RSC Republican Study Committee

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Legislative Bulletin……………………………….………March 18, 2007

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: $371 million over six years

Effect on Revenue: $0

Total Change in Mandatory Spending: $0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 1361 — RECOVER Act (*Velazquez, D-NY*)

Order of Business: The bill is scheduled for consideration on Wednesday, April 18, 2007, subject to a structured rule (H.Res. 302). The rule self-executes a manager's amendment and allows for two additional amendments (summarized below).

Summary: H.R. 1361, the Relief for Entrepreneurs: Coordination of Objectives and Values for Effective Recovery Act of 2007 (or "RECOVER" Act) would amend the Small Business Act to make various changes to loan and grant programs administered by the Small Business Administration (SBA) and require the SBA to develop a "comprehensive" disaster response plan, among other provisions. The specific provisions of the bill are as follows:

- Requires the SBA to develop, implement, and maintain a comprehensive written disaster response plan, which must include the following elements:
  1) "For each region of the Administration, a description of the disasters most likely to occur in that region.
  2) "For each disaster described in the provision above:
     a) an assessment of the disaster;

b) an assessment of the demand for Administration assistance most likely to occur in response to the disaster;
c) an assessment of the needs of the Administration, with respect to such resources as information technology, telecommunications, human resources, and office space, to meet the demand referred to in subparagraph (B); and
d) guidelines pursuant to which the Administration will coordinate with other Federal agencies and with State and local authorities to best respond to the demand referred to in subparagraph (B) and to best use the resources referred to in that subparagraph."

- Requires the first plan to be completed within 180 days of enactment; thereafter, it requires the SBA to update the plan on an annual basis and following any "incident of national significance (as declared by the President or his designee)."
- Requires the SBA to carry out the above provisions "through an individual with substantial knowledge in the field of disaster readiness and emergency response."
- Requires the SBA to maintain a "disaster reserve corps" for the purpose of performing the functions of the SBA related to disaster response; it requires the corps to consist of at least 1,000 individuals who: do not ordinarily have the duties of a full-time officer or employee of the Administration, but are able to assume duties related to disaster response when the SBA requires.
- Requires the SBA to provide annual training to the above mentioned individuals "in one or more functions relating to disaster response" and must ensure training functions differ from year to year (as much as practical), so as not to duplicate individual training.
- Requires the SBA to ensure that no more than 30 percent of the individuals in the corps reside in any one region of the SBA.
- Requires the SBA to develop long-term plans to secure additional office space to accommodate an expanded workforce in times of disaster.
- Requires the SBA to ensure that the disaster assistance programs of the SBA are coordinated with the disaster assistance programs of the Federal Emergency Management Agency (FEMA) to "the maximum extent practicable."
- Requires the SBA, in consultation with FEMA, to establish regulations to ensure that each application for disaster assistance is submitted as quickly as practicable to the SBA or directed to the appropriate agency; also requires that the initial regulations be completed within 9 months, and thereafter revised annually.
- Establishes a new Associate Administrator for Disaster Assistance position at the SBA, appointed by the President, by and with the advice and consent of the Senate, from among individuals who have: "proven management ability" and "substantial knowledge in the field of disaster readiness and emergency response."
- Establishes a new Director for Disaster Planning position at the SBA, appointed by the SBA from among SBA personnel, which shall a) develop and implement the Administration's plans for responding to disasters, and b) direct the Administration's disaster training exercises.
- Requires the SBA to coordinate with the Associate Administrator for the Office of Disaster Assistance of the Administration, the FEMA Director, and other federal, state, and local disaster planning offices, as necessary.

- Establishes a new Director for Disaster Lending position at the SBA, appointed by the SBA from among SBA personnel, which will direct all aspects of the disaster lending program under section 7(b) of the Small Business Act.
- Requires the SBA to ensure that the Associate Administrator for Disaster Assistance, the Director of Disaster Planning, and the Director of Disaster Lending have adequate resources to carry out the duties defined in the Act.
- Allows SBA disaster loans for private non-profit organizations when responding to an "incident of national significance" as declared by the President.
- Allows the SBA to make or guarantee a mitigation loan to a small business that receives a loan under section 7(b)(1)(A) (disaster mitigation) for the damage or destruction, by reason of an incident of national significance (as declared by the President or his designee), of property owned by the small business; stipulates that the amount of this loan cannot exceed 20 percent of the total amount of the cost of the damage or destruction (and states that the total amount must be calculated without regard for any costs for which the small business is reimbursed under any insurance policy).
- Allows the SBA to carry out the above mentioned disaster mitigation loans for private non-profit organizations that were located in an area affected by Hurricane's Katrina, Rita, or Wilma (the bill specifically defines those areas affected).
- Requires the SBA to develop, implement, and maintain a centralized information system to track communications between SBA personnel and applicants for disaster assistance, and requires that the system shall ensure whenever an applicant for disaster assistance communicates with SBA personnel on a matter relating to the application, the following information is recorded: the method and date of communication, the identify of the personnel, and a summary of the subject matter of the communication.
- Requires that every applicant for disaster assistance receives, by telephone, mail, or electronic mail, follow-up communications from the SBA at all "critical stages of the application process," including: when the SBA determines that additional information or documentation is required to process the application, when the SBA determines whether to approve or deny the loan, or when the primary contact person managing the loan application has changed.
- Requires the SBA to carry out a new program, known as the Immediate Disaster Assistance program, under which the SBA participates on a deferred (guaranteed) basis in 85 percent of the balance of the financing outstanding at the time of disbursement of the loan if the balance is less than or equal to $25,000 for businesses affected by a disaster. This provision further stipulates that a person who receives a loan under section 7(b) must use the proceeds of that loan to repay all loans guaranteed under subsection (a), if any, before using the proceeds for any other purpose. SBA must also ensure that each loan application under this program receives a decision approving or disapproving of the application within 36 hours upon SBA's receipt of the application.
- Allows the SBA to provide disaster victims with an option of receiving a deferment period, up to four years, for disaster loans.
- Requires the SBA to provide a minimum loan deferment period of 12 months (for loan repayment under 7(b)), and requires that the repayment period begin from the date that the final loan disbursement is made.
- Requires the SBA to disburse loan amounts (under section 7b) in stages as follows:
    a) For loans up to $150,000:

