, Cooling Contractors National Association. She discussed the fact that the energy market is more than the buying selling of electricity; it is

also the buying and selling of plumbing, heating, and cooling equipment; repair services; maintenance agreements; and other goods and services. Because many utilities are now entering the competitive markets listed above, she fears that they may be using ratepayer funds to subsidize the new avenues of business. She provided the Subcommittee with an agreement that was negotiated with her major investor-owned utility, and offered it as a model that could be followed in the future to address other small businesses' concerns about the issue of cross-subsidization.

For further information on this hearing, refer to Committee publication number 105–61.

## 7.6 Summaries of the Hearings Held by the Subcommittee on Tax, Finance, and Exports

### 7.6.1 WHY EXPORTS MATTER

#### Background

On May 1, 1997, the Subcommittee opened its trade agenda by holding a hearing on the general importance of trade to the overall economic health of the nation, particularly examining the impact of trade on small businesses. The purpose of the hearing was to allow academic experts to comment on trade policy and the value of export promotion programs.

*Summary*

The hearing was comprised of one panel that included Clyde Prestowitz, Jr., President of the Economic Strategy Institute, David Richardson, Professor of Economics at Syracuse University and a Visiting Fellow at the Institute for International Economics, and Perry Newman, Director of the Maine International Trade Center. The 1st session of the 105th Congress had a series of trade initiatives on its legislative calendar, including the reauthorization of the Overseas Private Investment Corporation (OPIC), the Export-Import Bank of the United States (Ex-Im), and "fast track" trade negotiating authority for the President.

Professor Richardson testified that export and import dependence is good public policy. The benefits to companies that are involved in international trade include higher growth, better wages and more secure jobs for their workers, and a more productive workforce. These same benefits apply equally to small and large businesses alike. Just in the last five years, the number of small firms that have ventured into the export arena has grown from 10 percent to 19 percent.

Professor Richardson concluded with three central recommendations for policymakers. First, do no harm. The U.S. should remove impediments to exports including an overvalued U.S. dollar and unilateral economic sanctions.

Second, be wise as serpents. Export promotion programs that work best are either infrastructural policies (e.g., trade data statistics, ensuring fair treatment abroad of U.S. products) or tactical policies (e.g., informed embassy personnel abroad or targeted export financing).

Finally, do the right thing. International trade is a great opportunity, not without risks, but not without significant gain for both large and small businesses alike.

Clyde Prestowitz of the Economic Strategy Institute then detailed the findings of his study of the value of Ex-Im. He concluded that Ex-Im has met its main objectives—responding to imperfections in the marketplace and counteracting the export subsidies given to U.S. competitors by foreign governments. If Ex-Im was abolished, the study concludes that U.S. exports would drop by $15 billion. Compounded over five years, that figure translates into a one-third increase in the already large U.S. trade deficit.

In addition, the U.S. Gross Domestic Product (GDP) would decrease by $35 billion, which translates in to a 250,000 job loss immediately and a 600,000 job loss over the long-term.

Finally, if Ex-Im was not reauthorized, it would translate into a loss of $7 billion in tax revenue to the U.S. Treasury immediately and approximately $24 billion over the long-term. Thus, getting rid of Ex-Im would actually increase the budget deficit when you factor in loss of revenue in addition to what it takes to run Ex-Im. Thus, Mr. Prestowitz made a compelling case to retain and reauthorize the Ex-Im Bank—it helps provide good paying U.S. jobs and decreases both the trade and budget deficits.

The third witness focused on bringing these lofty economic statistics down to earth. Perry Newman talked about the importance of educating more companies in Maine about the benefits of exporting. Using some case studies, Mr. Newman explained that the explosion of trade is not limited to big companies in large population centers but applies equally to small business in rural America.

Thus, all three witnesses agreed on the need for small businesses to remain engaged in the international marketplace. For further information about this hearing, refer to Committee 105–8 publication.

### 7.6.2 DOES OPIC HELP SMALL BUSINESS EXPORTERS?

*Background*

On May 15, 1997, the Subcommittee held a hearing examining the impact of the Overseas Private Investment Corporation (OPIC) on small businesses. OPIC provides political risk insurance, in addition to project finance, for U.S. investments overseas in developing nations and emerging economies. OPIC needed to be reauthorized by September 30, 1997. Thus, the hearing provided an opportunity to review OPIC's programs for small business and their role in helping small business growth.

*Summary*

The hearing was comprised of one panel that included Mildred O. Callear, Acting President and CEO of OPIC; Monique Maddy, President of the African Communications Group of Cambridge, Massachusetts; Elliott Braswell, President of the Braswell Services Group of Charleston, South Carolina; and Craig Roach of the Boston Pacific Company of the District of Columbia.

Ms. Callear outlined the history and performance of OPIC. Over the past 25 years, OPIC has facilitated $108 billion of private sec-

tor investments, which have generated $53 billion in U.S. exports and 225,000 U.S. jobs, all at no net cost to the taxpayer. In fact, OPIC has operated at a surplus to the U.S. Treasury (in 1996, OPIC generated $209 million in revenue for the taxpayer), resulting in a $2.7 billion reserve fund.

