

108TH CONGRESS }
1st Session

SENATE

{ REPORT
108-1

SUMMARY OF LEGISLATIVE
AND OVERSIGHT ACTIVITIES
DURING THE 107TH CONGRESS

R E P O R T

OF THE

COMMITTEE ON
SMALL BUSINESS & ENTREPRENEURSHIP
UNITED STATES SENATE



JANUARY 9, 2003.—Ordered to be printed

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COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

ONE HUNDRED SEVENTH CONGRESS

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CHRISTOPHER S. BOND, Missouri, *Ranking Member**

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PATRICIA R. FORBES, *Democratic Staff Director and Chief Counsel*
EMILIA DiSANTO, *Republican Staff Director*

*As of June 6, 2001, Senator James Jeffords of Vermont moved from the Republican Party to become an Independent and caucus with the Democrats. With this change, the Democrats gained control of the Senate and Senator John F. Kerry became the Chairman of the Committee and Senator Christopher S. Bond became its Ranking Member.

**Senator Paul D. Wellstone was a member of the United States Senate from the State of Minnesota from January 3, 1991, through the date of his death on October 25, 2002. May he rest in peace.

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

R E P O R T

OVERVIEW

The 107th Congress was one of great changes, both in Congress and for the Nation. One major change in the Senate during the 107th Congress occurred when Senator Jim Jeffords of Vermont switched his party affiliation on June 5, 2001, from Republican to Independent and caucused with the Democrats. This changed the shared majority in the Senate to Democratic control and on June 29, 2001, Democrats took control of committees. With that change, Senator John F. Kerry, Ranking Member of the Committee on Small Business, became Chairman. One of Chairman Kerry's first acts as Chairman was to change the name of the Committee to the Committee on Small Business and Entrepreneurship, a title that more fully represents the spectrum of small businesses and allows the Committee to focus some of its efforts on the entrepreneurial spirit that fuels the start up of fast-growing small businesses.

A great change for small businesses came with the challenges they faced in the uncertain economy. After years of economic increase, the robust economy was beginning to slow down. After eight years of steady unemployment declines, rates were beginning to increase. Economists expected the gross domestic product, which had also been on the rise, to be lackluster in the coming years. For the first time since November of 1998, the Federal Reserve Board cut interest rates in an attempt to soften the predicted economic slump. The Fed would go on to cut rates to 1.25 percent, a 40-year low. And while consumer confidence remained high and inflation low, bankruptcies rose 12.8 percent in 2001 and the markets weakened. The NASDAQ fell 21 percent in 2001, and 32 percent in 2002. To help small businesses, the Committee worked to bolster Federal small business contracting, to strengthen SBA loan programs, to increase and improve educational and development re-

sources, to ease regulatory burdens and to promote responsible tax initiatives.

The events of September 11, 2001, marked a much greater change for our Nation, a tragedy that affected all Americans both personally and economically. In the months following the attacks, unemployment rose further, economic growth continued to decline, and many banks tightened their lending to small business. These changes affected millions of small businesses, causing many to go out of business and many more to experience severe financial hardship. The Senate Committee on Small Business and Entrepreneurship responded quickly to help these small businesses, and the Congress enacted legislation geared toward assisting small businesses affected by the terrorist attacks. This difficult economic situation for small businesses was exacerbated by Bush Administration attempts to impose severe cuts in funding for important SBA loan programs, which the Committee fought.

Another way our nation changed as a result of the events of September 11, 2001, was to direct more of its focus and resources to homeland security and the fight against terrorism. Small businesses contribute greatly to homeland security efforts, and during the 107th Congress the Committee helped those businesses by promoting procurement among Federal agencies, as well as ensuring that Federal agencies were complying with procurement directives. The Committee held the Small Business Homeland Security Expo to spotlight some of those businesses whose purpose is to protect our nation. The Committee also worked to stop contract bundling among Federal agencies to ensure that more small businesses would have access to these contracts, many of which are crucial to homeland security.

In the 1990s, the number of small businesses involved with technology increased dramatically. During the 107th Congress, the Committee focused on a number of technology issues including reauthorizing and implementing the Small Business Innovation Research (SBIR) program and the Small Business Technology Transfer (STTR) program in which small businesses are involved with research and development for Federal agencies.

The Committee also directed its attention to energy and environmental issues that affect small businesses every day. In the beginning of the 107th Congress these problems were highlighted because the cost of energy and fuel increased dramatically, causing small businesses' costs to increase as well as their access to energy to diminish. Toward the end of the Congress, many small businesses were experiencing difficulty due to severe drought in their areas. The Committee examined these problems, held hearings and Roundtables on the issues, and proposed legislation to help small businesses through these difficult times.

RESPONSE TO TERRORIST ATTACKS OF SEPTEMBER 11, 2001

Assessment Meetings

Shortly after the terrorist attacks of 9/11, Chairman Kerry reached out to a wide array of small business trade associations, the SBA's lending and counseling partners, and many small businesses to assess the magnitude and scope of their injuries. The meetings helped the Committee to identify the needs of small busi-

nesses and what Congress could do to mitigate losses, closures, bankruptcies and layoffs.

Among those most severely affected were the owners of small businesses located in airports and those associated with the tourism and hospitality industry. Those sectors were hit especially hard because of the closure of the airports, the drop in airline passengers, and the public's general reluctance to travel post 9/11.

The Committee also met with Federal government officials charged with assisting small businesses or doing business with them through Federal procurement. In addition, the Committee sought the views of government contractors and subcontractors about future Federal procurement opportunities and their views regarding the upcoming increase in Federal spending, especially on defense. These meetings and communications resulted in several bills, including S. 1499, the American Small Business Emergency Relief and Recovery Act.

Legislation

The main piece of small business legislation developed in response to the terrorist attacks was S. 1499, the American Small Business Emergency Relief and Recovery Act of 2001. Chairman Kerry introduced this bill on October 4, 2001, with Ranking Member Bond. The bill, with 62 cosponsors, had broad bi-partisan support.

The purpose of the small business legislation, S. 1499, was to strengthen and expand access to the Small Business Administration's loans and management counseling in order to help small businesses meet their payments on existing debts, finance their businesses, maintain and create jobs, and thereby provide some stability for the economy. In addition, the bill addressed the shrinking availability of credit and venture capital to small businesses through traditional lenders and investors that started before 9/11 but was exacerbated by the attacks. Finally, this bill included provisions to aid Federal contractors facing increased costs when trying to access Federal facilities to work on existing contracts. In spite of the strong bi-partisan support for the comprehensive relief legislation, politics obstructed passage of this bill in a timely and meaningful way.

Ultimately, Chairman Kerry, working with Senators Byrd and Hollings, was successful in enacting and funding key provisions of the bill as part of emergency spending and defense legislation, H.R. 3338, the Department of Defense Appropriations Act of 2002 and the Emergency Supplemental Act of 2002, which became PL 107-177. Those key provisions (1) authorized the SBA to make 7(a) emergency loans for small business victims of 9/11th, (2) deferred payments of principle and interest, with no accrual, on disaster loans for two years from the date of issuance for small businesses located in the officially declared disaster areas in and surrounding New York, Virginia and Pennsylvania, (3) reduced for one year 7(a) lending guarantee fees from .5 to .25 percent to reduce the cost of making the loans and to provide an incentive for lenders to make loans to effected small businesses, and (4) appropriated \$75 million in funding to pay for the cost of guaranteeing about \$4.5 billion in 7(a) STAR Loans through the economic injury disaster loans and 7(a) supplemental disaster loans, known as STAR Loans. Almost

17,000 small businesses secured low-cost working capital loans, pumping \$3.95 billion into the economy.

HOMELAND SECURITY

The roles of small business and the Small Business Administration are as important to homeland security and national defense today as they were 50 years ago when the Agency was created. Small businesses were critical to winning World War II, helping the U.S. quickly build up mass production and diversify the number and location of manufacturers so that our country's soldiers, and those of our allies, were well supplied and not dependent on the fate of one plant. In addition to the continuing need for the SBA to foster the startup and growth of small businesses so that the United States has diverse industries to fight the war on terror, small businesses are critical to researching and developing cutting-edge technologies for our homeland security. We need technologies that enable us to identify and catch terrorists before they board a flight, protect civilians from anthrax or small pox, and provide our military with the best equipment possible.

The country has two main Federal small business technology programs, the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) program, through which the government can easily identify small businesses for these purposes. The Committee has been active in fostering these programs, facilitating the collaborations they promote and raising general public awareness of the contributions and capabilities SBIR and STTR companies make.

Monitoring Agencies for Use of Small Business in Anti-Terrorism Technologies

On November 9, 2001, Chairman Kerry, joined by Ranking Member Bond, sent a letter to SBA Administrator Hector Barreto regarding the SBIR and STTR programs. They requested a survey of the participating SBIR and STTR agencies in order to assess the role of small businesses in meeting the anti-terrorism mission through these innovation-driven programs.

The purpose was to (1) find out which agencies were already using the programs as a resource, (2) identify the most significant projects, and (3) have the SBA actively encourage participating agencies to solicit topics through the SBIR and STTR programs for Federal anti-terrorism projects. The Committee found that the SBIR and STTR program managers had long been tapping into the small businesses to meet agency missions and recognized their value, but among higher-level officials at the agencies, including at the SBA, there was very little focus on using this valuable resource.

The Small Business Homeland Security Expo

Reinforcing the findings from the above-mentioned survey, small businesses and small business trade associations contacted the Committee complaining that the Federal government was investing billions in homeland security but contracts were not being awarded to small businesses.

To help address this issue, Chairman Kerry and Ranking Member Bond co-hosted the Small Business Homeland Security Expo on

July 10, 2002. The event was an exposition for small businesses to educate members of Congress about their products to help fight and win the war against terrorism. The Expo had nearly 50 small businesses participating, with hundreds more appearing in a procurement booklet containing all of the small businesses nominated by each member of Congress. The booklet is a resource for procurement officers in government and the private sector to identify small business in the homeland security field. White House Homeland Security Advisor Tom Ridge, SBA Administrator Hector Barreto and numerous Federal procurement personnel attended the event. Total attendance was estimated at more than 1,000 people.

In the wake of 9/11 and the ramping up of the nation's homeland security, procurement opportunities in the Federal government and in the private sector were increasing quickly. The event highlighted the significant role small businesses can play in supporting the country's war on terror.

On the eve of the Expo, the Senate passed S.Res.264 expressing the sense of the Senate that small business participation is vital to the defense of our nation, and that Federal, State, and local governments should aggressively seek out and purchase innovative technologies and services from American small businesses to help in homeland defense and the fight against terrorism.

Small Business Procurement Protections in the Department of Homeland Security

On July 18, 2002, Chairman Kerry sent a letter, co-signed by Ranking Member Bond, to Senator Lieberman, Chairman of the Senate Committee on Governmental Affairs. The letter was a response to Senator Lieberman's request for feedback from Senate committee chairmen on the Bush Administration's proposal to create a Department of Homeland Security. Chairman Kerry's letter raised serious concerns with the procurement provisions of the proposal, questioning why the proposed Department needed a blanket waiver from all procurement regulations, including those intended to strengthen the small business supply base.

In the letter, Chairman Kerry argued that such a waiver was unprecedented and would harm small-business participation in Federal procurement opportunities, and by extension, the fight against terrorism, as small-business participation is essential in this battle. Finally, the letter stressed that the Bush proposal would likely have the opposite effect as intended and result in delays in acquisitions and increase the potential for fraud.

Chairman Kerry was able to include language in the Homeland Security Department bill that eliminated the blanket waiver and substituted a one-year procurement waiver.

OVERSIGHT

Small business is the engine of economic growth in our Nation. However, many small businesses need assistance to gain fair treatment by Federal government agencies, access to capital, and better access to government contracts. Under the rules of the United States Senate, the Senate Small Business and Entrepreneurship Committee has jurisdiction over matters related to the Small Business Administration (SBA). In order to carry out these responsibilities, the Committee must investigate all problems related to small

business enterprises and their dealings with the Federal Government.

Sale of Disaster Loans on the Secondary Market

On December 19, 2001, Chairman Kerry joined with Senators Dorgan, Conrad, Wellstone, Congressman Pomeroy, and Delegate Donna Christensen in sending a letter to SBA Administrator Hector Barreto requesting that he make changes to the SBA's Asset Sales Program with respect to disaster victims. This became necessary because of complaints from borrowers about the inflexibility and sometimes ruthlessness of loan collection companies that had purchased their loans from the SBA, such as when borrowers requested a substitute or release of collateral or subordination of a lien position. There were attempts throughout the Congress—in the Senate and the House of Representatives—to enact legislation to eliminate or put a moratorium on the sale of disaster loans in the SBA's asset sale program, but they were routinely blocked. As an alternative, the letter urged the SBA to buy back problematic loans and to substitute these loans with other SBA loans. In the response of January 29, 2002, the SBA said it was not a feasible option to buy back problematic loans and the Agency offered no alternative.

Implementation of the New Markets Venture Capital Program

On March 9, 2001, Senator Kerry sent a letter to Acting SBA Administrator John Whitmore requesting a detailed schedule of how the Agency planned to implement the New Markets Venture Capital (NMVC) program before the funding expired on September 30th, 2001. While the SBA efficiently developed regulations under the Clinton Administration, their effective date, along with that of many other published regulations, was postponed for 60 days by direction of the White House on January 20, 2001.

The firms and organizations specializing in community development venture capital were very concerned about the Administration's series of delays in implementing this program, particularly since the funding was scheduled to lapse in September, 2001, and the Administration had eliminated all funding for the program in FY 2002, demonstrating a lack of support for the program. The delays left applicants an unreasonably short time frame of two months, instead of the maximum two years allowed by statute, to raise the required \$6.5 million in matching funds to qualify. Ultimately, the delays did have an adverse impact on the approval of applicants and their ability to raise capital, which was a deterrent for attracting an adequate number of applicants, triggering the need for Congress to intervene through legislation, letters, and meetings. On June 6, 2001, Chairman Kerry, Senator Snowe, and 14 other senators sent a letter to Chairman Hollings and Ranking Member Gregg of the Appropriations Subcommittee on Commerce, Justice and State requesting a technical change to the FY 2001 appropriations for the New Markets Venture Capital (NMVC) program.

In order to allow the SBA to implement the program according to Congressional intent, thereby giving applicants a more reasonable amount of time to raise the matching funds, the Senators requested that the FY 2001 appropriations for the grant and debenture funds be changed to conform with the authorizing statute, PL

106–554, allowing the funds to remain available for obligation through 2006. The technical change was budget neutral and the Senators' request was successfully enacted as part of the 2001 Supplemental Appropriations Act.

Extending the New Markets Venture Capital Fundraising Deadline for Applicants

On July 27, 2001, Chairman Kerry and Congressman Don Manzullo, Chairman of the House Committee on Small Business, sent a letter to Administrator Hector V. Barreto requesting prompt implementation of the technical change enacted as part of the 2001 above-mentioned Supplemental Appropriations Act. This was necessary because, despite the enactment of the appropriations change, the SBA had not given NMVC applicants more time to raise the matching funds and would not offer a second round of funding until the first round of applicants met their fundraising deadlines. On August 1, 2001, the SBA extended the time NMVCs had to raise matching funds until January 9, 2002, giving NMVCs as much as six months.

