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SMALL BUSINESS ADMINISTRATION 50TH ANNIVERSARY REAUTHORIZATION ACT OF 2003

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Ms. SNOWE, from the Committee on Small Business and Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 1375]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 1375) to provide for the reauthorization of programs administered by the Small Business Administration, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

I. INTRODUCTION

The Small Business Administration 50th Anniversary Reauthorization Act of 2003, introduced by Senator Snowe, and cosponsored by Senator Kerry, on July 8, 2003, is a bill to reauthorize most programs at the SBA for Fiscal Years 2004, 2005, and 2006. Additionally, the bill makes changes to various existing programs and authorizes several new pilot initiatives. The Committee adopted by unanimous voice vote an amendment by Senator Snowe, and cosponsored by Senator Kerry, which includes four amendments proposed by Senators Bayh, Crapo, Landrieu, and Levin, and the bill was subsequently adopted by a unanimous vote of 19–0.

The Small Business Administration 50th Anniversary Reauthorization Act of 2003 is the product of a series of hearings and roundtable discussions that the Committee held in 2003. Beginning with a hearing on March 18, 2003, the Committee focused on the issue of contract bundling, which too often presents insurmountable ob-

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stacles to small businesses seeking to compete in the Federal marketplace for a share of the more than $200 billion that Federal agencies award in contracts each year. The hearing examined the President's nine-point plan for minimizing the effects of contract bundling as well as other legislation addressing Federal procurement opportunities for small businesses, including the Small Business Federal Contractor Safeguard Act (S. 633), introduced by Senator Kerry on March 17, 2003.

In April, the Committee began its in-depth examination of the entire spectrum of programs and services offered by the SBA. In its April 9, 2003, roundtable, the Committee focused on the SBA's non-credit programs including the Small Business Development Centers (SBDCs) program, the Service Corps of Retired Executives (SCORE) program, the SBA's Office of Women's Business Ownership Programs, the National Women's Business Council, the Veterans Business Development Program, the Native American Outreach program, and other entrepreneurial development programs administered by the SBA. The Committee heard from a broad cross-section of the small business stakeholders of these programs as well as from SBA representatives who oversee these programs.

In addition, the April 9, 2003, roundtable also reviewed the SBA's government contracting and business development programs, which include the Prime Contracting and Subcontracting Programs, HUBZone Program, 8(a) Business Development Program, and BusinessLINC Program. Stakeholders of these programs provided important insight to the Committee, and many of their recommendations were incorporated into the bill.

While the SBA's Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer Program (STTR) programs are not facing reauthorization in the current cycle, the Committee did examine during the April 9, 2003, roundtable the Technology Rural Outreach Program and Federal & State Technology Partnership Program (FAST), which are related programs reauthorized under the bill.

The Committee turned to the SBA's financing programs on April 30, 2003, in the first of two roundtable discussions. The Committee heard from lenders, small business stakeholders, and SBA representatives about the 7(a) Loan Guarantee Program, which continues to play a vital role in helping small businesses obtain operating capital. The Committee also heard from participants in the Microloan program, which provides capital and technical assistance to microenterprises.

On May 1, 2003, the Committee held the second roundtable on the SBA's credit programs, focusing first on the 504 Loan Program. Participants noted that the 504 Loan Program, often referred to as a "bricks and mortar" lending program, has become a solid economic development tool and helps small enterprises acquire essential real estate and basic machinery and equipment. The roundtable also examined the SBA's Small Business Investment Company (SBIC) program and the New Markets Venture Capital program. These programs represent important sources of equity capital for small businesses.

As part of the May 1, 2003, roundtable, the Committee focused on the SBA Disaster Assistance Loan program. Through this program, the SBA is the nation's foremost direct lender to disaster victims. The roundtable participants offered valuable insight into the program's operations and areas for improvements.

The Committee completed its series of hearings and roundtables on SBA reauthorization with a hearing on June 4, 2003, that featured SBA Administrator Hector Barreto. This hearing provided an additional opportunity for the agency to respond to issues raised during the previous roundtable discussions, discuss its legislative package that was submitted to the Committee for review, and comment on the President's Fiscal Year 2004 budget submission for the SBA. The hearing also examined a number of agency management issues including the SBA's efforts to obtain a clean audit opinion on the agency's financial statements, implementation of a loan monitoring system, and workforce transformation plans.

Throughout the hearings and roundtables, the Committee's objectives have been to single out the SBA programs that are working well, identify the reasons for their superior performance, and then apply those principles to programs that are in need of improvement. The voluminous amount of information that the Committee has collected through the hearings and roundtable discussions held this year and in the previous Congress as well as information received directly from small business stakeholders has contributed greatly to achieving that goal and the results are reflected in the bill.

The Committee believes that by providing reasonable authorization levels, improvements to specific SBA programs, and several new initiatives, the Small Business Administration 50th Anniversary Reauthorization Act of 2003 provides a sound foundation for the agency to begin its next 50 years of even greater service to the nation's small businesses and entrepreneurs.

II. Description of Bill

TITLE I—GENERAL PROVISIONS

Administration accountability

Since its amendment in 1955, the Small Business Act has required the SBA to maintain its essential documents and records and make them available for congressional oversight. The bill updates Section 10(e) of the Small Business Act to emphasize that the Administration shall maintain its documents and records for at least two years and to provide a broader illustration of the types of documents and records covered by the section.

In recent years, the Committee has been concerned by the SBA's failure to make certain documents and records available when requested. For instance, in 2002, the Committee requested a copy of the SBA General Counsel's opinion that the agency identified as the basis for restricting the availability of economic injury disaster loans in cases of disasters resulting from floods. Despite numerous requests for a copy of this legal opinion, the SBA has never made it available for the Committee's review. Similarly, this year, the Committee requested the documents on which the SBA based its determination that the new econometric model, implemented as a result of Public Law 108–8, could not be applied to loans made under the Supplemental Terrorist Activity Relief (STAR) Loan Program. Again, despite a formal and repeated informal follow-up requests, the documentation was never produced.

In light of these concerns, the Committee included in the bill clarification that SBA documents and records shall be made available to the Senate and House Committees for their inspection and examination. Specifically, the bill provides that upon the written request of either the Senate or House Committee, the Administrator or the Inspector General, as applicable, shall make any documents or records requested available to the requesting Committee or its duly authorized representatives within 5 business days of the request.

To discharge its constitutional oversight obligations, the Committee occasionally requires timely access to certain SBA documents and records. To the extent that such requests cannot be satisfied or will be delayed, the Committee expects a reasonable explanation and designation of a time for completing the request whenever possible. The Committee does not intend, however, that this provision jeopardize any on-going investigation by the SBA Inspector General or any individual's privacy. Any documents or records requested by the Committee pursuant to Section 10(e) of the Small Business Act will continue to be subject to the Committee's rules regarding the disclosure of confidential information.

It is the Committee's expectation that the agency will work cooperatively with the Committee to ensure that congressional oversight of the SBA and its programs can be accomplished in a thorough, timely, and efficient manner.

Program authorizations

Section 111 of the bill authorizes appropriations for the SBA's financing programs and certain other programs administered by the SBA. The SBA's financing programs reauthorized in this bill include Section 7(a) Guaranteed Business Loans, Section 504 Certified Development Company Loans, Microloans, Disaster Assistance Loans, and the Small Business Investment Company Debentures and Participating Securities. The New Markets Venture Capital program is already authorized through Fiscal Year 2006.

The following chart details the funding set out in the bill for each of the reauthorized SBA programs over the three-year time frame of the bill. The Committee carefully considered the Administration's funding request for each program, as well as recommendations from small business owners, advocacy organizations representing small businesses and entrepreneurs, the lending and investment community, and members of the Committee.

PROGRAM LEVELS FOR SMALL BUSINESS ADMINISTRATION 50TH ANNIVERSARY REAUTHORIZATION ACT OF 2003

[In millions of dollars]

Program	Current levels FY03	Budget request FY04	SBA authorization request			Reauthorization bill		
			2004	2005	2006	2004	2005	2006
7(a)	$10,839	$9,300	$16,000	$16,000	$16,000	$16,000	$16,500	$17,000
504	4,500	4,500	5,000	5,000	5,000	5,000	5,250	5,500
SBIC:								
Debentures	3,000	3,000	3,000	3,000	3,000	3,000	3,250	3,500
Participating Securities	4,000	4,000	4,000	4,000	4,000	4,000	4,250	4,500
Microloan:								
Technical Assistance	15	15	70	70	70	70	75	80
Direct Loans	31.27	20	100	100	100	100	105	110
Guaranteed Loans	1.99	2	50	50	50	50	50	50

PROGRAM LEVELS FOR SMALL BUSINESS ADMINISTRATION 50TH ANNIVERSARY REAUTHORIZATION ACT OF 2003—Continued

[In millions of dollars]

Program	Current levels FY03	Budget request FY04	SBA authorization request			Reauthorization bill		
			2004	2005	2006	2004	2005	2006
Delta	22.99	0	500	500	500	500	500	500
Surety Bond Guarantee:								
General Program	1,672	1,672	6,000	6,000	6,000	6,000	6,000	6,000
Preferred Program	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
SCORE	5	5	7	7	7	7	7	7
SBDC	89	88	88	88	88	125	130	135
HUBZone Program	0	2	10	10	10	10	10	10
SBIR Rural Outreach Program	0	(2)	2	2	(2)	2	2	2
SBIR FAST Program	0	3	10	10	(2)	10	10	10
Women's Business Centers	12.5	12	14.5	14.5	14.5	15	16	17.5
Paul C. Coverdell Drug Free Workplace	2	3	3	3	3	5	5	5
National Women's Business Council	0.75	0.75	0.75	0.75	0.75	1	1	1
Veterans Outreach	0.75	0.75	0.75	0.75	(2)	1	1.5	2
PRIME	5	0	(2)	(2)	(2)	15	15	15

[1] Funded at up to 50% of the total.
[2] No request specified.

Additional authorizations

The bill also includes an extension of the authorization for the assistance offered through Small Business Development Centers (SBDCs) to provide small businesses with information and assistance to establish drug-free workplace programs. Additionally, the bill extends the current $5 million authorization for the Paul C. Coverdell Drug-Free Workplace Program through Fiscal Year 2006. Both programs have made important contributions in helping small businesses remove drugs from the workplace.

TITLE II—FINANCIAL ASSISTANCE

7(a) Loan Guarantee Program

The 7(a) program has had a profound effect on the American economy and on the lives of thousands of small business owners and employees. During the last 3 years, the SBA 7(a) loan program has made financing available to more than 39,000 start-up small businesses and to approximately 99,000 existing small businesses that received financing for operating and expansion purposes, all totaling more than $28 billion in the same 3-year period. Most significantly, this program has helped small businesses create more than one million new jobs in the last three years.

On April 30, 2003, the Committee held a roundtable discussion to review the 7(a) loan program and received comments and recommendations from small business stakeholders and lenders participating in the 7(a) program.

Based on the roundtable testimony and information received directly from program participants, the Committee approved the increased authorization levels set forth in the bill for the 7(a) Guaranteed Business Loan Program over the next three fiscal years. This reflects the Committee's recognition that the number of loans made in the 7(a) program has grown substantially over the last several years, and the Committee's belief that the program has a substantial potential for continued growth, not just in the number of loans made but in the total lending volume of the program.

The SBA has expressed its interest in continuing to expand the number of small loans made under the 7(a) program, particularly through the SBA Express sub-program. While the Committee agrees that increasing the number of smaller 7(a) loans is a valid goal for the SBA, the Committee disagrees that this goal must come at the expense of the number of larger 7(a) loans. The Committee believes that the 7(a) lenders and the SBA must work together to determine the true demand from small businesses for the appropriate mixture of large and small loans, and allow appropriated funds for the 7(a) program to be used as the market of small businesses demands.

In addition, the Committee is concerned that the SBA bases its estimates for the volume of the 7(a) program in future years solely by measuring the historical levels of the program. The Committee and the SBA are not tasked with simply maintaining programs at current levels, but with allowing programs to grow when that growth is necessary and helpful to small businesses. By reviewing only historical data to set future loan levels for the 7(a) program, the SBA provides small businesses with only a static resource, in contrast to the growth that the SBA should be encouraging. Instead, the Committee believes that the SBA should examine the feasability of implementing a system for estimating loan demand that would give added weight to recent changes in loan volume, trends in the economy, and initiatives and program changes that will affect loan volume.

At the Committee's roundtable, lenders participating in the 7(a) Preferred Lenders Program (PLP) reported frustration at having to apply for PLP status separately within each SBA district. This concern is an element of a larger issue: the difficulties lenders face in complying with varying practices in each SBA District Office. Lenders have reported that different SBA District Offices at times resolve similar matters in different ways, thus adding costs and delays to participation in the 7(a) program, even though the SBA has Standard Operating Procedures established for personnel in District Offices. While the Committee believes that a national Preferred Lenders Program will successfully address the inefficiencies and cost of applying for special lending status in each district and will encourage lending, it is not a substitute for action by the SBA to ensure its lending personnel follow uniform policies and procedures. The SBA's loan programs are complex. To encourage lender participation, the agency needs to have uniform standards, because that ultimately serves the best interests of small businesses.

In response to these problems, Section 201 of the bill directs the SBA to initiate a three-year pilot program in which PLP lenders can receive authorization to operate in every state as a National PLP lender if the lender meets criteria established by the SBA. The bill lays out the general guidelines for establishing the criteria.

In delineating the types of criteria that would be required for applicants to be licensed as National PLP lenders, the Committee does not intend that the SBA will require that lenders applying to be licensed as a National PLP lender have made a certain number of loans in any of the specific sub-programs or pilot programs that are contained within the overall 7(a) loan program, except for the Preferred Lender Program. In addition, the Committee does not expect that the SBA will require that applying lenders have made a certain number of 7(a) loans greater than or less than a particular monetary amount, nor that the SBA will set a required average loan size for applicants.

The bill also states that during the SBA's evaluation of a lender's application, the SBA may consider comments about the lender from any SBA District Director or Regional Administrator relating to the applicant's current performance as a PLP lender. No such comments are required to be submitted, and when evaluating an applicant to be a National PLP lender, the SBA should not delay the approval of the applicant because no comments, or only a certain number of comments, have been received from SBA officials. The option was included in the bill to allow District Directors and Regional Administrators an opportunity to voice their comments about an applicant, but those comments are not a necessary requirement of the application process.

Section 202 of the bill extends the program participation fees paid by lenders involved in the 7(a) program. Accordingly, new 7(a) loans will continue to be subject to the existing fees, which are as follows: for loans that have a total amount of $150,000 or less, lenders pay a fee of one percent of the SBA's guarantee amount; for loans with a total amount of more than $150,000, but equal to or less than $700,000, lenders pay a fee of 2.5 percent of the SBA's guarantee amount; and for loans that have a total amount of more than $700,000, lenders pay a fee of 3.5 percent of the SBA's guarantee amount. In addition, lenders pay an annual fee for each 7(a) loan of 0.25 percent of the outstanding balance of the guarantee amount. In effect, this section reauthorizes fees under current law relating to 7(a) loans. The fees specified in this section will apply only to loans made after the date of enactment of the bill.

The Committee also approved a new initiative that authorizes 7(a) lenders to pool, for sale in the secondary market for 7(a) loans, loans with varying interest rates. During the April 30, 2003, roundtable, lenders raised concerns about the difficulty of pooling loans with varying interest rates, and the Committee believes that this change will address the issue by providing lenders with increased flexibility in grouping loans together for re-sale.

The bill also increases the size of the loans that can be made under the SBA's Low Documentation (LowDoc) sub-program of the 7(a) program. By increasing the maximum loan amount from $100,000 to $250,000, the bill makes the size limit for the LowDoc program consistent with the maximum loan size permitted for the SBA Express Loan program. The LowDoc program offers entrepreneurs a more convenient way to access the 7(a) program, and has been helpful to small business owners who have traditionally been less involved with the SBA's loan programs.

For instance, women small business owners have been frequent participants in the LowDoc program. The SBA reports that in Fiscal Year 2002, 9,100 LowDoc loans were made, and 3,390 (37 percent) of these were made to women-owned small businesses. In contrast, only 18 percent of all 7(a) loans in Fiscal Year 2002 were made to women-owned small businesses. As a result, the Committee believes that increasing the maximum size of LowDoc loans will provide traditionally under-served small business borrowers, such as women-owned small businesses, a better opportunity to receive the financing they need.

The bill increases the maximum size of the 7(a) loans that are available to small businesses involved in exporting products. The Committee believes that increasing the maximum loan size from $2 million to $2.6 million, with a maximum guaranteed amount of $1.3 million, will assist small businesses that are attempting to compete in international markets.

The Committee also increased the maximum size of loans available under the SBA's Defense Loan and Technical Assistance (DELTA) program, which is designed to help eligible small defense-dependent companies to diversify into commercial markets, from $1.25 million to $2 million, to conform the maximum size of these loans to the maximum size of general loans under the 7(a) program.

Finally, the bill includes several sections relating to the 7(a) program that also pertain to other SBA programs (these provisions appear in the bill under Subtitle G). The first provision (Section 261) allows small businesses to participate simultaneously in both the 7(a) and 504 programs by receiving loans under both programs. In order to ascertain the extent to which this combination of loans is utilized by small businesses, the SBA should require that lenders report to the SBA's fiscal and transfer agent those 7(a) loans that are made to small businesses that also have 504 loans. In addition, the fiscal and transfer agent should provide this information to the SBA so the agency can include it in its annual budget request and performance plan submitted to Congress.

The second provision (Section 262), conforms the guidance provided under both the 7(a) and 504 programs regarding the extent to which small businesses may lease property financed through SBA programs. The Committee approved this SBA proposal in order to reduce ambiguities under the current leasing guidance and to eliminate the potential for inconsistent results for similar borrowers, one with a 7(a) loan and the other with a 504 loan.

Section 263 increases the ability of small businesses to receive investments from an SBIC while also receiving loans under either the 7(a) or 504 loan programs. While recognizing that increasing the amount of borrowed and equity capital that a small business can receive subject to an SBA guarantee may increase the agency's exposure to loss, the Committee believes that the additional risk will be small and counterbalanced by the benefits of expanding available capital for small businesses. In addition, the bill limits the exposure by permitting a small business with an SBIC investment to obtain borrowed capital only from the 7(a) or 504 loan program, but not both, and by continuing to count 50 percent of the borrowed capital against the maximum SBIC investment.

Finally, Section 264 directs the SBA to establish an alternative size standard for the 7(a) program, as it has done for the 504 program. This concern was raised by lenders at the Committee's April 30, 2003, roundtable on the 7(a) program, and the Committee believes this change will greatly simplify the 7(a) program for small businesses.

Microloan Program

The SBA's Microloan program offers loans of up to $35,000 and technical assistance to small businesses. Under the program, the SBA makes loans and grants to intermediaries, who then re-loan their loan funds to small businesses and use SBA grant funds to provide technical assistance, such as managerial or strategic advice, to small businesses. Microloan lenders have made over 8,000 loans to existing and start-up small businesses during the past four years, and these enterprises have created or retained an estimated 34,000 jobs during that period.

The bill includes increases in the authorization levels for the loan and technical assistance components of the program over the next three Fiscal Years to meet the demand for small loans and to continue serving populations with the least access to capital. The Committee expects that the microloan program will demonstrate a continued contribution to business owners and employees who seek to establish or grow small businesses, particularly in areas that have suffered from severe economic distress.