Specifically, OPIC directly provided a record amount of support for small business projects in 1996—33 individual projects in 17 different countries, for a total of $1.8 billion. Indirectly, small businesses benefit from OPIC as downstream suppliers to larger firms. More than half of the identified suppliers to OPIC's larger customers are small U.S. companies.

Monique Maddy testified regarding her experience with OPIC. Ms. Maddy heads a three person small business that specializes in focusing investments in the telecommunications sector in Africa. The African Communications Group (ACG) received their first OPIC political risk insurance package in 1993, which resulted in $5 million in U.S. exports to Tanzania. This particular project provided Tanzania with nationwide wireless public pay phone, paging, and voicemail services. ACG is in the process of redesigning Ghana's telephone system, which could result in $50 million in sales of equipment and services from U.S. suppliers. With OPIC, ACG was able to penetrate markets in Africa that have been traditionally ceded to European or Asian firms.

Elliott Braswell also related his experience with OPIC. The Braswell Services Group, a 250-employee shipyard repair firm, had traditionally relied on government contracts to repair U.S. naval vessels in the Charleston, South Carolina harbor. When the Base Closure Commission shut down the Charleston Naval Shipyard, the Braswell Services Group looked elsewhere for business. They successfully bid on a 20-year contract with the Panamanian government in the canal zone, which was supported by a direct loan from OPIC. However, when certain well-connected Panamanian officials attempted to seize their property and illegally terminate the contract, OPIC intervened, along with the U.S. Ambassador, to correct the situation. Without OPIC's insurance backing and timely U.S. government intervention, Mr. Braswell would have lost his entire investment in Panama.

The final witness, Dr. Craig Roach, documented for the subcommittee three case studies of what happens to small business suppliers once a larger firm wins a power project contract thanks to help from OPIC and/or the Export-Import Bank of the United States (Ex-Im). In his findings, Dr. Roach reported that first, each of these case studies generated between 3,000 and 4,000 U.S. jobs; second, each of these projects relied on a large number of suppliers spread throughout the country; and third, 60 percent of these suppliers were small- and medium-sized businesses.

Dr. Roach also emphasized for the subcommittee that every major industrialized nation has trade finance and investment support comparable to or more aggressive than OPIC and Ex-Im. Each of these case studies were subject to intense foreign competition. Thus, if OPIC or Ex-Im was not there to level the playing field, these deals would have gone to our foreign competitors. As a result, the benefits to small business suppliers would have disappeared.

In conclusion, the hearing determined that OPIC helps small business, both directly and indirectly. For further information about this hearing, refer to Committee publication number 105–10.

### 7.6.3 THE IMPACT OF ESTATE TAXES ON SMALL AND FAMILY OWNED BUSINESSES

*Background*

On June 27, 1997, the Subcommittee on Tax, Finance and Exports held a hearing to discuss the impact of estate taxes on small and family-owned businesses. The Committee heard testimony from individuals, business owners and organizations affected by this onerous tax. Additionally, the Committee investigated the recommendations of two economists and possible solutions to the death tax.

*Summary*

The hearing consisted of two panels. The first panel included: Mr. James Antunes, President, and CEO, A.J. Antunes & Co., on behalf of the National Association of Manufacturers; Ms. Mary Borse, Downers Grove, Illinois; Mr. James Martin, President, the 60 Plus Association; Mr. Todd McCracken, President, National Small Business United; Ms. Kelly Niemi, ACF, Neimi Forestry, Castle Rock, WA; and Mr. James Wickett, Manager, House of Legislative Affairs, Federal Government Relations, National Federation of Independent Business.

Mr. Antunes testified that preparing to avoid the death tax forces many family-owned businesses to borrow against their company to pay high insurance premiums and taxes. He elaborated these businesses are forced to sell off assets or to forgo making necessary capital improvements. In the past five years, the death tax rate grew faster than the ability of Mr. Antunes' company to create jobs.

Ms. Borse testified the death inflicted economic horrors upon her family. After her parents' death, the IRS levied a 60% tax on the estate and forced them to pay double on unearned income. The family was economically "raped" by lawyers, accountants and their trustee. Ms. Borse also testified the family business was forced to close, resulting in a loss of over 200 jobs in the community. Ms. Borse stressed the important role her parents and their family business led in contributing to and building their local community.

Mr. Wickett testified the death tax destroys the American dream of owning and developing a business with employees and family members; and of passing it on to the next generation. He stated that people who support the death tax based upon IRS data are using misleading and incomplete information. While the IRS data illustrates that a small portion of society pays the tax, it ignores the thousands of small business owners who have to liquidate their businesses and estates to pay tax bills. Mr. Wickett testified that the House of Representatives Committee on Ways and Means passed legislation increasing the exemption to $1 million by 2007. However, this change is only a first step that does not yet accurately catch up with inflation rates.

Mr. McCracken testified that the House passed death tax is insufficient and needs to be properly indexed for inflation. He stated that estate tax planning continuously erodes employers' profitability. Finally, Mr. Martin highlighted a petition with 190,000 signature circulated by the 60 Plus Association in support of abolishing the death tax.

The second panel consisted of two economists: Mr. Bruce Bartlett, Senior Fellow, National Center for Policy Analysis; and Mr. Leonard Burman, Senior Research Associate, The Urban Institute, Income and Benefits Policy Center.

