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SUMMARY OF LEGISLATIVE AND OVERSIGHT ACTIVITIES DURING THE 109TH CONGRESS

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Mr. KERRY, from the Committee on Small Business and Entrepreneurship, submitted the following

R E P O R T

I. OVERVIEW

During the 109th Congress, the Committee's agenda concentrated on the highest priorities of the small business community. The Committee focused on a host of concerns, including small business access to affordable health insurance, manufacturing, targeted regulatory reform, the impact and recovery from Hurricanes Katrina and Rita, access to capital, and oversight and the reauthorization of the Small Business Administration (SBA). The Committee received testimony and information about these topics from small business owners and employees and from experts across the United States. This report summarizes the legislative and oversight activities of the Committee on these critical issues of concern and interest to small businesses.

II. OVERSIGHT OF THE SMALL BUSINESS ADMINISTRATION

A. THE SMALL BUSINESS REAUTHORIZATION AND IMPROVEMENTS ACT OF 2006 (S. 3778)

At the end of the 109th Congress, the Committee unanimously approved comprehensive legislation reauthorizing the SBA for fiscal years 2007, 2008, and 2009. This bipartisan bill was reported out of the Committee unanimously and was introduced as an original bill by Chair Olympia J. Snowe on July 27, 2006. In accordance with Senate procedure, original bills reported from a Committee may only be introduced by one Senator. Members of the Committee who wished to cosponsor the bill included: Senators Kerry, Vitter, Landrieu, Cantwell, and Lieberman.

During markup of the bill, the Committee adopted by voice vote an amendment by Senator Bond and an amendment by Senator Coleman. The Small Business Reauthorization and Improvements

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Act of 2006 (S. 3778) was subsequently adopted as amended by unanimous vote of 18–0.

The bill would have provided the opportunity to revitalize and renew the SBA, to improve outreach to the small business community, and to meet the changing needs of the 21st-century entrepreneur. Since the last reauthorization in 2004 (P.L. 108–447), the Committee has held a series of hearings, meetings, and roundtables to analyze the SBA's programs and services in preparation for the introduction of new legislation to reauthorize the SBA and build on the agency's success of helping small businesses create jobs that drive America's economy.

Beginning in 2005, following Hurricanes Katrina and Rita, the Committee convened two hearings on the SBA's disaster response. The first hearing, "The Impact of Hurricane Katrina on Small Businesses," held on September 22, 2005, focused on the effects of the hurricanes on small businesses and provided the Committee with the opportunity to: (1) receive a briefing on how the SBA had responded to the hurricanes; (2) analyze the SBA's immediate and long-term response plans; (3) receive feedback on Hurricane Katrina-related small business legislation; and (4) investigate how Congress and the SBA could improve assistance to victims of the Gulf Coast hurricanes and displaced small businesses.

The Committee held a second disaster hearing, "Strengthening Hurricane Recovery Efforts for Small Businesses," on November 8, 2005. The Committee received an update on the SBA's response to the 2005 hurricanes, analyzed the SBA's disaster response in the two months following the initial disaster hearing, investigated the SBA's long-term disaster response plans, and examined the administration's policy regarding prime and subcontracting opportunities for small businesses. Witnesses at this hearing included representatives from the SBA, the U.S. Army Corps of Engineers, the U.S. Department of Homeland Security, the Government Accountability Office (GAO), and the Office of the Governor of Louisiana. These hearings provided insight into the immediate needs of affected small businesses and laid a foundation for the Committee's reauthorization efforts that pertain to the SBA's disaster response and preparedness.

On March 9, 2006, the Committee held a hearing to examine the SBA's budget and to analyze the SBA's proposed legislative package for reauthorization. SBA Administrator Hector Barreto provided testimony on the SBA's achievements and its budgetary and programmatic proposals for fiscal year 2007. The administration proposed a funding level of $624 million for the SBA, of which only $425 million would go to the SBA's core programs. This proposal continued an alarming trend of decreases to the SBA's budget. Since 2001, the SBA's overall budget has been reduced by 37 percent.

During the hearing, the Committee examined: (1) the SBA's diminishing budget and funding proposals for essential programs, including the Microloan, Small Business Development Center (SBDC), and Women's Business Centers; (2) the administration's proposal to impose administrative fees on the small business participants of Section 7(a) and Section 504 lending programs; and (3) issues regarding Small Business Investment Companies (SBICs).

On April 26, 2006, the Committee held a hearing, “Reauthorization of SBA Financing and Economic Development Programs.” The Committee addressed issues regarding the SBA’s finance programs, which guaranteed over $24 billion in loans and venture capital for small businesses in 2005, the highest level of capital ever provided by the SBA. The Committee heard from lenders, small business stakeholders, and SBA representatives on the benefits of the SBA’s credit programs and evaluated reauthorization proposals to improve the broad range of finance programs that play a vital role in assisting America’s entrepreneurs in obtaining operating and equity capital.

Additionally, the Committee solicited post-hearing questions regarding the SBA’s economic development programs and non-credit programs, including the SBDC, Women’s Business Ownership and Veterans Business Development programs, the National Women’s Business Council, and other entrepreneurial development programs administered by the SBA.

On July 12, 2006 at another hearing entitled “Strengthening Participation of Small Businesses in Federal Contracting and Innovation Research Programs,” the Committee focused on procurement and government contracting issues, and the often insurmountable obstacles small businesses face when seeking to compete in the Federal marketplace for a share of the more than $200 billion in Federal contracts. The hearing examined the enforcement of the SBA’s small business size and status standards, the President’s Initiative Against Contract Bundling, the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, as well as the SBIR Rural Outreach program and the Federal & State Technology Partnership program (FAST). The Committee heard from a broad cross-section of small business stakeholders, as well as from SBA representatives who oversee these programs.

The Committee also reviewed the SBA’s government contracting and business development programs, which include the SBA’s Prime Contracting and Subcontracting programs, the HUBZone program, and the Small Disadvantaged Business program. Stakeholders of these programs provided valuable insight and recommendations to the Committee.

The Committee also held a staff-led regulatory reform roundtable on July 21, 2005, which served as a forum for small businesses, key stakeholders, and agency staff to address regulatory reform issues. Committee staff led a discussion of a number of targeted regulatory reform bills that were introduced in the 109th Congress, including the Small Business Compliance Assistance Enhancement Act (S. 769), which would have clarified the existing requirement under the Small Business Regulatory Enforcement Fairness Act (SBREFA) that Federal agencies produce small business compliance guides when they promulgate rules that would have a significant impact on a substantial number of small businesses. The roundtable also addressed the National Small Business Regulatory Assistance Act (S. 1411), which would have directed the SBA to establish a competitive, pilot program to provide regulatory compliance assistance to small businesses, through SBDCs. Taking into account many of the concerns raised at the staff-led regulatory reform roundtable, the Committee included versions of these measures in the Small Business Reauthorization and Improvements Act of 2006 (S. 3778).

On April 20, 2005, the Committee held a hearing, "Solving the Small Business Health Care Crisis: Alternatives for Lowering Costs and Covering the Uninsured." The Committee heard from several panels of distinguished witnesses, including Elaine L. Chao, Secretary, U.S. Department of Labor and Hector V. Barreto, then the Administrator of the SBA. The hearing focused on finding solutions to the small business health insurance crisis and providing small businesses with relief from escalating health care costs and limited coverage options. The number one issue facing small business today is the affordability and accessibility of health insurance. There are now 46.6 million uninsured Americans, approximately 60 percent of whom work for a small business or are dependent on someone who does. In addition, fewer and fewer of our Nation's smallest businesses are now offering health insurance as a workplace benefit. In 2006, the Kaiser Family Foundation reported that only 48 percent of our Nation's smallest businesses, with fewer than ten employees were able to offer health insurance as a workplace benefit. In stark contrast, health insurance is nearly universally provided by larger businesses with more than 200 employees.

Based on the testimony presented at the hearing, the Committee included a Health Insurance Title to the Small Business Reauthorization and Improvements Act of 2006, with provisions to increase small business education and awareness regarding health insurance coverage options in various geographic areas with the intention of encouraging more of our Nation's smallest businesses to offer health insurance to their employees.

Throughout the hearings and roundtables, the Committee singled out the SBA programs that are working well, identified the reasons for their superior performance, and then sought to apply those principles to programs that are in need of improvement. The voluminous amount of information that the Committee collected through the hearings and roundtable discussions held in the 109th Congress as well as in previous Congresses, and the information received directly from small business stakeholders contributed greatly to achieving that goal and the results were reflected in the bill. The bill also reflected information obtained from numerous reviews undertaken at the Committee's request by the GAO and the SBA Inspector General.

The Small Business Reauthorization and Improvements Act of 2006 (S. 3778) would have provided a sound foundation for the agency to provide improved service to the Nation's small businesses and entrepreneurs. However, S. 3778 was not taken up by the full Senate during the 109th Congress. The House was also unable to pass its version of a comprehensive SBA reauthorization bill. As a result, Congress approved a short-term extension of the SBA's authorization to enable the SBA to continue functioning, and to allow the SBA's programs to continue to be used by small businesses. This extension continued into fiscal year 2007, when new SBA reauthorization legislation will need to be introduced.

B. 7(a) Loan Program—The Small Business Lending Improvement Act of 2005 (S. 1603)

Under the 7(a) Business Loan Guaranty program, organized under Section 7(a) of the Small Business Act, the SBA guarantees a portion of a loan that a commercial lender makes to a qualified small business. Loans may be up to a maximum of $2 million, and the maximum guarantee is $1.5 million. To receive a 7(a) loan, a small business must be unable to obtain comparable credit elsewhere. Loans made under this program are most often for working capital, real estate, expansion, or other business expenses. In 2005, the SBA guaranteed 88,845 7(a) loans, and in 2006, the SBA guaranteed 90,483 7(a) loans (more than ever before) with a total value of approximately $13.8 billion.

In order to improve the 7(a) program, Chair Snowe introduced the Small Business Lending Improvement Act of 2005 (S. 1603) to enhance the accessibility, attractiveness, and convenience of the 7(a) program for small business borrowers and for lenders.

Under current law, the most prolific lenders in the SBA's 7(a) loan program can participate in the "Preferred Lender Program" (PLP), which allows them to use their own processing facilities increasing lenders' efficiency and reducing costs for the SBA. However, PLP lenders are required to apply for PLP status in each of the 71 SBA districts nationwide and they must re-apply each year in each district. S. 1603 allowed qualifying lenders to participate in the PLP program on a nationwide basis after just one licensing process. This provision reduced administrative costs and standardized the operation of the PLP program. A National Preferred Lenders Program would increase the ease with which loans are made to small businesses, thereby improving small businesses' access to capital. Increased competition among lenders for small business customers would expand financing alternatives and lower costs for small businesses.

S. 1603 would have increased the maximum size of a 7(a) loan to $3 million from the current $2 million and increased the maximum size of a 7(a) guarantee to $2.25 million from the current $1.5 million. This would maintain the maximum 75 percent guarantee. This increase in 7(a) program loans to $3 million would bring 7(a) loans closer in size to 504 program loans, while still leaving 7(a) loans smaller than 504 program loans.

The bill also would have required the SBA to implement an alternative size standard, in addition to the program's current standard, for the 7(a) program. Under the 7(a) program, a small business's eligibility to receive a loan is currently determined by reference to a multi-page chart that has different size standards for every industry. This is extremely confusing, especially for small lenders that do not make many 7(a) loans. Under S. 1603, the SBA would create an alternative size standard for the 7(a) program, as it has done for the 504 program, that considers a business's net worth and income. This would simplify the 7(a) lending process and provide small businesses with a streamlined procedure for determining their eligibility for 7(a) loans, and it would conform the standards used by the 7(a) and 504 programs.

S. 1603 was referred to the Committee but never considered by the full Senate. Instead, the bill was included in the Small Business Reauthorization and Improvements Act of 2006 (S. 3778), which passed unanimously out of Committee but was never considered by the full Senate.

C. CDC/504 Loan Program—The Local Development Business Loan Program Act of 2005 (S. 2162)

In the Certified Development Company (CDC) loan program, also known as the 504 loan program, (it is organized under Section 504 of the Small Business Investment Act of 1958), the SBA guarantees 40 percent of a financing package supplied to a small business to purchase either real estate or capital equipment. To obtain a 504 loan, a small business works with a CDC, a non-profit community development organization, to construct an appropriate financing package. The CDC provides a loan for 40 percent of the total financing package, and the SBA guarantees 100 percent of this portion of the total package; a commercial bank, separate from the CDC, provides a commercial loan that funds 50 percent of the financing package, and the SBA guarantees no portion of this commercial loan. Finally, the small business is required to contribute 10 percent of the total financing package. In fiscal year 2006, 8,162 loans under the 504 loan program were funded for a total of $5.7 billion.

In December 2005, Chair Snowe introduced the Local Development Business Loan Program Act of 2005 (S. 2162) to improve the 504 loan program by streamlining the lending process and providing small businesses with greater opportunities to obtain affordable financing. For many small businesses, expansion plans face constraints imposed by facilities that are too small or equipment that has insufficient capacity or outdated features. These small businesses often lack capital to remedy these needs, and without the SBA, they are limited to obtaining short-term financing with higher, often variable, rates.

Job creation and retention is a bedrock element of local development efforts throughout the country. One of the statutory purposes of the 504 loan program is to create new jobs and help small businesses retain existing jobs. The purpose of the bill was to strengthen the local development impact of the 504 loan program. To reflect that, the bill would have re-named the 504 loan program the "Local Development Business Loan program" (Local Development program). Many small business owners commented to the Committee that the name "504 program" was neither clear nor indicative of the program's purposes. The bill would not have required the SBA to discard existing program materials that refer to the previous name but to use the program's new name on any new materials produced after the bill's enactment.

This legislation would have also reduced regulatory barriers that constrained CDCs from expanding their operations into new areas. By increasing competitive opportunities for CDCs, the bill would have increased the number and quality of financing options available to small businesses. Complex regulations made compliance both costly and difficult and deterred many CDCs from expanding into new areas. Simplifying these regulations would result in increased access to capital for small businesses.

S. 2162 allowed borrowers to provide more than the required minimum amount of equity when initiating a loan and to use that excess equity to reduce the amount of a first-lien mortgage made by a private lender in the program. By contributing a larger down payment at the onset of the loan, this provision would have provided an opportunity for these borrowers to reduce their periodic payment obligations.

This bill also would have designated Local Development Program loans that qualify under the New Markets Tax Credit Program as a public policy goal under the Local Development Program, and, thus, made them eligible for larger financing packages. The New Markets Tax Credit program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities.

The legislation also would have permitted the ownership interest of two or more small business owners to be combined to determine whether the small business is 51 percent owned by minorities, women, or veterans in order to qualify as a business eligible for a public policy loan. The act's goal of improving access to capital for small businesses was also furthered by another provision that would have permitted Local Development Program borrowers to obtain financing at the maximum level allowed under this program and also under the SBA's 7(a) loan program.

This legislation also sought to allow a borrower to refinance a limited amount of existing debt. The amount that could be refinanced could not exceed 50 percent of the expansion project funded by the loan and would have been limited to certain situations. By giving small businesses the ability to refinance and obtain lower-cost capital, the bill would have provided greater opportunity for success.

The bill also would have eliminated a fee now imposed on the first-mortgage lenders (i.e., private banks) in a Local Development Program financing package. The lender's fee is a one-time fee equal to 0.5 percent of the first-mortgage loan. Currently, the first mortgage lenders pass this fee on to CDCs and borrowers. The bill would not have increased the total fees paid by the CDCs or the borrowers, but it would have clarified that the CDC's stipulated annual fee would be increased by 0.06 percent and that the borrower's stipulated fee would be increased by approximately 0.06 percent to replace the fees currently imposed on CDCs and borrowers by private lenders. In other words, instead of a fee imposed on CDCs and borrowers by the private lenders, which is not always clearly identifiable to those outside the program, this provision specified the fee be paid directly by the CDCs and borrowers.

S. 2162 was referred to the Committee but never considered by the full Senate. Instead, the bill was included in the Small Business Reauthorization and Improvements Act of 2006 (S. 3778), which passed unanimously out of Committee but was never considered by the full Senate.

D. The SBA Disaster Loan Program

1. The Red Tide Emergency Relief Act of 2005 (S. 1316).—The "Red Tide" is a toxic algae bloom in coastal waters that, if eaten, renders any infected shellfish (e.g., clams or oysters) potentially fatal to humans and animals. The Red Tide affecting Maine, Massachusetts, and New Hampshire in 2005 was the worst since at least 1972. Thousands of small businesses were unable to operate

normally. These small businesses included clammers, oystermen, restaurants, processing plants, and shipping companies. The estimated losses exceeded $3 million per week.

The SBA declared disasters in the shellfish industries in Maine, Massachusetts, and New Hampshire, and, therefore, offered Disaster Loans to small businesses that suffered economic injuries because of the disaster. The SBA could loan money to fishermen who fish for cod or shrimp, but it could not issue loans to oystermen and clammers who sought to replenish their shellfish beds, because under current law these trades are considered "aquaculture." Under current law, small "aquaculture" businesses (i.e., businesses that grow food products in an aquatic environment) are not eligible to receive SBA Disaster Loans. Instead, they are only eligible for loans from the United States Department of Agriculture (USDA). This legal anomaly caused hardship for hundreds of small aquaculture businesses.

To address this anomaly, Chair Snowe, along with Senators Kerry, Collins, Kennedy, and Chafee, introduced the Red Tide Emergency Relief Act of 2005 (S. 1316). This bill would have made small businesses engaged in aquaculture eligible to receive SBA Disaster Loans from the SBA if the SBA has declared a Federal disaster for a particular region. S. 1316 passed the Senate by Unanimous Consent but was held at the desk and, thus, never became law.

2. The Small Business, Homeowners, and Renters Disaster Relief Act of 2005 (S. 1724).—On September 19, 2005, Chair Snowe, along with Senators Vitter and Talent, introduced S. 1724 to enable small businesses, homeowners, and renters to recover from Hurricane Katrina. The legislation would have made significant changes to the SBA Disaster Loan Program primarily by allowing borrowers to defer the repayment of SBA Disaster Loans for up to 12 months. This 12-month period could be extended to 24 months at the discretion of the SBA Administrator if the administration thought that Katrina victims needed additional time to begin repaying their loans. Second, the bill would have increased the maximum size of an SBA Disaster Loan from $1.5 million per loan to $10 million per loan. Third, the bill sought to allow victims of Hurricane Katrina who had existing SBA Disaster Loans prior to the hurricane to refinance those loans into new Disaster Loans. It also would have allowed victims to refinance business debt into Disaster Loans even if the debt was non-mortgage based. Currently only mortgage-based debt may be refinanced. The bill also would have allowed non-profit institutions to apply for Disaster Loans and established an extended period for applying for Disaster Loans for Hurricane Katrina. In addition, this legislation would have appropriated $86 million to increase the program level for SBA Disaster Loans by $600 million, to $4.0 billion, for fiscal year 2006.

In addition to changing the SBA's Disaster Loan Program, the bill would have established a pilot program to assist small businesses and farms coping with rapid increases in energy costs. This 4-year pilot program would have allowed small businesses and farms to apply for SBA Disaster Loans if the business or farm needed the loan to contend with the increased cost of oil or gas following Hurricane Katrina. Businesses and farms could only apply in the event of a 40 percent increase in energy prices.

S. 1724 would also have affected the SBA Entrepreneurial Development program by appropriating funds to increase business counseling in the damaged areas. The bill sought to appropriate: (1) $21 million for Small Business Development Centers (SBDCs), with $15 million for non-matching grants to provide Hurricane Katrina assistance; (2) $2 million for Service Corps for Retired Executives (SCORE), with $1 million to provide Hurricane Katrina assistance; (3) $4.5 million for Women's Business Centers (WBCs), with $2.5 million for non-matching grants to provide Hurricane Katrina assistance; (4) $1.25 million for Veterans Business Centers, with $750,000 provided for Hurricane Katrina assistance; and (5) $5 million for Microloan Technical Assistance to provide Hurricane Katrina assistance.

S. 1724 would have also affected the SBA's 7(a) and 504 Business Loan programs in the following ways: First, it would have increased the authorization for the SBA's 7(a) program from a program level of $17 billion to $20 billion and the authorization for the 504 program from a program level of $7.5 billion to $10 billion. No appropriation would be necessary for these increases, as both programs are zero-subsidy and fully supported by fees. Second, it would have allowed the SBA to defer repayments for up to 12 months for borrowers in the SBA's 504 loan program in states damaged by Hurricane Katrina. This 12-month period could be extended to 24 months at the discretion of the SBA Administrator. Third, the bill would have allowed the SBA to offer 7(a) program business loans with lower fees to small businesses adversely affected by Hurricane Katrina. After the September 11 attacks, Congress created the "Supplemental Terrorist Activity Relief" (STAR) loan program. STAR loans were made under the SBA's 7(a) loan program, but with lower fees for lenders. The loan program created under this bill would have established clearer criteria than the STAR Loan Program for requiring applicants to demonstrate how they were adversely affected by Hurricane Katrina. It would only have been offered for one year from the date of enactment, and, unlike STAR loans, fees would be lowered for borrowers, as well as for lenders.

S. 1724 would also have affected small business contracting provisions by designating the Hurricane Katrina disaster area as a HUBZone, which would have enabled small businesses locating in the disaster area and employing people in that area to receive contracting preferences and price evaluation preferences to offset the greater costs of doing business. The bill also would have increased the maximum size of surety bonds from $2 million to $10 million enabling local small businesses in the Gulf Coast area to use the higher bonds to compensate for the damage to their assets from the hurricane. This legislation sought to promote job creation and development through small business set-asides on reconstruction contracts by establishing a 30 percent prime contracting goal and a 40 percent subcontracting goal for each agency's Katrina-related reconstruction contracts. These goals are consistent with the Department of Homeland Security's history of small business achievements of approximately 40 percent of prime contracts and subcontracts.

Finally, S. 1724 would have appropriated a total grant of $400 million to all five States that suffered physical damage from Hurricane Katrina: Louisiana, Mississippi, Alabama, Texas, and Florida to be administered by the Department of Commerce. States that suffered from Hurricane Katrina would have discretion to use the grants as they chose. Grants could be used to provide "bridge loans" to homeowners or businesses while these entities waited for their SBA Disaster Loans to be reviewed.

The bill was referred to the Committee but never considered by the full Senate. Many provisions were included in the Small Business Reauthorization and Improvements Act (S. 3778), which passed the Committee unanimously but was not considered by the full Senate. Additionally, S. 1724 was identical to S.A. 1717, offered by Chair Snowe and Senators Vitter and Talent to the Commerce, Justice, and Science (CJS) Appropriations Act of 2005 (H.R. 2862) to assist persons and businesses harmed by Hurricane Katrina. Senators Kerry and Landrieu subsequently cosponsored that amendment, which the Senate approved by a vote of 96–0 on September 15, 2005. Despite widespread support in the Senate, Chair Snowe's amendment was ultimately stripped from the Senate CJS bill during conference with the House bill.