Although the deadline for NMVC applicants to raise matching capital was extended, the aggregate six months provided was inadequate and not close to the maximum two years allowed by statute and intended by Congress. The fundraising difficulties were compounded by the economic downturn of the 9/11 terrorist attacks, and complications with the implementation of the complementary New Markets Venture Capital Tax credit, an incentive for investors.

Once again, Chairman Kerry requested through meetings with the SBA that it use its statutory authority to revise the deadline so that NMVC applicants had up to the statutory two years to raise the money, but the Agency refused. Chairman Kerry then proposed an amendment to S. 1196, the Small Business Investment Company Amendments Act of 2001, to give NMVC companies the full two years and offer a second round of funding in the Spring of 2002. In the end, the Committee compromised with the Agency by agreeing to take the provisions out of the legislation in exchange for an announcement from the Administration to extend the deadline to December 31, 2002, and offer a second round in the fall of 2002. As of early January 2003, the Committee was still waiting for the Administration to offer the second round of NMVC funding.

The New Markets Venture Capital Tax Credit

On May 23, 2002, Chairman Kerry and Senator Snowe sent a letter to Finance Committee Chairman Max Baucus and Ranking Minority Member Charles Grassley asking for their support in amending the New Markets Tax Credit (IRC 45D) so that New Markets Venture Capital companies receive the same favorable tax treatment as certified Community Development Financial Institutions (CDFIs) and Specialized Small Business Investment Companies (SSBICs). Currently the New Markets Venture Capital programs do not work as effectively as they were intended to, partly because the tax credit program does not expressly apply to the New Markets venture capital companies. In order to be eligible to apply for a tax credit allocation, the applicant must first be certified as a Community Development Entity (CDE). CDFIs and SSBICs are

automatically certified, but NMVC companies are not and must go through a lengthy application process for certification, virtually duplicating a rigorous review by the SBA. Excluding NMVC companies have created an uneven playing field that makes it harder for them to attract investors, makes the process more bureaucratic, and goes against the intentions of Congress. To rectify this, the Senators recommended that the statute be changed to automatically certify NMVC companies as community development entities. The Finance Committee agreed to include the change as part of a comprehensive small business tax package when it acts on one. The Committee on Joint Tax estimated that there would be no reverse effect.

Compliance with Small Business Research & Development Programs

In the 107th Congress, the Committee on Small Business and Entrepreneurship worked to preserve and increase the role of small businesses in Federal research and development, mainly through the Small Business Innovation Research (SBIR) program and the Small Business Technology Transfer (STTR) program. Under the Small Business Act (15 U.S.C. 638(f)(1)(C)), all Federal agencies with extramural research and development (R&D) budgets of \$100 million or more must participate in the program and therefore reserve at least 2.5 percent of their extramural R&D annual budget for projects with small businesses. For agencies with extramural research and development budgets of \$1 billion or more, they must participate in the Small Business Innovation Research program and therefore reserve at least .15 percent of their extramural R&D annual budget for projects with small businesses. The Committee was successful in 2001 and 2002 in (1) keeping all agencies participating and in (2) keeping the programs operating under continuing resolutions.

Growing Gap Between Resources and Responsibilities

On June 11, 2001, Chairman Kerry, with Ranking Member Bond, sent a letter to SBA's Acting Administrator John Whitmore regarding the Agency's Office of Technology, which administers the STTR and SBIR programs. The purpose of the letter was to get historical information to document the dwindling resources in funds and staffing in the department that runs the SBIR and STTR programs. The results showed that from fiscal years 1983–2000, the number of awards had more than doubled from \$502 million to \$1.2 billion, the budget had been cut just about in half—from \$907,000 to \$530,000—and the staff has been reduced from ten to six. That number has since dropped to five, even though the research is needed more than ever for our national defense and homeland security.

Publication and Finalization of the Policy Directives for the Small Business Innovation Research Program's Reauthorization of the 106th Congress

The Committee monitored the development of these regulations and their publication. In spite of great delays from participating SBIR agencies and the Office of Management and Budget in drafting the directives, Incoming Chairman Kerry and Ranking Member

Bond sent a letter to SBA's acting Administrator John Whitmore on June 15, 2001, requesting an extension of the comment period for at least 30 days on policy directives for the SBIR program because the small business community did not feel it had adequate time to respond and that the issues, such as intellectual/data rights, were so important more input was imperative. The Agency agreed and extended the comment period from June 18, 2001, to July 23, 2001.

The Department of Defense's Missile Defense Agency Compliance with the Small Business Innovation Research Program

On January 29, 2002, Chairman Kerry and Ranking Member Bond sent a letter to Secretary of Defense Donald Rumsfeld regarding an amendment stealthfully included in the FY 2002 Department of Defense Appropriations Act which attempted to exempt one of the DoD's agencies, the Missile Defense Agency (formerly the Ballistic Missile Defense Organization), from setting aside 2.5 percent of its extramural R&D funds for contracts with small business concerns through the SBIR program. Instead the change required MDA to set aside only a minimum of \$75 million, which amounted to an estimated \$74 million less for small business R&D firms through the SBIR program. The Committee wrote to inform DoD that it was still legally required to reserve 2.5 percent of its entire extramural R&D budget for small business concerns. If it reduced MDA's reserve below the 2.5 percent, it would therefore have to explain from which other agencies within the Department it would make up the difference. Though the response was extremely late, the Committee was pleased that the DoD agreed to comply with the overall percentage and apply it to each of its agencies.

Implementation of Disaster Loans for 9/11 Small Business Victims

On January 16, 2002, Chairman Kerry and Ranking Member Bond sent a letter to SBA Administrator Hector Barreto regarding 7(a) Disaster Loans. The Senators requested a detailed description of how and when the Agency would implement the funding and authority for 7(a) 9/11 disaster loans, also known as STAR Loans, by January 22, 2002. Prompt implementation was critical because these loans could be delivered through the SBA's 5,000 private-sector 7(a) lending partners, which were located throughout every state and would cost five times less than economic injury disaster loans proposed by the Administration. Originally this provision was introduced as part of S. 1499, the Small Business Relief and Recovery Act of 2001, but the Administration opposed the loans and blocked the legislation from passing the Senate for five months. Ultimately, the Committee succeeded in getting the provision authorized and funded as part of H.R. 3338/PL 107-117, the FY 2002 Department of Defense Appropriations Act. The rest of S. 1499, with changes agreed upon with the Administration, passed the full Senate by unanimous consent on March 22, 2002.

Extending the Application Deadline for Economic Injury Disaster Loans

On May 24, 2002, Chairman Kerry sent a letter to SBA Administrator Hector Barreto regarding the application deadline for eco-

nomic injury disaster loans related to 9/11 victims outside of New York, Virginia, and Pennsylvania. On May 22nd, the deadline had expired, limiting to six months the application period despite the Administration's general practice of allowing small business disaster victims nine months to apply. The letter urged Administrator Barreto to extend the filing deadline until September 30th, giving 9/11 small business victims across the country the same amount of time to apply as disaster victims in New York, Virginia, and Pennsylvania and the surrounding counties. Administrator Barreto replied on May 31, 2002 that the Administration would not extend the deadline because, among other reasons, there was no demand for such loans. The SBA's own weekly reports contradicted that conclusion and showed that applications were being submitted from small businesses in all but five states. Chairman Kerry continued to push for an extension through discussions and meetings with the SBA and the OMB. Finally, the SBA agreed on June 17 to extend the application period for 9/11 victims throughout the nation until September 30, 2002. Because of the extension, about 1,600 more small businesses were able to borrow \$217 million to get their businesses operating again.

Implementation of the National Veterans Business Development Corporation

The National Veterans Business Development Corporation was authorized on August 17, 1999, as part of PL 106-50, and is considered by veterans service organizations key to helping veterans, particularly service-disabled veterans, start their own businesses, run them more successfully, and compete for Federal contracts. This translates into greater opportunities for financial security and self-sufficiency. Senator Kerry worked hard to pass PL 106-50 in the Senate, which included his bill to provide disaster loans to reservists who own small businesses and are called to active duty. Both he and Ranking Member Bond consider implementation of the Corporation very important and have played a continual role in oversight of its development. In this Congress, Chairman Kerry and Senator Cleland put forth an amendment, No. 3669, to H.R. 4775, the Post 9/11 Supplemental Appropriations bill, to permit the Corporation to retain its FY 2002 appropriation of \$4 million until expended. This amendment is critical to the success of the Corporation as it works toward self-funding. The amendment was maintained in conference and enacted.

General Accounting Office Study of the National Veterans Business Development Corporation

As part of PL 106-50, the Corporation's authorizing legislation, GAO is to conduct a study. Chairman Kerry and House Small Business Committee Chairman Don Manzullo of Illinois have been working with the GAO through periodic meetings to shape the study and monitor the Corporation's progress.

Merchant Banking Regulations and the Small Business Investment Company Program

Chairman Kerry successfully led congressional efforts to stop the enactment of the Federal Reserve's proposed rule governing capital treatment for merchant banking activities that would have nega-

tively affected the SBA's venture capital program, the Small Business Investment Company Program (SBIC). The proposed Federal Reserve rule would have forced financial institutions that either own or invest in an SBIC to deduct 50 percent of the total value of their investment from their regulatory capital. The increased deductions were likely to adversely impact the success of the SBIC program by discouraging financial institutions from investing in SBICs. This in turn would have decreased the availability of equity capital for small business. During the 106th Congress, Senator Kerry wrote a letter to Federal Reserve Chairman Greenspan that was also signed by Senate Small Business Committee Chairman Bond, House Small Business Committee Chairman Talent, and Ranking Member Velazquez, asking that the provision that affects SBICs be dropped. In January 2001, their efforts proved unsuccessful when the Federal Reserve proposed new rules governing regulatory capital treatment for equity investments that exempted SBICs from any new capital deduction requirements.

Contract Bundling by Defense Agencies

On March 5, 2001, Ranking Member Kerry and Chairman Bond sent a letter to Acting Secretary of the Air Force Lawrence Delany inquiring about the Air Force's Flexible Acquisition and Sustainment Tool (FAST), which is a \$7.4 billion bundled contract. The letter requested detailed information about the manner in which the Air Force intended to monitor and enforce compliance with subcontracting plans and with the award of task orders to small business prime contractors under FAST.

On June 26, 2002—upon learning that the Department of the Army was establishing the Army Contracting Agency, and having concerns that the Agency could unnecessarily bundle contracts, eliminating the ability of small businesses to compete for such procurement awards—Chairman Kerry offered S. Amdt. 4106 to the National Defense Authorization Act, S. 2514. The amendment required the Secretary of the Army to submit, during its first year of operation, a detailed report on the effects of the Army Contracting Agency on small business. The Amendment was retained in the enacted version of the bill, which became PL 107-314.

Contract Reporting Requirements for the Department of Energy

In 1999, Senator Kerry and Senator Bond were successful in compelling the Department of Energy to accurately report its small-business prime contracting awards. Previously, the Department of Energy incorrectly reported subcontracting awards as prime contracting awards. In May of 2002, the Department of Energy indicated that it would revert back to its previous, inaccurate reporting method. On May 22, 2002, Chairman Kerry and Ranking Member Bond sent a letter to the Energy Secretary Abraham congratulating the Department on the recent progress it had made in reaching out to small business, but also informing the Secretary that a return to previous practices would be a step backward and unacceptable. Secretary Abraham responded on July 15, 2002 to the senators, stating that the Department would continue to comply with the Office of Federal Procurement Policy's subcontract reporting directive and that it was working with the SBA on such

matters. It also committed to increasing small business's share of the Department's prime contract awards.

Application and Certification Process for 8(a), Historically Underutilized Business Zone and Small and Disadvantaged Business Programs

On February 14, 2002, after a series of communications with small-business owners and representative organizations and groups, Chairman Kerry wrote to SBA Administrator Hector Barreto concerning the outdated application and certification processes for the 8(a) and Small Disadvantaged Business (SDB) programs at the SBA. In the letter, Chairman Kerry urged the Administrator to use the HUBZone program's application and certification process as a model for improving the 8(a) and SDB application and certification processes. The Chairman was concerned that the 8(a) and SDB programs were not being treated equally with regard to the online application and certification process. Kerry wrote that true equality for the programs requires equal treatment on all levels. To better understand the problems expressed by small businesses regarding application and certification process for each program, Chairman Kerry posed in the letter a series of questions to the Administrator regarding the processes. Administrator Barreto responded on March 14, 2002, noting that the SBA was examining the problems with the process. The Agency also has a task force working on streamlining the electronic version of the application, and expects the project to be complete in the summer of 2003.

Presidential Nominations

During the 107th Congress, the Committee on Small Business and Entrepreneurship received four executive nominations from the President.

Hector V. Barreto, Jr.

On July 19, 2001 the Committee held a hearing to consider the nomination of small business owner Hector V. Barreto, Jr. to be the Administrator of the Small Business Administration. After careful review, the Committee voted unanimously in favor of Mr. Barreto and on July 25, 2001, he was confirmed by a unanimous vote of the Senate as the 21st Administrator of the Small Business Administration. Formerly Vice Chairman of the United States Hispanic Chamber of Commerce, Mr. Barreto lived much of his life in California where he served on the Board of the Latin Business Association and worked to increase the organization's membership and revenue.

Thomas M. Sullivan

On October 16, 2001, the Committee held a hearing to consider the nomination of Thomas M. Sullivan for the position of Chief Counsel for Advocacy at the Small Business Administration. A unanimous Committee vote in favor of Mr. Sullivan moved his nomination to the Senate floor, where he was confirmed by unanimous consent on January 25, 2002.

Mr. Sullivan was formerly with the National Federation of Independent Businesses (NFIB) where he served as Executive Director of the Legal Foundation as the Regulatory Policy Council. Prior to

this time at NFIB, Mr. Sullivan worked as an attorney at the U.S. Environmental Protection Agency and the Department of Justice.

Melanie R. Sabelhaus

On February 27, 2002, the Committee held a hearing on the nomination of Melanie Sabelhaus to be Deputy Administrator the Small Business Administration. Ms. Sabelhaus's nomination was approved by the Committee and confirmed by the full Senate on April 8, 2002.

Melanie Sabelhaus became an expert on business through her experiences as a business owner. Formerly an executive with IBM, she also served on the Board of Directors for organizations such as United Way, The Alzheimer's Association of Maryland, and the Nantucket Historical Society.

Harold Damelin

On September 3, 2002, President Bush nominated Harold Damelin to serve as Inspector General of the Small Business Administration. At the time, the position was still occupied by the nominee for Inspector General of the Department of Agriculture, Phyllis K. Fong. Because Ms. Fong's nomination had not been acted on by the Committee on Agriculture, the Committee on Small Business and Entrepreneurship decided not to consider Mr. Damelin's appointment until the SBA Inspector General's position was vacant. When Ms. Fong's nomination for the Department of Agriculture was confirmed, insufficient time remained in the 107th Congress for this Committee to hold a hearing on Mr. Damelin's nomination.