Mr. Bartlett testified that good estate planning can eliminate the death tax completely, but conceded estate planning takes extensive time and cost. Accordingly, only individuals possessing larger estates traditionally implement an estate plan. As a result, most small business owners and their families face the egregious estate tax because they rarely consider the net value of their estate while they are alive. Under this system, the surviving family members have to deal with the financial repercussions. He also testified that implementing a flat tax would be beneficial and easier to comprehend.

Mr. Burman testified that Congress should think about estate tax reform. Mr. Burman highlighted IRS data indicating the estate tax affected only 1.4% of the people who died in 1995. Of this percentage, only 2,000 were small businesses or farms. Nonetheless, he testified that estate taxes levied on small businesses and farms amount to less than 4% of federal estate tax revenues. Therefore, while few people who die are directly subject to the estate tax, a problem does exist. The problem is that the government spends more money enforcing the tax and individuals spend more money complying with it than the government raises in collecting it. In Mr. Bruman's view, therefore, the best way to cut estate taxes would be to allow a full credit against estate taxes for the taxes individuals paid on their capital gains.

For further information on this hearing, refer to Committee publication number 105–14.

### 7.6.4 DOES EX-IM HELP SMALL BUSINESS EXPORTERS?

*Background*

On July 15, 1997, the Subcommittee held a hearing examining the impact of the Export-Import Bank of the United States (Ex-Im) on small business. Ex-Im is the official export credit agency of the U.S. government for American-made products destined for export. The Ex-Im reauthorization bill had just passed the Banking Committee and was nearing House floor action. The purpose of the hearing was to acquaint subcommittee Members with Ex-Im's programs and review their efforts to help small business exporters.

*Summary*

The hearing was comprised of one panel, which included five witnesses. The first panelist was the newly installed President and Chairman of the Ex-Im Bank, the Honorable James Harmon. He presented the subcommittee with a brief review of Ex-Im's history and its efforts to carry out its congressional mandate to increase

small business export loans. In 1992, Congress mandated that at least 10 percent of Ex-Im's financing be set aside for small businesses. In 1996, Mr. Harmon announced that Ex-Im supported 1,934 small business transactions, valued at $2.4 billion. In other words, 21 percent of Ex-Im's financing and 81 percent of the transactions or deals were in direct support of small businesses. In addition, Mr. Harmon pointed out that Ex-Im supports even more small businesses which participate as subcontractors and suppliers to larger firms that export with Ex-Im help. He highlighted a specific deal in the Chairman's district, Beloit Corporation, that supported about 300 suppliers, 150 of which were small businesses mostly located in the 16th District of Illinois.

The second witness, Brett Silvers, Chairman and President of First National Bank of New England of Hartford, Connecticut, provided a perspective of a banker who specializes in making small business export loans. He informed the subcommittee of the importance of Ex-Im and made a few suggestions for reform. Critical to increasing small business export growth and to reduce the bureaucratic burden on Ex-Im, Mr. Silvers believes that Ex-Im should lower the risk to the taxpayer of Ex-Im's Medium Term Guarantee and Medium Term Insurance Programs from 100 percent to 85 percent. Currently, Ex-Im maintains a 100 percent guarantee for these medium-term (up to seven years) programs, which, in Mr. Silvers' opinion, prevents Ex-Im from delegating this responsibility to interested lenders, similar to the Export Working Capital Guarantee program (the EWCG program is geared towards shorter term deals, under one year, and many banks have been authorized under the "delegated authority" program by Ex-Im to make EWC loans, subject to oversight). Fifteen percent risk-sharing by lenders and exporters for loans and insurance programs up to seven years would, according to Mr. Silvers, increase the number of banks involved in international finance and thus increase the number of small business exporters.

The next two witnesses provided a point of view from the small business exporter. Warren Fuller, President and Chairman of Paul O. Abbe, Inc. of Little Falls, New Jersey related the story of how his 40 employee company that manufactures very specialized process equipment went from $3 million in sales in 1994 to over $7 million in sales in 1996, thanks largely in part to exports. This increase was spurred by a $1.5 million line of credit established through the First National Bank of New England, which is a delegated authority lender of Ex-Im. As a result, Mr. Fuller was able to hire three more people to fill high-quality, good paying jobs in his company.

David Lamb, Managing Director of Lamb-Grays Harbor Company of Hoquiam, Washington, related a similar story. Mr. Lamb's company employs nearly 300 workers producing materials handling equipment for the pulp and paper industry. Their main competitors are in Germany, Finland, Sweden, and Japan who have no reservations about using their home government export credit agency. Lambs-Gray Harbor began to use Ex-Im services in 1992 after Congress imposed the new mandate to expand small business export loans and changed the culture of the agency. According to Mr. Lamb, Ex-Im proved to be the winning edge in securing these in-

tensely competitive foreign contracts. Just a few weeks before the hearing, Mr. Lamb related a story of how his company won a $20 million order because of a 24 hour turn-around time on a letter of commitment from Ex-Im for a loan. Without Ex-Im's quick action in helping to secure that deal, Lamb-Grays Harbor would have had to let go 30 people.