3. The Small Business Hurricane Relief and Reconstruction Act of 2005 (S. 1807).—On September 30, 2005, Chair Snowe, along with Senators Kerry, Landrieu, Vitter, Pryor, Cornyn, Bayh, Kennedy, Cochran, and Talent, introduced the Small Business Hurricane Relief and Reconstruction Act of 2005 (S. 1807), which incorporated many provisions from S. 1724 (described in the preceding section), including Disaster Loan program provisions, SBA Entrepreneurial Development programs, SBA 7(a) and 504 Business Loan program provisions, and Small Business Contracting provisions.

The Disaster Loan program provisions would have granted the SBA the authority to defer borrowers' repayments of disaster loans for up to 12 months. This would have allowed borrowers (homeowners, renters, or businesses that receive Disaster Loans) to have a 12-month period in which to re-establish their own incomes, or re-establish their business cash flow, before they must begin making principal and interest payments on the loan. This 12-month period could be extended to 24 months at the SBA Administrator's discretion.

The provision in the bill also would have allowed hurricane victims who had existing SBA disaster loans prior to the hurricanes to refinance prior loans into new Disaster Loans. In addition, the bill would have provided victims the opportunity to refinance business debt into disaster loans even if the debt was non-mortgage based. Currently, only mortgage-based debt may be refinanced. Additionally, this provision would have permitted recipients of disaster loans to increase the size of their loan if the additional amounts would be spent on mitigation efforts to prepare for future disasters. Currently, when providing a disaster loan for uninsured damage suffered by a disaster victim, the SBA can increase the loan amount by up to 20 percent of the uninsured portion of the borrower's losses, so the borrower can invest in disaster mitigation technologies such as sea walls and storm shutters.

S. 1807 would have provided the SBA the ability to offer Economic Injury Disaster Loans (EIDLs) to small businesses throughout the country if the businesses suffered direct economic injuries from the hurricanes, regardless of their location in the United States. The bill would have allowed small businesses and small farms throughout the country to apply for SBA Disaster Loans if the business or farm needed the loan to cope with the increased cost of oil or gas following the hurricanes.

Finally, with respect to disaster loans, S.1807 would have increased the maximum size of a SBA disaster loan from $1.5 million per loan to $10 million per loan, and allowed non-profit institutions to apply for Disaster Loans. Victims of Hurricane Katrina and Hurricane Rita would have been granted an extended period to apply for Disaster Loans.

S. 1807 also would have authorized additional funds for the SBA's entrepreneurial development programs to increase business counseling in the damaged areas. The bill would have provided: (1) $21 million for a SBDC with at least $15 million for non-matching grants to provide hurricane assistance; (2) $2 million for Service Corps of Retired Executives (SCORE) with at least $1 million to provide hurricane assistance; (3) $4.5 million for Women's Business Centers (WBCs) with at least $2.5 million for non-matching grants to provide hurricane assistance; (4) $1.25 million for Veterans Business Centers with at least $750,000 provided for hurricane assistance; and (5) $5 million for Microloan Technical Assistance to provide hurricane assistance.

In addition, the bill would have authorized the SBA Administrator to waive the $100,000 maximum size for SBDC portability grants for Hurricane Katrina. This provision would have given the Administrator the authority to waive that maximum level, so that SBDCs could fully service the victims of the affected region.

For the SBA's 7(a) and 504 business loan program provisions, the bill did four things: First, it increased 7(a) and 504 program levels for fiscal year 2006 from $17 billion to $27 billion for 7(a) loans and $7.5 billion to $12.5 billion for 504 loans. No appropriation would have been necessary for these increases, as both programs are zero-subsidy and fully supported by fees. Second, by appropriating $75 million the bill would have allowed the SBA to defer repayments owed to the SBA by borrowers in the SBA's 504 loan program. Third, the bill would have offered 7(a) program business loans with lower fees to small businesses adversely affected by Hurricane Katrina authorizing an additional $75 million in appropriations. Finally, this provision would have protected future borrowers in the SBA's business loan programs from paying higher fees to compensate the Federal government for defaults that may occur due to the businesses of some current borrowers being destroyed in the hurricanes. Those defaults would not be included in the calculation of future program costs in the SBA's business loan programs.

The small business contracting provisions would have designated the hurricane disaster area as a HUBZone. Those provisions would have increased the maximum size of SBA surety bonds from $2 million to $5 million and would have provided the SBA with the authority to increase the maximum size to $10 million. The bill also would have further directed the SBA and the directors of Small and Disadvantaged Business Utilization to create a contracting outreach program for small businesses located or willing to locate in the Hurricane Katrina disaster area and to promote job creation and development through small business set-asides on reconstruction contracts.

Additionally, this provision would have increased the micro-purchase threshold to $15,000 from $2,500, and allowed Federal agencies to use the same emergency procurement authorities for contracting related to the hurricanes that are authorized for response to weapons of mass destruction attacks and military contingency operations. These authorities would have expired within 180 days of enactment. At the same time, this provision would immediately sunset the excessive increases in various contracting thresholds that were inserted into the Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Rising from the Consequences of Hurricane Katrina (P.L. 109–62) in September 2005. As a result, this provision would have restored anti-fraud protections and competitive protections for small businesses.

Finally, the legislation would have authorized grants at a total appropriation of $450 million to the five States that suffered physical damage from Hurricane Katrina and Hurricane Rita: Louisiana, Mississippi, Alabama, Texas, and Florida.

S. 1807 was referred to the Committee but not considered. Portions of the bill were included in the other legislation that the Committee considered.

4. The Small Business Disaster Response and Loan Improvements Act of 2006 (S. 4097).—The Small Business Disaster Response and Loan Improvements Act of 2006 (S. 4097) built on the disaster provisions in the Committee's SBA reauthorization bill in the following ways. First, it would have increased the maximum size of an SBA disaster loan from $1.5 million per loan to $5 million per loan and made it possible for non-profit institutions to be eligible for disaster loans. Second, it would have created a Private Disaster Loan (PDL) program that allowed for PDLs to be made to disaster victims by private banks, approved by the SBA. A business would be eligible for a PDL if the county in which the business is located was declared a disaster area at any time in the last 24 months. The business would not have to show a nexus between its need for a loan and the disaster that occurred. It would be enough to be located in that county. The SBA would provide an 85 percent guarantee for these loans. Third, the bill would have provided authorization for the SBA to enter into agreements with qualified private contractors to process disaster loans. This provision required the SBA to provide Congress with a report on how the SBA disaster loan application process could be improved, including methods to expedite loan processing and verification for sources vital to rebuilding efforts. Fourth, the bill would have required the SBA to promulgate rules within one year that would create a new "expedited disaster assistance business loan program." These short-term loans would have low interest rates similar to regular disaster loans. The program was intended to provide businesses with short-term assistance while those businesses retained SBA disaster loans or insurance payouts following future disasters. This program would have addressed one of the major issues following Hurricanes Katrina and Rita—the lack of access to immediate capital to keep businesses afloat.

The bill also would have created a "Catastrophic National Disaster" declaration to allow the SBA to issue nationwide Economic

Injury Disaster Loans to small businesses affected by a disaster. Finally, it would have allowed the disaster loan program to provide relief to small businesses when energy prices reach a certain threshold.

The bill was referred to the Committee but never considered by the full Senate. Many provisions were included in the Small Business Reauthorization and Improvements Act of 2006 (S. 3778), which passed the Committee unanimously.

5. The Government Accountability Office's Findings on the SBA's Response to the Gulf Coast Hurricanes.—At the request of Chair Snowe, the GAO completed a report evaluating how well the SBA provided victims of the Gulf Coast hurricanes with timely assistance. This report details: (1) the challenges the SBA experienced in providing victims of the Gulf Coast hurricanes with timely assistance; (2) factors that contributed to these challenges; and (3) steps the SBA has taken since the Gulf Coast hurricanes to enhance its disaster preparedness.

The GAO identified several significant systemic and logistical challenges that the SBA experienced in responding to the Gulf Coast hurricanes. These challenges undermined the SBA's ability to provide timely disaster assistance to victims. For example, the limited capacity of the SBA's automated loan processing system—the Disaster Credit Management System (DCMS)—restricted the number of staff who could access the system at any one time to process disaster loan applications. In addition, the SBA staff who could access the DCMS initially encountered multiple system outages and slow response times in completing loan-processing tasks. The SBA also faced challenges training and supervising the thousands of mostly temporary employees the agency hired to process loan applications and obtaining suitable office space for its expanded workforce.

While the large volume of disaster loan applications that the SBA received clearly affected its ability to provide timely disaster assistance to Gulf Coast hurricane victims, the GAO's report found that the absence of a comprehensive and sophisticated planning process beforehand likely limited the effectiveness of the agency's initial response. For example, in designing the capacity of the DCMS, the SBA primarily relied on historical data such as the number of loan applications that the agency received after the 1994 earthquake in Northridge, California—the most severe disaster that the agency had previously encountered.

According to the GAO report, the SBA did not consider disaster scenarios that were more severe or use the information available from disaster simulations (developed by Federal agencies) or catastrophe models (used by insurance companies to estimate disaster losses). The report also indicated that the SBA did not adequately monitor the performance of a DCMS contractor or completely stress test the system prior to its implementation. Moreover, SBA did not engage in comprehensive disaster planning prior to the Gulf Coast hurricanes for other logistical areas, such as workforce planning or space acquisition, at either the headquarters or field office levels. In the aftermath of the Gulf Coast hurricanes, the SBA has planned or initiated several measures that officials said would enhance the agency's capacity to respond to future disasters. For example, the SBA has completed an expansion of DCMS's user capacity to support a minimum of 8,000 concurrent users as compared with just 1,500 for the Gulf Coast hurricanes. Additionally, the SBA initiated steps to increase the availability of trained and experienced disaster staff and redesigned its process for reviewing loan applications and disbursing funds. However, the SBA has not established a time line for completing key elements of its disaster management plan, such as cross-training agency staff not typically involved in disaster assistance to provide back-up support in an emergency. The SBA also has not: (1) assessed whether its disaster planning process could benefit from the supplemental use of disaster simulations or catastrophe models; and (2) developed a long-term strategy to obtain suitable office space for its disaster staff. While the SBA agreed with GAO's report recommendations for addressing these concerns, it remains to be seen how comprehensive the agency's final disaster plan will be and how the agency will respond to a future disaster.

E. Information Security—The Small Business Information Security Act of 2006 (S. 3786)

In 2006, Chair Snowe introduced the Small Business Information Security Act of 2006 (S. 3786), a bill that would have created a Small Business Information Security Task Force within the SBA to better assist small businesses to both understand cyber-security issues and to identify resources to help meet those complex challenges.

Currently, small businesses turn to the SBA for assistance when developing and maintaining their ventures, but information security resources are not readily available. The Task Force this bill sought to create would have provided resources and information to small businesses to help them decrease the risks posed to their businesses by cyber criminals. It would have consisted of public- and private-sector experts and continually updated a database of information as new technologies and new threats emerged. The Task Force would have been designed to: (1) identify information-security concerns and the services that address those concerns; (2) make recommendations to the SBA; (3) promote programs and services; and (4) inform and educate small businesses about available resources.

The cyber-security threat and efforts to prevent and reduce it carry a tremendous sense of urgency. This bill would have provided an opportunity for the SBA to address those needs. S. 3786 was referred to the Committee but never considered by the full Senate.

F. Small Business Investment Companies Program

The Small Business Investment Companies (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 for-profit entities that invest with the prospect of sharing in the success of the small businesses. There are approximately 400 SBICs nationwide. The SBA matches private capital raised by each SBIC with government-guaranteed capital on a 2:1 basis.

There are two types of SBICs: Participating Securities and Debenture SBICs. For Participating Securities SBICs, the SBA guarantees the SBIC's sale of equity securities to private investors, and the SBIC invests the proceeds of that sale, as well as the private capital the SBIC raised, in small businesses. For Debenture SBICs, the SBA guarantees the SBIC's debt securities ("debentures").

The SBIC program has been a major contributor of venture capital to small businesses. SBIC investing peaked in 2000, at $5.4 billion, but then declined to $4.5 billion in fiscal year 2001, $2.7 billion in fiscal year 2002, and $1.7 billion in fiscal year 2003. It rebounded to $2.8 billion in fiscal year 2004 and $2.9 billion for both fiscal years 2005 and 2006. For Participating Securities SBICs, the securities issued to fund the SBICs (that are guaranteed by the SBA) earn interest payable to the SBA, but the payment is contingent upon the SBIC being profitable. The SBA receives a pre-arranged return on the securities if the SBICs are profitable (usually not more than 7 percent to 9 percent), plus a small percentage of any additional profit earned by the SBIC.

According to the SBA, the Participating Securities program has suffered losses, or will suffer losses based on current projections, of $2.7 billion since 1994, because of three primary problems: (1) a program structure that caused the SBA to share fully in any losses suffered by each SBIC but prevented it from sharing fully in profitable investments (i.e., its profits were capped at 7 percent to 9 percent of the SBICs' profits, but its losses could be up to 67 percent of the SBICs' losses); (2) the bursting of the stock-market bubble in 2000; and (3) poor investments by some SBIC managers. As a result, the SBA has proposed that the Participating Securities program be eliminated. The Debenture Program has not suffered any program-wide losses, and no stakeholders have suggested that it be terminated.

The Debenture SBIC program began in 1958, and the Participating Securities Program began in 1994. The latter was a result of Debenture SBICs' complaints that their program's structure prevented them from making equity investments. Both are zero-subsidy programs, meaning that they receive no appropriation and are designed to be fully self-funded by fees and profits received in the program. The programs previously received some Federal appropriations to serve as a reserve fund to compensate the SBA for losses, but they became zero-subsidy in the late 1990s when the programs were showing a profit because private industry, Congress, and the SBA thought the programs could be self-sustaining.

Because of these problems, the SBA predicted the program would have a subsidy rate for fiscal year 2005 of 24.75 percent rather than the previous zero-subsidy rate. This meant that to support $2 billion in investments in fiscal year 2005 (the expected demand), approximately $500 million in appropriations (roughly 24.75 percent of $2 billion) would have been necessary to fund the program.

Because no appropriations were available (none were requested by the SBA or the SBICs), there will be no new financing issued to SBICs until (and unless) Congress can restructure the program to have a zero-subsidy. The program will continue for up to five years, as the SBICs invest the funds the SBA has already committed to provide to them.

1. The Small Business Investment and Growth Act of 2005 (S. 1923).—During the 109th Congress, the Committee undertook the task of reforming and enhancing the SBIC program. On October

26, 2005, Chair Snowe introduced the Small Business Investment and Growth Act of 2005 (S. 1923). This bill created a third type of Small Business Investment Company (SBIC) program, the Participating Debenture, designed to prevent the losses the existing Participating Securities program has suffered. In creating the new Participating Debenture program, this bill would have made the program a zero-subsidy, with no Federal appropriations necessary. Additionally, the new program would have prevented financial losses to the government by increasing its share of SBICs' profits. The bill included procedures for the continuation of existing SBICs affected by the current suspension in issuances of new financing by the SBA, including financing that had previously been promised to SBICs by the SBA. The Committee believes there is a need for a program to facilitate equity capital to small businesses, particularly in rural areas and in industries passed over by traditional venture capital investors.

Original cosponsors to S. 1923 included Senators Talent, Bond, Cochran, Coleman, Isakson, Thune, and Vitter.

G. Small Business Surety Bonds—Surety Bonding Improvement Act of 2006 (S. 3785)

Chair Snowe introduced the Surety Bonding Improvement Act of 2006 (S. 3785) on August 3, 2006. The bill was designed to strengthen the SBA's Surety Bond Guarantee program (SBG) and increase the ability of small businesses to secure surety bonds. Over the last several years, the number of surety bonding companies participating in the SBG program has declined substantially, a trend that has adversely affected the number of small businesses that can receive SBG bond guarantees.

S. 3785 addressed a number of issues that decreased surety bonding companies' program participation. The legislation would have prohibited the SBA from rejecting a claim on a surety bond, or unwinding the bond, for technical reasons that the SBA should have discovered through the bond underwriting process. The legislation would also have updated the Preferred Surety Bond (PSG) program's outdated fee structure. Under current law, sureties in the PSG program are forced to use insurance rates set on August 1, 1987. These rates limit the fees sureties can charge small businesses, greatly reducing the sureties' profitability and willingness to participate in the SBG program. The bill would have allowed sureties to use the rates approved by the insurance commissioner in the state in which the contract would be performed. The legislation also would have raised the amount of a bond that a small business can obtain through the program. Currently, the limit for the SBG program is $2 million. The bill proposed a modest increase in this amount to $3 million.

Surety bonds are critical to small businesses' ability to survive and compete. Without bonding, small firms cannot secure the contracts they need to grow. Unfortunately, many new small businesses lack the stable credit histories and assets they need to secure surety bonding. Many sureties also refuse to bond small companies because of the greater risks associated with insuring unproven firms. For many small businesses, their inability to obtain surety bonds has become a barrier that prevents them from competing in defense contracting, construction, services, and other markets.

Following introduction, S. 3785 was referred to the Committee, but no further action was taken.

H. VETERANS BUSINESS ISSUES

1. Congressional Budget Office Study on the Effects of Military Deployments on Small Businesses.—On October 30, 2003, Chair Snowe formally requested that the Congressional Budget Office (CBO) analyze the impact of reserve component call-ups on small businesses and examine the potential costs and effectiveness of options to alleviate hardships without weakening our national defense. In May 2005, the CBO issued the study, The Effects of Reserve Call-Ups on Civilian Employers.

Summary of CBO Study: Currently, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides primary job protection rights to reservists and their employers. The USERRA provides coverage to service members that meet certain criteria regardless of their employers' firm size. The act: (1) prohibits employers from discriminating against reservists in hiring, retention, and compensation; (2) requires employers to reemploy reservists released from active duty (unless it is an undue hardship to the employer or if the job was temporary); and (3) mandates the continuation of certain benefits for the activated reservists.

The National Guard and Reserve is becoming increasingly critical to military missions. Not since fiscal year 1991 have U.S. reservists seen such a drastic increase in average days in support of missions. In fact, the average days in support of missions per reservist increased from 14.5 in fiscal year 2001 to 46.8 in fiscal year 2002, and again to 70.2 in fiscal year 2003. These increases have led to the lengthy absence of a significant portion of the domestic workforce, which in turn has hindered the productivity of many small businesses.

The hurdles that small businesses face when reservist employees are called to duty include difficulties recruiting and hiring replacements, as well as losses in productivity and profitability. The unexpected vacancies created by call-ups lead to an increase in businesses' costs. The USERRA further compounds this problem because it does not allow these costs to be avoided and mandates the continuation of some benefits, increases the risk of litigation that businesses could face if their compliance with USERRA is in question, and creates unequal losses among firms. Finally, call-ups can also have a disproportionate impact upon small businesses, employers with highly skilled or specialized personnel, and self-employed reservists.

The CBO report notes that businesses often suffer due to a lack of knowledge and uncertainty about the timing and duration of reservist call-ups. Historically, employers have received little advance warning of an employee's call-up. The average notification occurs 13 days before a call-up, and 60 percent of all firms surveyed were given less than one week's notice. Often, for many firms, changes in call-up timing and tour durations exacerbate vacancy problems. As a result of the timing changes and tour extensions, some employers found that they could not completely avoid vacancies left by call-ups. Many of these same firms stated that they could have taken actions to avoid the vacancies had they previously received accurate information.

While most businesses are not affected, about 6 percent of all firms employ reservists. In addition, less than one-half of one percent of those who are self-employed are reservists (equal to approximately 50,000 troops). Call-ups have the greatest impact upon businesses that require specialized skills, firms that lose key employees (those are especially difficult to replace) and self-employed reservists. Potentially, 8,500 to 32,000 small businesses are affected by the USERRA. With 40 percent of the reservist force activated, approximately 13,000 small businesses may have already experienced the aforementioned difficulties. Among all businesses that employ reservists, 18 percent are small firms that have fewer than 100 employees. Approximately 35 percent of deployed National Guard and reservists are either employed by a small business or are self-employed.

The CBO study also discusses ways Congress can balance reservists' rights against the costs to their employers. Some options for new policy include: (1) direct payments to employers; (2) tax credits to employers; (3) low interest loans; (4) government-subsidized insurance; and (5) limitations placed upon call-ups.

2. Supporting Our Patriotic Businesses Act of 2005 (S. 1014).—On May 12, 2005, Chair Snowe introduced Supporting our Patriotic Businesses Act of 2005 (S. 1014). Original cosponsors to this legislation were Senators Allen, Coleman, Santorum, Talent, Burns, Isakson, Smith, and Thune.

The genesis of this legislation came from the CBO Study on The Effects of Reserve Call-Ups on Civilian Employers (described above). The bill would have increased authorized appropriations for the SBA's Office of Veterans Business Development to $2 million for fiscal year 2006, $2.1 million for fiscal year 2007 and $2.2 million for fiscal year 2008. Increasing funding would have allowed the SBA's Office of Veterans Business Development to better assist our Nation's veterans and provide them the business services they need.

The SBA's Advisory Committee on Veterans Business Affairs has served as a valuable independent source of advice and policy on veterans business issues to the SBA Administrator; the SBA's Associate Administrator for Veterans Business Development; the Congress; the President; and other U.S. policymakers. The Advisory Committee was authorized under P.L. 106–50 and was set to terminate its duties on September 20, 2006. This legislation would have permanently extended the authority and duties of the SBA's Advisory Committee on Veterans Business Affairs.

Many Guard and Reserve personnel have continuing education requirements that they are unable to satisfy because of being called to active duty. These patriotic individuals should not have to satisfy these continuing education requirements. To address this problem, S. 1014 would have provided that a service member need not satisfy any continuing education requirements imposed with respect to their profession or occupation while they are called-up or within the 120-day period after they are released from the call-up.

Because some of the SBA's contracting and business development programs have defined time limits for participation, small business owners who get called-up to active duty in the National Guard or Reserve are effectively penalized because their active duty time is counted against the time limitations on participation in the SBA's programs. This legislation would have amended the Small Business Act by allowing small businesses owned by veterans and service-disabled veterans to extend their SBA program participation time limitations by the duration of their owners' active duty service after September 11, 2001. A survey published by the Department of Defense (DoD) in November 2003 (DMDC Report No. 2003–10), which questioned guard and reservists who had been called-up over the previous 24 months, indicated that they notified their civilian employers an average of 13 days before their call-up began. The survey also showed that almost 60 percent of guard and reservists gave their employers advance notice of one week or less. Unfortunately, providing short notice to employers does not allow them time to adequately plan for a guard member or reservist's absence, and ultimately hurts a business's bottom line. It is critical that employers have ample time to make the adjustments necessary to sustain their businesses.

S. 1014 would have required that the Secretary of each military department ensure that counseling is provided, at least once a year, to members of the National Guard and Reserves on the importance of notifying their employers regarding their mobilization.

The bill was referred to the Committee but was not considered by the full Senate.

3. The Patriot Loan Act of 2006 (S. 3122).—Since September 2001, nearly 600,000 National Guard and Reserve personnel have been mobilized in support of current operations. As a result of call-ups, many small businesses have been forced to operate without their owners and key personnel for months and sometimes years on end. In an attempt to mitigate this problem, Chair Snowe and Senator Craig introduced the Patriot Loan Act of 2006 (S. 3122).

