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YEAR 2000 READINESS AND SMALL BUSINESS PROGRAMS RESTRUCTURING AND REFORM ACT OF 1998

SEPTEMBER 25, 1998.—Ordered to be printed

Mr. BOND, from the Committee on Small Business, submitted the following

REPORT

[To accompany H.R. 3412]

The Committee on Small Business reported H.R. 3412, as amended, to authorize a special program to provide loans to small business concerns to repair or replace their computer systems in preparation for the Year 2000, to authorize programs at the Small Business Administration, and for other purposes, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. INTRODUCTION

The Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 is a bill that addresses the Year 2000 computer problems that are confronting small business concerns. In addition, the bill expands certain programs at the Small Business Administration and creates new pilot programs to help small businesses in today's competitive economy.

On September 15, 1998, the Committee on Small Business conducted a mark-up of bills pending before the Committee. Senator Bond proposed an amendment in the nature of a substitute to H.R. 3412, a bill making technical amendments to the SBIC Program which passed the House on March 24, 1998, and was referred to the Committee. Senator Bond's substitute amendment incorporated the full texts of S. 2372, the Year 2000 Readiness Act, and S. 2407, the Small Business Programs Restructuring and Reform Act of 1998, and provisions from S. 2448, the Small Business Loan Enhancement Act, introduced by Senator Kerry. The Committee de-

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bated and approved seven amendments to Senator Bond's substitute amendment by unanimous voice votes. It subsequently voted 18-0 to report favorably H.R. 3412 as amended by Senator Bond's substitute amendment as amended.

This legislation draws on testimony made before the Committee over the past two years, from reports received by the Committee, and from meetings held with small business owners, their employees, and other persons regarding significant issues facing small business.

On June 2, 1998, the Committee held a hearing on the impact the Year 2000 computer problem on small businesses. The testimony of the witnesses was alarming. Only 15% of small businesses with fewer than 200 employees have begun to inventory the automated systems that may be affected by this computer glitch. The Committee is very concerned about the impact the Y2K problem may have on the economy, in particular on small business owners. One of the looming problems not yet addressed was how small business would obtain the necessary capital to upgrade their computer systems to make them Y2K compliant. The Committee responded by approving an expansion of SBA's FA$TRAK Program, which allows SBA's Certified and Preferred Lenders to obtain a 50% guaranty for making loans to small businesses to make Y2K corrections.

Many of the programs at SBA that are designed to help small business owners are working well, but they need statutory changes to allow them to expand to meet growing demand from the small business community. The Women's Business Center Program is a good example. It was expanded from a $4 million program to an $8 million program by this Committee just last year; however, its growth continues. The Committee's bill authorizes the program to increase to $12 million in grants annually beginning in Fiscal Year 1999.

The Committee has received similar reports about the growth of the Small Business Innovation Research (SBIR) Program. The General Accounting Office (GAO) submitted a comprehensive report on the SBIR Program and testified before the Committee earlier this year. There are ever-increasing numbers of small research firms that are applying for research grants. GAO reports that only one in eight grant applications are being funded. In spite of this success, there are many states that receive 11 or fewer awards annually. In recognition of the program's success, the Committee agreed to make the SBIR Program permanent. The Committee also adopted a provision recommended by Senator Levin which directs Federal agencies to use existing resources to provide SBIR Program outreach in those states that receive small numbers of SBIR awards.

During the past three years, the Committee has taken an active role overseeing SBA's credit programs. In 1995, the Committee approved a provision in the Small Business Lending Enhancement Act (P.L. 104–36) directing SBA to notify the Senate and House Committees on Small Business not later than 15 days before making any significant policy or administrative change affecting the operation of the 7(a) guaranteed business loan program. The bill includes a new provision that requires SBA to provide notification to the Committees whenever its initiates or changes a pilot program under 7(a). These pilot programs generally have not been authorized by the Congress, nor does SBA promulgate regulations to implement the pilot programs. Therefore, this change was adopted to ensure that the Committee obtains sufficient information about the pilot programs to conduct its oversight role.

The SBA has the resources to help in areas that are struggling to participate in the small business community. The bill directs SBA to take an aggressive approach to assist our Nation's veterans, especially the service-disabled veterans. For successful Microloan Intermediaries, the Committee approved a reduced loan loss reserve, and encourages the Intermediaries to use the savings to make more loans and provide more technical assistance to borrowers.

Building on its record to help small businesses deal with the burden of government regulation, the Committee adopted the Small Business Environmental Assistance Pilot Program. This pilot program is designed to provide technical assistance to small businesses to help them comply with environmental regulations. Testimony before the Committee from small business owners frequently focuses on the volume of Federal regulations and the near impossibility for small business to be in compliance with each applicable rule governing its business activities.

There is an obvious reluctance on the part of a small business owner to bring a specific compliance problem to the attention of the agency directed with enforcing compliance. The bill creates a public-private advisory committee at SBA which is tasked with charting the course of small business environmental compliance assistance. The bill also provides four year grants to up to ten Small Business Development Centers to provide environmental compliance assistance to small businesses in partnership with existing programs.

The Committee adopted amendments approving two new pilot programs at SBA. The Disaster Mitigation Pilot Program authorizes loans to small businesses located in disaster prone areas. The loans are to be used to pay for preventive measures to mitigate against future disaster losses. The Community Development Venture Capital Demonstration Program would authorize a new technical assistance program to assist firms that want to make venture capital investments in small businesses located in economically distressed areas, such as inner cities and poor rural counties. The bill directs SBA to report to the Committee on the impact of the two pilot programs.

II. Description of Bill

TITLE 1: SMALL BUSINESS YEAR 2000 READINESS

The Committee is concerned that most small businesses are not adequately prepared for the problems they may face from Year 2000 (Y2K) computer problems. The Y2K problem is a result of computer programmers over the years writing computer code that used only two digits to represent years. This means that certain computers and processors in automated systems will fail because such systems will not recognize the Year 2000 but will mistake it for 1900. The Committee held hearings this year on the effect the Y2K problem will have on small businesses. The Committee received testimony that the companies most at risk from Y2K failures are small and medium-sized industries, not larger companies. Witnesses testified that this anomaly is caused by two factors. First, many small companies have yet to realize the extent the Y2K computer problem affects their businesses. Second, many small companies may not have the access to capital to cure such problems before they cause disastrous effects. They concluded the outlook for small businesses is not good.

A study on Small Business and the Y2K Problem sponsored by Wells Fargo Bank and conducted by the National Federation of Independent Businesses found that an estimated 4,750,000 small employers are exposed to the Y2K problem. This equals approximately 82 percent of all small businesses that have at least two employees. Even though the Y2K problem will have a significant adverse affect on small businesses, the Committee has received information that only 15 percent of all businesses with under 200 employees have even begun to inventory the automated systems that may be affected by this computer glitch, much less commenced fixing such systems. The Committee is concerned that small business exposure to the Y2K problem will have devastating affects on our economy generally. As the result of communications with small businesses, computer manufacturers, consultants and groups, the Committee has found there is significant likelihood that the Y2K issue will cause many small businesses to close, playing a large role in Federal Reserve Chairman Greenspan's prediction of a 40 percent chance for recession at the beginning of the new millennium.

Given the effect a substantial number of small business failures will have on our nation's economy, the Committee determined that it is imperative that legislation be enacted to ensure that small businesses are aware of the Y2K problem and have access to capital to fix such problems. This legislation requires the Small Business Administration (SBA) to establish a limited-term loan program whereby SBA would guarantee 50 percent of the principal amount of a loan made by a private lender to assist small businesses in correcting Year 2000 computer problems. The loan amount would be capped at $50,000. The guarantee limit and loan amount will limit the exposure of the government and ensure that eligible lenders retain sufficient risk so that they make sound underwriting decisions. The Y2K loan program regulations will be based on the guidelines SBA already has established to govern its FA$TRAK pilot program, or any successor pilot program or successor program. Accordingly, lenders originating loans under the Y2K loan program would be permitted to process and document loans using the same internal procedures they would on loans of a similar type and size not governed by a government guarantee.

The bill further provides that each lender designated as a Preferred Lender or Certified Lender by SBA is eligible to participate in the Y2K loan program. This would include approximately 1,000 lenders that have received special authority from SBA to originate loans under SBA's existing 7(a) loan program. The Y2K loan program would sunset after October 31, 2001.

