SMALL BUSINESS LEGISLATION—1970

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SMALL BUSINESS

OF THE

COMMITTEE ON BANKING AND CURRENCY

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 2609

A BILL TO INCREASE THE PARTICIPATION OF SMALL BUSINESS CONCERNS IN THE CONSTRUCTION INDUSTRY BY PROVIDING FOR A FEDERAL GUARANTEE OF CERTAIN CONSTRUCTION BONDS AND AUTHORIZING THE ACCEPTANCE OF CERTIFICATIONS OF COMPETENCY IN LIEU OF BONDING IN CONNECTION WITH CERTAIN FEDERAL PROJECTS, AND FOR OTHER PURPOSES

S. 3528

A BILL TO AMEND THE SMALL BUSINESS ACT TO ENCOURAGE THE DEVELOPMENT AND UTILIZATION OF NEW AND IMPROVED METHODS OF WASTE DISPOSAL AND POLLUTION CONTROL; TO ASSIST SMALL BUSINESS CONCERNS TO MEET FEDERAL OR STATE POLLUTION CONTROL STANDARDS; AND FOR OTHER PURPOSES

S. 3699

A BILL TO CLARIFY AND EXTEND THE AUTHORITY OF THE SMALL BUSINESS ADMINISTRATION, AND FOR OTHER PURPOSES

JUNE 15, 16, AND 17, 1970

Printed for the use of the Committee on Banking and Currency

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SMALL BUSINESS LEGISLATION—1970

MONDAY, JUNE 15, 1970

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
SUBCOMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m. in room 5302, New Senate Office Building, Senator Thomas J. McIntyre, chairman of the subcommittee, presiding.

Present: Senators Sparkman and McIntyre.

Senator MCINTYRE. The subcommittee will come to order.

This morning the Small Business Subcommittee begins 3 days of hearings on three bills designed to improve the lot of the small businessman in today's economic life. They are S. 3528, a bill which I introduced on March 2 of this year, to assist small businesses in making conversions necessary to meet Government antipollution standards and to encourage the development and utilization of new or improved methods of waste disposal and pollution control; S. 3699, the administration's small business amendments of 1970, which is designed to clarify and extend the authority of the Small Business Administration in a number of ways; and S. 2609, introduced by Senator Birch Bayh in July 1969 to increase the participation of small contractors and, particularly, minority contractors in the construction industry.

(The bills and accompanying reports follow:)

91ST CONGRESS
1ST SESSION

S. 2609

IN THE SENATE OF THE UNITED STATES

JULY 14, 1969

Mr. BAYH introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

A BILL

To increase the participation of small business concerns in the construction industry by providing for a Federal guarantee of certain construction bonds and authorizing the acceptance of certifications of competency in lieu of bonding in connection with certain Federal projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the purpose of this Act to advance the national policy set forth in section 2 of the Small Business Act by authorizing assistance to small business enterprises, wishing to enter the construction business with special reference to those persons and concerns which, as a result of discrimination or

otherwise, have not been able to participate fully or fairly in a vital and expanding industry.

CONSTRUCTION BOND GUARANTEES

SEC. 2. Title IV of the Small Business Investment Act of 1958 is amended—

(1) by striking out the title heading and inserting in lieu thereof the following:

"TITLE IV—GUARANTEES

"PART I—LEASE GUARANTEES";

(2) by striking out "this title", wherever it appears in sections 402 and 403, and inserting in lieu thereof "this part"; and

(3) by adding at the end thereof the following:

"PART II—CONSTRUCTION BOND GUARANTEES

"DEFINITIONS

"SEC. 410. As used in this part—

"(1) The term 'bid bond' means a bond conditioned upon the bidder on a contract for the performance of a construction project entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

"(2) The term 'payment bond' means a bond conditioned upon the payment by the principal of money, received from the obligee, to subcontractors, mechanics, laborers, and other persons entitled to receive the same.

"(3) The term 'performance bond' means a bond conditioned upon the completion by the principal of a construction project in accordance with the terms of the contract under which the project is performed.

"(4) The term 'surety' means the person who (A) under the terms of a bid bond undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, or (B) under the terms of a payment bond or performance bond undertakes to incur the cost of fulfilling the terms of a construction contract in the event the principal breaches the conditions of the contract.

"(5) The term 'obligee' means (A) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of a construction project and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond, or (B) in the case of a bid bond, the person requesting bids for the performance of a construction project. An obligee may be the owner or lessee of real property upon which a construction project is to be performed, or a prime contractor or subcontractor.

"(6) The term 'principal' means (A) the person primarily liable to complete a construction project for the obligee, or to make payments to other persons with money

provided by the obligee in respect of such project, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond, or (B) in the case of a bid bond, a person bidding for the award of a contract to perform a construction project. A principal may be a prime contractor or a subcontractor.

"(7) The term 'prime contractor' means the person with whom the owner or lessee of real property upon which a construction project is to be performed has contracted to perform the project.

"(8) The term 'subcontractor' means a person who has contracted with a prime contractor or with another subcontractor to perform a construction project.

"(9) The term 'construction project' means a project involving work on or improvements to real property; a construction project to be performed by a prime contractor may involve one or more lesser construction projects to be performed by subcontractors.

"AUTHORITY OF THE ADMINISTRATION

"SEC. 411. (a) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss as the result of the breach of the terms of a bid bond, payment bond, or performance bond by a principal, subject to the following conditions:

"(1) The person who would be the principal of the bond is a small business concern.

"(2) The bond is required in order for such person to bid on a construction contract, or to serve as a prime contractor or subcontractor on a construction project.

"(3) Such person is not able to obtain such bond on terms and conditions which generally prevail in the industry without a guarantee under this section.

"(4) The Administration determines that there exists a reasonable expectation that such person will perform the covenants and conditions of the contract with respect to which the bond is required.

"(5) The contract and the construction project meet requirements established by the Administration for feasibility of successful completion and reasonableness of cost.

"(b) Any contract of guarantee under this section shall obligate the Administration to pay to the surety a sum not to exceed 90 per centum of the cost incurred by the surety in fulfilling the terms of his contract with an obligee as the result of the breach by the principal of the terms of a bid bond, performance bond, or payment bond.

"(c) The Administration shall fix a uniform annual fee for any guarantee under this section which shall be payable at such time as may be determined by the Administration. To

the extent practicable, having due regard for the purposes of this section, the amount of any such fee shall be determined in accordance with sound actuarial practices and procedures. Any fee so established shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as it determines are reasonable and necessary to pay administrative expenses incurred in connection therewith.

"(d) The provisions of section 402 shall apply in the administration of this section.

"FUND

"SEC. 412. (a) There is established a revolving fund for use by the Administration in carrying out this part. Initial capital for such fund shall consist of not to exceed $5,000,000 transferred from the fund established under section 4 (c) (1) (B) of the Small Business Act, but paragraph (6) of such section shall not apply to any amounts so transferred.

"(b) There shall be deposited into the fund established by this section all receipts from the guarantee program authorized by this part. Money in such fund not needed for the payment of current operating expenses or for the payment of claims arising under such programs shall be invested in bonds or other obligations of, or guaranteed by, the United

States; except that money provided as initial capital for such fund shall be returned to the fund established by section 4(c) (1) (B) of the Small Business Act, in such amounts and at such times as the Administration determines to be appropriate, whenever the level of the fund established by this section permits the return of such money without endangering the solvency of the program under this part."

CERTIFICATIONS OF COMPETENCY TO PERFORM FEDERAL CONSTRUCTION PROJECTS

SEC. 3. Paragraph (7) of section 8(b) of the Small Business Act is amended by inserting "(A)" after "(7)" and adding at the end thereof the following:

"(B) (i) to certify to any department or agency of the Government, within fifteen days after application therefor is made by a small business concern, concerning the competency, capacity, and credit of such concern to bid upon and to carry out a contract for a construction project to be financed by such department or agency in accordance with the terms thereof, and to meet all obligations arising thereunder, and any such certification shall, notwithstanding any other provision of law, be accepted by such department or agency in lieu of requiring that such concern provide a bid bond, payment bond, or performance bond; subject to the following conditions:

"(aa) the small business concern is not able to obtain from private sources the bonding which, except for the provisions of this paragraph (B), would be required in order to be awarded such contract;

"(bb) the Administration determines that such concern possesses qualifications which would normally be considered sufficient by the surety industry to obtain such bonding;

"(cc) the amount of any payment bond or performance bond which, except for the provisions of this paragraph (B), would be required of such concern does not exceed $500,000; and

"(ii) to charge and receive from any small business concern which is awarded a contract for a construction project by a department or agency of the Government, pursuant to a certification made under this paragraph (B), a fee or fees in an aggregate amount which is not more than the premium or premiums which such concern would have otherwise been required to pay, under sound actuarial practices and procedures, to a private surety to obtain a payment bond and a performance bond in order to qualify for such contract; such fee or fees to be paid at such time or times as the Administration shall by regulation prescribe."

NATIONAL CONSTRUCTION TASK FORCE

SEC. 4. Section 8 of the Small Business Act is amended by adding at the end thereof a new subsection as follows:

"(f) (1) The Administrator shall establish a National Construction Task Force (hereinafter referred to as the 'Task Force') to consist of fifteen persons to be appointed by the Administrator. Members of the Task Force shall be broadly representative of Government, business, labor, and the public, but in selecting such members the Administrator shall seek to obtain the services of persons who, by experience, training, or interest, are knowledgeable concerning the construction industry and the problems of the small contractor. Members of the Task Force shall elect a Chairman and shall meet on the call of the Chairman which shall be not less often than once each quarter. Each member of the Task Force from private life shall receive compensation at a rate of $75 for each day he is engaged in the actual performance of duties vested in the Task Force, and shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently. The Administration shall provide the Task Force with such office facilities, materials, and staff as may be necessary or appropriate to enable it to carry out its functions.

"(2) The Task Force shall, after consultation with

representatives of the Department of Labor and the Department of Housing and Urban Development, develop programs and policies to be carried out, with the approval of the Administrator, for broadening the participation of small business enterprise in the construction industry. Such programs shall include (A) the provision of technical instruction and counseling with respect to the managing, financing, and operation of small construction concerns, and the techniques of successful bidding on construction contracts, and (B) the correlation and dissemination of information concerning opportunities for small business enterprises to participate as prime contractors or subcontractors on construction projects.

"(3) Approved programs and policies developed by the Task Force shall be carried out by the Administration on a local basis having regard for varying conditions prevailing in the construction industry in different areas of the country. Whenever necessary in furtherance of such programs and policies, the Administration may obtain the temporary or intermittent services of experts or consultants, or an organization thereof, in accordance with section 3109 of title 5, United States Code, but at rates for individuals not to exceed $100 per diem.

"(4) The authority conferred by this subsection shall terminate upon the expiration of ten years after the date of its enactment."

48-335—70——2

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 19, 1969.

Hon. JOHN SPARKMAN,
Chairman, Committee on Banking and Currency,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to letter of July 29, 1969, requesting a report on S. 2609, 91st Congress, 1st session, entitled "A BILL To increase the participation of small business concerns in the construction industry by providing for a Federal guarantee of certain construction bonds and authorizing the acceptance of certifications of competency in lieu of bonding in connection with certain Federal projects, and for other purposes."

Our Office has no special information as to the need or desirability of increasing the participation of small business concerns in the construction industry or the preferable method to accomplish that purpose. As shown by the following comments, however, we do not recommend favorable consideration of the bill.

S. 2609 has three main parts. First, it amends title IV of the Small Business Investment Act of 1958 to provide that the Small Business Administration may enter into commitments to guarantee any surety against 90 percent of the loss resulting from default of the small business principal on bid, payment or performance bonds for private construction work. Second, it amends paragraph (7) of section 8(b) of the Small Business Act to provide for the issuance of certificates of competency by the Small Business Administration in connection with federally funded construction projects in lieu of a bid, payment or performance bond. Third, it amends section 8 of the Small Business Act to provide for the establishment of a National Construction Task Force to provide technical assistance to small business concerns for the purpose of broadening the participation of such concerns in the construction industry.

As observed, S. 2609, under section 2, provides for the Government to guarantee sureties against 90 percent of the loss incurred by them in fulfilling their obligations under bid bonds, payment bonds or performance bonds as the result of default by private small business construction contractors. The assurance to sureties of such a large guarantee of recovery and a minimum of liability could lessen their incentive to determine the validity of or vigorously defend claims and actions under the bonds. Also, because of the substantial contingent liability confronting the Government in such circumstances, it might have to intercede in numerous claims and actions to insure their proper settlement or defense. In fact, it is conceivable that sureties might look to the Government to defend such claims and actions in view of the Government's substantial interest. The impact of the Government's involvement in this respect which would create administrative burdens and additional costs should be weighed by the Congress in its consideration of the bill.

With respect to the certificates of competency as to Federal construction contracts, section 3 of S. 2609 provides that the Small Business Administration is empowered—

"to certify to any department or agency of the Government, within fifteen days after application therefor is made by a small business concern, concerning the competency, capacity, and credit of such concern to bid upon and to carry out a contract for a construction project to be financed by such department or agency in accordance with the terms thereof, and to meet all obligations arising thereunder, and any such certification shall, notwithstanding any other provision of law, be accepted by such department or agency in lieu of requiring that such concern provide a bid bond, payment bond, or performance bond * * *"

The Miller Act, 40 U.S.C. 270a, provides for the Government obtaining performance and payment bonds from Government contractors or contracts exceeding $2,000 in amount for the construction, alteration or repair of any public building or public work of the United States. The requirement for bid bonds being furnished to the Government contracting agencies is set forth in paragraph 10–102 of the Armed Services Procurement Regulation and section 1–10.103–1 of the Federal Procurement Regulations.