This bill would have improved the SBA's Military Reservist Economic Injury Disaster Loan (MREIDL) program by raising the maximum loan amount from $1.5 million to $2 million, which is the same level as the SBA's other loan programs (e.g., 7(a) loans, International Trade loans, and 504 Certified Development Corporation loans). It also would have permitted the SBA Administrator to offer loans up to $25,000 without requiring collateral from the Guard or Reserve Member. Currently, the SBA offers military reservist loans up to $5,000 without requiring collateral. To improve the information available to military reserve troops who have been called to serve on active duty the measure would have required the SBA and DoD to develop a joint website and printed materials providing information regarding this program.

Finally, the bill would have mandated the SBA and the DoD to jointly study the feasibility of subsidizing loan payments and fees paid by members of the Guard and Reserve and veterans on these loans. The SBA and DoD would have been required to study business mobilization and interruption insurance programs for members of the Guard or Reserve who own or operate small business concerns and the feasibility of creating an insurance program to repay debts to the SBA in the event of death or significant injury of a Guard or Reserve Member.

The bill was referred to the Committee but was not considered by the full Senate.

I. SMALL BUSINESS WOMEN'S ISSUES

According to the Center for Women's Business Research, in 2006, there were 10.4 million women-owned businesses, generating almost $2 trillion in revenues and employing more than 12.8 million Americans. With women entrepreneurs making significant contributions to the economy, Chair Snowe wanted to ensure that programs, such as the SBA's Women's Business Center program, continued to help these women succeed. During the 109th Congress, Chair Snowe introduced two bills related to improving programs and services for women in small business.

1. A Bill to Permit Women's Business Centers To Re-Compete for Sustainability Grants (S. 1517).—On July 27, 2005, Senator Snowe, along with Senators Kerry, Coleman, Domenici, and Pryor, introduced S. 1517, a bill to permit Women's Business Centers to recompete for sustainability grants. The Senate approved the bill by unanimous consent late that day, but it was never taken up by the House. This bill would have provided critical funding needed to preserve the operation of existing Women's Business Centers. In accordance with outdated legislation, the SBA planned to award 92 competitive grants to regular and sustainability Women's Business Centers in September 2005. However, 11 of the longest-standing centers were not eligible to compete for these grants. This was not the Senate's intent. During the 108th Congress, the Senate agreed to transform the Women's Business Center program into a three-year competitive grant program which was reflected in Senator Snowe's reauthorization bill, The Small Business Administration's 50th Anniversary Reauthorization Act of 2003 (S. 1375). While a long-term solution still needed to be provided, this emergency legislation temporarily solved the problem. With this legislation, existing centers that have been established for the longest period of time would have been able to operate without disruption in funding and could continue the programs and services they currently offer. Moreover, this provision would not have required any additional appropriations but only re-allocation of current funds.

2. The Women's Small Business Ownership Programs Act of 2006 (S. 3659).—On July 13, 2006, Chair Snowe, along with Senator Kerry, introduced the Women's Small Business Ownership Programs Act of 2006 (S. 3659). This bill was designed to improve the programs and services that the SBA delivers across the Nation for women business owners through the Office of Women's Business Ownership, the Women's Business Centers program, the National Women's Business Council, and the Interagency Committee on Women's Business Enterprise. The bill would have provided consolidation, direction, and integration of existing programs that have previously been created to offer opportunities for women through their entrepreneurial endeavors. Additionally, the bill would have made the Women's Business Center program permanent for existing eligible centers so that women could depend on the experienced services of long-term counseling and small business education and training. These centers have proven to be a great value to the communities they serve, and this bill would have ensured that these programs and services continue to be available.

During the Committee's consideration of SBA reauthorization in 2003, the Committee found that the SBA's programs had not evolved to meet the changing needs of women-owned small businesses. Specifically, women business leaders expressed their frustration with the lack of results from 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; the limited opportunities for Federal government contracts for women; and the lack of connection with the "real-world problems" facing women entrepreneurs on a day-to-day basis.

In response, Chair Snowe introduced the Women's Small Business Programs Improvement Act (S. 1154) and the Women's Business Centers Preservation Act of 2003 (S. 1247), cosponsored by Senator Kerry. Provisions from these bills were then incorporated into the Small Business Administration 50th Anniversary Reauthorization Act of 2003 (S. 1375).

However, in fiscal year 2005, a revised version of the SBA's reauthorization was inserted into Division K of H.R. 4818, the Consolidated Appropriations Act for 2005. While this version included the reauthorization of the regular Women's Business Center program, it excluded the authorization for the Women's Business Center Sustainability Pilot program. The pilot program was created in bipartisan legislation, the Women's Business Center Sustainability Act of 1999, sponsored by Senator Kerry and cosponsored by Chair Snowe. Since 2005, the pilot program has only been reauthorized on an annual basis through the appropriations process, leaving the most experienced centers, in years five through ten, operating with the uncertainty of whether they would have an opportunity to continue to participate in the program.

In 2006, to address these concerns and to meet the increasing demand for the program's services, Chair Snowe, along with Senator Kerry, introduced the Women's Small Business Ownership Programs Act of 2006 (S. 3659). Most of the provisions in S. 3659 were updated during the reauthorization process and incorporated in The Small Business Reauthorization and Improvements Act of 2006 (S. 3778), which passed the Committee unanimously but was not considered by the full Senate.

J. SBA Budget and Appropriations

1. Fiscal Year 2006 Views and Estimates Letter to Senators Gregg and Conrad.—On February 18, 2005, Chair Snowe sent a letter to Budget Committee Chairman Judd Gregg and Ranking Member Kent Conrad regarding her views on the President's fiscal year 2006 budget request for the SBA. The administration's proposed budget of $592 million for the SBA represented a 13-percent decrease from the agency's 2005 request and a 26-percent decrease from the 2004 request. Chair Snowe's letter listed concerns regarding the request for zero appropriations and recommended funding levels for the Microloan program, Microloan Technical Assistance, Federal and State Technology Partnership program, and U.S. Export Assistance Centers. In addition, Chair Snowe requested an increase in funding for the Small Business Development Center program, Women's Business Center program, Veterans Business De-

velopment program, SCORE, and to hire additional Procurement Center Representatives.

2. Amendment to S. Con. Res. 18.—On March 16, 2005, the Senate agreed to S. Amdt. 216 offered by Chair Snowe and Senator Kerry to increase the budget authority for the SBA in the Senate Budget Resolution for fiscal year 2006. By increasing the SBA's budget authority, the agency would more effectively be able to provide its lending and technical assistance resources more effectively to our Nation's small businesses. The amendment increased funding for the SBA's programs such as Microloans, SBDCs, Women's Business Centers, the HUBZone program, and other small business programs by offsetting the costs through a reduction in funds under function 150 for Foreign Microloans and other programs. With the SBA helping to create or retain more than 4.5 million jobs since 1999, this amendment provided necessary funds to aid the agency in its efforts to revitalize our Nation's economy. The amendment increased the SBA's budget by $55 million over fiscal year 2005 appropriations and $78 million above the President's fiscal year 2006 budget proposal.

3. Fiscal Year 2006 Appropriations Letter to Senators Shelby and Mikulski.—On April 22, 2005, Chair Snowe, with support from the entire Committee, sent a letter to Chairman Richard Shelby and Ranking Member Barbara Mikulski of the Senate Appropriations Subcommittee on Commerce, Justice, Science, and related Agencies requesting that they utilize the additional funding available in the fiscal year 2006 Senate passed budget resolution. The request included funding for the SBDC, Microloan, Women's Business Center, HUBZone, and the Veterans Business Development programs among others. The letter also requested the SBA's 7(a) and 504 loan programs be provided with full lending authority for fiscal year 2006. In addition, the letter addressed the SBA's proposal to eliminate line-item funding for the 7(j) program, Advocacy Research, HUBZone program, National Ombudsman, Native American Outreach, and the USEAC programs, and also requested that they be included in the agency's overall operating budget.

4. Amendment to Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (H.R. 2862).—On September 16, 2005, the Senate agreed, by a vote of 96–0, to S. Amdt. 1717 offered by Chair Snowe and Senators Kerry, Talent, Vitter, Landrieu, Pryor, Bingaman, Obama, and Corzine to provide assistance for small businesses damaged by Hurricane Katrina. This amendment provided emergency funding and necessary legislation, so that the SBA could provide immediate and vital resources to the victims of Hurricane Katrina.

5. Fiscal Year 2007 Views and Estimates Letter to Senators Gregg and Conrad.—On March 2, 2006, Chair Snowe sent a letter to Budget Committee Chairman Judd Gregg and Ranking Member Kent Conrad regarding her views on the President's fiscal year 2007 budget request for the SBA. The administration's proposed budget of $624 million for the SBA represented a 25-percent reduction in the agency's core loan and technical assistance programs over the prior six years. Moreover, this signified an astounding 37 percent reduction in the SBA's overall budget since 2001. Chair Snowe's letter addressed overall small businesses concerns, including affordable health insurance and small business tax simplifica-

tion. The letter rejected the SBA's proposal to increase fees to small businesses participating in the 7(a), 504, SBIC and Disaster Loan programs as well as the request to eliminate funding for the Microloan program and Microloan Technical Assistance. In addition, Chair Snowe requested an increase in funding for the SBDC program, Women's Business Center program, Veterans Business Development program, and SCORE program, as well as to hire additional Procurement Center Representatives.

6. Amendment to S. Con. Res. 83.—On March 16, 2006, the Senate agreed to S. Amdt. 3134, offered by Chair Snowe and Senator Kerry, to increase the budget authority for the SBA in the Senate Budget Resolution for fiscal year 2007. By increasing the SBA's budget authority the agency would more effectively be able to provide its lending and technical assistance resources more effectively to our Nation's small businesses. This amendment prevented an increase in interest rates paid by disaster victims and increased funding for the SBA's Microloans, SBDCs, HUBZones, and other small business development programs by offsetting the cost through a reduction in funds under function 920. With the SBA helping to create or retain more than 5.3 million jobs since 1999, this amendment provided necessary funds to aid the agency in its efforts to revitalize our Nation's economy. This amendment provided $130 million in additional budgetary authority to be added to the SBA's fiscal year 2007 budget.

7. Fiscal Year 2007 Appropriations Letter to Senators Shelby and Mikulski.—On April 7, 2006, Chair Snowe and Ranking Member Kerry, with support from all the members of the Committee, sent a letter to Chairman Richard Shelby and Ranking Member Barbara Mikulski of the Senate Appropriations Subcommittee on Commerce, Justice, Science and related Agencies requesting that they utilize the additional funding available in the fiscal year 2007 Senate passed budget resolution. The requested appropriations would restore needed funding, prevent higher costs from being borne by small businesses, and deliver essential support for the SBA's core programs that continue to prove their success and economic importance, including the SBDC, Microloan, Women's Business Center, HUBZone, and Veterans Business Development programs, among others. The letter also addressed the SBA's proposal to eliminate line-item funding for the 7(j) program, Advocacy Research, HUBZone program, National Ombudsman, Native American Outreach, and the USEAC programs and requested they be included in the agency's overall operating budget.

III. HURRICANE KATRINA RECONSTRUCTION AND DISASTER CONTRACTING

The chief challenges experienced by the small contractors and subcontractors during the 109th Congress related to the workings of the Federal procurement system in the aftermath of the devastation caused by Hurricanes Katrina, Rita, and Wilma in 2005.

A. Disaster Contracting Oversight

In times of disaster, government contracts and subcontracts can help the Federal government leverage the expertise and manpower of contractors to implement disaster recovery, relief, and reconstruction efforts. Simultaneously, government contracts can provide instant funding to private businesses damaged in a disaster or located around the areas damaged by a disaster. To that end, the Small Business Act requires priority in the award of contracts and subcontracts to those small businesses that will perform a substantial portion of the work in the areas of unemployment and underemployment.

However, immediately after Hurricane Katrina, the Committee was flooded with complaints from small businesses that they were being excluded from any reconstruction opportunities as prime contractors, were required to work for free, or were required to work only as low-tier subcontractors for a fraction of the price paid by the government to large firms. Stories in the media and complaints from small businesses also questioned several billion dollars of sole-source awards of disaster contracts to large corporations. Of particular concern were the awards of large prime contracts by the Department of Homeland Security's Federal Emergency Management Agency (FEMA) to three companies that were cited by GAO in its report, Department of Energy: Improved Oversight Could Better Ensure Opportunities for Small Business Contracting (GAO–05–459), for multi-million dollar overstatements of subcontracting on Department of Energy (DOE) projects. Under the Small Business Act, agencies should take compliance with subcontracting requirements in future awards of prime contracts to large companies in because these companies would be expected to manage small business subcontracts in the future.

Within a month of Hurricane Katrina, on September 28, 2005, Chair Snowe and House Small Business Chairman Donald Manzullo requested that the GAO investigate small business participation federally-funded disaster contracts and subcontracts.

In October 2005, Chair Snowe twice wrote to R. David Paulison, Acting Director of FEMA concerning small business participation in Hurricane Katrina disaster contracts awarded by the Department of Homeland Security (DHS). On October 7, Chair Snowe wrote to Director Paulison with a request that DHS make provisions to ensure that its $1.5 billion in four sole-source reconstruction contracts held by large businesses would be recompeted on terms that allowed small businesses to bid. On October 10, FEMA announced that it would reserve a portion of its future contracts for small business participation, but that only 8(a)-certified small disadvantaged businesses would be eligible to bid on this set-aside. On October 11, Chair Snowe again wrote to Director Paulison requesting that DHS increase FEMA's proposed small business reconstruction contracts and expand them beyond the 8(a) program so as to include as many small businesses as possible. Chair Snowe also requested that FEMA terminate its big business non-competitive contracts rather than allow these contracts to run their course. Finally, Chair Snowe requested that DHS/FEMA ensure that the "big four" reconstruction contractors and other incumbent Katrina contractors be held accountable for meeting small business subcontracting goals and that subcontracting plans be in place for each large prime contractor. Chair Snowe noted that three out of the "big four" companies were cited by GAO Report No. 05–459 for "misleading" subcontracting reports on DOE projects.

Under the leadership of Chair Snowe, the Committee addressed the concerns with Katrina contracting during three hearings that took place in September 2005, November 2005, and March 2006. In particular, on November 8, 2005, Chair Snowe convened a hearing that included appearances by the Chief Procurement Officer of DHS, the Deputy Commander of the U.S. Army Corps of Engineers, the Director of Acquisition Sourcing and Management at the GAO, and small business representatives. The hearing addressed the challenges to small business participation in disaster contracting, including lax compliance with subcontracting requirements of the Small Business Act, the exclusion of qualified local small businesses, and the allegations of wasteful spending on contracts for temporary trailer classrooms due to lack of competition, poor acquisition planning, and potential "fronting." During the hearing, Chair Snowe pressed the represented agencies to close out no-bid awards to large businesses as soon as possible and to open them for competition by small businesses. Chair Snowe received a commitment from the DHS that subcontracting requirements of the Small Business Act would be strictly enforced.

On March 31, 2006, the DHS announced the award of 36 contracts to small businesses, as well as 8(a) small disadvantaged businesses, worth $3.6 billion for Gulf Coast reconstruction. As a result of Chair Snowe's November 5 oversight hearing and her letters to Acting FEMA Director R. David Paulison, DHS expanded the dollar value of these awards by $2.1 billion and expanded the eligibility pool to small businesses beyond those already certified under the 8(a) program.

B. Legislation on Disaster Contracting

1. Repeal of the Anti-Small Business Provisions in the Second Katrina Emergency Supplemental Act.—On September 8, 2005, the House passed the Second Emergency Supplemental Appropriations Act to Meet Needs Arising from the Consequences of Hurricane Katrina, 2005 (H.R. 3673). The Senate approved the act late that day. In addition to funding provisions, the act contained authorizing language to effectively repeal the application of small business set-asides to all Katrina contracts under $250,000, as well as permit the non-application of small business subcontracting requirements to various Katrina contracts.

Chair Snowe and House Small Business Committee Chairman Manzullo both spoke out in opposition to these provisions during the debate before the act's final passage on September 8, 2005, as P.L. 109–62. On October 19, 2005, Chair Snowe cosponsored S. Amdt. 2070 to the Transportation, Treasury, Housing and Urban Development, The Judiciary, The District of Columbia, and Independent Agencies Appropriations Act, 2006 (H.R. 3058) to permanently repeal these provisions. The bill was enacted as P.L. 109–115.

2. S. Amdt. 1717 to the Commerce, Justice, Science Appropriations Act.—On September 15, 2005, the Senate unanimously agreed to Chair Snowe's S. Amdt. 1717 to the Science, State, Justice, Commerce, and related Agencies Appropriations Act of 2006 (H.R. 2862) concerning disaster recovery. Senators Kerry, Pryor, Vitter, Talent, Obama, Bingaman, Corzine, and Landrieu cosponsored the amendment. The amendment designated areas affected

by Hurricane Katrina as HUBZones and established contracting outreach programs to small businesses operating in these areas.

3. The Small Business, Homeowners, and Renters Disaster Relief Act of 2005 (S. 1724).—On September 19, 2005, Chair Snowe, together with Senators Vitter and Talent, introduced the Small Business, Homeowners, and Renters Disaster Relief Act of 2005 (S. 1724). The bill again sought to designate Hurricane Katrina areas as HUBZones; create outreach programs to small business contractors operating in disaster areas; and authorize the SBA to conclude assistance agreements with government agencies, educational institutions, and private non-profit organizations in order to carry out these outreach programs. The bill also would have established small business participation goals of not less than 30 percent for prime contracting and not less than 40 percent for subcontracting on all Hurricane Katrina-related work.

4. The Small Business Partners in Reconstruction Act of 2006 (S. 2608).—On March 7, 2006, Chair Snowe and Senator Vitter introduced the Small Business Partners in Reconstruction Act of 2006 (S. 2608), which contained wide-ranging reforms to Federal government practices concerning small business participation in disaster contracting. The bill would have directed the Administrator for Federal Procurement Policy to ensure compliance with the OMB Guidelines on Emergency Procurement Flexibilities issued on May 30, 2003 and continue to encourage the Federal government to utilize small business procurement flexibilities in times of disaster, contingency, and other emergency. The bill also would have required reciprocity with respect to contracting certifications for small businesses owned and controlled by socially and economically disadvantaged individuals in Federal and federally-funded programs. It required an update of the Federal Procurement Data System with respect to small business participation in Hurricane Katrina- or Rita-related contracting. The bill also created the Disaster Contracting Outreach program for small businesses, and established a 30 percent goal for small business participation in disaster-related Federal contracts and a 40 percent goal for small business participation in disaster-related subcontracts. It also directed the Federal government to establish advance, multiple-award contracts with small businesses for disaster-related services, as well as clarified the statutory priority for disaster-area small businesses. Finally, the bill would have ensured that the Small Business Act's requirements concerning reservation of contracts for small businesses and requirements concerning subcontracting plans on contracts awarded to large businesses be applicable to disaster contracts regardless of adjustments in the Simplified Acquisition Threshold or designations of disaster contracts as commercial item acquisitions. The bill also would have waived the Small Business Competitiveness Demonstration program for all Hurricane Katrina disaster contracts.

5. Katrina Small Business Contracting (S. Amdt. 3627).—On April 26, 2006, Senator Vitter introduced an amendment to the Defense, Global War on Terror, and Tsunami Relief Emergency Supplemental Appropriations Act (H.R. 4939). The amendment designated Hurricane Katrina areas as HUBZones and would suspend the Small Business Competitiveness Demonstration program (Comp Demo) for Hurricane Katrina contracts. The amendment

was cosponsored by Chair Snowe, Ranking Member Kerry, and Senators Landrieu and Lott. The Senate approved the amendment by voice vote on May 2, 2006.

6. Disaster Contracting Provisions in SBA Reauthorization Bill (S. 3778).—The Committee included disaster-contracting provisions in the Small Business Reauthorization and Improvements Act (S. 3778), which was unanimously approved by the Committee on August 3, 2006. This bill would have directed the SBA to create a contracting outreach program for small businesses located in—or having a significant presence in—designated disaster areas. Federal contracts and subcontracts can provide critical assistance to small businesses located in areas devastated by natural disasters in the form of solid business opportunities and prompt, steady pay. In addition, government procurement would open doors for many local small businesses to participate in the long-term reconstruction work necessary in these areas. While many small businesses would benefit from other forms of disaster assistance, many of them want to get back to work and into business as soon as possible. Technical assistance and outreach through the SBA, the Procurement Technical Assistance Centers, the Federal Offices of Small and Disadvantaged Business Utilizations, and other organizations could prove invaluable to these firms.

In its proposal to rebuild the Gulf Coast region, the administration proposed to increase the maximum size of SBA surety bonds to $5 million and to provide the SBA with authority to increase the maximum size to $10 million. Small businesses vying for government contracts need an increase in bonds to handle larger projects for disaster relief.

To promote job creation and development in a disaster region, the bill would have established a 30 percent prime contracting goal and a 40 percent subcontracting goal on each agency's disaster-related reconstruction contracts. These goals are consistent with the DHS and the U.S. Army Corps of Engineers' history of small business achievements.

Moreover, the bill would have protected the Small Business Reservation (SBR) for disaster-related contracts below the Simplified Acquisition Threshold (SAT). The SAT and the SBR are normally set at $100,000. The Federal Acquisition Streamlining Act allowed Federal agencies to use simplified procedures for all contracts below the SAT, but only if they attempt to place, or "reserve," these contracts with qualified small businesses. Many small businesses qualify for contracts under expedited procedures under the Small Business Act, which helps to move the reconstruction process forward. The SBR does not delay relief contracting. If no qualified small business is available to do the job, agencies can place the contract with any qualified supplier. This provision would have restored the parity between the SBR and the SAT any time the SAT is increased for disaster-related contracts. In addition, the legislation would have preserved requirements for small business subcontracting plans on large disaster contracts, while providing a grace period to conclude them.

In recent disaster reconstruction efforts, small business contractors have been denied access to reconstruction dollars by paperwork and bureaucracy. Many of these contractors have been certified to do business under the federally-funded, Congressionally-established Disadvantaged Business Enterprise Program (DBE). In the Federal procurement system, a parallel Small Disadvantaged Business (SDB) program exists. The bill would have ensured that capable small contractors enjoy full reciprocity between Federal and federally-funded contracting programs for small business concerns owned and controlled by socially and economically disadvantaged individuals.

The bill would have also directed the Administrators of the OFPP and the SBA to work with other Federal agencies to ensure creation of multiple-award contracts for disaster recovery that are set aside for small business concerns. In response to the Gulf Coast hurricanes, the GAO testified before the Committee that Federal agencies lacked adequate acquisition planning for disaster relief. In response, the bill sought to ensure that the Federal Government establish and maintain advance multiple-award contracts with small business concerns of all categories on a nationwide and regional basis for the purpose of conducting and supporting Federal disaster recovery efforts. Additionally, the SBA Administrator would have been required to submit to the Committee, as well as to the House Small Business Committee, a report describing the terms, conditions, and status of the contracts awarded during the preceding fiscal year.

The Committee believes it is necessary to strengthen the Small Business Act's existing priority for local small businesses, which perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. The bill sought to designate disaster areas as eligible for this priority and authorized Federal agencies to use contractual set-asides, incentives, and penalties to enhance participation of local small business concerns in disaster recovery contracts and subcontracts. Additionally, the bill would have authorized set-asides to be performed in a targeted labor surplus area or substantial unemployment area.