ENERGY AND THE ENVIRONMENT

There are an estimated 25 million small businesses in this country, and they account for more than half of all the commercial energy used in North America. In the last couple of years, small businesses have suffered crippling financial hardships because of price spikes and unreliability. They could have been saving billions if the Federal government used its resources to (1) educate small businesses about practices that save energy and (2) to facilitate purchases of energy-efficient equipment. Chairman Kerry increased the Committee's focus on the interplay between small businesses, innovation, job creation, and the nation's environmental and energy goals. Through hearings and legislation, he raised awareness of the important role small businesses play as innovators and risk-takers creating technologies to reduce consumption, pollution, and reliance on foreign oil, as well as their role as consumers who reduce business costs and improve efficiency by using the innovative energy-efficient technologies. This would be possible if the Small Business Administration, the Environmental Protection Agency and the Department of Energy would actively coordinate their efforts to educate small businesses.

Hearing: "The Business of Environmental Technology"

On August 1, 2001, Chairman Kerry held a hearing regarding the business of environmental technology. The purpose was to highlight the role of technological innovation in meeting environmental goals, the role of small businesses in producing that innova-

tion, and issues facing small businesses in the environmental field. The witnesses represented experts in the energy field and the energy needs of small business.

Field Hearing: "The Energy Crisis: Taking the Power Out of Small Businesses"

On June 23, 2001, the Committee held a field hearing in Seattle, Washington, to examine how the energy crisis was affecting small businesses and the need for injured small businesses to access working capital through the Small Business Administration's economic injury disaster loans. On the West Coast, the unreliability and price spikes of electricity and natural gas hurt small businesses.

The hearing consisted of one panel with four witnesses: a manufacturer, a restaurant owner, a utility company representative, and an expert on energy efficiency.

Mr. Duane Britschgi, President and General Manager of Atlas Foundry and Machine Co., one of the premier steel foundries in North America located in Tacoma, Washington, represented the problems facing manufacturers, such as electricity rate hikes of 58 percent, and the savings they realized through conservation efforts. He testified about the impact of unregulated power rates and the subsequent energy surcharges ranging from 45 to 75 percent. He called on the Federal government to bring the crisis under control by capping prices and revising national energy policy. Mr. Britschgi specifically noted that the U.S. should not have allowed its electrical generation capacity to fall below 10 percent, versus that of Europe at 20 percent, because it created a severe supply and demand issue at the slightest energy upset.

Ms. Diane Symms, President and Owner of Lombardi's Cucina Italian Restaurant Group in Seattle, Washington, testified about how energy intensive the hospitality industry is because of refrigeration, air conditioning and lighting, making it reliant upon electricity, natural gas and water. In the Seattle region of Washington, her company had suffered electricity cost increases of as high as 30 percent and natural gas as high as 65 percent. She discussed the benefits of conservation, and called on the Government to ensure a constant supply of energy and to develop new and innovative sources of energy.

Mr. Charles Valentin, Assistant Energy Management Analyst of the Smart Business Program for the utility, Seattle City Light in Seattle, Washington, works directly with small businesses to help them use electricity more efficiently. The program is a model for how the country can increase energy conservation through direct financial assistance to help offset the cost of energy-efficiency upgrades and to overcome barriers preventing businesses from making investments that provide long-term benefits. The company has served more than 700 small businesses, investing \$1.1 million in financial incentives, resulting in annual energy savings that are the equivalent of powering 650 homes and saving more than \$260,000 annually. Seattle City Light has been successful because it developed a simple rebate format that requires little paperwork and staff time. Mr. Valentin urged the Congress to target Federal financial assistance for energy efficient investments so that more utilities will get involved and also to target Federal funding for en-

ergy auditing services that help businesses identify cost-effective energy efficient investments, changes in operations, maintenance, and behavior.

Mr. Dave Sjoding, Acting Director of the Washington State University (WSU) Energy Program in Olympia, Washington, is an expert in energy efficiency and provided objective information on energy and resource efficiency to businesses, government and individuals. He urged the Congress to encourage the establishment of product codes and standards that increase energy efficiency, such as for cars, and to fund more research and development of energy efficient technologies. All the witnesses were extremely supportive of Congress passing S. 295, the Small Business and Farm Energy Emergency Relief Act of 2001. Chairman Kerry advocated the witnesses' recommendations as part of the Senate's National energy debate.

Amendment No. 3099 to the Energy Policy Act of 2002

On April 10th, 2002, Chairman Kerry, along with Senator Landrieu, introduced this Amendment 3099 to promote energy efficiency in small businesses. The amendment directed the Department of Energy (DoE) and the Environmental Protection Agency (EPA) to make a special effort to reach out to small businesses when the agencies promote the Energy Star program. The amendment also directed the SBA's disaster loan program and FEMA to promote Energy Star products and directed the SBA to work with the DoE and the EPA to help finance through the SBA's loan programs qualified businesses that need equipment upgrades through the SBA's loan programs. The amendment was agreed to by a voice vote in the Senate, but the entire bill died in conference.

Amendment No. 3152 to the Energy Policy Act of 2002

On April 18, 2002, Senator Landrieu introduced, and Chairman Kerry cosponsored, Amendment No. 3152 to S. 517, the Energy Policy Act of 2002. The purpose of the amendment was to assist small businesses in becoming more energy efficient. The amendment directed the SBA to develop and coordinate a program that (1) educates small firms about the cost-benefits and business advantages of being energy efficient, and (2) that identifies financing options for energy efficiency upgrades. The amendment also directs other Federal agencies to increase their work with small businesses to research and develop innovative energy efficient products. The amendment was adopted in the Senate by Unanimous Consent, but the entire bill died in conference.

PROCUREMENT

The Small Business Administration was officially established in 1953—largely as a response to the pressures of World War II and the Great Depression—to foster a strong and varied supplier base and to help struggling small businesses obtain a “fair portion” of government contracts, as well as compete against a growing number of big businesses across the nation. Today, the SBA and the Senate Committee on Small Business and Entrepreneurship, in its oversight and legislative capacities, continue to seek to improve opportunities for small businesses in the Federal procurement arena. In the wake of the terrorist attacks of 9/11 and with the continued

fight against terrorism, the importance of small business contracting to the diversity and stability of our economy cannot be overstated.

While procurement reform in the early and mid-90s attempted to adequately protect the interests of small businesses, contract bundling, increased use of the GSA supply schedule, cut backs in procurement personnel, and limitations on certain procurement programs in response to the *Adarand* decision have had a devastating effect on small businesses and their ability to do business with the Federal government. During the 107th Congress, the Committee on Small Business and Entrepreneurship spent much of its time addressing these problems and working to protect and increase the role small businesses play in the government procurement process.

The Office of Small and Disadvantaged Business Utilization

After learning that the Deputy Secretary of the Department of Housing and Urban Development (HUD) was moving the Department's director of the Office of Small and Disadvantaged Business Utilization (OSDBU) from the direct oversight of the Secretary, Chairman Kerry sent a letter asking the Deputy Secretary to provide a legal basis for the move. As required by the Small Business Act, the Director of the OSDBU at each agency must be "responsible only to, and report directly to, the head of such agency or to the deputy of such head," with an exception for the Department of Defense (15 U.S.C. 644(k)(3)). After receiving the letter, HUD congressional affairs informed the Committee that the OSDBU office was moving back to the direct oversight of the Secretary of HUD.

To ensure that other agencies were also complying with the law, the Committee sent out an inquiry on November 28, 2001, to 21 major Federal agencies asking them to provide the Committee with a description of the OSDBU's position within the organization and to whom the OSDBU Director reports on a daily basis. Information received by the Committee indicated that some agencies have been subjecting the OSDBU Director to bifurcated reporting relationships for administrative and budgetary matters. Upon receiving and reviewing the responses (and following up with several agencies) the Committee believed at least half of the agencies were out of compliance with section 15(k) of the Small Business Act. To further investigate the matter, Chairman Kerry requested that the GAO conduct a study that would look further into the agencies' compliance with section 15(k) and also at the effectiveness of each OSDBU office. The GAO study is also examining how the law applies to the Executive Office of the President and its 11 staff offices, including the Office of Management and Budget, and the OSDBU director at the Department of Defense. The GAO estimated that the study will be complete by the middle of 2003. The oversight involved in this issue led to the introduction of S. 2753, the Small and Disadvantaged Ombudsman Act.

The Office of Small and Disadvantaged Business Utilization and the Government Prime Contracting Goal

Chairman Kerry introduced the Small and Disadvantaged Business Ombudsman Act, S. 2753, on July 18, 2002, following the above-mentioned series of correspondence with various agency

heads and small-business advocacy groups. The bill established a Small and Disadvantaged Business Ombudsman for Procurement (SDB Ombudsman) at the SBA and strengthened the Office of Small and Disadvantaged Business at each Federal agency. The legislation also raised the Federal government-wide procurement goal for small-business prime contracting by 7 percentage points, phased in over three years (26 percent in FY 2004, 28 percent in FY 2005 and 30 percent in FY 2006 and thereafter), setting the government-wide goal at 30 percent.

This legislation would increase opportunities for all small businesses and enhance the diversified network of small business suppliers to meet the Federal government's needs. On July 24, the Committee unanimously passed S. 2753 including a Kerry-Bond substitute amendment that renamed the SDB Ombudsman as the Small Business Procurement Ombudsman and moved the position to the Office of Advocacy from the SBA. The position retained, however, all of its original authority under the introduced version of the legislation, except for the power to negotiate goal attainment plans. The goal attainment plans called for under the original legislation would now fall under the responsibilities of the SBA Administrator.

Under the substitute bill, the Procurement Ombudsman remained responsible for evaluating and reporting on these goal attainment plans. The substitute retained the government-wide small-business prime contracting goal increase from 23 percent to 30 percent, as well as the improvements to the Office of Small and Disadvantaged Business Utilization at each Federal agency and changes to the OSDBU Council. The report was filed on September 3, 2002, but the bill was not considered by the full Senate prior to the end of the 107th Congress.

Priority Preference and Parity for the 8(a) and Historically Underutilized Business Zone Programs

In 1997, as legislation to establish the HUBZone program was being conducted by the Committee, then-Ranking Member Kerry included amendments to the legislation that changed the HUBZone legislation from one of HUBZone priority over the 8(a) program to one of equality with the 8(a) program. Shortly following the bill's passage, the SBA published rules on implementing the legislation that established a balance between the programs, as well as set out guidelines for a priority preference for dual-certified small business concerns. On January 28, 2002, however, the SBA published proposed rules that, among other things, reversed its position on the priority preference.

Because of the complexity of the rule changes, Senator Kerry initially wrote to SBA Administrator Barreto on February 8, 2002, to extend the comment period from 30 days to 90 days, through April 29, 2002, to allow adequate time for careful examination of the proposal and comment by the public. The SBA compromised, extending the comment period to 60 days, through March 29, 2002.

On March 20, 2002, Chairman Kerry wrote to Administrator Barreto and Associate Administrator Michael McHale describing his concerns with the rule's proposed changes. Chairman Kerry was troubled that the rule neither included language to protect the 8(a) program, nor a grandfather provision to protect 8(a) contracts

and to keep awards intended for 8(a) companies within the 8(a) program.

The SBA-proposed rule intended also to guide contracting officers when awarding contracts. It suggested that contracting officers look at a Federal agency's HUBZone and 8(a) contracting goals when making award decisions. This, Senator Kerry wrote, could hurt 8(a) firms, particularly because the Department of Defense, which is responsible for over 63 percent of the Federal government's procurement spending, has no 8(a) program goal.

Further, there is no statutory, government-wide 8(a) goal. Other concerns expressed in the letter included the removal of a "super-priority" historically given to dual-certified, 8(a)-HUBZone small businesses and the detrimental changes made to the definition of a HUBZone employee. It was Congress's intent when drafting the HUBZone legislation that dual-certified, 8(a)-HUBZone firms would have an advantage over single-certified companies when bidding on contracts set aside for the 8(a) and HUBZone programs. The changes proposed in the SBA's rule to the definition of a HUBZone employee were so broad that traditional volunteers could be considered employees, which had deviated from the original definition and congressional intent that, if implemented, would have undermined the HUBZone program. In the March 20th letter Chairman Kerry made specific recommendations to the SBA on how to protect the 8(a) program and how to strike a proper balance between the two programs to continue parity. This led to the introduction of the Combined 8(a) and HUBZone Priority Preference Act, S. 1994.

Along with Ranking Member Bond, Chairman Kerry introduced S. 1994 on March 6, 2002. The legislation established a preference for purposes of bidding on Federal procurement contracts for firms that have both 8(a) Business Development (BD) and HUBZone certifications, or "dual certification." The legislation also allowed these firms to combine their price evaluation preferences when bidding on Federal contracts. Finally, the legislation increased the sole-source thresholds for both goods and services and manufacturing contracts by \$1 million for each category, increasing the threshold to \$4 million for goods and services contracts and to \$6 million for manufacturing contracts. The increases apply to both the 8(a) BD and HUBZone sole-source thresholds.

During the mark-up of July 24, 2002, a Bond-Kerry amendment made changes to the types of benefits available to firms with both 8(a) and HUBZone certification under restricted competition, as well as clarified the benefits for these firms for contracts under full and open competition. The amendment also included Senator Bond's previously filed amendment to clarify when a held small business concern may participate in the HUBZone program. This amendment reflected negotiated changes raised by Senator Bond during the bill's introduction and at the Committee's procurement Roundtable, that a 20 percent price-evaluation preference was too high. This legislation retains the enhanced benefits to a small business that is certified as an 8(a) Business Development firm and a HUBZone small business concerns, as well as increases the sole-source threshold for these firms by \$1 million.

On June 19, 2002, the Committee held a Roundtable titled "Are Government Purchasing Policies Failing Small Business?" The Roundtable involved representatives from small business groups

participating in Federal procurement programs, such as 8(a), HUBZone, SDB, women-owned and veteran-owned, as well as representatives from the Administration. The Roundtable discussed general procurement policies and current legislative initiatives before the Committee, including S. 1994. Feedback from the small business participants was positive across the board.

On July 24, 2002, the Committee unanimously passed S. 1994. The report was filed on October 1, 2002, but the full Senate failed to take up the bill before it adjourned for the year.

Contract Bundling

Federal contract bundling is a long-standing problem for small business contractors that has gotten progressively worse as Agency staffing has decreased and streamlining has increased. After the Committee was contacted by numerous small-business groups about small businesses being excluded by Federal agencies from contracts due to their “bundled” nature, Chairman Kerry introduced S. 2466, the Small Business Federal Contractor Safeguard Act, on May 7, 2002. The bill strengthened the definition of a bundled contract in order to close the loopholes in the existing definition and to prevent Federal agencies from circumventing statutory safeguards intended to ensure that separate contracts are consolidated for economic reasons, and not solely for expediency.

The bill would have also made it harder for Federal agencies to consolidate small contracts that would otherwise be available for small-business bidders. The current definition of a bundled or consolidated contract does not account for all circumstances in which contracts can be bundled together. The Small Business Act requires likely bundled contracts to undergo market research to determine cost savings. An agency may not use a reduction in personnel costs alone to justify a bundled contract unless they are substantial. S. 2466 would have eliminated the term “bundled contract” and its definition, and substituted a new term, “consolidated contract,” meaning a multiple award contract or a contract for goods or services with a Federal agency that combines discrete procurement requirements from not less than two existing contracts, adds new, discrete procurement requirements to an existing contract, or includes two or more discrete procurement requirements. This definition eliminates the flaw in the previous definition that left room for varied interpretations by the Federal agencies, and it closed the loopholes in the current definition pertaining to new contract requirements and multiple award contracts.