The Committee intends that this bill will serve the dual purpose of providing small businesses with the means to continue operating successfully after January 1, 2000, and making financial institutions and small firms more aware of the dangers that lie ahead. The Committee believes that awareness by lenders of the availability of this loan program is of paramount importance. The Committee understands that, pursuant to the Year 2000 WorkProgram Phase II, the Federal Financial Institutions Examination Council has established procedures for federal regulators to use when examining federally supervised financial institutions for Y2K preparedness. These examination procedures include determining if financial institutions have evaluated the Y2K readiness of their borrowers and implemented controls to mitigate risk from the potential financial difficulties of such borrowers. The Committee believes that financial institutions, in order to comply with these examination procedures and to mitigate losses to their loan portfolios, will contact their small business customers to ensure that they are Y2K compliant and to make them aware of the problems that may arise from noncompliance. The Committee has determined that the existence of a separate Y2K loan program will give financial institutions a specific solution to offer small companies that may not be eligible for additional private capital to fund Y2K corrections and will focus the attention of financial institutions and, in turn, their small business customers to the Y2K problem. Accordingly, the legislation requires SBA to inform all lenders eligible to participate in the program of the loan program's availability.

Section 104 amends the 7(a) loan program to state that one of the purposes of the 7(a) loan program is to "assist small business concerns in meeting technology requirements for the Year 2000." This provision is intended to clarify that all 7(a) lenders, regardless of their status as regular, Certified or Preferred Lenders, may also make loans for Y2K corrections under the 7(a) loan program.

PILOT PROGRAM REQUIREMENTS

Section 103 establishes two reporting requirements for SBA relating to pilot programs administered by SBA under the 7(a) loan program. First, section 103 requires SBA to report to the House and Senate Committees on Small Business prior to making any changes to a pilot program it administers under the 7(a) loan program or prior to the initiation of any pilot program under the 7(a) program, if such change or initiation may affect the subsidy rate estimates for the 7(a) program. The Committee believes it is appropriate that SBA perform, in consultation with OMB, an analysis of the affect any change in, or initiation of, a pilot program will have on the subsidy rate for the 7(a) program and inform the Senate and House Committees on Small Business of the estimated affect, which current law does not require. Any change in the subsidy rate may substantially effect the program level established by Congress.

TITLE II: SMALL BUSINESS PROGRAM RESTRUCTURING AND REFORM

WOMEN'S BUSINESS CENTER PROGRAMS

Due to the rapid growth of women-owned businesses, this Section 201 increases the funding authorization for grants under the Women's Business Center program. Paragraph (a) sets forth the Congressional findings supporting the need for additional funding and the benefits to be derived from the program's expansion. Paragraph (b) increases the authorization for annual appropriations to $12 million, effective Fiscal Year 1999 and thereafter. This is $3 million above the level the Administration requested in the President's budget for Fiscal Year 1999, and $4 million above the level authorized in the Small Business Reauthorization Act of 1997 (P.L. 105–135). Section 201(b) becomes effective on October 1, 1998 and, consequently, does not alter the restrictions in P.L. 105–135 on SBA using these funds for administrative purposes.

Section 201(c) amends the Section 308(b) of P.L. 105–135 to establish a uniform fourth-year matching requirement (one non-federal dollar for every federal dollar awarded) for all Women's Business Centers receiving grants from SBA. At the request of the Committee on Small Business in the House of Representatives, the law enacted last year included a more stringent matching requirement (two non-federal dollars for each federal dollar) for the Centers extending their three-year eligibility for funding to five years. Enactment of this Section will retain the higher matching requirement for all Centers during their fifth year of funding. This change will be effective as though contained in the Small Business Reauthorization Act (P.L. 105–135) at the time of its enactment.

Section 201(d) instructs the General Accounting Office (GAO) to conduct baseline and follow-up studies of the administration of the Women's Business Center program by SBA's Office of Women's Business Ownership (OWBO). Because the Administration previously sought to zero out this program, the GAO studies are to ensure that SBA is providing appropriate oversight, funding and staff to support to this popular and growing program. The information gathered by the Comptroller General will assist the Committees on Small Business in the Senate and House of Representatives' oversight of SBA's management of the program and its continued expansion.

The Comptroller General is to coordinate GAO's efforts with the Small Business Committees. SBA is to assist GAO by making available the information provided to OWBO by the Women's Business Centers. While GAO may contact current and former grantees to gather additional information, GAO should first review all relevant information submitted to SBA in order to minimize the burden on the Centers. GAO is encouraged to meet with the national association of women's business centers to identify the least intrusive and most beneficial approach to gathering information directly from the Centers.

Section 201(d) identifies the analysis to be conducted by GAO and addressed in the baseline and follow-up reports. GAO is to assess SBA's implementation and operation of the program. The analysis required under paragraph (i) would disclose the level of staffing involved in administering the program, the nature of their responsibilities, the process for soliciting and selecting applicants to open centers, administrative expenditures by OWBO related to the women's business center program, and the methods for evaluating the Centers compliance with the terms of their grant contracts. This would include a review of OWBO's procedures for complying with Section 29(h) of the Small Business Act, which requires SBA to conduct annual programmatic and financial evaluations of the centers receiving grants.

Under paragraph (ii), the Committee expects GAO to review SBA's implementation of the program and assess its compliance with the legislative objectives of the program. Paragraph (iii) focuses on the supervisory and oversight responsibilities performed by OWBO. GAO should describe the relationship between OWBO and the Centers. For instance, does OWBO provide technical assistance to the Centers on the delivery of services?

The intent of paragraph (iv) is for GAO to assess whether all 69 centers awarded SBA grants since 1988 continue to provide ongoing training. The Committee intends for GAO to review the information submitted to OWBO by currently funded women's business centers and identify the types of training offered, the number of training hours provided, and number of clients served. Examples of training approaches to be measured include: one-on-one counseling, all-day training sessions, multi-week training courses (i.e., FastTrak II), roundtables, and workshops. GAO will distinguish "networking" sessions from actual training and reflect other services such as the number of loans packaged. The challenge will be for GAO to conduct a telephone survey or develop a written questionnaire to get the same information from formerly funded Centers that no longer have a reporting obligation to SBA. This comparison will inform the Committee on the long-term benefits derived from the grants and whether the Centers are able to sustain their activities without the SBA grants.

GAO's analysis under paragraph (v) assesses SBA's compliance with the reporting requirement found under 29(j) of the Small Business Act. The Small Business Reauthorization Act (P.L. 105–135) retained the requirement for SBA to report annually to the Senate and House Committees on Small Business on the effectiveness of the women's business center program. SBA's report covering June 1996 through July 1997 did not address all five criteria specified in the statute. GAO's analysis should address OWBO's effectiveness in quantifying the outcomes identified in the Small Business Act, the implementation of a computerized monitoring and reporting system (OWBOTrack) to capture this data, and alternative measurements should the outcomes identified in the statute prove inherently difficult to measure. Under paragraph (vi), the Committee will work with GAO to see if there is an appropriate way to identify best practices or gain a profile of the characteristics of a successful women's business center.

SBIR PROGRAM

In 1982, Congress established the Small Business Innovation Research Program because small businesses are a principal source of innovation in the United States. In order to remain competitive in the global economy, the United States has historically depended heavily on innovation through research and development. Our dependence on small business for innovation is significant.

The SBIR program requires agencies with extramural R&D budgets of $100 million or more to set aside not less than 2.5% of that amount for the SBIR program. It is a three phase program. Phase I is designed to determine the scientific and technical merit and feasibility of a proposed research idea. A Phase I grant award cannot exceed $100,000. Phase II is designed to develop further the idea, taking into consideration such things as the idea's commercialization potential. Phase II grant awards cannot exceed $750,000. Phase III is the commercialization phase. It is funded by non-federal funds for the commercial application of the technology or non-SBIR federal funds for continued R&D under government contracts.

Ten years after Congress originally approved the SBIR program, it was re-authorized by the Small Business Research and Development Enhancement Act (P.L. 102–564, October 28, 1992). The principal purposes of the 1992 Act were to:

Expand and improve the SBIR Program;

Emphasize the program's goal of increasing the private sector's commercialization of technologies; and

Increase small business' participation in the program by women-owned small business concerns and by socially and economically disadvantaged small business concerns.