The bill also would have terminated the application of the Small Business Competitiveness Demonstration (Comp Demo) program. The Comp Demo program denies the protections of the Small Business Act, including set-asides, for small businesses involved in construction and specialty trade contracting; refuse systems and related services; landscaping, pest control, and non-nuclear ship repair; and architectural and engineering services, including surveying and mapping. Historically, small businesses have been the backbone of these industries, and these industries are in heavy demand for disaster recovery efforts. The Comp Demo program, ostensibly a test program, denies the DoD and nine other agencies the ability to do small business set-asides. Essentially, the Comp Demo program reserves whole industries for big business.

In 2005, at the request of the DoD, Chair Snowe supported an amendment to the National Defense Authorization Act to terminate the Comp Demo program. The Senate agreed that small businesses in all industries should receive the full protections of the Small Business Act and unanimously voted to repeal the Comp Demo program. The House, however, rejected the provision in conference. Chair Snowe again offered the same amendment in 2006, with Senator Kerry as a cosponsor. Again, the Senate approved it unanimously as part of the National Defense Authorization Act, but the

House rejected it in conference. The Committee believes that terminating this program would go a long way towards restoring fair treatment for small businesses affected by disasters.

IV. MISCELLANEOUS CONTRACTING ISSUES

During the 109th Congress, the Committee under the leadership of Chair Snowe actively pursued legislation and oversight to expand access of small firms to prime contracts and subcontracts.

A. CONTRACTING AMENDMENTS TO THE FISCAL YEAR 2006 NATIONAL DEFENSE AUTHORIZATION

The Committee actively pursued enhancement to small business contracting policies as part of the fiscal year 2006 National Defense Authorization Act (S. 1042). Chair Snowe filed several amendments concerning small business contracting. First, S. Amdt. 2528 directed the SBA to determine whether it would be equitable to provide relief to battlefield contractors by excluding the high costs of security that are passing through small business contracts in Iraq and Afghanistan. Second, S. Amdt. 2529 confirmed the Congressional policy that overseas contracts shall be subject to the Small Business Act's procurement goals and set-aside authorities. Third, S. Amdt. 2530 confirmed the Congressional policy that multiple-award contracts are subject to statutory small business contracting goals and authorized small business set-asides in multiple-award contracts. Fourth, S. Amdt. 1538, introduced at the request of the Department of Defense, provided for termination of the Small Business Competitiveness Demonstration program. Finally, S. Amdt. 2574 authorized the Federal government to enter into long-term contracts of up to 20 years to purchase power from small power plants (up to 60 megawatts) located on HUBZone Base Realignment and Closure Areas. The purpose of this amendment was to assist the redevelopment of the old power plant at the former Loring Air Force Base into an active power plant generating renewable energy. All of the amendments above were adopted unanimously by the Senate. S. Amdt. 2528 was enacted into law.

Also, Senator Kerry offered S. Amdt. 1500 requiring the Department of Defense to provide a report on the impact of its Radio Frequency Identifier Technology requirements on small business. The amendment was unanimously adopted by the Senate.

B. CONTRACTING AMENDMENTS TO THE FISCAL YEAR 2007 NATIONAL DEFENSE AUTHORIZATION ACT

In June 2006, Chair Snowe again offered S. Amdt. 4464 to the fiscal year 2007 National Defense Authorization Act (S. 2766) to repeal the Small Business Competitiveness Demonstration program (Comp Demo). Ranking Member Kerry cosponsored the amendment, which was unanimously approved by the Senate.

C. ACCOUNTABILITY FOR SMALL BUSINESS SPENDING WITH GOVERNMENT PURCHASE CARDS (S. AMDT. 4191)

On June 6, 2006, Chair Snowe offered an amendment (S. Amdt. 4191) to The Purchase Card Waste Elimination Act (S. 457), to require the Federal government to ensure small business participation in government credit card purchases that are not subject to competitive bidding. The Senate agreed to the amendment by unanimous consent. Since Federal agencies spend $16 billion each year through credit card orders that are not subject to competitive requirements, Chair Snowe put forth this amendment to ensure fair small business participation. It directed the OMB to better track Federal government credit card purchases and to meet a 23 percent small business participation goal for purchases up to $2,500. The amendment encouraged the Federal government to work with credit card companies to help track small business spending more accurately and locate small businesses that accept government credit cards. The Purchase Card Waste Elimination Act would require the government to utilize a strategic approach to its credit card spending. Senator Snowe's amendment applied the Strategic Sourcing Guidance of the OMB to Federal credit card orders, which would require that small business participation be a necessary part of the government's strategic approach to purchasing. Under Senator Snowe's leadership, the Committee worked with the OMB, the General Services Administration, and major credit card associations, such as Visa and MasterCard, to promote accurate accounting of Federal credit card purchases from small businesses.

D. Application of the Small Business Act to Postal Contracting (S. Amdt. 2696)

On January 27, 2006, Chair Snowe filed S. Amdt. 2696 to the Postal Accountability and Enhancement Act (S. 662) in order to extend to the Postal Service (USPS) the provisions of the Small Business Act and other contracting laws. The USPS purchases over $11 billion of goods and services a year. However, in recent years, reports by the GAO and the Postal Service Inspector General have documented serious problems with the access of small businesses to Postal Service contracting. In particular, the Postal Service abandoned small business participation goals even though such goals were found by the GAO to represent best practices in modern supply chain management. In addition, Postal Service contracts were found vulnerable to misrepresentation of small business status. For instance, in May 2004 and December 2005, the GAO issued two reports, Postal Service: Progress In Implementing Supply Chain Management Initiatives (GAO–04–540) and Postal Service: Purchasing Changes Seem Promising, But Ombudsman Revisions and Continued Oversight Are Needed (GAO–06–190) recommending that the USPS reestablish small business goals as consistent with sound Congressional oversight and best commercial practices. The GAO found that without small business contracting goals, "it would be difficult for stakeholders to hold USPS officials accountable for their actions or ensure that USPS (1) maintains a diversified supplier base, (2) achieves its desired efficiencies, and (3) implements its revised regulations in a manner consistent with principles of postal procurement," such as accountability and social responsibility.

On February 28, 2006, the USPS' Acting Vice President for Supply Management wrote to Chair Snowe promising to reestablish goals for small, women-owned, and disadvantaged businesses consistent with the SBA's standards.

E. July 2006 Hearing on Strengthening Small Business Participation in Federal Contracting and Innovation Programs

On July 12, 2006, Chair Snowe convened a hearing of the Committee to address the challenges faced by small businesses in Federal contracting and subcontracting. The Committee heard testimony on procurement issues from SBA Inspector General Eric Thorson, as well as from representatives of minority, veterans, and technology contracting organizations. The testimony focused on the need to strengthen the integrity of small business certifications; to enforce the penalties against misrepresentation of small business size and status in Federal contracts; to reduce contract bundling; and to enhance bidding opportunities for service-disabled veterans and for small disadvantaged businesses.

In addition, written testimony was solicited and received from Marcia Madsen, Chair of the White House Acquisition Advisory Panel, concerning the recommendations of the panel's Small Business Working Group. These recommendations concerned reductions in contract bundling, improvement of contracting data quality in the Federal Procurement Data System, and, most importantly, providing clear authority to set aside task order competitions under multiple-award contracts such as Federal Supply Schedules for bidding by small business concerns. In 2004, Chair Snowe sought and received a written commitment from the White House Office of Federal Procurement Policy that the Advisory Panel would consider small business contracting issues and that an SBA representative would serve on the panel.

F. Contracting Provisions in the SBA Reauthorization Bill (S. 3778)

The Committee approved legislative changes to the way small firms participate in Federal procurement as part of the Small Business Reauthorization and Improvements Act of 2006 (S. 3778), sponsored by Chair Snowe. This bill would have reauthorized critical small business contracting programs such as the HUBZone and the Business Matchmaking programs. The bill also would have reformed the current definition of contract bundling by codifying the President's 2002 policy statement on bundling and making the Small Business Act's definition more consistent with this statement. In addition, the bill sought to address the problem of misrepresentation of small business size or status in Federal contracts. The bill would have extended the time period for hearing misrepresentation protests to 100 days from the current time periods of 10 to 15 days, depending on the particular small business program. The bill also would have clarified that companies misrepresenting their small business status should be denied Federal contracts. In addition, the bill sought to address the problems faced by service-disabled veterans in accessing Federal contracts by temporarily suspending the "rule of two" that requires veterans to prove the absence of competition in order to receive a sole-source contract award. Finally, the bill would have extended the HUBZone program to economically distressed areas located in suburban and rural counties. For instance, the Katahdin region in Maine is located in the same county that includes the metropolitan area of

Bangor. Under current law, only census tracts in Bangor qualify for the HUBZone program, even though the Katahdin region has experienced double-digit unemployment.

1. Title X of S. 3778.—Contract bundling is the consolidation of contracts in a manner that unduly restricts competition and was originally prohibited under the Competition in Contracting Act (CICA) of 1984. The Small Business Reauthorization Act of 1997 supplemented CICA by defining the bundling of contract requirements as the consolidation of two or more procurement requirements for goods or services previously provided or performed (or suitable for performance) under separate, smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern. The requirement that at least a portion of the contract be "previously performed" by small firms allows Federal agencies to avoid bundling review by declaring large consolidations to be "new work." The statute allows the agency to bundle its requirements if the agency has performed sufficient market research and has justified the bundled action.

Generally, a bundled procurement will be found necessary and justified if the agency will derive measurably substantial benefits as a result of consolidating the requirements into one large contract. If the requirement involves "substantial bundling," where a contract's value exceeds specified thresholds ($2 million for most agencies, $5 million for the GSA, NASA, and DOE, and $7 million for the DoD), a contracting agency must conduct an internal analysis of the contract, submit a contract to the SBA Procurement Center Representatives for review, and take actions to maximize small business participation as subcontractors at various tiers under the contract.

Bundling or consolidation of Federal contracts tends to deprive small firms of business opportunities with the Federal government. The size of a contract, geographic spread of performance, or multiplicity of requirements can prevent small firms from capitalizing on their competitive advantages, including greater attention to customer service, superior rate of innovation, and lower general and administrative costs. In 2002, the White House Office of Federal Procurement Policy (OFPP) cited an estimate that small businesses lose more than $30 dollars for every $100 of bundled contracts. In addition, contract bundling drastically reduces the Federal government's supplier base, and, especially, the defense industrial base. According to the SBA's Office of Advocacy, during the time period that contract bundling began to increase, the number of small business contractors receiving new contract awards dropped by more than 50 percent, from 26,506 in fiscal year 1991 to 11,651 in fiscal year 2000.

In its report on the 1997 SBA Reauthorization Act (S. Rept.105–63), this Committee stated, "often bundling results in contracts of a size or geographic dispersion that small businesses cannot compete for or obtain. As a result, the government can experience a dramatic reduction in the number of offerors. This practice, intended to reduce short term administrative costs, can result in a monopolistic environment with a few large businesses controlling the market supply." The fiscal case for reduction in consolidated contracts is strong. For instance, the SBA program to break up large contracts for competition (the Breakout Procurement Center

Representatives program), is currently staffed by less than ten people, and has saved the Federal government over $2.5 billion since 1985.

On March 19, 2002, the President directed Federal agencies, as part of a "contract bundling initiative" to break up bundled contracts, which he defined simply as "huge contracts with massive requirements" that "tend to go to the same group of large, corporate bidders." The President further stated that the Contract Bundling Initiative serves the following goals: "to encourage competition as opposed to exclude competition; to make sure that the process is open; to make sure the process helps achieve a noble objective, which is more ownership in our country. And wherever possible, we're going to insist that we break down large Federal contracts so that small business owners have got a fair shot at Federal contracting."

In October 2002, the OFPP announced a 9-point strategy to implement the President's directive and reduce contract bundling by: (1) ensuring accountability of senior agency management for improving contracting opportunities for small business; (2) ensuring timely and accurate reporting of contract bundling information through the President's Management Council; (3) requiring contract bundling reviews for task and delivery orders under multiple award contract vehicles; (4) requiring agency review of proposed acquisitions above specified "substantial bundling" thresholds for unnecessary and unjustified contract bundling; (5) requiring identification of alternative acquisition strategies for the proposed bundling of contracts above specified thresholds and written justification when alternatives involving less bundling are not used; (6) mitigating the effects of contract bundling by strengthening compliance with subcontracting plans; (7) mitigating the effects of contract bundling by facilitating the development of small business teams and joint ventures; (8) identifying best practices for maximizing small business opportunities; and (9) dedicating agency OSBDUs to the President's Small Business Agenda.

Five years after the President's anti-bundling initiative was announced, the SBA continues to fail to provide leadership, consistent execution, or accountability to the initiative. For instance, to date, the SBA has not published a "best practices" guide on bundling as directed by the OMB in 2002. Reviews by the GAO and the SBA Inspector General found that many Federal agencies are confused about the statutory definition of bundling. According to the GAO report, Impact of Strategy to Mitigate Effects of Contract Bundling on Small Business is Uncertain (GAO–04–454), Federal agencies claim to be confused by the legal definition of bundling, and officials at two of four agencies contacted did not know they were mandated to report all potential bundlings. The SBA Inspector General's Audit of the Contract Bundling Program (No. 5–20) found that Federal agencies and the SBA disagree on the definition of bundling, and that the SBA failed to review over 80 percent of contracts designated as bundled. This resulted in almost $400 million of potential lost opportunities for small businesses.

The Committee believes there is an urgent need for Federal agencies to follow SBA's guidance on bundling and to close the loopholes in the Federal agencies' interpretation of contract bundling. The definition of bundling must be simplified in line with the

President's definition and the original meaning of the term as consolidation that is restrictive of competition.

The Committee's SBA reauthorization bill would have provided that agencies shall presumptively treat as bundled any contract that is at least three times the amount of the relevant substantial bundling threshold. Among other things, this presumption would have triggered all related obligations to mitigate damage to small business concerns through other prime contracting or subcontracting opportunities.

The Committee believes that the recommendations of the GAO and the SBA Inspector General on contract bundling must be fully implemented. Specifically, the SBA must publish its best practices guide on reducing contract bundling, and better data on incidents and the impact of bundling must be collected. The Committee has also directed the SBA to conduct a government-wide review of contract bundling policies and interpretations. The Committee expects that the review will be conducted in such a manner as to preserve the independence of the SBA Offices of Advocacy and Inspector General. The Committee also expects that a policy will be issued by the SBA tying performance evaluations and compensation of Federal managers to the Federal agencies' compliance with small business contracting and subcontracting obligations.

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 ten years. The Committee believes that the failure to maintain sufficient levels of PCRs diminishes the SBA's ability to carry out its statutory mandate. GAO reports disclose that the SBA is struggling to accomplish its mission and lacks the assurances that PCRs are reviewing proposed acquisition strategies to identifying barriers to small business participation. The GAO also concluded the number of PCR-recommended small business set-asides have 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 businesses. The Committee's reauthorization bill would have required 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's reauthorization bill would have further clarified that these individuals 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 the complicated procurement processes.

The Committee believes that accurate data collection is essential in getting a handle on contract bundling by Federal agencies. However, the SBA in the past objected to implementing the bundling database required by law, arguing that the database could not be created because the law required it to contain existing information, and Federal agencies do not collect information on bundling. The bill would have provided an enhanced authority for the SBA to overcome any impediments it may have and proceed with the construction of the database.

2. Title XI of S. 3778.—Small businesses receive over $45 billion in Federal subcontracts each year. Unfortunately, Committee oversight revealed that subcontracting practices have been plagued with overstatements. According to the GAO report, Department of Energy: Improved Oversight Could Better Ensure Opportunities for Small Business Contracting (GAO–05–459), numerous large contractors have overstated their small business subcontracting achievements (up to $30 million per contract per year at one Federal agency alone). The Committee strongly believes that greater compliance and oversight must be implemented government-wide to the fullest extent possible.

In order to prevent misrepresentations in subcontracting, the Committee's SBA reauthorization bill would have provided that compliance of Federal prime contractors with small business subcontracting plans be evaluated as a percentage of obligated prime contract dollars, as well as a percentage of subcontracts awarded, as recommended by the GAO.

In addition to implementing GAO recommendations, the Committee largely re-adopted small business subcontracting provisions that the Senate passed unanimously in the 108th Congress. Small businesses previously testified before the Committee that prime contractors baited them by using them to create competitive subcontracting plans, helping the prime contractors to win contracts, only to have the prime contractors switch and not follow through with their subcontracting plan commitments once the contracts were 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 Committee's reauthorization bill made several changes to the Small Business Act that would have held prime contractors responsible for the validity of subcontracting data and imposed penalties for false certifications of past compliance with small business subcontracting.

Specifically the bill would have imposed 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 include fines of not more than $500,000, imprisonment for not more than ten years, or both. The bill also would have authorized contracting officers to withhold payment from a prime contractor until the prime contractor provides the agency with complete and accurate subcontracting reports.

To prevent prime contractors from taking advantage of small business subcontractors through bait-and-switch fraud, the Committee's reauthorization bill would have required large prime contractors to certify that they would 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. The Committee expects that Federal agencies will use all appropriate legal and contractual remedies to deter, punish, and recover the proceeds of such fraud.

The Committee's reauthorization bill also would have required 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 included amendments that would 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 called for recognition of a prime contractor's past performance in supporting small business subcontracting participation in other Federal contracts.

Finally, the bill also would have included a provision that directed the SBA to develop and implement a pilot initiative to test the feasibility of allowing direct payments to subcontractors. In an effort to encourage greater compliance with small business subcontracting obligations, the bill would have authorized a compliance pilot program to permit contractual incentives for companies that exceed their goals and also provide for assessments of funds from large contractors that fail to meet their subcontracting obligations. These assessments would have been used to fund mentor-protégé assistance to small business subcontractors, and counted for purposes of subcontracting credit.

3. Title XII of S. 3778.—Since its inception, the HUBZone program has facilitated over one-half billion dollars in private-sector investment by small businesses into economically distressed areas, and HUBZone firms employ over 124,000 HUBZone residents. The Committee's reauthorization bill would have reauthorized up to $10

million a year for the next six years for the SBA HUBZone Office to conduct HUBZone certifications.

The Committee is concerned that the HUBZone program still fails to reach all distressed areas. In general, areas can qualify for the HUBZone program either as rural or urban HUBZones. To qualify as an urban HUBZone, an area must be a low-income census tract in a metropolitan statistical area—basically, a large town where over 20 percent of the county resides. Also, an entire rural county can qualify if certain income average or unemployment requirements (e.g., income less than 80 percent of statewide income or unemployment higher than 140 percent of the state or national unemployment rate, whichever is less) are met. Under existing rules, some rural areas in a county may be excluded from qualification even though their unemployment is high or income is low. To correct this inequity, the Committee's reauthorization bill would have expanded the classification of HUBZone eligibility to include any village, city, town, and economic development area governed by a public authority, district, or other unit of local government that is located in a suburban county and that meets income or unemployment qualifications.

The Federal government continues to fall short of its goals for contracting with service-disabled veterans. Testimony before the Committee established that contracting officers continue to refuse to exercise the sole-source authority for service-disabled veterans. The Committee's reauthorization bill would have strengthened this authority by making sole-source awards to service-disabled veteran-owned small firms mandatory instead of permissive. This would have put disabled veterans on par with other small business programs that have sole-source authority. In addition, the Committee sought to provide for a temporary waiver of the ban on sole-source awards to service-disabled veterans if two or more small firms owned by disabled veterans may be available to compete. This so-called "rule of two" does not apply to the 8(a) program, and this inapplicability proved to be a useful tool in promoting contracts with small disadvantaged businesses.

The 8(a) contracting program exists to aid socially and economically disadvantaged businesses to achieve competitiveness. One of the methods of evaluating whether a business is economically disadvantaged is through a net worth threshold, which places a ceiling on the net worth of a participating business owner. Currently, if a business owner's personal net worth exceeds $250,000, the business is denied 8(a) certification. Further, if a business owner's net worth exceeds $750,000 while certified as an 8(a) business, the business is graduated from the program. The Committee believes that net worth threshold is a valuable factor in the process of evaluating a disadvantaged business. However, the threshold should not unduly prejudice successful business owners. The current levels of $250,000 and $750,000 were established more than 17 years ago and are restricting access to legitimately disadvantaged businesses as a result of not being adjusted for inflation. The Committee's reauthorization bill would have instructed the SBA to make annual inflationary adjustments to the net worth threshold so that legitimately disadvantaged businesses are not wrongfully denied access to the 8(a) program.

Both 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 Federal government's contracting with women-owned firms. 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 the Small Business Reauthorization Act of 2000 (P.L. 106–554) 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 a Federal court recently found that the SBA delayed the implementation of this program. In order to achieve the original goal of improving contracting opportunities for women-owned small businesses, the Committee's reauthorization bill would have directed the SBA to implement the program within 90 days.

4. Title XIII of S. 3778.—The Committee's reauthorization bill would have improved collection of acquisition-related data on contract bundling; provided for government-wide training on small business matters; and implemented the White House Acquisition Advisory Panel's recommendation to authorize small business set-asides in multiple awards and multi-agency contracting vehicles to correct the mixed record of small business participation in such contracts. These contract types were intended to reduce administrative costs of contracting by reducing both the number of businesses and the types of terms and conditions that had to be competed for each task or delivery order. Under such a contract, the government negotiates an up-front agreement on future price discounts and delivery terms, but no actual work is performed or paid for until task and delivery orders are issued. Small businesses have had trouble securing business through the multiple-award contracts. For example, within the GSA Federal Supply Schedules, small businesses represented about 80 percent of Schedule holders but only 36.8 percent of Schedule sales dollars in fiscal year 2004.

The Small Business Act and the Federal Acquisition Regulation require Federal agencies to set contracts aside for small businesses if there is a reasonable expectation that two or more small businesses would submit bids at reasonable prices. However, these general set-aside requirements have been interpreted not to apply to multiple-award contracts. Authorizing small business set-asides in multiple-award contracts provides unambiguous direction to contracting officers.

For many years, the Federal government has failed to meet its procurement goals with regard to women, service-disabled veterans, and HUBZone firms. The Committee's reauthorization bill would have implemented a White House Acquisition Advisory

Panel recommendation to give priority in small business set-asides to those groups for which the relevant agency failed to achieve its small business contracting goals. In addition, the bill would have required advance plans on small business spending in the agencies' budgets and directed the SBA Administrator to report to Congress annually on small business participation in overseas government contracts.

5. Title XIV of S. 3778.—In June 2006, the SBA announced that the Federal government met or exceeded its statutory 23 percent small business prime contracting goal for the third year in a row. Specifically, the SBA claimed that small firms received $79.6 billion in Federal contracts. However, reports from the GAO and the SBA Office of Advocacy, as well as testimony by the SBA Inspector General (IG) before the Committee, indicated that these numbers are misleading because many large corporations have been classified as small businesses for contracting purposes. Since fiscal year 2003, billions of dollars of contracts have been improperly coded as awarded to small companies. Hearings before the Committee established that fraud, regulatory loopholes and delays, and poor training in small business laws and regulations have contributed to the problem.