At the Committee's April 30, 2003, roundtable discussion, the Committee heard from several participants in the microloan program on the program's successes and areas for improvement. These comments and written testimony provide the basis for provisions included in the bill to improve the Microloan program.

Specifically, the Committee heard about the need for intermediaries in certain parts of the country that are currently not served, or are under-served, by the microloan program. To increase the reach of microloan intermediaries to more areas, the bill includes several provisions that seek to expand access to the program.

First, the bill alters the eligibility requirements for an entity to be licensed as a microloan intermediary, and thus eligible to receive loans and grants from the SBA. Currently, to be licensed as an intermediary an entity must have at least one year of institutional experience in providing loans to small businesses and at least one year of institutional experience in providing technical assistance to small businesses. To enable newly established entities to become microloan intermediaries, the bill allows an entity to be licensed if it has a full-time employee on staff with at least three years of experience in making microloans; the entity would also have to establish that it has at least one year of experience in providing technical assistance to small businesses. It is not the Committee's intent to lower the standards of quality for entities that are licensed as intermediaries, but rather to permit access for entities that are new to the program and have employees with demonstrated experience and ability.

The bill also increases, from 25 percent to 30 percent, the amount of a technical assistance grant that a microloan intermediary can use to contract out technical assistance to a third-party. One incentive that intermediaries have to perform their technical assistance functions well is that the intermediaries must repay their loans to the SBA. The quality of the technical assistance the intermediaries provide to small businesses correlates to the success of the businesses, and to the businesses' ability to repay their loans to the intermediary. Third-party technical assistance providers do not have this concern, as they do not receive direct loans from the SBA.

The Committee was concerned that removing any ceiling on the percent of grant funds that an intermediary could contract out to a third-party technical assistance provider would increase the occurrence of situations in which the entity providing technical assistance to small businesses does not have the additional incentive that is provided by the need to repay a loan to the SBA. The Committee recognizes, however, that there is a need for certain technical assistance, like legal, accounting, and tax advice, which intermediaries are not able to provide directly. Accordingly, the bill provides additional flexibility for intermediaries to contract with third parties in such cases.

As part of an amendment offered by the Chair and Senator Kerry, the Committee included in the bill an increase in the percentage of technical assistance that an intermediary may provide to potential borrowers, rather than actual borrowers, from 25 percent to 30 percent. The Committee believes that this change will provide more flexibility to intermediaries in deciding how to allocate their technical assistance. The Committee recognized, however, that completely eliminating the limitation on the use of technical assistance for potential borrowers could have the negative effect of reducing the amount of technical assistance that must be devoted to those small businesses that have actually entered the microloan program as borrowers, rather than merely explored the possibility of receiving a microloan.

The bill also amended the Small Business Act to allow intermediaries to make revolving-term loans or longer fixed-term loans to small businesses. Currently, intermediaries may only make "short-term" loans with fixed terms, which restricts the ability of microlenders to structure loans that meet the needs of certain small enterprises.

The bill makes a change to the Small Business Act to indicate that microloan intermediaries that have a microloan portfolio with an average loan size of not more than $10,000 can receive an interest rate lower than the normal rate extended by the SBA to intermediaries; previously, the statute provided that an intermediary had to have an average loan size of not more than $7,500 to receive a reduced interest rate.

The Small Business Act currently requires the SBA to use a portion of its annual appropriation for microloans and microloan guarantees to provide one or more technical assistance grants to microlending organizations and national and regional nonprofit organizations to "procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practice necessary to operate successful microloan programs." The bill adds to the Small Business Act a requirement that the SBA report, in its annual budget request and performance plan to Congress, on the SBA's performance of this requirement.

Finally, the bill requires the SBA to develop a subsidy model for the microloan program, to be used in the Fiscal Year 2005 budget, that improves on the current subsidy model. Participants in the microloan program have reported to the Committee that the current model is subject to unnecessary fluctuations and results in inaccurate subsidy rates for the program.

Lender oversight

The effectiveness of the SBA's oversight of the lenders participating in SBA lending programs, and its oversight of the loan guarantees for which the SBA is responsible, is an issue of primary importance to this Committee. On multiple occasions, the Committee has requested that the General Accounting Office (GAO) assist the Committee in its oversight of the SBA by conducting analyses that identify issues of concern in the SBA's oversight of its lenders, its loan portfolio, and its information technology management, as well as other areas. These analyses have been valuable to the Committee as it developed this bill. For instance, in a December 2002 report (Small Business Administration: Progress Made but Improvements Needed in Lender Oversight, GAO–03–90, Dec. 9, 2002), the GAO identified ways in which the SBA needs to improve its lender oversight process to measure adequately the financial risk lenders pose to the SBA.

In roundtables held on April 30, 2003, and May 1, 2003, the Committee heard from the GAO and the SBA concerning some of the issues the GAO identified regarding the SBA's lender oversight. Moreover, the SBA's Office of the Inspector General (OIG) has conducted audits of the SBA's lending programs, which have resulted in important recommendations for improving these programs and the SBA's oversight of them. The Committee is confident that the excellent work of the GAO and the OIG will continue to assist the Committee as it works with the SBA regarding the SBA's lender oversight functions.

The Committee believes that new provisions in the bill will aid the SBA in improving its lender oversight programs. First, Section 102 of the bill transfers the operations of the SBA's Office of Lender Oversight (OLO) from the Office of Capital Access (OCA) to the office of the agency's Chief Operating Officer (COO). Since the OCA is tasked with increasing the SBA's total number of loans, and promoting the loan programs generally, it should not be responsible for operating the OLO, which is charged with overseeing the lenders affiliated with the SBA and for identifying improper risks in the SBA's loan portfolios. The OLO's task, at times, is to restrain lenders or lending practices. The Committee believes that this transfer will lessen the possibility of a conflict of interest. Outside the scope of the OCA, the OLO will be able to concentrate exclusively on lender oversight.

In discharging its responsibilities under the COO, the OLO may at times make recommendations with which the OCA does not concur. In such circumstances, the Committee expects that the COO and the Associate Deputy Administrator for the OCA will resolve any disagreements directly, with the Administrator being the final arbiter in any such case.

The bill also allows the SBA to charge fees to 7(a) lenders for lender examinations, and use these fees solely to fund examinations and review activities. This change, suggested by the SBA, will provide the agency with the ability to cover costs associated with oversight and review of these lenders' portfolios. The SBA will set reasonable fee levels based upon the size of the lenders' portfolios being reviewed, and the time necessary to review the portfolios. In determining these fees, the Committee expects that the SBA will consult with lenders and consider comparable fee structures charged by financial regulatory agencies. This change is, in part, a response to the analysis of the GAO, which identified as problematic examination fee structures that, by paying set fees per review, appeared to reward examiners for completing their lender reviews as quickly as possible. The Committee anticipates that this provision will improve the SBA's ability to conduct adequate reviews of its lenders' portfolios.

The bill also provides the SBA with additional oversight authority with respect to two types of lenders—Small Business Lending Companies (SBLCs) and Non-Federally Regulated SBA Lenders (NFRLs). SBLCs are defined as non-depository financial institutions that only make loans under Section 7 of the Small Business Act. NFRLs are defined as financial institutions that make loans under Section 7 of the Small Business Act, are not SBLCs, and are not regulated by the Farm Credit Administration, the Federal Financial Institutions Examination Council, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration.

The bill delineates in the Small Business Act the SBA's right to assert enforcement and supervisory authority over SBLCs and NFRLs. This authority includes the ability to issue cease and desist orders, impose civil money penalties, and remove officers and directors who are acting in an unsafe and unsound manner. The enforcement language gives the SBA various mechanisms to address substantive and technical violations that do not warrant court action or revocation of an SBLC's or NFRL's lending authority. The language also provides notice requirements and other due process protection for the lenders. Providing the SBA with the authority to regulate SBLCs and NFRLs will aid the SBA's lender oversight efforts by allowing the SBA some degree of influence over lenders who are not otherwise fully regulated by financial regulatory agencies.

The Committee believes that these provisions, as well as continued oversight by the Committee and diligence by the SBA, will aid the agency in conducting a more effective lender oversight program.

Disaster Assistance Loan Program

The Disaster Assistance Loan Program is the SBA's largest direct lending program. Disaster loans are the primary form of Federal assistance for non-farm, private-sector disaster losses. The disaster loan program is the only form of SBA assistance that is not limited to small businesses.

The SBA makes two types of disaster loans. Physical disaster loans provide funds for the permanent rebuilding and replacement of uninsured disaster damages to privately-owned property. These loans are available to homeowners, renters, non-profit organizations, and non-farm businesses of all sizes. Economic injury disaster loans provide working capital to small businesses, until normal operations resume, after a disaster. Economic injury loans are restricted to small businesses.

The bill clarifies a note within Section 7(c)(6) of the Small Business Act to confirm the existence of a $1.5 million maximum amount per loan for disaster loans to entities that are identified as major sources of employment for their area. The Committee expects that this clarification will not change the standard that the SBA employs, but will simply place that standard within the statute.

In addition, the bill includes the substantive provisions of the Small Business Drought Relief Act of 2003 (S. 318), introduced by Senator Kerry, which was passed by the Senate on April 1, 2003. This section of the bill clarifies the SBA's authority to provide emergency assistance, through disaster loans, to non-farm-related small businesses that have suffered substantial economic harm from drought. Currently, in cases of drought, the SBA takes the position that it is only authorized to provide disaster loans to businesses whose revenue is tied to farming and agriculture. The Committee believes that the agency's interpretation of current law results in the exclusion of a large number of businesses, including businesses in the tourist industry, that can be adversely affected by droughts. This section includes in its definition of "disaster" below-average water levels in the Great Lakes or any other body of water in the country that is used for commercial purposes.

Finally, the bill reauthorizes and extends the SBA's Disaster Mitigation pilot program, which offers pre-disaster loans, under the SBA's disaster loan program, to small business borrowers. Small businesses may borrow up to $50,000 to protect their property by taking specific measures to mitigate against potential damage from a future disaster. This pilot program was originally authorized in 2000 for a five year period from Fiscal Year 2000 through Fiscal Year 2004. Because the pilot program was only recently implemented by the SBA and because the agency's current authorization only extends through September 30, 2003, the Committee reauthorizes this pilot program for four years, through Fiscal Year 2006, instead of the original five years, to be consistent with the three-year reauthorization cycle. By reauthorizing the pilot program, the Committee believes that the SBA should implement the program in order to provide sufficient time to test the efficacy of this pilot and determine if disaster mitigation will decrease the need for actual Disaster Assistance Loans, as originally envisioned.

504 Loan Program

The 504 Loan program assists small businesses in financing real estate, as well as investments in machinery and equipment. In the past three years, the SBA has approved guarantees for more than 15,000 new loans through the 504 Loan program—almost 3,000 for new business start-ups and more than 12,000 for existing small businesses. The total number of jobs created and retained as a result of these loans was 325,471 during the three-year period.

The bill makes significant changes to the 504 loan program to improve its efficiency for existing participants and to encourage its usage by more small businesses. The Committee believes the changes will simplify the program and render it more accessible to small enterprises.

Of primary importance, the bill extends, through Fiscal Year 2006, fees paid by the borrowers, the first mortgage lenders, and the Certified Development Companies (CDCs) under the 504 program. These fees cover the subsidy rate of the program, and therefore the program requires no appropriations. The fees are as follows: The first mortgage lender pays a one-time up-front fee of 0.5 percent of the amount of the first mortgage. The CDC pays an annual fee of 0.125 percent of the outstanding amount of each debenture authorized after September 1996. In addition, the borrower pays an annual fee based on the outstanding amount of the debenture. The exact amount of this fee, which can be up to 0.975 percent per year, is determined by SBA in order to maintain a zero subsidy rate for the program.

The bill also amends the Small Business Investment Act of 1958 (SBIA) to address overcapitalization in the loan loss reserve accounts of Premier Certified Lenders (PCLs). Overcapitalization in these accounts reduces the funds available for PCLs to lend to small businesses. The bill adjusts loan loss reserve requirements to allow PCLs to have more capital available for loans, while maintaining sufficient reserves, as required by law, to cover loan losses.

Under current law, upon making a loan, a PCL has two years to make payments into a loan loss reserve account that equals one percent of the loan's initial exposure. For example, if a PCL makes a $1 million loan that amortizes over ten years, the PCL must have contributed $10,000 into its loan loss reserve after two years. Despite the fact that this loan would be amortizing over the next eight years, the PCL must maintain $10,000 in its loan loss reserve for the duration of the loan. The bill allows PCLs to utilize their capital better by providing that, after two years, PCLs need only retain in their loan loss reserve one percent of a loan's outstanding exposure. This result should make more capital available to PCLs and thereby enable PCLs to make more loans to small businesses and create more jobs.

Additionally, the bill provides PCLs with an option to operate under a newly established loan loss reserve program. PCLs that elect to participate would maintain in their loan loss reserve accounts at least $100,000, plus additional funds necessary to protect the government adequately from risk of loss. The calculation of the appropriate levels for lenders' respective loan loss reserves will be performed by an independent accounting firm approved by the SBA. PCLs that elect to participate in this program will be defined as "qualified high loss reserve PCLs."

The bill also requires the SBA to contract with another Federal agency, or with a member of the Federal Financial Institutions Examination Council, to study the extent to which statutory requirements have caused overcapitalization in PCLs' loan loss reserves, and identify alternatives for establishing and maintaining loss reserves sufficient to protect the Federal government from risk of loss. The Committee believes that amending the existing reserve requirement, offering PCLs a new reserve option, and studying the causes of overcapitalization will help to remedy the problem of overcapitalization in loan loss reserves, thus allowing PCLs to make more loans to small businesses.

In light of rising costs of real estate and fixed assets since the last reauthorization in 2000, the bill authorizes the SBA to increase its maximum 504 loan guarantee from $1 million to $1.5 million for general 504 program loans, and from $1.3 million to $2 million for loans that achieve a "public policy goal." The nine public policy goals currently identified by the statute are: rural development; expansion of exports; expansion of minority business development; business district revitalization; enhanced economic competition; restructuring because of Federally-mandated standards or policies; changes necessitated by Federal budget cutbacks; expansion of small businesses owned and controlled by veterans; and expansion of small businesses owned and controlled by women. An amendment proposed by Senator Bayh to increase the maximum loan guarantee size for manufacturing loans, from $2 million as initially proposed to $4 million, was also approved by the Committee.

The Committee believes that these increased loan limits will assist qualifying small businesses in obtaining needed capital. The manufacturing sector, in particular, should benefit from an increase in the SBA's maximum loan guarantee amount for manufacturing loans. Manufacturers will have a greater opportunity to engage in larger, more expensive projects that will help them expand their operations and, ultimately, hire more employees. It is also the Committee's hope that increasing access to long-term fixed-rate loans to manufacturers will improve the competitiveness of U.S. manufacturers.

The bill also updates the SBIA's job creation standards for small businesses that receive 504 loans. Since 1990, the SBA has required that small businesses receiving 504 loans certify that, for each $35,000 that the SBA guarantees, the small business is creating one job. The standard is amended by requiring non-manufacturing small businesses to create one job per $50,000 in SBA guarantees. Pursuant to the amendment proposed by Senator Bayh and approved by the Committee, the standard for loans made for manufacturing purposes is raised to a requirement that such a loan create one job per $100,000 in SBA guarantees.

The Committee believes that the changes in the job creation requirements will give lenders more flexibility in making loans, allow more small businesses to qualify for loans, and enable existing 504 participants additional operating flexibility. Quickly escalating costs in the manufacturing industry justify granting manufacturing entities less restrictive job creation standards. The bill also provides for a waiver process, either for CDCs that temporarily do not meet the job creation requirements, or for projects that do not meet the job creation levels but that achieve an economic development goal, as detailed in the statute.

In addition to expanding the size of 504 loans, the bill also addresses the complexities of obtaining such a loan. Section 246 of the bill requires the SBA to develop a simplified application for the 504 loan program. Participants in the Committee's roundtable on May 1, 2003, discussed the fact that CDCs spend an inordinate amount of time processing SBA application forms for 504 program loan guarantees. The amount of paperwork that is required for 504 loans is far greater than for comparable loans in other programs or in the private sector.

While a substantial amount of paperwork may always be necessary for real estate-based loans, participants in the 504 program have called for the SBA to develop simplified forms and a quicker processing system. Progress toward the latter goal is being made, in part, by the SBA's current pilot program to centralize loan processing, but improvements for the entire program must still be made. Simplifying the application forms and process would reduce the time CDCs spend processing loans, thus enabling them to provide more loans to small businesses and to provide them more quickly.

Accordingly, the bill requires the SBA to develop and make available to CDCs, within 180 days of the enactment of this legislation, a shorter, more concise, and simplified application for 504 program loan guarantees of not more than $400,000. Furthermore, the SBA must develop a similarly simplified application that will be available for 504 program loan guarantees of all sizes within 270 days of the enactment of this legislation.

The legislation does not specify how the SBA should simplify the application and reduce paperwork. However, the Committee strongly urges the agency to work with the trade association of 504 lenders, the National Association of Development Companies (NADCO), to comply with the bill's requirements in a meaningful way. The Committee also urges the SBA to expedite this process by utilizing the SBA's study on streamlining the application process, completed in the late 1990s, rather than duplicating those efforts and expenses.

Recognizing the critical need for child care in the United States, the bill includes a pilot program to allow small non-profit child-care providers to participate in the 504 program. The section incorporates the provisions of the Child Care Lending Pilot Act of 2003 (S. 822), which Senator Kerry introduced on April 8, 2003.

At its May 1, 2003 roundtable, the Committee heard from participants in the child-care industry regarding the shortage of affordable child care in the United States. This new three-year pilot program responds to that shortage by enabling CDCs to make 504 loans to qualifying non-profit child-care providers. The pilot program will be available through Fiscal Year 2006.

While neither the SBA nor its specific loan programs are designed to serve non-profit entities, the Committee believes that non-profit child-care providers warrant special consideration because the industry is unique and the shortage is so severe in many states. The Committee recognizes that child care can be extremely difficult to obtain. In addition, in order to qualify for certain types of Federal assistance for low income families, a child-care provider may be required to organize as a non-profit, rather than a for-profit, entity, which can have a negative impact on the entity's ability to obtain necessary capital. Whereas most service industries are made up of for-profit businesses, in many states a significant portion of child care is delivered through non-profits, and in the neediest communities non-profits are often the only child-care providers. For example, the following states have high percentages of non-profit child-care providers: Oregon (79 percent), Michigan (86 percent), Iowa (77 percent), Ohio (62 percent), and Massachusetts (90 percent). The Committee recognizes that entrepreneurs and employees, particularly women, cite a lack of child care for their children as a substantial obstacle to their ability to be more actively involved in the small business sector of the economy.

Accordingly, the Committee believes it appropriate to authorize a pilot program to determine whether the 504 loan program could serve as a useful means to deliver capital to child-care providers, without changing the general nature of the 504 program. The Committee notes, too, that permitting non-profit child-care providers to participate in the 504 program is not completely unprecedented, as the SBA's microloan program has permitted loans to be made to non-profit child-care providers since 1997.