The final witness was Lon Zeager, President of Made Machine Company, Inc. of Elyria, Ohio who provided a perspective of a small business supplier to a larger firm. Mr. Zeager's company biggest customer is the Fuller Company of Bethlehem, Pennsylvania, which manufacturers cement. His 24 employee company, which doubled in size over the past seven years, manufacturers dampers for various applications. Mr. Zeager believes the reason for the job growth at his company is because of the increase in the number of orders his company has received from the Fuller Company when they won export deals abroad, thanks to assistance from Ex-Im.

Thus, the hearing concluded that Ex-Im helps small business exporters. While there is room for improvement, the agency should not be abolished. For further information about this hearing, refer to Committee publication number 105–18.

### 7.6.5 THE FIRST STEP: DEATH TAX REFORM

*Background*

On March 25, 1998, the Subcommittee on Tax, Finance and Exports held a hearing to explore in detail the onerous economic effects of the estate tax—the death tax —on small business, women and minorities. The Committee investigated whether the elimination of the death tax is essential to the survival of our nation's small businesses and family farms, and to the health of the nation's economy.

*Summary*

The hearing consisted of one panel: Mr. William Beach, John M. Olin Senior Fellow in Economics, and Director of the Center for Data Analysis, The Heritage Foundation, Washington, DC; Mr. Richard Fullembaum, accompanied by Ms. Mariana McNeill, M&R Associates, Rockville MD, on behalf of the Research Institute for Small and Emerging Businesses, Inc., Washington, DC; Mr. David Lord, President and CEO, Pioneer Newspapers, Inc., Seattle Washington; and Mr. Edward McCaffery, Professor of Law and Economics, University of Southern California, Los Angeles, California.

Mr. Lord testified that the death tax has severe socio-economic effects on the newspaper industry as a whole and on Pioneer Newspapers in Seattle, Washington. To successfully counter the potentially devastating economic effects of the death tax, Pioneer newspapers must allocate valuable resources to pay estate planners and attorneys' fees to create tax avoidance structures. As a result, Pioneer must delay necessary capital improvements and investments in employee and community programs. Mr. Lord elaborated that the death tax is a contributing factor in the growing trend toward consolidation of newspapers, thereby reducing the number of privately held companies and yielding large conglomerations and a diluted, disinterested media source.

Mr. Beach testified that the death tax is inconsistent with public policy by inflicting an extraordinary amount of socio-economic damage to minority and women-owned small businesses. While our public policy extends civil liberties, civil rights, and equal opportunity to all, the death tax undermines this promise. Mr. Beach testified that if Congress repeals the death tax the economy would grow an estimated $11 billion dollars, create 145,000 new jobs, and increase personal income precipitously.

Mr. McCaffery, a self-avowed "liberal" professor, testified that Congress must completely abolish the death tax. Calling it the ultimate "tax on virtue," Mr. McCaffery said the death tax penalizes those who work hard, save and invest. He faulted Democrats for not "seeing the light" in tax reform, and for blocking key Republican death tax reform initiatives. Mr. McCaffery argued against special death tax provisions that fall short of complete repeal. He believes these provisions invariably lead to complicated laws that are expensive to enforce. They result in counter-productive and counter-intuitive effects in both equity and efficiency. Mr. McCaffery also believes that special business carve-outs from the death tax penalize thrift, life work and savings. Consequently, he strongly advocates complete repeal of the death tax.

Mr. Fullenbaum testified on the findings of a study prepared by him and Ms. McNeill for the Research Institute for Small and Emerging Businesses, Inc., which analyzes the aggregate short-term and intermediate economic effects of repealing the Federal Estate and Gift Tax over a seven (7) year period. The study addresses the macroeconomics consequences of eliminating the tax in terms of output, employment, productivity, interest rates, investment, prices and net government revenues. The results of the study conclude that from fiscal years 1997 to 2003 eliminating the death tax would lead to higher levels of real output, employment and investment. Approximately $74 billion of the lost $98 billion in revenue would be recaptured, excluding any revenue recaptured from projected increased consumer activity. (These figures do not take into account any revenues recaptured as result of the subsequent sale of assets under a unified capital gains tax system.)

For further information on this hearing, please refer to the Committee publication number 105–41.

### 7.6.6 INTERNAL REVENUE SERVICE ACCOUNTABILITY TO SMALL BUSINESS AND SELF-EMPLOYED TAXPAYERS

*Background*

On Friday, May 15, 1998, the Subcommittee on Tax, Finance and Exports of the Committee on Small Business held a hearing at Washington State University in Vancouver, Washington. The purpose of the hearing was to assess whether the Internal Revenue Service (IRS) had improved its services and accountability to small business and self-employed taxpayers during the past year. The Honorable Linda Smith, Vice Chair of the Subcommittee, presided over the hearing.

Throughout the fall of 1997, a series of hearings held in the House and Senate revealed growing IRS mismanagement and collection abuses. The hearings and several related bills prompted the

House to pass a sweeping IRS reform bill, the Internal Revenue Service Restructuring and Reform Act, on November 5, 1997 by a vote of 426 to 4. In May 1998, the Senate unanimously passed its own version of the IRS reform bill. This Subcommittee hearing served as an opportunity for the small business community to testify on its evaluation of the IRS. The testimony of the witnesses also provided important small business information in preparation for the anticipated House-Senate conference on the IRS reform legislation.