Recently, the SBA IG and the Department of Justice achieved a $1 million settlement with a large corporation that advertised itself as a small business for ten years. However, the SBA IG testified that prosecutions of companies that misrepresent their small business size and status have been rare. Under current law, the government has difficulty proving loss when the fraud was in the inducement to receive a contract and not in performance of the contract. The IG testified that such cases still involve both the societal loss and the programmatic loss to the Federal government. To solve this problem, the Committee's reauthorization bill would have created an irrefutable statutory presumption that small business size or status fraud constitutes a loss to the government of contracting dollars diverted to large firms on a dollar-for-dollar basis. The Committee intended that this presumption be applied in all manner of criminal, civil, administrative, contractual, common law, or other actions which the United States Government may take to redress such fraud and misrepresentation.

In CMS Information Services, Inc. (2002), the GAO confirmed that Federal agencies may properly require certification of small business size at the time of submission of quotations on procurements reserved for small business concerns. With regard to task orders on interagency or government-wide multiple-award contracts like Federal Supplies Schedules at issue in that case, this legislation would have codified the CMS decision by requiring certification on task orders. The SBA reached a similar conclusion in Size Appeal of SETA Corporation and Federal Emergency Management Agency, SBA No. SIZ–4477 (2002).

The Committee realizes that unforeseen situations may arise and intends for the SBA to fully exercise its discretion. With regard to task orders on interagency multiple-award contracts, the Committee intends that the SBA, in consultation with relevant Federal agencies, would develop policies on appropriate certification requirements that would take into account and balance the varying features of such contracts, the impact of potential "ramp-offs" on small business contracting opportunities at the affected agencies, and the need for integrity and adequate disclosure of the actual small business participation. With regard to multiple-award contracts used for intra-agency purposes only, the Committee similarly expects the SBA to exercise its discretion. The Committee expects that the SBA's discretion will be consistent with the existing legal principle that company size is determined at the time of award based on the company's initial offer, while ensuring that reporting on small business participation shall accurately reflect all cases where a contract previously awarded to a small business concern or a small business concern itself have been novated to an other than small business concern through merger, acquisition, divestiture, or otherwise.

Further building on the CMS decision, the Committee's reauthorization bill would have provided that submissions of bids on small business set-asides, registration as a small business on a procurement database, or inducements to Federal agencies to take small business credit for award of a contract, grant, or another funding instrument shall be deemed certifications of small business size and status. In addition, the bill would have required paper-based certifications by signature of responsible officials. The SBA was to be given authority to promulgate "safe harbor" regulations to provide protections from liability in cases where the relevant business concern did not intentionally misrepresent its size or status.

The SBA IG, Eric Thorson, testified before the Committee that annual certification of small business size or status is the most effective measure of ensuring integrity of small business contracts. The Committee agrees with this view. The Committee notes that the SBA has made its own proposal for an annual small business certification but has failed to implement the regulation. The Committee's reauthorization bill would have provided for annual certifications of small business size and status, and that small business size or status be determined, as part of a company's responsibility, at the time of the award of a contract.

The Small Business Act already contains numerous provisions mandating that companies misrepresenting their size or category status as a small business concern be subject to immediate suspension and debarment from Federal contracts and to other civil, contractual, and criminal penalties. These authorities include Section 16(a) and (d), 15 U.S.C. § 645(a) and (d), Section 8(m), 15 U.S.C. § 637(m), and Section 36(d), 15 U.S.C. § 657f(d). The Committee has expressed concerns that current regulations and practices of the GAO, the SBA, and the Federal Acquisition Regulation Council have actually hindered the enforcement of these provisions as Congress intended. To root out waste, fraud, and non-compliance with procurement laws, the Federal procurement system relies on private bidders to bring bid protests against the improper awards of government contracts. Procurement protests usually result in stays of contracts awarded or to be awarded. However, Committee oversight indicates that large businesses often receive small business contracts because Federal agencies are given a green light not to respect SBA decisions on whether a company is large or small.

For instance, in Planned Systems International, Inc. (2004), the GAO reviewed existing SBA and FAR regulations and found that Federal agencies do not have to wait longer than ten days for the

SBA to rule on protests that contracts reserved for small business concerns are given to large businesses. As a result, a Federal agency awarded a small business contract to a large business notwithstanding the SBA's formal determination that the awardee was not a qualified small business. The Committee views such practice as improper and contrary to the statutory policy of Section 16(d) of the Small Business Act concerning the integrity of small business contracting.

The Committee further notes that the Small Business Act supersedes the GAO advisory rulings as well as the Federal regulations on which these rulings are based insofar as those rulings and regulations are inconsistent with the statute. Federal agencies have the obligation to comply with the act's anti-misrepresentation provisions, and to the maximum extent possible, to promptly terminate small business contracts awarded to ineligible firms and make the eligible firms whole. When termination is impossible, honest small businesses should still be made whole for their bid, proposal, and protest costs as customary in procurement integrity protests. In all cases, agencies should refer cases of misrepresentation to the appropriate Inspector General.

However, under the current system, contracts protested to the GAO on any grounds may be stayed for up to 100 days, but contracts protested on the grounds of small business size misrepresentations may not be delayed beyond ten days. The Committee's reauthorization bill sought to remedy this problem by giving the SBA the ability to decide small business size or status challenges to contracts in the same manner and on the same terms that protests are decided by the GAO under the Competition in Contracting Act.

SBA IG Thorson testified before the Committee that Federal officials often lack training in small business laws and regulations. As a result, the Committee's reauthorization bill would have directed development of such training courses, and also mandated a policy on prosecutions of small business size and status fraud.

Reports and testimony from the SBA IG and the GAO indicate that small business sole-source contracting authorities are vulnerable to "fronting" or the exploitation of small businesses by large subcontractors, which can rob small business prime contractors of the work to which small businesses are entitled and required to perform as prime contractors under the Small Business Act and applicable regulations. The bill would have authorized challenges of small business size and status in sole-source contracting awards.

To ensure that Federal contracting officials are aware of the small business size and status of companies holding multiple-awards contracts, the Committee's reauthorization bill would have required holders of such contracts to submit an annual certification statement to the government. The Committee is troubled to learn that a multi-billion dollar corporation and its large business predecessor were able to pass themselves off as small businesses on a GSA schedule for approximately ten years.

Under current procurement rules, a contracting officer designates a primary industry category for each contract, and the bidding firm must qualify as small under the size standard for that industry category to be given the contract as a small business. Examples of SBA general size standards include the following: (1) Manufacturing: maximum number of employees may range from 500 to

1,500, depending on the type of product manufactured; (2) Wholesaling: maximum number of employees may range from 100 to 500, depending on the particular product being provided; (3) Services: annual receipts may not exceed $2.5 million to $21.5 million, depending on the particular service being provided; (4) Retailing: annual receipts may not exceed $5.0 million to $21.0 million, depending on the particular product being provided; (5) General and heavy construction: general construction annual receipts may not exceed $13.5 million to $17 million, depending on the type of construction; (6) Special trade construction: annual receipts may not exceed $7 million; (7) Agriculture: annual receipts may not exceed $0.5 million to $9.0 million, depending on the agricultural product; and (8) Small innovative companies participating in the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs: maximum number of employees may not exceed 500.

Over the last several years, the SBA has considered reforming and simplifying its size standards, including the creation of tier-based standards. Under the tier-based approach, the SBA would establish an overall cap of employees or revenues per industry category, as appropriate, and then establish caps at lower tiers. Contracting officers would set aside smaller contracts for lower-tier, small firms, so that the very small firms can grow and become "bigger small businesses" that can better compete against its peers and large corporations. Precedent for this approach exists with the Very Small Business Program, operated by the SBA on a limited, pilot program basis. Lower-tier, small firms could bid on contracts suitable for upper-tier small firms, but not vice versa. The Committee's reauthorization bill would have authorized development of tier-based size standards. The Committee recognizes that a great deal of time and effort has been spent exploring the feasibility of this proposal and alternative proposals for addressing size standards. For this reason, the Committee sought to authorize the development of tier-based size standards and leave to the SBA's discretion the decision on whether to develop or implement them.

Currently, the SBA does not calculate the employee size of a small firm based on full-time equivalents (FTEs). As a result, companies are penalized for hiring part-time help because they may be in danger of exceeding their small business size classification. The Committee's reauthorization bill would have directed the SBA to use full-time employee equivalents in computing size standards.

V. OVERSIGHT OF SMALL BUSINESS CONTRACTING AND SUBCONTRACTING

Oversight of small business participation in government contracting and subcontracting has been a major priority of the Committee under Chair Snowe's leadership.

A. THE GOVERNMENT-WIDE SMALL BUSINESS PERFORMANCE SCORECARD

Chair Snowe's oversight efforts led to reform of the way the Bush administration rates the Federal agencies' small business performance. In August 2006, OMB's Deputy Director for Management wrote to Chair Snowe to express the administration's intention to establish a scorecard to rate Federal agencies implementation of the President's Initiative Against Contract Bundling and to increase the number of SBA Procurement Center Representatives. On November 17, 2006, the OMB Office of Federal Procurement Policy released the design of the small business scorecard. The new scorecard is modeled after the President's Management Agenda scorecard, putting the accountability level for small business contracting and the President's Initiative Against Contract Bundling on par with the accountability level for other Presidential initiatives.

B. General Services Administration Government-Wide Acquisition Contracts

Through staff oversight activities during 2006, Chair Snowe and House Small Business Committee Chairman Donald Manzullo have ensured that the General Services Administration preserved the $15 billion Alliant Small Business Contract for Information Technology, the largest GSA small business IT set-aside in history. In particular, the Committee rejected the GSA's attempt during 2006 to reduce the dollar size of the contract.

In addition, Committee oversight ensured that the GSA rolled out the $5 billion VETS Government-wide Acquisition Contract during 2006. The President's 2004 Executive Order 13–360 on contracting with service-disabled veterans mandated the contract.

On October 25, 2006, Chair Snowe sent a letter to Lurita Doan, Administrator of the GSA, questioning the agency's decision to consolidate all of its regional information technology contracts and award them as one large task order under the GSA's 8(a) STARS Government-wide Acquisition Contract. Chair Snowe was concerned that this opportunity was not set-aside for HUBZone firms since information technology is ideally suited for development of HUBZone areas such as Machias, Maine. A December 27, 2006, report of the GSA Inspector General (A050213/Q/6/P07001) indicated that the STARS contract is vulnerable to "fronting" through disproportionate subcontracting to large businesses.

C. Army Food Services Contracting

Small businesses in the food services industry brought to the attention of Chair Snowe and the Committee that the Department of the Army intended to bundle all of the Army's food supply contracts and, henceforth, procure them from large businesses through the Defense Logistics Agency's Prime Vendor program. In response to oversight activities by Chair Snowe, Senator Kerry, and Congressman Mark Kirk, the Army reversed its policy. On August 25, 2006, the Army Installation Management Agency's Principal Deputy Director issued a memorandum committing Army installations to purchasing food services through contracts with local small businesses. The Committee commends the Army's policy favoring fair small business participation.

D. Iraq and Afghanistan Contracting

Participation of small businesses in overseas contracts to support the Global War on Terror as well as the democracy-building, relief, and other efforts has been a priority for the Committee. On January 12, 2005, Chair Snowe, Senator Coleman, and Senator Bennett wrote to Secretary of State Colin Powell and Secretary of State-Nominee Condoleezza Rice expressing concern with the proposed language in the Department of State Acquisition Regulation stating that compliance with the Small Business Act on contracts awarded domestically would be mandatory regardless of the place of performance, but compliance on contracts awarded overseas would be "voluntary." Although the Department of State initially disagreed with the Committee's request to reverse the "voluntary" compliance proposal, the Committee was recently advised that the State Department began including small business subcontracting clauses in Iraq contracting projects.

E. Small Business Contracting and Subcontracting at the Department of Energy

A major oversight priority for the Committee has been the ability of small businesses to access prime contracting and subcontracting opportunities at the Department of Energy (DOE), the Nation's largest civilian contracting agency. DOE awards most of its procurement dollars to large corporations and educational institutions operating the DOE's government-owned, contractor-operated laboratories and other facilities. Many of these contracts have been awarded to the same incumbents for more than 20 years. Historically, DOE contracts with large contractors provided that these large contractors act as DOE representatives. Large DOE contractors were authorized to award prime contracts on behalf of DOE subject to "the Federal norm" in awarding and administering these contracts. Following the precedents of the GAO and the U.S. Court of Appeals for the Federal Circuit, which held that large DOE contractors are no longer subject to "the Federal norm" and are no longer DOE agents for contracting purposes, awards made by large DOE prime contractors have been properly considered subcontracts. At less than 5 percent, DOE has been posting the lowest levels of small business prime contracts among all Cabinet agencies. In order to fully ascertain the status of DOE small business contracting, the Committee asked the GAO to review DOE efforts to improve access of small firms to contracts and subcontracts. Chair Snowe and Ranking Member Kerry received assurances from other committees with jurisdiction over the DOE contracting that any legislative action concerning small business participation in DOE contracts would take place following the GAO review and with full consent of the Committee.

However, on April 6, 2005, the Senate Appropriations Committee reported the Defense, Global War on Terror, and Tsunami Relief Appropriations Act (H.R. 1268), which, under Section 6023, would have allowed the DOE to count its small business subcontracts as prime contracts towards goals under the Small Business Act and to impose a total cap on small business contracts at the DOE at not more than 23 percent of total DOE contracts. In contrast, the Small Business Act imposes on the Federal government a statutory prime contracting goal of at least 23 percent. This language would have had a disastrous effect on the ability of small businesses to receive prime contracts at the DOE and would have reduced the total small business spending at the DOE by about 50 percent. The stated purpose of Section 6023 was to respond to the potential displacement of local small business subcontractors from DOE projects in New Mexico through prime contracts awarded to Alaska Native Corporations. However, the terms of Section 6023 did not address the displacement.

On April 12, 2005, Chair Snowe filed S. Amdt. 338 to strike Section 6023 from H.R. 1268. Chair Snowe was joined by Ranking Member Kerry and Senators Lieberman, Bayh, and Cantwell as original cosponsors. Senators Enzi, Talent, Collins, McCain, and Clinton also later signed on as cosponsors. While the amendment was not considered on the floor, Chair Snowe and Ranking Member Kerry expressed strong objections to inclusion of Section 6023 in the conference committee report.

On April 15, 2005, Chair Snowe and Ranking Member Kerry, along with House Small Business Committee Chairman Manzullo and Ranking Member Velázquez, wrote to the Director of the OMB urging the administration to repudiate Section 6023.

In May 2005, the GAO formally issued, Department of Energy: Improved Oversight Could Better Ensure Opportunities for Small Business Subcontracting (GAO–05–459), which found that many DOE facility management contractors have routinely overstated their small business subcontracting achievements once the reported percentages were converted to dollars. This finding further undermined the rationale for counting subcontracts as prime contracts. However, the DOE disagreed with the GAO recommendation to measure subcontracting dollars. Chair Snowe raised concerns about the DOE position.

On May 10, 2005, the Senate passed the Conference Report for H.R. 1268. President Bush subsequently signed the Emergency Supplemental Appropriations Act (P.L. 09–13) into law. The Conference Report replaced Section 6023 of the Senate version with a new Section 6022. Section 6022 required the DOE and the SBA to enter into a memorandum of understanding concerning the methodology for counting small business prime contracts and subcontracts. In addition, Section 6022 required the SBA, the DOE, the National Nuclear Security Administration, and the Defense Nuclear Facilities Safety Board to conduct a study on the feasibility of changing large DOE management and operating contracts to increase small business participation. Further, Section 6022 directed DOE to consider, as part of the decision to break out work from large prime contracts, whether the services were previously performed by small businesses and whether the contract was the type capable to be performed by a small business.

On June 13, 2005, the Deputy Secretary of Energy wrote a letter to Chair Snowe with the promise to reverse the DOE's previous position concerning the GAO recommendations and to begin measuring subcontracting dollars reported by large DOE contractors. The DOE also promised to review proposed contracts over $3 million and to study breaking out its existing facilities management contracts to provide prime contracting opportunities to small businesses. The DOE also committed to ensuring that it will increase contracting opportunities for service-disabled veteran-owned small businesses. The Deputy Secretary promised regular accountability to the Congressional Small Business Committees concerning these issues. Finally, with regard to the Emergency Supplemental Appropriations Act, DOE acknowledged that Congress chose to replace

Section 6023 of the Senate-passed version for the new Section 6022. DOE pledged that it “does not intend to reduce its commitment to small business participation at the prime and subcontract level as a result of enactment of Section 6022.” On September 30, 2005, the SBA and the DOE entered into a Memorandum of Understanding directed by Section 6022. The memorandum retained the practice of treating small business subcontracts as subcontracts and not as prime contracts.

Further, in April 2006, the GAO issued its report, Department of Energy Contracting: Improved Program Management Could Help Achieve Small Business Goal (GAO–06–501), which compared DOE contracting practices with practices at the agencies well known for integrating small business contractors into agency missions that are similar to that of the DOE: the U.S. Army Corps of Engineers, the Department of Health and Human Services’ Center for Disease Control, and the National Aeronautics and Space Administration. The GAO recommended that DOE make management improvements in order to integrate small businesses into the DOE mission, including: (1) identifying clear steps necessary to achieve the statutory prime contracting goals; and (2) collecting information necessary to evaluate its small business program. The DOE agreed with the GAO’s recommendations.

On June 27, 2006, the SBA’s Office of Advocacy released the study mandated by Section 6022 of the Emergency Supplemental Appropriations Act. The study, Encouraging New Opportunities for Small Businesses As Prime Contractors Through Changes to DOE’s Management and Operating and Other Management Contracts, was conducted jointly by the SBA Office of Advocacy, the DOE, the National Nuclear Security Administration, the Defense Nuclear Facilities Safety Board, the DOE Office of Management, and the SBA Office of Government Contracting and Business Development. The study represented a major victory for the Committee and for America’s small businesses. It concluded that changing the methodology for reporting DOE small business subcontracts as prime contracts was not feasible since doing so would contradict Congress’s action of rejecting proposed legislation authorizing this type of reporting, the laws and regulations applying to DOE management and operating contracts, and the policy of uniform accountability among Federal agencies. The study, however, recommended several changes that all agencies involved found to be feasible. These changes include: on a pilot basis, breaking out work for small businesses from DOE management and operating contracts; stimulating large DOE contractors to build up the capability of small businesses; and awarding suitable management and operating contracts to small businesses.

F. Field Hearing on the Women-Owned Small Business Contracting Program

In October 2006, Senator George Allen held a field hearing at the George Mason University in Fairfax, Virginia, concerning the implementation of the Women-Owned Small Business Contracting program. The Committee heard testimony from Karen Hontz, the Assistant Administrator for Government Contracting at the SBA, Emily Murphy, the Chief Acquisition Officer of the GSA, and from representatives of women’s small business groups and women-owned small businesses. The hearing focused on the multi-year delays in implementing the Women-Owned Small Business program set-asides authorized by the Congress in 2000 for select industries where women have traditionally faced barriers to fair participation in Federal contracting. The Committee received assurances that the SBA intends to comply with the Women-Owned Small Business statute. In addition, the Committee received assurances that Women-Owned Small Business status may be used as a primary evaluation factor in awarding GSA Federal Supply Schedule task order contracts under the existing GSA policy.

G. HUBZONE FORUMS

In December 2005, Chair Snowe sponsored six HUBZone forums across the state of Maine in partnership with the SBA and the Maine Procurement Technical Assistance Center. In Maine, areas in 9 out of 16 counties qualified for the HUBZone program, and all six Indian reservations also qualified. These forums were held in South Paris, Farmington, Skowhegan, Dover-Foxcroft, Presque Isle, Houlton, and Machias. The purpose of the forums was to increase the number of HUBZone-certified firms in Maine. The forums were attended by economic developers, local officials, and business executives.

VI. SMALL BUSINESS INNOVATION RESEARCH AND SMALL BUSINESS TECHNOLOGY TRANSFER

In the field of innovation, the Committee has jurisdiction over the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs. These programs provide about $2 billion a year in contracts and grants to small businesses and partnerships between small businesses and research institutions to develop technologies to meet national priorities. Chair Snowe was an original cosponsor of the Small Business Innovation Development Act of 1982, which created the SBIR program.

A. SECTION 252 OF THE FISCAL YEAR 2006 NATIONAL DEFENSE AUTHORIZATION ACT AND THE SBIR COMMERCIALIZATION PILOT PROGRAM

In 2005, Chair Snowe and Ranking Member Kerry sponsored legislation amending the Small Business Act to create the SBIR Commercialization Pilot program at the DoD and to provide other needed enhancements to the SBIR programs. This legislation was adopted as Section 252 of the National Defense Authorization Act for Fiscal Year 2006. According to private industry, this legislation is expected to result in additional contracts and subcontracts for SBIR technologies worth several billions of dollars.

B. OVERSIGHT OF SBIR AND STTR

On May 15, 2006, Chair Snowe, Ranking Member Kerry, and House Small Business Committee Chairman Donald Manzullo sent a letter to Kenneth Krieg, Under Secretary of Defense for Acquisition, Technology, and Logistics, concerning Section 252 of the National Defense Authorization Act for Fiscal Year 2007, which would have amended the Small Business Act to authorize the SBIR Commercialization Pilot program (CPP) and made other changes to the SBIR and the STTR programs. The letter provided guidance to the DoD concerning the implementation of the CPP and requested that DoD provide specific plans for key areas addressed in Section 252, including: (1) the SBIR quadrennial portfolio review and the program research focus; (2) the involvement of the program managers and program executive officers in SBIR topic selection; (3) the authority to make Phase II and Phase III awards for testing and evaluation of small business innovations; (4) the implementation of priority for SBIR and STTR manufacturing topics; and (5) the identification of high-priority SBIR projects for the SBIR CPP.

In response to the letter, the Department of the Air Force and the DoD issued memoranda concerning the implementation of the SBIR CPP. The Air Force memorandum was issued on June 16, 2006, and the DoD memorandum was issued on June 27, 2006. As a result, all defense agencies and military services participating in the SBIR program will review the pool of SBIR projects that have received endorsement from acquisition program managers. DoD policy requires such endorsement for at least 50 percent of DoD and SBIR projects. Unfortunately, these memoranda did not address the types of incentives that will be available for greater SBIR commercialization. The Committee expects that the DoD will provide this information, along with the information on the number of SBIR firms assisted and the dollar value of additional Phase III commercialization awards, in the annual report to Congress on the CPP.

C. SBIR Issues Raised During the Hearing on Strengthening Small Business Participation in Federal Contracting and Innovation

As stated above, on July 12, 2006, Chair Snowe convened a Committee hearing on strengthening the participation of small businesses in Federal contracting and innovation programs. During the hearing, the Committee received testimony from Dr. Charles Wessner, director of the Board of Science, Technology, and Economic Policy at the National Academies of Sciences and the director of the Congressionally-mandated study of the SBIR program. The testimony unequivocally confirmed the need for the SBIR program for small businesses seeking to survive the financial "valley of death" created by imperfections in the market for innovations. In addition, the testimony confirmed the positive impact of the SBIR program on meeting national innovation needs. Additional testimony was received from representatives of the Biotechnology Industry Organization and the Small Business Technology Council concerning participation of venture capital in the SBIR program.