The Committee stresses, however, that it does not intend to expand the SBA's loan programs to other types of non-profit entities in the future. The fundamental purpose of the SBA is to foster profitable small businesses and the entrepreneurs who start them. In order to ensure that this pilot program does not impede the ability of for-profit businesses to access capital through the 504 loan program, the bill limits the pilot program to seven percent of the number of 504 loans guaranteed in any year.

Moreover, the Committee recognizes that in some circumstances, 504 loans to certain non-profit child-care providers could be based on collateral that may be difficult for the lender to access. In light of that potential, the bill requires that the collateral provided for a loan be owned directly by the child-care provider. The loan also must be personally guaranteed, and the borrower must have sufficient cash flow from its normal operations to both make its loan payments and pay for customary operating expenses. Furthermore, the bill directs the General Accounting Office to provide to Congress a comprehensive report analyzing the pilot program, as the program nears the end of its three-year pilot period.

As noted previously, loans that achieve one of nine "public policy" goals enumerated in the statute, can be larger in amount than regular 504 loans. One such public policy goal is rural development. The SBA currently classifies rural areas as those jurisdictions that have less than 20,000 residents and are not in an urbanized area adjacent to a jurisdiction with more than 20,000 residents. In contrast, the definition of "rural" used by the U.S. Department of Agriculture (USDA) is based on jurisdictions with more than 50,000 residents. As a result, a rural area may qualify for benefits under USDA programs, but not under those offered by the SBA.

The bill eliminates this disparity by modifying the SBA's definition of "rural" to include jurisdictions that have less than 50,000 residents. The Committee believes that this change will expand the number of small businesses in non-urban areas that are eligible for the "public policy" 504 loans. Additionally, conforming to the USDA's definition of "rural" will eliminate any potential confusion inhabitants of rural areas could encounter when interacting with both the SBA and the USDA.

Finally, the bill includes several sections relating to the 504 program that also pertain to other SBA programs (these provisions appear in the bill under Subtitle G). Section 261 allows small businesses to participate simultaneously in both the 504 and 7(a) programs by receiving loans under both programs. In order to ascertain the extent to which this combination of loans is utilized by small businesses, the SBA should require that lenders report to the SBA's fiscal and transfer agent those 7(a) loans that are made to small businesses that also have 504 loans. In addition, the fiscal and transfer agent should provide this information to the SBA so the agency can include it in its annual budget request and performance plan submitted to Congress.

The second provision, Section 262, conforms the guidance provided under both the 504 and 7(a) programs regarding the extent to which small businesses may lease property financed through SBA programs. The Committee approved this SBA proposal in order to reduce ambiguities under the current leasing guidance and to eliminate the potential for inconsistent results for similar borrowers one with a 504 loan and the other with a 7(a) loan.

Section 263 increases the ability of small businesses to receive investments from an SBIC while also receiving loans under either the 504 or 7(a) loan programs. While recognizing that increasing the amount of borrowed and equity capital that a small business can receive subject to an SBA guarantee may increase the agency's exposure to loss, the Committee believes that the additional risk will be small and counterbalanced by the benefits of expanding available capital for small businesses. In addition, the bill limits the exposure by permitting a small business with an SBIC investment to obtain borrowed capital only from the 504 or 7(a) loan program, but not both, and by continuing to count 50 percent of the borrowed capital against the maximum SBIC investment.

Surety Bond Program

Under the SBA's Surety Bond Guarantee Program, the SBA may guarantee bid, payment, and performance bonds for eligible small contractors for contracts of up to $2 million. The SBA may provide sureties up to a 90 percent guarantee to issue bonds on behalf of small businesses.

Currently, the SBA does not guarantee bonds for any contract with a total value greater than $2 million. The bill clarifies that the SBA may guarantee bonds for specific contracts of $2 million or less when the total range of affiliated contracts exceeds $2 million, or has the potential to exceed $2 million. The surety's bond liability, however, may not exceed $2 million.

The reason for this modification involves circumstances under which a small business seeks bonding for a sub-contract award on an Indefinite Delivery Indefinite Quantity (IDIQ) contract, or similar contract, when the value of the entire contract is larger than $2 million. A small business that receives an award on an IDIQ that is $2 million or less, may be denied a bonding guarantee by the SBA under the current law because the value of the entire contract exceeds the $2 million threshold. In these circumstances, the bill makes it clear that the SBA may provide a bonding guarantee to the small business. Even if the contract's total value exceeds $2 million, the SBA may guarantee bonding if a small business's specific award does not exceed $2 million, the surety's bond liability does not exceed $2 million, and the SBA judges the contract satisfactory.

The Committee is particularly interested in the manner in which the SBA promotes, advertises, and manages both the Preferred Surety Bond Guarantee Program and the Surety Bond Guarantee Program. These programs bear significant potential to assist small businesses to compete more effectively in a difficult economy, and the Committee is concerned by reports that the SBA is not adequately promoting the programs or maximizing their usefulness. The Committee believes that the SBA should work with contracting officers in all government agencies to ensure that they understand the SBA's surety bond program and that, when appropriate, contract solicitations should be structured in a way that permits small businesses to participate fully in the bid process.

In addition, the Committee believes it is important that the SBA ensure that these programs are managed by personnel with adequate training and experience to understand the circumstances under which small businesses bid for contracts and attempt to obtain surety bond guarantees. Finally, the Committee is also concerned by reports that the SBA's surety bond guarantee approval process has increased from a few days to up to 2 weeks; clearly, the SBA must provide small businesses with a quick and efficient approval process.

Pilot program for guarantees on pools of non-SBA loans

Section 265 of the bill authorizes the SBA to develop a three-year pilot program for providing a partial guarantee on pools of loans that are not otherwise guaranteed by the SBA. The SBA's budget request and performance plan for Fiscal Year 2004, submitted in February 2003, reported that the SBA was considering such a proposal. The proposal was also discussed at the Committee's roundtable on April 30, 2003. At the roundtable, the SBA reported that it had been exploring this type of program, but the agency was uncertain if it had the authority to develop and implement such a program, absent legislative authorization. The Committee has consulted with the SBA and with participants in the small business financing industry to determine the program's appropriate elements. The bill authorizes, but does not require, the SBA to develop the program if the SBA determines that it can be practically implemented.

If the program is undertaken, financial firms approved by the SBA would pool loans not individually guaranteed by the SBA. These pooling entities would then issue securities offering returns based upon the returns from the loans in the pool. The securities would be rated by a rating agency and sold to private investors.

The pooling entity would also offer a partial "first-loss" guarantee to investors on the securities' returns. If the loans had insufficient returns to pay the expected returns on the securities, the pooling entity's guarantee would be the first guarantee called into performance to pay investors. The SBA would issue partial, not complete, "second loss" guarantees on the return from the securities, but not on individual loans within the pool. The pooling entities' guarantees would have to be completely exhausted before the SBA's guarantees would be called upon. The Committee intends that the SBA's guarantees would be funded entirely by fees charged to the private investors, with no appropriations to be made for the program. The program, if implemented, will sunset at the end of Fiscal Year 2006 unless it is reauthorized by Congress.

The rationale for this proposal is to increase effective liquidity for small businesses, and for community banks, by improving the quality and amount of loans available to small businesses. The pooling structure is based on similar arrangements for home mortgages, credit card loans, and car loans, which have active secondary markets based upon their pooling and securitization. The dual guarantee structure, and the quality of the loans involved, should allow substantially all of the securities issued for each pool to be rated as investment grade. The Committee believes that this program would allow lenders, including community banks, to benefit from the increased liquidity of small business loans and to utilize capital that is otherwise locked into existing loans, and therefore to provide better terms on loans to small businesses, as well as to make more small business loans.

The Committee has received statements of support for the pilot program from representatives of small businesses that believe the program could improve access to capital, and could improve the terms of obtained capital, for many small businesses, particularly those without significant real estate property to use as collateral. Financial firms currently involved in the pooling and securitization of SBA 7(a) and 504 loans have also expressed their support for the program, and have opined that it will increase small businesses' access to effective capital.

The Committee has addressed many specific comments about the program by adding elements to the bill. As noted, the SBA's guarantees are intended to be funded entirely by fees paid by private investors, and will only be needed if the pooling entities' guarantees are fully exhausted. It is the Committee's expectation that the types of loans that will be included in the pools will be unlike the loans currently made in other SBA programs. The Committee realizes that the SBA must craft the program's details, and the bill gives the SBA the flexibility to develop a program that is feasible and that will produce additional lender capital for many small businesses, without negatively affecting other small businesses.

The bill also requires three separate types of reports: (1) The SBA must provide to the Committee and to the Committee on Small Business of the House of Representatives a report detailing the pooling program before it is implemented, and wait 50 days after submitting the report before implementing the program; (2) the SBA must file with the Congress, in the SBA's Budget Request and Performance Plan, an annual report about the program's performance; and (3) the GAO is required to study the program, if implemented, and report on the program's performance, including any effects the program may have on the 504 or 7(a) programs, before calendar year 2006.

In light of concerns raised by Senator Pryor, the Committee agreed that as the bill moved to consideration by the Senate, the Chair would work with Senator Pryor and other Members of the Committee to address such issues and ensure that the pooling proposal provides the greatest benefit to small businesses in need of capital while limiting risk to the Federal government.

New Markets Venture Capital Program

Several participants at the Committee's May 1, 2003, roundtable described their experience with the New Markets Venture Capital (NMVC) program and offered recommendations for improving the program. Based on these recommendations and other information received by the Committee, the bill sets a standard time of two years for conditionally approved NMVC companies to satisfy their requirements for final approval. This change will give conditionally approved NMVC companies two years to raise $5 million in private capital. By raising $5 million in private capital, NMVC companies become eligible for matching funds provided by the Federal government.

The current statute gives the SBA the discretion to allow up to two years for NMVC companies to satisfy the private-capital matching requirement. In the past, the SBA has set the time limit for raising private capital at various lengths; currently, the SBA has set the limit at two years.

Establishing the time standard at a full two years will provide NMVC companies more certainty in meeting their private-capital obligations as well as granting potential investors in aspiring NMVC companies a longer time-frame in which to evaluate the NMVC companies and assess the merits of an investment.

Additionally, the bill changes the definition of "low-income geographic area" used in the NMVC program to conform the definition more closely to the equivalent term used in the New Markets Tax Credit (NMTC) program. Many investors participate in both the NMVC and NMTC programs, and a uniform definition will improve coordination between the two programs, where applicable. The change will increase the flexibility that NMVC companies have in choosing small businesses in which to invest, by significantly broadening the definition of those areas in which investment is permitted under the NMVC program.

Small Business Investment Company Program

The Small Business Investment Company (SBIC) Program provides equity capital, long-term loans, debt-equity investments and management assistance to small businesses, particularly during their growth stages. SBICs are privately owned and managed, profit-motivated companies, investing with the prospect of sharing in the success of the funded small businesses as they grow and prosper.

There are now 443 licensed SBICs, and these SBICs have made more than 16,000 investments in small businesses since the start of Fiscal Year 1999, with a total value of almost $17 billion. That is critical long-term or "patient" capital for small businesses that has led to the creation and retention of approximately 481,000 jobs during this period.

At the May 1, 2003 roundtable, the Committee discussed the SBIC program and heard from representatives of SBICs as well as from the SBA. In preparing this bill, the Committee worked with participants in the SBIC industry to develop appropriate changes to the current program. The bill contains several provisions that are intended to strengthen the program and improve the ability of SBICs to provide equity financing to small enterprises.

Specifically, Section 281 provides SBICs with additional flexibility for handling funds prior to investments in small businesses by allowing SBICs to invest such funds in additional types of securities. Currently, SBICs holding cash, prior to investing in a small business, are only permitted to invest directly in obligations of the United States, obligations guaranteed by the United States, or in certificates of deposit maturing within one year or savings accounts that are in institutions insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The bill modifies this requirement to permit SBICs to invest in securities, mutual funds, or instruments, which themselves invest solely in the obligations that are currently permitted. For instance, under the bill SBICs will be able to invest in mutual funds that, in turn, invest in the government-backed obligations already authorized for SBICs. The Committee believes that this modification will provide SBICs with greater flexibility and a wider range of short-term investment options.

Section 282 changes the maximum amount of the fee paid to the SBA by SBICs that use participating securities backed by the SBA. The Committee recognizes that this fee is necessary to maintain a zero subsidy for the SBIC program. The bill provides that, for each participating securities SBIC, the SBA may charge a fee of up to 1.7 percent of that SBIC's outstanding SBA-backed leverage. The annual fee for each SBIC that uses debenture-backed financing will remain unchanged.

Section 283 changes the formula by which a participating securities SBIC may distribute its profits, after it has repaid accrued prioritized payments and tax distributions, to a formula based on the SBIC's ratio of outstanding SBA-backed leverage to total private capital as measured at the time of distribution (whether or not the private financing has actually been paid into the fund). The change will result in the SBA receiving a greater percentage of distributions than is now the case and result in the outstanding leverage of SBICs making distributions under this section being repaid faster than under current law.

The Committee believes that this change will allocate the distributions from the SBICs in accordance with the ratio of financial risk each party bears at the time of distribution. Private capital commitments are binding in favor of the SBA, and may be "called" by the SBA, until the SBA has been paid its outstanding leverage upon completion of the fund. On the other hand, the only money at risk for the SBA at the time the distributions are made is the amount of SBA-guaranteed leverage that is actually outstanding at the time.

Section 263 of the bill removes some of the restrictions that small businesses face if they attempt to secure financing that simultaneously involves the SBIC program and either the 7(a) or 504 loan programs. The SBA's regulations currently prohibit an SBIC from having more than 20 percent of its privately-raised funds invested in any one small business. The SBA counts a small business' 7(a) and 504 loans against this 20 percent limit for any SBIC that owns more than 20 percent of the small business, by requiring a guarantee of all or a portion of the 7(a) or 504 loans. This provision will modify the restriction so that, for an SBIC with an investment in a particular small business, only 50 percent of the SBA loan amount will be counted by the SBIC in determining the SBIC's 20 percent limit for any one portfolio company. A small business must elect whether to use the benefit of this calculation for either its 7(a) or 504 loan. It cannot use the benefit for both a 7(a) and 504 loan. While recognizing that increasing the amount of borrowed and equity capital that a small business can receive subject to an SBA guarantee may increase the agency's exposure to loss, the Committee believes that the additional risk will be small and counterbalanced by the benefits of expanding available capital for small businesses.

Small Business Intermediary Lending Pilot Program

The Committee included in the bill an amendment, proposed by Senator Levin, to authorize a new three-year pilot program in which the SBA may make loans to local non-profit lending intermediaries, and the intermediaries can then re-loan the funds to small businesses. The program seeks to address the capital needs of start-up and expanding small businesses that require flexible capital but may not be eligible for private or public venture capital. The pilot program is aimed at businesses that desire larger loans than can be provided under the SBA's Microloan program and that, for a variety of reasons, including lack of sufficient collateral, are unable to secure the credit with practicable terms through conventional lenders, even with the assistance of the 7(a) or 504 loan programs.

Through this pilot program, the SBA is authorized to make one percent, 20-year loans, on a competitive basis, to up to 20 non-profit lending intermediaries around the country, with a maximum amount of $1 million per loan. Intermediaries will not pay any fees or provide any collateral for their loans. Each 20-year loan will capitalize a revolving loan fund through which the intermediary will make loans of between $35,000 and $200,000 to small businesses. These subordinated-debt loans will be more flexible in collateral and general underwriting requirements than the SBA's other lending programs. In addition, intermediaries will assist their borrowers in leveraging the SBA funds to obtain additional capital from other sources. The pilot will test the impact of this program on job creation in rural and urban areas, especially among underemployed individuals.

Unlike the SBA Microloan Program, the intermediaries will receive no technical assistance grants. All administrative costs or technical support provided to small business borrowers will be covered by the interest-rate spread between the lending intermediary's one percent loan from the SBA and the interest rate on loans made to the small business borrowers, the rate for which will be set by the intermediary.

This program design has been utilized successfully in a similar program at the U.S. Department of Agriculture (USDA) that has provided loans to non-profit lending intermediaries since 1985. Under that program, no intermediaries have defaulted on their loans from the USDA, which are made at one percent and have terms of 30 years, and only two percent of intermediaries are currently delinquent on their loans. Unlike the USDA's program, which is limited to rural areas, the pilot will serve both urban and rural regions.

This pilot is designed to reach small businesses that 7(a) lenders will not reach due to the perceived higher risk of these businesses. Many states are fortunate to have a healthy network of community based, non-profit intermediary lenders that are experienced and successful in meeting the needs of small businesses. This pilot program will give them additional tools to stimulate the economy by creating jobs—including jobs for low income individuals—and by facilitating new lending and investing in businesses.

TITLE III—ENTREPRENEURIAL DEVELOPMENT PROGRAMS

The Committee's focus on the SBA's Entrepreneurial Development Programs began with a clear objective—to ensure that the investments in these programs would create a return to the economy through successful business ownership and job creation. A priority for the Committee was to review all of the SBA's Entrepreneurial Development Programs to assess usage, value and cost effectiveness based on data provided in the agency's Budget and Performance Report for Fiscal Year 2002. The result revealed the programs that work well and identified the need for program improvements and the introduction of new programs.

The potential users of entrepreneurial development programs and services include not only 25 million small business owners across the country, but also the millions of Americans who are looking at small business ownership as an alternative to the "traditional workplace" where corporate America once offered life-long futures for workers. Each year, there are 3 to 4 million new small businesses started and one quarter of existing small business owners intend to form another small business. These numbers, and the individuals behind the numbers, generate 32 percent of total business wealth in the country today. These statistics set the mark for the SBA to provide the best possible programs and services through its Regional and District Offices, its internet-based programs, and network of resources partners—the Small Business Development Centers, the Service Corps of Retired Executives, the Women's Business Centers, and the Veterans Outreach Programs.

The SBA's Office of Entrepreneurial Development performs program development, oversight duties, and administers program delivery through its District Offices and agency funded resource partners. The non-credit program offices include: the Office of Business Initiatives (Business Information Centers, SCORE, Drug-Free Workplace and e-Business Institute), the Office of Small Business Development Centers, the Office of Women's Business Ownership, the Office of Native American Affairs, and the agency's Business Information Services (Answer Desk and Publications). The agency's internet programs and services include: the SBA Website, Internet Small Business Classroom, Internet U.S. Business Advisor, and Internet BusinessLaw.gov. Also included as a non-credit program is the Office of Veterans Business Development, which reports to the Administrator as prescribed under Public Law 106–50.

One of the agency's most successful initiatives is the Business Information Centers (BICs) Program. The Committee emphasizes the significance of the BIC program to encourage the agency to continue to support and maintain this valuable program and to consider using this model to expand the agency's reach to entrepreneurs in urban and rural areas. Individuals considering small business ownership, as well as established small business owners, find that the BIC's products provide the level of self-help reference tools and computer workstations necessary to improve the process of making informed business decisions.

Aided by counseling services and workshops provided by the Service Corps of Retired Executives or the Small Business Development Centers, the BIC is a concept that the SBA should make a cornerstone in any transformation plans. The agency has placed the BIC product in several off-site locations, not within agency District Offices and not supported by Federal government facilities, locations that have proven to be more accessible to entrepreneurs. The agency must review its present policy of not allocating funds to support the off-site locations of the BICs to maintain the integrity of the program.