We assume that the certificate in lieu of the bid bond provided for in the clause quoted above would have to be furnished with the bid since the purpose of the bid bond is to protect the Government against the failure of the lowest, responsive, bidder to accept the award and execute the contract documents and it is, therefore, well established that the bid bond requirement is a material condition which must be met by a bidder at the time bids are opened in order to be eligible for award. Moreover, it is not unusual for bidders in the construction industry to pre-

pare their bids at the last possible moment before the time scheduled for bid opening. In view of this practice, bidders for Government contracts could belatedly discover that private bonding was not available (one of the named conditions precedent to the issuance of a certificate) and then find it too late to meet the 15-day application requirement for a certificate to be issued. Also, because of the substitution of a certificate of competency for the bid bond requirement it is conceivable that in many instances the Small Business Administration of necessity would be called upon to issue certificates of competency to a number of the small business concerns which might be interested in bidding on a contract rather than only to the lowest responsive bidder who has been determined by the contracting agency after bid opening to lack the necessary capacity and credit to perform the contract as is now required. This undoubtedly would impose a substantial additional burden on the Small Business Administration.

Further, as contemplated by S. 2609, when a certificate of competency is furnished in lieu of bonds, subcontractors, materialmen, laborers and the like would be left without payment bond protection. The payment bond is in the nature of a substitute for mechanics' liens which are not recognized by the Government. Thus, while small business construction contractors would benefit from not having to comply with the requirement for furnishing payment bonds, the elimination of the requirement could have serious impact upon subcontractors, suppliers and laborers, who also may be small business concerns, because the payment bond protection ordinarily provided those parties would not be available. In addition, although this may not be a serious problem, the Government would be deprived of the financial protection now afforded by performance bonds as required by the Miller Act as well as the protection afforded by the bid bond requirement of the procurement regulations as indicated above.

We note the absence of any specific provision which would place the responsibility on the Government of settling the claims of laborers, suppliers and others who, through no fault of the procurement agencies, would not be protected by a payment bond and might be unable to collect their debts from a Government contractor. On the other hand, we seriously doubt that it would be in the best interest of the Government to assume such responsibility. As a legal proposition, there is no privity of contract between the Government and subcontractors and suppliers under Government contracts. Nevertheless, if the Government would undertake to settle their claims, it could become involved in disputes between the contractor and his supplier of labor or materials as to whether an indebtedness in fact existed or whether the contractor had a valid defense to the claims. This would require the promulgation of implementing regulations and the establishment of internal procedures to process, adjudicate and settle such claims. The resulting administrative expenses Governmentwide could become quite substantial.

S. 2609 provides that one of the conditions of the certification in lieu of bonds on Government projects is that the amount of any payment bond or performance bond which would be required of the small business concern would not exceed $500,000. Since, under the Miller Act, the payment bond and performance bonds required to support Government construction contracts can be in varying amounts and the performance bonds on jobs of the same dollar amount may be for different penal sums, it might be preferable for the sake of uniformity to state the condition in terms of the contract price.

S. 2609 provides that the National Construction Task Force shall consult with representatives of the Department of Labor and the Department of Housing and Urban Development before developing programs and policies for broadening small business participation in the construction industry. Consideration might be given to providing for consultation with other interested Federal agencies which may be of assistance in achieving this objective. For example, the Business and Defense Services Administration and the Office of Minority Business Enterprise in the Department of Commerce, the Department of Defense and the General Services Administration may be able to provide information which would be of value to the Task Force in this area.

Sincerely yours,

R. F. KELLER,
For the Comptroller General of the United States.

SMALL BUSINESS ADMINISTRATION,
Washington, D.C., April 2, 1970.

Hon. JOHN SPARKMAN.
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of July 29, 1969, requesting the views of the Small Business Administration on S. 2609, a bill "To increase the participation of small business concerns in the construction industry by providing for a Federal guarantee of certain construction bonds and authorizing the acceptance of certifications of competency in lieu of bonding in connection with certain Federal projects, and for other purposes."

Because of their slender financial resources and their limited managerial experience and knowledge, small construction firms commonly encounter difficulty in obtaining the bonds (bid, payment and performance) normally required of concerns seeking construction work. This is particularly true of blacks, and of members of other minority groups trying to establish themselves in the industry. Existing bonding requirements represent a high barrier to the progress of these minority concerns.

S. 2609 contains a remedial proposal extending to all construction activity, whether conducted by the Government or private industry. SBA would be authorized, under certain conditions, to guarantee sureties against losses resulting from the breaching of bid bonds, payment bonds or performance bonds by small construction firms. Such a guarantee could cover up to 90 percent of the amount of the loss.

We are in strong general agreement with this proposal. Indeed, a bill which we recently submitted to the Congress, calling for a number of measures to expand and intensify Government assistance to small business, contains a similar proposal. A copy of the bill is enclosed herewith. We are hopeful that such guarantee legislation will be promptly enacted.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

HILARY SANDOVAL, Jr., *Administrator.*

91ST CONGRESS
2D SESSION

S. 3528

IN THE SENATE OF THE UNITED STATES

MARCH 2, 1970

Mr. MCINTYRE introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

A BILL

To amend the Small Business Act to encourage the development and utilization of new and improved methods of waste disposal and pollution control; to assist small business concerns to effect conversions required to meet Federal or State pollution control standards; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7(a) of the Small Business Act is amended—

(1) by striking "paragraph (5)" in paragraph (4) and inserting "paragraphs (5) and (8)"; and

(2) by adding at the end thereof a new paragraph as follows:

"(8) The Administrator shall require that any equip-

ment, facilities, or machinery to be acquired with assistance under this subsection be so designed as to prevent control, or minimize environmental pollution which might otherwise result therefrom in accordance with such standards as the Administrator shall prescribe after consultation with the Secretary of Health, Education, and Welfare. In the processing of applications for financial assistance under this subsection the Administrator shall give priority to those applications which he determines will further the development or utilization of new and improved methods of waste disposal or pollution control. The rate of interest for the Administration's share of any loan with respect to which such determination has been made shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum, plus one-quarter of 1 per centum per annum."

SEC. 2. (a) Section 7(b) of the Small Business Act is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; and"; and

(2) by adding after paragraph (5) a new paragraph as follows:

"(6) to make such loans (either directly or in

cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration determines to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in its plant, facilities, or methods of operation to meet requirements for the prevention or control of environmental pollution imposed by Federal or State law, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of such Act is amended by striking "or (5)" and inserting ", (5), or (6)".

(c) Section 4(c)(1) of such Act is amended by inserting "7(b)(6)", after "7(b)(5),".

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
July 1, 1970.

HON. JOHN SPARKMAN,
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of March 3, 1970, for a report on S. 3528, a bill "To amend the Small Business Act to encourage the development and utilization of new and improved methods of waste disposal and pollution control; to assist small business concerns to effect conversions required to meet Federal or State pollution control standards; and for other purposes."

On June 16, 1970, this Department submitted a written statement to your Committee for inclusion in the record. For the reasons listed in that statement, a copy of which is enclosed for your convenience, we urge deferral of action on S. 3528 until completion of the Executive Branch review of this subject, as mentioned in the statement.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ELLIOT L. RICHARDSON, *Secretary.*

STATEMENT OF CHARLES C. JOHNSON, JR., ADMINISTRATOR, ENVIRONMENTAL HEALTH SERVICE, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman, it is a pleasure for me to give you the views of our Department on S. 3528. We favor the general objective of this bill. All sources of environmental pollution, large and small, should be prevented and controlled by all reasonable means. The interest of the Congress in bringing this about is most encouraging.

It should be noted that Section 103 of P.L. 91–190, "The National Environmental Policy Act of 1969," requires that all agencies of the government review their present authorities, regulations, policies and procedures to determine what changes or additions are needed to "bring their authorities and policies into conformity with the intent, purposes and procedures set forth in the Act." The agencies are to report any needed proposals to the President not later than July 1, 1971. Executive Order 11514 requires the agencies to review their procedures related to loans, grants, contracts, licenses, leases, and permits and report to the Council on Environmental Quality and planned corrective actions by September 1, 1970. A comprehensive coordinated Executive Branch review of this entire subject has been undertaken to assist in the preparation of the recommendations called for both by the statute and the Executive Order. Enactment of legislation dealing with only one element of this entire broad subject without benefit of the extensive review of all of the considerations relating to enforcement, standards and required administrative procedures appears to this Department to be premature at this time.

We do have several specific comments to make, however, concerning the provisions of the bill. It is not clear to us as to the type of standards which the Administrator of the Small Business Administration is to be authorized to prescribe. We do not believe that the Administrator of the Small Business Administration should be given the responsibility of prescribing environmental pollution control standards since the Departments of Health, Education, and Welfare and Interior possess primary expertise in dealing with environmental problems. Further, the granting of authority to the Administrator of SBA to set pollution control standards would have the adverse effect of increasing the proliferation of responsibility for solving the Nation's pollution problems.

The same problems we have discussed with respect to the Administrator of SBA's standard setting authority under the bill arise with respect to the provision which requires the Administrator to give priority to applications which he determines will further the development or utilization of new and improved methods of waste disposal or pollution control. The expertise necessary to make such a determination rests with DHEW and Interior rather than with SBA.

In summary, while we agree with the general objective of this proposed legislation, we have reservations concerning its enactment prior to the completion of the study project previously mentioned as well as for the other reasons stated.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., June 12, 1970.

Hon. JOHN SPARKMAN,
Chairman, Committee on Banking and Currency, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on S. 3528, a bill "To amend the Small Business Act to encourage the development and utilization of new and improved methods of waste disposal and pollution control; to assist small business concerns to effect conversions required to meet Federal or State pollution control standards; and for other purposes."

The bill amends the Small Business Act to require that equipment, facilities or machinery acquired with assistance under section 7(a) thereof be so designed as to prevent, control or minimize environmental pollution which might otherwise result. The Administrator of the Small Business Administration, after consultation with the Secretary of Health, Education, and Welfare, is required to set standards to prevent such pollution. The Secretary is to give priority to applications for financial assistance which he determines will further development or use of new and improved methods of waste disposal or pollution control. Section 7(b) of the Act is amended to authorize loans to assist small business concerns

in adding to or altering their plants, facilities or methods of operation to meet the requirements in Federal or State law for control of environmental pollution, if the Administrator determines such aid is required to avoid substantial economic injury to the concerns.

We agree with the objectives of the bill which are in keeping with the intent of the National Environmental Policy Act of 1969 that all Federal actions be directed toward the enhancement of environmental quality and the prevention of adverse impact upon the environment. In this regard we observe that, pursuant to that Act and Executive Order 11514, the agencies of the executive branch are reviewing their authorities and programs to determine what changes, if any, are needed to bring them into accord with the policy in the Act. Therefore, we have been unable, as of this time, to arrive at a decision as to whether the approach embodied in the bill represents the most effective technique for advancing the purpose of environmental protection through existing Federal programs of assistance for small businesses. We suggest, therefore, that the Committee defer completing action on the bill until the executive branch has completed review of the subject. We do have the following comments to offer, however, concerning the specific provisions of the bill.

Since the Secretary of the Interior has primary responsibility for water pollution control under Federal law, his concurrence should be required in any regulations issued by the Administrator concerning water pollution.

The term "environmental pollution", as used in the bill, is not sufficiently precise to carry out the stated purposes of encouraging new methods of waste disposal and pollution control and providing assistance to firms in meeting pollution control standards. The bill should refer specifically to applicable air or water quality standards, although there may be other standards (e.g., for solid waste disposal or noise abatement) at the State or other levels of jurisdiction which the broader term "environmental pollution" would cover.

The following amendments would be required to implement the foregoing suggestions:

1. On page 2, line 3, delete "control, or minimize" and substitute "any violation of applicable air or water quality standards or other standards regarding", and insert a comma after the word "therefrom" on line 4.

2. On page 2, lines 5 and 6, delete "after consultation with" and substitute "with the concurrence of the Secretary of the Interior and".

3. On page 3, lines 6 and 7, delete the words from "meet" to "control of" and substitute "comply with applicable air or water quality standards or other standards regarding".

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

WALTER J. HICKEL,
Secretary of the Interior.

91ST CONGRESS
2D SESSION

S. 3699

IN THE SENATE OF THE UNITED STATES

APRIL 9, 1970

Mr. MCINTYRE (for himself, Mr. BIBLE, Mr. JAVITS, Mr. PACKWOOD, Mr. PERCY, Mr. PROXMIRE, and Mr. TOWER) introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

A BILL

To clarify and extend the authority of the Small Business Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Amendments of 1970".

TITLE I

SEC. 101. In connection with the financial assistance programs established by the Small Business Act, the Small Business Investment Act of 1958, and by title IV of the Economic Opportunity Act of 1964, the Small Business Administration is authorized—

(1) to make loans in cooperation with persons or organizations not normally engaged in lending activity, as well as with banks or other lending institutions, and to enter into agreements with respect to the servicing of these loans;

(2) when authorized in appropriation Acts, to extend guarantees to banks or other lending institutions, or to persons or organizations not normally engaged in lending activity, without requiring that advance approval be obtained from the Administration for each of the related loans. Where a guarantee is extended without such a requirement, loan approval decisions shall be made by the recipient of the guarantee, in conformity with criteria to be specified in regulations prescribed by the Administration. The Administration may adopt measures necessary to insure compliance with the criteria, including periodic reviews of the books and records of such recipient. A guarantee issued under this subsection shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement; and

(3) to make interest subsidy grants to small business concerns which receive financial assistance from the Administration, through the cooperation of banks or other lending institutions or through the cooperation

of persons or organizations not normally engaged in lending activity. In no case, however, shall the annual amount of such a grant exceed the product of the amount of the loan multiplied by the least of (A) 3 per centum; (B) one-third of the prevailing rate of interest applicable to the loan; or (C) the difference between the prevailing rate of interest applicable to the loan and 5½ per centum. No grant shall be made under this subsection relating to interest due on a loan later than three years from the time the loan was disbursed, and each grant under this title shall be charged, in the amounts thereof relating to each of said years, to the respective appropriations current at the time the grant agreement is entered into and to the appropriations current on the respective anniversaries thereof.