- the first disbursement shall consist of 40 percent of the total loan amount (or a lesser percentage of the total loan amount if the SBA and the borrower agree on such a lesser percentage)
- the second disbursement shall consist of 50 percent of the amounts that remain after the first disbursement, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of the first half of the first disbursement; and
- the third disbursement shall consist of the amounts that remain after the preceding disbursements, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of the first disbursement and the first half of the second disbursement.

b) For loans of $150,000 to $500,000:
- the first disbursement shall consist of 20 percent of the total loan amount, or a lesser percentage if the Administrator and the borrower agree on such a lesser percentage;
- the second disbursement shall consist of 30 percent of the total loan amount remaining after the first disbursement, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of the first half of the first disbursement;
- the third disbursement shall consist of 25 percent of the total loan amount remaining after the first and second disbursements, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of the first disbursement and the first half of the second disbursement; and
- the fourth disbursement shall consist of the amounts that remain after the preceding disbursements, and shall be made when the borrower has produced satisfactory receipts to demonstrate the proper use of the first and second disbursements and the first half of the third disbursement.

c) For loans greater than $500,000:
- the first disbursement shall consist of at least $100,000, or a lesser amount if the Administrator and the borrower agree on such a lesser amount; and
- the number of disbursements after the first, and the amount of each such disbursement, shall be in the discretion of the Administrator, but the amount of each such disbursement shall be not less than $100,000.

➢ Prohibits the SBA, when making a business loan under section 7(b) of $100,000 or less, from requiring the borrower to use the borrower's home as collateral.

➢ Allows the SBA to carry out a program which permits banks and other financial institutions to process, approve, close, and service disaster loans under section 7(b) for a fee not to exceed two percent of the total loan amount; stipulates that the SBA *must* provide this program during 1) any period of an incident of national significance (as declared by the President), or 2) any period during which the average time for the SBA to approve disaster loans in response to any single disaster is 30 days or more.

➢ Allows the SBA to exclude certain lenders from the above program (or the preferred lenders program) if their default rate is "inordinate" (as determined by the SBA).

➢ Requires the SBA to ensure that a facility is in place for disaster loan processing that, whenever the SBA's primary facility for loan processing becomes unavailable, is able to

- Allows the SBA to make a grant of up to $100,000 to disaster-affected small businesses (defined in the bill by specific disaster declarations and areas), that meets certain requirements; authorizes to be appropriated such funds for grants as may be necessary.
- Permits the SBA to waive the prohibition on duplication of benefits for any victim of Hurricanes Katrina, Rita, or Wilma.
- Increases the legislative limit in the Small Business Act (15 USC 636(b)(3)(E)), currently at $1.5 million, to $3 million.
- Prohibits the SBA, in making section 7(b) loans, from requiring the borrower to pay any non-amortized amount for the first five years after repayment begins.
- Adds "private non-profit organization" to the list of qualified entities that qualify for disaster assistance.
- Expands the current provision that allows certain businesses (which are a major source of employment prior to a disaster) to qualify for disaster loans beyond the current statutory limit to allow business that "subsequently are a major source of employment following a disaster."
- Requires the SBA to establish a process under which a small business may file a preliminary application for assistance before the date on which an essential employ is ordered for active duty.
- Expands the current definition of incidents of "economic injury" to include "ice storms and blizzards" and "lack of snowfall," thus expanding the eligibility for disaster loans under these circumstances.
- Requires the SBA, within 45 days after the end of a fiscal year, to submit a report to Congress on the SBA disaster assistance operations for that fiscal year, and stipulates certain information the report must include, such as total number of personnel involve, SBA's effectiveness in responding to disasters, and a description of SBA's disaster plans for the upcoming fiscal year.
- Requires the SBA, during an incident of national significance (as declared by the President) to submit a report to Congress monthly on the disaster assistance operations of the SBA relating to the incident of national significance, and stipulates that the report must include 1) the number of applications distributed, 2) the number of applications received, 3) the average time for the Administration to approve or disapprove an application, 4) the amount of disaster loans approved, 5) the average time for initial disbursement of loan proceeds, and 6) the amount of disaster loan proceeds disbursed.