*Summary*

The hearing was comprised of one panel including: David Austen, CPA, Vancouver, Washington; Mike Day, CPA, Caton, Day & Co., CPA's Inc., Vancouver, Washington; Scott Dietzen, CPA, LeMaster & Daniels, PLLC, Moses Lake, Washington; Dolores Harris, EA, Puyallup, Washington, on behalf of the National Association of Enrolled Agents; Stephen B. Hill, Esq., Shareholder, Bullivant, Houser, Bailey, Pendergrass & Hoffman, Portland, Oregon; Leslie S. Shapiro, Legal Counsel, National Society of Accountants, Alexandria, Virginia.

Many witnesses shared their sense that the IRS had made substantial improvements internally. For example, the IRS vastly upgraded its management initiatives. Nevertheless, the witnesses concurred that the agency needs to continually examine and improve its policies and practices affecting small businesses. Furthermore, the testimony of the witnesses revealed that the IRS' level of quality is a regional factor in which certain IRS offices succeeded while others failed to improve their accountability to small business and self-employed taxpayers.

Most of the witnesses expressed overall satisfaction with the Washington and Oregon district IRS offices. Stephen Hill discussed his satisfaction in handling most issues for clients that involved interaction with the Oregon District Internal Revenue Service. Similar to the other witnesses, it appeared to him that upper levels of management are willing to make improvements. Relatedly, several witnesses cited new IRS Commissioner Charles O. Rosotti's positive steps for small business. Dolores Harris expressed her sense that Commissioner Rosotti's proposals for change are on the right track for small business. She also discussed the Seattle area's small business lab and focus group.

Witnesses described many problems that plague small business owners and practitioners attempting to resolve tax issues with the IRS. Mike Day expressed his concerns regarding the Automated Collections System and how time constraints often limit the ability of professional practitioners to help taxpayers. Scott Dietzen, a representative of several farm producers, focused on IRS employees and discussed why he believes IRS personnel lack an understanding of the law. He testified there are IRS proceedings that improperly motivate IRS employees. Further, he explained why the complexity of IRS regulations hurt small farmers. Similarly, Stephen Hill expressed dissatisfaction with how the actions of some Service Center employees in Oregon frustrate practitioners and taxpayers. He explained that Service Centers provide inconsistent, slow service and lack an adequate computer system to handle consolidations.

The panel offered substantial recommendations for improving the lingering problems small businesses face with the IRS. Mike Day suggested the IRS should create a more user-friendly collection notice and educate the public about alternatives in dealing with IRS personnel should a conflict arise. Delores Harris emphasized clarification techniques as well and suggested there is a need for taxpayer education and tax simplification. She and other panel members emphasized reforming Internal Revenue Form 1040, Schedule D. Leslie Shapiro offered recommendations for improving the structure of the proposed IRS Oversight Board should the provision remain in the IRS reform bill after conference. His suggestions included providing the Oversight Board with the authority to address audit and collection activities and to review the ethics, integrity and civility of IRS officers and employees. Finally, he fervently recommended the inclusion of small business representatives on the proposed IRS Oversight Board.

For further information on this hearing, please refer to the Committee publication number 105–51.

### 7.6.7 REDUCING THE TAX BURDEN ON SMALL BUSINESS OWNERS

*Background*

During the afternoon of June 1, 1998, the Subcommittee traveled to the State Capitol building in Topeka, Kansas to learn of the tax problems facing small business owners. The purpose of the hearing was to hear directly from small business owners, who have limited time and are usually unavailable to travel to Washington, DC to testify before Congress, about their recommendations for possible tax cuts and reforms.

*Summary*

The hearing was comprised of one large panel of seven witnesses. Each one of these witnesses focused on one particular tax problem that hindered their ability to expand and create jobs in Kansas.

Charlie Peer of Great Plains Ventures located in Wichita, Kansas led off the panel discussion testifying about the negative impact of the federal estate or "death" tax. Mr. Peer has had to artfully plan for his retirement and his estate in order to keep his company in private hands in Wichita, both for his children's security and his employees future. His daughter, Susayn Brandes, also employed at Great Plains Ventures, testified how the estate or "death" tax takes a personal toll on her family. To her, small family-owned and operated companies like Great Plains Ventures is similar to raising a child. The estate tax is like having an outsider moving this family member from home to out-of-state and then telling the family that they can no longer influence this child. Ms. Brandes and her brother have made many personal sacrifices just so the family business is protected from seizure by this "outsider," which is, in this case, the U.S. government.

David Allison, a Certified Public Accountant (CPA) with the firm of Braunsdorf, Carlson & Clinkinbeard, located in Topeka, Kansas, provided a unique view of the federal tax burden on small business owners. His number one recommendation was to reform the defini-

tion of "independent contractor." He urged Members of Congress to cosponsor and endorse H.R. 3722, introduced by Representative Jon Christensen of Nebraska, which would simplify the definition of independent contractor in order to eliminate the confusion that exists between those who are legitimate independent contractors and employees of a company.