SEC. 102. (a) The Small Business Administration is authorized to extend grants to public or private organizations to pay all or part of the costs of providing business management assistance and related technical aid to socially or economically disadvantaged persons.

(b) The purposes of the grants made under this section may include the following:

(1) planning and research, including feasibility studies and market research;

(2) the identification and development of new business opportunities;

(3) the furnishing of centralized services with regard to public services and Government programs;

(4) the establishment and strengthening of business service agencies, including trade associations and cooperatives;

(5) the encouragement of the placement of subcontracts by major businesses with small business concerns owned by socially or economically disadvantaged persons, including the provision of incentives and assistance to such major businesses so that they will aid in the training and upgrading of potential subcontractors or other small business concerns;

(6) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing businesses, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served;

(7) payment of all or part of the costs, including

tuition, of the participation of socially or economically disadvantaged persons in courses and training programs for the development of skills relating to any aspect of business management; and

(8) provision of guidance or advice to socially or economically disadvantaged persons seeking government assistance relating to the establishment or continuance of small businesses.

(c) To the extent feasible, services under this section shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(d) Section 406 of the Economic Opportunity Act of 1964 is hereby repealed.

SEC. 103. The Small Business Administration may conduct research and studies with a view to identifying categories of small business which lack growth possibilities, as distinguished from small business built around innovations promising rapid growth, and with a view to identifying the nature and causes of small business failures. Where necessary for the successful conduct of such research or study, or of any other research or study which it is authorized to undertake, the Administration shall employ the services of experts and consultants.

SEC. 104. Appropriations are authorized in such amounts

as may be necessary for the purposes of the programs under sections 101, 102, and 103.

TITLE II

SEC. 201. Section 103 of the Small Business Investment Act of 1958 is amended—

(1) by striking "and" from paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(3) by adding the following new paragraph:

"(8) The term 'minority enterprise small business investment company,' hereinafter called MESBIC, means a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages."

SEC. 202. Section 301 of the Small Business Investment Act of 1958 is amended by adding the following new subsection:

"(d) Notwithstanding any other provision in this section, a MESBIC may be organized and chartered under State nonprofit corporation statutes, and may be licensed by the Administration to operate under the provisions of this Act."

SEC. 203. Section 302 of the Small Business Investment Act of 1958 is amended by adding the following new subsection:

"(d) Notwithstanding subsection (b) (2) of this section, or any other provision of law, shares of stock, other equity or debt securities issued by a MESBIC shall be eligible for purchase by banks and other financial institutions, subject to the 5 per centum limitation of subsection (b) (1) of this section. MESBIC's shall not be deemed ineligible for any assistance under this Act because of such purchases."

SEC. 204. Subsection 303 (b) of the Small Business Investment Act of 1958 is amended—

(1) by inserting the following in lieu of the first sentence thereof: "To encourage the formation and growth of small business investment companies the Administration is authorized (but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms), when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United

States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection.";

(2) by inserting "or guaranteed" following "purchased" each time it appears in paragraphs (1) and (2) thereof and in the second sentence thereof;

(3) by inserting "or guarantees" following "purchases" in the last sentence of paragraph (2) thereof; and

(4) by inserting "or guarantee" following "purchase" in paragraph (3) thereof.

SEC. 205. Subsection 304 (a) of the Small Business Investment Act of 1958 is amended by adding the words "and unincorporated" after the word "incorporated" in said subsection.

SEC. 206. Subsection 305 (b) of the Small Business Investment Act of 1958 is amended by deleting the second sentence thereof.

SEC. 207. This title may be cited as the "Small Business Investment Act Amendments of 1970".

TITLE III—SURETY BOND GUARANTEES

SEC. 301. Title IV of the Small Business Investment Act of 1958 is amended—

(1) by striking out the title heading and inserting in lieu thereof the following:

"TITLE IV—GUARANTEES

"PART A—LEASE GUARANTEES";

(2) by striking out "this title", wherever it appears in sections 401 and 402, and inserting in lieu thereof "this part";

(3) by amending section 403 thereof to read as follows:

"SEC. 403. There is hereby established a revolving fund for use by the Administration in carrying out the provisions of parts A and B of this title. Initial capital for such fund shall consist of not to exceed $10,000,000 transferred from the fund established under section 4(c) of the Small Business Act: *Provided*, That the last sentence of such section 4(c) shall not apply to any amounts so transferred. Into the fund established by this section there shall be deposited all receipts from the guarantee programs authorized by this title. Moneys in such fund not needed for the payment of current operating expenses or for the payment of claims arising under such programs may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as initial capital for such fund shall not be so invested but shall be returned to the fund established by section 4(c) of the Small Business Act, in such amounts and at such times

as the Administration determines to be appropriate, whenever the level of the fund herein established is sufficiently high to permit the return of such moneys without danger to the solvency of the programs under this title. The Administration shall pay into miscellaneous receipts of the Treasury, as of the close of each fiscal year, interest on the net outstanding disbursements of the initial capital from the fund, at rates determined by the Secretary of the Treasury, taking into consideration the average yield on outstanding long-term, interest-bearing marketable public debt obligations of the United States as of the month of June preceding such fiscal year."; and

(4) by adding at the end thereof the following:

"PART B—SURETY BOND GUARANTEES

"DEFINITIONS

"SEC. 410. As used in this part—

"(1) The term 'bid bond' means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

"(2) The term 'payment bond' means a bond conditioned upon thep ayment by the principal of money to persons under contract with him.

"(3) The term 'performance bond' means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

"(4) The term 'surety' means the person who (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, or (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment.

"(5) The term 'obligee' means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

"(6) The term 'principal' means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or

performance bond. A principal may be a prime contractor or a subcontractor.

"(7) The term 'prime contractor' means the person with whom the obligee has contracted to perform the contract.

"(8) The term 'subcontractor' means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.

"AUTHORITY OF THE ADMINISTRATION

"SEC. 411. (a) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss, as hereinafter provided, as the result of the breach of the terms of a bid bond, payment bond, or performance bond by a principal on any contract up to $500,000 in amount, subject to the following conditions:

"(1) The person who would be the principal of the bond is a small business concern.

"(2) The bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon.

"(3) Such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section.

"(4) The Administration determines that there is a

reasonable expectation that such person will perform the covenants and conditions of the contract with respect to which the bond is required.

"(5) The contract meets requirements established by the Administration for feasibility of successful completion and reasonableness of cost.

"(6) The terms and conditions of any bond guaranteed under the authority of this part are reasonable in light of the risks involved and the extent of the surety's participation.

"(b) Any contract of guarantee under this section shall obligate the Administration to pay to the surety a sum not to exceed 90 per centum of the loss incurred by the surety in fulfilling the terms of his contract as the result of the breach by the principal of the terms of a bid bond, performance bond, or payment bond.

"(c) The Administration shall fix a uniform annual fee which it deems reasonable and necessary for any guarantee issued under this section, to be payable at such time and under such conditions as may be determined by the Administration. Such fee shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. The Administration shall also fix such uniform fees for the processing of applications for guarantees under this section as it determines are reasonable and necessary to pay administrative expenses

incurred in connection therewith. Any contract of guarantee under this section shall obligate the surety to pay the Administration such portions of the bond fee as the Administration determines to be reasonable in the light of the relative risks and costs involved.

"(d) The provisions of section 402 shall apply in the administration of this section."

SEC. 302. This title may be cited as the "Surety Bond Assistance Act of 1970".

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 29, 1970.

Hon. THOMAS MCINTYRE,
Chairman, Subcommittee on Small Business,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCINTYRE: I take this opportunity to express the support of the Department of Labor for the enactment of S. 3699, the Small Business Amendments of 1970. The enactment of this Administration bill will help open up opportunities to persons who, because of social and economic disadvantages, have been prevented from participating fully in the free enterprise system. The legislation will significantly further this objective by providing management training for those among the disadvantaged who are entrepreneurs or prospective entrepreneurs. I am pleased to note that grants are authorized for the payment of costs for the participation of such persons in courses and training programs necessary to develop skills relating to all aspects of business management.

I wish to particularly endorse the bill's innovative provision establishing a Small Business Administration program of surety bond guarantees. The President's Task Force on Improving the Prospects of Small Business has identified as a major problem area in the small business community the need to overcome special financial problems, such as the need for bonding, which small firms face in their early years.

The Department of Labor has been conducting an experimental program of providing fidelity bonding assistance to ex-offenders under Section 105 of the Manpower Development and Training Act. In the course of operating this program, we have received numerous expressions of interest in the possibility of similar Federal assistance for small businessmen seeking to obtain surety bonds, especially for major construction work. Surety companies will not bond a contractor unless they feel reasonably certain that he has the experience, organization and financial capacity to undertake and satisfactorily complete a proposed project. Since minority contracting firms generally have not had the same opportunities for business experience as other firms, they particularly have been caught in a vicious circle, even as the national mood—reflected in new government regulations and programs by private business—seeks to encourage the growth of minority-owned businesses. Since existing programs, such as SBA loans to finance operating expenses and technical assistance to inexperienced contractors, short of actually guaranteeing any surety against loss from breach of a bid bond, payment bond or performance bond by the principal, have failed to convince private surety companies to bond such contractors at 100% risk, it is appropriate that the Federal

government should become directly involved in this high risk area. I am particularly pleased to see that funds will be given to the SBA so that it will be able to underwrite the surety for 90% of the loss which he incurs in fulfilling the terms of his contract.

With respect to the criteria for eligibility of principals, I wish to draw the committee's attention to the fact that analogous criteria already have been proven to be successful in the Department of Labor's experimental fidelity bonding program. We found it to be appropriate that guaranteed bonding should be made available only if the principal is unable to obtain the required bonding through regular commercial sources on reasonable terms and conditions.

Another significant result of the Department of Labor's experimental fidelity bonding program that should be considered by the committee in its evaluation of the proposed surety bonding program was the willingness of private bonding companies to reduce their coverage rates once it was clear that the government would underwrite losses related to the ex-offenders covered by the program. Hopefully, the private surety companies will respond in similar fashion with respect to minority small contractors once their risk is diminished under the terms of this bill.

For the above reasons, I favor the enactment of S. 3699 and particularly endorse the establishment of the surety bond guarantee program. However, I believe that this piece of legislation is only a first step in removing the restrictions on the ability of small businesses conducted by minority entrepreneurs to obtain surety bonds. We understand that additional action regarding bonding may be called for in the Federal Insurance Administrator's June 30, 1970 report, required by the Housing and Urban Development Act of 1968.

The Bureau of the Budget advises that the enactment of S. 3699 would be in accord with the program of the President.

Sincerely,

GEORGE P. SHULTZ,
Secretary of Labor.

Senator MCINTYRE. In order to place the hearings in proper perspective, I would like to say a few words about each of the bills before us. I believe that virtually everyone now realizes, although quite belatedly, that we are in the midst of an environmental crisis. I think it is also clear that there will be new legislation and tougher regulations which will place a greater proportion of the burden for cleaning up the environment on private industry, and this is as it should be. However, I think we must realize that this will create far greater hardships for small businesses than for large corporations, since most small businesses do not have the cash flow, access to Securities markets and other sources of capital, or in-house technological expertise necessary to make the large-scale conversions in plant facilities and methods of operation which will be necessary.

The purpose of S. 3528, as I stated at the time of its introduction, is not intended to exempt small businesses from regulation but rather to assist them in complying. In order to accomplish this objective it authorizes the Small Business Administration to make long-term, low-interest loans to small businesses which have been ordered to make changes in order to meet Government antipollution standards. However, it also specifies that the Administrator of SBA shall require that any equipment, facilities, or machinery to be acquired through the regular business loan program meet Federal pollution control standards and that he give priority in processing such applications to those which will promote the development and utilization of new or improved methods of waste disposal and pollution control. So the bill is really a two-edged sword.

I think that most of those who follow closely the operations of the Small Business Administration realize that the program has not been

as effective during the present extended period of tight money and high interest rates as it was previously. There is also a growing realization that the program as presently constituted does not meet completely the needs of minority businessmen. The administration bill, S. 3699, is intended to deal with these and other problems.

As I indicated when I introduced this bill, some of its provisions may be controversial and it may not deal adequately with all of the problems in the small business program. However, it does represent a move in the right direction, and hopefully we can improve on it as a result of these hearings.

The third bill before us, S. 2609, deals with a very serious problem affecting small contractors; namely, their difficulty in obtaining bid, payment or performance bonds. Such bonds are required on all Government contracts.

In order to deal with this problem, which apparently is most acute for minority contractors, S. 2609 would authorize SBA to guarantee the issuer of such bonds against 90 percent of the loss up to $500,000 resulting from default by a small business contractor. A similar provision is incorporated in S. 3699. However, S. 2609 also includes provisions authorizing SBA to issue certificates of competency which may be used in lieu of bonds in Government contracts, and to establish a national construction task force to develop programs and policies for broadening the participation of small businesses in the construction industry.

I believe that all of these bills are of tremendous importance to the well-being of the small business community, and I am very sorry that we are having to telescope the hearings into a 3-day period. However, due to other important business on the committee docket and the current plans for an early adjournment, it was unavoidable. I hope that witnesses will try to help us expedite matters by summarizing their statements, if they are lengthy, and we shall incorporate the entire text in the record.

The first witness this morning will be the Honorable Senator Birch Bayh from Indiana.

Senator Bayh, the subcommittee is very happy to welcome you here this morning, my friend and neighbor and distinguished Senator from Indiana, to testify with respect to your bill S. 2609, which is one of the three bills that we are considering.

STATEMENT OF BIRCH BAYH, U.S. SENATOR FROM THE STATE OF INDIANA; ACCOMPANIED BY GORDON ALEXANDER, SPECIAL ASSISTANT FOR URBAN AFFAIRS

Senator BAYH. Mr. Chairman, it is a privilege to appear before you this morning. May I ask permission for Mr. Gordon Alexander of my staff, who has been working in this whole area of minority contracting and minority economic opportunity for the last couple years, to join me at the table?