D. SBIR and STTR Reauthorization

Following the hearing discussed in the preceding section, the Committee approved wide-ranging changes to the SBIR and STTR programs as part of the Small Business Reauthorization and Improvements Act of 2006 (S. 3778). Title I of this bill would have permanently re-authorized both programs and changes included doubling the size of the SBIR and the STTR programs and increasing small business research and development funding by over $2 billion a year. The changes also included: an elevation in stature for the SBA Office of Technology; an extension of the Defense Commercialization Pilot program to top civilian contracting agencies; an increase of the statutory SBIR and STTR award sizes to account for inflation; restrictions on "jumbo" SBIR and STTR awards that are many times in excess of the generally established statutory award sizes; repeal of the SBA pre-approval requirement for Cooperative Research and Development Agreements between SBIR and STTR firms and Federal laboratories; and priority status for SBIR and STTR projects related to energy efficiency. Small businesses would also have been given the flexibility to transfer between the SBIR and STTR programs depending on their need to partner with research institutions and to compete for follow-up Phase II SBIR and STTR awards at agencies other than those which made the original Phase I awards. The legislation also would have established a 3-percent SBIR and STTR technology insertion goal for Federal research and development contracts. In addition, the Committee voted to include an amendment that would allow the businesses majority owned and controlled by venture capital firms to participate in the SBIR program.

E. The SBA Reauthorization Bill, Title XV, Small Business Innovation Research and Small Business Technology Transfer

Under the Committee's SBA reauthorization bill (S. 3778), which passed the Committee unanimously, Federal agencies with annual extramural research and development budgets of more than $100 million must reserve 2.5 percent of their research and development funds for awards to small businesses. In the SBIR program's 24-year history, small high-tech firms have submitted more than 250,000 proposals, which have resulted in over 60,000 awards worth more than $21 billion.

The SBIR program cycle is divided into three phases. Under Phase I, small firms receive competitive grants or contracts to develop new technologies. Competitive Phase II grants or contracts are awarded to develop the commercial potential of the new technology or product. These awards help small firms to establish a successful reputation for their technologies and to survive the so-called "valley of death" in their business cycle when private investors alone are unwilling to assume all the risk. Approximately one third of initial Phase I SBIR projects convert to Phase II. In Phase III, SBIR firms are expected to commercialize the resulting product or process but with no further SBIR funding.

Under the companion STTR program, agencies with an annual extramural research and development budget of more than $1 billion must reserve 0.3 percent of their funds for award to collaborative efforts between small businesses and non-profit research institutions, generally universities or state technology programs. The STTR program awards about $92 million annually to small business research institution partnerships. The STTR program's goal is to take research and move it from the lab or a university to the market through the help of small businesses. The program is structured similarly to the SBIR program.

F. THE SBA OFFICE OF TECHNOLOGY; NATIONAL ADVISORY BOARD; ANNUAL NATIONAL SMALL BUSINESS INNOVATION AND TECHNOLOGY TRANSFER PLAN

Efforts to strengthen American competitiveness through small businesses begin with the SBA's Office of Technology, which administers and monitors the implementation of both the SBIR and the STTR programs government-wide. As these programs have grown, the responsibilities of the office have increased to encompass activities, such as monitoring government-wide compliance with the SBA's SBIR and STTR Policy Directives; carrying out the Federal and State Assistance program and the Rural Outreach program; and carrying out the President's Executive Order 13–329, Encouraging Innovation in Manufacturing. At the same time, the budget and staff for this office have decreased. Specifically, since fiscal year 1991, funding for the programs has increased nearly fourfold, growing from $500 million to about $2 billion a year. Yet, the budget for the Office of Technology has been cut by more than half. According to the SBA's Historical Summary, Office of Technology, in 1991, the Office of Technology had a budget of $907,000 and ten positions. In 2003, the Office of Technology had a budget of $280,520 and five positions.

The Committee has raised this issue with the agency on numerous occasions over the years, but there has been no increase in the resources for this office. Consequently, there has been inadequate oversight of participating agencies to meet their 2.5 percent requirement, and other compliance violations have put at risk significant SBIR dollars. For example, at the Missile Defense Agency, $75 million and $93 million were at risk in fiscal year 2002 and fiscal year 2003, respectively. At the Air Force $175 million was at risk in fiscal 2005. Senator Kerry intervened and made sure the agencies awarded all the funds for SBIR awards instead of diverting the funds to other programs. The Committee urges the SBA to request that OMB and the administration support requests that are sufficient for the Office of Technology to successfully operate.

The Committee's reauthorization bill also would have required the SBA's Assistant Administrator for Technology to be a Presidential appointee. Without a mandate from the President, the Assistant Administrator's ability to provide oversight and enforcement of the SBIR and STTR Policy Directives across the Federal acquisition community would be impaired. Since the passage of the Services Acquisition Reform Act of 2003, the Chief Acquisition Officers in Federal agencies are required to be senior Presidential appointees. The Committee's reauthorization bill would have restored the parity between the stature of the Chief Acquisition Officers and the Assistant Administrator for Technology who is responsible for oversight of their compliance with the SBIR and the STTR program requirements.

The Committee believes that the Congressional Small Business Committees must be consulted concerning appointments to head the SBA Office of Technology in the same manner that relevant Congressional committees have been consulted regarding appointments to the White House Acquisition Advisory Panel. To provide continuous improvements in the administration of these programs, the bill would have established a National Small Business Innovation and Technology Transfer Advisory Board appointed from individuals with relevant experience to advise the Office of Technology.

The Committee's reauthorization bill also would have directed the SBA to prepare and submit to the Congress a national plan on the SBIR and STTR programs. The SBA is already required to publish annual government-wide reports on SBIR and STTR at the end of each fiscal year. The SBA's report is based on the annual statutory reports of participating agencies. However, Federal agencies need advance planning and technology "road-mapping" to ensure better planning and utilization of small high-tech firms in Federal innovation development. Many SBIR and STTR technologies can have applications across multiple agencies, especially at the commercialization stage. According to SBA data, in fiscal year 2004, 2 out of 11 SBIR agencies (NASA and the Department of Homeland Security) under-funded SBIR technologies. There were similar shortfalls in the STTR program.

In fiscal year 2004, the Federal government shortchanged small business-university partnerships in the STTR program by $20 million. The Committee expects the National SBIR/STTR plan to be composed of annual SBIR/STTR plans and forecasts of SBIR and STTR topics and acquisition opportunities by each participating Federal agency and an overall plan by the SBA. The plan will address participation of small high-tech firms and small business-university partnerships in Federal research and development, as well as commercialization of SBIR and STTR innovations.

Data from the National Science Foundation's annual Science & Engineering Indicators reveal that small businesses consistently receive less than 5 percent of Federal research and development dollars. This exclusion of small businesses has wasted valuable Federal research and development dollars.

To unleash American innovation, Congress must support the tremendous innovative potential of small firms. According to the SBA Office of Advocacy: (1) small firms represent 40 percent of highly innovative firms (i.e., firms with 15 or more patents); (2) small firms produce 13 to 14 times more patents per employee than large firms; (3) small firms' share of U.S. patents equals small firms' share of U.S. manufacturing employment, 41 percent; (4) small firms' patents are on average twice as technically important as large firm patents (2 to 1 ratio of the top 1 percent of the most cited patents); (5) small-firm innovation is more extensively linked to outside technology (large-firms build more of their own technology); and (6) small-firm innovators are more dependent on local technology.

To stimulate America's most innovative sector of the economy and to remedy the problem of exclusion of small businesses from Federal research and development, the Committee's reauthorization bill would have permanently reauthorized these worthy programs. The bill would have doubled both the SBIR and the STTR programs as reflected in the Small Business Growth Initiative Act of 2005 (S. 2161) introduced on December 15, 2005, by Senator Bayh. Such an increase would benefit the universities, laboratories, and research institutions that partner with small businesses. To ensure smooth administration, the SBIR and STTR increases are spread out over five years.

Small business innovators must not only receive a greater share of Federal funds, but the SBIR and STTR awards they receive must also reflect economic and programmatic realities. Current law directs the SBA to adjust the size of SBIR and STTR awards for inflation every five years, but the SBA has not done so. For instance, the SBIR Phase II awards size has not been increased since 1992. The size of Phase II awards for the STTR program, which was created after the SBIR program, has not been increased since 2001. The Committee attempted to correct this deficiency, in its reauthorization bill, by raising the award sizes for the programs from $100,000 to $150,000 in Phase I and from $750,000 to $1,250,000 for Phase II. The bill also would have addressed the problem of "jumbo" awards that routinely exceed legislative guidelines. For example, the GAO conducted a review of the program, Small Business Innovation Research: Information on Awards Made by NIH and DoD in Fiscal years 2001 through 2004 (GAO–06–565), and found that NIH had made a Phase I award of $1.7 million and a Phase II award of $6.5 million. Small businesses, particularly those in rural states, have complained to the Committee for years that "jumbo" awards hurt them because they reduce the number of grants and awards that can be given out. For example, in the case of a Phase I award for $1.7 million, the possibility of 16 awards of $100,000 were eliminated, and in the case of a Phase II award for $6.5 million, the possibility of almost seven awards of $750,000 were eliminated. To address this issue, the Committee's reauthorization bill would have prohibited Federal agencies from making an award more than 50 percent higher than the guidelines established in the legislation, which is a cap of $225,000 for Phase I awards and $1,875,000 for Phase II awards.

The Committee's reauthorization bill also would have provided for portability of awards among different Federal agencies and between the two SBIR and STTR programs by permitting eligible small business concerns to qualify for post-Phase I awards at another agency or through the other program. These measures would have ensured that small innovative businesses receive the maximum opportunity for participation in Federal research and development and that the Nation would have received the full benefits of the resulting small business innovations. Today, research and development efforts to meet national priorities are conducted across Federal agencies; for instance, the Departments of Energy and Agriculture work together on renewable energy research, and biodefense research is pursued by the Departments of Defense, Homeland Security, and Health and Human Services. At the same time, research project needs may require changes in relationships between the small business and its research institution partner. This legislation introduces much-needed flexibility into the SBIR and the STTR programs.

The Committee's reauthorization bill also addressed relevant SBIR and STTR intellectual property protections. To attract small businesses for participation in Federal research and development, the SBIR and STTR programs guarantee data rights protections to small business innovators. Unfortunately, the scope of these protections has been misconstrued by the U.S. Court of Federal Claims in the case of *Night Vision* v. *United States*, Court of Federal Claims No. 03–1214C, on November 8, 2005. The Court mistakenly relied on the Federal Acquisition Regulation to exclude prototypes from statutory data rights protections, even though the Small Business Act clearly and unambiguously provides that prototypes are within the scope of research and development activities that are part of SBIR and STTR. The Committee's reauthorization bill would have overruled the Night Vision case and reasserted protections for prototypes consistent with current law under the Small Business Act, providing that SBIR and STTR research and development activities include improvement, development, and design of prototypes. In addition, the bill also would have ensured that SBIR and STTR data rights are protected from disclosure and reverse engineering as trade secrets under applicable laws, such as the Federal Trade Secrets Act; that data rights protections extend to the technical data developed at private expense but used in the development, testing, or evaluation of SBIR or STTR technologies; and that data rights protections apply to all Federal contracts, subcontracts, and mentor-protégé agreements.

There are concerns that the Court of Federal Claims disregarded the special acquisition preference Congress intended for Phase III awards by effectively placing the burden of proof on small businesses regarding the practicality of a Phase III award. The Committee believes that any questions regarding the ability of small businesses to perform as Phase III awardees should be established by the relevant agency through the SBA's Certificate of Competency determination process. The Committee's reauthorization bill would have also codified and clarified the existing special acquisition preference. In addition, the legislation contained requirements for advance review of contract solicitations on topics that duplicate SBIR or STTR awards, so that taxpayer money invested in SBIR and STTR projects would not be wasted, and time, particularly on sensitive projects of health, defense and energy, not lost duplicating the work. To avoid and reduce duplication, relevant Federal officials were directed to consult the SBA's Tech-Net database prior to issuing the solicitation.

To promote the effective enforcement of the SBIR and STTR Policy Directives, Section 1537 of the Committee's reauthorization bill would have required the SBA to notify Congress of its appeals or other actions to enforce the Policy Directives. Likewise, the Committee expects that the SBA Administrator will be promptly informed concerning any case or controversy surrounding the SBIR or the STTR program. The Committee believes that the SBA must always be presented an opportunity to defend its programs in legal proceedings.

In the 2000 SBIR Reauthorization Act (P.L. 106–554), Congress created the Federal and State Technology Partnership program (FAST) to strengthen the technological competitiveness of small businesses in all 50 states. At that time, Congress also extended the SBIR Rural Outreach Grant program (ROP), which provides certain states, with relatively low participation in the SBIR and STTR programs, an opportunity to receive grants to support statewide efforts to increase their participation levels in the programs. The administration did not request funding for the SBIR FAST and Rural Outreach programs in the President's budget requests for fiscal years 2005, 2006, or 2007. In fiscal year 2004, the administration requested funding of $3 million for the FAST program and

$500,000 for the ROP program. In appropriations for fiscal year 2004, Congress provided $2 million for FAST and $250,000 for ROP. Although the administration made the same funding request the previous year (fiscal year 2003), the programs were not funded in fiscal year 2003 appropriations. Instead, the SBA was given authority to fund the program, but according to the SBA IG's Office, chose not to do so. During fiscal year 2002 and fiscal year 2001, the FAST program was funded at $2.7 million and $3 million, respectively.

The FAST and the ROP programs serve to bring into the SBIR and the STTR programs small businesses and state technology research organizations located in states with historically low participation in Federal small business research and development and technology contracting. While the SBA's stated desire to consolidate FAST and ROP development services into its district offices to increase effectiveness and efficiency is legitimate, the SBA has not made the case that its district offices are better suited to provide FAST and ROP development services. The Committee's reauthorization bill would have reauthorized these two important programs and increased authorized funding for the ROP program from $2 million to $5 million.

Since 2000, the SBIR program has been subject to a Congressionally mandated evaluation by the National Academies of Sciences (NAS). To date, the Academies have published several books on the subject of SBIR and submitted extensive testimony and publications to the Committee on July 12, 2006. The academies confirm the SBIR program's value and the need to continue it. This Committee's reauthorization would have extended the authorization for the Academies' study for one year and provided additional areas that the Academies should research and address. There were concerns raised that extending the NAS's authority for one year would delay the release of the current study, which is expected in early 2007. The study is vital to deliberations regarding the reauthorization of the program. Concerns were also raised that the extension and expansion would be construed as a mandate from Congress on the participating agencies to pay more money for the study. This Committee's provision was not intended to create a mandate on those Federal agencies that funded the SBIR and STTR study to provide more funding to NAS beyond the $5 million they have already disbursed. The provision required good-faith negotiation between the Academies and the agencies and would have given NAS the authority to explore complementary issues. Consequently, additional research shall be subject to availability of funds.

In response to questions during a Committee hearing on July 12, 2006, Dr. Charles Wessner of the National Academies testified that efforts to promote greater funding of Phase II technologies would be valuable. The Committee's reauthorization bill would have authorized a pilot program to address this issue. Additionally, the Committee believes that the innovative potential of small businesses must be harnessed to address the energy challenges faced by our country. The bill would have included provisions modeled after the President's Executive Order 13–329, Encouraging Innovation in Manufacturing, to give priority in SBIR and STTR awards to energy efficiency and renewable energy projects.

This bill addressed participation in the SBIR program of companies majority-owned by venture capital firms. Firms with venture capital investment have always been allowed to participate in the program, as long as they met the regulatory size standard and affiliation rules for a small business. However, a case brought before the SBA's Office of Hearings and Appeals (OHA) in 2001 highlighted that there is, or has been, some ambiguity about these standards, particularly over what it means to be owned by an "individual" and whether small businesses owned and controlled by venture capital firms can participate. Before that time, the SBA had never formally ruled on the meaning of the term "individual," but when the question was brought before it, the SBA's OHA ruled in 2001, 2002, and 2003, that "individual" refers to humans and not corporations or entities.

Since the SBIR program's creation in 1982, small business regulatory size and affiliation rules for the SBIR program have required firms to be for-profit and at least 51 percent owned and controlled by "individuals" who are U.S. citizens or resident aliens. Rules have also required that the company must have fewer than 500 employees, including affiliates as a protection against parent companies using smaller subsidiaries to participate in the program. In January 2005, the SBA expanded eligibility by changing the rule regarding subsidiaries so that a subsidiary could be owned up to 100 percent by a parent company, including a venture capital firm, as long as the parent company itself was owned and controlled by individuals. While that change helped some small firms that were majority-owned by venture capital firms to meet eligibility requirements and participate in the program, the Committee received complaints that the definition still excluded many small biotechnology firms that had attracted venture capital investments. Consequently, there was an effort to change the definition so that a company with multiple venture capital investors with more than 51 percent ownership and control of a company could participate in the SBIR program.

Proponents of changing the regulations and rules argued that these standards were particularly harmful to biotechnology firms that needed hundreds of millions of dollars and as many as 15 years to commercialize a therapy or treatment, requiring them to seek venture funding and relinquish ownership and control of the firm. Even with significant venture capital investments, if these firms had other promising research they wanted to conduct that was not sufficiently far along to attract new venture funding, the venture funding they had could not be used for a new project. Thus, they needed SBIR grants to conduct new research. The proponents also argued that firms majority-owned by venture firms had always participated in the program; the SBA suddenly changed the definition and rules that were in effect for 20 years; funding to venture firms had diminished since the SBA made its ruling; and excluding them was hurting the biotechnology industry and the development of important therapies.

Opponents argued that the SBIR grants and awards of $100,000 and $750,000, or even "jumbo awards," were created to serve as seed funding for firms that had not yet attracted venture capital; not firms that had tens or even hundreds of millions of dollars in venture capital. They argued that such firms should not be eligible to compete for the 2.5 percent of Federal funds designated for small businesses and instead should compete for the other 97 percent of Federal research and development funds. Nevertheless, the opponents were in support of creating a separate funding source at the National Institutes of Health (NIH) for these mid-sized biotech firms. They argued that the SBIR regulatory size standards and affiliation rules as interpreted by the SBA had always existed, but that firms self-certified and the SBA and departments and agencies with SBIR programs were not aware that ineligible firms were participating until a company was challenged in 2001. They argued that SBA's ruling had not led to a decrease in SBIR grants to companies with venture capital funding, and they disagreed that the ruling that excluded some biotech firms was hurting the development of important therapies since the research had not stopped (it was simply going to other biotech firms, ones deemed to be a small business), and the quality of research was the same or better after the SBA's OHA rulings. Opponents point to a GAO SBIR report, Small Business Innovation Research: Innovation on Awards Made by NIH and DoD in Fiscal Years 2001 through 2004 (GAO–06–565), discussed below, to support their views.

Because no data existed on the impact of the SBA's ruling, or the extent to which firms with venture capital participated and commercialized SBIR projects, Senators Kerry and Kennedy, along with Senator Snowe, Senator Enzi and Congressman Manzullo, requested that the GAO undertake a review of awards at the NIH and DoD, the agencies that account for the largest share of SBIR awards out of the 11 that participate. Specifically they asked GAO to quantify venture capitalists' involvement in the program and the impact of the SBA's ruling on firms with venture capital and the SBIR program. The GAO could not determine which firms were majority-owned by venture capital firms, but its staff did determine which ones had venture investment, and the results showed that the SBIR grants to firms with venture investment actually increased, from 14 percent to 21 percent, rather than decreased, following the ruling.

The Committee's reauthorization bill included an amendment proposed by Senator Bond that would have allowed the participation of small firms that are majority-owned by venture capital firms in the SBIR program. It would have authorized any participating agency, upon submission of a written determination to the Congressional Small Business Committees, to permit small businesses majority-owned by venture capital firms and otherwise eligible under the other terms of the SBIR program, to compete for SBIR awards at such agency. The determination was required to demonstrate that using the authority would lead to additional venture funding of small business innovations, substantially contribute to the mission of the funding agency, or otherwise fulfill the capital needs of small business concerns for additional funding. The provision would have limited majority venture-owned firms to a maximum of 25 percent of SBIR funds at the relevant agency, allowing the head of each participating agency to "direct" not more than that amount toward these firms. The figure represented a cap on the amount that could be awarded and was not an authorization for a set-aside for small businesses majority-owned by venture capital firms. This distinction is important because, as Senator Kerry noted at the markup, there was concern that the use of the word "direct" would be wrongly interpreted as a set-aside, reducing to 75 percent the Federal research and development funds for the other small technology firms, including firms with venture capital funding that are not majority-owned.

The Bond amendment derived its 25 percent cap on SBIR awards to qualified majority venture-owned small U.S. firms from the aforementioned GAO study that found in 2003 and 2004 that 21 percent of the firms that received NIH SBIR awards had some venture funding. However, opponents contend that the percentages do not correspond because the 25 percent cap is for companies majority-owned by venture firms and that 21 percent is assumed to encompass firms that are not majority owned by venture capital firms, but merely have some venture funding. They say that the 21 percent should have excluded majority-owned firms because it was derived from data captured after the SBA's rulings and it is assumed the agencies were following SBA's OHA rulings.

The Committee's intent was that the increase in the program percentages and the authority to allow firms majority owned by venture capital firms be adopted and enacted together as contained in the Committee's reauthorization. The doubling of the SBIR and the STTR programs, phased in over five years, could have provided more than $1.5 billion in new funding opportunities to non-venture-backed small businesses, which proponents contended would have held harmless the firms not majority-owned by venture capital firms.

Further, the Committee's reauthorization bill would have included an amendment proposed by Senator Coleman during markup that provided for up to $10,000 a year in grants to SBIR firms to encourage them to hire science, technology, engineering, and mathematics students.

G. Federal Laboratory Consortium for Technology Transfer

To fully develop their inventions, small innovators frequently need to access the scientific resources that are typically available only to large businesses. Small firms have often attempted to overcome this challenge by entering into a Cooperative Research and Development Agreement with Federal laboratories that exist within many civilian and defense agencies. The Committee has worked with the Federal Laboratory Consortium (FLC) on Technology Transfer concerning greater cooperation between small businesses and Federal laboratories. The FLC has begun the process of tracking participation of small businesses in Federal lab technology transfer projects. Also, under consideration is the establishment of a small business committee within the FLC. The Committee will continue to encourage and monitor these efforts.

H. Maine SBIR Forum

In July 2006, Chair Snowe teamed with the Maine Technology Institute and the SBA to hold an SBIR forum at the University of Southern Maine. During the forum, SBIR program staff and Chair Snowe's Committee staff assisted multiple firms and individuals with the SBIR application process.

VII. SMALL BUSINESS HEALTH INSURANCE

The rising cost of health insurance remains one of the top concerns facing small businesses today. According to the Kaiser Family Foundation, the cost of health insurance has increased at double digit percentage levels in four of the past six years—far outpacing wage gains and inflation. In fact, health insurance costs are on track to become the largest share of employers' total benefit packages, surpassing total retirement benefits.

Meanwhile, there are now 46.6 million uninsured Americans. The number has risen dramatically this decade, by over 4,000,000 since 2001. The Congressional Research Service has concluded that the number of the uninsured has risen almost every year since 1989 and is expected to continue rising into the future.

Clearly, the size of a business plays a pivotal role in whether an employer will offer health insurance as a workplace benefit. Small employers are far less likely than larger employers to provide health insurance to their workers. The Small Business Administration's Office of Advocacy recently found that less than 40 percent of employees in the smallest firms were eligible for health insurance coverage, while slightly more than 77 percent of the largest firms' employees were eligible for coverage. Additionally, the 2006 Kaiser Family Foundation Survey of Employer Health Benefits found that health insurance is offered by only 48 percent of businesses with three to nine employees. This is down from 58 percent in 2002 and 52 percent in 2004. By contrast, health insurance is nearly universally offered as an employer-provided benefit in larger firms (200 or more employees), which offer insurance to 98 percent of their employees.