Pat Shelley of Teague Electric Construction of Overland Park, Kansas, testified about the need to reduce the capital gains tax rate. Mr. Shelley believes the capital gains tax rate represents an anti-growth philosophy. Literally trillions of dollars worth of investment are locked away simply because of the potential adverse tax consequences. Other nations of the world, like Hong Kong, Germany, and the Netherlands do not tax capital gains at all. Reducing and perhaps eliminating the capital gains tax rate would increase America's international competitiveness.

Roland Smith of the Wichita Independent Business Association testified about the need to provide 100 percent tax deductibility of health insurance premiums for the self-employed. Mr. Smith believes it is unfair that incorporated businesses are able to fully deduct their health insurance premiums but not the self-employed. While the tax cut bill passed by Congress last year made gradual progress to solve this problem, it is still not good enough. Fully deductibility should not have to wait until 2007, according to Mr. Smith.

Paul Styers of Styers Equipment Company located in Overland Park, Kansas, testified about the need to generally reduce tax rates across-the-board. By allowing more money to be kept by the hands that produce it will result in significant benefits to the U.S. economy.

Finally, Bill Rowe of Willie C's Café and Bar located in Wichita, Kansas testified about various tax problems unique to restaurant owners. The most onerous problem is the "tip" tax, which makes tax collectors out of restaurant owners. While the Tip Reporting Alternative Commitment (TRAC) is suppose to be voluntary, the IRS strongly suggested to Mr. Rowe that in order to avoid an audit, he should sign up for the TRAC program. It is his opinion that collecting proper taxes on tips should be a matter between his employees and the IRS, not placing him as the man in the middle.

Mr. Rowe also mentioned four other problems associated with the tax code. First, was the compliance cost of the tax laws on small business owners. Second, was his complaint about double taxation, particularly on the issue of paying corporate income taxes and then having his shareholders pay taxes again on the dividends. Third, was his observation about the enormous burden of payroll taxes. And, last, he agreed with the other witness on the need to reduce the capital gains tax rate.

In conclusion, all witnesses had various ideas on how to reduce the tax burden on our nation's small business owners. These ideas centered around repealing the estate tax, clarifying the definition of an independent contractor, reducing the capital gains tax rate, providing full deductibility of health insurance premiums for the self-employed, reducing tax rates across-the-board, and reforming the tip tax policy of the IRS. They all agreed that some progress was made by Congress in 1997 in this direction. But they all be-

lieved that there is still a long way to go to reforming the U.S. Tax Code in order to foster small business development in the United States. For further information about this hearing, refer to Committee publication 105–54.

### 7.6.8 EXPORT RESOURCES FOR SMALL BUSINESSES

*Background*

During the morning of June 1, 1998, the Subcommittee continued its field hearing agenda with a forum in Overland Park, Kansas to examine the resources that are available from the public and private sectors to help small businesses enter or expand their export sales. The purpose of the hearing was to familiarize the small business community in the greater Kansas City metropolitan area about the wealth of information that is readily available, often just a few computer clicks away, about export opportunities around the world.

*Summary*

The hearing was comprised of three panels. The first panel allowed local small business exporters to share their story of how they became involved in selling overseas. Those who provide export information and trade statistics demonstrated their product as part of the second panel. Once an interested overseas customer is found, the final panel explained the services that are available from the U.S. government to help finance an export deal.

The first panel was comprised of two witnesses—Jill Jarvis of Thompson's Pet Pasta Products, located in Kansas City, Kansas, and Mike Kilkenny of Taylor Forge Engineered Systems, located in Paola, Kansas. Ms. Jarvis testified how her company, a manufacturer of high quality dog food, never exported prior to 1995. Because she used some of the federal government's resources in export promotion (the National Trade Data Bank and the Foreign Agricultural Service), she was able to export $800,000 worth of dog food in 1997 and expects to reach $2.5 million in international sales this year. In addition, she complimented the help she reached through various export promotion offices of the State of Kansas.

Mr. Kilkenny attributed almost all of the sales growth of Taylor Forge, which designs and fabricates custom steel products for the energy markets, over the last three years to exports. Average sales grew from $20 million in 1992 to an expected $38 million in 1998. His company sought international markets mainly out of necessity. He gave four quick points of advice to potential small business exporters. First, do not be afraid to start. Second, define your niche specifically. Third, establish good overseas agent relationships. And, finally, learn the way other countries do business. Mr. Kilkenny also specifically recommended traveling on an overseas trade mission as one good way to establish contacts and overcome the fear factor of selling overseas.

The second panel of three witnesses then began their presentations. Tom Strauss, the local Kansas City representative of the U.S. & Foreign Commercial Service of the Department of Commerce, went through his slide presentation of what export promotion services are available from the U.S. government. The main

focus of his presentation centered on the National Trade Data Bank (NTDB) and the various reports a small business exporter can receive for a nominal fee about the prospects for doing business in a particular country. In addition, Mr. Strauss encouraged participation in trade shows and overseas trade mission.

Mary Ann Boukalis, of Global Trade Information Services, described how her private company customizes trade statistical information into a more user-friendly format. By dividing the total value of a specific good by the total volume of trade, one can easily determine if a potential small business exporter can competitively sell to customers in a particular country. In addition, the trade statistical information can determine which potential countries to prioritize in targeting, based on the rate of growth of sales of a particular good.