The SBA is one of the smallest Federal government agencies but has the greatest potential customer base. In general, the agency's entrepreneurial programs and services are broad and diverse, developed to meet the special needs of small businesses. The Committee recognizes the tremendous challenge of preparing tomorrow's small business owners and the need to offer stability to established small businesses facing every possible challenge—from lack of financing to the inability to handle rapid growth. So, with this three-year reauthorization bill, the programs contained in Title III address the needs and concerns brought to the Committee's attention by small business owners, small business advocates and organizations, and the SBA.

Office of Entrepreneurial Development

Service Corps of Retired Executives

The Service Corps of Retired Executives (SCORE) has grown to more than 800 service delivery locations, providing training and free counseling through its 10,500 volunteer members to almost a half million entrepreneurs last year. The projected costs for providing SCORE services in Fiscal Year 2002 was $30 per client—the most cost effective of all SBA funded programs. In recognition of the increasing need for services provided by SCORE, the Committee believes that SCORE should receive the full authorized funding level of $7 million for Fiscal Years 2004, 2005, and 2006.

In order to clarify that SCORE should continue to have office space and paid personnel to support its Headquarters in Washington, D.C., Section 8(b)(1)(B) of the Small Business Act was amended. SCORE operates as a volunteer organization and leverages gifts and contributions to provide its counselors with the tools and technology they need to better serve entrepreneurs. Therefore, Section 8(b)(1)(B) was amended to allow SCORE to manage the gifts and contributions that the organization receives.

Cosponsorship authority

In the Small Business Reauthorization Act of 2000, at the request of the SBA, the Committee provided broader cosponsorship authority in order to expand the types of assistance that could be provided to small businesses to include "information and education." At that time, the agency believed that this change would provide the flexibility in the types of assistance it could provide to small businesses. Since 1980, the agency has used the cosponsorship authority to leverage its limited resources with public and private partners in the delivery of programs and services. Although Congress has amended the authority in past reauthorization bills, the agency proposed much broader authority for the next six Fiscal Years.

Based on concerns resulting from a report prepared by the SBA Office of Inspector General, issued August 26, 2002, the Committee concluded that further review of the agency's cosponsorship authority and gift authority is necessary before additional provisions are granted. The report was performed at the request of the Administrator to review allegations of fiscal improprieties involving gift acceptance and cosponsorship authority. The review concluded that the activities in question were not managed in accordance with the SBA and Federal policies and procedures. However, the events were not considered "cosponsorships" as defined by the Small Business Act.

Since the cosponsorship authority is critical to the agency's ability to conduct marketing and outreach activities that assist entrepreneurs and promote the agency's programs and services, the Committee will continue to work with the agency to identify actions necessary to clarify the intent, purpose and practice of the cosponsorship and gift authorities so that the agency can perform in a manner that is without question and does not place participating agency personnel in jeopardy of abusing the process unknowingly. In addition, the Committee believes that any changes to the cosponsorship authority should include adequate protections against abuse in order to protect the agency, small businesses, and taxpayers. A major concern related to the SBA's request involved the handling of cash contributions and disbursements for purchases, the purchase of apparel for agency employees, and the payment of expenses incurred by agency personnel with donated funds.

The bill extends the existing authority for the Fiscal Years 2004, 2005, and 2006, without additional amendments to provide the Committee with the opportunity to work with the agency to ensure that the cosponsorship authority and gift authority have adequate protections against possible abuse, as well as avoid the appearance of abuse.

Small Business Development Centers Program

Since 1980, the Small Business Development Centers (SBDCs) have been essential in the delivery of counseling assistance and educational programs to prospective and existing small business owners through their 58 host sites and more than 1,100 sub-centers, which employ more than 5,000 professional and clerical personnel. The SBDC program assists more than half of the entrepreneurs that SBA reports serving each year. Therefore, its value goes well beyond the actual projected "return on investment"—each Federal dollar invested in counseling produced a $2.80 return in tax revenue in Fiscal Year 2002, and created or retained 132,000 jobs in the United States.

Section 101(c) of the bill provides funding authorization for the SBDC program in the amount of: $125 million in Fiscal Year 2004, $130 million in Fiscal Year 2005, and $135 million in Fiscal Year 2006, which will allow the SBDC network to meet the growing demand for its business education programs and counseling assistance nationwide. In addition, the SBDCs also participate in Federal grants administered by the agency to fund: the Drug Free Workplace Program; BusinessLINC Program; and the Federal and State Technology Partnership and Rural Outreach Programs.

The Committee elected not to accept the Administration's proposal to restructure the SBDC program as a result of concern for the communities presently served by the program. The Committee does, however, support the need for greater oversight of program participants and the need to open the program to growth and diversity. The Committee encourages the Association of Small Business Development Centers to consult with the agency to develop a uniform level of quality and accountability for all SBDCs participating in this program. As well, the agency's oversight duties must adhere to the highest level of programmatic and financial review to ensure that the SBDC participants meet the agency's requirements as defined in Section 21 of the Small Business Act.

A privacy requirement, proposed by Senator Crapo, amends Section 21(c) of the Small Business Act to protect client information by prohibiting the disclosure of client information (including the name, address, telephone and facsimile numbers, and e-mail address) without the written consent of the client. The provision is modeled after a section of the Kerry-Ensign Small Business Regulatory Assistance Act, S. 1255. In addition, the bill changes the use of the word "certification" to "accreditation" for purposes of the SBDC program to distinguish the agency's certification programs and the Association of SBDCs accreditation program for SBDCs.

A new program under Section 112(c)(3) of this bill was added to provide grants to eligible SBDCs to deliver portable small business assistance on a temporary basis in communities experiencing severe economic challenge as a result of industry/military base downsizing or closing or other major events (other than natural disasters) that increases job loss or causes small business instability. The change would enable the SBDC program to be more flexible in creating programs and services that provide assistance to small businesses challenged by a particular economic crisis, or displaced workers seeking to take skills and transform them into a small business.

While the bill reserves $1 million of the SBDC appropriated funds for the portable small business assistance program, it is not the intention of the Committee to disrupt the current funding formulas of appropriated funds for the SBDC program. Based on the need for SBDCs to have the flexibility to respond temporarily to communities in distress, the Committee encourages the SBA to move forward with this program as appropriate.

PRIME reauthorization and transfer to the Small Business Act

PRIME (Program for Investment in Microentrepreneurs) was created in 1999 when the PRIME Act was incorporated and amended in the Gramm-Leach-Bliley Act as part of the U.S. Department of the Treasury's Community Development Financial Institutions Program, but the conferees chose to have the program administered by the SBA. However, the statutory provisions were never moved to the Small Business Act. The bill reauthorizes PRIME and transfers the statutory provisions pertaining to this program from the Riegle Community Development and Regulatory Improvement Act of 1994 to the Small Business Act.

Additionally, the bill adds a data collection provision that is intended for grantees that provide training and technical assistance to disadvantaged entrepreneurs. Under PRIME, the SBA provides grants to intermediaries, which use the PRIME grants to (1) train other intermediaries to develop microenterprise training and services programs; (2) research microenterprise practices; or (3) provide training and technical assistance to "disadvantaged entrepreneurs." For continued evaluations and awarding of grants, the Administration should continue to evaluate all grantees as it has under regulations set forth in 13 CFR Part 119.

In keeping with Section (e)(4) "Diversity," the Committee reminds the SBA that PRIME is intended to serve very low-income, or otherwise disadvantaged entrepreneurs, wherever they may live. Any criterion applied to determine grants made under this Act should not discriminate against urban, rural or suburban applications, as long as they meet the service standards outlined therein. The income status of potential clients—not their location—is to serve as the criteria for reviewing applications for PRIME funding.

In Fiscal Years 2001 and 2002, PRIME grants were issued in the total amounts of $15 million and $5 million, respectively. For Fiscal Year 2003, the estimated level of PRIME grants is approximately $5 million. The bill authorizes $15 million to be available for PRIME grants for Fiscal Years 2004, 2005, and 2006.

Women's Small Business Ownership Programs

During the course of the Committee's hearings, roundtables, and discussion groups, witnesses and participants identified the following: the lack of SBA programs that meet the needs of existing small businesses; great concern for pilot sustainability grants program for the Women's Business Center Program; the need for specific research to be conducted by the National Women's Business Council; and the limited opportunities for Federal government contracts for women. In general, women business leaders expressed their frustration with the agency, the lack of results from all agency programs and services for existing women business owners, the inactivity of the National Women's Business Council and Interagency Committee on Women's Business Enterprise, and the lack of connection with the "real world problems" facing women entrepreneurs on a day-to-day basis.

These concerns led to the introduction of two key pieces of legislation by Senator Snowe in 2003, the Women's Small Business Programs Improvement Act (S. 1154) and the Women's Business Centers Preservation Act of 2003 (S. 1247), the latter being cosponsored by Senator Kerry. Measures addressed in these bills were incorporated and perfected for reauthorization purposes. S. 1154 addressed the need to improve the broad spectrum of programs and services for women entrepreneurs, and S. 1247 was introduced to offer a stop-gap measure to stabilize Women's Business Centers operating under the Pilot Sustainability grant program.

Small Business Administration Office of Women's Business Ownership

The bill provides authority for the SBA's Office of Women's Business Ownership to develop and make available new programs and services for established women owned businesses addressing issues in the areas of women in manufacturing, technology, professional services, retail and product sales, travel and tourism, international trade and Federal government procurement. The Committee expects that these new programs and services will be developed in consultation with the National Women's Business Council, the Interagency Committee on Women's Business Enterprise, and representatives of the women's business centers associations.

The bill also directs the SBA to conduct training for District Office Women Business Ownership Representatives (existing personnel who are responsible for marketing and outreach activities) and District Office Technical Representatives (existing personnel who are responsible for grant programmatic and financial oversight duties) and to provide resources for the District Offices to carry out their responsibilities.

Women's Business Center Program

The Women's Business Center Program, established in 1988, provides long-term training and counseling to encourage small business ownership through more than 80 non-profit organizations. The Women's Business Center program has been well received by recipient users and has become a unique resource for women entrepreneurs—proving to be of great benefit to the SBA in its quest to serve greater numbers of entrepreneurs. Therefore, the Committee has questioned the agency actions in support of opening new centers in new locations before stabilizing established centers through continued funding opportunities. The SBA has stated that after initial funding, the centers should be able to provide services independent of the grant program. However, since a requirement of the Women's Business Center program is to conduct outreach and long-term assistance to the underserved markets on a "no-fee" basis, it would be difficult for a center to become self-sufficient. The Committee supports the agency's positioning itself to first meet the obligations of renewal grant funding for productive centers before creating new centers.

Under the bill, beginning in Fiscal Year 2004, the Women's Business Centers program will operate on a permanent basis replacing the Pilot Sustainability Grants Program. Existing Women's Business Centers will be eligible to submit proposals every three years as they graduate from existing grant awards. To avoid a repetition of unexpected and unannounced actions by the SBA in the future that may create a detrimental impact on the delivery of programs and services, the bill clearly sets forth the process and criteria that the agency must follow in administering the women's business center grant program. This process should include a review of SBA's evaluation criteria that centers must produce an annual 10 percent increase in client growth and SBA guaranty loans.

To improve this process, the bill directs the agency to streamline and reduce the reporting requirements and costs of the centers recognizing the limited grant award and limited human resources within the centers. All of the eligible associations that represent Women's Business Centers (WBCs) will also have an opportunity to consult with the SBA Office of Women's Business Ownership for the purpose of developing training programs for centers and recommendations to improve the policies and procedures governing the operations and administration of the program.

National Women's Business Council

The National Women's Business Council was created by the Women's Business Ownership Act of 1988 to serve as an advisory body to the President, the Congress and the SBA. Its members came from the public and private sectors, and was so constituted to respond to criticism of the Interagency Committee's inactivity. By separating from the Interagency Committee, the Council was better able to focus on its advisory mission. The 1997 Small Business Reauthorization Act provided for improved reporting duties and Council appointments. The 2000 Small Business Reauthorization Act increased the annual authorized appropriation from $600,000 to $1 million to allow the Council to broaden its scope in research and reports, establish advisory councils, conduct conferences, and establish an interstate communication network.

To build upon the foundation previously established for the Council, the Committee incorporated the Administration's and Council's requests to change its research formula and establishes a 30 percent allocation of appropriated funds for specific research. In addition, the bill provides the Council with the authority to create a clearinghouse on women's business ownership. In addition, through the establishment of three new subcommittees, the bill enables the Council to share common issue areas with the SBA's Office of Women's Business Ownership and the Interagency Committee on Women's Business Enterprise that include manufacturing, technology, professional services, retail and product sales, travel, international trade, procurement and Federal contracting. The bill also provides the Council with the same cosponsorship authority as the SBA in order for it to expand research and program activities for women-owned small businesses.

To ensure the Council's continuity and independence, the bill clarifies membership representation. The Council has 15 members representing small businesses and small business organizations, with the Chairperson appointed by the President, six members representing women's business organizations, and the remaining eight members appointed by the SBA Administrator based upon recommendations of the Chair and Ranking Members of the Committee and the Committee on Small Business of the House of Representatives. Of these eight "party-affiliated" members, four are to come from the same political party as the President and four are not to be of the President's party.

In response to the Committee's concern about the appointment process for Council members, Senator Landrieu proposed an amendment, which was adopted by the Committee, to establish fairness in the appointment of Council members as a result of an imbalance in membership representation between the two political parties for almost two years. The amendment calls for equal representation of the two political parties in the process of appointing members to fill vacant seats on the Council and requires the Administrator to report to Congress on vacancies that remain unfilled for more than 30 days. The report must cite in detail the status of all vacancies, identifying the type of vacancies, the process the Council will follow, and the notice of any anticipated delays in filling the vacancies.

Interagency Committee on Women's Business Enterprise

In 1977, an interagency task force was formed, and by Executive Order 11213, in May 1979, the task force was re-named the Interagency Council. In 1988, the Women's Business Ownership Act (Public Law 100–533) replaced the Interagency Council with a joint public-private sector National Women's Business Council. The SBA Reauthorization and Amendment Act of 1994 (Public Law 103–403) revised the Interagency Council's structure again, returning to all public-sector participants to comprise an expanded Interagency Committee on Women's Business Enterprise.

In 1994, by separating the private-sector Council from the public-sector Interagency Committee, it was thought that the Council would be the pro-active force to inspire action by the Interagency Committee. The 1997 Reauthorization Act, incorporated a requirement that representatives on the Interagency Committee report directly to the head of their agency on the Interagency Committee's activities. There is no funding authorization provided under current law to support the activities on the Interagency Committee. Nor are there clear directives on the operations and interaction of the Federal agency and department representatives.

Currently, the Interagency Committee includes representatives from Departments of Commerce, Defense, Education, Energy, Health & Human Services, Labor, Transportation, and Treasury, the SBA, General Services Administration, Office of Federal Procurement Policy, National Aeronautics and Science Administration, Environmental Protection Agency, the Federal Reserve, and the Executive Office of the President.

The Federal agencies and departments represented on the Interagency Committee allocate existing personnel and resources to support participation on the Interagency Committee. The Interagency Committee is required to submit an annual report to the President and Congress, through the SBA, but there is no record of the annual reports being prepared or forwarded to the President and Congress for the past three years. In addition, the President has not appointed a Chairperson to carry out the mission of the Interagency Committee, and therefore, the Interagency Committee is inactive.

To reactivate the Interagency Committee so that it can accomplish its intended mission, the bill directs the SBA Deputy Administrator to assume temporarily the responsibilities of the Interagency Committee Chair if vacant until the President makes an appointment. This action provides for the continuity of activities and avoid periods of inactivity. The bill also provides operational direction for the Interagency Committee by requiring that the Interagency Committee conduct three official meetings each year to plan upcoming Fiscal Year activities; track year-to-date agency contracting goals; and evaluate Fiscal Year progress and begin the report process.

The bill also establishes, as a subcommittee to the Interagency Committee, a policy advisory group consisting of representatives from the SBA, the Department of Commerce, the Department of Labor, the Department of Defense, the Department of the Treasury, two individuals and two organizations that are members of the National Women's Business Council. The Committee believes that the policy advisory group will return the Interagency Committee to a mix of public/private members to provide the support and direction so badly needed to revive the intent of the Interagency Committee.

Office of Native American Affairs

The Small Business Administration Office of Native American Affairs began operations in Fiscal Year 2003 to implement the agency outreach program for Native American communities on or near Tribal lands. The initiatives underway will pave the way for the programs and services established in the bill, which incorporate the Native American Small Business Development Act (S. 1126), introduced by Senator Johnson and cosponsored by Senators Kerry and Smith. Specifically, the bill establishes three small business assistance programs to provide entrepreneurial development opportunities for Native Americans.

Section 322 provides financial assistance (grants, without a matching requirement, contracts, or cooperative agreements) to Tribal Governments and Tribal Colleges through five-year projects to provide financial, management, and marketing education, including appropriate training and counseling. The bill authorizes funding for training and technical assistance to Native-American businesses through the Tribal Governments and Tribal Colleges, including Alaska Native Corporations and Native Hawaiian Organizations.

The bill also establishes two pilot programs. The first is a four-year program offering two to four-year grants to provide culturally tailored business development training and other services to Native Americans and small businesses owned small businesses. The second is a four-year pilot program for American Indian Tribal Assistance Centers to provide assistance to prospective and current owners of small business concerns located on or near tribal lands. Both pilot programs sunset in Fiscal Year 2007.

Office of Veterans Business Development

Congress established the Office of Veterans Business Development through Section 201 of Public Law 106–50. The office is responsible for the formulation, execution and promotion of policies and programs of the SBA that provide assistance to small businesses owned and controlled by veterans and service-disabled veterans. The office works closely with the local SBA field offices to provide small business support and has implemented initiatives designed to increase agency outreach targeting veteran entrepreneurs.

The bill extends the SBA's responsibility for the Office of Veterans Business Development through Fiscal Year 2006. The bill also increases the authorized funding level for Office of Veterans Business Development to carry out the outreach programs for veterans to $1 million for Fiscal Year 2004, $1.5 million for Fiscal Year 2005, and $2 million for Fiscal Year 2006.

The Advisory Committee on Veterans Business Affairs was also established by Public Law 106–50, to serve as an independent source of advice and policy recommendation to the SBA Administrator, the SBA Associate Administrator of Veterans Business Development, the Congress, the President, and other policy makers. The Advisory Committee reviews, coordinates and monitors plans and programs developed in the public and private sector that affect the ability of small business concerns owned and controlled by veterans to secure financing and access to markets. The bill extends the SBA's responsibility for the activities of the Advisory Committee on Veterans Business Affairs through Fiscal Year 2006.

The Outreach Grants for Veterans Program is based on Public Law 105–135, which instructed the SBA to do comprehensive outreach to veterans. Public Law 106–50 more clearly defined the scope of the outreach activities. The Committee understands that the grant program that the SBA has planned for Fiscal Years 2004 through 2006 will include the establishment of Veteran Outreach Centers (presently in New York, Florida and Texas) in each SBA region. The grant program, as funds are available, would provide for training programs for veterans entrepreneurs for small business start-up and expansion. The program would also fund local veteran business councils to work with District Offices and SBA resource partners (e.g., Small Business Development Centers, Women Business Centers, Service Corps of Retired Executives) to develop and conduct programs and services to veterans.