Further compounding the problem, there simply is no competition among insurers in the small group insurance markets in the states. In May 2005, Chair Snowe requested, along with Senator Talent, that the GAO research the competitiveness of small group health insurance markets in every state. The GAO's report, released in October 2005, revealed that a handful of large insurance carriers dominate the small group market, leaving small businesses with few, if any, choices when it comes to securing affordable, quality health insurance for their employees. More specifically, the GAO discovered that the median market share of the largest small group carrier was about 43 percent in 2005, compared to 33 percent in 2002. And when combined, the five largest carriers in the small group market represent 75 percent or more of the market in 26 states, up from 19 states in 2002. Finally, the median market share of all Blue Cross and Blue Shield (BCBS) carriers was about 44 percent, up from 34 percent in 2002.

The Committee believes that there are simply not enough health insurance carriers competing in the small group market. This lack of competition has contributed to higher prices for the handful of products that do exist in the small group market. In this way, small businesses are trapped in stagnant, dysfunctional health insurance markets, in which prices are spiraling out of control and viable coverage options have moved far beyond their budgetary reach. Despite accounting for nearly 75 percent of all new jobs in America, small businesses are treated like the "pariahs" in the current health insurance marketplace and are often priced out of the market altogether. To counter these alarming trends, the Committee considered the following proposals.

A. Small Business Health Plans

In February 2005, Chair Snowe introduced the Small Business Health Fairness Act of 2005 (S. 406) which would have allowed small businesses to pool together nationally, through Small Business Health Plans (SBHPs), to provide uniform health insurance plans to their employees at significantly lower costs. It is a matter of simple fairness; small businesses ought to receive the same advantages under current Federal law as Fortune 500 companies and unions. SBHPs would help cover up to 8.5 million Americans at nominal cost to the Federal government at a time when more than 46 million Americans are among the ranks of the uninsured. SBHPs are supported by a coalition of more than 100 organizations representing more than 12 million employers and 80 million individuals.

Chair Snowe's legislation would have amended the Employee Retirement and Income Security Act (ERISA) to include sections on the certification and regulation of Association Health Plans, now also known as SBHPs. The legislation would have expanded ERISA to allow small businesses to pool together through bona-fide trade and professional associations, which would operate and administer health plans that would receive the same advantages under Federal law that larger businesses and unions currently receive.

Chair Snowe's SBHP legislation would have allowed SBHPs to either "self-insure" (i.e., to bear their own risk in providing health insurance to their employees, without going through an insurance carrier) or to be "fully-insured" (i.e., to purchase health insurance through an insurer). Under the measure, the Department of Labor would solely regulate self-insured SBHPs, just as the Department of Labor solely regulates over 300,000 self-insured plans of larger employers and union plans, covering 78 million people. The states would solely regulate "fully-insured" SBHPs, just as the states solely regulate other types of fully insured products.

Chair Snowe's SBHP legislation contained strict requirements under which only bona-fide professional and trade associations can sponsor an SBHP. These organizations would have to be established for purposes other than providing health insurance for at least three years. Finally, the Small Business Health Fairness Act contained tough new solvency provisions that would have increased consumer protections for many small business workers. These new provisions included: claims reserves certified by a qualified actuary; minimum surplus reserves; both specific and aggregate stop-loss insurance; and indemnification insurance to ensure that all claims are paid.

On April 20, 2005, Chair Snowe held a Committee hearing focused on the Small Business Health Fairness Act.

B. Small Business Health Insurance Tax Incentives

The Committee continues to believe that Congress must explore all means of encouraging small businesses to offer health insurance. To that end, in the 109th Congress, Chair Snowe introduced the Small Business Health Insurance Relief Act (S. 2457), which would have utilized the tax code to both: (1) encourage our Nation's smallest employers to offer health insurance to their employees; and (2) inject competition among insurers into stagnant, dysfunctional state insurance markets.

This proposal contained a targeted tax credit that would have encouraged our Nation's smallest businesses to offer health insurance as a workplace benefit. This tax incentive would have helped to ensure that our Nation's smallest businesses can offer health insurance in the same way that larger businesses currently do. The measure targeted small businesses with 50 or fewer employees because these are the small businesses most desperately in need. The maximum tax credit under the proposal would have been $1,500 for single coverage and $3,000 for family coverage. The tax credit would have phased out as a business increased in size. Notably, the proposal was neutral between types of insurance; small businesses and their employees could choose what worked best for them—traditional employer-sponsored health insurance or health savings accounts (HSAs).

Second, the legislation also would have provided a necessary reform of the state small group health insurance markets. As described above, there is simply no competition in the small group market, and coverage and affordability are real problems. To counter this market consolidation, the measure would have provided insurers with a 50 percent tax deduction for claims and expenses incurred in serving the small group market and Small Business Health Plans (SBHPs). This incentive would have served as a powerful motivator for new insurers to enter this dysfunctional marketplace.

Finally, the legislation would have reduced barriers insurance companies face in entering new markets. Specifically, it would have provided a tax credit to defray the cost of state licensing requirements. Under the proposal, an insurer could have claimed a tax credit of the lesser of 50 percent of qualified costs or $10,000 to cover the administrative costs and expenses incurred in satisfying state licensing requirements. Available with respect to each state in which an insurer operates, this incentive sought to encourage a host of insurers to provide products in the state small group market.

C. Small Business Health Education and Awareness

Finally, Chair Snowe introduced, with Senator Bennett, the Small Business Health Education and Awareness Act (S. 2607), which would have established a pilot, competitive matching-grant program for Small Business Development Centers (SBDCs) to provide educational resources and materials to small businesses designed to increase awareness regarding health insurance options available in their areas. This measure was based on recent research conducted by the non-partisan Healthcare Leadership Council that found that following brief educational and counseling sessions, small businesses are up to 33 percent more likely to offer health insurance to their employees.

The legislation would have required the SBA to provide up to 20 matching grants to qualified SBDCs across the country. No more than two SBDCs (one per state) would be chosen from each of the SBA's ten regions. The grants would be more than $150,000, but less than $300,000 and would be consistent with the matching requirement under current law. In creating the materials for their grant programs, participating SBDCs would evaluate and incorporate relevant portions of existing health insurance options, including materials created by the non-partisan Healthcare Leadership Council, the Kaiser Family Foundation, and the National Association of Insurance Commissioners.

Enacting this legislation would be an important step in the right direction towards assisting small businesses as they work to strengthen themselves, remain competitive against larger businesses that are able to offer affordable health insurance, and in turn bolster the entire economy. This bill was included in the Small Business Reauthorization and Improvements Act of 2006, which was unanimously reported out of the Small Business Committee.

VIII. SMALL BUSINESS REGULATORY/LEGAL REFORM

The Committee has long worked to reduce the burden that Federal regulations exert on small businesses. Over the past 20 years, the number and complexity of Federal regulations have multiplied at an alarming rate. These regulations impose a much more significant impact on small businesses than larger businesses. A recent report prepared for the SBA's Office of Advocacy found that in 2004, the per-employee cost of Federal regulations for firms with fewer than 20 employees was $7,647. This is 44.8 percent more than the $5,282 per-employee cost faced by businesses with 500 or more workers.

The Committee believes that Congress needs to assist the nation's 25 million small businesses by stimulating innovation and creativity, lowering the cost of starting and running a business, and providing the tools and resources to grow and expand. In the 109th Congress, the Committee considered the following small business regulatory and legal reform proposals.

A. Small Business Regulatory Compliance Assistance

As noted, regulatory compliance is far more expensive for smaller companies than it is for larger ones. As a result, small business owners have found it increasingly difficult to meet their regulatory obligations while at the same time trying to successfully operate their businesses. In many cases, small business owners do not learn about their failure to comply with a regulation until it is too late and an inspector or auditor walks through the door. Small business owners need additional compliance assistance tools and resources to both understand and comply with complex regulatory actions.

To address this issue, in April 2005, Chair Snowe introduced the Small Business Compliance Assistance Enhancement Act (S. 769), a bill that would have clarified existing requirements under Federal law so that agencies publish useful regulatory compliance guides for small businesses. In 1996, the full Senate unanimously passed the Small Business Regulatory Enforcement Fairness Act (SBREFA), which made the Regulatory Flexibility Act more effective in curtailing the impact of regulations on small businesses. One of the SBREFA's most important provisions compels agencies to produce compliance assistance materials to help small businesses satisfy the requirements of agency regulations. Unfortunately, over the years, agencies have used numerous loopholes to avoid satisfying this requirement. Consequently, small businesses have been forced to figure out on their own how to comply with these regulations. This makes compliance that much more difficult to achieve, and therefore reduces the effectiveness of the regulations.

In 2002, GAO–02–536R found that agencies have ignored this requirement or failed miserably in their attempts to satisfy it. The GAO also found that SBREFA's language is unclear in some places about what is actually required. That is why Chair Snowe introduced the Small Business Compliance Assistance Enhancement Act, to close those loopholes and to make it clear that Congress was serious when it required that agencies produce quality compliance assistance materials to help small businesses understand how to deal with regulations

The Small Business Compliance Assistance Enhancement Act was drawn directly from the GAO recommendations and intended only to clarify an already existing legal requirement not to add anything new. It simply detailed how and when Federal agencies must publish small business compliance guides. The agency-produced guides would have suggested how to satisfy a regulation's requirements but would not have imposed further requirements or additional enforcement measures. Additionally, this bill does not in any way interfere or undercut an agency's ability to enforce their regulations to the full extent currently enjoyed.

As a freestanding bill, the Small Business Compliance Assistance Enhancement Act enjoyed the support of 15 of the 18 members of the Committee. The measure was also included in the Small Business Reauthorization and Improvements Act, which the Committee unanimously approved.

B. Targeted Regulatory Reform

The Committee has long fought to ensure that small businesses across the country are treated fairly by Federal government regulations. Unfortunately, in far too many cases, Federal agencies promulgate regulations without adequately addressing the economic impacts on small businesses. The Regulatory Flexibility Act (RFA) was enacted in 1980 and requires Federal government agencies to propose rules that keep the regulatory burden at a minimum on small businesses. The RFA requires agencies to analyze the economic impact of proposed regulations when there is likely to be a significant economic impact on a substantial number of small entities and to consider less burdensome alternatives.

Unfortunately, there remain a number of loopholes in the RFA that undermine its effectiveness in reducing these regulatory burdens. To close these loopholes, in July 2005, Chair Snowe introduced the Regulatory Flexibility Reform Act of 2005 (RFRA) (S. 1388). This measure would have ensured that Federal agencies conduct a complete analysis of the effects of Federal regulations, thereby providing small businesses, which represent more than 99 percent of all firms in America and create more than two-thirds of all net new jobs each year, with much needed regulatory relief.

This legislation would have required Federal agencies to consider comments provided by the Small Business Administration's Office of Advocacy. Codifying this necessary change would have ensured that agencies give the proper deference to the Office of Advocacy, and hence, to the comments and concerns of small businesses. This is a straightforward and simple reform that could have major benefits. The Committee believes that the SBA's Office of Advocacy does not receive the public attention it deserves.

In case after case it has been the last, best hope for small businesses, faced with burdensome, duplicative and nonsensical Federal regulations. The Office of Advocacy serves two critical roles: (1) it represents small businesses' interests before the Federal government in regulatory matters, and (2) it conducts valuable research to further our understanding of the importance of small businesses and their job-creating potential in our economy.

The Regulatory Flexibility Reform Act was a primary focus of a staff-led regulatory reform roundtable held in the Committee.

IX. SMALL BUSINESS TAX ISSUES

A. Small Business Expensing

In the 109th Congress, the Committee worked to maintain the ability of small businesses to deduct more of their costs in acquiring capital assets used in their business in the year of purchase. On July 28, 2005, Chair Snowe introduced the Small Business Expensing Permanency Act of 2005 (S. 1523), which would have made permanent the increased $100,000 (adjusted annually for inflation) expensing limit for small business investments. On February 15, 2006, Chair Snowe introduced S. 2287 reflecting the President's fiscal year 2007 budget proposal to double small business expensing to $200,000 and make it permanent.

Although neither bill was enacted into law, the legislation played a large role in the small business expensing extension that was included in the Tax Increase Prevention and Reconciliation Act of 2005 (H.R. 4297), which Congress passed and the President signed into law on May 17, 2006 (P.L. 109–222). H.R. 4297 extended for two years (through 2009) the increased small business expensing enacted into law by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108–27).

B. Taxable Year (S. 2462)

On March 28, 2006, Chair Snowe introduced the Small Business Tax Flexibility Act of 2006 (S. 2462) to provide small business start-ups with greater flexibility to choose the taxable year that best suits their business cycle. Until 1986, businesses could elect the taxable year-end that made the most economic sense for the business. As a result, Certified Professional Accountants (CPAs) were able to spread the preparation of their clients' financial audits and tax returns over an entire year. In 1986, Congress adopted legislation requiring partnerships and S corporations to adopt a December 31st year-end.

As a result, the problem of workload compression was exacerbated. Now in addition to preparation of individual tax returns, CPAs and other return preparers must squeeze in all their work for partnerships and S corporations between January 1 and April 15 of each year. As a consequence, small businesses find themselves competing for their tax preparers' time during filing season, often at a higher fee.

The Small Business Tax Flexibility Act would have allowed small partnerships and S Corporations to elect taxable years other than the calendar year (e.g., to elect a July 1–June 30 taxable year). The election could be made only by start-up small businesses, or partnerships and S corporations, with gross receipts of less than $5 million.

C. CASH METHOD OF ACCOUNTING (S. 543)

On March 7, 2005, Chair Snowe introduced S. 543 to expand the availability of the cash method of accounting for small businesses. Currently, the general rule under the tax code is that only those small businesses that generally earn less than $5 million in annual gross receipts are able to use the cash method of accounting in determining their federal income tax liability. Chair Snowe's bill would have increased this threshold to $10 million in annual gross receipts.

Chair Snowe's bill also would have permitted those taxpayers that have inventory to potentially qualify for the cash method of accounting. Currently, if a taxpayer otherwise satisfies the requirements for using the cash method of accounting but also has inventory in its business, the taxpayer cannot use the cash method. Chair Snowe's bill provides an exception for such taxpayers who have inventory by permitting them to account for those costs as if they are an incidental material supply, which is a standard that exists under current law.

D. SIMPLE CAFETERIA PLANS (S. 723)

On April 6, 2005, Chair Snowe introduced the SIMPLE Cafeteria Plan Act of 2005 (S. 723), to create a separate mechanism under which small businesses could enable their employees to purchase health insurance that they offer with tax-free dollars. Additionally, this bill would have modified current tax law provisions that limit the availability of certain employee benefits to the self-employed and employees of small businesses. Accordingly, this bill addressed specifically the access to health care issue for small business owners and their employees, and it would have improved substantially their capability of purchasing health insurance.

Currently, although many large companies are able to offer their employees cafeteria tax plans, small businesses may be unable to do so. The reason for this discrepancy is a result of "non-discrimination" rules in the tax code that essentially prevent smaller firms from qualifying for this benefit solely because they cannot satisfy numerical tests based solely on the number of their employees.

E. NEW MARKETS TAX CREDIT (S. 1800)

In 2000, Congress enacted the New Markets Tax Credit (NMTC) in order to increase the flow of private capital to low-income communities. The purpose of the NMTC is to stimulate investment in low-income communities where small businesses predominate by providing for a 39 percent tax credit to taxpayers who make equity investments in community development entities (CDEs). The CDEs, in turn, make investments in or provide loans to qualified businesses in low-income communities. Taxpayers who participate in these deals as investors will receive the tax credit over seven years (i.e., the tax credit is equal to five percent of their investments in each of the first three years and six percent of their investment for each of the remaining four years).

The NMTC program, as currently established, is temporary and was set to expire at the end of 2007. Thus, in order for the program to continue, it needed to be reauthorized. As a result, Chair Snowe introduced and Ranking Member Kerry cosponsored the New Markets Tax Credit Reauthorization Act (S. 1800). The proposed reauthorization legislation would have extended the program for five years and provided $17 billion in tax credit authority. Although the legislation was not enacted, it played a large role in the one-year extension, through December 31, 2008, that was enacted as part of H.R. 6111, the Tax Relief and Health Care Act of 2006 (P.L. 109–432).

F. Payroll Tax Deposit Agents (S. 3583)

Under current tax law, the IRS has no legal authority to assess the firms that process payroll taxes for business clients with the tax liability of its clients, oftentimes small businesses. Rather, the IRS must assess the liabilities to the taxpayers themselves. The reason for this apparent inequity is because under current law, the duty to withhold payroll taxes rests on the employer, which in this case is the accounting firm's client. Upon withholding payroll taxes from its employees, the employer is then deemed to hold these taxes in trust for the benefit of the United States. As such, if the employer fails to turn over those taxes to the government, it becomes liable as a responsible party for the unpaid payroll taxes.

On June 27, 2006, Chair Snowe introduced S. 3583 to prevent payroll agents, such as accounting firms, from defrauding innocent taxpayers in the future. The legislation would have amended Section 6672 of the Internal Revenue Code to include payroll withholding agents as "responsible parties." As a result, the IRS would be able to assess a 100 percent penalty against these persons. By assessing this penalty against the payroll agents, the IRS would not automatically re-assess the tax against the innocent third-party taxpayers who paid what they thought was their payroll tax obligation to the payroll agent. Moreover, if the IRS was to assess this Section 6672 penalty against the payroll agent, payroll agents could not file for federal bankruptcy protection in hopes of being relieved from this obligation.

Although the legislation was not enacted, Chair Snowe, during Senate Finance Committee consideration of the Telephone Excise Tax Repeal and Taxpayer Protection and Assistance Act of 2006 (S. 1321), proposed an amendment based on the bill during a markup. The amendment was included as part of the Chairman's modifications to the mark. The underlying bill including the Snowe amendment was subsequently passed out of the Finance Committee.

G. Qualified Intermediaries

On February 7, 2006, the Department of the Treasury and the IRS issued a notice of proposed rules for deferred like-kind exchanges with respect to funds held by qualified intermediaries

(QIs). Under IRS Section 1031 taxpayers are allowed to engage in like-kind exchanges of business property. QIs hold the proceeds of a sale of business property while the taxpayer locates replacement property. Generally, QIs generate revenue by charging a fee and retaining a portion of the interest earned on the exchange proceeds that they manage. The proposed regulations would treat the funds held by the QI as a loan from the exchanging taxpayer to the QI. This change has substantial tax implications for small business QIs.

Chair Snowe, joined by Ranking Member Kerry and Senators Isakson and Pryor, sent a letter to Treasury and the IRS expressing the Committee's concerns regarding the potentially devastating and negative impact that these proposed regulations would have on small businesses. Specifically, the letter requested a full and complete Regulatory Flexibility Act (RFA) analysis be conducted and legal analysis under the proposed regulations be reconsidered. In response to the Snowe-Kerry-Isakson-Pryor letter, the IRS has committed to conducting a new RFA.

H. Retail Depreciation

On August 3, 2006, Chair Snowe, Ranking Member Kerry, Senator Hutchison, and Senator Lincoln introduced the "Recovery Period for Depreciation of Certain Improvements to Retail Space" (S. 3806). This legislation would reduce from 39 to 15 years the depreciable life of improvements that are made to retail stores that are owned by a retailer. Under current law, only retailers that lease their property are allowed this accelerated depreciation, which means it excludes retailers that also own the property in which they operate. Critically, this proposal would conform the tax code to the realities that retailers face. Studies conducted by the Treasury Department, Congressional Research Service, and private economists have all found that the 39-year depreciation life for building improvements is far too long. Retailers generally remodel their stores every 5 to 7 years to reflect changes in customer base and compete with newer stores. Moreover, many improvements such as interior partitions, ceiling tiles, restroom accessories, and paint, may only last a few years before requiring replacement. Upon introduction, S. 3806 was referred to the Senate Finance Committee.

X. ACCESS TO CAPITAL AND MARKET ISSUES

A. Improving Small Businesses' Financial Health, and Making Small Businesses More Competitive With Larger Businesses

As she had during the 108th Congress, Chair Snowe cosponsored the Interest on Business Checking Act of 2005 (S. 1586) that Senator Hagel introduced on July 29, 2005. The bill would have assisted small businesses and small banks by permitting banks to offer interest on business checking accounts and allowing the Federal Reserve to pay interest on the bank reserves it holds. Senator Reed (D–RI) also cosponsored the bill, which was referred to the Senate Committee on Banking, Housing, and Urban Affairs.

Small businesses consistently report that the difference between success and failure often depends upon their ability to make the most efficient use of capital. Current Federal law prohibits banks from offering interest on business checking accounts. Because large businesses have large cash reserves, they can often circumvent these restrictions by structuring “sweep” arrangements with large banks that also sell or trade securities, in which the businesses are compensated for the short-term use of the cash reserves in the securities markets. This compensation can replace the prohibited interest, creating the same result. As a result, small businesses are placed at a competitive disadvantage.

These complicated “sweep” arrangements are expensive to establish, and small businesses have never been able to utilize them in the same manner as larger businesses. The prohibition on interest for business checking accounts has: (1) benefited larger banks and businesses at the expense of smaller banks and businesses; (2) discouraged small businesses from banking with local community banks, which cannot offer expensive “sweep” arrangements; and (3) prevented small businesses from earning interest on their deposits.

Congress enacted the prohibition on paying interest on business checking accounts during the Depression as part of the Banking Act of 1933 (the regulation was technically implemented by Board Regulation Q). Regulations outlawed paying interest on checking accounts because it was believed that it would lead to bank failures.

Although the Interest on Business Checking Act of 2005 was never considered by the full Senate during the 109th Congress, its provision authorizing the Federal Reserve to pay interest on bank reserves was included in the Financial Services Regulatory Relief Act of 2006. President Bush signed this legislation into law on October 13, 2006 (P.L. 109–351).

B. Assessing the Effects of the Sarbanes-Oxley Act of 2002 on Smaller Public Companies

In April 2006, Chair Snowe and Senator Enzi issued a GAO report that investigated the effects of the Sarbanes-Oxley Act (the Act) on small business. Senators Snowe and Enzi jointly requested the study in 2005 in response to small business concerns about new legislation. The final report, entitled Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies (GAO–06–361), found that the Act’s cost was disproportionately higher, as a percentage of revenues, for smaller public companies than it was for larger public companies. The study also included a list of regulatory actions the Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board could take to help small companies meet the Act’s compliance requirements.

In 2006, in addition to the GAO study, Chair Snowe sent two letters to the SEC concerning the Act. The first letter was sent on March 6, 2006, to SEC Chairman Christopher Cox. In this letter, Chair Snowe voiced her concerns about the recommendations of the Advisory Committee on Smaller Public Companies. She stressed that the SEC’s necessary, but ongoing review, of the Act put many small public companies in a state of regulatory limbo that left them unsure as to whether they would be required to comply with Section 404’s requirements on internal controls.

On May 18, 2006, Chair Snowe sent another letter to Chairman Cox about the effects of the Act on public offerings in the United States. Chair Snowe raised concerns that the Act's costly compliance requirements were motivating domestic companies to raise capital in London and other foreign capital markets where regulatory requirements were not as costly or as cumbersome.