In addition, the 1992 Act directed the GAO to undertake two reports. The first report was submitted to the Committees on Small Business on March 8, 1995. Their second report was received April 1998.

In April 1998, GAO issued its comprehensive report on the state of the SBIR Program. In June 1998, GAO addressed the report in testimony before the Committee. The unmistakable message was clear—this is a worthwhile program that is running very well. There are ten Federal agencies that participate in the program, and GAO concluded they are adhering to the program's funding requirements. Competition has been intense among small business R&D firms in response to solicitations from the ten agencies. GAO found, however, that it was very rare for an agency to make an award when it received only one proposal in response to a solicitation.

Section 202 would remove the sunset date for the SBIR Program, effectively making the program permanent. Testimony before the Committee and the findings of the GAO clearly support this Congressional action. Section 202 also requires each agency subject to the SBIR Program to use the same formula set forth by the Director of the Office of Management and Budget in calculating extramural budgets, as noted by GAO in its testimony before the Committee.

Members of the Committee continued to be concerned about the high concentration of SBIR awards in a small number of states, with nearly 80% of awards going to six states. Last year, the Congress approved a special program that directs SBA to make grants to conduct outreach in states where SBIR participation is low. Section 202 is another step to improve outreach of the SBIR Program.

It directs existing Federal outreach activities, such as the electronic commerce resource centers and the procurement technical assistance centers, to conduct specific outreach activities funded out of their existing budgets to support the SBIR Program. The Committee intends to review closely the success of SBA activities and activities of agencies subject to the SBIR Program to conduct effective outreach activities in states receiving small numbers of SBIR awards.

SBIC PROGRAM

In 1958, Congress created the SBIC Program to assist small business owners obtain investment capital. Forty years later, small businesses continue to experience difficulty in obtaining investment capital from banks and traditional investment sources. SBICs are frequently their only sources of investment capital. In 1992 and 1996, the Committee on Small Business worked closely with the SBA to correct earlier deficiencies in the law in order to ensure the future of the program. Today, the SBIC Program is expanding rapidly in an effort to meet the growing demands of small business owners for debt and equity investment capital.

H.R. 3412, as passed by the House of Representatives, included three technical changes in the SBIC program which have been incorporated in Section 203. The first change removes a requirement that at least 50% of the annual program level of the approved participating securities under the SBIC Program be reserved for funding with SBICs having private capital of not more than $20 million. The requirement has become obsolete because SBA's experience has shown that the vast majority of SBICs applying for leverage have private capital of less than $20 million. Removing the requirement will enhance SBA's recently imposed leverage commitment process and facilitate the use of five-year commitments for SBIC leverage.

The second House change to the SBIC Program clarifies the rules for the determination of an eligible small business or small enterprise that is not required to pay Federal income tax at the corporate level, but that is required to pass income through to its shareholders or partners by using a specified formula to compute its after-tax income.

The third House provision requires SBA to issue SBIC guarantees and trust certificates at periodic intervals of not less than twelve months. The current requirement is six months. This change will give maximum flexibility for SBA and the SBIC industry to negotiate the placement of certificates that fund leverage and obtain the lowest possible interest rate.

Section 203 would also make a relatively small change in the operation of the program. This change, however, would help smaller, small businesses to be more attractive to investors. SBICs would be permitted to accept royalty payments contingent on future performance from companies in which they invest as a form of equity return for their investment.

SBA already permits SBICs to receive warrants from small businesses, which give the investing SBIC the right to acquire a portion of the equity of the small business. By pledging royalties or warrants, the small business is able to reduce the interest that would otherwise be payable by the small business to the SBIC. Importantly, the royalty feature provides the smaller small business with an incentive to attract SBIC investments when the return may otherwise be insufficient to attract venture capital.

During the Committee's consideration of H.R. 3412, the Committee approved an amendment to increase the program authorization levels to fund participating securities. In Fiscal Year 1999, the authorization level would increase from $800 million to $1 billion; in Fiscal Year 2000, it would increase from $900 million to $1.2 billion. The two increases were approved by the Committee based on reports that demand in the SBIC program was growing at a rapid rate, and higher authorization levels are necessary if the SBIC Program is going to meet the demand for investment capital from the small business community.

CERTIFIED DEVELOPMENT COMPANY PROGRAM

The 504 Certified Development Company (CDC) Program was enacted to leverage private sector resources to fund larger projects for small businesses to acquire, construct or expand their facilities. Such loans create job opportunities and improve the economic health of communities.

Over the past four years, this Committee has devoted considerable attention to the 504 program. The Committee has been particularly concerned about reports and testimony from the Small Business Administration (SBA) and the Office of Management and Budget about low recoveries following a default by a borrower on a loan made under the program. Under current law, in nearly all cases when a 504 program borrower defaults, it is SBA, not the CDC, that takes the required liquidation and foreclosure actions. The failure of SBA to take aggressive actions to recover the value of collateral held following a default significantly increases the costs to borrowers to obtain a loan under the 504 program. This failure is demonstrated by the Administration's fiscal year 1999 budget estimates that show recoveries on defaulted loans under the 504 program steadily declining. The recovery rate estimate utilized to determine the subsidy rate for the 504 loan program has declined from 44 percent in 1997 to 34.27 percent in 1998 to 30.67 percent in 1999. Because the 504 program is self-funded through user fees, with no appropriation required by Congress, borrowers must pay higher fees to compensate for low recovery rates. The Committee believes that greater recoveries could be realized if all qualified CDCs were given the authority to liquidate and foreclose on the 504 loans in their portfolios.

In response to the continuing problem of low recoveries on 504 loans, the Committee, in 1996, approved legislation establishing a pilot program that allowed approximately 20 CDCs to liquidate loans that they originate. This pilot was implemented in June, 1997, by SBA, working with a group of CDCs representing the CDC industry. Early results of the pilot are encouraging, and allow the Committee to conclude that it is in the best interests of the 504 program to allow additional CDCs to conduct their own liquidation and foreclosure activities.

Many CDCs have demonstrated the ability, through the pilot program and other lending programs in which they participate, to appropriately perform such activities; and have indicated a willingness to perform such functions to supplement SBA's activities in this area. Accordingly, Section 204 of this bill makes the pilot liquidation program permanent and requires SBA to permit certain CDCs to foreclose and liquidate defaulted loans that they have originated under the 504 loan program.

Section 204 requires that a CDC submit to SBA a liquidation plan, workout plan or plan to purchase any other indebtedness secured by property securing the loan at issue, as applicable, prior to engaging in any liquidation or workout activities. Section 204 further requires SBA to approve or reject such plans within 15 business days or provide a CDC with written notice explaining the reason why such plans cannot be approved within this time-frame. These deadlines were drafted in consultation with SBA to ensure that SBA has sufficient time to appropriately consider the plans developed by CDCs. As originally introduced, the legislation provided that if SBA did not specifically approve a liquidation plan, workout plan or plan to purchase indebtedness within the required time frames, such plans would be deemed approved. This initial language was intended to ensure that SBA promptly respond to CDC liquidation plans. The Committee is concerned that if SBA is not expeditious in its consideration of efforts of CDCs to recover the value of collateral, the value of such collateral will depreciate. The legislation, therefore, requires SBA to report to Congress annually on the number of times SBA has failed to approve or reject a CDC's liquidation plan or loan workout plan and the Committee will closely monitor SBA's compliance with these deadlines.

After approval by SBA of a CDC's liquidation plan, the Committee intends that the CDC be permitted to engage in liquidation activities in a manner consistent with that plan and in a reasonable and sound manner according to commercially accepted practices. A CDC need not obtain additional authority to engage in routine liquidation activities that are consistent with its approved liquidation plan. In addition, the Committee intends that CDCs not be required to obtain additional approval for non-routine activities that have been specifically approved in a liquidation plan. It may be appropriate for SBA to promulgate, as part of its regulations, guidelines on the type of routine liquidation activities that do not require further approval from SBA.