The bill includes a proposal by the Administration to clarify previously enacted statutory changes to the Small Business Act to reflect that veterans shall have full consideration in all SBA programs. Specifically, the provision includes in the definition of "veterans" the term "members of a reserve component of the Armed Forces."

TITLE IV—SMALL BUSINESS PROCUREMENT OPPORTUNITIES

Prime contracting

The Committee believes that the growth of the small business share of Federal procurement continues to be too slow. Twenty five years ago small businesses received 22.5 percent of the dollars spent by the Federal government for goods and services. In Fiscal Year 2002, small firms received approximately 22.6 percent.

The Small Business Act requires small businesses to have the maximum practicable opportunity to participate in the performance of Federal government contracts. In 1997, the Congress directed the President to increase the goal to 23 percent from 20 percent of the Federal government's prime contract dollars to be awarded to small businesses for each fiscal year. The SBA is responsible for coordinating goals with Federal agencies to ensure that the Federal government achieves the 23 percent goal.

The Committee believes measures that hold agency officials more accountable for their performance will result in a larger Federal contracting share for small businesses. Accordingly, the bill requires the head of an agency, upon request, to provide a complete report to the agency's congressional appropriators on the agency's small business utilization. In addition, the bill directs agency officials to communicate to subordinate employees the importance of achieving small business goals. It further directs agencies to include in the annual performance evaluation for agency officials, a factor that measures the success of that official in small business utilization.

The SBA Procurement Center Representatives (PCRs) monitor Federal agency procurement activity to ensure that (1) appropriate steps are taken to provide contract awards to small businesses, (2) agencies meet their small business contracting goals, and (3) proposed contracts that could involve consolidated procurement requirements are identified and resolved. PCR responsibilities include: reviewing proposed acquisitions and recommending alternative procurement strategies; identifying qualified small business sources; conducting reviews of small business programs at Federal contracting activities to ensure compliance with small business policies; counseling small businesses; and sponsoring and participating in small business conferences and training.

The number of PCRs, however, has shrunk dramatically in the last 10 years. The SBA Administrator testified before this Committee on March 18, 2003, that 47 PCRs represent the SBA at 255 department and agency contracting offices across the country. Of the approximately 2,200 Federal contracting offices, PCRs are only able to cover 11.6 percent. These 255 contracting activities award approximately half of the total Federal contracts each year.

The Committee believes that the failure to maintain sufficient levels of PCRs diminishes the SBA's ability to carry out its statutory mandate. Reports prepared by the GAO disclose that the SBA is struggling to accomplish its mission and lacks the assurances that PCRs were reviewing proposed acquisition strategies to identify barriers to small business participation. The GAO also concluded the number of PCR-recommended small business set-asides has declined by more than half in the last ten years.

More importantly, the Committee recognizes that acquisition is a technical discipline that requires knowledge and experience to manage effectively; therefore, tasking these responsibilities to other SBA employees as a part-time function will not address insufficient staffing levels. The Committee believes that locating a PCR in the small business community and at buying activities across the country improves the ability of these individuals to advocate and effectively assist in the procurement of contracts for small business.

The bill requires that the SBA allocate sufficient resources to provide for at least one PCR in each state, in addition to at least one PCR at each major procurement center. In determining the extent of program expansion, the Committee reviewed the current PCR staffing levels by state. The Committee also reviewed the total dollar value of contract awards by purchase office to determine which procurement centers represented a significant portion of the total Federal procurement budget. The Committee determined that a minimum of 25 additional resources would be necessary to ensure that there are no less than one PCR at each major procurement center and no less than one PCR for each state.

It further clarifies that these individuals shall be independent of, and have responsibilities distinct from, Breakout Procurement Center Representatives and Commercial Market Representatives. Many small businesses that still are not able to sell to the Federal government rely on these individuals to help them navigate through the complicated procurement processes.

Small business participation ensures competition. Failure to use competition not only results in higher prices but also deprives Federal agencies and the general public of the benefits of a broader industrial base. The Committee recognizes that small businesses offer innovative and creative solutions to Federal agencies trying to carry out their governmental functions, which then take advantage of these innovations to deliver better quality products and services to the general public.

Since the enactment of the Federal Acquisition Streamlining Act (FASA) in 1994, Federal agencies are increasingly relying on contracts and acquisition services offered by other agencies, specifically, the GSA Federal Supply Schedule and government-wide acquisition contracts, to purchase goods and services. FASA included an amendment to the Small Business Act that created an exclusive reservation for small businesses consisting of contracts valued at more than $2,500 but not more than $100,000.

Although GAO reports indicate that the level of small business participation on multiple award contracts is growing and is relatively higher than the share small businesses receive on non-multiple award contracts, small businesses have testified before the

Committee that they invest time and effort and incur costs to negotiate multiple award and multi-agency contracts successfully with the General Services Administration or an executive agent managing a government-wide acquisition contract, and they never reap the benefit of an order placed against that contract.

Therefore, to ensure small businesses are provided a fair opportunity to be considered for orders on multiple award contracts, the bill establishes a government-wide goal for participation by small businesses of the dollar value of awards placed against multiple award contracts, including Federal Supply Schedule, at not less than 23 percent. In addition, to protect small businesses further, the bill reserves orders on multiple award schedules valued at more than $2,500 but not more than $100,000 for small business. The Committee believes this amendment emphasizes the Committee's original intent in establishing a small business reserve.

Contract bundling

During the last several years, Congress has focused on streamlining procurement processes to improve the Federal government's capacity to acquire goods. These procurement reforms included provisions to facilitate the increased use of certain types of contracts. The Federal Acquisition Streamlining Act of 1994 codified the authority of agencies to enter into task-or delivery-order contracts with multiple firms for the same or similar products and services known as multiple award contracts. Information technology acquisition reforms of the Clinger-Cohen Act of 1996 provided for the use of multi-agency contracts and government-wide acquisition contracts.

In Fiscal Year 2002, more than 40 agencies spent approximately $20 billion on the General Services Administration's (GSA) schedule contracts, a more than 200 percent increase since 1997. With new regulations adopting rules for "co-operative" purchasing use of information technology schedules by state and local governments, the GSA expects total sales to double over the next several years.

Reports by the GAO, however, disclose that some organizations that represent small businesses are concerned that these contract types can diminish the ability of small businesses to compete for Federal contracts because they could potentially consolidate multiple agencies' requirements or call for performance over a wide geographic area.

The Committee believes stronger action is needed to address the problem of contract consolidation. In pursuing operational efficiencies, Federal agencies are making decisions, including contract consolidation, that block small business access to the Federal marketplace and the opportunity to compete.

As far back as 1983, the GAO determined that consolidated procurements have the potential for limiting prime contract awards to small business and may not always result in the lowest cost to the Government. Contract bundling continues to threaten small business. In the last ten years, the number of small businesses receiving new contract awards has declined by more than 50 percent.

According to a recent study for the SBA's Office of Advocacy, conducted by Eagle Eye Publishers, Fairfax, VA, for every 100 bundled contracts awarded, small businesses lose an average of 60 contracts; and, for every $100 awarded on a "bundled" contract, there is a $33 decrease to small business. At $109 billion in Fiscal year 2001, bundled contracts cost small business $13 billion.

On March 18, 2003, small businesses and SBA officials testified before the Committee on the detrimental effects of contract bundling, specifically, the lost opportunity cost of choosing among fewer firms, with fewer ideas and innovations, to deliver goods and services at lower prices. This is a defense readiness issue—by forcing agencies to continue to look to small business sources, we ensure that the nation maintains a greater industrial base.

By taking legislative action on this issue, the Committee ensures that small businesses continue to have access to Federal contracts and a fair opportunity to compete for those contracts.

Several studies have pointed to weaknesses in the current definition. The current term "bundling of contract requirements" means consolidating two or more of an agency's requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for small business because of the (a) diversity, size, or specialized nature of the elements of the performance specified (e.g., too many units for one small firm); (b) the aggregate dollar value of the contract is larger than a small business can handle financially; (c) the geographical dispersion of the contract performance sites (e.g., having to perform a service in both New Jersey and California, which a small business may not be able to do); or (d) any combination of the factors described in (a), (b), and (c).

This definition has led to implementation problems because it does not account for all circumstances in which contracts can be bundled together, and the prerequisite that it be unsuitable for award to a small business concern. The definition excludes new requirements. This definition also excludes multiple award contracts, which are contracts awarded under the GSA Multiple Award Schedule Program. Multiple award contracts include any indeterminate delivery or quantity contracts that are awarded to more than one firm.

In addition, some Federal agencies have interpreted the requirement that a bundled contract is one that is "unsuitable for award to a small business concern" to mean that if a small business could submit an offer on a contract, it is not, by definition, bundled. Because current law permits small businesses to team together to perform a bundled contract, and still be considered a small business, it is nearly impossible for a contract ever to be "unsuitable for award to a small business concern."

In light of the foregoing, the bill replaces the term "bundling of contract requirements" with "consolidation of contract requirements," which means the use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of a Federal agency.

The Committee believes that the new definition will eliminate the issues with the current definition leaving room for interpretation by the Federal agencies and will close the loopholes in the current definition pertaining to multiple award contracts. Moreover, it replaces the current definition standard, concerning the diversity, size, specialized nature of the elements of the performance specified, aggregate dollar value, and the geographical dispersion of consolidated requirements, with the following more meaningful standard. Under the bill, a contract is consolidated if the total cost of the contract for which the offers are now solicited is greater in cost than the cost of the previously awarded individual contracts.

The bill builds on the amendment offered by Senator Collins to the Fiscal Year 2004 Senate Department of Defense Reauthorization bill. That amendment established policy for Department of Defense contract processes only. The Committee has built on the amendment's definition language so that it applies government-wide.

The bill also alters the current requirements under the Small Business Act regarding procurement strategies when a contract is consolidated to include a threshold level for triggering the economic research requirements of the Small Business Act. The Committee intends for agency heads, before they proceed with an acquisition strategy that could lead to a consolidated contract, to continue to conduct market research to determine whether consolidation is necessary and justified.

The bill also includes language limiting the authority of Federal agencies to execute such an acquisition strategy that includes consolidated requirements with a total value in excess of $2 million ($5 million for Department of Defense) unless the agency demonstrates that the consolidation is necessary and justified based on market research and identifies any alternative contracting approaches that would involve a lesser degree of consolidation.

Previously, agencies were required to provide a written determination and findings to the SBA Administrator for each consolidation strategy, regardless of dollar value. The bill raises the dollar threshold for this requirement, which is intended to target contracting actions that would most likely involve contract consolidation.

For Federal agency contracts that contain consolidated requirements with a total value in excess of $5 million ($7 million for Department of Defense), the bill directs agencies to conduct a more extensive analysis of the benefits to be derived from contract consolidation. This analysis includes a rationale for not choosing alternative strategies that would reduce or minimize the scope of the consolidation. The Committee recognizes that an infinite number of alternative strategies may exist and intends for Federal agencies to evaluate reasonable alternative strategies that offer substantial benefit.

An amendment proposed by Senator Crapo, which was approved by the Committee, requires the GAO to study the feasibility of establishing alternative thresholds based on industry categories.

The Committee recognizes that successful small business procurement strategies implemented on an ad hoc basis are very difficult to institutionalize. A better approach is to identify best practices and adopt them uniformly to synchronize the process. Therefore, the bill also requires the SBA to include in their annual contract bundling report to the Congress a new section on best practices for maximizing small business prime and subcontracting opportunities. The Committee intends for the SBA to disseminate these examples to all departments and agencies in the Federal government.

The Committee believes that the contract bundling provisions included in the bill will do more to ensure that small businesses have access to the Federal marketplace while at the same time ensuring fiscal responsibility in government.

Subcontracting

Advocates of contract bundling allege that denying small businesses access to prime contracts can be offset by ensuring that such firms receive more subcontracts from the large firms that are awarded the prime contracts. The Committee notes, however, that the success of the small business subcontracting program depends solely upon the voluntary good faith effort of Federal prime contractors. And, while many large prime contractors have taken the existing subcontracting policies seriously, the Committee has received numerous reports from small businesses that some prime contractors continue to treat them unfairly. Additionally, there is little incentive for prime contractors to award subcontracts to small businesses.

Small businesses testified at a hearing before the Committee on March 18, 2003, that prime contractors used them to create competitive subcontracting plans, helping the prime contractor win a contract, only to have the prime contractor not follow through with its subcontracting plan commitments once the contract was awarded. If prime contractors are able to continue to submit data on their subcontracting efforts but are not held accountable for the accuracy of that data, they will be tempted to submit incomplete or misleading information.

As a result, the Committee believes more aggressive action is needed to increase the small business subcontracting share of Federal prime contracts. Therefore, the bill makes several changes to the Small Business Act that hold prime contractors responsible for the validity of subcontracting data and impose penalties for false certifications of past compliance with small business subcontracting.

The bill imposes penalties on prime contractors that falsify data in reports they file with Federal agencies. These penalties mirror current penalties for entities that misrepresent their status as a small business concern, a qualified HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women in order to obtain Federal contracts and subcontracts included in Section 8(d) of the Small Business Act, which are fines not more than $500,000, imprisonment for not more than ten years, or both. The bill also authorizes contracting officers to withhold prime contractor payment until the prime contractor provides the agency with complete and accurate subcontracting reports.

To prevent prime contractors from taking advantage of small business subcontractors, the bill requires large prime contractors to certify that they will use small business subcontractors in the amount and quality used in preparing their winning bid or proposal unless such firms no longer are in business or can no longer meet the quality, quantity or delivery date. If non-compliance with a subcontracting plan is found to constitute a material breach of contract by the contracting officer, these provisions require the contracting officer to refer the case to the Inspector General of the affected agency for investigation into the extent of criminal activity or fraud. This review does not prevent the contracting officer to use the tools available to correct this material breach.

The bill also requires the SBA to share subcontracting compliance review data with Federal contracting officers and to update a national centralized government-wide database with prime contractor past performance specifically related to subcontracting plan compliance.

The Committee intends for Federal contracting officers to use this data to provide prime contractors with an incentive to increase small business subcontracting opportunities. The bill includes amendments to Section 8(d), which provide for the consideration of proposed small business participation as subcontractors and suppliers as part of the process of selecting among competing offerors for any contract award that includes significant opportunity for subcontracting. In addition, the bill calls for recognition of a prime contractor's past performance in supporting small business subcontracting participation in other Federal contracts.

Responding to concerns raised by small business interest groups at the April 9, 2003, roundtable discussion concerning the amount of time it takes to receive payment for work performed on Federal subcontracts, the bill includes a provision that directs the SBA to develop and implement a pilot initiative, similar to the Navy/Marine Intranet contract direct payment to subcontractors program, to test the feasibility of allowing direct payments to subcontractors.

Contracting opportunities for women-owned small businesses

Both the Congress and the Administration have expressed concern about the continued disparity between the number of women-owned small businesses in the economy and the extent of the government's contracting with them. The Federal Acquisition Streamlining Act of 1994 established a government-wide goal for participation by women-owned small businesses in procurement contracts of not less than five percent of the total value of all prime and subcontract awards for each year. Federal agency progress towards increasing contracting for women-owned small businesses has been slow, and the goal has never been reached.

In 2000, Congress passed legislation to allow for certain small business procurement set-asides for women-owned businesses. The legislation required the promulgation of regulations to help implement these new set-asides. The legislation, however, conditioned the regulations on a study to be conducted by the SBA to identify the disparate treatment of women in various procurement industries. This study would then serve as the basis for the regulations governing set-asides for women-owned small businesses. The Committee understands that the SBA has completed a study; however, the study has never been officially released.

In order to achieve the original goal of improving contracting opportunities for women-owned small businesses, the bill reassigns responsibility for the study to the GAO. The Committee expects that the GAO can expeditiously and impartially report the results of its review and analysis and enable the SBA to move forward with the regulations authorized in 2000.

Historically Underutilized Business Zone (HUBZone) Program

The Historically Underutilized Business Zone (HUBZone) program was designed to direct portions of Federal contracting dollars into areas of the country that in the past have been out of the economic mainstream. HUBZone areas, which include qualified census tracts, poor rural counties, and Indian reservations, often are out-of-the-way places that the stream of commerce passes by, and thus tend to be in low or moderate income areas. These areas can also include certain rural communities and tend generally to be low-traffic areas that do not have a reliable customer base to support business development. As a result, businesses have been reluctant to move into these areas. It simply has not been profitable, without a customer base to keep them operating.

The HUBZone program seeks to overcome this problem by making it possible for the Federal government to become a customer for small businesses that locate in HUBZones. While a small business works to establish a regular customer base, a Federal contract can help it stabilize its revenues and maintain profitability.

In past years, the HUBZone Program has encountered issues relating to the statutory requirement that a HUBZone firm be entirely owned and controlled by individual U.S. citizens. This requirement means that all HUBZone applicants need to be owned by human beings and not business entities. Exceptions for Alaska Native Corporations, Indian tribal governments and community development corporations were added by Title VI of the Small Business Reauthorization Act of 2000. A corporate entity with an ownership stake in a small business automatically disqualifies an otherwise eligible firm from participation in the HUBZone program.

In general, a small business that is successful enough to attract institutional investment is one that the Committee believes should be eligible for the HUBZone program because such a firm has the wherewithal to make a difference in the distressed communities that the program seeks to reinvigorate. Accordingly, the bill modifies the ownership requirements for HUBZone small businesses to include any small business investment company, specialized small business investment company, New Markets Venture Capital company, or other similar investment company, provided such ownership does not exceed 15 percent of the small business concern.

The Committee recognizes the economic ramifications of military base closures and that the HUBZone program can harness the strength and the creativity of the private sector by providing incentive for small businesses to relocate to areas suffering such ramifications. Therefore, the Committee intends that military bases that close after the date of enactment of this act, be designated as HUBZones in order to attract small businesses to areas affected by base closure where there are customers and a skilled workforce. The Committee believes that new business and new jobs created through HUBZone small businesses mean new life for areas affected by base closure.

TITLE V—MISCELLANEOUS

Minority Small Business Capital Ownership Development Program

The Small Business Act authorizes the 8(a) Program, which is intended to help eligible small socially and economically disadvantaged businesses compete in the American economy through business development activities.

Believing it essential to further the success of the 8(a) Program, Congress made three major legislative attempts—in 1978, 1980, and 1988—to improve the SBA's administration of the 8(a) program and to emphasize business development aspects. Changes to the program enabled 8(a) firms to receive management, technical, financial and other services tailored to their specific needs.

Reports prepared by the General Accounting Office disclose that the SBA has continued to emphasize business management skills instead of contracting opportunities. For example, since Fiscal Year 1996, SBA has devoted 40 to 50 percent of its $2.6 million management and technical assistance training budget under Section 7(j) to executive education for 8(a) firms. The 8(a) Business Development Mentor-Protege Program, which encourages private-sector relationships with mentors, is designed to help 8(a) firms compete more successfully for contracts through assistance, such as financial, technical, and management assistance provided by mentors. As of July 2003, the SBA has more than 200 mentor-protege agreements in place.

To reflect this shift in program emphasis and achieve consistency with the program purpose, the bill includes an SBA proposal to change the name of the Office of Minority Small Business Capital Ownership Development to the "Office of Business Development."