Additional Background: The SBA was originally established in 1953, and has been subsequently expanded and reauthorized numerous times in the last four decades, most recently within the 2005 Consolidated Appropriations Act (H.R. 4818; P.L. 108-447) in the 108th Congress. Also, H.R. 4745 in the 109th Congress provided for emergency supplemental appropriations for the SBA's disaster loan program, providing $712 million by transferring the funds from previously appropriated FEMA Disaster Relief Funds (P.L. 109-62, the Second Katrina Supplemental). This amount is in addition to $441 million that was provided to the SBA program in the Second Hurricane Supplemental. Click here for the RSC's Legislative Bulletin on H.R. 4745.

For additional information about the creation and history of the Small Business Administration, please visit the SBA website. For additional information that is critical of the current role and usefulness of the SBA loan program, please visit the American Enterprise Institute website.

RSC Bonus Fact: A little known fact is that the SBA does not directly make loans to businesses, with the exception of disaster loans. As noted by CRS, its stated purpose is to provide guarantees for private business loans that lenders would not otherwise be willing to make under desirable terms of maturity and interest rate. Also, the SBA website states that SBA's "current business loan portfolio of roughly 219,000 loans worth more than $45 billion makes it the largest single financial backer of U.S. businesses in the nation."

Possible Conservative Concerns: As described above, the bill significantly expands SBA loan and grant programs and eligibility requirements, as well as creates several new programs and offices within the SBA regarding disaster relief and recovery. Some conservatives may be concerned by the scope of these expansions and additions which further engage the federal government in local disaster relief and recovery. The federal government has not proven particularly effective in times past in providing rapid, efficient relief for victims and businesses affected by disasters relative to assistance and opportunities provided by the private sector and local and state governments and institutions. Further, some conservatives argue that the current SBA loan programs are duplicative of private-sector efforts and opportunities and are counterproductive to fostering competitiveness, growth, and ingenuity in U.S. small businesses.

Amendments: Below are the summaries of the three amendments made in order under the rule. Note: Summaries are based on RSC staff's review of actual amendment text.

Manager's Amendment (self-executing under the rule): Strikes section 211 of the underlying bill, which waives the current prohibition on duplication of loan benefits from SBA (CBO noted this provision would increase mandatory spending by $215 million and thus creates a PAYGO violation). Inserts a new section 211, which allows the SBA to carry out a program to make grants to victims of Hurricanes Katrina, Rita, or Wilma who already receive disaster assistance as a result of those disasters. The amendment authorizes to be appropriated such sums as may be necessary to carry out the provision – which makes the program discretionary and subject to appropriations (and therefore removes the PAYGO violation).

In effect, this amendment would narrow the scope of the original section 211 in the bill by eliminating the SBA's retroactive authority to alter *existing* disaster loans and preserving the SBA's authority to provide victims of Hurricanes Katrina, Rita, or Wilma with grants to replace compensation that has been taken by the SBA as a duplication of benefits. The amendment would also modify section 218 to require the SBA to submit a report to Congress assessing the need and ability of the SBA to provide economic injury disaster loans for businesses affected by a ***lack of snowfall***.

1. Chabot (R-OH). Strikes section 211 of the bill, which waives the current prohibition on duplication of loan benefits. The sponsor states that the net effect of this amendment would be to "require anyone receiving both a grant and a disaster loan to use the grant to repay the disaster loan thereby preventing the government from compensating the same person twice for the same disaster."

2. Chabot (R-OH). Strikes section 210 of the bill, which allows the SBA to make grants up to $100,000 to small businesses affected by disasters (under certain conditions). The amendment sponsor states this would eliminate the authority of the SBA to offer grants to certain small businesses that were affected by Hurricanes Katrina, Rita, or Wilma but that were denied disaster loans.

3. Jindal (R-LA). Provides disaster victims of Hurricanes Katrina, Rita, and Wilma with the option of receiving an increased four-year deferment period for disaster loans. The amendment sponsor notes that section 204 of underlying bill extends this option to future disaster victims, while this amendment would make it retroactive to the 2005 hurricanes.

Committee Action: H.R. 1361 was introduced on March 6, 2007, and referred to the Committee on Small Business. The bill was marked-up on March 15, and reported (amended) to the House by a vote of 17-9 the same day. (House Report 110-82).

Cost to Taxpayers: According to CBO, H.R. 1361 will authorize $217 million in FY08 and $371 million over the FY07-FY12 period. The base bill would have increased direct spending by $140 million in FY07 and $215 million over the FY07-FY12 period, ***but this has been addressed in the self-executing manager's amendment.***

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, as noted above, the bill expands current programs and creates new programs, positions, and offices.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Small Business Committee, in House Report 110-82, cites constitutional authority in Article I, Section 8, Clause 18 (the congressional power to make all laws necessary and proper for carrying into execution the foregoing powers listed in the Constitution), but fails to cite a foregoing power of authority.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain "a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." *[emphasis added]*

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