The bill also included a threshold level for triggering the economic research requirements for “consolidated” contracts in the Small Business Act. On July 24, 2002 the Committee unanimously passed S. 2466. The report was filed on October 8, 2002, but was never taken up by the full Senate prior to adjournment.

Small Business Team Arrangements

On September 26, 2001, Chairman Kerry and Ranking Member Bond introduced the Small Business Procurement Competition Act of 2001, S. 1472. The bill was accepted in its entirety, as Amendment No. 1694 to the Department of Defense Authorization bill, S. 1438, on September 26, 2001, but was not included in the conference report. The bill sought to help small businesses compete on

large and bundled contracts by allowing small businesses to form small business-only joint ventures to compete for any contract over \$5 million, even if the joint venture exceeded the size standard. To facilitate and encourage this, the legislation set up a 3-year pilot Small Business Procurement Competition Program. The bill also allowed small businesses to subcontract up to two-thirds of a contract if the contract were bundled, so long as they would subcontract to other small businesses and do the largest proportion of the work themselves. Currently, small businesses can subcontract up to 49 percent of a contract. Finally, the legislation set up a program to help promote the formation of joint ventures and created a database to help link small businesses wishing to form joint ventures together and changed the definition of a bundled contract. On October 30, 2002, the Office of Management and Budget issued a nine-point action plan to thwart contract bundling. It included a provision similar to S. 1472 that encourages Federal agencies to develop small business team arrangements capable of competing for larger contracts.

Improving Contract Bundling Reporting Requirements and Expanding Participation in the Historically Underutilized Business Zone Program

In September 2001, Chairman Kerry and Ranking Member Bond included an amendment in the FY 2003 National Defense Authorization Act, S. 1438, making changes to the data collection and report provisions for bundled contracts and to eligibility requirements of the HUBZone program. First, the Amendment No. 1695 revised the reporting requirements for the Department of Defense market analyses to make them more systematic and meaningful. The legislation also required that the SBA Administrator report to the congressional small business committees, including an assessment of how to improve current and future market analyses.

Second, the amendment made it easier for small businesses to participate in the HUBZone program if its stock is publicly traded. Under current law, publicly traded companies are unable to participate in the HUBZone program. Unfortunately, the Kerry-Bond amendment was not retained in the DOD Authorization Conference Report.

TECHNOLOGY, RESEARCH & DEVELOPMENT

The Committee believes strongly in the role of small business in our nation's effort to maintain its lead as the innovator of technology. Small businesses are noted for a higher success rate in commercializing technologies, and they research and develop technology and processes less expensively and faster. Innovations by small business contribute to our country having the best military intelligence and medical technology.

In the 107th Congress, the Committee continued its support of small business technological innovation, which benefits the country by contributing to our having the best military technology, intelligence technology, technology to improve our quality of life from health revolutions in breast cancer detection and surgery to equipment. And it all makes our economy stronger.

Reauthorization of the Small Business Technology Transfer Program

On May 9, 2001 Senator Kerry, along with Senator Bond, introduced S. 856, the Small Business Technology Transfer (STTR) Program Reauthorization Act of 2001. The purpose of the legislation was to (1) reauthorize the program for eight years; (2) double the percentage that participating Departments and Agencies set aside for STTR R&D from .15 percent to .3 percent starting in FY 2004; (3) increase the Phase II grant award amount from \$500,000 to \$750,000 starting in FY 2004, which coincides with the funding increase and is consistent with Phase II SBIR awards; (4) require the participating agencies to implement an STTR outreach program to research institutions in conjunction with any such similar SBIR outreach; and, (5) strengthen the data collection requirements regarding awards and the data rights for companies and research institutions that conduct STTR projects, consistent with changes made to the SBIR program in the 106th Congress.

On June 21, 2001, the Committee held a hearing to review reauthorization of the Small Business Technology Transfer program and to seek feedback on S. 856, the Small Business Technology Transfer Program Reauthorization Act of 2001. On July 19, 2001, the Committee considered the bill and voted unanimously in favor of its passage. It passed the full Senate on September 14, 2001. The House companion to the bill, H.R. 1860, which contained S. 856 in its entirety, was passed on September 26, 2001 and sent to the President for his signature. The legislation was enacted as PL 107-50.

Small Business Innovation Research Program and Small Business Technology Transfer Program Foreign Patent Protection

On August 2, 2001, Chairman Kerry introduced S. 1323, the SBIR and STTR Foreign Patent Protection Pilot Program Act. The bill sought to establish a five-year pilot program to help protect the intellectual property of SBIR and STTR companies that try to export their technology and need financial assistance to help offset the high costs of patent filing in foreign markets.

Ultimately, the goal was to establish a revolving fund, with revenues generated from the sales and/or licensing fees that companies realize from the patented technology. At the STTR hearing the Committee held on June 21, 2001, two businesses and the technology transfer office of Northeastern University in Massachusetts commented favorably about the need for this assistance. The bill (1) established a five-year pilot; (2) limited grants to a maximum \$25,000; (3) limited each company to one grant; (4) required the company to already have U.S. patent protection in order to be eligible for the grant; (5) generated revenue for the revolving fund through royalty fees of 3 to 5 percent, with a cap of three times the amount of the grant the business received; and (6) authorized appropriations for five years, starting with \$2.5 million in FY 2003, in order to fund 100 grants of \$25,000, and ending with \$10 million in FY 2007, in order to fund 400 grants of \$25,000.

EDUCATION & DEVELOPMENT

The Committee's role in overseeing the numerous SBA programs designed to protect the interests of small businesses has led to the development of several programs aimed at giving small businesses the tools they need to compete and succeed. Of great importance to this endeavor is the capacity by which the SBA can improve the success rate of small businesses through education and development.

The Committee believes programs such as the Small Business Development Centers (SBDCs) and the Tribal Business Information Centers (TBICs) are vital to this cause. With deep budget cuts affecting a majority of the SBA's programs, the Committee looked closely at a variety of education and development programs to continue their success and improve upon their shortcomings.

Vocational and Technical Entrepreneurship Training

On July 19, 2001, the Subcommittee on Workforce, Empowerment and Government Programs of the House Committee on Small Business held a hearing on pending legislation, including H.R. 2666, the Vocational and Technical Entrepreneurship Development Act, which was introduced by Congressman Brady of Pennsylvania.

The hearing demonstrated a need for expanded entrepreneurship training services at other Small Business Development Center (SBDC) locations. On August 1, 2001, the House Committee on Small Business considered H.R. 2666, passed it without amendment and ordered it reported. On October 2, 2001, the full House considered H.R. 2666 under suspension of the rules. It was subsequently agreed to by voice vote.

During consideration of H.R. 2666 in the Senate Committee on Small Business and Entrepreneurship on July 24, 2002, the Ranking Republican, Senator Bond, raised concerns that the Senate Committee had not adequately considered the National Small Business Regulatory Assistance Act.

In response to these concerns, Committee Chairman Kerry proposed holding a Roundtable on the legislation to alleviate these concerns in order to move forward with the Committee vote. On August 1, 2002, the Committee held a Roundtable titled "Promoting Small Business Regulatory Compliance and Entrepreneurial Education—the Role of the SBDC Network." During this Roundtable, the Senate Committee received evidence that H.R. 2666 would provide adequate resources to SBDCs, so that they could provide technical assistance to secondary schools and post-secondary vocational and technical schools to develop and implement curricula to promote vocational and technical entrepreneurship.

Small business representatives at the Roundtable also stressed the need to provide such assistance as an important addition to curricula that is merely skills-based. Small business groups such as the National Small Business United supported H.R. 2666, as well as leading educational institutions, such as the Wharton School of Business at the University of Pennsylvania, and the Association of Small Business Development Centers.

The purpose of H.R. 2666 was to assist the development and implementation of curricula that would encourage skilled persons to

start their own businesses and to provide needed entrepreneurial training to support the success of such businesses. The Act provided the necessary entrepreneurial support to expand the career opportunities for persons receiving vocational training and thus use their newly gained skills to become the successful owners of their own business.

To accomplish this, the bill would have established a 3-year pilot program to be headed by the Administrator of the SBA and would have offered grants to state SBDCs with the minimum grant being \$200,000. The legislation also designated the Association of Small Business Development Centers as a clearinghouse for the collection of information and expertise regarding vocational and technical entrepreneurship programs. H.R. 2666 was voted out of the Senate Committee by an 18–1 margin, with Senator Enzi dissenting, on July 24, 2002. The report was filed on October 9, 2002. The bill was not addressed by the full Senate prior to adjournment.

Native American Small Business Development

In 1995, the SBA was granted \$1.2 million in funding from the Bureau of Indian Affairs to start the Tribal Business Information Center (TBIC) program. Since then, the program has struggled to achieve its mission due to inadequate resources. In 2002, Tribal Lands in only six states were served under the program, despite repeated requests from Tribal Leaders elsewhere for additional TBICs. The lack of resources means that the 16 TBICs have received an average of only \$33,000 in funding, to cover all expenses, including staffing. Although designed to provide culturally tailored business development assistance to prospective and current small-business owners on reservations, the lack of resources has hampered this program from meeting its promise to the Native American community.

During the 107th Congress, the issue of funding for the Tribal Business Information Center (TBIC) program became even more dire. On January 24, 2002, Chairman Kerry, along with five other senators, sent a letter to SBA Administrator Hector Barreto and the Office of Management and Budget (OMB) Director Mitch Daniels to urge them to provide the TBICs with \$2.5 million and a specific “line-item” in President Bush’s fiscal year 2003 budget request. Then, as the program was set to run out of money on March 31, 2002, Chairman Kerry sent a bipartisan letter, cosigned by nine senators, on March 22, 2002, to SBA Administrator Barreto requesting that the Small Business Administration begin the re-programming process in order that the Tribal Business Information Center program could continue receiving funding for fiscal year 2002. To remain operational in the second half of the fiscal year, the program required \$200,000. The SBA failed to respond, leaving the TBIC program without the Federal component of its funding due to “budgetary contracts” at the SBA.

Funding the Tribal Business Information Center Program

In the wake of the Tribal Business Information Centers (TBICs) losing their funding, Senator Tim Johnson of South Dakota and Chairman Kerry introduced S. 2335, the Native American Small Business Development Act, on April 25, 2002. The bill was designed to place SBA services for Native Americans on par with that

of other specialized groups, such as women-owned small businesses. It made statutory the Office of Native American Affairs (ONAA) at the SBA, expanded on the TBIC program at the SBA, and changed the name to Native American Business Centers. The legislation also established two pilot grant programs to assist Native American communities, although three grant programs existed in the original legislation.

On April 30, 2002, the Committee held a joint hearing with the Committee on Indian Affairs. The late Senator Paul Wellstone of Minnesota co-chaired the hearing in Chairman Kerry's absence with Chairman Inouye of the Indian Affairs Committee. The hearing focused on general economic development in Native American communities and the Native American Small Business Development Act. Senator Johnson testified before the committees on the legislation.

A mark-up of the legislation was held on July 24, 2002, during which a Kerry-Bond amendment eliminated the proposed American Indian Tribal Assistance Center Grant pilot program, incorporated a previously filed Kerry amendment to improve the Native American Development Grant pilot program, and transferred \$1 million from the Native American Small Business Development Program created under the legislation to the Native American Development Grant pilot program. It also made a number of technical and conforming corrections. The bill passed 18-1, but was not considered by the full Senate prior to adjournment.

DISASTER LOAN PROGRAM

During the 107th Congress, small businesses across the country suffered economic injury because of energy price spikes and severe drought. In order to help these companies continue to operate and mitigate layoffs, Chairman Kerry introduced and advocated for legislation to make it possible for qualifying small businesses to access the SBA's economic injury disaster loans. Economic injury disaster loans give affected small businesses necessary working capital until normal operations resume, or until they can restructure or change the business to address the market changes.

In addition to needs for disaster assistance for small businesses, the Committee responded to calls from small businesses complaining about the sale of disaster loans by the SBA to private entities, as well as to requests and initiatives from their Senators and Congressman to eliminate disaster loans from the SBA's asset sales. At a minimum, members requested a moratorium on the sale of disaster loans in order to investigate the treatment of borrowers from secondary market lenders.

Energy Disaster Assistance

On February 8, 2001, Senator Kerry introduced S. 295, the Small Business and Farm Energy Emergency Relief Act of 2001. The bill had bi-partisan support, with 34 Senate cosponsors, as well as a companion bill in the House, H.R. 1010, which was introduced by Congressman Tom Udall of New Mexico. The purpose of the bill was to provide emergency relief, through affordable, low-interest Small Business Administration Economic Injury Disaster loans, to small businesses adversely affected by, or likely to be adversely af-

affected by, significant increases in the prices of heating oil, propane, kerosene, natural gas, or electricity.

Many small businesses are dependent upon heating oil, propane, kerosene, natural gas and electricity either because they sell or distribute the product, because they use it to heat and cool their facilities or as part of their business, or because they depend on it to refrigerate their products and provide energy to wash dishes and linens. The significant and unforeseen rise in the price of these fuels, compounded by in many regions of the U.S. by cold snaps and slowed economic conditions in the winter of 2000/2001, threatened the economic viability of many small businesses.

For those businesses that were in danger of or were suffering from significant economic injury caused by crippling increases in the costs of heating fuels and electricity, access to capital was a critical need. However, commercial lenders typically weren't making loans to these small businesses because they often did not have the increased cash flow to demonstrate the ability to repay the loan.

To exacerbate the situation, banks had tightened their lending to small businesses by 45 percent at that time, according to the Federal Reserve Board's quarterly survey on lending practices that was released in February 2001. Senator Kerry's legislation responded to the energy problems during the 107th Congress by seeking to amend the SBA economic injury loan program to give small businesses access to low-interest disaster loans that would help them keep their monthly payments low and ease cash flow problems until business returned to normal.

As amended, the emergency bill included (1) a proposal by Senators Boxer and Feinstein to include electric energy in the scope of the bill that originally focused on heating fuels; (2) a proposal by Senator Levin to allow the loan proceeds to be used for small businesses to convert their energy systems from using heating fuels to using renewable or alternative energy sources; (3) a proposal by Senators Kohl and Harkin to extend similar loan assistance to small agricultural producers through the Department of Agriculture's emergency loan program; (4) a proposal by Senator Bond to sunset the program after two years, and to conduct a study of the program's usage to help Congress assess the merits of reauthorization; (5) a proposal by Senator Enzi to expand Senator Levin's amendment by including "co-generation" in the list of renewable or alternative energy sources; and, (6) technical and conforming amendments made in consultation with the Administration, to make the program as consistent as possible with the existing disaster loan program.

Drought Disaster Assistance

On July 16, 2002, Chairman Kerry and Senator Hollings introduced S. 2734, the Small Business Drought Relief Act, in response to concerns raised by Governor Hodges of South Carolina and supported by 15 other governors whose states were suffering severe drought. Sixteen governors—Governor Hodges of South Carolina, Governor Easley of North Carolina, Governor Barnes of Georgia, Governor Foster of Louisiana, Governor Musgrove of Mississippi, Governor Perry of Texas, Governor Wise of West Virginia, Governor Patton of Kentucky, Governor Glendening of Maryland, Gov-

ernor Holden of Missouri, Governor Keating of Oklahoma, Governor Sundquist of Tennessee, Governor Warner of Virginia, Governor Siegelman of Alabama, Governor Huckabee of Arkansas, and Governor Guinn of Nevada—asked the Congress to pass this drought relief, but they got no cooperation from a small minority of Senators. The bill had bi-partisan support of 22 senators. The purpose was to help small non farm-related small businesses hurt by drought, eliminate contradictory statutory interpretations, and clarify existing law and Congressional intent.