Extension of authority for technology assistance programs

The SBA's primary small business technology assistance programs are the Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer Program (STTR) programs. Through the SBIR program, ten Federal agencies, which have annual external research and development requirements of more than $100 million, reserve 2.5 percent of their research and development requirements for award to small businesses. In its 20-year history, small technology firms have submitted more than 250,000 proposals, which have resulted in over 60,000 awards worth more than $12 billion.

Similarly, under the STTR program, five agencies with annual external research and development budgets of more than $1 billion reserve 15 percent of these requirements for award to collaborative efforts between small businesses and non-profit research institutions. The STTR Program awards $70 million annually to small businesses.

While both the SBIR and STTR programs are currently authorized through Fiscal Years 2008 and 2009, respectively, and are therefore not addressed in the bill, two related programs are reauthorized by the Committee. The Small Business Innovation Research Rural Outreach Program provides grants to approximately 25 states to increase participation in the SBIR Program. Recognizing the important contribution that this program makes for small business innovation and research, the bill provides for authorization for the program through Fiscal Year 2006.

The bill also provides authorization for the Federal and State Technology Partnership program (FAST) through Fiscal Year 2006. FAST is a competitive grants program, that allows each state to receive funding in the form of a grant to provide an array of services in support of the Small Business Innovation Research and Small Business Technology Transfer programs.

During its April 9, 2003, roundtable, the Committee received comments and concerns from a wide range of participants and supporters of these programs about the SBA's Office of Technology that oversees them. According to the agency, the Office of Technology has seen a reduction in staffing and funding while its responsibilities relating to monitoring and administering these programs have significantly increased.

Specifically, the SBIR program has grown from providing $44 million in grants in Fiscal Year 1983 to $1.5 billion in Fiscal Year 2002, and the STTR program has grown from $18 million in Fiscal Year 1994 to $91 million in Fiscal Year 2002. Despite doubling and tripling in program volume and responsibilities, the staff resources have been cut from 10 to five employees, and the budget over the past ten years has been cut from almost $900,000 to $280,000.

Because the programs overseen by the SBA's Office of Technology are too important to the development of innovations in this country, the Committee urges the SBA to evaluate carefully the staffing, travel and other resources required by the Office of Technology as well as the status of the office within the agency. If the Office of Technology is to ensure the continued success of the SBIR, STTR, Rural Outreach, and FAST programs, the agency must recognize the importance of the office and dedicate sufficient resources for it to carry out its responsibilities.

III. Committee Vote

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following votes were recorded on July 10, 2003.

A motion by Senator Snowe to adopt the amendment offered by her and Senator Kerry to reauthorize the Program for Investment in Micro-Entrepreneurs (PRIME) and to increase the amount of technical assistance grant funds that Microlenders can use to assist potential borrowers passed by unanimous voice vote.

The Chair also included in this amendment the following four proposals:

(1) Senator Bayh's amendment to increase the amount that manufacturers could borrow through the 504 loan program and to increase the job creation requirement for loans to manufacturers.

(2) Senator Crapo's amendment to add a GAO study on the feasibility of setting contract bundling thresholds according to industry categories rather than fixed dollar amounts;

(3) Senator Landrieu's amendment to improve the process for filling vacancies on the National Women's Business Council; and

(4) Senator Levin's amendment to establish a Small Business Intermediary Lending Pilot Program.

A motion by the Chair to adopt the Small Business Administration 50th Anniversary Reauthorization Act of 2003 as amended, to reauthorize the programs of the Small Business Administration, and for other purposes, was approved by a unanimous 19–0 recorded vote, with the following Senators voting in the affirmative: Snowe, Kerry, Bond, Burns, Bennett, Enzi, Fitzgerald, Crapo, Allen, Ensign, Coleman, Levin, Harkin, Lieberman, Landrieu, Edwards, Cantwell, Bayh, and Pryor.

IV. COST ESTIMATE

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts discussed in the following letter from the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 1, 2003.

Hon. OLYMPIA J. SNOWE,
Chairman, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIR: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1375, the Small Business Administration 50th Anniversary Reauthorization Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa Zimmerman.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 1375—Small Business Administration 50th Anniversary Reauthorization Act of 2003

Summary: S. 1375 would authorize appropriations for fiscal years 2004 through 2006 for the Small Business Administration (SBA) and would make a number of changes to SBA loan programs, programs that support entrepreneurship, and programs that involve preferences for small businesses in government contracting.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 1375 would cost about $3 billion over the 2004–2008 period. About $1.6 billion of this amount is the estimated subsidy and administrative cost of continuing SBA credit programs, and $1.3 billion would be for other SBA programs and activities. The remaining $0.1 billion is for provisions related to federal procurement activities. Enacting this bill would not have a significant effect on direct spending or revenues.

S. 1375 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). Any costs incurred by state, local, or tribal governments would be the result of complying with conditions of federal grants. The bill would authorize $2 million per year for pilot programs run by the Office of Native American Affairs (ONAA) over the 2004–2007 period.

Major Provisions: Title I would set the maximum amounts of small business loans that could be guaranteed by SBA in 2004, 2005, and 2006. It also would authorize the appropriation of funds for the Service Corps of Retired Executives (SCORE), for technical assistance grants to recipients of microloans, and for certain activities of the Small Business Development Centers (SBDCs). Title I would authorize the appropriation of such sums as may be necessary for the diaster loan program and for administrative expenses to carry out the Small Business Act and the Small Business Investment Act.

Title II would make a number of changes to SBA's loan guarantee programs. It would require SBA to:

- Collect fees from business-lending companies sufficient to offset the cost of financial examinations by SBA;
- Reduce the initial and annual fees paid by prospective borrowers under the 7(a) loan program;
- Develop and implement a new subsidy model for the microloan program by 2005; and
- Establish a new pilot program at SBA to guarantee pools of conventional small business loans.

Title III would reauthorize the Program for Investment in Microentrepreneurs through 2006, reauthorize and amend several Women's Small Business Ownership Programs, create grant programs for Native American business development, and reauthorize SBA's Outreach Grants for Veterans.

Title IV would authorize appropriations for the HUBZone program for 2004 through 2006.

Title V would extend the authorization of appropriations for the Federal and State Technology Partnership and Rural Outreach Programs through 2006.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1375 is shown in Table 1. The costs of this legislation fall primarily within budget function 370 (commerce and housing credit).

TABLE 1.—SPENDING SUBJECT TO APPROPRIATION UNDER S. 1375

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SBA Spending Under Current Law:						
Estimated Authorization Level [1]	765	0	0	0	0	0
Estimated Outlays	917	225	67	11	4	0
Changes to SBA Loan Programs:						
Estimated Authorization Level	0	536	549	561	0	0
Estimated Outlays	0	322	505	539	210	27
Changes to Noncredit Programs:						
Estimated Authorization Level	0	441	457	484	5	5
Estimated Outlays	0	190	307	411	241	141
Subtotal, Changes to SBA Spending:						
Estimated Authorization Level	0	977	1,005	1,045	5	5
Estimated Outlays	0	512	812	951	452	168
SBA Spending Under S. 1375:						
Estimated Authorization Level [1]	765	977	1,005	1,045	5	5
Estimated Outlays	917	737	879	962	456	168
Changes to Federal Procurement Spending:						
Estimated Authorization Level	0	23	23	23	23	23
Estimated Outlays	0	14	23	23	23	23
Total Changes to Spending Under S. 1375:						
Estimated Authorization Level	0	1,000	1,028	1,068	28	28
Estimated Outlays	0	526	835	974	475	191

[1] The 2003 level is the amount appropriated for SBA operations for that year.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2004 and that the necessary amounts will be appropriated by the start of each fiscal year. Outlay estimates are based on historical spending rates for existing or similar programs.

Spending subject to appropriation

Most of the bill's budgetary effects would come from reauthorizing existing SBA programs and would consist primarily of the subsidy costs of direct and guaranteed loans. Provisions affecting government procurement also would add to the cost of implementing the legislation.

Small Business Administration. The bill would reauthorize most of the programs administered by SBA through 2006. Based on information from SBA and historical spending patterns for the agency's programs, CBO estimates that implementing those provisions would cost $2.9 billion (including about $1.6 billion for loan programs) over the 2004–2008 period.

Loan Programs. The bill would authorize SBA to guarantee loans and make direct loans to businesses worth up to $29 billion in 2004, $30 billion in 2005, and $31 billion in 2006. By comparison, the authorized loan level for 2003 is $29 billion, and in 2002, the agency's direct and guaranteed loans were worth about $15 billion. S. 1375 would authorize the agency to make an indefinite amount of disaster loans over the 2004–2006 period. Table 2 shows the loan levels that would be authorized by the bill for SBA's guaranteed and direct business loans and CBO's estimate of the amounts of disaster loans, as well as the estimated subsidy cost and administrative expenses for those loans.

The Federal Credit Reform Act of 1990 requires an appropriation of the subsidy costs and administrative costs associated with loan guarantees and direct loan program operations. (The subsidy cost is the estimated long-term cost to the government of a direct loan or loan guarantee, calculated on a net present-value basis, excluding administrative costs.) The bill does not specify an explicit authorization for either the subsidy or administrative costs for the guaranteed, direct, or disaster loans, and CBO estimated these amounts based on historical information about the operation of those programs.

The estimated subsidy rates for the different types of business loans and loan guarantees offered by SBA ranges from zero to about 9 percent. Based on historical data for those loan programs and incorporating minor program changes required by this bill, CBO estimates that the subsidy costs for the authorized levels of guaranteed and direct business loans would be $189 million in 2004, $195 million in 2005, and $200 million in 2006.

Based on the current administrative costs for SBA's loan programs, CBO estimates that the administrative costs for the business loan programs would be $132 million in fiscal year 2004, $136 million in fiscal year 2005, and $140 million in fiscal year 2006.

TABLE 2.—ESTIMATED SBA LOAN LEVELS, SUBSIDY COSTS, AND ADMINISTRATIVE COSTS UNDER S. 1375

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
Authorized Loan Levels					
Guaranteed and Direct Business Loans	28,650	29,905	31,160	0	0
Disaster Loans	815	815	815	0	0

TABLE 2.—ESTIMATED SBA LOAN LEVELS, SUBSIDY COSTS, AND ADMINISTRATIVE COSTS UNDER S. 1375—Continued

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
Loan Subsidy Costs					
Guaranteed and Direct Business Loans:					
Estimated Authorization Level	189	195	200	0	0
Estimated Outlays	99	181	188	87	4
Disaster Loans:					
Estimated Authorization Level	114	14	114	0	0
Estimated Outlays	57	103	114	57	11
Loan Administration Costs					
Guaranteed and Direct Business Loans:					
Estimated Authorization Level	132	136	140	0	0
Estimated Outlays	94	126	135	38	7
Disaster Loans:					
Estimated Authorization Level	101	104	107	0	0
Estimated Outlays	72	96	103	29	5

[1] These are estimated loan levels, based on the historical experience of SBA's Disaster Loan Program.

For this estimate, CBO assumes that demand for SBA's disaster loans would be near the average historical rate for the past four years, excluding loans authorized to be made by the Small Business Investment Company Amendments Act of 2001 immediately following the terrorist attacks of September 11, 2001. We estimate that SBA would make disaster loans worth $815 million a year over the 2004–2006 period. Over the last four years, loan volume for the regular disaster loan program has ranged from about $760 million to $870 million. CBO estimates that the administrative costs for the disaster loan program would be $101 million in 2004, $104 million in 2005, and $107 million in 2006. The estimated subsidy rate for disaster loans is about 14 percent, based on the historical performance of those loans.

Noncredit Programs. The bill would authorize the appropriation of funds for noncredit programs that support small businesses and other SBA activities, most of which the agency does under current law. CBO estimates that continuing those activities would require the appropriation of $1.3 million over the 2004–2008 period. Of that amount, the bill would specifically authorize the appropriation of $763 million for SBDCs, SCORE, technical assistance for recipients for SBA microloans, the women's business council, the drug-free workplace program, the HUBZone program, and various other SBA programs designed to benefit businesses owned by Native Americans and veterans over the 2004–2006 period.

Fees for 7(a) Loans. Section 202 would permanently reduce the initial loan fee and the annual fees that borrowers pay under the 7(a) program. In 2001, the fees associated with loan guarantees under the 7(a) program were temporarily reduced by the Small Business Investment Company Amendments Act of 2001. Based on information provided by the Administration, CBO assumes for this estimate that the reduced fees would only apply to loans made in 2004 and after, and would not affect loans made before those fees were reduced in 2001. The estimated subsidy rate set by the Administration for fiscal year 2003 for the 7(a) program is about 1 percent. That subsidy estimate considers the lower fees that are temporarily in place. Thus, CBO estimates that permanently reducing the fees would not change the current subsidy rate for the 7(a) program.

By permanently lowering the 7(a) program fees, this provision would increase the subsidy rate from what it would otherwise be if the temporary reduction in fees were allowed to expire. Because the number of 7(a) loan guarantees that the SBA can issue in any year is limited by the amount of the subsidy appropriation, the agency would be able to guarantee fewer loans when the subsidy rate increases.

Interest Rate on Microloans. Under current law, SBA microloans of $7,500 or less are eligible to receive an interest rate reduction of 75 basis points below the interest rate for direct loans in the microloan program. Section 211 would increase the maximum loan amount eligible for the interest rate reduction to $10,000. Because more loans could receive a lower interest rate under the bill, CBO expects that this provision would lead to a minor increase in the subsidy rate for the microloan program. Because of the small volume of such loans, however, we estimate that the increased cost of this provision would be less than $500,000 a year.

Examination Fees. Section 221 would require small business lending companies to pay the costs of financial examinations performed by SBA. Based on the amount SBA currently spends to examine small business lending companies, CBO estimates this provision would increase collections, which are an offset to discretionary spending for those examinations, by $3 million a year over the 2004–2008 period.

Pilot Program for Guarantees on Pools of Non-SBA Loans. A common financial practice among commercial lenders and firms that issue securities is to pool together large collections of individual conventional and government-guaranteed loans. Such loan pools are used to create asset-backed securities (ABSs). The sale of such ABSs give lenders access to capital from the secondary loan marketplace to fund new loans. Section 265 would authorize a three-year pilot program that would enable the SBA to guarantee pools of conventional small business loans (that is, loans not guaranteed by SBA). Under the bill, the SBA would guarantee a portion of the timely payments of scheduled principal and interest due on the pooled loans that back those securities in exchange for a fee paid by the issuers of those ABSs. CBO estimates that SBA would charge the lenders or issuers of the ABSs a fee of about 20 basis points to cover the estimated subsidy cost associated with the program. Without such a fee, SBA would require appropriations of about $2 million over the next three years to cover the estimated subsidy cost of the program.

This legislation does not specify a particular structure for the new SBA pilot program. CBO consulted firms involved with small business credit to understand how this program might work. There are many ways to structure such a program, and for this estimate, CBO assumes that the lender or issuer of the ABSs would assume a first-loss position and SBA would assume a second-loss position. That is, the lenders or issuers of the securities would realize losses before SBA would be called upon to make good on its guarantee. (In contrast, a typical SBA loan guarantee would cover 75 percent of any loss associated with the underlying loan.) SBA has not decided how the risk shares would be allocated for this program. To estimate the subsidy cost associated with this program, CBO assumes that the first-loss position would cover the first 5 percent of the loss and that SBA would cover the next 20 percent of the loss. If SBA were to cover a smaller portion of the loss, estimated subsidy costs would be lower than this estimate. Alternatively, if SBA were to cover a greater portion of the loss, estimated subsidy costs would be greater than we have estimated here.

Over the past 10 years, there have been about 40 commercial issues involving the securitization of conventional small business loans, totaling about $4 billion. (The largest offering by a single issuer was about $590 million in 1999.) In contrast, the SBA reports that in 2001 the outstanding balance on all small business loans totaled $460 billion. Industry analysts that CBO consulted anticipate that the demand for a secondary market for conventional small business loans would be relatively small. Small business loans are often profitable for lenders, and as a result, many lenders prefer to hold such loans in a portfolio rather than sell them. Moreover, such loans are not always the best candidates for pooling into securities because as a group they are not homogenous, and small business lenders do not currently adhere to a standard set of underwriting guidelines, creating some additional underlying risk for the firm issuing an ABS consisting of small business loans.

This legislation would limit the number of entities that could participate in the program to no more than five lenders or issuers. Given this limitation on the number of participants and information that suggests only modest demand for ABSs backed by conventional small business loans, CBO estimates that over the next three years, SBA would provide guarantees for ABSs worth about $1 billion.

Under credit reform procedures, funds must be appropriated in advance to cover the subsidy cost of loan guarantees, measured on a present-value basis. Under this legislation, SBA would be required to charge a fee that would cover—in whole or in part—the cost of the credit subsidy for SBA's guarantee on the pools of small business loans. CBO estimates that the subsidy rate for this pilot program as outlined above would be about 0.2 percent if no fees were charged to lenders or the issuers of securities. Furthermore, CBO estimates that if SBA charged an up-front fee of about 20 basis points, this estimated subsidy cost would be offset and no additional appropriations would be required. If, however, the participants in the pilot program would not be willing to pay such a fee, CBO estimates that the SBA would require appropriations of about $2 million over the next three years to cover its cost of expected losses under a $1 billion guarantee program. Additionally, if SBA implements the risk share differently, the program could be more costly and appropriations greater than $2 million would be required.

Small Business Intermediary Lending Pilot Program. Section 293 would authorize the SBA to make direct loans of up to $20 million over the 2004–2006 period for the new Small Business Intermediary Lending (SBIL) program. The new program would be similar to the existing direct loans made under the microloan program but would feature lower interest rates, a longer loan duration, and a longer grace period. CBO estimates that the subsidy rate for the SBIL would be about 30 percent, or around three times the subsidy rate for direct loans under the microloan program. We estimate that the subsidy cost for the authorized amount of SBIL loans would be about $6 million over the 2004–2006 period.

Procurement Center Representatives. Section 401 would expand the use of the federal procurement center representative (PCR) program. Under the bill, the program would operate at each major federal procurement center and in each state. The PCR program helps small businesses obtain federal contracts. According to SBA, there are 255 major federal procurement centers. The PCR program currently operates at 47 of those centers. CBO estimates that expanding the program to operate at each major procurement center and in each state would cost $23 million a year.

Direct Spending and revenues

Premier Certified Lenders Program. Certified Development Company (CDC) loans, also known as section 503 and 504 loans, provide small businesses with long-term, fixed-rate financing for the purchase of land, buildings, and equipment. The Premier Certified Lenders Program allows a participating CDC the authority to review and approve loan requests and to foreclose litigate, and liquidate loans made under the program. Under current law, CDCs can qualify as Premier Certified Lenders (PCLs) if, among other requirements, they agree to pay 10 percent of SBA's potential loss on a defaulted 504 loan. A PCL must hold 10 percent of this potential loss (i.e., 1 percent of the total loan) in a reserve for the life of the loan.

Sections 242 and 243 would have two effects on the requirements for loss reserves under the PCL Program. First, the provisions would change the loss-reserve requirement from 1 percent of the total value of the loan to 1 percent of the total loan outstanding. PCLs would be allowed to withdraw any funds from their loss reserves in excess of this amount. Second, certain PCLs would have the option to maintain an alternate loss-reserve level based on risk rather than a fixed percentage. The amount of the reserve would be determined by an independent, SBA-approved auditor. under the two provisions, if a PCL chooses this option, it must pay 15 percent of SBA's total loss on defaulted CDC loans.