Although strong support remains for the Act's investor protections, many small companies argued that some provisions, such as Section 404 on internal controls, are excessively vague, costly, and cumbersome, hurting small companies' profitability more than they protect investors. Between 2003 and 2006, anecdotal evidence suggested that the costs of implementing the Act helped to drive smaller public companies from the U.S. stock markets and discouraged small firms from taking their stocks public in the U.S. This restricted access to domestic capital could significantly reduce small firms' ability to create innovative new products, expand into new markets, and hire additional employees.

C. Helping Start-Up Small Businesses To Get Off the Ground

To meet the clear need of encouraging new "angel" investors to provide equity stakes in start-up small businesses, Chair Snowe and Ranking Member Kerry on September 27, 2006, introduced the Access to Capital for Entrepreneurs Act of 2006 (ACE Act) (S. 3950). The legislation was referred to the Senate Finance Committee.

Although opening a new business requires a substantial amount of initial resources, venture capital is no longer a realistic source of financing for the start-up phase of a company's development. Recent research shows that venture capitalists are now targeting their investments for larger businesses or for later in a business's development, leaving precious little seed money for new ventures. Today, venture capitalists invest an average of $7 million per deal, an amount that far exceeds the needs of a nascent small business. Moreover, in 2005, of the $21.7 billion invested by venture capitalists, just 3.3 percent was allocated to start-up small businesses.

With few venture capital dollars available for start-up small businesses, so-called "angel" investors (high-net-worth individuals who invest in and support start-up companies in their early stages of growth) are beginning to help fill this gap. In contrast to venture capitalists who invest an average of $7 million per deal, angel investors typically invest between $500,000 and $1 million, an amount more in concert with what start-up small businesses need. While 227,000 angel investors were active in 2005, there are a large untapped number of potential angel investors whose capital could significantly benefit small businesses. IRS statistics on wealth and income suggest that the number of potential angel investors to active angel investors is between 7 to 1 and 10 to 1.

The ACE Act provides qualified angel investors a 25 percent tax credit to offset up to $500,000 of investments per year. The bill limits the investment per small business to $250,000, so the investor would have to invest in at least two companies for the $500,000 tax credit. To qualify, angel investors must have an income of $200,000 over a two-year period, or a net worth of $1 million. The bill references the Small Business Act definitions to determine the size of enterprises that can be invested in for purposes of the credit.

Given that angel investments have already created thousands of new jobs, enacting the ACE Act could create thousands more. Angel investments helped create 198,000 new jobs in the United States in 2005, or four jobs per angel investment. Notably, this tracks only jobs created at the time of the angel investment, so 198,000 is likely the minimum number of jobs created by angels in 2005. In addition, the credit in the ACE Act is likely to be particularly effective because it is patterned after successful tax credits in 21 states: Arkansas, Arizona, Colorado, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, New York, North Dakota, Ohio, Oklahoma, South Carolina, Utah, West Virginia, and Wisconsin.

XI. SMALL BUSINESS PENSION REFORM

A. SMALL BUSINESS PENSIONS AND RETIREMENT SAVINGS ACT OF 2006 (S. 3715)

On June 24, 2006, Chair Snowe introduced the Small Business Pensions and Retirement Savings Act of 2006 (S. 3715). The bill would have amended the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA) to establish a hybrid tax-exempt retirement plan for small businesses with fewer than 500 employees. Also known as a combined, defined benefit/401(k) plan, or DBK plan, this type of retirement account would have allowed small employers to offer their employees the benefits of both defined benefit plans and qualified cash or deferred compensation arrangements. The bill sets forth benefit, contribution, vesting, and nondiscrimination requirements for DBK retirement plans. It also included provisions that would have allowed employers to make automatic contributions to DBK accounts on behalf of employee participants. The DBK language contained in S. 3715 was included in H.R. 4 the Pension Protection Act of 2006, which President Bush signed into law on August 17, 2006 (P.L. 109–280).

XII. HEARINGS OF THE 109TH CONGRESS, 1ST SESSION

A. FEBRUARY 17, 2005: HEARING—"THE PRESIDENT'S BUDGET REQUEST FOR THE SMALL BUSINESS ADMINISTRATION FOR FISCAL YEAR 2006"

On February 17, 2005, the Committee held a hearing to review and make recommendations to the administration's budget proposal for the SBA for fiscal year 2006. The hearing examined the critical role the SBA's lending and technical assistance programs have played in aiding America's small businesses during a time of economic recovery. With two-thirds of all new jobs created by small businesses, the SBA continues to prove its investment in America's economic future, having created or retained more than 6 million jobs since 1999.

The SBA's budget has been drastically reduced by 36 percent over the past five years. Moreover, the administration's proposed $592 million budget represented a 13 percent decrease from the agency's 2005 request and a 26 percent decrease from the 2004 request. Considering that the SBA's budget represents less than 3/

100ths of one percent of the total Federal budget, there should be no doubt these unwarranted cuts must be stopped, and instead investments made for future economic vitality. The hearing analyzed the SBA's ability to provide the same level of services under the administration's budget proposal for reduced funding.

B. April 20, 2005: Hearing—"Solving the Small Business Health Care Crisis: Alternatives for Lowering Costs and Covering the Uninsured"

On April 20, 2005, the Committee held a hearing, "Solving the Small Business Health Care Crisis: Alternatives for Lowering Costs and Covering the Uninsured." The Committee heard from several panels of distinguished witnesses, including Elaine L. Chao, Secretary, U.S. Department of Labor and Hector V. Barreto, then the Administrator of the SBA. The hearing focused on finding solutions to the small business health insurance crisis and providing small businesses with relief from escalating health care costs and limited coverage options. The number one issue facing small business today is the affordability and accessibility of health insurance. There are now 46.6 million uninsured Americans, approximately 60 percent of whom work for a small business or are dependent on someone who does. In addition, fewer and fewer of our Nation's smallest businesses are now offering health insurance as a workplace benefit. In 2006, the Kaiser Family Foundation reported that only 48 percent of our Nation's smallest businesses, with fewer than ten employees were able to offer health insurance as a workplace benefit. In stark contrast, health insurance is nearly universally provided by larger businesses with more than 200 employees.

The primary focus of the hearing was on the Small Business Health Fairness Act, introduced by Chair Snowe, which would have created National Association Health Plans, also known as Small Business Health Plans, to allow small businesses to pool their employees together, across state lines, to offer uniform health plans and receive the same bulk purchasing and administrative efficiencies already enjoyed by large employers and unions. The Committee discussed other pooling mechanisms and also ways of using the tax code as a mechanism for increasing small business access to health insurance—primarily through legislation that would enable more small business owners to offer a choice of "cafeteria plans" that would allow employees to purchase health insurance with tax-free dollars.

Other witnesses who testified at the hearing included Doug Newman, Newman Concrete Services in Hallowell, Maine; Al Mansell, President, National Association of Realtors; Tom Haynes, Executive Director, Coca-Cola Bottlers' Association; Len Nichols, Director, Health Policy Program, New America Foundation; John Morrison, Montana State Auditor, Commissioner for Insurance and Securities; and William Lindsay, Past Chair, National Small Business Association.

C. SEPTEMBER 19, 2005: FIELD HEARING—"MILITARY RESERVISTS AND SMALL BUSINESSES: SUPPORTING OUR MILITARY FAMILIES AND THEIR PATRIOTIC SMALL BUSINESS EMPLOYERS"

On September 19, 2005, Ranking Member Kerry chaired a field hearing entitled, "Military Reservists and Small Business: Supporting our Military Families and their Patriotic Small Business Employers." The hearing was held on the campus of Boston College in Chestnut Hill, Massachusetts. The hearing focused on the consequences of call-ups on civilian employers.

Witnesses for this hearing included: Douglas Holtz-Eakin, Director, Congressional Budget Office; Marshall Hanson, Legislative Director, Reserve Officers Association of the United States; Kenneth Forchielli, Chairman, Massachusetts Committee for the Employer Support of the Guard and Reserve; and Colonel Samuel Poulten, a reservist and small business employee.

D. SEPTEMBER 22, 2005: HEARING—"IMPACT OF THE HURRICANES KATRINA AND RITA ON SMALL BUSINESSES"

On September 22, 2005, Senator Snowe chaired a hearing on the impact of Hurricane Katrina on small business. This hearing provided the Committee the opportunity to receive: (1) a briefing on how the SBA had responded to the hurricane up to that point; (2) analysis regarding the SBA's immediate and long-term response plans; (3) feed-back on Senator Snowe's Hurricane Katrina small business legislation; and (4) input on how Congress and the SBA could further efforts to help the victims, particularly small businesses, of Hurricane Katrina.

Witnesses for this hearing included: SBA Administrator Hector Barreto; SBA Associate Administrator, Office of Disaster Assistance, Herb Mitchell; and a panel of small business owners located in the Gulf Coast disaster areas.

E. NOVEMBER 8, 2005: HEARING—"STRENGTHENING HURRICANE RECOVERY EFFORTS FOR SMALL BUSINESSES"

On November 8, 2005, Senator Snowe chaired a hearing on "Strengthening Hurricane Recovery Efforts for Small Businesses." This hearing gave the Committee the opportunity to: (1) receive an update from the SBA on the agency's response to the 2005 Gulf Coast hurricanes; (2) analyze SBA's disaster response over the two months since the hurricanes struck and examine the agency's long-term disaster response plans; (3) analyze the administration's policy regarding prime and subcontracting opportunities for small businesses; (4) discuss Senator Snowe's SBA Disaster Response bill, S. 1807; and (5) receive input on how Congress and the SBA can further efforts to help hurricane victims and small business contractors assisting in the recovery efforts.

Witnesses for this hearing included: Rep. Bennie Thompson of Mississippi; SBA Administrator Hector Barreto; Major General Ronald L. Johnson, Deputy Commander, U.S. Army Corps of Engineers; Mr. Gregory Rothwell, Chief Procurement Officer, Department of Homeland Security; and Mr. David E. Cooper, Director, Acquisition and Sourcing Management, Government Accountability office.

XIII. HEARINGS OF THE 109TH CONGRESS, 2ND SESSION

A. MARCH 1, 2006: HEARING—"THE NOMINATION OF ERIC THORSON TO BE THE SBA'S INSPECTOR GENERAL"

On June 28, 2005, President Bush nominated Eric Thorson to serve as the SBA's Inspector General. Mr. Thorson brings to the SBA substantial investigative experience, including more than a decade of experience in investigating and reforming major Federal contracting programs. Mr. Thorson is a graduate of the U.S. Air Force Academy and a Vietnam veteran. In the Executive Branch, he previously served as the Senior Advisor for Investigative Operations and Agency Planning at the Office of Personnel Management, as well as the Deputy Assistant Secretary and the Acting Assistant Secretary of the Air Force. In the Legislative Branch, Mr. Thorson served on both sides of the aisle as a Special Assistant to Senate Republican Leader Trent Lott, the Chief Investigator for the Senate Finance Committee and for the Senate Permanent Subcommittee on Investigations under Senator William Roth, and as a senior House committee staff member under Congressmen John Dingell and John Conyers.

The late Senator Roth profiled Mr. Thorson's professionalism, exemplary character and integrity, and strong dedication to public service in his landmark book, The Power to Destroy: How the IRS Became America's Most Powerful Agency, How Congress Is Taking Control, and What You Can Do to Protect Yourself Under the New Law. In addition, Mr. Thorson's efforts to investigate and root out racial discrimination at the IRS received an official commendation from the National Association for the Advancement of Colored People (NAACP). Mr. Thorson also received plaudits from Senators Grassley and Kyl, as well as numerous endorsements from law enforcement and investigative professionals. The Committee held a hearing concerning Mr. Thornton's nomination on March 1, 2006. During the hearing, the Committee examined the nominee's extensive experience, including his investigations of major Air Force contracts and his participation in the 1997 and 1998 oversight hearings of the Internal Revenue Service. The Committee unanimously and favorably reported the nomination by a vote of 16–0 on March 9, 2006. On March 31, 2006, the Senate unanimously confirmed Eric Thorson as the SBA Inspector General.

B. MARCH 9, 2006: HEARING—"THE PRESIDENT'S BUDGET REQUEST FOR THE SMALL BUSINESS ADMINISTRATION FOR FISCAL YEAR 2007"

On March 9, 2006, the Committee held a hearing to review and make recommendations to the SBA's budget proposal for fiscal year 2007. The hearing examined the agency's lending and technical assistance programs and the resources the SBA needed to respond to the 2005 Gulf Coast Hurricanes.

The administration proposed a budget for the SBA of $624 million for fiscal year 2007. Excluding the Disaster Loan program, this represented a 25 percent reduction in the agency's core loan and technical assistance programs over the last six years. Moreover this signified an astounding 37 percent reduction in SBA's overall budget since 2001. The hearing analyzed this steady decline in the SBA's budget and how it could jeopardize the agency's ability to provide small businesses with the ability to grow, flourish, and thrive.

C. April 26, 2006: Hearing—"Reauthorization of SBA Financing and Economic Development Programs"

On April 26, 2006, the Committee held a hearing, "Reauthorization of SBA Financing and Economic Development Programs." The Committee focused on the issue of the SBA's finance programs, which guaranteed over $24 billion in loans and venture capital for small businesses in 2005, the highest level of capital ever provided by the SBA. The Committee heard from lenders, small business stakeholders, and SBA representatives on the benefits of the SBA's credit programs. The Committee also considered how the reauthorization process could be used to improve the broad range of finance programs that play a vital role in assisting America's entrepreneurs to obtain operating and equity capital.

Additionally, the hearing examined the SBA's economic development programs and non-credit programs including the Small Business Development Centers (SBDCs), the SBA's Office of Women's Business Ownership programs, the National Women's Business Council, and the Veterans Business Development program. Witness testimony illustrated the highly effective role these entities play in the SBA's primary infrastructure.

D. June 21, 2006: Hearing—"The Nomination of Steven C. Preston To Be Administrator of the Small Business Administration"

President Bush on May 16, 2006, nominated Steven C. Preston to be SBA Administrator. The previous SBA Administrator, Hector Barreto, resigned on April 25, 2006, to become the National Chairman of The Latino Coalition, a Hispanic Advocacy organization. Mr. Barreto was the second longest serving Administrator in the SBA's history.

Between January 2004 and his nomination, Mr. Preston served as the Executive Vice President of the ServiceMaster Company, working on issues including information technology, corporate streamlining efforts, strategy, and acquisitions. From April 1997 to January 2004, he served as the company's Chief Financial Officer. Prior to his tenure at ServiceMaster, Mr. Preston was the Senior Vice President and Treasurer of First Data Corporation from September 1993 to March 1997, and an investment banker and Senior Vice President at Lehman Brothers from October 1985 to August 1993.

Mr. Preston received his undergraduate degree with highest distinction (Cum Laude) from Northwestern University in 1982 and an MBA from the University of Chicago. Currently, he is the recipient of various academic recognitions and scholarships, including the G.S. Parker Valedictorian Scholarship and the Phi Beta Kappa award.

Mr. Preston was active in numerous civic, professional, religious, and charitable organizations during his academic and professional career. These memberships include, the Hinsdale Hospital Foundation, Voices for Children, Operation Exodus Inner City, and Trinity Presbyterian Church. Mr. Preston has also served on the Advisory

Board of Concentric Equity Partners, a ServiceMaster sponsored private-equity firm and Tri-Artisan Capital Partners, a privately-held merchant bank. It should be noted that Concentric Equity Partners' chief mission is to assist entrepreneurs in building leading service and related businesses.

On June 21, 2006, the Committee held a confirmation hearing for Preston. Although the focus and purpose of the hearing was to examine the qualifications of the nominee, this hearing provided the Committee with a forum to discuss their primary small business initiatives and ideas for improving and revitalizing the SBA. Mr. Preston was questioned about the SBA's credit, non-credit, and equity capital programs, the administration's disaster response, and his commitment to ensuring small businesses a fair opportunity to access Federal government contracts and subcontracts.

Mr. Preston's nomination was unanimously reported out the Committee on June 29, 2006, and the full Senate confirmed the nomination by a voice vote on June 29, 2006.

E. July 12, 2006—Second Hearing on SBA Reauthorization Regarding "Strengthening Participation of Small Businesses in Federal Contracting and Innovation Research Programs"

On July 12, 2006, the Committee held a hearing, "Strengthening Participation of Small Businesses in Federal Contracting and Innovation Research Programs." During the hearing, the Committee focused on procurement issues, which too often present insurmountable obstacles 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 Small Business Innovation Research (SBIR) program and the Small Business Technology Transfer program (STTR), as well as the Technology Rural Outreach program and Federal and State Technology Partnership program (FAST), all of which would have been reauthorized under the Small Business Reauthorization and Improvements Act of 2006 (S. 3778). 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 hearing also served to review the SBA's government contracting and business development programs, which include the SBA's Prime Contracting and Subcontracting programs, HUBZone program, Section 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 S. 3778.

F. October 3, 2006: Hearing—"Challenges Facing Women-Owned Businesses in Government Contracting"

In October 2006, Senator George Allen held a field hearing at the George Mason University in Fairfax, Virginia, concerning the implementation of the Women-Owned Small Business Contracting program. The Committee heard testimony from Karen Hontz, the Assistant Administrator for Government Contracting at the SBA and Emily Murphy, the Chief Acquisition Officer of the General

Services Administration, as well as from representatives of women's small business groups and women-owned small businesses. The focus of the hearing concerned the multi-year delays in implementing the Women Owned Business (WOSB) set-asides authorized by the Congress in 2000 for select industries where women have traditionally faced barriers to fair participation in Federal contracting. The Committee received assurances that the SBA intends to comply with the WOSB statute. In addition, the Committee received assurances that WOSB status may be used as a primary evaluation factor in awarding GSA Federal Supply Schedule task order contracts under the existing GSA policy.

G. DECEMBER 6, 2006: HEARING—"THE NOMINATION OF JOVITA CARRANZA TO BE DEPUTY ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION"

President Bush on September 7, 2006 nominated Jovita Carranza to be Deputy Administrator of the SBA. The previous SBA Deputy Administrator, Melanie Sabelhaus, resigned on June 15, 2005, to return to the private sector.

Prior to her nomination, Ms. Carranza spent her entire professional career with United Parcel Service (UPS), working her way from a part-time, night-shift clerk in Los Angeles in 1976 to regional manager for international relations in Miami in 2000. Throughout her UPS career, Ms. Carranza was steadily promoted. She served as a workforce planning manager (1987), human resources manager (1990), district shipping hub manager (1991–1996), and manager of the Americas region (1999).

Ms. Carranza served as a board member for the National Center for Family Literacy and the United Way. She is also active in other organizations that support various children's and urban causes. For her accomplishments throughout her career, Ms. Carranza was named Hispanic Business Magazine's "Woman of the Year" in 2004.

Ms. Carranza received her MBA from the University of Miami. She also has received executive, management, and financial training at the INSEAD Business School in Paris, France, the University of Michigan, and the University of Chicago.

On December 6, 2006, the Committee held a confirmation hearing for Ms. Carranza. Prior to the hearing, critics of Ms. Carranza's nomination cited her lack of small business experience. However, during the hearing, Ms. Carranza cited small businesses as one of the largest customer bases for UPS. Ms. Carranza stated that she is well aware of the needs of small businesses, and that throughout her career, she has been active in helping to address the requirements that enable small businesses to remain competitive in the global marketplace. These initiatives include providing financing to small businesses, consulting services on ways to reduce shipping costs, and assistance with disaster contingency plans.

Ms. Carranza's nomination was unanimously reported out of the Committee on December 6, 2006, and the full Senate confirmed the nomination by unanimous consent on December 9, 2006.

XIV. SMALL BUSINESS COMMITTEE STAFF DELEGATIONS

A. Staff Trip to Gulf Coast To Tour Hurricane-Ravaged Areas (October 2005)

In October 2005, the Committee led a bipartisan staff delegation to Baton Rouge, Louisiana, and Fort Worth, Texas, to observe and analyze SBA's response to Hurricanes Katrina and Rita. The SBA played a vital role in assisting individuals and small businesses victimized by Hurricanes Katrina and Rita and was responding to an unprecedented natural disaster. However, two months after Hurricane Katrina hit, only 12 percent of SBA's disaster loans had been processed and less than 2 percent of them had been approved. The goal of the staff delegation was to determine the reasons for SBA's delays and to provide recommendations to improve the agency's disaster response. Committee staff provided the following findings and recommendations following the Gulf Coast trip.

(1) The SBA should hire 1,000 additional employees for the Fort Worth processing center, including business loan officers and data entry staff, to meet the current demand for loan processing. A disaster application may sit inactive for 8–10 days before being typed into the computer, and thus it is delayed before loan processing even begins.

(2) The SBA should hire 450 additional Loss Verification Officers to analyze the damages of homes and businesses in Louisiana and Mississippi.

(3) The SBA should simplify credit tests for disaster loan applications to make them less burdensome. By law, the interest rates on a home, business or economic injury loan depend on whether each applicant has credit available elsewhere. The SBA has determined that over 97 percent of disaster loan applicants do not have credit available elsewhere.

(4) Allow SBDCs to apply for additional non-matching funds such as "portability grants" that are larger than $100,000.

(5) The SBA should hire at least five additional full-time Procurement Center Representatives and five additional full-time Commercial Market Representatives, as well as leverage the personnel and expertise of Procurement Technical Assistance Centers (PTACs) to help small businesses with prime and subcontracting opportunities.

(6) The SBA and its resource partners should increase one-on-one business counseling and services to small businesses affected by a disaster.

(7) The SBA should enhance its disaster loan computer system, the Disaster Credit Management System (DCMS), to make it more efficient and effective for future disasters, and expedite the implementation of an on-line loan application system.

(8) The SBA should improve notification to the public of application deadline changes.

B. Staff Trip to Gulf Coast To Tour Hurricane-Ravaged Areas (October 2006)

On October 23 and 24, 2006, the Congressional delegation's participants had the opportunity to meet with small businesses located in New Orleans East, the French Quarter, Magazine Street, St.

Bernard Parish, and Lake Charles, Louisiana. The interactions with these small businesses led to extremely informative discussions. Staff was also able to participate in two roundtable discussions with community business leaders, regional SBA staff, and Federal, State, and local government representatives, among others.

All the businesses that the staff visited shared compelling stories, and several central themes emerged from the roundtable conversations, including: (1) anger and dissatisfaction with the Federal government's response to the 2005 hurricanes; and (2) the rising costs of insurance, rent, and doing business in a post-Katrina environment. Additionally, many of the affected businesses discussed specific issues with the SBA including, borrower-SBA communication, lost documentation, bridge loans, and duplication of benefits.

On Wednesday, October 25, 2006, the delegation traveled to Fort Worth, Texas, to visit the SBA Processing Disaster Center. On this occasion, staff had the opportunity to tour the SBA's Processing Disaster Center and see a demonstration of the application process for disaster loan borrowers. Staff also was able to see first hand the agency's implementation of the Accelerated Disaster Response Initiative.

SBA staff and the delegation also engaged in a question-and-answer session to go over several concerns and issues observed by Committee staff during tours and roundtable discussions held in Louisiana. Staff sent a follow-up letter to the agency with recommendations on how to deal with some of these issues, including loan modifications and clarification regarding flood insurance requirements.

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