As amended, the bill sought the following changes to the Small Business Act. To address the SBA's argument that drought victims are not eligible for disaster loans because a drought is not a disaster by definition, the bill adds the word "drought" to the definition of disaster in the Small Business Act. In order to address concerns that adding drought would expand the SBA's disaster program too broadly, the Kerry-Bond substitute amendment specifies that assistance for drought victims is only available to small businesses, not home owners, and that they are only eligible for SBA economic injury disaster loans, not physical disaster loans. While the Committee believes that the SBA already has the authority to make economic injury disaster loans to "any small business concern" in a declared disaster area and should treat all such businesses equally, in order to clarify that authority as it applies to drought victims, the Kerry-Bond substitute amendment directed the SBA to make economic injury disaster loans available to both farm-related and non farm-related small businesses hurt by drought.

The Kerry-Bond substitute amendment also included a provision to ensure that small business drought victims meet requirements demonstrating substantial economic injury caused by drought. Last, the Kerry-Bond substitute preserved a state governor's role in initiating a drought declaration rather than limiting such authority to actions by the U.S. Secretary of Agriculture.

On July 24, 2002, the Committee on Small Business & Entrepreneurship considered S. 2734, the "Small Business Drought Relief Act." The Committee adopted by unanimous voice votes S. 2734, including a substitute amendment offered by the Chairman of the Committee, Senator Kerry, and the Ranking Republican, Senator Bond, an amendment offered by Senator Carl Levin to include in the definition of "disaster", "low water levels on the Great Lakes," as a disaster term, and an amendment offered by Senators Edwards and Allen to require the Administrator of the SBA to respond to disaster declaration requests from governors within 30 days. Despite the bill's bi-partisan support and its unanimous endorsement by the Committee, the Administration opposed its passage and persuaded some Republican Senators to block its enactment.

The Committee negotiated for months with the Administration to reach agreement in order to pass the emergency drought relief, and finally the Office of Management and Budget agreed to limit the cost of the bill \$9 million in authorized appropriations, which would fund approximately \$40 million of such disaster loans annually. In spite of this agreement, one Republican senator continued to block the bill's passage, causing the bill to die when Congress recessed for the year.

On December 13, 2002, Chairman Kerry sent a letter to Administrator Barreto requesting that the Agency provide a copy of its legal opinion regarding its interpretation of the Small Business Act with regards to making economic injury disaster loans to non agriculture-related small businesses. The SBA has interpreted its authority under the Federal statute, paragraph 7(b)(2) of the Small Business Act, to apply only to farm-related small businesses when there is a drought disaster declaration, and the Chairman and Ranking Member remain concerned that the SBA's interpretation of its authority narrows the scope of disaster relief assistance that the Congress intended in passing the law. After numerous requests from the Committee during the second session of the 107th Congress, the Administration finally provided the opinion to the Committee on December X, 2002, well after the end of the 107th Congress.

REGULATORY ASSISTANCE

The Committee believes that providing resources and guidance on complying with government regulations is particularly important to small businesses. Understanding and following the countless number of Federal regulations can be tricky for small firms, especially small companies with few employees. Small businesses often face a daunting task when seeking advice on how to comply, let alone actually complying with Federal regulations, particularly when implementation may vary in different regions of the country, or from state to state. Many small businesses fail to comply with important and needed labor and environmental regulations not because they want to break the law, but because they are unaware of the actions they need to take to comply.

During the 107th Congress, the Committee continued to address this issue of how best to educate small businesses about laws and regulations, the most effective ways to help them comply with existing laws, and what ways Congress can strike a delicate balance between easing the compliance burden and upholding necessary protections.

Regulatory Compliance Assistance

Joining with Senator Cleland of Georgia, Chairman Kerry introduced S. 2483, the National Small Business Regulatory Assistance Act. The legislation called for the establishment of a pilot project in which 20 selected Small Business Development Centers (SBDCs) would provide regulatory compliance assistance to small businesses. The pilot project was to be administered by the Small Business Administration, which would be authorized to award grants between \$150,000 and \$300,000 to selected SBDCs. The bill also required that Congress receive a progress report annually on the pilot program's accomplishments at each SBDC. Under the bill, SBDCs would need to form partnerships with Federal compliance programs, conduct educational and training activities and offer free-of-charge compliance counseling to small business owners. Further, the measure was designed to guarantee privacy to those who receive compliance assistance. This privacy provision was also extended to all small businesses that seek any assistance from their local SBDC. The National Small Business Regulatory Assistance

Act provided small businesses with the support they need to navigate the often complicated world of Federal regulations.

On July 24, 2002, the Committee passed S. 2483 with one “nay” vote from Senator Mike Enzi of Wyoming and without amendments. On August 1, 2002, the Committee conducted a Roundtable titled “Promoting Small Business Regulatory Compliance and Entrepreneurial Education—the Role of SBDC Network.” The Roundtable was held to supplement the Committee’s record on pending legislation, S. 2483 and H.R. 2666. While each piece of legislation was drafted to provide additional resources to the Small Business Development Center network, S. 2483 specifically addressed helping small businesses with regulatory compliance. The report was filed on October 9, 2002. The full Senate did not take up S. 2483.

Regulatory Impacts on Small Businesses

On April 24, 2001, the Committee held a hearing titled “Protecting America’s Small Business Rights: SBREFA on Its 5th Anniversary.” During the hearing, the Committee heard from small business owners, officials and leaders from the General Accounting Office, the Small Business Administration, National Small Business United, the Environmental Protection Agency, and the Department of Commerce. Issues addressed at the hearing included the cost of regulations as monitored by the Small Business Regulatory Enforcement Fairness Act and the Regulatory Flexibility Act, regulations and Federal agencies that overlook various small business sectors when drafting regulations, and how to best ameliorate the situation and protect small business interests. Panelists at the hearing gave testimony on how the SBA Office of Advocacy could better facilitate regulatory compliance and addressed the disproportionate impact regulations often have on small businesses.

TAX ISSUES

Small businesses have been the engine of economic growth across the nation for the last decade. This country’s ability to foster entrepreneurship also has been an integral part of our success in creating high-wage jobs for America’s future. During the 107th Congress, the Committee developed measures to insure that the Federal tax code effectively assisted the creation and growth of small businesses and family farms. Income from small businesses is subject to Federal taxation like other income; however, small businesses and their larger counterparts are not always treated equally by the tax code. The Committee supported a number of important changes in tax law that, if enacted, could have a dramatically positive effect for small businesses and the economy.

Joint House-Senate Small Business Committee Roundtable on Tax Agenda for Small Business

On April 4, 2001, the Senate and House Small Business Committees held a Roundtable on a proposed tax agenda for small business that focused on small business tax relief, tax simplification and taxpayer rights and protections. Among the initiatives discussed during the tax relief section of the Roundtable were modifying the estate tax, reducing the depreciation recovery period, lowering individual income tax rates, reforming the Alternative Minimum Tax

and the allowing a greater deductibility of health insurance expenses.

The tax simplification section of the Roundtable discussion focused on capital gains tax relief, increasing the expensing limitation, making the Research and Experimentation tax credit permanent and simplifying cash versus accrual accounting. Finally, the taxpayer rights section of the Roundtable focused on reforming the Independent Contractor regulations, increasing flexibility for small business pensions and modifying the tax treatment of investments in debenture small business investment companies (SBICs) to encourage greater investments.

The Affordable Small Business Stimulus Act of 2001

In response to many of the important tax issues raised at the Joint Roundtable, Chairman Kerry introduced S. 1676, "The Affordable Small Business Stimulus Act of 2001." The bill contained the following provisions that:

- Increased the expensing limitation for small businesses to \$35,000, and increased the phase-out level, above which expensing would not be allowed, to \$350,000. Both the \$35,000 and \$350,000 limits would be increased annually for inflation beginning in calendar year 2003.
- Modified and expanded a 1993 law regarding new equity investments in small businesses' stock. Under the Kerry bill, new investments in companies with capitalization of up to \$100 million at the time of investment would have a 75 percent capital gains exclusion if the investments were held at least three years. The exclusion for such investments would be 100 percent if they were made in a business involved in certain critical technologies, or for investments in specialized small business investment companies. Both the 75 and 100 percent exclusion levels would be available for investments made by both individuals and corporations. In addition, the rollover period for such investments would be increased from 60 days to 180 days.
- Reduced the depreciation recovery period for computers or peripheral equipment from five years to three, and for software from three years to two. This change would be permanent.
- Made the health insurance expenses of the self-employed fully tax deductible in 2001, as opposed to 2003 as permitted by current law.
- Included the Single Point Tax Filing Act, which would simplify the tax filing process for employers by allowing the Internal Revenue Service and State agencies to combine, on one form, both State and Federal employment tax returns.
- Extended the existing income averaging provisions to cover fishing as well as farming.
- Modified the tax treatment of investments in debenture small business investment companies (SBICs), so they are less likely to create unrelated business taxable income (UBTI) liability. In so doing, the bill would encourage greater investment in SBICs, which provide critically needed venture capital to emerging small businesses. These venture capital funds are sorely needed in today's stalled economy.

The Senate Finance Committee did not consider this legislation during the 107th Congress.

The Single Point Filing Act

America's small businesses, which employ more than half of the workforce, are drowning in tax paperwork. They are currently responsible for filing Federal and state employment taxes and wage reports as well as unemployment insurance reports. These reports obligate employers to understand and comply with diverse and often conflicting state and Federal laws. Just to keep up with these requirements, employers must maintain separate wage records for Federal income tax withholding, state income tax withholding, social security, and unemployment insurance. This reporting must be provided to government agencies at different times using different forms. If the employer does business in more than one state, the reporting burdens are often compounded. The financial burden associated with employer tax, wage, and unemployment insurance was estimated at \$16.2 billion in 1999. The Federal portion of these costs stood at \$9.8 billion.

Small businesses need the government to reverse course, which is why Chairman Kerry successfully included this legislation as S. Amdt. 787 during Senate consideration of H.R. 1836, the Economic Growth and Tax Relief Reconciliation Act. Unfortunately, this provision was not included in the Conference Report to H.R. 1836. In the 108th Congress, Senator Kerry will continue to work to give small businesses a more efficient option, a single filing form, to comply with Federal and state regulations. This will allow small businesses more time to concentrate on running their business instead of filling out endless streams of paperwork.

The Business Retained Income During Growth Expansion Act of 2002

New, entrepreneurial businesses are often the foundation of our nation's productivity gains and economic growth. Emerging growth companies are a major source of job creation, technology, global competitiveness, tax revenues, and export sales. Chairman Kerry introduced the Business Retained Income During Growth and Expansion (BRIDGE) Act (S. 1903) to help ensure that rapidly expanding, entrepreneurial businesses have access to the capital they need to continue creating jobs and stimulating the economy.

A Small Business and Entrepreneurship Roundtable on this legislation was held on May 22, 2002. Congressman Jim DeMint of South Carolina introduced the House companion bill with 18 cosponsors. The bill allowed small and mid-sized, fast-growing businesses to temporarily defer a portion of their Federal income tax liability so they could continue making new investments in their businesses. The two-year deferral would be limited to \$250,000 of tax, which would be repayable with interest over a four-year period. The tax-deferred amount would be deposited in a separate trust account—a BRIDGE account—at a bank or other approved intermediary, and the firm could borrow against the deferred amount, as collateral, for business purposes. Eligible firms would be required to have gross receipts of at least 10 percent greater than the firm's average receipts for the prior two years, and total annual receipts would be permitted to exceed \$10 million. Upon sale or merger of the business, any remaining tax deferral would be payable at that time.

The entrepreneurial spirit lies at the forefront of our economy's technological advances and dynamic innovations. The BRIDGE Act, by freeing entrepreneurial businesses from the constraints of unmet capital funding needs and empowering them to expand into new markets, would promote economic diversification and renewed growth. The Senate Finance Committee did not consider this legislation during the 107th Congress. Chairman Kerry will continue to push for consideration of this important legislation during the 108th Congress.

The Worker Investment and Retirement Education Act of 2002

In April 2002, Chairman Kerry and Senator Olympia Snowe of Maine introduced the Worker Investment and Retirement Education Act of 2002, the first bipartisan pension reform bill to protect small business workers without prompting a reduction in benefits. Specifically, the bill would help small businesses provide their employees with unbiased information on the basics of investing, as well as personalized information to help them know if they are adequately preparing for their retirement years. The bill would apply different diversification rules based on the type of contribution—such as worker payroll deduction, employer matching contribution, or employers non-matching contribution—rather than the type of plan to allow workers to diversify their contributions once they are vested in a retirement plan. Finally, the bill would establish an Office of Pension Participant Advocacy where workers could turn to voice their concerns about pension policy. Unfortunately, the Senate Finance Committee did not consider this legislation during the 107th Congress.

TRADE ISSUES

The number of United States small businesses involved in exporting has tripled since 1987. The dollar value of small business exports has grown 300 percent over the period from 1996 through 2001. Small business now accounts for 31 percent of the value of small business exports. Overall, 97 percent of all exporters are small businesses, with the most dramatic growth of exporters among companies employing less than 20 people. The World Trade Organization (WTO) has the potential to address a wide range of global trade issues of concern to small businesses in the United States. During the 107th Congress, Chairman Kerry and Senator Olympia Snowe have worked to establish a small business advocate at the WTO and at the Office of the United States Trade Representative.

Seeking an Enhanced Role for Small Business at the World Trade Organization

In April 2001, Senators Snowe and Kerry introduced S. 714, which expressed the Sense of the Senate that the United States Trade Representative should pursue the establishment of a small business advocate at the World Trade Organization to safeguard the interests of small firms and represent those interests in trade negotiations involving the World Trade Organization. On June 27, 2001, Chairman Kerry and Senator Olympia Snowe sent a letter to U.S. Trade Ambassador Robert Zoellick asking for support in their efforts to place an advocate for small business within the WTO.

Small businesses face enormous challenges in order to become involved in international trade and it is very difficult for many to compete on a level playing field. Today, less than one percent of U.S. small businesses are engaged in international trade-related activities. In the above-mentioned letter, the Senators stated that a small business advocate at the WTO would be a crucial step toward enhancing the involvement of small business in international trade and could assist in assuring international protection of international property rights, in settling trade disputes, and in enhancing small business access to e-commerce. Because the WTO is the principal international organization for rules governing worldwide international trade, it has the potential to address a range of global trade issues of concern to small businesses in the United States. Better coordination is needed between small businesses and advocacy agencies throughout the world. In August, Ambassador Zoellick responded to the June 27, 2001, letter saying that the WTO did not envision an advocacy role for small business.

OTHER COMMITTEE INITIATIVES

Honoring Milton Stewart

On March 5, 2002, Chairman Kerry introduced S. Res. 216 to honor Milton Stewart on his 80th birthday. Mr. Stewart was the first Chief Counsel for the SBA's Office of Advocacy and had a long and noteworthy career promoting the interests of small business. The Resolution was passed by unanimous consent the same day it was introduced.