Senator MCINTYRE. We are delighted to welcome you, too.

Senator BAYH. I am pleased to have the opportunity to share my views concerning these measures which are under consideration and which you outlined to all those present in the hearing room this morning. The provisions of S. 3699 are in keeping with my concern that

opportunity for small businessmen be something more than a rhetorical exercise—unfortunately, the situation we find ourselves in more often than not.

On July 14, 1969, I introduced three bills whose overall purpose was to increase the participation of minority contractors in the mainstream of the construction industry. One of these bills, S. 2610, was adopted as an amendment and is contained in section 3 of the 1969 Housing and Urban Development Act. Senator Percy is not here, but he initiated this concern in the area of housing. We broadened with his able assistance, and I want to thank you and the other members of the committee for the cooperation which resulted in the enactment of this one feature.

It requires maximum utilization of individuals and business concerns located in, or owned by persons who reside in areas of certain federally assisted projects. This participation of minority contractors is becoming increasingly essential to the timely completion of major governmentally sponsored construction projects in the cities of this country. I have been informed, Mr. Chairman, that Secretary Romney is still in the process of developing guidelines for these provisions. It is imperative that these guidelines be completed as quickly as possible so that this section of the act can be implemented. I hope I am not too forward if I might suggest perhaps this committee could have a bit of "decide-atory" influence in emphasizing again to the Secretary the importance of his moving forward with these guidelines so the act can be implemented.

The second bill I introduced last July would amend the Miller Act of 1935 to increase the exemption from payment and material bonds on federally sponsored construction projects from $2,000 to $20,000. This would make accessible over one thousand additional contract opportunities unencumbered by the requirements of such bonds. Not only would this provide more leeway, Mr. Chairman, but let me suggest it takes into consideration what has happened to the economy since 1935, that very few meaningful contracts today are let for $2,000; $20,000 seems to be a more reasonable level, and for that reason we recommend it to you.

The third bill, S. 2609, was designed to accomplish many of the same objectives which no doubt prompted you, Mr. Chairman, to introduce S. 3699, the "Small Business Amendments of 1970"—and, I might add that I appreciated your reference in your statement when you introduced this proposal, for yourself and other Senators, for the administration.

Mr. Chairman, I believe that S. 3699 contains many desirable features. I believe that we must make capital, in the form of loans and investments, more readily available to minority small businessmen. In my opinion, the provisions empowering the Small Business Administration to make loans—in conjunction with other institutions—to guarantee loans, and to make interest subsidy grants together with the provisions encouraging the forms of nonprofit small business investment companies will do much to accomplish this objective. Moreover, I believe that these individuals would benefit by increased access to business management assistance and other technical aid.

There can be little doubt that the provisions contained in the bill will do much to make this form of assistance more readily available. However, with an objective study, I would say I believe the bill can be

improved by the addition of other provisions other than what it now contains.

First, I commend the administration and you, Mr. Chairman, and the others who assisted, as I mentioned a moment ago, for your adoption of section 301 of S. 3699 that portion of the bill which we earlier introduced which provides for 90 percent guarantee against loss to private sureties. I was pleased to note the increase in the revolving fund limit from $5 to $10 million.

Frankly, I am concerned that the provisions of S. 2609 for issuance of certificates of competency and the provision for staffed technical contractor assistance mechanisms were not included.

Certificates of competency are presently used in the performance of Government service and supply contracts. It is important to extend, as this bill would do, such application to Government contracts involving construction and to give minority contractors who have been unable to obtain bid and performance bonding the opportunity for reevaluation by the Small Business Administration.

If the SBA determines that the contractor possessed qualifications considered normally sufficient by the surety industry, a certificate of competency would be issued to the contractor in lieu of a bid and/or performance bond. If the certified contractor should be the low bid, his performance would be bonded by the Government as a self-insurer and he would in turn pay to the Government a premium commensurate with the going rate of the insuring industry.

Mr. Chairman, may I ask that this statement be included in the record. You are busy and I am trying to hurry.

Senator McIntyre. Without objection, it is so ordered.

(The full statement of Senator Bayh appears on p. 39.)

Senator Bayh. I might capsulize my concern.

My office, through Mr. Alexander, has been conducting a study of minority contracting with the assistance of businessmen all over the country. We have been alarmed at the cold hard fact that if your face is brown and particularly if your face is black you have great difficulty getting a bond on anything. We find that although it is possible to appeal in most instances a determination of a governmental agency to not award a contract, because you don't meet certain standards, there is no way you can appeal a determination of a surety who has the power of giving you a bond or not giving you a bond, that you do not have reliable performance capacity.

For this reason, we feel that it is important to broaden the contractor's ability to secure necessary bonding. For this reason we have suggested that the Government is the proper vehicle to provide this surety opportunity.

Further study, has led me to suggest means by which the proposal we made earlier can be improved. Although it does provide for protection to the Government in the event the minority contractor should default, it does not provide sufficient protection for those who provide the material and those who labor for the contractor involved. So, what we are suggesting in this statement, just to abbreviate it, is that perhaps we should up the ante from 90 percent coverage to 100 percent Government insurance of the surety and provide opportunity for the bonding company to give this Government-insured bond to the minority contractor.

The minority contractor, of course, would pay the Government for providing this bonding opportunity.

Mr. Chairman, that very briefly summarizes what this statement says. It does conclude by commending you, Mr. Chairman, for introducing the provision relative to pollution control of small businesses. I think this is a very important recommendation.

It seems to me if we are concerned in America, as you are and I think most Members of the Senate are, with keeping this system open and broadening the spectrum of involvement of more and more people in the system, it is totally inconsistent with this philosophy to permit the continued existence, let me say, of a bonding policy which denies access to the economic ladder to large numbers of minority contractors to have the competency of doing the job.

Mr. Chairman, I know this may not be the most important issue before Congress, but if we are looking for ways to make minority citizens feel that this country is their country and that they have a definite vested stake in protecting our system, I can think of no way we can make a more significant contribution than giving them a larger piece of action in building roads, bridges, and communities. All of these things are part of the unfinished business of the country.

I think minority contractors can make a significant contribution in seeing that this business is finished, and the measures before you, Mr. Chairman, will help them have this opportunity.

Senator McINTYRE. Just one or two questions, Senator.

Did you or your staff have an opportunity to examine section 301 of the administration bill—that is S. 3699—and compare that with the comparable section of your S. 2609?

If so, did you find any substantial differences, or was it in effect pretty well embraced in the administration bill?

Senator BAYH. The amount of the revolving fund is the only major significant difference we would find there.

Senator McINTYRE. Is Mr. Alexander familiar with the letter from the Comptroller General of the United States dated September 19, which criticized that section in the Bayh bill dealing with certificates of competency?

Mr. ALEXANDER. Yes.

Senator McINTYRE. Would you reply to that criticism?

Mr. ALEXANDER. Yes.

The criticism concerned itself with the certificate of competency provision and observed that it might cause problems related to payment and material bonds. For this reason, the Senator referred to his recommended changes in this particular provision to allow the payment and material bonds to be given at 100 percent guarantee. We would then be dealing in terms of certificates of competency with only bid and performance bonds.

The certificate would then be issued initially for a bid and performance bond. If the contractor then, in the final analysis, became the person to perform on that project, he would then be eligible for a 100-percent guarantee payment and material bond.

Senator BAYH. I think I mentioned earlier in our testimony that we were concerned about protecting the person who was the recipient of the performance from an unsatisfactory performance. So we had directed our attention on how we protect the sureties in the instance of

bid and performance bond default, but we did not sufficiently protect the suppliers of labor and material referred to in the letter that you mentioned.

That is why we suggested changing the direction and having the bond purchased through normal channels with the Government insuring that bond so that you are insuring not only the person who receives the building or the roadway, but you insure the laborer and the supplier of material which was not covered adequately in our earlier version of the bill.

Senator McIntyre. I want to thank you for coming here this morning, I know you have a busy schedule.

I appreciate your continuing and always intense interest in this field that is so important to all of us—small business and its problems throughout the country.

Senator Bayh. We appreciate your leadership, Mr. Chairman.

(The complete statement of Senator Bayh follows:)

Statement of Birch Bayh, U.S. Senator From the State of Indiana

Mr. Chairman, I am pleased to have this opportunity to share my views concerning the measures under consideration by this committee. The provisions of S. 3699 are in keeping with my concern that opportunity for small minority businessmen be something more than a rhetorical exercise.

On July 14, 1969 I introduced three bills whose overall purpose was to increase the participation of minority contractors in the mainstream of the construction industry. One of those bills, S. 2610 was adopted as an amendment and is contained in Section 3 of the 1969 Housing and Urban Development Act. It requires maximum feasible utilization of individuals and business concerns located in, or owned by persons who reside in areas of certain federally assisted projects. The participation of minority contractors is becoming increasingly essential to the timely completion of major governmentally sponsored construction projects in the cities of this country. I have been informed that Secretary Romney is still in the process of developing guidelines for these provisions. It is imperative that these guidelines be completed as quickly as possible so this section of the Act can be implemented.

A second bill I introduced last July would amend the Miller Act of 1935 to increase the exemption from payment and material bonds on federally sponsored construction projects from $2,000 to $20,000. This would make accessible over one thousand additional contract opportunities unemcumbered by the requirement of such bonds.

The third bill S. 2609, was designed to accomplish many of the same objectives which no doubt prompted you, Mr. Chairman, to introduce S. 3699, the "Small Business Amendments of 1970"—and, I might add that I appreciate your reference to my bill in your statement when you introduced the administration proposal, Mr. Chairman.

Mr. Chairman, I believe that S. 3699 contains many desirable features. I believe that we must make capital, in the form of loans and investments, more readily available to minority small businessmen. In my opinion, the provisions empowering the Small Business Administration to make loans (in conjunction with other institutions), to guarantee loans, and to make interest subsidy grants together with the provisions encouraging the formation of nonprofit small business investment companies will do much to accomplish this objective. Moreover, I believe that these individuals would benefit by increased access to business management assistance and other technical aid. There can be little doubt that the provisions contained in the bill will do much to make this form of assistance more readily available. However, I do believe that the bill can be measurably improved by the addition of other provisions.

First, I commend the Administration for its adoption as Section 301 of S. 3699 that portion of my bill which provides for a 90 percent guarantee against loss to private sureties. And I was pleased to note the increase in the revolving fund limit from 5 to 10 million dollars. But frankly I am concerned that the provision in S. 2609 for issuance of certificates of competency and the provision for a staffed technical contractor assistance mechanism were not included.

Certificates of competency are presently used in the performance of government service and supply contracts. It is important to extend, as the bill would do, such application to Government contracts involving construction and to give minority contractors who have been unable to obtain bid and performance bonding the opportunity for reevaluation by the Small Business Administration. If the S.B.A. determines that the contractor possessed qualifications considered normally sufficient by the surety industry, a certificate of competency would be issued to the contractor in lieu of a bid and/or performance bond. If the certified contractor should be the low bidder, his performance would be bonded by the Government as a self-insurer and he would in turn pay to the Government a premium commensurate with the going rate in the surety industry.

I believe that the provisions providing for the grant of certificate of competency are not only desirable but necessary. A recent report of the City of Los Angeles Public Works Task Force to Resolve Bonding Problems of Small Contractors states, and I quote, "while it is the City which requires bonding, it is the sureties who determine who shall be bonded. Thus, if the sureties conclude that a contractor lacks the know how, equipment, working capital, etc. to complete a city project successfully, that contractor simply does not get the job. The sureties' denial is final. It is not subject to appeal or review. No procedural safeguards protect the contractor against arbitrary decisions of the sureties." While this is neither the time nor place to discuss the constitutionality of the delegation of the plenary authority to private sureties to deny bonding to contractors who have clear capacity and capital to perform—and, it should be clear that the certificate of competency provisions apply only to this type of contractor—certainly the vesting of this power in the hands of private concerns ought to be examined very closely.

Frankly, Mr. Chairman, after close re-examination of the provisions of my bill governing the certificate of competency, I have become concerned with the provisions as they relate to payment bonds. While the certificate of competency would make the government a self-insurer as to the protection normally accorded by bid and performance bonds, the provisions, as they are now written, would also have the effect of depriving subcontractors, materialmen, and laborers of the protection ordinarily provided to them by payment bonds. Certainly, Mr. Chairman, I would not want to burden these parties with unnecessary risks. Therefore, I would be amenable to some modification of the certificate of competency provisions to rectify this situation.

One method which occurs to me of retaining the certificates of competency provisions without depriving material suppliers, laborers, and the like of the protection normally accorded by payment bonds would be to increase the government guarantee of payment bonds to 100% whenever the contractor has been granted a certificate of competency. Thus, pursuant to these provisions, modified as I have suggested, the qualified contractor who is unable to obtain bonding for some reason other than one relating to his qualifications will be able to perform work for the Federal government because: (a) as to bid and performance bonding, the government would act as a self-insurer; and, (b) payment bonding will become available to him due to the fact that the government will be willing to grant any private surety providing a payment bond with a 100% guarantee against loss.

Second, the technical assistance provision of S. 3699 which authorizes the Small Business Administration to extend grants to public or private organizations has definite merit. I assume that a local contractors association or a national organization such as the National Minority Contractor's Association could submit an application for such a technical assistance grant. However, Mr. Chairman, I would recommend that my proposal for a technically staffed National Construction Task Force be adopted as further assurance of assistance.

I have been advised that the present S.B.A. Action Construction Teams are not able to provide adequate technical assistance in their present volunteer status. I believe the volunteer effort should certainly continue but it must be reinforced by a salaried staff organized for maximum flexibility in technical assistance delivery.