Section 204 further permits CDCs to litigate matters related to their liquidation and foreclosure activities, subject to SBA's oversight of such litigation and SBA's right to assume the defense or prosecution of a case if the outcome of the case may adversely affect SBA's management of the 504 loan program or if SBA is entitled to beneficial legal remedies not available to CDCs. The Committee understands that litigation may arise in the ordinary course of liquidation of real estate secured loans, including, for example, judicial foreclosure proceedings and intervention in bankruptcy proceedings. The Committee believes that CDCs should be permitted to engage in such routine litigation activity that arises in the ordinary course of their liquidation efforts. The Committee also believes that SBA should be kept aware of such routine litigation matters and may require certain notifications from CDCs on significant developments in such litigation. SBA, however, should not intervene in such litigation unless the outcome may adversely affect SBA's management of the program or if there are clear benefits to SBA or a CDC from SBA asserting legal remedies unavailable to the CDC.

SMALL BUSINESS FEDERAL CONTRACT SET-ASIDES

Section 502 of the Business Opportunity Development Reform Act of 1988 (P.L. 100–656 of Nov. 15, 1988) called upon the President to establish an annual goal for small business opportunities in Federal contracting, with the Government-wide goal to be "not less than 20 percent of the total value of all prime contract awards for each fiscal year." This Government-wide minimum was raised to 23% in the Small Business Reauthorization Act of 1997 (P.L. 105–135 of Dec. 2, 1997).

The Committee is alarmed by a report issued in April 1998 by the Department of Energy's Office of Inspector General ("Report on Inspection Regarding Small Business Contracting, Statistics Reporting, and Presentation"), which indicates inter alia that the Department of Energy (DoE) exploited a change in its statistical methodology to inflate its small business contracting achievements. For Fiscal Year 1994, the DoE had set a goal of 25% of prime contracts to be awarded to small business. At the end of that year, the DoE reported awarding $3,328,780,000 in contracts to small business out of a total of $9,404,716,000—an impressive 35.4% achievement that well exceeded the 25% goal. Moreover, the DoE set a Fiscal 1995 goal of awarding $3,029,100,000 in prime contracts to small business, out of a base of $8,780,000,000 in total prime contracts, a goal of 34.5%. Although this would have been a modest decline from the 35.4% achievement in Fiscal 1994, it would still have been an encouraging contribution toward the Government-wide contracting goal, then 20%. These goals were signed in a Performance Agreement between the Secretary of Energy and the President.

The remarkable growth in the DoE's small business contracting turned out to be the result of a reduction in the base number the DoE used as its total value of prime contracts. Reducing the denominator of a fraction, with no change in the numerator, will necessarily increase the percentage that the fraction represents. Initially, the Deputy Administrator of the Small Business Administration accepted this change in methodology due to "a unique situation" at DoE regarding the excluded contract dollars. However, the Deputy Administrator subsequently asked DoE to recalculate its small business goals and achievements after observing that DoE's "unique situation" was not in fact unique. When the excluded contract dollars were restored to the base number of total prime contract dollars, the DoE's Fiscal 1994 achievement dropped from the 35.4% initially reported to 19.5% (below the DoE's 25% goal). Further, the Fiscal 1995 goal dropped from 34.5% to 18.4%.

The Inspector General's report notes that, although the inflated figures were included in a Performance Agreement signed with the President, the DoE did not revise its Performance Agreement to reflect the new numbers requested by SBA. The Committee is greatly disturbed by the failure to keep the President apprised of these changes, particularly since the Small Business Act, as amended in

1988 and 1997, places responsibility in the President for setting the Government-wide goal (provided it is not less than 23%). Moreover, the Committee is appalled by comments made in the Inspector General's report by the DoE's Director of Economic Impact and Diversity that "we do not believe it was necessary" to notify the head of the Executive Branch of these significant changes by an Executive agency.

The Committee believes that such notification is in fact necessary. Moreover, the Committee is concerned that the 3% increase in the Government-wide prime contracting goal may increase the temptation for agencies to engage in statistical manipulation to give the mere appearance of compliance without truly increasing small business contracting opportunities. Accordingly, the Committee has included new reporting requirements intended to disclose and monitor these changes. The Committee is concerned that the SBA has issued letters appearing to authorize, and later to de-authorize, these methodological changes. The Committee wishes to be kept apprised of any such letters, and to have the benefit of informed comments by a small business advocate on the advisability of issuing each such letter.

Thus, copies of such letters must be provided to the Senate and House Small Business Committees at least 45 days before such letters may be issued. Further, the SBA's Chief Counsel for Advocacy shall receive copies of such letters as well, and shall submit written comments on the appropriateness of each such letter within 30 days after receipt. The Committee believes this to be consistent with the Chief Counsel's current responsibilities, which include reporting on a variety of issues concerning the Federal Government's relationship with the small business sector. (See 15 U.S.C. §§ 634b, 634c.) As with the Chief Counsel's other reports (see 15 U.S.C. § 634f), the Chief Counsel's comments on letters to change an agency's statistical methodology will not be subject to prior review by other Executive Branch agencies.

To prevent the use of methodological changes to inflate an agency's small business achievements, the Committee has included provisions that require each agency making such methodological changes to include, in its annual report on small business, a calculation of what the reporting year's total contract dollar value would have been under the methodology used during each of the previous two years. The calculation of the total dollar value under the previous year's methodology is intended to disclose the effect of that year's methodological change, to avoid giving the appearance of sudden changes in small business contracting from year to year. The calculation of the total dollar value under the methodology used two years previously is intended to disclose longer term trends: for example, whether the cumulative effect of changes during the current year and of changes during the previous year are consistently allowing the agency to overstate its small business contracting achievements.

Finally, the Committee has also included broader language requiring disclosure of any data excluded from an agency's small business report, any report that deviates from the requirements of the Small Business Act, and of the reasons for such changes. This is intended to capture changes in small business reporting that may be due to problems or practices not currently known to the Committee. Because some agencies have fallen behind in reporting on their small business programs (most notably the DoE, which the Inspector General found was "not in compliance" with statutory requirements), the Committee has imposed a new deadline for reporting to the Congress: 180 days after the end of a fiscal year.

The Committee believes the information required by this bill is necessary to monitor the true state of small business contracting opportunities. Although these reporting provisions entail some additional work, it is hoped this process will prevent abuse of these methodological changes and will keep the number of such changes to an absolute minimum of truly necessary adjustments.

The Committee has not included language in this section to develop an overall methodology or baseline beyond those currently necessary to carry out existing law. The Committee is concerned with changes from year to year that could prove misleading to the users of small business procurement statistics. Generally, a statistic for a given year should be comparable to the same statistic for prior years and for subsequent years—and if it is not comparable, the reasons should be disclosed and explained. In this way, changes in the statistic can help monitor changes in the phenomenon being measured, not simply reflect mere manipulation of statistical methodology.

The Committee notes that the minimum Government-wide goal for small business participation is fixed statutorily at 23% "of the total value of all prime contract awards for each fiscal year." The Committee expressly directs that the value of a contract or type of contract may not be excluded from this total value solely because of the contracting agency's subjective judgment that such a contract is not awardable to small business. The statutory goal is not set in terms of a percentage of "contracts winnable by small business" actually awarded to small business; it is set in terms of total prime contract dollars, and the Committee expects the value of all prime contracts (and only prime contracts) to be included in that figure.

ASSISTANCE FOR VETERANS

Last year, when Congress approved the Small Business Reauthorizaton Act of 1997, it included a separate title to improve business opportunities for service-disabled veterans. The Senate and House Committees on Small Business believed strongly that these individuals deserve better support from the Federal agencies than they have received historically. Last year's bill included a provision requiring the SBA to undertake a comprehensive report containing the findings and recommendations of the SBA Administrator on the needs of small businesses owned and controlled by service-disabled veterans.

Section 206 of H.R. 3412 would take the next step to strengthen the mandate that SBA's programs be more responsive to all veteran small business owners. The bill would direct that veterans receive comprehensive help at SBA. Section 206 elevates the Office of Veterans Affairs at SBA to the Office of Veterans Business Development, which would be headed by an Associate Administrator who would report directly to the SBA Administrator.

In addition, section 206 would establish an Advisory Committee on Veterans' Business Affairs composed of 15 members. Eight members would be veterans who own small businesses, and seven members will be representatives of national veterans service organizations. Further, the bill would create the position of National Veterans' Business Coordinator within the Service Corps of Retired Executives (SCORE) Program. This new position would work in the SBA headquarters to ensure that SCORE's programs nationwide include entrepreneurial counseling and training for veterans.