Slotting Allowances

In the 106th Congress, the Committee addressed the issue of slotting allowances—fees charged by retailers to individual product manufacturers, which can adversely affect small businesses that sell their products through large retailers. The most common reasons for charging slotting allowances include insuring a retailer income for an untested product, to acquire shelf space, to acquire high-profile shelf space, to acquire exclusive shelf space, and to acquire warehouse space in a wholesale facility. During the 106th Congress, then-Ranking Member Kerry brought the slotting issue to the attention of the Small Business Committee. The Committee held two hearings on slotting in September 1999 and September 2000.

The General Accounting Office was asked to conduct a study on the issue, and testified that they were unable to complete their study because the grocery industry refused to cooperate, with exceptions from two mid-size grocery store chains. The FTC, however, released a report on the issue February 20, 2001. The recommendations of the FTC staff report, that is part of a longer study, included pursuing further an empirical study to contribute to enforcement actions or business guidance beginning with gathering basic data on current practices.

No formal guidelines on slotting allowances were given at the time of the report's release. Five specific steps for future FTC actions in this area included (1) carefully reviewing exclusive contracts to determine if and how they affect competition, (2) examining slotting allowances and pay-to-stay fees that can give rise to

exclusionary effects, (3) revisiting price discrimination issues, (4) focusing inquiries primarily on situations that involve collusion, and (5) ensuring that supermarket merger policies take into account market power over suppliers as well as consumers. At the end of the 107th Congress, the full slotting study being conducted by the FTC was not yet complete.

The Office of Advocacy

On February 27, 2001, Senators Kerry and Bond introduced the Independent Office of Advocacy Act, S. 395, to strengthen the Office of Advocacy at the SBA. It required each appropriation request submitted by the SBA to include a separate funding request for the Office of Advocacy and allowed the Office's Chief Counsel to be removed by the President after Congressional notification. It also required the Office to recommend methods for the delivery of financial assistance to women-owned businesses and to evaluate the efforts of Federal agencies and the private sector in assisting such businesses. It also required the Office to make recommendations and submit specified reports concerning issues and regulations affecting small business and any necessity for corrective action. Further, it required the Office to evaluate the efforts of the Federal government and private industry to assist small businesses owned by veterans and service-disabled veterans, and required the SBA to provide appropriate administrative support to the Office. Lastly, the legislation required the Chief Counsel to report annually to the President and specified congressional committees on agency compliance with Federal regulatory analysis requirements. The bill passed the Senate by unanimous consent on March 26, 2001, but was not passed by the House Committee on Small Business during the 107th Congress.

The White House Quadrennial Small Business Summit

On February 27, 2001, Senators Kerry and Bond introduced the White House Quadrennial Small Business Summit Act, S. 396. It mandated that the White House hold a quadrennial national summit to recognize outstanding small businesses, as well as develop and promote ideas to further advance all American small businesses. The bill also established the White House Quadrennial Commission on Small Business to conduct the Quadrennial and State Summits that would bring together individuals concerned with issues relating to small business. The Commission would appoint a Summit Advisory Committee from participants at the previous Quadrennial Summit. It also directed the Chief Counsel for Advocacy of the Small Business Administration to assist in carrying out the Quadrennial Summit and prerequisite State Summits. In addition, it required each Summit's Commission to report to the President and the chairmen and ranking members of the Congressional small-business committees on its findings, recommendations, and proposals for legislative changes to implement such recommendations. S. 396 was unanimously voted out of Committee without amendment on February 28, 2001. The Committee report 107-136 was filed on February 7, 2002, but the full Senate prior to adjournment did not take up the legislation.

THE SBA BUDGET AND APPROPRIATIONS

In the past two fiscal years, the Administration has not requested adequate resources to fund and staff the Small Business Administration and the services it provides. For FY 2002, the President requested a cut in funding from almost \$900 million to \$539 million. At a time when the economy was volatile and the Federal Reserve reported that 45 percent of banks were cutting back on lending to small businesses, the FY 2002 budget eliminated and froze funding for loans and venture capital to small businesses that conventional lenders typically wouldn't make even in good times. The President's FY 2002 budget request eliminated funding for the SBA's largest loan program, the 7(a) program, and shifted the costs to small business borrowers and lenders by increasing already excessive fees. In order to fund a loan program of \$10.5 billion, small businesses would have had to pay at least \$112 million extra in fees. In that budget, the President also eliminated all funding for the SBIC program, whose investments have more than paid for themselves with successes like Intel, Callaway Golf, and Staples. The President's FY 2002 budget requested 19 percent less for microloans than the previous year's appropriation, nearly 14 percent less for Small Business Development Centers, shifting the cost to entrepreneurs seeking small business counseling and training. The budget drastically cut funding for the disaster loan program and proposed moving it out of the Agency. Fortunately, Congress opposed that proposal, which if implemented, would have compounded the impact of the terrorist attacks of 9/11 as homeowners and small businesses in need would have been dealing with a program inadequately funded and under reorganization.

In FY 2003, the President's request for the SBA was \$798 million, closer to the true costs of supporting small business programs during an economic downturn. However, in some respects, the budget was even worse, most notably the 50 percent cut in 7(a) loans. In that budget request, increases were primarily limited to administrative expenses and staffing. Consequently, for the second consecutive year, the Committee and small business supporters in the Congress have spent much of their time working to restore cuts and eliminate fee increases for the SBA.

On April 6, 2001 Senator Kerry and then-Chairman Bond offered amendment No. 183 to the Senate Budget Resolution for FY 2002. The full Senate agreed to it by voice vote. The amendment had 13 cosponsors, including Senator Snowe. The purpose of the amendment was to restore funding, and in certain program areas to increase funding, to the SBA for FY 2002. Had the President's budget been enacted, the SBA's programs would have experienced, at minimum, a 26 percent cut. Specifically, the amendment provided \$264 million for the SBA's FY 2002 budget. Senator Kerry, together with Senators Bond and Collins, offered an amendment to increase funding for the Women's Business Centers for FY 2002. The purpose was to increase funding from \$12 million to \$13.7 million, the fully authorized amount. The Kerry-Bond amendment passed the Senate, but the program's overall funding was cut in conference, as was the funding for many of the SBA's programs.

Hearing: "SBA's Funding Priorities for FY 2002"

On May 1, 2001, the Committee held a hearing to review the President's FY 2002 budget for the SBA. There were three panels, and nine witnesses.

The first panel was reserved for the Administration's witness, Mr. John D. Whitmore, Acting Administrator of the Small Business Administration in Washington, D.C. Mr. Whitmore presented the President's FY 2002 budget proposal for the SBA.

The witnesses on the second panel primarily addressed proposals affecting the SBA's credit programs. Providing testimony were: Mr. Alan Corbet, Executive Director of the Growth Opportunity Connection in Kansas City, Missouri, who testified about the Microloan Program and the harm to minority borrowers and risk of taxpayer money that would be caused by the budget's inadequate funding; Mr. Lee Mercer, President of the National Association of Small Business Investment Companies based in Washington, D.C., who testified in favor of the proposal to eliminate funding for the SBIC program in exchange for a higher program level and the need for additional SBA staff to operate the SBIC program and to faster process license applications; Mr. Ronald L. Phillips, President of Coastal Enterprises, Inc. in Wiscasset, Maine, who testified against the proposal to eliminate funding for the New Markets Venture Capital program and called for administrative and legislative changes to allow the program to work as Congress intended; Mr. Anthony R. Wilkinson, President and Chief Executive Officer of the National Association of Government Guaranteed Lenders, Inc. in Stillwater, Oklahoma, who testified against the President's proposal to eliminate funding for the 7(a) loan program, against the proposed increase in loan fees on borrowers and lenders, and in favor of the budget amendment by Senators Kerry and Bond to provide \$118 million in funding, allowing for \$11 billion in loans to be leveraged.

The witnesses on the third panel primarily addressed proposals affecting the SBA's non-credit programs. Providing testimony were: Mr. Harry Alford, President of the National Black Chamber of Commerce in Washington, D.C., who addressed government contracting deficiencies for minority-owned small businesses and testified in opposition to the proposal to eliminate funding for the BusinessLINC program; Ms. Wendy Werkmeister, President of the Wisconsin Women's Business Initiative Corporation in Milwaukee, Wisconsin, who testified against the proposal to freeze funding for Women's Business Centers, inadequately fund the Microloan Program and eliminate funding for the PRIME program; and Ms. Diane Wolverton, State Director for the Wyoming Small Business Development Center in Laramie, Wyoming and Chairman of the Association of Small Business Development Centers Board, who was a former successful business owner and testified about her first-hand experience with SBDC assistance and the Association's opposition to the budget request for SBDCs.

Among Committee members, there was bi-partisan opposition to the President's budget, which requested a 26-percent reduction in funding for the SBA's credit and non-credit programs, including elimination of all funding for the Agency's largest small-business lending program, the 7(a) program, and shifting the cost through higher fees to small-business borrowers and lenders. The budget

cuts jumped to 40 percent with the Administration's proposal for disaster funding, which would have created a "National Emergency Reserve," leaving only a base amount of \$300 million at the Agency. That amounted to \$526 million less in disaster loans than Congress provided the previous year.

Letters Sent to Government Officials

On March 1, 2002, Chairman Kerry sent a letter to Budget Chairman Kent Conrad and Ranking Minority Member Pete Domenici regarding his views on the President's FY 2003 budget request for the SBA. In that letter he opposed the budget and listed his primary concerns as the 50-percent reduction in the 7(a) loan program; the fee increases to the 504 loan program; the cut in microloan technical assistance; and the overall problem with the SBA's subsidy rate models and assumptions. In summary, Chairman Kerry proposed that \$200 million be added to the SBA's FY 2003 budget to make up for the inadequate funding and budget cuts. The Chairman was successful in obtaining the funds requested for the budget, which the Budget Committee adopted.

On April 26, 2001, Senator Kerry sent a letter to Senate and House Conferees on the Budget Resolution for FY 2002, asking them to include the funding for the SBA that the Senate agreed to by voting in favor of Kerry Budget Resolution Amendment No. 183 on April 6.

On April 30, 2001, Senator Kerry wrote to the Chairman and Ranking Member of the Appropriations Subcommittee on Commerce, Justice and State (CJS) Departments to request adequate funding for the SBA Microloan Program, which the Senate endorsed in the Budget Resolution Amendment 183 on April 6.

On April 30, 2001, Senator Kerry sent letters to Senate Appropriations CJS Subcommittee Chairman Gregg and Ranking Member Hollings to request funding for the SBA as the Senate agreed to in the Kerry-Bond Budget Resolution Amendment No. 183 on April 6.

On October 2, 2001, in an attempt to keep the SBIC program from shutting down and to avoid a larger increase in program fees to compensate for the lack of funding, Senator Kerry and Senator Bond sent a letter to the Senate Appropriations CJS Subcommittee requesting level funding, consistent with Budget Amendment 183 that restored that money. Ultimately, the Administration succeeded in eliminating all the funding for the program and raising the fees.

Hearing: "The SBA Fiscal Year 2003 Budget and Other Matters"

At the Committee's February 27th, 2002 hearing on the SBA's FY 2003 budget request, Administrator Barreto testified, as did five members of the small business community, which included representatives from the National Association of Government Guaranteed Lenders for 7(a) loans, the National Association of Development Companies for 504 loans, the Growth Opportunity Connection for microloans and microloan technical assistance, Women Entrepreneurs of Baltimore for Women's Business Centers and PRIME, and the Association of Small Business Development Centers. Democrats and Republicans were united against the President's proposal to cut 7(a) loans by 50 percent, and a number of Senators

from both sides of the aisle spoke against the broken subsidy rates, fee increases on 504 loans, under funding for microloans, women's business centers and prime and SBDCs. Senator Bennett of Utah was particularly supportive of increasing the 7(a) funding and defending the fee reduction, which he characterized as a "tax cut." Senator Kerry asked Administrator Barreto to have the Administration send up an amendment to adequately fund the 7(a) loan program, but he would not agree to request such an amendment.

Consequently, the Committee and a coalition of more than 30 small business organizations, led by the U.S. Chamber of Commerce, spent most of the year trying to reverse the Administration's cuts. All efforts were blocked. The Committee will continue advocating for funding and a better subsidy rate model in the 108th Congress.

FEDERAL LOAN PROGRAMS AND ACCESS TO CAPITAL

Access to capital remains a top priority for American small businesses. The Federal government's programs of guaranteed loans and venture capital have helped millions of small businesses finance the startup, growth, and expansion of their firms, and the Committee spent much of the 107th Congress focusing on this critical small-business need. The Committee sought to overcome the Administration's insufficient budget requests and secure adequate funding for the SBA's finance programs. The Committee also worked with the General Accounting Office to identify ways that the SBA and the OMB could correct the government accounting systems in the current fiscal year that have had an adverse effect on small businesses.

The Microloan Program

On January 24, 2001, Senator Kerry introduced S. 174, the Microloan Program Improvement Act of 2001. The legislation was designed to make the SBA Microloan Program more flexible to meet credit needs, more accessible to micro-entrepreneurs across the nation, and more streamlined for lenders to make loans and provide management assistance. It built on changes that were enacted in the 106th Congress as part of the 2001 Omnibus Consolidated Appropriations Act. S. 174 included the following changes: (1) allowed micro-intermediaries to offer revolving lines of credit; (2) broadened the eligibility criteria for potential SBA micro-intermediaries; (3) expanded flexibility for intermediaries to subcontract for technical assistance and permitted more pre-loan technical assistance; and, (4) established a peer-to-peer mentoring program, which Senator Snowe introduced on January 25, 2001, as a separate initiative, S. 182. Senator Kerry was the lead cosponsor of S. 182. The Administration opposed the peer-to-peer mentoring provision and persuaded the House Committee on Small Business to strike it when it considered the legislation.

The Senate Committee on Small Business and Entrepreneurship marked up and passed S. 174 unanimously on February 28, 2001. The report was filed in June 2001, but it was blocked from passage by Republican objections until November 16. The legislation was then sent to the House and referred to the House Committee on Small Business where on April 17, 2002, it was marked up, passed

and ordered reported out of Committee. The bill died in the 107th Congress because the full House failed to bring it up for a vote.

The Small Business Investment Company Program

On July 18, 2001, Ranking Member Bond and Chairman Kerry introduced S. 1196, the Small Business Investment Company (SBIC) Amendments Act of 2001. The purpose of this bill, as amended by a managers' amendment for final passage, was to adjust the fees charged to Participating Security SBICs from one percent to 1.37 percent. The change was necessary because the demand for the SBIC program had been growing beyond what was possible to support through annual appropriations. The legislation allowed the fees to be increased enough to cover all the currently established subsidy costs of a \$3.5 billion program, assuming no appropriations, as was the case for FY 2002 at the President's request. If in a future fiscal year some appropriations were made available, the legislation made it possible for the fee to be adjusted so that it would exactly cover the subsidy costs of the program.

On July 19, 2001, the Committee marked up and passed S. 1196 by unanimous consent. The bill passed the full Senate with a Kerry-Bond amendment, which lowered the borrowers' and lenders' costs of participating in the 7(a) and 504 programs as of fiscal year 2003. This amendment was included at the request of the small business community to offset the fee increases requested by the Administration in another small business finance program and to bring the 7(a) and 504 fees more in line with the costs of the programs. The 7(a) and 504 borrowers and lenders had been overcharged approximately \$2 billion combined because the Administration continued to use faulty subsidy rate calculations. The bill was signed into law on December 21, 2001, becoming PL 107-100.