Finally, Mr. Chairman, allow me to say that I wish to commend you for your leadership in introducing the other bill pending before this subcommittee, S. 3528. We all agree that strict anti-pollution requirements are necessary. However, we surely would not want our efforts to end pollution to have the undesirable effect of driving small businesses out of the market. Your bill, designed to enable small business to adopt to new anti-pollution requirements and to en-

courage the development of new and improved methods of waste disposal and pollution control will do much to enable us to preserve and protect our environment without destroying small business.

Senator McIntyre. I call as our next witness, the Administrator of the Small Business Administration, Mr. Hilary Sandoval.

We are happy to welcome you here this morning, Mr. Sandoval, and I am very anxious, of course, to hear your comments on not only the administration bill, which I know you feel is very important, as we do, too, but also on our own bill S. 3528 which, as you know, tries to anticipate some of the difficulties that we foresee for small business in the environmental field.

I might say that during the time that the environmental question was being talked about all over the country, the question was often put to me, and I am sure to others, whether anything would come from this.

I do feel there is certain momentum that is charged up and is ready to move so that some of our existing laws may, in the near future—if not this year—have more teeth and be strengthened considerably.

I have had some very appalling situations in New Hampshire where, for example, a small business under the current restrictions and pressures from the State and Federal Government has just thrown up its hands and closed its doors and said we can just not face up to this financial problem. That is why I introduced this bill which was referred here.

You may go ahead and testify as you wish.

STATEMENT OF HILARY SANDOVAL, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATOR; ACCOMPANIED BY JACK EACHON, JR., ASSOCIATE ADMINISTRATOR FOR FINANCIAL ASSISTANCE, SBA; AND ANTHONY CHASE, GENERAL COUNSEL

Mr. Sandoval. Mr. Chairman, I have on my left Mr. John Eachon, Jr., who is the associate administrator for financial assistance, and on my right Mr. Anthony Chase, who is General Counsel of SBA.

Mr. Chairman, it is a privilege to appear here today to present the views of the Small Business Administration on three legislative proposals currently pending before this subcommittee: S. 3699, S. 2609, and S. 3528.

S. 3699 is basically a bill which clarifies and extends the authority of SBA in a number of respects. It is designed to carry out most of the legislative measures proposed in the small business message transmitted to the Congress by the President on March 20, 1970.

The tax legislation proposed in the President's March 20 message is formulated in a draft bill submitted to the Congress by the Secretary of the Treasury on April 17, 1970.

In order to increase the funds available to high-risk small business, this tax bill would provide a deduction equal to 20 percent of the gross income derived by corporations from obligations guaranteed by SBA.

It also would permit business losses incurred by individuals or qualified small business corporations to be carried forward for 10 years as a deduction against income.

It would liberalize the requirements for capital gain treatment of qualified stock options, and it would improve the value to small business of subchapter S corporations.

These tax benefits would supplement the programs embodied in S. 3699 to promote the welfare of small business.

S. 3699 effects a number of improvements in the financial assistance and management aid programs conducted by SBA.

With your permission, let us turn now to the details of this bill.

Senator McIntyre. I hope you won't mind my interrupting from time to time. My past experience has been that we have many suggestions for bills that come out of SBA to be referred to the Finance Committee, and they don't seem to move along.

Has a bill incorporating these suggestions of the administration been introduced as a bill, and has it been referred to the Finance Committee as of now?

Mr. Chase. Senator, I don't understand. You mean a bill that would be the same?

Senator McIntyre. No, a bill that would incorporate these suggestions, tax incentives to small business that would more appropriately be assigned to our Finance Committee here in the Senate because their jurisdiction embraces this. Has such a bill been put together and brought in and referred to Finance?

Mr. Chase. Yes, Mr. Chairman. Such a bill was sent to the Senate by the Secretary of the Treasury and referred by the Vice President to the Committee on Finance. It is called the Small Business Taxation Act of 1970. We mention it here because it is an important part of the President's package.

Senator McIntyre. Our experience is after it gets there they don't exactly move with lightening speed. I am sorry to interrupt.

Mr. Sandoval. The financial needs of the small business community are far too great to be met entirely by direct financial assistance from the Government. One of our main objectives, however, is to augment the Government's effort with credit available in the private sector.

We already have made substantial progress in this direction through guarantee agreements with banks. In return for the guaranteed protection we provide the banks against loss; they put up the money.

During the coming year we hope to effect a substantial increase in bank participations by means which include the installation of our 3-day approval plan in all major cities, and a complete revision of all forms and procedures.

Emphasis will be placed on the use of bank forms, speaking engagements before banking groups throughout the country to explain the programs of SBA and our revolving line of credit guarantee using bank forms entirely.

It should be noted, however, that banks are only one source of private credit.

Still untapped by SBA are such sources as pension funds, trusts, foundations, church groups, community groups, and others.

Many of these groups are anxious to put their funds to work in the form of loans to small business with the protection of our guarantee.

But under existing law, we can extend guarantees only to banks or other lenders. Many members of the groups I have named could

not be accurately described as lenders. If they do make loans, it is done only on an occasional basis.

S. 3699 would remedy this situation by authorizing SBA to extend guarantees even to recipients who are "not normally engaged in lending activity."

We anticipate that some of these groups will lack the experience and facilities needed to service loans made by them under SBA agreement.

In such cases, it would be necessary for SBA to service these loans in agreement with the lender. SBA's authority to do this is spelled out clearly in this legislation.

Almost from the day of its inception, SBA has made continuous efforts to simplify and speed up its loan procedures so that needless delay can be avoided in getting the money into the hands of the borrower.

Our success in this respect—particularly in connection with our guarantee activity—has been gratifying.

At one time, a bank which desired to obtain SBA guarantee protection had to negotiate a separate agreement for each loan. But when we instituted the simplified blanket loan guarantee plan this cumbersome requirement was eliminated. A bank can now process an indefinite number of loans under one basic guarantee agreement.

Nevertheless, it is still necessary for the bank to obtain from SBA advance approval for each of these loans.

Existing law does not permit us to delegate to the bank authority to make final loan decisions.

To alleviate this situation, we have imposed limits in some parts of the country on the time we take to review bank recommendations. This period is 3 days.

This 3-day plan was first instituted in the Chicago area and has since been placed in operation in Boston, New York, Washington, D.C., Houston, and San Francisco. It will be expanded as time and training will permit. This plan makes it possible for a decision to be made within 3 days after submission of the completed loan application by the bank to SBA.

But it has become increasingly apparent that such measures are not enough. If our guarantee mechanism is to achieve its full potential as a means of bringing financial assistance to small business firms, SBA should be authorized to permit a participating lender to make loans without advance approval. Such authority is contained in S. 3699.

Let me emphasize that only those lenders who have the requisite qualifications will be entrusted with the power to make final loan decisions.

Moreover, such decisions could be made only in accordance with guidelines to be issued by SBA, governing such matters as terms, rates, application procedures, et cetera.

Under the terms of the bill SBA may adopt whatever measures are necessary to insure compliance with the criteria. This may include periodic reviews of the books and records of lenders by our Office of Portfolio Management. This has never been done before.

A dollar ceiling would be imposed on the total amount of loans a bank could make without advance approval. When that ceiling has

been reached, the bank could make no further loans on the same basis without renewed permission from SBA. This system will provide SBA with an effective method of surveillance.

In view of these safeguards, we believe there is little danger of lenders abusing the powers of decision granted them by SBA.

S. 3699 also clarifies and broadens the authority of SBA to make grants to pay all or part of the costs of providing business management assistance and technical aid to socially or economically disadvantaged persons.

Of particular significance is the provision of the bill stipulating that these grants may include the cost of tuition in connection with such courses, an item of substantial importance to persons of limited means.

The risk of failure for small business is high.

As the President pointed out in his message of March 20, the early years of such enterprises are the most perilous.

These are the years in which the small businessman most often finds himself short of working capital. These are the years when high interest rates can be the greatest burden.

To meet the needs of these critical early years, S. 3699 authorizes SBA to make grants to small business borrowers whose loans are guaranteed by SBA.

These grants would narrow the gap between the prevailing interest rate and the statutory interest rates for direct loans made by SBA.

For example, let us consider a $10,000 loan payable over a 10-year period. Let us assume that the prevailing interest rate is 9 percent.

Under the terms of the bill, we could extend to this borrower financial assistance to help meet the interest costs arising during the first year of the loan.

The practical effect of the assistance would be to reduce the borrower's interest rate from 9 to 6 percent, thereby reducing his annual repayments on the loan in the amount of $300.

SBA could extend similar aid in the second year and again in the third year. Thereafter, the need for such assistance would normally decline, since the borrower's operations under the loan should then be yielding sufficient returns to permit him to pay the prevailing interest rate.

Incidentally, I want to make it clear that provisions of the bill relating to advance approval of loans to interest subsidy grants are not intended to apply to small business investment companies or small business concerns receiving assistance from them. To clarify the situation, I have asked our General Counsel, Mr. Anthony Chase, to transmit appropriate statutory language to the staff director of this distinguished committee.

(The language referred to follows:)

PROPOSED CHANGES IN S. 3699

1. On p. 1, Line 7, insert after "Act," the following: "by title V of."
2. On p. 2, line 8, strike out "tions," and insert in lieu thereof the following: "tions (not including small business investment companies),".
3. On p. 2, line 25, insert after "institutions" the following: "(not including small business investment companies)".

SBA's small business investment program was inaugurated by the Small Business Investment Act of 1958. It provides equity capital, long-term funds, and management aid for small firms.

The vehicles established for this purpose are small business investment companies (SBIC) which are privately owned and privately operated financial institutions. Although SBIC's are chartered under State law, they are licensed and regulated by SBA.

According to latest reports, SBIC's indicated investments totaling $7 million in 131 minority enterprises.

We know that the actual figure is larger, since only 52 percent of the SBIC investments were identified as to minority classifications.

SBA has approved $58 million in new loans to SBIC's and MESBIC's in fiscal 1970, with MESBIC's receiving $1.1 million of that amount.

An additional $9 million is being invested in minority enterprise by regular SBIC's.

Thus, at this time, the SBIC's and MESBIC's have provided $17 million to minroity small businesses.

A MESBIC is simply an SBIC which invests only in small business firms owned by persons who are socially or economically disadvantaged.

Title II of S. 3699 would exempt MESBIC's from the general rule that a bank may not own as much as 50 percent of the voting stock of an SBIC.

The importance of this exemption stems from the probability that most MESBIC's will be created and supported by large corporations, including banks.

S. 3699 also would allow MESBIC's to be licensed by SBA as corporations not organized for profit under State law.

Under the terms of the President's tax bill, contributions to MESBIC's would be treated as charitable contributions. This tax incentive should serve to promote rapid growth of the program.

As of today, we have licensed and have commitments for 108 MESBIC's.

Senator McIntyre. I am confused on that figure of 108 MESBIC's. You say we have licensed and have commitments for 108. Can you break that down? How many licenses do we have and how many commitments do we have?

Mr. Sandoval. We have licensed or have commitments——

Senator McIntyre. Let me rephrase the question, Mr. Administrator. Would you please tell us how many of these 108 have actually applied to SBA for licensing, how many applications have been approved, and how many are still pending?

Mr. Sandoval. As of this date, we have licensed 10 MESBIC's, we have 17 applications in process, and we have 81 what we consider solid commitments.

Senator McIntyre. Commitments?

Mr. Sandoval. Yes, sir.

Senator McIntyre. Thank you.

Mr. Sandoval. S. 3699 would clarify and strengthen the authority of SBA to enter into guarantee agreements on loans made by private lenders to SBIC's, including MESBIC's.

Legislation for this purpose, S. 2540, was passed by the Senate last year.

But clear and adequate guarantee authority is essential to allow the development of a stable system for helping to fund the SBIC program through access to private capital markets.

The legislative history of the Small Business Investment Act of 1958 indicates that SBA has implied authority to extend such guarantees.

The Comptroller General has so ruled.

The chairman of the Committees on Banking and Currency in both Houses of Congress have concurred in that ruling.

But investors generally have been unwilling to rely upon our existing authority to guarantee loans to SBIC's.

They want to see the matter spelled out in statutory language, such as that proposed by S. 3699.

It also has become apparent that institutional investors making loans to SBIC's need to be assured not only of protection against loss, but assured also of SBA authority to guarantee timely payment of principal and interest on SBIC debentures. They want protection against delays or unscheduled prepayments in the event of regulatory or financial problems involving the SBIC.

The enactment of this bill would clearly permit SBA to guarantee that a defaulted SBIC debt would be assigned to SBA and SBA would then continue regular uninterrupted payments of interest and principal to the investor for the full maturity of the loan.

In other words, SBA would become the holder of the debenture and would collect the debt from the SBIC.

By providing such assurance to investors, we can open to SBIC's a vitally important source of financing hitherto denied them.

Because of their limited financial resources, managerial experience and knowledge, small construction firms commonly encounter difficulty in obtaining the bid, payment, and performance bonds normally required of concerns seeking construction work.

This is particularly true for minority groups trying to establish themselves in the industry.

Existing bonding requirements represent a high barrier to the progress of these minority firms.

S. 3699 contains a remedial proposal extending to all construction activity, whether conducted by the Government or private industry.

SBA would be authorized to guarantee sureties against losses resulting from the breaching by small construction firms of bid bonds, payment bonds or performance bonds on contracts amounting up to $500,000.

Such a guarantee could cover up to 90 percent of the amount of the loss. We are happy to note that S. 2609—one of the other bills under consideration by this subcommittee today—contains a similar proposal.

We all seek the same end—to maximize the contribution which inner city residents can make to the construction activity attending the restoration of their neighborhoods.

S. 3699 will carry us far in that direction, and I sincerely hope it will be enacted promptly.

Pursuant to presidential directive, SBA presently requires all its borrowers to comply with governmental measures adopted to combat air and water pollution and otherwise improve environmental conditions.

Senator McIntyre. Mr. Administrator, you wouldn't object to that being incorporated in legislative language?

Mr. SANDOVAL. No, sir.

Senator MCINTYRE. You are just pointing out that it is already in the directive.