Section 206 of the bill would make veteran small business owners eligible to apply for small, start-up loans under SBA's Microloan Program. And the SBA Office of Advocacy would be directed to evaluate annually efforts by Federal agencies, business and industry to help business that are owned and controlled by veterans.

The Committee believes that SBA has taken too long to undertake the study directed by last year's bill. Now that SBA has finally undertaken that study, it should proceed with the study expeditiously and should implement Section 206 as promptly as possible. The Committee intends to review thoroughly the efforts by SBA with respect to veterans when it conducts its oversight of SBA programs in early 1999.

SECTION 7(A) LOAN PROGRAM

Section 207 repeals a provision requiring that SBA pay a lender under the 7(a) loan program 100 basis points less than the interest rate on a loan when a lender is paid the guaranteed portion of a defaulted 7(a) loan. Two years ago, Congress enacted this requirement anticipating that it would decrease subsidy costs of the 7(a) program substantially. This has not proved to be the case and the Committee believes that the paperwork burden caused by this provision has been disproportionately high compared to the savings achieved.

The Committee has heard concerns from community banks, including rural banks, that the monthly reporting requirements in the SBA's 7(a) loan program are burdensome. Lenders have stated they lack the loan volume or personnel to meet reporting requirements for the 7(a) loan program in a cost effective manner. In response, the SBA has simplified and varied the forms used to report the 50 basis point fee on all 7(a) loans. The Committee views this as a positive step in assisting rural banks in complying with reporting requirements. However, the Committee continues to hear from community banks, especially rural banks, about difficulties in meeting the monthly reporting requirements. Therefore, the Committee requests that SBA provide it with a report, within 180 days, on the ability of banks, particularly rural banks, to meet the monthly reporting requirement without any undue burden. The report should also contain an analysis of the benefits of monthly reporting as compared with quarterly reporting on the subsidy rate and the effectiveness of any contractors or subcontractors used to compile data for the SBA's lender reporting requirements for the 7(a) program as it relates to the subsidy rate.

DISASTER MITIGATION PILOT PROGRAM

Section 208 incorporates Senator Cleland's amendment to establish a pilot disaster mitigation loan program at the Small Business Administration. This section would permit SBA to establish a pilot program using up to $15 million of disaster loans annually from FY 1999—2003 to provide small businesses located in disaster prone areas with low interest, long-term disaster loans to finance preventive measures to mitigate against future disaster losses. The pilot program would operate in disaster prone areas designated by the Federal Emergency Management Agency (FEMA). FEMA has launched "Project Impact," which emphasizes emergency preparedness, in response to the problem of increased costs and personal devastation caused by repeated natural disasters. Focusing on mitigation of future disaster losses, rather than the current strategy of response and recovery, has been estimated to save as much as 50 percent of projected disaster loan costs.

Under current law, SBA disaster loans may be used for mitigation purposes only to the extent that includes repairing or replacing existing protective devices that are destroyed or damaged in an area that has recently suffered a natural disaster. In addition, up to 20 percent of the disaster loan amount may be used to install new mitigation devices that will prevent future damage. Under the Disaster Mitigation Pilot Program, a small business borrower would be allowed to use 100 percent of an SBA disaster loan for disaster mitigation purposes within an area designated by FEMA.

MICROLOAN PROGRAM

Section 209(a) would strike the cap on the amount of loan funds that a single state can receive under the Microloan Program, while ensuring equitable funding of intermediaries. This provision was adopted during the Committee's consideration of H.R. 3412. Current law requires the SBA to use a formula, based on state population compared to national population, to determine how much funding a state can receive in any fiscal year. This formula neither takes into account the demand for microloans in any single state nor does it consider that several states have intermediaries with the capacity to generate high loan volumes. The formula has worked to penalize several rural states with small populations and a strong demand for microloans. In addition to striking the state funding cap, Section 209 would direct SBA to fund intermediaries equitably. This provision would ensure that Microloan intermediaries in every state have access to adequate microloan funds.

Section 209(b) incorporates Senator Kerry's amendment to restructure the loan loss reserve requirements for SBA's Microloan Program. This provision is designed to permit those Microloan Intermediaries with historical loss rates of less than 15% during the previous five years to reduce their loan loss reserves. The Committee would urge Intermediaries to direct their savings from this provision to make additional microloans or much needed technical assistance available for the borrowers.

This section authorizes the SBA Administrator, upon request of a Microloan Intermediary with at least five years' participation in the program and when certain conditions are met, to reduce its loan loss reserve from 15 percent of its outstanding microloans to its five-year average loan loss rate. In no case could the loan loss reserve be reduced to less than 10 percent. The maximum loan loss reserve would remain at 15 percent. In determining whether to approve an Intermediary's application for a reduced loan loss reserve, the Administrator should consider the average loan losses of the Intermediary for each of the prior five years and any other factors that are likely to impair the ability of the Intermediary to repay its obligations to the SBA. Once an Intermediary's application for a reduced loan loss reserve has been approved, the SBA is required to conduct an annual review of the reduced loan loss reserve, and to make appropriate adjustments to the loss reserve requirement which would be necessary to protect the Federal government from excessive risk of loss.

REAL ESTATE APPRAISAL

Section 210 was incorporated into the legislation at the Committee's markup as an amendment proposed by Senator Kerry. This section changes SBA's appraisal standards under the 504 and 7(a) loan programs to require appraisals of real estate collateral by state-licensed or state-certified appraisers only when more than $250,000 of the loan proceeds are to be used to acquire, construct or improve real property. The section also specifies that a lender must require a state-certified or state-licensed appraisal on loans of less than $250,000 if the lender requires such appraisals for similar unguaranteed loans.

This section conforms the appraisal requirements for the 7(a) and 504 loan programs to the regulations promulgated on June 7, 1994, by the Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation and the Federal Reserve Board. These regulations established a loan amount of $250,000 as the threshold at or below which depository institutions are not required to obtain appraisals of real estate collateral. SBA currently requires lenders to obtain appraisals on collateral on most loans exceeding $100,000. This mandate arises from a circular (Circular No. A–129) issued by the Office of Management and Budget (OMB) which requires all agencies that manage credit programs to ensure that all credit transactions over $100,000 have an appraisal prepared by a state-licensed or state-certified appraiser.

Committee staff has had numerous discussions with officials from OMB and SBA on whether increasing to $250,000 the loan amount threshold that triggers an appraisal requirement will increase risk to Federal government funds. OMB and SBA officials have assured Committee staff repeatedly that raising the threshold to $250,000 will not expand risk to the government or affect the subsidy rates for the 504 or 7(a) loan program. In addition, prior to markup, the Committee received a letter from SBA, that was approved by OMB, providing that neither SBA nor OMB objected to raising this threshold. The Committee has received information that this change will save borrowers approximately $1,000 to $3,000 on each loan where an evaluation of real estate collateral is required in lieu of an appraisal.

COMMUNITY DEVELOPMENT VENTURE CAPITAL DEMONSTRATION PROGRAM

Section 211 authorizes a total of $20 million over four years to create the Community Development Venture Capital (CDVC) Demonstration Program at the SBA. The purpose of this new program is to develop and expand a new but growing field of organizations that use the tools of venture capital to create good jobs, productive wealth, and entrepreneurial capacity that benefit disadvantaged people and economically distressed communities. The Committee would expect the SBA to follow established definitions, such as the definition for the HUBZone Program, to identify "economically distressed communities" that will be eligible to benefit under this demonstration program.

CDVC funds make equity investments in highly competitive small businesses that hold the promise of rapid growth. The investments typically range from $100,000 to $1 million, and the companies in which CDVC funds invest generally employ between ten and one hundred people. Investors in CDVC funds include foundations, banks, insurance companies, corporations, and private individuals.

A small number of CDVC organizations have been successful at producing a "double bottom line" of not only financial returns, but also social benefits in the form of good jobs and healthier communities. Investing capital in smaller businesses in inner cities and rural areas, however, requires a highly specialized set of skills. Businesses in low-income communities need patient, longer-term capital. They need investors who will provide significant entrepreneurial and managerial assistance. They need equity investments far smaller than most traditional venture capital investments. For all these reasons, CDVC funds are generally more expensive to operate as a percentage of funds under management.