Letters Regarding the 7(a) Loan Program's Subsidy Rate Model

On April 12, 2002, Chairman Kerry and Ranking Member Bond joined Senate Budget Committee Chairman Kent Conrad and Ranking Member Pete Domenici, in sending a letter to Mitchell Daniels, Director of the Office of Management and Budget, regarding continued and routine over-estimation by the OMB of the cost of the SBA's 7(a) and 504 loan programs. That persistent over-estimation caused small business borrowers and lenders in the 504 program to pay nearly \$400 million in excess fees and in the 7(a) loan program of roughly \$1 billion in excess fees. Of particular concern was the impact of the subsidy rate model on the FY 2003 budget, which cut the 7(a) loan program by 50 percent, reducing from \$11 billion to less than \$5 billion the amount of loan dollars available to small businesses. The Senators (1) requested that the Administration submit and support a budget amendment for FY 2003 to make possible \$11 billion in program level, (2) offered the Administration an opportunity to correct any assumptions in the FY 2003 budget that would more accurately reflect the performance cost of the program, and (3) asked for any legislative recommendations that could fix the problem. In its response of May 17, 2002, the OMB ignored all three of the Senators' requests. As a result, the Committees pursued a legislative solution. Based on a study from the GAO the legislation that would mandate the SBA and the

OMB to use only data of actual loan performance from 1992 forward in calculating the subsidy rate.

The above-mentioned study resulted from a May 4, 2002, request to the GAO from the leaders of the Senate and House Committees on Small Business, Senators Kerry and Bond, and Congressmen Manzullo and Velazquez, that sought review of the OMB's subsidy rate model for the 7(a) loan program, which had resulted in borrowers and lenders annually paying excessive fees to participate in this program. For almost every year since the inception of credit reform in 1992, a comparison of projected program costs against actual program costs for FY 2002 in the 7(a) program revealed that substantial funds were being returned to the Treasury routinely because the subsidy rates were too high. Consequently, lenders and borrowers paid more in fees than necessary year after year. Congress asked the GAO to identify problems with the cost projections and to recommend solutions that would more accurately calculate program costs and therefore bring fees more reasonably in line with the actual costs of the program. The GAO found, among other things, that the SBA and the OMB had miscalculated the estimated default rate of 7(a) loans by 87 percent and, that as of FY 2000, borrowers and lenders has paid roughly \$1 billion more than necessary in fees since 1992. The GAO made five recommendations to address the errors, but the Administration rejected all of them.

Roundtable: "The 7(a) Loan Guaranty Program: A Look at SBA's Flagship Program's Fees and Subsidy Rate"

On September 5, 2001, Chairman Kerry convened a Roundtable, "The 7(a) Loan Guaranty Program: A Look at SBA's Flagship Program's Fees and Subsidy Rate," with small business lenders, small business trade associations, the SBA and the OMB. The purpose was to discuss the impact of excessive program fees on the ability of small businesses to access and lenders to participate in the 7(a) Loan Guaranty Program; to hear the findings of the General Accounting Office study on the subsidy rate model for the 7(a) Loan Guaranty Program; to expose the drastic difference between projected and actual default rates used to calculate the subsidy rates for the SBA's 7(a) Loan Guaranty Program; to discuss the various proposals to change the subsidy rate model for the 7(a) Loan Guaranty Program; and to discuss the various proposals to change the program fees.

The Committee needed to convene a Roundtable because the 7(a) trade association, the National Association of Government Guaranteed Lenders (NAGGL), had asserted for years that the model used to calculate the subsidy rate (the cost for running the program) for the 7(a) Loan Guaranty Program was flawed and needed to be exposed to see exactly what the Office of Management and Budget and the Small Business Administration use to calculate the subsidy rate. NAGGL pointed to the OMB and the SBA's usage of inaccurate estimates of defaults, such as 14 percent for estimated defaults versus 8 to 9 percent for actual defaults. The inaccuracies caused small business borrowers and participating lenders to pay too much to participate in the program.

The concern of the small-business community regarding overcharging for program participation was exacerbated by the Administration's proposal in the FY 2002 budget request to eliminate

funding for the 7(a) loan program and raise fees that were already too high. In the Roundtable, NAGGL urged Congress to require the OMB and the SBA to use more accurate data in the subsidy rate models in order to derive a more accurate cost of the program, and therefore more accurate fees charged to borrowers and lenders. The Association also urged Congress to lower the program fees because they were unfair and driving lenders out of the program, thereby reducing access to affordable credit for small businesses.

Participants included: Mr. James C. Ballentine, Director of Community Development for the American Bankers Association, Washington, D.C.; Mr. David Bartram, President, SBA Division, U.S. Bank, San Diego, CA; Mr. Daniel Blair, Assistant Director, Financial Management and Assurance, General Accounting Office, Washington, D.C.; Dr. Lloyd Blanchard, Associate Director, General Government Programs, Office of Management and Budget, Washington, D.C.; Mr. John Brocato, President & CEO, Biz Capital, New Orleans, LA; Ms. Linda Calbom, Director, Financial Management and Assurance, General Accounting Office, Washington, D.C.; Mr. Todd McCracken, President, National Small Business United, Washington, D.C.; Mr. Keith McLaughlin, Senior Vice President, Union Planters Bank, Columbia, MO; Mr. Paul G. Merski, Chief Economist & Director of Federal Tax Policy, Independent Community Bankers of America, Washington, D.C.; Mr. Bruce D. Phillips, Senior Fellow in Regulatory Studies, National Federation of Independent Business Education Foundation, Washington, D.C.; Mr. Stephen Raffaele, Senior VP & Treasurer, Sterling Bancshares, Inc., Houston, TX; Mr. Deryl K. Schuster, President, Mid-America Division, Wichita, KS; Mr. Steven Stultz, Stultz Financial, Newport Beach, CA; Mr. Wilkinson, President, NAGGL, Stillwater, OK; Mr. Dick Wise, President & CEO, American National Bank, Parma, OH; and Mr. John D. Whitmore, Chief of Staff, Small Business Administration, Washington, D.C.

APPENDIXES

Hearings of the 107th Congress

First Session

March 1, 2001: Forum titled "Encouraging and Expanding Entrepreneurship: Examining the Federal Role", Senator Bond chaired.

March 7, 2001: Roundtable titled "PNTR/WTO: A Good Deal for U.S. Small Businesses in China?" Senator Bond chaired.

April 4, 2001: Joint Roundtable with the House Small Business Committee titled "A Tax Agenda for Small Business", Senator Bond chaired.

April 24, 2001: Hearing titled "Protecting Small Business Rights: SBREFA on Its 5th Anniversary", Senator Bond chaired.

May 1, 2001: Hearing titled "SBA's Funding Priorities for FY 2002", Senator Bond chaired.

June 21, 2001: Hearing titled "S. 856, Small Business Technology Transfer Reauthorization", Senator Kerry chaired.

June 23, 2001: Field Hearing titled "The Energy Crisis: Taking the Power Out of Small Business" held in Seattle, Washington, Senator Kerry chaired.

July 19, 2001: Confirmation Hearing on the Nomination of Hector V. Barreto and Markup on Pending Legislation, Senator Kerry chaired.

August 1, 2001: Hearing titled “The Business of Environmental Technology”, Senator Kerry chaired.

August 16, 2001: Field Hearing titled “Revitalizing Rural America: What Can the Federal Government Do to Promote Small Business Growth and Development in Rural Communities?” held in St. Cloud, Minnesota, Senator Wellstone chaired.

September 5, 2001: Roundtable titled “The 7(a) Loan Guaranty Program: A Look at the SBA’s Flagship Program’s Fees and Subsidy Rate”, Senator Kerry chaired.

September 10, 2001: Field Hearing titled “Entrepreneurial Companies: Their Needs and Challenges in Today’s Economy” held in Cambridge, Massachusetts, Senator Kerry chaired.

October 16, 2001: Confirmation Hearing on the Nomination of Thomas M. Sullivan to Chief Counsel for Advocacy at the Small Business Administration, Senator Kerry chaired.

Second Session

February 27, 2002: Hearing titled “The SBA Fiscal Year 2003 Budget and Nomination Hearing of Melanie Sabelhaus to be Deputy Administrator of the Small Business Administration”, Senator Kerry chaired.

April 30, 2002: Joint Hearing with the Senate Indian Affairs Committee titled “Small Business Development in Native American Communities: Is the Federal Government Meeting its Obligations?” Senator Kerry chaired.

May 22, 2002: Roundtable titled “Unleashing the Power of Entrepreneurship: Stimulating Investment in America’s Small Businesses”, Senator Kerry chaired.

June 19, 2002: Roundtable titled “Are Government Purchasing Policies Failing Small Business?” Senator Kerry chaired.

July 24, 2002: Markup of Procurement, Educational, Drought Relief and other Small Business Legislation, Senator Kerry chaired.

August 1, 2002: Roundtable titled “Promoting Small Business Regulatory Compliance and Entrepreneurial Education—the Role of SBDC Network”, Senator Kerry chaired.

Bills Referred to the Committee

First Session

S. 174 (Mr. Kerry) January 24, 2001. A bill to amend the Small Business Act with respect to the Microloan Program, and for other purposes.

S. 182 (Ms. Snowe) January 25, 2001. A bill to amend the Small Business Act with respect to the Microloan Program.

S. 295 (Mr. Kerry) February 8, 2001. A bill to provide emergency relief to small businesses affected by significant increases in the prices of heating oil, natural gas, propane, and kerosene, and for other purposes.

S. 348 (Mr. Hutchinson) February 15, 2001. A bill to amend the Small Business Act to extend the authorization for the drug-free workplace program.

S. 395 (Mr. Bond) February 27, 2001. A bill to ensure the independence and nonpartisan operation of the Office of Advocacy of the Small Business Administration.

S. 396 (Mr. Bond) February 27, 2001. A bill to provide for national quadrennial summits on small business and State summits on small business, to establish the White House Quadrennial Commission on Small Business, and for other purposes.

S. 408 (Ms. Boxer) February 27, 2001. A bill to provide emergency relief to small businesses affected by significant increases in the price of electricity.

S. 522 (Mr. Kerry) March 13, 2001. A bill to direct the Administrator of the Small Business Administration to conduct a pilot program to raise awareness about telecommuting among small business employers, and to encourage such employers to offer telecommuting options to employees.

S. 849 (Mr. Bond) May 9, 2001. A bill to amend provisions of law enacted by the Small Business Regulatory Enforcement Fairness Act of 1996 (104–121) to ensure full analysis of potential impacts on small entities of rules proposed by certain agencies, and for other purposes.

S. 856 (Mr. Kerry) May 9, 2001. A bill to reauthorize the Small Business Technology Transfer Program, and for other purposes.

S. 861 (Mr. Bond) May 10, 2001. A bill to enhance small business access to Federal contracting opportunities and provide technical advice and support that small businesses need to perform contracts awarded to them, and for other purposes.

S. 1196 (Mr. Bond) July 18, 2001. A bill to amend the Small Business Investment Act of 1958, and for other purposes. Signed by the President and became Public Law 107–100 on December 21, 2001.

S. 1323 (Mr. Kerry) August 2, 2001. A bill entitled SBIR and STTR Foreign Patent Protection Act of 2001.

S. 1472 (Mr. Kerry) September 26, 2001. A bill to amend the Small Business Act to promote the involvement of small business concerns and small business joint ventures in certain types of procurement contracts, to establish the Small Business Procurement Competition Program, and for other purposes.

S. 1499 (Mr. Kerry) October 4, 2001. A bill to provide assistance to small business concerns adversely impacted by the terrorist attacks perpetrated against the United States on 9/11, 2001, and for other purposes.

S. 1552 (Mr. Harkin) October 16, 2001. A bill to provide for grants through the Small business Administration for losses suffered by general aviation small business concerns as a result of the terrorist attacks of 9/11, 2001.

S. 1670 (Mr. Kerry) November 9, 2001. A bill to amend the Small Business Investment Act of 1958 with respect to subsidy fees.

S. 1676 (Mr. Kerry) November 13, 2001. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for small business, and for other purposes.

H.R. 203 (Mr. Sweeney) January 3, 2001. A bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a pilot program to provide regulatory compliance assistance to small business concerns, and for other purposes.

H.R. 2538 (Mr. Udall of New Mexico) July 17, 2001. A bill to amend the Small Business Act to expand and improve the assistance provided by Small Business Development Centers to Indian tribe members, Alaska Natives, and Native Hawaiians.

H.R. 2666 (Mr. Brady of Pennsylvania) July 27, 2001. A bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a vocational and technical entrepreneurship development program.

Second Session

S. 1903 (Mr. Kerry) January 28, 2002. A bill to amend the Internal Revenue Code of 1986 to allow certain small businesses to defer payment of tax.

S. 1994 (Mr. Kerry) March 6, 2002. A bill to establish a priority preference among certain small business concerns for purposes of Federal contracts, and for other purposes.

S. 2335 (Mr. Johnson) April 25, 2002. A bill to establish the Office of Native American Affairs within the Small Business Administration, to create the Native American Small Business Development Program, and for other purposes.

S. 2455 (Mr. Ensign) May 2, 2002. A bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a pilot program to provide regulatory compliance assistance to small business concerns, and for other purposes.

S. 2466 (Mr. Kerry) May 7, 2002. A bill to modify the contract consolidation requirements in the Small Business Act, and for other purposes.

S. 2483 (Mr. Cleland) May 8, 2002. A bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a pilot program to provide regulatory compliance assistance to small business concerns, and for other purposes.

S. 2734 (Mr. Kerry) July 16, 2002. A bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought.

S. 2753 (Mr. Kerry) July 18, 2002. A bill to provide for a Small and Disadvantaged Business Ombudsman for Procurement in the Small Business Administration, and for other purposes.

S. 2891 (Mr. Kerry) August 1, 2002. A bill to create a 4-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans.

Public Laws

PUBLIC LAW 107–50, 107TH CONGRESS

An Act To reauthorize the Small Business Technology Transfer Program, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Technology Transfer Program Reauthorization Act of 2001”.

SEC. 2. EXTENSION OF PROGRAM AND EXPENDITURE AMOUNTS.

(a) IN GENERAL.—Section 9(n)(1) of the Small Business Act (15 U.S.C. 638(n)(1)) is amended to read as follows:

“(1) REQUIRED EXPENDITURE AMOUNTS.—

“(A) IN GENERAL.—With respect to each fiscal year through fiscal year 2009, each Federal agency that has an extramural budget for research, or research and development, in excess of \$1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

“(B) EXPENDITURE AMOUNTS.—The percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be—

“(i) 0.15 percent for each fiscal year through fiscal year 2003; and

“(ii) 0.3 percent for fiscal year 2004 and each fiscal year thereafter.”.

(b) CONFORMING AMENDMENT.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended in subsections (b)(4) and (e)(6), by striking “pilot” each place it appears.

SEC. 3. INCREASE IN AUTHORIZED PHASE II AWARDS.