Under current law, the Administrator SBA must adjust an annual fee on CDC loans to produce an estimated subsidy rate of zero at the time the loans are guaranteed. Enacting sections 242 and 243 could affect the subsidy rates for previous cohorts of CDC loans. Decreasing the loss reserve requirement for PCLs would cause SBA to collect a smaller amount of recoveries if a small business defaults on a loan and a PCL is unable to pay its portion of SBA's total loss. However, increasing the required loss coverage to 15 percent for PCLs that opt to maintain a loss-reserve level base on risk would increase SBA's recoveries on defaulted CDC loans. It is unclear if, taken together, those effects would increase or decrease the average subsidy costs for previous CDC loans. However, CBO estimates that the net result of those two effects would not have a significant impact on direct spending.

Civil Penalties. Sections 222 and 223 of the bill would authorize SBA to impose civil penalties on small business lending companies and SBA lenders that are not federally regulated. Such penalties are recorded in the budget as revenues. CBO expects that any increase in civil penalties resulting from the enactment of S. 1375 would be insignificant.

Intergovernmental and private-sector impact: S. 1375 contain non intergovernmental or private-sector mandates as defined by UMRA. The intergovernmental impacts, primarily benefits, would be on tribal governments. Title III, the native American Small Business Development act, would establish ONAA would create and administer Native American Business Centers and provide grants and other assistance to tribal governments and businesses owned and operated by Native Americans.

Previous estimate: On June 5, 2003, CBO transmitted a cost estimate for H.R. 923, the Premier Certified Lenders Program Improvement Act of 2003, as ordered reported by the House Committee on Small business on May 22, 2003. Provisions of that bill are similar to sections 242 and 243 of S. 1375, and the estimated costs for those provisions are the same.

Estimated prepared by: Federal Costs: Melissa E. Zimmerman, Julie Middleton, Susanne Mehlman, Lisa Cash Driskill, Matthew Pickford, and Matthew Schmit. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. 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.

VI. Section-by-Section Analysis

Section 1. Short title; table of contents

The short title of the bill is the Small Business Administration 50th Anniversary Reauthorization Act of 2003.

Sec. 2. Effective date

The provisions of the bill shall be effective on October 1, 2003.

Subsection (b) provides that unless otherwise stated, the Administrator shall publish proposed regulations to carry out the provisions of the bill within 180 days of enactment and final regulations not later than 300 days after the date of enactment.

TITLE I—GENERAL PROVISIONS

Subtitle A—Administration Accountability

Sec. 101. Document retention and investigations

Section 101(a) updates Section 10(e) of the Small Business Act to emphasize that the Administration shall maintain its documents and records for at least two years and to provide a broader illustration of the types of documents and records covered by the section.

In addition, this section clarifies that such documents shall be available to the Committee and the Committee on Small Business of the House of Representatives for their inspection and examination. Specifically, the section provides that upon the written request of either Committee, the Administrator or the Inspector General, as applicable, shall make any documents or records requested available to the requesting Committee or its duly authorized representatives within 5 business days of the request. This section further provides that if a document or record cannot be made available within such time frame, the Administrator or the Inspector General, as applicable, shall provide the requesting Committee with a written explanation stating the reason that each document or record requested has not been provided and a date certain for its production.

Sec. 102. Management of the Small Business Administration

Section 102 transfers the responsibility for operating the SBA's Office of Lender Oversight from within the Office of Capital Access to the office of the Chief Operating Officer of the SBA.

Subtitle B—Authorizations

Sec. 111. Program authorization levels

Section 111 provides authorization levels for Fiscal Years, 2004, 2005, and 2006 for the individual SBA programs.

(See Chart of Program Levels in Section II of the report above).

Sec. 112. Additional reauthorizations

(a) Drug-Free Workplace Program Assistance

Section 112(a) amends Section 21(c)(3)(T) of the Small Business Act by extending through October 1, 2006, the assistance through Small Business Development Centers (SBDCs) to provide small businesses with information and assistance to establish drug-free workplace programs.

(b) Paul C. Coverdell Drug-Free Workplace Program

Section 112(b) amends Section 27(g)(1) of the Small Business Act by extending the program for the Fiscal Years 2004, 2005 and 2006 at the authorized funding levels of $5 million each Fiscal Year.

(c) Small Business Development Centers Program

Section 112(c) amends Section 21(a)(4)(C) of the Small Business Act to authorize the Small Business Centers Program for: $125 million in Fiscal Year 2004; $130 million in Fiscal Year 2005; and $135 million in Fiscal Year 2006.

Section 112(c)(3) reserves $1 million of appropriated funds in Fiscal Year 2004, 2005, and 2006 to provide temporary SBDC assistance in communities experiencing severe economic challenge as a result of industry/military base downsizing or closing that result in an increase of job loss or small business instability. Grants of $100,000 or less will be administered by the SBA.

TITLE II—FINANCIAL ASSISTANCE

Subtitle A—7(a) Loan Guarantee Program

Sec. 201. National Preferred Lenders Pilot Program

Section 201 amends Section 7(a) of the Small Business Act by directing the SBA to operate a three-year pilot program in which participants in the 7(a) Preferred Lenders Program ("PLP program") would be authorized to operate as a preferred lender in any state or SBA district if the lender meets eligibility criteria established by the agency. Currently, PLP lenders have to apply for separate authorization in each SBA district in which they operate.

This section also enumerates eligibility criteria to be a National PLP lender, including: (i) demonstrated proficiency in the PLP program for at least 3 years; (ii) annual loan approvals of a minimum number of PLP loans to be determined by the SBA, but excluding SBAExpress loans; (iii) operation by the lender in at least 5 states or 10 SBA districts; (iv) centralized loan approval, loan servicing, and loan liquidation functions and processes that are satisfactory to the SBA, and (v) consideration of any comments about the lender that may be received from an SBA District Director or Regional Administrator.

Sec. 202. Extension of program participation fees

This section makes permanent the two-year reduction of borrowers' and lenders' fees enacted as part of PL 107–100. For borrowers, it reduces one-time fees on loans of up to $150,000 from 2 to 1 percent, and for loans of $150,000 to $750,000 it reduces the fee from 3 to 2.5 percent. For lenders, it reduces the annual guarantee fee from 0.5 to 0.25 percent. This fee is paid on the outstanding balance of the loan guarantee.

Sec. 203. Loans sold in secondary market

Currently, the Small Business Act permits lenders to sell the guaranteed portion of their 7(a) loans to investment firms, which package groups or "pools" of 7(a) loans and then sell shares of those pools to other private investors. Section 203 amends Section 5(g) of the Small Business Act to allow loan pools to be comprised of loans with varying interest rates; the pool's interest rate would reflect the weighted average interest rate of such loans. Section 203 requires that the SBA prescribe the maximum amount of variation in the loan characteristics in order to enhance marketability of the pool.

Sec. 204. Clarification of eligibility for veterans

This provision clarifies that all veterans, not just service-disabled veterans, are eligible to receive 7(a) loans.

Sec. 205. Enhancement of Low Documentation Loan Program

The SBA's Low Documentation ("LowDoc") Program allows small businesses to apply for 7(a) loans using a simplified one-page application form, and to receive a response from the SBA within a few days. Section 205 increases the maximum size of a LowDoc loan from the current $100,000 to $250,000. Under current laws, loans under the general 7(a) program that are less than or equal to

$150,000 generally receive a guarantee rate of 85% from the SBA (with the exception of Express loans), and loans above $150,000 have a guarantee rate of 75%. The change in the maximum LowDoc loan size will not effect those guarantee rates.

Sec. 206. Increased loan amounts for exporters

Section 206 increases the maximum size of the 7(a) loan that an exporter may receive. The section provides that a small business that is involved in exporting products may receive an SBA guarantee of up to $1.3 million on a 7(a) loan under the SBA's Export Working Capital Program ("EWCP") (instead of the current maximum SBA guarantee of $1 million) and have a total loan size of $2.6 million (instead of the current maximum loan size of $2 million). In order to conform the size of the guaranteed portion of an EWCP loan to that of a loan under the SBA's International Trade Loan ("ITL") Program, the section also increases the maximum SBA-guaranteed portion of an ITL Program loan from $1.25 million to $1.3 million.

Subtitle B—Microloan Program

Sec. 211. Microloan program improvements

Section 211 makes several changes to the Microloan program. Section 211(a) permits an entity to be licensed as a microloan intermediary even if that entity does not have institutional experience as a microloan lender or technical assistance provider, provided that the new microloan intermediary hires a full-time employee with at least three years of experience making microloans and the intermediary has at least one year of experience providing intensive marketing, management, and technical assistance to its borrowers.

Section 211(b) makes a change to the Small Business Act to provide that microloan intermediaries that have a microloan portfolio with an average loan size of not more than $10,000 can receive an interest rate lower than the normal rate extended to intermediaries; previously, the statute provided that an intermediary had to have an average loan size of not more than $7,500 to receive a reduced interest rate.

Section 211(c) increases the amount of technical assistance grants that an intermediary can contract out to a third-party technical assistance provider from 25 percent to 30 percent.

Section 211(d) allows intermediaries to make revolving-term loans or longer fixed-term loans to small businesses; previously, intermediaries were only allowed to make "short-term" loans with fixed terms.

Section 211(e) requires the SBA to make an annual report to Congress about the SBA's performance of the current statutory obligation to use microloan funds to assist intermediaries' training.

Section 211(f) requires the SBA to develop and implement a subsidy model for the microloan program to be used in the Fiscal Year 2005 budget that is more accurate than the model currently in use.

Section 211(g) increases the amount of a technical assistance grant from the SBA that an intermediary can devote to potential borrowers, rather than actual borrowers, from 25 percent of the grant to 30 percent.

Subtitle C—Lender Oversight

Sec. 221. Examination and review fees

Section 221 authorizes the SBA to charge and retain fees from lenders participating in the 7(a) program for the cost of the SBA's annual examinations of the lenders and any necessary follow-up actions. The fee levels will be set by the SBA after consultation by the SBA with lenders, and will be based upon the size of the lenders' loan portfolios being reviewed.

Sec. 222. Enforcement authority for Small Business Lending Companies and Non-Federally Regulated SBA Lenders

Section 222 provides the SBA with specific enforcement and supervisory authority over Small Business Lending Companies ("SBLCs") and Non-Federally Regulated SBA Lenders, as now defined in new Section 223, including the ability to issue cease and desist orders, impose civil money penalties, and remove officers and directors who are acting in an unsafe and unsound manner. The enforcement language gives the SBA various mechanisms to address substantive and technical legislative and regulatory violations that do not warrant court action or revocation of an SBLC's or Non-Federally Regulated SBA Lender's lending authority. All mechanisms incorporate notice and other due process protections for the regulated entity.

Sec. 223. Definitions for Small Business Lending Companies and Non-Federally Regulated SBA Lenders

Section 223 codifies the definitions of the Small Business Lending Companies ("SBLCs") and Non-Federally Regulated SBA Lenders over which the SBA is now statutorily authorized to assert supervisory and other regulatory authority (see Section 222). SBLCs are defined as non-depository financial institutions that only make loans under Section 7 of the Small Business Act. The definition for Non-Federally Regulated SBA Lenders identifies those entities as financial institutions that make loans under Section 7 of the Small Business Act, are not SBLCs, and are not regulated by the Farm Credit Administration, the Federal Financial Institution Examination Council, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration.

Subtitle D—Disaster Assistance Loan Program

Sec. 231. Conforming amendment for Disaster Assistance Loan Program

Current law allows businesses that are major sources of employment for a particular area to receive disaster loans "larger than $500,000," with a clarification in a note to the Small Business Act that such loans cannot exceed $1.5 million. Section 231 makes the conforming change to the Small Business Act to codify the $1.5 million loan ceiling for these entities.

Sec. 232. Disaster relief for small business concerns damaged by drought

Section 232 clarifies that SBA disaster assistance loans may be made to farm-related as well as non-farm-related small businesses that have suffered substantial economic harm from drought. The definition of "disaster" for the purpose of this section includes below-average water levels in the Great Lakes or any other body of water in the country that is used for commercial purposes.

Sec. 233. Disaster Mitigation Pilot Program

Section 233 reauthorizes and extends to Fiscal Year 2006 a pilot program authorized in 2000 to offer pre-disaster loans, under the SBA's disaster assistance loan program, to small business borrowers in disaster-prone areas, such as areas with frequent floods or tornadoes. A small business receiving a loan under the program can use the loan proceeds to mitigate the damage that may occur to the business from a future disaster.

Subtitle E—504 Loan Program

Sec. 241. Extension of user fees

Section 241 extends through fiscal year 2006 the 504 program fees paid by the borrower, the first mortgage lender, and the Certified Development Company (CDC) under the 504 program. These fees cover the subsidy rate of the program, and therefore the program requires no appropriations. The fees are as follows: The first mortgage lender pays a one-time upfront fee of 0.5 percent of the amount of the first mortgage. The CDC pays an annual fee of 0.125 percent of the outstanding amount of each debenture authorized after September 1996. In addition, the borrower pays an annual fee based on the outstanding amount of the debenture. The exact amount of this fee, which can be up to 0.975 percent per year of the outstanding balance of the loan, is determined by SBA in order to maintain a zero subsidy rate for the program.

Sec. 242. Amortized loan loss reserve fund

This section allows a CDC to withdraw money from its loan loss reserve as the borrower pays down the loan, so that the amount in the reserve is always proportionate to the ratio of CDC liability and the outstanding amount of the loan guarantee.

Sec. 243. Alternative loss reserve for certain premier certified lenders

Section 243 permits lenders in the 504 Loan Program that are Premier Certified Lenders ("PCLs") to elect to operate under a newly established loan loss reserve system based upon risk. PCLs that elect to operate under the new system will be required to maintain in their loan loss reserve accounts at least $100,000, as well as any additional amount necessary to allow the lender to meet its obligations to protect the Federal government from risk of loss. Such PCLs will also be required to assume greater exposure on the loans, increasing their responsibility from 10 percent to 15 percent for any losses. The provision also requires that the analysis of the appropriate level for each lender that elects the new loss reserve calculation will be done by an independent accounting firm approved by the SBA.

Subsection (d) requires the SBA to contract with another Federal agency, or with a member of the Federal Financial Institutions Examinations Council, to study the extent to which statutory requirements have caused overcapitalization in PCLs' loan loss reserves, and to identify alternatives for establishing and maintaining loss reserves sufficient to protect the Federal government from risk of loss. This report shall be delivered to the Committee and to the Committee on Small Business of the House of Representatives not later than 180 days after the enactment of this Act.

Sec. 244. Debenture size

Section 244 amends Section 502 of the Small Business Investment Act of 1958 ("SBIA") to increase the maximum potential size of a loan made to a small business by a Certified Development Company (CDC). New subparagraph (b)(2)(A) increases the maximum loan guarantee amount (now $1,000,000) to $1.5 million under the general CDC program. New subparagraph (b)(2)(B) increases the maximum loan guarantee amount (now $1,300,000) to $2 million if the project being funded is directed towards one of the nine categories enumerated as public policy goals in Section 501(d)(3): rural development; expansion of exports; expansion of minority business development; business district revitalization; enhanced economic competition; restructuring because of Federally mandated standards or policies; changes necessitated by Federal budget cutbacks; expansion of small businesses owned and controlled by veterans; and expansion of small businesses owned and controlled by women.

In addition, for small business loans that will be used for manufacturing, this section increases the maximum size of the SBA's guarantee to $4 million.

Sec. 245. Job creation or retention standards

The Small Business Act grants the SBA discretion to set a job creation test for small businesses that receive 504 loans. Since 1990, the SBA has required that small businesses receiving 504 loans certify that, for each $35,000 guaranteed by the SBA, the small business is creating or retaining one job. Section 245 modifies that standard so that the small business must create or retain one job for each $50,000 guaranteed by the SBA. For loans that will be used for manufacturing, however, this section requires that the small business create or retain one job for each $100,000 guaranteed by the SBA.

Sec. 246. Simplified applications

Section 246(a) requires the SBA to develop and make available to Certified Development Companies (CDCs) that make 504 loans, within 180 days of the enactment of this legislation, a shorter, more concise, and simplified application form for 504 program loan guarantees of $400,000 or less. Subsection (b) requires the SBA to develop and make available to CDCs, within 270 days of the enactment of this legislation, a similarly improved application for all 504 loans.

Sec. 247. Child Care Lending Pilot Program

Section 247 provides for a new pilot program under which non-profit child-care providers may qualify for loans under the 504 loan program. The pilot program is limited to 7 percent of the number of loans guaranteed annually under the 504 loan program. The section also requires the General Accounting Office to submit a report on the pilot program to the Committee and to the Committee on Small Business of the House of Representatives by March 31, 2006.

Sec. 248. Definition of rural area

For purposes of the rural development public policy goal that allows larger loans to be made under the 504 loan program, Section 248 amends the SBIA by defining the term "rural" as any area other than a city or town that has a population of greater than 50,000 inhabitants and other than an urbanized area adjacent to such a city or town. This change conforms the definition used by the 504 loan program to that used by the U.S. Department of Agriculture (USDA) for purposes of certain programs administered by the USDA.

Subtitle F—Surety Bond Program

Sec. 251. Clarification of maximum surety bond guarantee

Section 251 clarifies that the SBA's $2 million limit on surety bonds applies to the bond guarantee and not the contract size.

Sec. 252. Authorization of Preferred Surety Bond Guarantee Program

Section 252 extends the authority of the SBA to administer the preferred surety bond guarantee program through Fiscal Year 2006.

Subtitle G—Miscellaneous

Sec. 261. Coordination of SBA loans

Section 261 allows a small business to participate simultaneously in both the 7(a) and 504 loan programs up to the maximum loan limit in both programs.

Sec. 262. Leasing options for 7(a) and 504 borrowers

Section 262 simplifies the guidelines for leasing a portion of property financed with an SBA 7(a) or 504 loan. Existing legislation requires that 60 percent of the space must be used by the small business and allows for 20 percent to be leased on a long-term basis. The statute is silent on the remaining 20 percent. This section clarifies that the entire 40 percent can be leased out and allows it to be leased on a short-term or permanent basis.

Sec. 263. Calculation of financing limitation for small business investment companies

Section 263 eases some of the restrictions that small businesses with investments from Small Business Investment Companies ("SBICs") face when attempting to obtain loans through the SBA's 7(a) or 504 programs. The SBA's regulations currently prohibit an SBIC from having more than 20 percent of the SBIC's privately raised funds invested in any one small business. The SBA counts a small business's 7(a) and 504 loans against this 20 percent limit for any SBIC investment. This section modifies the restriction so that, for an SBIC with an investment in a particular small business, only 50 percent of the small business's 7(a) or 504 loan values will be counted by the SBIC in determining the SBIC's 20 percent limit. A small business must elect whether to use this calculation for its 7(a) or 504 loan; it may not apply to both types of loans.

Sec. 264. Establishing alternative size standard

Section 264 enables the SBA to establish an alternative size standard for small businesses, for use in the 7(a) program as well as the 504 program, that considers a business's net worth and net income. This provision will simplify the 7(a) lending process and provide small businesses with a streamlined procedure for determining if they are eligible for 7(a) loans. It will also conform the standards used by the 7(a) and 504 programs.