Mr. SANDOVAL. Yes, sir.

S. 3528 calls upon the agency to continue this requirement.

The bill also revises our lending authority to extend special loan benefits to small business concerns which:

(1) Further the development of new or improved methods of waste disposal or pollution control; or

(2) Suffer substantial economic injury because of expenditures made in effecting additions to, or alternations of, its plants or methods of operation. The costs are necessary to meet requirements imposed by Federal or State law for the prevention or control of environmental pollution.

Through the National Environmental Policy Act of 1969, Public Law 91–190, the Congress established policies and procedures to be followed by the Government in the national effort to improve environmental conditions.

The act calls upon the President to file with the Congress each year a report reviewing environmental problems and such legislative recommendations as he considers appropriate.

In that connection, S. 3528 is one of a number of legislative proposals presently under consideration within the executive branch of the Government.

Until these deliberations have been completed, we would like to reserve our general position on that bill until a future date.

The only comment I wish to make at this time is that we would oppose the use of disaster-type loans to assist small firms in meeting problems arising out of programs to improve the environment.

As I pointed out in my testimony here last July, the disaster loan programs established in section 7(b) of the Small Business Act are conducted at very substantial loss to the Government.

Clearly, these programs will become too costly a burden for the taxpayer unless they are severely limited to persons whose needs are most urgent.

The financial needs of the small business concerns being considered here are not of sufficient urgency to justify disaster loan relief.

In our view, the business loan program vested in SBA by section 7(b) of the Small Business Act should provide an adequate means of assistance.

In the closing remarks of his March 20 message, the President had this to say about small business:

> Small business is an important part of our national life; it has been an important part of my personal life as well.
>
> My father knew the challenges and rewards of owning and operating a small store. To him—and to our family—that store meant more than a source of income; it meant a daily challenge, a place where we could work out the destiny of the family in our own way, taking the risks and enjoying the satisfactions of ownership.
>
> Looking back on those years, I know now that our store was a success not only for our family budget, but for what it did for our spirit.
>
> I know that today, in helping Americans in small business, we are helping their spirit—and the spirit of our nation.

This concludes my statement. I and the other members of my staff who are present today will answer any questions the committee might ask.

Senator McIntyre. The committee wants to note the presence of the distinguished chairman of our full committee—the Senator from Alabama, Senator Sparkman—and as a matter of courtesy I would like to yield to him at this point.

Senator Sparkman. Mr. Chairman, I came in late. I did want to drop by and visit the hearings. I was interested in the Administrator's testimony. I am glad to hear his very strong recommendations on things that might be done for the SBIC's. I think we can work out something that will do the job.

I have no questions.

Senator McIntyre. I just wanted to go back to your statement and ask you whether or not the fact that you have licensed only 10 MESBIC's, and have only 17 applications pending, endangers the goal that was set forth here last year of having 100 licensed MESBIC's by June 30 of this year?

Mr. Sandoval. No, sir. One of the things we have been very much aware of from the very beginning is that there is a time factor. We can get a commitment but the corporations and the people who make the commitment have to try to find qualified managers.

I think we can all understand how difficult it is to try to find someone who would be qualified to head up such a little corporation. Also, the corporate legal maze within their own corporation they have to check out. They have to be incorporated within their own State. Sometimes that takes time. Some of our commitments have been multiple commitments where several people have been involved. Such multiple corporate ownerships create problems. Also SEC requirements must be met.

We are aware that in 1966–67, over 300 SBIC's left the program. We don't want to get into a similar situation.

We know that if we are to place this program on a permanent and long-range basis, we have to have a strong parent or sponsor for each MESBIC. We will have to be very careful in the screening of applications in order to do this. These are some of the long-range problems.

It is a new industry we are creating. This cannot be done overnight. We do have these commitments and we are working on them as fast as we can.

Senator McIntyre. Mr. Sandoval, in your statement you began with S. 3699 and then proceeded to S. 2609 and S. 3528. In my questions, I would like to reverse the order, since you have much less to say about the latter two bills.

In your statement you said you would have to decline taking a position on section 2 of S. 3528 authorizing SBA to make loans under the economic disaster provisions of section 7(b) of the act to small businesses which are required to make plant and other alterations to meet Government pollution control standards, until the administration has completed its deliberations on all of the proposals in the environmental field which are currently being considered within the executive branch of the Government.

It appears to me this is becoming a regular pattern whenever legislative action is proposed up here.

Would you please tell me when we may expect the administration to give us their position on this bill?

Mr. SANDOVAL. I will have to furnish that for the record, sir.

Senator MCINTYRE. Could you tell me who will be responsible for formulating the administration's position on the bill? As you may know, when we first asked your agency for a position we were told that SBA would defer to the President's Council on Environmental Quality. But, later, a letter from the Council on Environmental Quality said it was SBA's responsibility to formulate a position on the bill.

Do you know who we would look to for formulation of the administration's position on this? It is SBA or the Council on Environmental Quality?

Mr. SANDOVAL. I think we will be getting together with them pretty quickly. I wasn't aware of that second letter.

Let us say this, we will accept a leadership position at this point to get together with the Council.

Senator MCINTYRE. Unless there be objection, I would like to insert in the record at this point a letter received from Russell E. Train, Chairman of the Council on Environmental Quality, dated June 2, in response to my question directed to him on this particular bill.

(The letter referred to follows:)

EXECUTIVE OFFICE OF THE PRESIDENT,
COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., June 2, 1970.

HON. THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCINTYRE: In response to your letter of May 25, Mr. Atkeson of our staff has explained to Mr. Barnes our reasons for wishing the Small Business Administration to take responsibility for discussing the environmental aspects of S. 3528. This is in accordance with Section 102(2)(C) of the National Environmental Policy Act (P.L. 91–190) and Section 6 of the Council's Guidelines on preparation of environmental statements by the agency which has primary responsibility for the subject matter involved in connection with reports on proposed legislation.

Sincerely,

RUSSELL E. TRAIN, *Chairman.*

Senator MCINTYRE. I might note in that in this letter, Mr. Administrator, the Council Chairman, Mr. Train says:

> In response to your letter of May 25, Mr. Atkeson of our staff has explained to Mr. Barnes our reasons for wishing the Small Business Administration to take responsibility for discussing the environmental aspects of S. 3528. This is in accordance with Section 102(2)(C) of the National Environmental Policy Act (Public Law 91–190) and Section 6 of the Council's Guidelines on preparation of environmental statements by the agency which has primary responsibility for the subject matter involved in connection with reports on proposed legislation.

Although you said you would take no position on this proposal at this time, Mr. Sandoval, it seems to me you went on to take a pretty definite position in opposition to it by repeating your statement here of last July on a similar bill proposed by Senator Bible which would have provided assistance to small businesses affected by any number of Government regulatory programs.

You based your opposition to that bill on the statement that the disaster loan program operates at a loss and that enactment of the bill would thus place too great a drain on the Treasury.

The bill we are presently considering is much more limited in scope in that it covers only the antipollution programs and not all Government regulatory programs.

Would that not reduce the outlay substantially?

Mr. SANDOVAL. Mr. Eachon.

Mr. EACHON. I think it is our feeling, from the standpoint of a positive approach, that we should tie the private sector into this aspect of solving this problem. As you know, the disaster legislation program is based on a 3-percent interest rate. We feel that this is a private sector problem, as well as the Government's problem, and our approach is to tie this together as well as we can using our regular 7(a) guarantee.

Senator MCINTYRE. Mr. Sandoval, in your statement on Senator Bible's bill you also expressed the opinion that the needs of small business concerns affected by Government regulatory programs, including the air and water pollution programs, were not of sufficient urgency to justify economic disaster loan relief.

Would you please tell us on what basis you reach that conclusion? You have statistics on a number of small businesses which have been ordered to make substantial changes in plant and equipment in order to meet the antipollution standards.

Do you know how many small businesses have already gone out of business, or may have to, because they do not have the means of financing such alterations? Do you have that data at your disposal?

Mr. SANDOVAL. No, sir, I do not; but we think our regular business loan program can cover those needs.

Senator MCINTYRE. We have two very good examples in New Hampshire, the Ashland Paper Co. in Ashland, N.H., under pressure from the State of New Hampshire and in compliance with Federal laws finally just closed its doors and some 200 or so employees in this small town were put out of work. On the other hand we have in New Hampshire the very fine example of the Franconia Paper Co. located in Lincoln, N.H., which was faced with a problem of cleaning up its pollution of the upper reaches of what we call the Pemigewasset. As the result of a grant at the Federal level from the, Economic Development Administration, plus the State of New Hampshire guarantee, plus the town of Lincoln putting up a sizable chunk of money in relation to its tax base, plus the industry taking that portion of the money that it could find and it could legitimately put into this; a whole package was developed, and and this antipollution control equipment and program are now operational. It meant a great deal to this little town in that the Franconia Paper Mill probably employed somewhere in the vicinity of 500, while the town of Lincoln only has a population of around 2,500 or 3,000.

So, if the Franconia Paper Mill had said, "Look, gentlemen, if we have to do this, we quit," it would have been disastrous to that town. That is why I say if we are experiencing some of these problems under the less rigid restrictions that exist today, when the Government moves heavily into the environmental field—and I surely feel it will—we will be creating all types of problems for small businesses.

That is why we want to try to start thinking in terms of doing something for them before a real crisis develops.

May I ask you, Mr. Sandoval, with reference to my bill S. 3528, what would be the interest rate if it were in effect today for such loans as I propose under the bill?

Mr. SANDOVAL. Under our guarantee program, sir?

Senator MCINTYRE. Under the bill that we propose, the interest rate is a formula that is based on average maturities of Government obligations.

Mr. EACHON. Yes. The interest rate on loans made under S. 3528 would be governed by formula.

Senator MCINTYRE. I refer you to page 2 of this bill, S. 3528, it says beginning on line 11, "the rate of interest for the administration's share of any loan with respect to which such determination has been made shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of one percentum, plus one-quarter of one percentum per annum."

Under that formula, if this bill were actually law, what would be the interest rate charged to the small business involved?

Mr. EACHON. Five and one-eighth percent, under existing conditions.

Senator MCINTYRE. Would that interest rate differ if it were under 7(b)(3)?

Mr. EACHON. No, sir.

Senator MCINTYRE. In your statement, Mr. Sandoval, on Senator Bible's bill you also said you believed that the regular business loan program under section 7(a) of the act should provide an adequate means of assistance. Would you please provide us with the number and total dollar amounts of either direct or guaranteed loans you have made to assist in meeting Government regulatory standards since your statement here last July?

Mr. SANDOVAL. We will furnish that for the record.

(The following information was received for the record:)

The Small Business Administration has been given specific authority to provide special loan terms to small firms compelled to comply with Federal regulations under only one set of circumstances to date. The Coal Mine Health and Safety Act of 1970 amended the Small Business Act to furnish such special assistance to small coal mines which were cited by the Bureau of Mines for health and safety deficiencies. Although a number of Notices of Deficiency have been issued, no loans have been approved although some applications are presently being prepared.

States must meet requirements of the Wholesome Meat Act of 1967 by December 15, 1970, but there are no provisions for special assistance for small firms by the Small Business Administration therein. Legislation to amend the Act to furnish such aid was introduced both last year and this year but no affirmative action has yet taken place.

S. 3528 was introduced on March 2, 1970, which would permit the Small Business Administration to give special assistance to small firms required to meet pollution controls imposed by Federal regulations. This bill, however, has not been passed. It is presently pending before the Committee.

The Small Business Administration has, since its inception, been cognizant of pollution dangers, and we have long required our borrowers to strictly comply with all local, State, and Federal regulations designed to combat environmental pollution. Those requirements were formalized in 1966 as a result of Executive Order 11258, "Prevention, Control, and Abatement of Water Pollution by Federal Activities."

At that time, we issued instructions to our field offices to refuse loans to borrowers whose activities contributed to air or water pollution, unless satisfactory

measures were taken. Further provisions were made, in fact, to increase the size of a loan request to help the business concern take whatever action was necessary. These instructions remain in full effect today.

Senator McINTYRE. In view of the current high interest rates, I do not see how guaranteed loans could possibly solve the problem, but in this connection would you please tell us whether the interest grant subsidies proposed in the administration bill, that is, S. 3699, would be available to small businesses seeking loans to meet pollution control standards?

Mr. SANDOVAL. Yes, sir; it would.

Senator McINTYRE. Although you opposed Senator Bible's bill, you did agree to undertake a study of the effects on small business of the Wholesome Meat Act. Would you please describe the progress and results of that study to date?

Mr. SANDOVAL. When the individual States were given an extra year to comply with the act, SBA decided to extend its own deadline for 1 year so a better and more complete job could be done. We have had some difficulty in having individual members of the meat industry to answer our questionnaires. It probably will require us to get on a person to person telephone basis or maybe even individual visits to make the study.

We do have some information but nothing that we could really consider as conclusive.

Senator McINTYRE. Going back again to the status of New Hampshire, I believe we only have some three meat-packing plants. To my knowledge, the small one existing in the town of Hooksett closed its doors under the impact of the Wholesome Meat Act. Mr. Administrator, are there not existing provisions in section 7(b) to provide economic disaster loans to small businesses affected by Government regulatory acts such as the recently enacted Coal Mine Health and Safety Act?

Mr. CHASE. Yes, Mr. Chairman, we do have that kind of authority with regard to the Mine Safety Act. It is similar to what you are talking about in connection with pollution or the Wholesome Meat Act.

There is one piece of legislation pending up here which would provide this kind of assistance in general for any kind of Federal regulation that results in some burden to small business or for that matter other business because of the proliferation of these kinds of acts.

Senator McINTYRE. We have legislation to benefit the small coal mine operator affected by regulations of the Federal Government to enable him to stay in business. And this is a narrow field as opposed to the general legislation that you refer to that would sweep the whole panorama of Federal regulation. But is it not true that the bill that I have introduced is similarly in a narrower field and of a narrower scope?