Under the CDVC Demonstration Program, SBA will make grants to experienced CDVC organizations that act as intermediaries to provide technical expertise and operating assistance to new, emerging, less experienced CDVC organizations. The SBA also will make grants to "developmental organizations" to conduct training and research to promote the sound development of CDVC organizations. Intermediaries will match each grant dollar with a dollar raised from non-Federal sources. None of the Federal grant funds, nor the matching amount provided by the grant recipient, can be used to fund equity or debt investments.

CDVC organizations, sometimes referred to as "funds," may be not-for-profit, for-profit, and quasi-public organizations. Their structures encompass for-profit "C" corporations, limited partnerships, limited liability companies, community development corporations, and Small Business Investment Companies.

TECHNICAL CORRECTIONS

Provisions in Section 212 make corrections to drafting errors that arose during the consideration of the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act of 1997, P. L. 105–135 of Dec. 2, 1997). The technical corrections make the literal language of the statute conform to the understanding and intent of the Congress at the time of enactment.

As this Committee noted in reporting out the Small Business Reauthorization Act of 1997 (S. Rpt. 105–62, at 26), the HUBZone Act intended to create three types of HUBZones: urban HUBZones defined by qualified census tracts; rural HUBZones consisting of counties that qualify on the basis of high unemployment or low income; and Federal Indian reservations. This approach was retained during final passage of the legislation, but a clause that was misplaced during the process of enactment could potentially undermine this Congressional intent.

In the definition of "qualified nonmetropolitan county," the language of the statute includes both the unemployment and income tests for qualification, but the clause describing the unemployment test (15 U.S.C. § 632 (p)(4)(B)(ii)) is misplaced outside of the restriction limiting the definition to nonmetropolitan counties (15 U.S.C § 632(p)(4)(B)(i)(I)). As a result, a literal reading of the definition would allow both nonmetropolitan and metropolitan counties with unemployment rates at least 140% of statewide average to be considered "qualified nonmetropolitan counties"—an absurd result not in accord with the expressed Congressional intent. The Committee has included a technical correction to this section.

Similarly, the description of urban HUBZones is not expressly clear that these refer to "qualified census tracts" in metropolitan areas. The Secretary of Housing and Urban Development designates census tracts in rural areas as well as metropolitan ones, but the HUBZones legislation addresses rural areas on a county-level basis, instead of the census tract basis that is used for urban areas. Thus, the Committee has included a technical correction to clarify the application of census tracts to metropolitan areas. Again, this brings the face of the statute into accord with the Congressional intent expressed at the time of passage.

The Committee included further language to correct the reference to the Internal Revenue Code of 1986 in which the definition of "qualified census tract" is found. In 15 U.S.C. § 632(p)(4)(A), the HUBZone Act refers erroneously to 26 U.S.C. § 42(d)(5)(C)(ii)(I) for the definition of "qualified census tract." The correct reference is 26 U.S.C § 42(d)(5)(C)(ii).

Without this correction, the list of qualified census tracts published by the Secretary of Housing and Urban Development would not be a valid guide to the HUBZone Program. The HUD Secretary designates census tracts subject to a restriction that no more than 20% of the population in a metropolitan statistical area may be included; in the absence of this limitation, additional tracts would qualify as HUBZones beyond those listed by the Secretary. Since the Congress did not include a mechanism for determining those additional tracts, the Congress clearly did not intend to exclude this provision from the HUBZone Program's definition of "qualified census tract." Thus, the Committee has corrected the reference to accord with the Congressional intent.

Last, the Committee deleted a typographical error in the definition of "HUBZone small business concern" (15 U.S.C. § 632(p)(3)).

TITLE III—SMALL BUSINESS ENVIRONMENTAL ASSISTANCE PILOT PROGRAM

Title III incorporates Senator Burns" amendment to create the Small Business Environmental Assistance Pilot Program to provide technical assistance to small businesses to help them comply with environmental regulations. The pilot program has two parts. First, an Advisory Committee on Small Business Environmental Assistance Program will be established to review existing programs that provide environmental assistance to small businesses and to chart the course for small business environmental compliance assistance. Second, SBA is authorized to establish a demonstration grant program, based on the recommendations and strategy developed by the Advisory Committee, to provide 4-year grants to certain small business development centers to provide environmental compliance assistance to small businesses in partnership with existing programs.

On April 28, 1998, the Committee on Small Business held a hearing entitled "Environmental Compliance Tools for Small Business." Witnesses provided testimony on the complexity of environmental regulations and the importance of environmental compliance tools designed to help small businesses comply with the laws and regulations administered by the Environmental Protection Agency (EPA). Witnesses commented on effective programs that provide small businesses with the assistance they need and recommended that improvements could be made with increased funding and better coordination. It was recommended that the strengths and weaknesses of existing programs be reviewed and the future direction for compliance assistance be developed strategically.

Title III establishes the Advisory Committee on Small Business Environmental Assistance Programs to provide advice and recommendations to SBA, EPA, and Congress on ways to enhance existing programs designed to improve the environmental performance of small businesses. The Advisory Committee would include the Chief Counsel of the Office of Advocacy of SBA, the Chair of Small Business Advocacy of EPA, the Assistant Administrator for Small Business Development Centers of SBA, and not more than 15 additional members which are to include not more than seven representatives of small business concerns or their trade associations, not more than four representatives of small business development centers, and not more than four representatives of state environmental compliance assistance programs. The Chief Counsel will serve as the Chair of the Advisory Committee and is charged with the responsibility of selecting the 15 additional members after consultation with the Assistant Administrator and the EPA Small Business Advocacy Chair. The Assistant Administrator is to recommend the representatives of the small business development centers, and the EPA Small Business Advocacy Chair is to recommend the representatives of the state environmental compliance assistance programs.

In selecting the members of the Advisory Committee, the Committe on Small Business urges the Chief Counsel to give careful consideration to their knowledge of environmental regulations and involvement with existing compliance assistance programs. The members selected to represent small business should comprise a cross section of industries and collectively should have experience with EPA's various regulations and program offices (i.e, air, water, hazardous waste, etc.). The individuals selected can come directly from a small business or a trade association representing small businesses, but each individual must be knowledgeable about EPA regulations and environmental compliance assistance programs, including state small business stationary source technical and compliance assistance programs (established under section 507 of the Clean Air Act), state pollution prevention programs, etc. The EPA Advocacy Chair should consider the full range of state compliance assistance programs, and not just those authorized under section 507, when selecting Advisory Committee members to represent state environmental compliance assistance programs.

Title III directs the Chief Counsel to make the appointments to the Advisory Committee no later than 60 days after the date of enactment. Each member of the Advisory Committee shall serve for a term of one year. If a vacancy occurs, it will be filled at the discretion of the Advisory Committee.

The duties of the Advisory Committee include: reviewing each SBA and EPA program that is designed to assist small business concerns in complying with environmental laws and regulations or to enhance environmental performance of small business concerns. The Committee on Small Business intends this to include programs established under section 21 of the Small Business Act, section 213 of the Small Business Regulatory Enforcement Fairness Act, and section 507 of the Clean Air Act. The Advisory Committee is to develop a strategy to enhance the efficacy of these compliance assistance programs in assisting small businesses with compliance and to improve small businesses" environmental performance. The recommended means for enhancing these programs can include improved techniques for measuring the achievements of compliance resulting from such assistance programs, innovative compliance assistance demonstration projects, and strengthening the capabilities of State and local compliance assistance programs. In addition, the Advisory Committee is to recommend types of pilot programs that would implement the strategy developed to enhance the efficacy of the existing programs.

Title III directs that not later than September 30, 1999, the Advisory Committee should provide a report containing the abovementioned strategy and recommendations to the Administrator of SBA, EPA Administrator and the Committees on Small Business in the Senate and House of Representatives. To assist the Advisory Committee in accomplishing its responsibilities, it may secure information from any department or agency of the Federal Government. The Chief Counsel for Advocacy, as chair of the Advisory Committee, shall require that the head of such department or agency furnish the information to the Advisory Committee as requested.