Sec. 265. Pilot program for guarantees on pools of non-SBA loans

Section 265 authorizes the SBA to develop a three-year pilot program in which financial firms, after being licensed by the SBA, could create "pools" of conventional (i.e., non-SBA) loans made to small businesses and issue securities (which would offer returns based upon the returns from the loans in the pools), and sell these securities to investors. Under the pilot program, the SBA would be permitted to issue partial guarantees on the pools themselves, rather than on individual loans. The SBA's guarantees will be in a "second loss" position, meaning that the private investors would suffer losses before any SBA guarantee applied. Fees from the loan pools will be placed into reserve accounts, which will fund the SBA's guarantee costs. The section also requires the GAO to study the pilot program and analyze its results, and requires the SBA to report its plan for the program to the Committee and the Committee on Small Business of the House of Representatives before implementing the program.

Subtitle H—New Markets Venture Capital

Sec. 271. Time frame for raising private capital

Section 271 requires the SBA to provide each conditionally approved New Markets Venture Capital company with two years to raise its matching private capital. Currently, the statute grants the SBA the discretion to allow up to two years for the matching private capital to be raised.

Sec. 272. Definition of low-income geographic area

Section 272 amends the Small Business Investment Act of 1958 to modify the definition of "low-income geographic area" as it relates to metropolitan areas to provide more conformity between the SBA's New Markets Venture Capital program and the New Markets Tax Credit program. Specifically, the statute currently provides that "low-income geographic area" means, in the case of population census tracts or equivalent areas that are within a particular metropolitan area, a census tract or area with (1) a poverty rate of at least 20 percent, (2) a substantial population of low-income individuals and an inadequate access to investment capital, and (3) 50 percent or more of the households in that census tract having an income equal to less than 60 percent of the area median gross income. This section modifies the last element of the definition, so that the census tract or equivalent area qualifies as a "low-income geographic area" if the first two criteria are met and the census tract or area has a median household income that "does not exceed 80 percent of the greater of the statewide median household income or the metropolitan area median household income."

Subtitle I—Small Business Investment Company Program

Sec. 281. Investment of excess funds

Section 281 authorizes Small Business Investment Companies ("SBICs") to invest funds being held as cash in additional types of securities. SBICs holding cash prior to investing in a small business are currently only permitted to invest directly in obligations of the United States or obligations guaranteed by the United States, or in Federally insured savings accounts. This section would permit SBICs to invest in instruments that themselves invest in the obligations that are currently permitted (e.g., mutual funds that invest only in U.S. Treasury bonds).

Sec. 282. Maximum prioritized payment rate

Section 282 increases from 1.38 percent to 1.7 percent the maximum amount of the fee paid by SBICs to the SBA, which is needed to maintain a zero subsidy rate for the program. The annual fee for each SBIC that uses bond-backed (debenture) financing will not change, but the annual fee for each SBIC that uses participating securities backed by the SBA will be up to 1.7 percent of that SBIC's outstanding SBA-backed leverage.

Sec. 283. Improved distribution requirements

Section 283 allows SBICs using SBA-backed participating securities to increase the distributions that they make from their securities to investors, including the SBA, so long as the principal the SBA provided to the SBIC is first repaid to the agency.

Subtitle J—Small Business Intermediary Lending Pilot Program

Sec. 291. Short title

The short title for this subtitle is the "Small Business Intermediary Lending Pilot Program Act of 2003."

Sec. 292. Findings

This section provides findings for the pilot program detailed in Section 293.

Sec. 293. Small Business Intermediary Lending Pilot Program

Section 293 creates a new pilot program for the SBA to provide long-term loans to intermediaries, which would then re-loan these funds to small businesses in loan amounts of between $35,000 and $200,000. This pilot program is intended to assist small businesses that need loans larger than those available through the Microloan program but, due to a lack of conventional collateral, are unable to secure credit through conventional lenders, even with the assistance of SBA's 7(a) Loan Guarantee program. The pilot is also intended to create employment opportunities for low-income individuals. This section requires the SBA to provide reports about the pilot program to the Committee and the Committee on Small Business of the House of Representatives.

TITLE III—ENTREPRENEURIAL DEVELOPMENT PROGRAMS

Subtitle A—Office of Entrepreneurial Development

Sec. 301. Service Corps of Retired Executives

Section 301(a) amends Section 8(b)(1)(B) to confirm that space and personnel support would be provided to the Service Corps of Retired Executives (SCORE) Headquarters in Washington, D.C. to oversee the program.

Section 301(a)(3) amends Section 8(b)(1)(B) to allow SCORE to manage the gifts and contributions that the organization receives.

Section 301(c) extends the SBA's current cosponsorship authority for the Fiscal Years 2004, 2005, and 2006.

Sec. 302. Small Business Development Centers Program

Section 302(a) changes the word "certification" to "accreditation" in Sections 20(a)(1) and 21(k) to distinguish the Association of Small Business Development Centers (SBDCs) accreditation programs based on examinations of small business development centers from the agency's certification programs.

Section 302(b) protects the privacy of SBDC clients by prohibiting the disclosure of client information without the client's written consent, unless it is required by a Federal or state agency or for a SBA audit.

Sec. 303. PRIME reauthorization and transfer to the Small Business Act

Section 303 reauthorizes the Program for Investment in Microentrepreneurs ("PRIME"), and transfers the statutory language for PRIME to the Small Business Act. PRIME is a program to provide grants to intermediaries that use the funds to (1) train other intermediaries to develop microenterprise training and services programs, (2) research microenterprise practices or (3) provide training and technical assistance to disadvantaged entrepreneurs. This section adds a data collection provision and reauthorizes the program at $15 million for Fiscal Years 2004, 2005 and 2006.

Subtitle B—Women's Small Business Ownership Programs

Sec. 311. Office of Women's Business Ownership

This section incorporates the Women's Small Business Programs Improvement Act of 2003 (S. 1154) with additional provisions.

Section 311 amends Section 29(g) of the Small Business Act by directing the SBA Office of Women's Business Ownership (OWBO) to develop new programs and services for women-owned businesses. This section also requires the OWBO to consult with the associations representing the Women's Business Centers, the National Women's Business Council, and the Interagency Committee on

Women's Business Enterprise when development such programs and services.

This section requires that training be provided for SBA District Office personnel responsible for carrying out the agency's programs designed to benefit women-owned businesses. Section 311 also requires the Administration to improve the Women's Business Center grant process and the programmatic and financial oversight process.

Sec. 312. Women's Business Center Program

This section pertains to the Women's Business Centers program, replacing the five-year grant program and pilot Sustainability Program (which sunsets at the end of Fiscal Year 2003) with a permanent grant program that can be renewed at three-year intervals.

Section 312 authorizes that the Administration to make four-year initial grants and three-year renewal grants of not more than $150,000 per year to Women Business Centers. This section also sets forth the grant procedures, criteria and requirements of the grant applicant, existing Women's Business Centers, and the SBA.

Section 312(a) also provides a transition rule for Women Business Centers funded by a sustainability grant and provides a one-year extension for sustainability grants scheduled to expire not later than June 30, 2005.

Section 312(b) authorizes $500,000 in Fiscal Year 2004 for supplemental sustainability grants to Women's Business Centers with a limitation of $125,000 in grant funding for the grant period beginning on July 1, 2003 and ending on June 30, 2004. The Fiscal Year authorizations for the Women's Business Center program set out in this section are: $15 million for Fiscal Year 2004; $16 million for Fiscal Year 2005; and $17.5 million for Fiscal Year 2006.

Section 312(c)(1) recognizes the existence and activities of associations of women's business centers, which are defined in Section 312(a) as an organization that represents not less than 30 percent of the women's business centers participating in the Administration's Women's Business Center Program.

Sec. 313. National Women's Business Council

Section 313(a) amends Section 406 of the Women's Business Ownership Act of 1988 by providing the National Women's Business Council with cosponsorship authority.

Section 313(b) clarifies membership representation on the Council so that a small business represented on the Council can change the individual representing the business after consultation with the chairperson of the Council.

Section 313(c) establishes committees under the direction of the chairperson on manufacturing, technology, professional services, travel, tourism, product and retail sales, international trade, and Federal procurement and contracting.

Section 313(d) provides authority for the Council to serve as a clearinghouse for information on small business owned and controlled by women.

Section 313(e) amends Section 410(a) of the Women's Business Ownership Act of 1988 by changing the Council's research allocation from $550,000 to 30 percent of appropriated funds.

Sec. 314. Interagency Committee on Women's Business Enterprise

Section 314(a) amends Section 403(b) of the Women's Business Ownership Act of 1988 by providing that the Deputy Administrator of the SBA shall serve as the acting chairperson for the Interagency Committee on Women's Business Enterprise in the event that a chairperson has not been appointed.

Section 314(b) establishes a policy advisory group to assist the chairperson in developing policies and programs, and defines the composition of the policy advisory group.

Section 314(c) creates subcommittees to reflect the committees established for the National Women's Business Council, establishes the duties, and states activities of the Interagency Committee.

Sec. 315. Preserving the Independence of the National Women's Business Council

Section 315 addresses the membership of the National Women's Business Council and the procedure for the replacement of vacancies in order to maintain the independence of the National Women's Business Council.

Section 315(c) amends Section 407(f) of the Women's Business Ownership Act of 1988 by requiring an equal number of members appointed to serve on the Council represent each of the two major political parties. This section also requires that if a vacancy is not filled, or if an imbalance of party-affiliated members exists on the Council, a report must be submitted within 10 days to the Committee and the Committee on Small Business of the House of Representatives.

Subtitle C—Office of Native American Affairs

Sec. 321. Short title

The short title for this title of the bill is the Native American Small Business Development Act.

Sec. 322. Native American Small Business Development Program

Section 322 provides financial assistance (grants, without a matching requirement, contracts, or cooperative agreements) to Tribal Governments and Tribal Colleges through five-year projects to provide financial, management, and marketing education, including appropriate training and counseling.

Sec. 323. Pilot programs

Establishes two pilot programs. The first program awards two to four-year grants to provide culturally tailored business development training and other services to Native Americans owned small businesses. The second is a four-year pilot program for American Indian Tribal Assistance Centers to provide assistance to prospective and current owners of small business concerns located on or near tribal lands. The pilot programs sunset in Fiscal Year 2007.

Subtitle D—Office of Veterans Business Development

Sec. 331. Advisory Committee on Veterans Business Affairs

Section 331 amends Section 33(h) by extending SBA's responsibility for the Advisory Committee on Veterans Business Affairs through Fiscal Year 2006; amends Section 203(h) of Public Law 106–50 by extending SBA's responsibility for the outreach activities of the Advisory Committee on Veterans Business Affairs through 2006.

Sec. 332. Outreach grants for veterans

Section 332 amends Section 8(b)(17) by expanding the grant program to apply to all veterans, including service disabled veterans and members of a reserve component of the Armed Forces. The SBA Outreach Program for Veterans was established by Public Law 105–135 and the scope of the outreach activities is more clearly defined in Public Law 106–50.

Sec. 333. Authorization of appropriations

Section 333 authorized funding for the SBA's Office of Veterans Business Development to carry out the outreach programs for veterans as follows: $1 million for Fiscal Year 2004, $1.5 million for Fiscal Year 2005, and $2 million for Fiscal Year 2006. This gradual increase will enable the SBA to expand programs and assistance for veterans nationwide.

TITLE IV—SMALL BUSINESS PROCUREMENT OPPORTUNITIES

Sec. 401. Contract consolidation

Section 401(a) replaces the definition of "bundled" contracts with "consolidation of contract requirements" to mean the use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements previously provided or performed, or of a type that is capable of being provided or performed by small business for that department or agency under two or more separate contracts smaller in cost than the total cost of the contract for which the offers are solicited.

Section 401(b) amends Section 15(e) of the Small Business Act and complements the intent of the original contract bundling legislation. It sets forth the procedures to be followed by Federal agencies and the SBA with regard to consolidation-of-contract requirements.

This section also limits the authority of Federal agencies to execute an acquisition strategy that includes a consolidation-of-contract requirement with a total value in excess of $2 million ($5 million for the Department of Defense) unless the agency demonstrates that the consolidation is necessary and justified based on market research. In addition, agencies must identify alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements.

When an agency contemplates a consolidated procurement above $5 million ($7 million for the Department of Defense), this section requires the agency to conduct a more extensive review that includes the estimated benefits of the proposed consolidated contract requirements and how such benefits were calculated. Additionally, this section requires an agency to: (1) assess the specific impediments to participation by small business concerns as prime contractors that will result from the consolidation; (2) specify actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming; (3) specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and, (4) identify alternative strategies that would reduce or minimize the scope of consolidation and justify the rationale for not choosing the alternatives.

Section 401(c) modifies Section 15(p)(4)(B) of the Small Business Act to require the SBA to collect procurement strategies that have been successful in maximizing small business prime and subcontracting opportunities. It requires the SBA to include in its annual contract bundling report to the Congress a section that identifies and describes these best practices.

Section 401(d) amends Section 15(l) of the Small Business Act to provide for at least one Procurement Center Representative (PCR) in each state. In addition, this section directs the Administration to ensure there is not less than one PCR assigned at each major procurement center. This subsection also clarifies that these individuals shall be independent of and have responsibilities independent from those of SBA Breakout Procurement Center Representatives and Commercial Market Representatives.

Section 401(e) makes technical corrections to Section 15(k) of the Small Business Act, and Section 401(f) makes conforming amendments to Section 15(p) of the Small Business Act.

Section 401(g) requires the GAO to conduct a study by June 30, 2004, of the feasibility of establishing contract consolidation thresholds based on industry categories.

Sec. 402. Agency accountability

Section 402 makes numerous changes that hold agencies accountable for small business utilization goals. Subsection (a) amends Section 15(g)(2) of the Small Business Act to require agency heads to identify, in their strategic plan and their annual budget submission to Congress, a specific portion of their budget requests that will be awarded to small businesses; and, to report on these amounts as part of the Government Performance and Results Act (GPRA) in their Annual Performance and Accountability reports.

Additionally, the head of an agency may also be required to provide a complete report to the agency's congressional appropriators on the agency's small business utilization at the next appropriations cycle.

This section also directs agency senior procurement executives to communicate to subordinate employees the importance of achieving small business goals. In addition, it directs agencies to include in the annual performance evaluation for senior procurement and program office employees, a factor that measures the success of that senior executive in small business utilization.

For agencies that fail to achieve their small business achievement goals, this section would permit, where appropriate, a percentage of the performance bonus for that agency's senior procurement and program office employees to be withheld.

Section 402(b) amends Section 15(k)(3) of the Small Business Act to ensure that all Directors for the Office of Small and Disadvantaged Business Utilization report to the head of the agency.

Section 402(c) amends Section 10(d) of the Small Business Act to require, in addition to the Department of Defense, all Federal agencies represented on the President's Management Council to submit annual small business achievement reports to the Committees and the Committee on Small Business of the House of Representatives showing the amount of funds appropriated that have been expended, obligated, or contracted to be spent with small business.

Sec. 403. Small business participation in prime contracting

Section 403(a) amends Section 15(g) of the Small Business Act to establish a government-wide goal for participation by small businesses of the dollar value of awards placed against multiple award schedule contracts at not less than 23 percent.

Subsection (b) amends Section 15(j) of the Small Business Act to ensure that the small business reserve threshold is adjusted for any increase to the simplified acquisition threshold. This subsection further amends Section 15(j) to include Federal Supply Schedule orders within the small business reserve.

Sec. 404. Small business participation in subcontracting

Section 404(a) makes several changes that hold prime contractors responsible for the validity of subcontracting data. It amends Section 8(d)(6) of the Small Business Act to require the chief executive officer of large prime contractors to certify the accuracy of the firm's subcontracting report under penalty of law. It also requires large prime contractors to certify that they will use small business subcontractors in the amount and quality used in preparing their winning bid or proposal unless such firms no longer are in business or can no longer meet the quality, quantity or delivery date.

Subsection (b) amends Section 16(f) of the Small Business Act to impose penalties for false certifications of past compliance with small business subcontracting.

Sec. 405. Evaluating subcontract participation in awarding contracts

Section 405 amends Section 8(d) of the Small Business Act to provide for the consideration of proposed small business participation as subcontractor and suppliers as part of the process of selecting among competing offerors for any contract award that includes significant opportunity for subcontracting. It also provides for recognition of a prime contractor's past performance in supporting small business subcontracting participation in other Federal contracts.

This section requires the SBA to share subcontracting compliance review data with Federal contracting officers and to update a national centralized government-wide database with prime contractor past performance specifically related to subcontracting plan compliance.

It also requires contracting officers to withhold prime contractor payment until the prime contractor provides the agency with complete and accurate subcontracting reports.

If a subcontracting violation is found to constitute a material breach of contract, this section requires such material breaches to be referred to the Inspector General of the affected agency for investigation.

Sec. 406. Direct payments to subcontractors

Section 406 amends Section 8(d) of the Small Business Act to establish a pilot program in certain agencies to test direct payment to small business subcontractors. This program shall remain in effect until September 30, 2006.

Sec. 407. Women-owned small business industry study

Section 407 amends Section 8(m)(4) to direct the GAO to conduct a study by December 31, 2003, to identify industries in which small businesses owned and controlled by women are underrepresented with respect to Federal procurement.

Sec. 408. HUBZone authorization

Section 408 amends Section 31(d) of the Small Business Act to extend authorization of funding levels for the HUBZone program through Fiscal Year 2006.

Sec. 409. Definition of HUBZone; treatment of certain former military installation lands as HUBZones

The section amends Section 3(p) of the Small Business Act to designate military installations undergoing closure as HUBZones.

Sec. 410. Definition of HUBZone small business concern

Section 410 amends Section 3(p) of the Small Business Act to modify the ownership requirements for HUBZone small businesses to include any small business investment company, specialized small business investment company, New Markets Venture Capital company, or other similar investment company, provided such ownership does not exceed 15 percent of the small business concern.

Sec. 411. Acquisition regulations

Section 411 establishes a deadline for procurement regulations to be issued no later than 180 days after the date of the enactment of this bill.

TITLE V—MISCELLANEOUS

Sec. 501. Minority small business capital ownership development program

Section 501(a) amends Sections 4(b), 7(j) and 8(a) of the Small Business Act to change the name of the office from the “Office of Minority Small Business Capital Ownership Development” to the “Office of Business Development.” Section 501(b) makes conforming amendments to the Small Business Act to reflect the above name change.

Section 501(c) amends Section 8(a)(20)(A) of the Small Business Act to change the requirement for 8(a) firms to report on fees paid to consultants, attorneys, accountants, etc. from the current semiannual to an annual basis.

Sec. 502. Extension of authority for technology assistance programs

Section 502(a) amends Section 9(s)(2) of the Small Business Act to extend the Rural Outreach Program authorization through Fiscal Year 2006.

Subsection (b) amends Section 34 of the Small Business Act to extend the program authorization for the Federal and State Technology Partnership Program through Fiscal Year 2006.

Sec. 503. BusinessLINC report to Congress

Section 503 modifies Section 8(n) of the Small Business Act to require the Administration to report annually on the effectiveness of the Program.