Mr. CHASE. Mr. Chairman, I don't know that it is appropriate for me as counsel to answer that question from a policy standpoint, but I would say based on my discussions with the Administrator and others, certainly a disaster requires an immediate response, and we feel that the guarantee device which we are trying to bolster and with which we have had so much success over the last months and years would meet the needs of any loan program where we have a little bit of time; in other words, days and weeks instead of just hours to respond as in the case of the disaster loan.

We would like to depend more heavily on the guarantee program, bank participation, either on an immediate or deferred basis than we would on direct loans without such participation.

Senator McINTYRE. I am not sure I correctly understand what you are referring to. Are you saying that the criteria for assistance to a small business should be that they are facing disaster before they can expect any relief—whether it be a coal mine operator or a small shoe or textile plant or paper company that is faced with strict regulations such that they cannot possibly meet them from the standpoint of the plain economics of the company's operation?

Mr. CHASE. Mr. Chairman, we are not quarreling with the need for assistance at all. We are just questioning the method. I don't see why it makes any difference to the borrower whether the money comes from a bank that is guaranteed by the Small Business Administration or whether the money comes directly from the Small Business Administration. What we are suggesting is where we can get the private sector involved and get their expertise cranked into the problem we ought to do so, and unless it is absolutely essential that we have direct money, as is the case with our disaster loan program, we ought not to proceed on any other basis.

Senator McINTYRE. What we are saying is that under 7(a) the interest rates would be too high under the guarantee mechanism and the length of time for repayment would be too short.

Mr. CHASE. There is a 3-percent subsidy proposed.

Mr. SANDOVAL. If S. 3699 goes through and we get the grant subsidy, that would bring the interest rate down, wouldn't it, Mr. Chairman?

Senator McINTYRE. In the administration bill?

Mr. SANDOVAL. Yes.

Senator McINTYRE. The question arises whether they would be automatically eligible, that is, these companies facing restrictive legislation in the antipollution field. Would they automatically be eligible for the subsidy?

Mr. SANDOVAL. I think where there is a need, certainly SBA wants them to be eligible and certainly wants to take that into consideration. I think that is our purpose.

I don't know why they couldn't be eligible.

Senator McINTYRE. I think the thrust of my bill here is to make sure they are eligible, that they are given every consideration and I don't think that is clear today.

Under Senator Bible's bill is it not true that there is a formula for determining the cost of money that would be available for this type of loan?

Mr. EACHON. Yes, sir.

Senator McINTYRE. And you are opposed to that?

Mr. SANDOVAL. No, sir.

Mr. EACHON. No, sir; we are not opposed to using this type of a formula.

Senator McINTYRE. What would be the interest rate on loans made under the Bible bill, S. 1750?

Mr. EACHON. At the present time, the rate on such loans would be 5⅛ percent.

Senator McINTYRE. And the same thing would apply under my bill?

Mr. EACHON. Yes, sir.

Senator McIntyre. Moving on to S. 2609, with respect to Senator Bayh's bill, I take it you have no opposition to the provision authorizing SBA to guarantee surety bonds since it was incorporated almost verbatim in the administration's bill; is that correct?

Mr. Sandoval. Yes, sir.

Senator McIntyre. It seems to me that one thing that needs to be cleared up with respect to this proposal is what benefit the small contractor will derive beyond being eligible to bid on a contract. In the case of default, the person issuing the bond would be guaranteed against 90 percent of his loss, but would the small contractor recover any of his loss?

Mr. Sandoval. Sir, probably not. What we are doing here is protecting the surety companies.

Senator McIntyre. Is this a secondary liability that the bond issuer takes on? In other words, if I am a subcontractor or I am, say, the owner, the obligee—is that correct—in the event that the contractor fails on the job, whom do I pursue immediately? Do I have to go against the contractor until I have exhausted all my remedies and then turn to the guarantor, the surety company?

Mr. Eachon. Mr. Chairman, may I speak to this just momentarily? This is a very, very complex question. It is one that has been under study for some time by another agency. There is a report due out, it is my understanding, at the end of this month, June 30, that will address itself to this particular question. We in SBA have been studying it as well but have not reached any conclusions of exactly how it could be handled.

There is a real problem, for example, of follow through on the part of those who take over in a guarantee. For example, should SBA be in a position to go out and actually finish the job or step into the same shoes as the surety? We are not really sure this should be our position. Should we in effect wait until a loss has been specifically determined and then step forward and take care of this loss?

This is a study in itself that is very involved, and we would certainly hope that we can defer this and the criteria for it until a later time, until this study is complete and we have access to it.

Senator McIntyre. It would seem to me that the small contractor if he was pursued first would undoubtedly be thrust into bankruptcy or into reorganization. On the other hand, if the injured party, the principal, or the owner, could bypass the small contractor and go right to the surety and make his recovery and be made whole to the extent that the legislation permits it, then the contest would be between the surety who would then be pursuing the contractor, and there might be some opportunity there for the contractor to bail out with some sort of a settlement.

Mr. Eachon. This is actually the way the surety works at the present time. That is why the bond is available. The owner wishes not to be concerned with going to the contractor himself. He wants to be able to go to someone that has the necessary financial standing to take care of any problems and to complete the job on time and in the proper way. That is why I say there are many ways to approach this and very frankly we have not come up with the final approach.

There is a way that is being explored right now on a precaution basis for small contractors by groups of bonding companies to try and

take some of the problems out of this to start with. In other words, it really is a performance problem, and the bond, of course, to the owner of the property is his way of being able to make sure that his project is completed and completed on time and properly in accordance with plans and specs.

Senator McIntyre. Mr. Sandoval, you expressed no opinion about the other two provisions of S. 2609 which are not included in the administration's bill. What is your position on the provisions for certification of competency in lieu of bonding on Government contracts and on the establishment of a national construction task force?

Mr. Sandoval. At this point, sir, I have no position.

Senator McIntyre. You have no position?

Mr. Sandoval. No, sir.

Senator McIntyre. I now want to go to your bill, S. 3699. At the beginning of your statement, Mr. Sandoval, you said, "the administration's bill S. 3699 was designed to carry out most of the legislative measures proposed in the small business message and transmitted to the Congress by the President on March 20 of this year." Presumably both the bill and the message were an outgrowth of the report of the President's task force on improving the prospects of small business; however, it seems to me that a number of the problems pointed out in the task force report were not dealt with either in the President's message or in the legislation before us.

For example, in summarizing the handicaps under which the small business program has operated, the task force said, "the Small Business Administration has not had the advantage of continuity of administrative leadership. In the last decade the average term of office of the agency's administrators has been hardly more than 1 year. For even the most able and dedicated leadership and staff, this presents great difficulties."

Mr. Sandoval, do you agree that lack of continuity at the level of the administrator has been one of the major problems of SBA?

Mr. Sandoval. Absolutely.

Senator McIntyre. Then what would your feeling be about substituting for the single Administrator, a presidentially appointed commission with staggered terms and with the chairman being designated by the President? Do you have any opinion on that?

Mr. Sandoval. I am not prepared to take an official position at this time. Speaking on a personal basis, let me say that I disagree with the proposal. Even though it has been a problem in the past, I don't feel it has to be a problem of the future.

Senator McIntyre. Well, the trouble is, history doesn't bear you out. We have some fine men like yourself come here to take this job; and they do the best they can with it. But in a year and a half or 2 years they are gone, a new man comes in—new ideas, new thoughts—and a year or two goes by and he is gone.

So we seem to lack continuity. This has been a frequent criticism I am sure you know by many of the small business associations, particularly the one that comes from New England known as SBANE.

Do you have any suggestions that might help solve this problem? I have made the suggestion of a Commission of three with staggered terms and one chairman. Do you have any thoughts, as a result of your experience, to try to help solve this problem of continuity in your office?

Mr. SANDOVAL. It is something I have been thinking about for 15 months, and I make no bones about it, and certainly the first year was one where every day I felt like quitting the job. The last 3 months I have actually enjoyed it. I have probably put in more hours than I did at the beginning.

I feel it is just a question of breaking into the job. It is a little difficult. I don't suggest any changes.

Senator MCINTYRE. Do you think it would be any help, for instance, to put the job under civil service as contrasted with political appointment?

Mr. SANDOVAL. No, sir.

Senator MCINTYRE. You don't think that would give the chairman of that Board or the chairman of that group any feeling of solidity that would help him?

Mr. SANDOVAL. No, sir.

Senator MCINTYRE. Another problem pointed out by the President's task force and which does not seem to be reflected in the administration bill, is that small businesses are still not getting a fair share of the Government contract work. To deal with this problem, the task force made a specific recommendation, "that the weighted average guidelines of the Department of Defense, and any similar list of factors influencing profit allowances by other Government agencies and the Renegotiation Board, include a specific guideline sufficient to motivate contractors to subcontract to small business." Has the administration taken any action on this recommendation or done anything else to alleviate this problem?

Mr. SANDOVAL. We have been working very closely with the other interested agencies, including the Defense Department, and I feel that we are making some progress in that area.

Senator MCINTYRE. If I am correct, this share of DOD's business has been a declining one for the last 4 or 5 years?

Mr. SANDOVAL. Yes, sir. I think we have to consider the sophistication of the weapons that are used today by the Defense Department. In some cases small business cannot play a role in that. I think in other cases they can.

Our program in 8(a) enabling us to award contracts directly is going to change the picture considerably once we get it geared up.

Senator MCINTYRE. Subsection (1) of section 101, of S. 3699 authorizes SBA to make loans in keeping with persons or organizations not normally engaged in lending activity. In this connection I believe you mentioned pension funds, trusts, foundations, church groups, community groups and others. Would you please tell us what others you have in mind?

Mr. SANDOVAL. It could be a single individual or consortium of groups that might want to get together.

Senator MCINTYRE. Section 101, subsection (2), authorizes SBA to guarantee loans by private lenders without requiring that advance approval be obtained from SBA on individual applications so long as the lender retains residual liability for at least 10 percent of the loan. Since this delegation of authority would include those persons not normally engaged in lending activity, do you think this is somewhat risky in view of their lack of experience in this field?

Mr. SANDOVAL. No, sir. We would be handling the work for them. We realize an individual might want to lend to small business; we recognize he is not normally in the lending business, so SBA would assume his duties.

Senator MCINTYRE. Perhaps it would be helpful if you would distinguish the way in which you would get away from the red tape, let's call it that, going forward with the normal lending institutions as opposed to what you might do with a church group or a pension fund that came to you and said we are interested.

Mr. SANDOVAL. I think we would have to take them on a one-by-one basis to see whether each would qualify as to rates and terms and just how each would follow our criteria. I would like for Mr. Eachon to address himself more to it. He has been working on that.

Mr. EACHON. The ability to service, Mr. Chairman, is one of the real keys to this. We are continuing to stress that we are not just a loan agency, that we are more interested, obviously so, in successful business. We are also looking for money from the other institutions that may want to get involved this way. We anticipate what we would do is work on so-called packaging. In other words, the outreach of SBA would be finding the small business people that would have this need, then those people who would want to use their money for this purpose would work with us, and then we would handle the servicing ourselves if they were unable to do so. The key to it is we will get the money to the small businessman that needs it with the kind of supervision that is necessary through the term of the loan, and these will all be prequalified.

Senator MCINTYRE. Who will pay the costs of such service?

Mr. SANDOVAL. The lender, sir. We would work out a fee of some kind which is something that we have not yet discussed at great length.

Senator MCINTYRE. You say——

Mr. SANDOVAL. Of course, eventually the borrower will pay in all reality.

Senator MCINTYRE. You say that only those lenders that have the requisite qualifications would be entrusted with the powers to make final loan decisions.

What criteria do you have in mind for determining who is so qualified?

Mr. EACHON. Mr. Chairman, we have not had sufficient opportunity to make such a list of qualifications. We would obviously have this prepared prior to the institution of this kind of program where we would delegate our authority to make decisions.

Obviously, the major portion of the banking industry would be in this category.

Senator MCINTYRE. Without objection. I will insert at this point in the record a letter from the Chairman of the Board of Governors of the Federal Reserve System, the Honorable Arthur F. Burns, and I would like to call your attention to the second paragraph where he says:

> The Board feels that subsection (2) of section 101 may not adequately protect the interests of small business borrowers. Under this subsection, the Small Business Administration may, when authorized in appropriation acts, extend guarantees on loans which it has not approved in advance. In such cases, the lender

makes the loan approval decision, in conformity with criteria to be specified in SBA regulations, and SBA may adopt measures to insure compliance with the criteria. The Board recognizes the desirability of streamlining the negotiation and approval process, especially for lenders with years of experience in making loans guaranteed by SBA, but it doubts whether the provisions of this subsection insure that a new lender, especially a person or organization not normally engaged in lending activity, will be adequately informed of the criteria at the time it approves a loan for SBA guarantee.

(The letter follows:)

CHAIRMAN OF THE BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., June 11, 1970.

Hon. THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business, Committee on Banking and Currency, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Board of Governors has only a few comments on S. 3699, the "Small Business Amendments of 1970."

In general, the Board supports efforts to make small business concerns better able to compete for credit from private sources. Thus, it favors Title I, section 101, subsection (1) of the bill, which extends the classes of lenders, with whom the Small Business Administration may cooperate in making loans to small business concerns, to include persons or organizations not normally engaged in lending activity; and subsection (3), which authorizes SBA to make limited interest subsidy grants to small businesses.

However, the Board feels that subsection (2) of section 101 may not adequately protect the interests of small business borrowers. Under this subsection, the Small Business Administration may, when authorized in appropriation acts, extend guarantees on loans which it has not approved in advance. In such cases, the lender makes the loan approval decision, in conformity with criteria to be specified in SBA regulations, and SBA may adopt measures to insure compliance with the criteria. The Board recognizes the desirability of streamlining the negotiation and approval process, especially for lenders with years of experience in making loans guaranteed by SBA, but it doubts whether the provisions of this subsection insure that a new lender, especially a person or organization not normally engaged in lending activity, will be adequately informed of the criteria at the time it approves a loan for SBA guarantee.