Finally, Mike O'Donnell of the International Business Resource Center of Kansas University, explained the workings of their Web Site. Small business exporters can briefly describe their company and their products on the Internet. Overseas customers interested in buying products from Kansas can browse KU's Web Site and place export orders through E-mail connections back to the company.

The third panel was comprised of two witnesses from two export credit agencies of the federal government. Ray Williams of the U.S. Small Business Administration (SBA) explained the mechanics of the Export Working Capital Program (EWCP). This program allows small business exporters, who need less than $750,000 of export working capital, to commence work on a particular project destined for export. The SBA would guarantee 90 percent of a commercial bank's loan for this purpose. Export working capital loans are of a short-term nature (usually less than 60 days) because a small business exporter must have a deal or contract in hand as assurance of repayment.

Jean Fitzgibbon of the Export-Import Bank of the United States (Ex-Im) explained many of their programs and some recent changes to their regulations to ease access to trade finance. Most importantly, Ex-Im jointly administers the EWCP by taking on the export deals greater than $750,000. Ms. Fitzgibbon also encouraged any bankers in attendance at the hearing to become qualified "delegated authority" lenders so that more opportunities could be opened up to small business exporters to find alternative sources of financing.

Thus, the hearing concluded that there are a multitude of resources that are readily available to help small businesses enter the export arena. It's mainly a question of surmounting the "fear" barrier of selling overseas. There were many supplementary materials submitted for the record that mentioned other resources for assistance. For further information about this hearing, refer to Committee publication 105–55.

### 7.6.9 THE EFFECT OF THE ESTATE TAX ON CENTRAL NEW JERSEY FARMS AND SMALL BUSINESSES

*Background*

On June 2, 1998, the Subcommittee continued its field hearing agenda with a forum dedicated specifically to focus on the impact of the estate or "death" tax on farms and small businesses in areas where land values are at a premium and suburban sprawl is a growing problem. The purpose of the hearing was not only to hear of the devastating impact of the estate tax on the longevity of family businesses but to learn of its negative impact on the environment.

*Summary*

The hearing was comprised of one panel of six small business witnesses from the central New Jersey area of the 12th District, represented by Congressman Mike Pappas. Each one of these witnesses told their personal story of their dealing with implications of the estate tax.

Four witnesses, who are farm owners and operators, testified about the harsh impact of the estate tax on their ability to pass along their business to future generations. Fred Clucas of Tewksbury, New Jersey explained that even spending much time and money planning for his death, he still does not exactly know if his estate tax plan will be enough to save his family farm.

Tom Everett of Somerville, New Jersey, complained about the high value of land in rural areas on the edge of suburban sprawl due to development pressures, such as central New Jersey. These land values easily exceed the maximum exemption limit of the estate tax. Thus, the estate tax is a barrier to the growth of a farm business in these areas.

Steven Jany from Highstown, New Jersey testified regarding his personal experience with the estate tax after the death of his father-in-law in 1991. His family was able to take advantage of Section 1032(a) to keep the farm open but has had to promise to farm the land for 10 years. It cost his family $30,000 just to pay the lawyers and appraisers for this Section 1032(a) protection.

Henry "Pete" Chamberlin of Windsor, New Jersey testified about how after he and his brother and sister inherited the family farm in 1990, their nightmare started. Just to pay the estate tax, he and his siblings had to liquidate their life savings. To add to this misery, his local township down zoned their property three different times, making the farm worth less and less. In fact, their farm lost one-third of its value since 1990. Only 34 acres remains of the farm his family has had since the early 1900's, and Mr. Chamberlin expected to sell that last portion of his land later that summer to developers.

To provide a non-farm perspective, Denise Wood of Princeton, New Jersey talked about her worries owning a BMW auto dealership. Because automotive dealers has a high percentage, up to 90 percent, of the value of the business tied up in non-liquid assets, such as inventory and property, the estate tax poses a high burden if the owner wishes to pass along the business to the next genera-

tion. Almost all auto dealers have assets well in excess of one-time unified credit exemption of $1.3 million, which places them in the 55 percent tax bracket. Franchised car dealers have contractual obligations to maintain a certain level of service and spare parts. They cannot sell off portions of the business in order to decrease the estate tax burden. Thus, car dealers are "asset rich but cash poor." In addition, Ms. Wood feels an obligation to preserve the business not just for her children but for her 45 employees and their families. In her opinion, the estate tax should not put these people out of a job.

Finally, the Subcommittee heard from Ms. Penny Hendrickson who owns a farm in Lawrenceville, New Jersey. In 1993, she and her husband inherited a 100 acre farm from her father-in-law. In order to reduce the estate tax obligation of $360,000, they took advantage of the "Promise to Farm" provision of the tax code, which reduced their tax payment to $51,000. This provision obligates the Hendricksons to farm their property for 10 years. Shortly after they acquired the farm, Ms. Hendrickson was approached by representatives from the New Jersey Farmland Preservation Program. In return for a promise not to sell their property to developers, the state of New Jersey would "purchase" their development rights. The goal of this state initiative is to maintain open spaces in historically rural areas now threatened by suburban sprawl. But if the Hendrickson's pursued this initiative, they would owe the Internal Revenue Service (IRS) $309,000. Thus, the estate tax stopped the Hendrickson's "cold" in their attempt to enroll in the pro-environmental open space state initiative. They are now contemplating selling the land to a developer anyway while land prices are still high. Ms. Hendrickson concluded that if New Jersey still wants to be known as the "Garden State," the estate tax should be removed as a barrier to farmers who want to participate in state-sponsored open space initiatives.