(a) IN GENERAL.—Section 9(p)(2)(B)(ix) of the small Business Act (15 U.S.C. 638(p)(2)(B)(ix)) is amended—

(1) by striking “\$500,000” and inserting “\$750,000”; and

(2) by inserting before the semicolon at the end the following: “, and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective beginning in fiscal year 2004.

SEC. 4. AGENCY OUTREACH.

Section 9(o) of the Small Business Act (15 U.S.C. 638(o)) is amended—

(1) in paragraph (12), by striking “and” at the end;

(2) in paragraph (13), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(14) implement an outreach program to research institutions and small business concerns for the purpose of enhancing its STTR program, in conjunction with any such outreach done for purposes of the SBIR program; and”.

SEC. 5. POLICY DIRECTIVE MODIFICATIONS.

Section 9(p) of the Small Business Act (15 U.S.C. 638(p)) is amended by adding at the end the following:

“(3) MODIFICATIONS.—Not later than 120 days after the date of enactment of this paragraph, the Administrator shall modify the policy directive issued pursuant to this subsection to clarify that the rights provided for under paragraph (2)(B)(v) apply to all Federal funding awards under this section, including the first phase (as described in subsection (e)(6)(A)), the second

phase (as described in subsection (e)(6)(B)), and the third phase (as described in subsection (e)(6)(C)).”.

SEC. 6. STTR PROGRAM DATA COLLECTION.

(a) **IN GENERAL.**—Section 9(o) of the Small Business Act (15 U.S.C. 638(o)), as amended by this Act, is amended by adding at the end the following:

“(15) collect, and maintain in a common format in accordance with subsection (v), such information from awardees as is necessary to assess the STTR program, including information necessary to maintain the database described in subsection (k).”.

(b) **DATABASE.**—Section 9(k) of the Small Business Act (15 U.S.C. 638(k)) is amended—

(1) in paragraph (1)—

(A) by inserting “or STTR” after “SBIR” each place it appears;

(B) in subparagraph (C), by striking “and” at the end;

(C) in subparagraph (D), by striking the period at the end and inserting “, and”; and

(D) by adding at the end the following:

“(E) with respect to assistance under the STTR program only—

“(i) whether the small business concern or the research institution initiated their collaboration on each assisted STTR project;

“(ii) whether the small business concern or the research institution originated any technology relating to the assisted STTR project;

“(iii) the length of time it took to negotiate any licensing agreement between the small business concern and the research institution under each assisted STTR project; and

“(iv) how the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project were allocated (by percentage) between the small business concern and the research institution.”; and

(2) in paragraph (2)—

(A) by inserting “or an STTR program pursuant to subsection (n)(1)” after “(f)(1)”;

(B) by striking “solely for SBIR” and inserting “exclusively for SBIR and STTR”;

(C) in subparagraph (A)(iii), by inserting “and STTR” after “SBIR”; and

(D) in subparagraph (D), by inserting “or STTR” after “SBIR”.

(c) **SIMPLIFIED REPORTING REQUIREMENTS.**—Section 9(v) of the Small Business Act (15 U.S.C. 638(v)) is amended by inserting “or STTR” after “SBIR” each place it appears.

(d) **REPORTS TO CONGRESS.**—Section 9(b)(7) of the Small Business Act (15 U.S.C. 638(b)(7)) is amended by striking “and (o)(9),” and inserting “, (o)(9), and (o)(15), the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns under each of the SBIR and STTR programs,”.

SEC. 7. STTR PROGRAM-WIDE MODEL AGREEMENT FOR INTELLECTUAL PROPERTY RIGHTS.

(a) DEVELOPMENT OF MODEL AGREEMENT.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended by adding at the end of the following:

“(w) STTR MODEL AGREEMENT FOR INTELLECTUAL PROPERTY RIGHTS.—

“(1) IN GENERAL.—The Administrator shall promulgate regulations establishing a single model agreement for use in the STTR program that allocates between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.

“(2) OPPORTUNITY FOR COMMENT.—In promulgating regulations under paragraph (1), the Administrator shall provide to affected agencies, small business concerns, research institutions, and other interested parties the opportunity to submit written comments.”.

(b) ADOPTION OF MODEL AGREEMENT BY FEDERAL AGENCIES.—Section 9(o)(11) of the Small Business Act (15 U.S.C. 638(o)(11)) is amended by striking “develop a model agreement not later than July 31, 1993, to be approved by the Administration,” and inserting “adopt the agreement developed by the Administrator under subsection (w) as the agency’s model agreement”.

SEC. 8 FAST PROGRAM ASSISTANCE TO WOMEN-OWNED AND MINORITY-OWNED SMALL BUSINESS CONCERNS AND CONCERNS LOCATED IN AREAS NOT PARTICIPATING IN SBIR AND STTR.

(a) SELECTION CONSIDERATION.—Section 34(c)(2)(B) of the Small Business Act (15 U.S.C. 657d(c)(2)(B)) is amended—

- (1) in clause (iv), by striking “and” at the end;
- (2) in clause (v), by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following new clause:

“(vi) whether the proposal addresses the needs of small business concerns—

“(I) owned and controlled by women;

“(II) owned and controlled by minorities; and

“(III) located in areas that have historically not participated in the SBIR and STTR programs.”.

(b) REGULATIONS.—Section 34(c)(4) of the Small Business Act (15 U.S.C. 657d(c)(4)) is amended by adding at the end of following: “The Administrator shall promulgate regulations establishing standards for the consideration of proposals under paragraph (2), including standards regarding each of the considerations identified in paragraph (2)(B).”.

Approved October 15, 2001.

PUBLIC LAW 107–100 107TH CONGRESS

AN ACT To amend the Small Business Investment Act of 1958, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Investment Company Amendments Act of 2001”.

SEC. 2. SUBSIDY FEES.

(a) **IN GENERAL.**—Section 303 of the Small Business Investment Act of 1958 (15 U.S.C. 683) is amended—

(1) in subsection (b)—

(A) by striking “of not more than 1 percent per year”;

(B) by inserting “which amount may not exceed 1.38 percent per year, and” before “which shall be paid”; and

(C) by striking “September 30, 2000” and inserting “September 30, 2001”; and

(2) in subsection (g)(2)—

(A) by striking “of not more than 1 percent per year”;

(B) by inserting “which amount may not exceed 1.38 percent per year, and” before “which shall be paid”; and

(C) by striking “September 30, 2000” and inserting “September 30, 2001”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall become effective on October 1, 2001.

SEC. 3. CONFLICTS OF INTEREST.

Section 312 of the Small Business Investment Act of 1958 (15 U.S.C. 687d) is amended by striking “(including disclosure in the locality most directly affected by the transaction)”.

SEC. 4. PENALTIES FOR FALSE STATEMENTS.

(a) **CRIMINAL PENALTIES.**—Section 1014 of title 18, United States Code, is amended by inserting “, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or the Small Business Administration in connection with any provision of the Act” after “small business investment company”.

(b) **CIVIL PENALTIES.**—Section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833a) is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) in subsection (c)—

(A) in paragraph (1), by striking “or” at the end;

(B) in paragraph (2)—

(i) by striking “1341,” and inserting “1341”; and

(ii) by striking “institution.” and inserting “institution; or”;

(C) by inserting immediately after paragraph (2) the following:

“(3) section 16(a) of the Small Business Act (15 U.S.C. 645(a)).”; and

(D) by striking “This section shall” and inserting the following:

“(d) **EFFECTIVE DATE.**—This section shall”.

SEC. 5. REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIALS.

Section 313 of the Small Business Investment Act of 1958 (15 U.S.C. 687e) is amended to read as follows:

“SEC. 313. REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIALS.

“(a) DEFINITION OF ‘MANAGEMENT OFFICIAL’.—In this section, the term ‘management official’ means an officer, director, general partner, manager, employee, agent, or other participant in the management or conduct of the affairs of a licensee.

“(b) REMOVAL OF MANAGEMENT OFFICIALS.—

“(1) NOTICE OF REMOVAL.—The Administrator may serve upon any management official a written notice of its intention to remove that management official whenever, in the opinion of the Administrator—

“(A) such management official—

“(i) has willfully and knowingly committed any substantial violation of—

“(I) this Act;

“(II) any regulation issued under this Act; or

“(III) a cease-and-desist order which has become final; or

“(ii) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of a fiduciary duty of that person as a management official; and

“(B) the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

“(2) CONTENTS OF NOTICE.—A notice of intention to remove a management official, as provided in paragraph (1), shall contain a statement of the facts constituting grounds therefore, and shall fix a time and place at which a hearing will be held thereon.

“(3) HEARINGS.—

“(A) TIMING.—A hearing described in paragraph (2) shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

“(i) the management official, and for good cause shown; or

“(ii) the Attorney General of the United States.

“(B) CONSENT.—Unless the management official shall appear at a hearing described in this paragraph in person or by a duly authorized representative, that management official shall be deemed to have consented to the issuance of an order of removal under paragraph (1).

“(4) ISSUANCE OF ORDER OF REMOVAL.—

“(A) IN GENERAL.—In the event of consent under paragraph (3)(B), or if upon the record made at a hearing described in this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

“(B) EFFECTIVENESS.—An order under subparagraph (A) shall—

“(i) become effective at the expiration of 30 days after the date of service upon the subject licensee and the management official concerned (except in the case

of an order issued upon consent as described in paragraph (3)(B), which shall become effective at the time specified in such order); and

“(ii) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

“(c) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

“(1) IN GENERAL.—The Administrator may, if the Administrator deems it necessary for the protection of the licensee or the interests of the Administration, suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of the licensee, or both, any management official referred to in subsection (b)(1), by written notice to such effect served upon the management official.

“(2) EFFECTIVENESS.—A suspension or prohibition under paragraph (1)—

“(A) shall become effective upon service of notice under paragraph (1); and

“(B) unless stayed by a court in proceedings authorized by paragraph (3), shall remain in effect—

“(i) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under subsection (b); and

“(ii) until such time as the Administrator shall dismiss the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

“(3) JUDICIAL REVIEW.—Not later than 10 days after any management official has been suspended from office or prohibited from participation in the management or conduct of the affairs of a licensee, or both, under paragraph (1), that management official may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under subsection (b), and such court shall have jurisdiction to stay such action.

“(d) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

“(1) IN GENERAL.—Whenever a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon that management official, suspend that management official from office or prohibit that management official from further participation in any manner in the management or conduct of the affairs of the licensee, or both.

“(2) EFFECTIVENESS.—A suspension or prohibition under paragraph (1) shall remain in effect until the subject information, indictment, or complaint is finally disposed of, or until terminated by the Administrator.

“(3) **AUTHORITY UPON CONVICTION.**—If a judgment of conviction with respect to an offense described in paragraph (1) is entered against a management official, then at such time as the judgment is not subject to further appellate review, the Administrator may issue and serve upon the management official an order removing that management official, which removal shall become effective upon service of a copy of the order upon the licensee.

“(4) **AUTHORITY UPON DISMISSAL OR OTHER DISPOSITION.**—A finding of not guilty or other disposition of charges described in paragraph (1) shall not preclude the Administrator from thereafter instituting proceedings to suspend or remove the management official from office, or to prohibit the management official from participation in the management or conduct of the affairs of the licensee, or both, pursuant to subsection (b) or (c).

“(e) **NOTIFICATION TO LICENSEES.**—Copies of each notice required to be served on a management official under this section shall also be served upon the interested licensee.

“(f) **PROCEDURAL PROVISIONS; JUDICIAL REVIEW.**—

“(1) **HEARING VENUE.**—Any hearing provided for in this section shall be—

“(A) held in the Federal judicial district or in the territory in which the principal office of the licensee is located, unless the party afforded the hearing consents to another place; and

“(B) conducted in accordance with the provisions of chapter 5 of title 5, United States Code.

“(2) **ISSUANCE OF ORDERS.**—After a hearing provided for in this section, and not later than 90 days after the Administrator has notified the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section.

“(3) **AUTHORITY TO MODIFY ORDERS.**—The Administrator may modify, terminate, or set aside any order issued under this section—

“(A) at any time, upon such notice, and in such manner as the Administrator deems proper, unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4)(B), and thereafter until the record in the proceeding has been filed in accordance with paragraph (4)(C); and

“(B) upon such filing of the record, with permission of the court.

“(4) **JUDICIAL REVIEW.**—

“(A) **IN GENERAL.**—Judicial review of an order issued under this section shall be exclusively as provided in this subsection.

“(B) **PETITION FOR REVIEW.**—Any party to a hearing provided for in this section may obtain a review of any order issued pursuant to paragraph (2) (other than an order issued with the consent of the management official concerned, or an order issued under subsection (d)), by filing

in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, not later than 30 days after the date of service of such order, a written petition praying that the order of the Administrator be modified, terminated, or set aside.

“(C) NOTIFICATION TO ADMINISTRATION.—A copy of a petition filed under subparagraph (B) shall be forthwith transmitted by the clerk of the court to the Administrator, and thereupon the Administrator shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

“(D) COURT JURISDICTION.—Upon the filing of a petition under subparagraph (A)—

“(i) the court shall have jurisdiction, which, upon the filing of the record under subparagraph (C), shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administrator, except as provided in the last sentence of paragraph (3)(B);

“(ii) review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code; and

“(iii) the judgment and decree of the court shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, United States Code.

“(E) JUDICIAL REVIEW NOT A STAY.—The commencement of proceedings for judicial review under this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administrator under this section.”.

SEC. 6. REDUCTION OF FEES.

(a) TWO-YEAR REDUCTION OF SECTION 7(A) FEES.—

(1) GUARANTEE FEES.—Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended by adding at the end the following:

“(C) TWO-YEAR REDUCTION IN FEES.—With respect to loans approved during the 2-year period beginning on October 1, 2002, the guarantee fee under subparagraph (A) shall be as follows:

“(i) A guarantee fee equal to 1 percent of the deferred participation share of a total loan amount that is not more than \$150,000.

“(ii) A guarantee fee equal to 2.5 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.

“(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.”.

(2) ANNUAL FEES.—Section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)) is amended by adding at the end of the following: “With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee as-

essed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.”.

(b) REDUCTION OF SECTION 504 FEES.—Section 503 of the Small Business Investment Act of 1958 (15 U.S.C. 697) is amended—

(1) in subsection (b)(7)(A)—

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and moving the margins 2 ems to the right;

(B) by striking “not exceed the lesser” and inserting “not exceed—

“(i) the lesser”; and

(C) by adding at the end the following:

“(ii) 50 percent of the amount established under clause (i) in the case of a loan made during the 2-year period beginning on October 1, 2002, for the life of the loan; and”; and

(2) by adding at the end the following:

“(i) TWO-YEAR WAIVER OF FEES.—The Administration may not assess or collect any up front guarantee fee with respect to loans made under this title during the 2-year beginning on October 1, 2002.”.

(c) BUDGETARY TREATMENT OF LOANS AND FINANCINGS.—Assistance made available under any loan made or approved by the Small Business Administration under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or financings made under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 *et seq.*), during the 2-year period beginning on October 1, 2002, shall be treated as separate programs of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 only.

(d) USE OF FUNDS.—The amendments made by this section to section 503 of the Small Business Investment Act of 1958, shall be effective only to the extent that funds are made available under appropriations Acts, which funds shall be utilized by the Administrator to offset the cost (as such term is defined in section 502 of the Federal Credit Reform Act of 1990) of such amendments.

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 2002.

Approved December 21, 2001.