The Advisory Committee shall meet no less than twice during Fiscal Year 1999. In between meetings, the Committee on Small Business expects the Chief Counsel of Advocacy, the Assistant Administrator, the EPA Advocacy Chair, and other departments and agencies as requested to gather information and prepare materials to further the efforts of the Advisory Committee. The funds authorized for carrying out this section include $500,000 for direct support and reimbursement of costs for the Advisory Committee. A portion of these funds are to be used to reimburse the members of the committee for their travel and subsistence expenses, and the balance will be used to provide the direct support required by the Advisory Committee and as provided by the Office of the Chief Counsel for Advocacy.

Title III authorizes the SBA to establish a demonstration program based on the criteria and recommendation in the Advisory Committee's report, whereby interested small business development centers (SBDCs) will apply to the SBA for 4-year grants of not more than $400,000 per year to carry out environmental assistance programs. Not later than 60 days after the Advisory Committee submits its report, SBA shall publish in the Federal Register a notice of the program, including application requirements and selection criteria based on the strategy and recommendation included in the Advisory Committee's report. SBDCs must submit grant applications not later than 60 days after the notice is published, and the SBA shall select the SBDCs not later than 90 days after the notice is published.

The SBA shall select 10 SBDCs, one from each EPA region if practicable, using the selection criteria based on the strategy and recommendation in the Advisory Committee report and consistent with the additional selection criteria provided in this subsection. Highest priority for selection shall be given to SBDCs that form partnerships with a State small business stationary source technical and compliance assistance program, or other environmental assistance providers, including trade associations, pollution prevention programs, etc. The partnership is intended to ensure the application offers the requisite experience and expertise in providing environmental compliance assistance. SBA shall select applications that demonstrate a cooperative approach between the SBDC and their environmental compliance assistance partner that utilize the relative strengths of each. Not later than 60 days after the 10 SBDCs are selected, the SBA shall make the grants available to the successful applicants. The statute limits the grant amounts to $400,000 but does not establish a minimum amount. The Committee expects SBA to use discretion in determining the amount of each grant, taking into consideration the demands in the State or other geographic area served by the SBDC, the complexity and scope of the proposed assistance program, and the number of partners affiliated with the SBDC.

Title III authorizes $4 million per year for Fiscal Year 2000 through Fiscal Year 2003. Of the amounts made available for the program during the Fiscal years 2000 through 2003, not more than six percent may be used for administration, evaluation, and reporting, but the six percent shall include the cost of a full-time SBA employee to assist in administering the program. Amounts made available to a SBDC by SBA or another agency to carry out section 21(c)(3)(G) will not be included in the calculation of the maximum funding under this program. Grants awarded a SBDC under this pilot demonstration program are not subject to a matching requirement. However, if this program is expanded or reauthorized, the Committee expects that a matching requirement consistent with that required under Section 21(a)(4) of the Small Business Act would apply.

Not later than March 1, 2003, the General Accounting Office shall submit to the Committees on Small Business of the Senate and House of Representatives an evaluation of the program, the criteria of which shall be developed under the direction of the Committees.

III. Committee Vote

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following vote was recorded on September 15, 1998.

Seven amendments were adopted by voice votes to the Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998, Senator Bond's amendment in the nature of a substitute to H.R. 3412.

A motion by Senator Bond to adopt the Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 as an amendment in the nature of a substitute to H.R. 3412 was approved by a unanimous 18–0 recorded vote, with the following Senators voting in the affirmative: Bond, Kerry, Burns, Coverdell, Kempthorne, Bennett, Warner, Frist, Snowe, Faircloth, Enzi, Bumpers, Levin, Harkin, Lieberman, Wellstone, Cleland, and Landrieu.

IV. Evaluation of Regulatory Impact

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

SECTION BY SECTION

TITLE I

Section 101. Findings

This section sets forth Congressional findings on the effect the Year 2000 computer problem likely will have on small business concerns.

Section 102. Year 2000 Computer Problem Loan Guarantee Program

This section requires the Small Business Administration to establish a pilot loan guarantee program whereby SBA would guarantee 50 percent of the principal amount of a loan, not exceeding $50,000, made by a private lender to assist small businesses in correcting Year 2000 (Y2K) computer problems. The Y2K loan program will sunset on October 31, 2001. This section further requires SBA to promulgate, within 60 days, Y2K loan program regulations based on the guidelines governing SBA's FA$TRAK pilot program, or its successor program or pilot program.

Under the FA$TRAK program, and thereby under the Y2K loan program, lenders originating loans are permitted to process and document loans using the same internal procedures they would on loans of a similar type and size not governed by a government guarantee. In return, lenders receive a smaller guarantee than under the 7(a) loan program and waive payment of such guarantee until after liquidation. This section also provides that each lender designated as a Preferred Lender or Certified Lender by SBA would be eligible to participate in the Y2K loan program. This section further requires SBA to inform all eligible lenders of the availability of the program.

Section 103. Pilot Program Requirements

This section establishes two reporting requirements for the SBA relating to pilot programs. First, SBA is required to report to the House and Senate Committees on Small Business prior to making any changes to a pilot program it administers under the 7(a) loan program or the initiation of any pilot program under the 7(a) program, if such change may affect the subsidy rate estimates for the 7(a) program. Second, SBA is required to report to the House and Senate Committees on Small Business on the number and amount of loans made under all pilot programs commenced under the 7(a) loan program, the number of lenders participating in such programs, and the default rate, delinquency rate and recovery rate for loans made under such pilot programs.

Section 104. Amendment to purposes of 7(a) loan program

The legislation amends the 7(a) loan program to state that one of the purposes of the 7(a) loan program is to “assist small business concerns in meeting technology requirements for the Year 2000.” This section was added from Senator Kerry’s legislation. It is intended to clarify that all 7(a) lenders, regardless of their status as regular, Certified or Preferred Lenders, may also make loans for Y2K corrections under the 7(a) loan program and clarify that the 7(a) loan program may be used by a lender to fund a small business concern’s Y2K corrections.

TITLE II

Section 201. Women’s Business Center Program

Subsection (a) sets forth the findings of the Committee in support of establishing additional Women’s Business Center sites.

Subsection (b) increases the funding authorization for grants under the Small Business Administration’s Women’s Business Center program from $8 million to $12 million, effective in Fiscal Year 1999 and thereafter.

Subsection (c) amends the Small Business Reauthorization Act of 1997 to establish a uniform fourth-year matching requirement (one non-Federal dollar for every Federal dollar awarded) for all Centers receiving grants from SBA. The two non-Federal dollar to one Federal dollar matching requirement will apply only to the fifth year a Center receives Federal funding. This change will take effect as if included in the 1997 Act.

Subsection (d) directs the General Accounting Office (GAO) to conduct a baseline and follow-up study of SBA's implementation of the Women's Business Center program to ensure that SBA provides appropriate oversight and staff support to this popular and growing program. The GAO reports will assist the Committees on Small Business in the Senate and House of Representatives in their oversight of the program's expansion.

Section 202. SBIR Program

Subsection (a) recognizes the need for the Federal government to take a more active role in encouraging research, development and production of actual products in the marketplace for assistive technology end-users. It encourages all the agencies participating in the Small Business Innovation Research (SBIR) Program to solicit proposals to advance research and development in this area.

Subsection (b) directs each agency subject to the requirements of the SBIR Program to conform its definition of "extramural budget" to the definition approved by OMB.

Subsection (c) directs Federal agencies to conduct program outreach activities to support the SBIR Program using existing outreach activities, such as the electronic commerce resource centers and the procurement technical assistance centers.

Subsection (d) repeals the sunset provision in existing law.

Section 203. SBIC Program

Section 203 amends the Small Business Investment Act of 1958 to permit a Small Business Investment Company to receive contingent obligations, such as warrants, royalties, and conversion rights, when financing a small business. The contingent obligations will not be used by SBA to determine whether the SBIC has complied with the maximum interest rate an SBIC can charge in a loan transaction.

Subsection (b) increases the funding level for participating securities from $800 million to $1 billion in FY 1999 and from $900 million to $1.2 billion in FY 2000.

Subsection (c) incorporates technical corrections in the SBIC Program that were included in the House-passed bill. It strikes the requirement for SBA to reserve 50% of the leverage for SBICs with less than $20 million in private capital. It provides for determining eligibility of a business that is not required to pay Federal income tax. It reduces the requirement for SBA to issue SBIC guarantees and trust certificates to once every twelve months.