Thus, all the witnesses concluded that the estate or "death" tax places a huge burden on any small business owner who wishes to pass down the company to his or her children. Many testified about the emotional pain the estate tax inflicts on families, causing them to make heart-wrenching decisions about the future of a family-run small business. Complying with estate tax takes away from investments that could be used to expand a small business and hire more employees. In addition, the estate tax is a hurdle to any farmer with property near the outer suburbs who wishes to preserve the land from development by enrolling in pro-environment state-sponsored open space initiatives. It was the opinion of all the participants that the estate tax should be repealed, either immediately or as part of a gradual phase-out. For further information about this hearing, refer to Committee publication number 105–52.

### 7.6.10 PENSION REFORM FOR SMALL BUSINESSES

*Background*

On September 16, 1998, the Subcommittee on Tax held a hearing on a pension reform proposal offered by Representative Roy Blunt of Missouri (HR 3870). The goal of this legislative initiative is to make it easier for more small businesses to establish pension plans

for their employees. In 1996, Congress passed the Savings Incentive Match Plan for Employees or SIMPLE pension reform plan. However, this proposal has not done enough to fill the gap of pension coverage, mainly because of limits on contributions ($6,000 and three percent match). H.R. 3870 aims to streamline the regulatory burden of setting up a pension plan for qualified small businesses, increase the contribution limits, and provides a tax credit incentive. H.R. 3870 had gained 78 bipartisan cosponsors, including five Subcommittee members, by the time of the hearing, which is the largest number of Members supporting any pension reform bill in recent memory.

*Summary*

The hearing was comprised of two panels—one with the two prime authors of H.R. 3870 and the second with private sector experts on pension issues.

The first panel allowed the two key bipartisan writers of H.R. 3870 to explain the rational and the need for this legislation. First, Representative Roy Blunt of Missouri (R–7th) provided the Subcommittee with basic background information about the absence of retirement plans among small businesses. For large companies, 84 percent of the employees have access to a pension plan. However, if you work at a firm that has less than 25 people, only 17 percent of those employees have access to a pension plan. The aim of H.R. 3870 is to make it easier and less cumbersome for small businesses to establish pension plans for their employees so that these workers do not rely solely on personal savings and Social Security for their retirement needs.

Representative Ken Bentsen of Texas (D–25th) testified about what he thought were the most important provisions of the legislation. As a trade-off for eliminating some of the "top-heavy" provisions of current pension regulations, H.R. 3870 also requires the employers meet specific qualifications and provide mandatory contributions of at least three percent of an employee's compensation on two conditions: (1) the employee is at least 21 years old and (2) the employee has worked more than 1,000 hours in the preceding calendar year. H.R. 3870 would also allow savings up to 15 percent in an employees pension plan, but no employer match is required above 10 percent. Finally, H.R. 3870 requires a minimum three year vesting period.

The second panel was comprised of two experts from the private sector representing different ends of setting up pension plans. John Bachmann, Managing Partner of the Edward Jones Investment Company in St. Louis, Missouri spoke about the investment side of H.R. 3870. He decried the few number of small businesses that have pension plans for their employees. Yet, many of these same small business owners have personal investment plans of their own. Mr. Backmann believes that H.R. 3870 helps to break down two barriers to setting up these plans by (1) simplifying the burdensome regulatory climate and (2) providing a tax incentive, representing 50 percent of the administrative cost, up to $2,000 the first year and up to 50 percent for future administration costs for the next four years. In response to a question about the level of interest in the approach contained in H.R. 3870, Mr. Bachmann re-

sponded that in about a ten-day period, his local office alone received more than 10,000 inquires.

Mr. Peter Kelly, a lawyer with the firm of Murphy, Smith & Polk of Chicago, Illinois, representing the U.S. Chamber of Commerce, addressed this issue from a legal perspective. Mr. Kelly specifically addressed some technical changes he would like to see in the bill to resolve his concern that H.R. 3870 covers defined benefit plans, as long as the contribution amounts by the employees and employers fit within the parameters in the bill. He also strongly believes that even though he might not personally benefit as a pension lawyer, regulations should be streamlined for small business to help them set up retirement plans. In Mr. Kelly's opinion, anything done to increase retirement savings among small business owners is a win-win for everyone—employers, employees, and all levels of government (in terms of decrease demand for government services).

The hearing concluded that H.R. 3870 is a generally sound legislative proposal that builds on the success of the SIMPLE plan passed by Congress in 1996. While some minor technical changes can be made to the bill and a more accurate cost estimate should be obtained from the Joint Committee on Taxation, nevertheless, H.R. 3870 deserve to be part of the overall debate on tax reform in the 106th Congress to help more small businesses establish pension plans for their employees. For further information about this hearing, refer to Committee publication number 105–65.

○