Section 204. 504 Certified Development Company Program

Subsection (a) amends the Small Business Investment Act of 1958 to require the Small Business Administration to permit certain certified development companies (CDCs) to foreclose and liquidate defaulted loans that such companies have originated under the 504 loan program. The Small Business Administration currently is conducting a pilot program that allows approximately 20 CDCs to liquidate loans that they have originated. By all accounts, this pilot program has been a success, with CDCs obtaining higher recoveries than SBA. This subsection makes the pilot program permanent by requiring the SBA to authorize CDCs that meet certain eligibility requirements to liquidate loans they originate.

Subsection (a) establishes eligibility requirements that must be met by a CDC to qualify under this loan liquidation and foreclosure program.

The legislation also describes the loan foreclosure and liquidation activities that must be undertaken by a qualified CDC and establishes a framework for SBA approval of liquidation plans and oversight of litigation relating to liquidation of loans. SBA may assume the defense or prosecution of litigation in certain circumstances, and SBA is required to provide written notification to CDCs if SBA does not approve a liquidation or workout plan within specified time frames. The legislation originally provided that such plans would be deemed approved if SBA did not meet respond within the mandated time frames. To assist the Committee in monitoring SBA's compliance with the time frames in the legislation, the substitute further requires SBA to annually report to the Committee on the number of times it has failed to meet such approval deadlines.

Subsection (a) also prohibits CDCs from engaging in activities causing an actual or apparent conflict of interest and it sets forth the circumstances under which SBA may suspend a qualified CDC from the loan foreclosure and liquidation program. The subsection directs SBA to submit an annual report to the Senate and House Committees on Small Business on the results of the delegation of authority to CDCs to foreclose and liquidate loans and a comparison of such results to SBA's liquidation performance.

Subsection (a) directs SBA to promulgate final regulations within 150 days of enactment of the Act implementing the requirements set forth in subsection (a).

Subsection (b) amends Section 501 of the Small Business Investment Act of 1958 to provide that the achievement of expansion of women-owned business development is one of the public policy goals of 504 loan program. This will permit women-owned businesses to receive loans of up to $1,000,000 under the 504 loan program. Loans that do not achieve one of the stated public policy goals of the 504 loan program are limited to $750,000.

Section 205. Small business Federal contract set asides

Section 205 addresses the Committee's concern about Federal agencies that have attempted to overstate their success in meeting the Federal contract small business set-aside goal, which was increased to 23% from 20% by the Small Business Reauthorization Act of 1997. This section directs SBA to submit an annual report to the Senate and House Committees on Small Business within 180 days of the end of each fiscal year that details the status of each Federal agency in meeting its small business set-aside goal.

Section 205 directs SBA to identify any agency that has changed its statistical methodology in calculating either the dollar value of prime contracts and subcontracts awarded to small businesses or the total dollar value of the agency's contracting awards against which the small business goal is measured, as well as any other omission of contracting data. This provision is intended to prevent the use of methodological changes to create the appearance of success at meeting the small business goals.

Section 205 requires that SBA submit to the Senate and House Committees on Small Business at least 45 days in advance any waiver it intends to grant to permit an agency to change its statistical methodology in calculating both the dollar value and percentage of Federal contract set-asides for small businesses. SBA is to provide a similar notification to the Chief Counsel for Advocacy, who will provide written comments on this waiver to both Committees and to the affected agency.

Section 206. Assistance for veterans

Subsection (a) defines veterans, service-disabled veterans, and small business concerns owned by veterans and service-disabled veterans.

Subsection (b) establishes an SBA Office of Veterans Business Development, which will be headed by the Associate Administrator for Veterans Business Development, who will report directly to the Administrator.

Subsection (b) also establishes a new Advisory Committee on Veterans Business Affairs, which will be composed of 15 members appointed by the SBA Administrator. Eight members will be veterans who are owners of small businesses, and seven members will be representatives of veterans service organizations. Each member will have a term of three years, and the chairperson will be selected by a vote of the members of the Advisory Committee. The Committee will meet at least twice annually.

Subsection (b) establishes in the Service Core of Retired Executives (SCORE) the position of National Veterans Business Coordinator, whose exclusive duties shall be those relating to veterans" business development matters. This subsection directs the SBA Administrator to submit annually a report to the Senate and House Committees on Small Business on the needs of small businesses owned by veterans and service-disabled veterans. This report will include information on the degree of utilization of small business programs by veterans and the percentage and value of Federal contracts that are awarded to veteran-owned small businesses.

Subsection (c) directs the SBA Office of Advocacy to evaluate and report annually to both Committees on efforts of each Federal agency and of private industry to assist small businesses owned by veterans and service-disabled veterans.

Subsection (d) amends the Small Business Act to include veterans as a targeted group to be served by the Microloan Program.

Section 207. Section 7(a) loan program

This section eliminates the requirement that a lender be paid 100 basis points less than the interest rate on a loan when a lender is paid the guaranteed portion of a defaulted 7(a) loan.

Section 208. Disaster mitigation pilot

Section 208 authorizes a new pilot program at SBA to provide direct loans to small business owners to finance installation of disaster mitigation devices and take preventive steps to protect against future disaster damage. Loans are limited to small businesses located in formal mitigation areas designated by FEMA.

Subsection (b) authorizes SBA to make loans totaling $15 million in Fiscal Years 1999–2003 to small businesses participating in the pilot program.

Subsection (c) directs SBA to report to the Senate and House Committees on Small Business by January 31, 2001, on the effectiveness of the pilot program.

Section 209. Microloan program

Subsection (a) amends the Small Business Act to strike the pro rata limit on microloan funds that can be allocated to each state.

Subsection (b) revises the loan loss reserve that must be maintained by each Microloan Intermediary to permit SBA to reduce the reserve from 15% to as low as 10% for Intermediaries that have been in the program for at least five years and maintained a successful loan portfolio. For Intermediaries that apply for the reduced loss reserve, SBA would have the discretion to reduce it to a percentage equal to the Intermediary's five year loss rate, but in no case could it be reduced below 10%.

Section 210. Real estate appraisals

Section 210 amends SBA's appraisal standards under the 504 and 7(a) loan programs to require appraisals of real estate collateral by state-licensed or certified appraisers only when more than $250,000 of the loan proceeds are to be used to acquire, construct or improve real property. The section also specifies that a lender must require a state-certified or licensed appraisal on loans of less than $250,000 if the lender requires such appraisals for similar unguaranteed loans.

Section 211. Community Development Venture Capital Demonstration Program

Subsection (a) sets forth the purpose of the section, which is to provide technical assistance to organizations that deliver venture capital to small businesses located in economically distressed areas.

Subsection (b) defines the organizations which are authorized to receive grants from SBA. This subsection describes the permissible uses of the grant funds, including payment for training and research activities. Grants funds can also be used to pay for intensive marketing, management, and technical assistance. Recipients of grants from SBA are authorized to make further grants to community development venture capital organizations for the purposes described above.

Section 212. Technical amendments

This section makes technical changes to correct drafting errors contained in the legislation enacted in 1997 establishing the HUBZone Program.

TITLE III

Section 301 amends the Small Business Act to create a new Section 21B, establishing the Small Business Environmental Assistance Pilot Program.

Section 21B(a) sets for the definition of key terms used in the pilot program.

Section 21B(b) directs the SBA to establish the Advisory Committee on Small Business Environmental Assistance Programs. This section outlines the membership of the Advisory Committee and sets forth the terms, duties, powers, and other requirements specific to the Advisory Committee's operation.

Section 21B(b)(5)(C) directs the Comptroller General to submit no later than March 1, 2003, to the Senate and House Committees on Small Business an Independent National Assessment evaluating the pilot program.

Section 21B(c) directs SBA to establish a demonstration grant program based on the criteria and recommendations contained in the report by the Advisory Committee on Small Business Environmental Assistance Programs. This section authorizes interested Small Business Development Centers (SBDCs) to apply to SBA for 4-year grants of not more than $400,000 per year to provide environmental compliance assistance to small businesses. Grants to SBDCs will be made subject to the terms contained in Section 21B(d).

Section 21B(e) authorizes the following amounts that SBA may spend on the programs contained in Section 21B: $500,000 in FY 1999 to support the expenses associated with the Advisory Committee; $4 million per fiscal year for Fiscal Years 2000–2003 for the demonstration grant program.

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