If SBA is unable to guarantee a loan because the criteria have not been fully understood, the lender may call the loan. With a view to minimizing the number of such cases, the Board suggests that subsection (2) of section 101 be revised to provide that the requirement for advance approval of loans be waived only for lenders specifically authorized by SBA to make loan approval decisions. Thus, a lender who wished to make loans under this subsection would first make application to SBA for designation as an authorized lender, and approval of the application would rest on SBA's determination that the lender did in fact understand the criteria governing loans guaranteed by SBA.

The only provision of the bill which relates particularly to the Board's area of concern in section 203 of Title II. This section permits a bank to acquire securities issued by a minority enterprise small business investment company (MESBIC), without regard to the 50 percent ownership limitation of section 302 of the Small Business Investment Act of 1958, so long as the bank's total interest in SBIC's does not exceed 5 percent of its capital and surplus. The Board does not consider it objectionable for a bank to own all of the stock of an SBIC, and hence we have no objection to such bank ownership of a MESBIC.

Sincerely yours,

ARTHUR F. BURNS.

Mr. EACHON. I think we have answered that previously.

Senator MCINTYRE. Mr. Sandoval, if as you say your 3-day approval policy will soon be in operation nationwide, why is this delegation of authority necessary?

Mr. SANDOVAL. Because, sir, I think if we can have banks using their own forms it would serve as the greater incentive to get more banks involved.

While we are getting more banks involved in our program month after month, we still have not, by any stretch of the imagination, hit the vast majority of the banks of the United States. We need to have incentives to make them go along with our program.

Mr. Eachon, who is formerly a vice president, might want to address himself to that.

Mr. EACHON. Mr. Chairman, I feel that the automatic approval given to certain institutions would expedite the loan to the individual businessman, and this is what we are really trying to solve, using SBA as a vehicle between the small businessman and the person or persons that have the money, and we feel that under the right criteria and under the proper kind of supervision, that the automatic approach to this is by far the best route to go.

The banking industry is obviously a very responsible one. I have no concern whatsoever that this would be misused under proper approaches and under proper criteria.

Senator MCINTYRE. I notice that you want to get banks more active in the MESBIC field, is that right?

Mr. SANDOVAL. Yes, sir.

Senator MCINTYRE. You probably won't have any trouble with the Senate but I don't know about the House. There are some questions in pursuit of this that I will ask you to answer for the record.

(The questions and answers follows:)

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C., June 22, 1970.

HON. HILARY SANDOVAL, JR.,
Administrator, Small Business Administration,
Washington, D.C.

DEAR MR. ADMINISTRATOR: You will recall during your appearance at the hearings before the Senate Subcommittee on Small Business, I said in order to save time I would send you some questions to be answered for the Record.

I would appreciate it if you would forward to the Subcommittee the answers to the following questions:

1. On June 2, 1969, Senator Sparkman wrote a letter to you suggesting that the Lease-Guarantee Program be extended to include personal property. On June 10 you responded to Senator Sparkman. You said that, "It is expected that in a relatively short period of time SBA will be able to insure personal property leases as well as property leases."

Has anything been done on this matter?

2. Indications are that the private insurance carriers are not working with SBA in promoting and participating in the lease guarantee program. It appears that SBA failed to get their initial cooperation, and consequently, little enthusiasm has been subsequently shown by the private carriers for the program.

What can SBA do to remedy this situation?

3. Would all recipients of SBA guaranteed loans be eligible for the interest subsidy grants provided for in section 101(3), and if not, how would eligibility be determined?

4. Would the interest subsidy be repaid at the end of the loan period?

5. Is this proposal, if enacted, not likely to reduce incentive for cooperating banks to hold interest rates down?

Sincerely yours,

THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business.

SMALL BUSINESS ADMINISTRATION,
Washington, D.C.

Hon. THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business, Select Committee on Small Business, U.S. Senate, Washington, D.C.

DEAR SENATOR MCINTYRE: Thank you for your letter of June 22, 1970. Answers to the questions are numbered in the same order as in your letter.

1. The problem of insuring personal property leases is a very complex one. Statistics which will allow the development of a premium rate level are extremely hard to come by. We have been in contact with various personal property leasing companies, trade organizations and financial institutions, as well as the Defense Logistics Service Center, in an attempt to develop meaningful figures. Several of these organizations have promised to review their files and let us have such data as may be valuable.

In the meantime, our own statistical organization has made some preliminary computer studies. In addition, a private actuary has, on our behalf, established an actuarial structure outline for the development of a rate level.

Personal property leasing encompasses such a variety of equipment that we are attempting to develop six major groups with separate rates for each. We hope that available data will enable us to adopt this simplified approach so a manageable program can be developed.

It is not known at this point whether all or any of these rates will fall within the 2½ percent statutory ceiling and at the same time be acceptable to the leasing and insurance industries as well as to the purchaser. As we get further along in our work, we will have answers to these questions.

2. Presently we have 13 insurance companies which have signed reinsurance treaties with the Small Business Administration under its real property lease guarantee program. Of these, we have begun to receive business from four. Three others have shown considerable interest and appear to be giving favorable consideration to becoming active participants. An accelerated reinsurance procedure, together with coverage changes encompassed in new insurance policy wording, is designed to make the program more attractive to the insurance industry.

3. Under the terms of section 101(3), we would be authorized to make interest subsidy grants to all small business concerns receiving loans made in cooperation with SBA. The interest subsidy would not be repaid at the end of the loan period.

4. We feel that the banks would not risk being accused of raising interest rates if the legislation is enacted. A careful watch will be kept on the rates the banks are charging just as we have done in the past.

We hope this will satisfactorily answer your questions. Please let us know if we can be of further service.

Sincerely,

HILARY SANDOVAL, JR., *Administrator.*

Senator MCINTYRE. I would like to just close up here now by going to one additional point.

Mr. Sandoval, in your statement I don't believe you mentioned section 103 of S. 3699 which is designed to increase SBA's authority to conduct and contract for research relevant to small business.

Would you care to comment briefly on that?

Mr. SANDOVAL. Of course, we look forward to the useful work that can be done in the area of research, especially in connection with the effects which environmental problems may have on small business. We are going to need research, just to see what small businesses are going to be hurt, and maybe we can be more of a rescue-type agency rather than a pathologist that goes in there and examines businesses that have gone down the drain.

Senator MCINTYRE. Ironically, we have received word that there is currently a proposal in the agency to downgrade the Office of Assistant Administrator for Planning, Research and Analysis; is that correct?

Mr. SANDOVAL. Sir, what we are doing with that particular department—we haven't done it yet, but it is certainly under study—the department was headed by an Assistant Administrator who reported only to me. It lacked supervision, and we feel that this lack will be remedied by placing it under an Associate Administrator.

Furthermore, its location within our Procurement Management Assistance Division, will enable us to take advantage of a lot of research personnel we already have in that particular section. If anything, the change will lead to an increase in the amount of our research and development work.

This is the feeling so far, sir.

Senator MCINTYRE. I note that there is nothing in title III of your S. 3699 which provides for consultation with the surety industry in setting up the guarantee program authorized by this title.

Do you plan to work with the surety industry in formulating rules and regulations for this program, and do you think the bill should be administered to require such consultations?

Mr. SANDOVAL. I don't think it is necessary to require it by statute. We do plan to consult the industry.

Senator MCINTYRE. Under defaults of guaranteed loans, as you mentioned in your statement, how long does it take your agency to pay off on the guarantees?

Mr. SANDOVAL. We have just recently decided upon a change in our payment procedure. When a bank requests payoff on a defaulted loan guaranteed by SBA, we will immediately make payment in the amount of the guaranteed portion. We should be announcing that pretty quickly to the banking industry. There will be no review of the loan prior to disturbing the funds to the lender.

Senator MCINTYRE. Mr. Sandoval, in discussing the MESBIC provisions of the bill, you point out that SBIC's and MESBIC's have provided $17 million to minority small business. As I read the breakdown of these figures, it appears that only $1.1 million of this amount has come from MESBIC's and the remainder from regular SBIC's. Is that correct?

Mr. SANDOVAL. Yes, sir. Would you like to have our associate administrator, Mr. Arthur Singer, address himself to that? He has been studying that.

Senator MCINTYRE. I would be happy to have him.

Mr. SINGER. The MESBIC program of course is just in its initial stages and one of the requirements of funding is that they must invest their private capital before we pledge them. Therefore, that is the reason for the relative small amount that has gone directly to MESBIC. However, since Mr. Sandoval has come onboard, we have had a regular campaign of trying to involve the regular SBIC industry in minority financing. We have been relatively successful.

In this recent go-around where the $70 million was provided last year, we were permitted to spread our interpretation to the point where if a regular SBIC makes a qualified investment in a minority business, such as Watts Manufacturing Co., that that can come out of the minority funds. We have used approximately $10 million that way. The other $7 million that Mr. Sandoval referred to, sir, was a statistical report that we get annually, and there we try to get the

various SBIC's to break down their portfolio companies in various categories, including minority, black, and so forth.

Only 50 percent of the companies made this minority classification breakdown, and they showed finances of 131 companies to the extent of $7 million.

If we just use a mathematical rule of thumb, since only half of them reported, there probably is twice that. So, the figure that Mr. Sandoval gives you is a very conservative one.

Incidentally, we hope to expand the interest of the SBIC in the minority field, and that is the reason for a proposed regulation which is now in the waiting period which would permit an SBIC to own a MESBIC.

Senator McIntyre. I want to thank you very much, Mr. Administrator and your able assistants here, for coming this morning and giving us the benefit of your views on the various pieces of suggested legislation. As we progress and in view of the time element, which I have sort of used up here, we may have some additional questions we would like to submit to you and your associates for the record at a later date.

Thank you very much.

I call as our next witness Mr. Carl L. Klein, Assistant Secretary for Water Quality and Resources, Department of the Interior. We are glad to have you here this morning, Mr. Klein. We are sorry we had to keep you waiting a little bit.

STATEMENT OF CARL L. KLEIN, ASSISTANT SECRETARY FOR WATER QUALITY AND RESOURCES, DEPARTMENT OF THE INTERIOR

Mr. Klein. That is quite all right.

Mr. Chairman and members of this distinguished subcommittee:

I have submitted to you my testimony which consists of a total of eight pages. I am pleased to be here to represent the Department of the Interior in this matter, and we are pleased that you are concerned with the small business of America and the deterioration of the Nation's environment. I believe it will be helpful if I summarize briefly the highlights of my prepared testimony. (The complete statement appears on p. 66.)

We agree with the objectives of the bill which are in keeping with the intent of the National Environmental Policy Act of 1969 that all Federal actions be directed toward the enhancement of environmental quality and the prevention of adverse impact upon the environment.

In this regard we observe that, pursuant to that act and Executive Order 11514, the agencies of the executive branch are reviewing their authorities and programs to determine what changes, if any, are needed to bring them into accord with the policy in the act.

Therefore, we have been unable at this time to arrive at a decision as to whether the approach embodied in the bill represents the most effective technique for advancing the purpose of environmental protection through existing Federal programs of assistance for small businesses.

I have been very concerned—not just about New Hampshire—but about small businesses and small towns in Illinois, New York, and

other States. The problems both of the communities and the small businesses have been brought to my attention.

When I was briefed on this subject last week, I directed the Federal Water Quality Administration to look further into it and I sent a letter to Chairman Train of the Council on Environmental Quality asking for his stance on whether they would coordinate the matter and, if they did not, whether they would designate FWQA as the coordinating agency so that we could get a final answer on the President's direction under the National Environmental Policy Act of 1969 and the Executive Order 11514 and secure a final answer to same.

I will close my off-the-cuff remarks there, and we stand ready for any questions which the Chairman wishes to direct on this matter.

Senator McIntyre. Certainly, Mr. Klein, as we look down the road and wonder about the problems we are going to be confronted with as we try to clean up our environment, none looms more difficult than that area where industry and jobs for a community or for a region are smack up against the desires of a State legislature or the Federal Government to move forward in this field. We have seen the beginnings of it. I mentioned a couple of New Hampshire incidents, one of which was solved by the use of outright Federal grants under the EDA program. In the other case of which due to what I sometimes think was a rather arbitrary feeling on the part of the ownership, the company just closed its doors.

So, I think that the executive branch should be aware of the problem and its possible intensity particularly if the momentum of our legislation in this field begins to move forward and we find ourselves able to pass—although it has not been easy to pass what we now have on the books—stricter and more proscribing bills.

You say "We agree with the objectives of S. 3528 which are in keeping with the intent of the National Environmental Policy Act of 1969." However, you also say that you have been unable to arrive at a decision as to whether the approach embodied in the bill we have reference to, S. 3528, represents the most effective technique to accomplish these objectives.

Do you at this time have any specific suggestions for improvement in S. 3528 other than those mentioned in your statement, or do you have any alternative approach to suggest?

Mr. Klein. The major problem we have here, sir, is getting all branches of Government to come back with everything they have to say. One of the things I would say to you, sir, is that we have been using development grants to find new and improved methods of waste disposal in FWQA. Recently I reviewed about $2 million worth of such grants. Two of them were to paper companies, one in Massachusetts and one was to a lumber company down in Mississippi. I double-checked this morning after you mentioned earlier in the hearing the names of Ashland Paper and Franconia Paper. I want to say to you that neither of them have applied for a demonstration grant which would have helped them solve their problems.

Senator McIntyre. The Franconia Paper was part of I thought quite a singular example of Federal-State-local cooperation in solving the problem under a program known as the Economic Development Act back in, 1966 or 1967. As I inferred, in the Ashland case there was some obstinance on the part of the ownership. They appealed to me

and I tried to see if there was something available at that time to assist them, but under their circumstances there was nothing.

Mr. KLEIN. I just double-checked to see whether anything showed in our records and nothing showed on those two.

Senator MCINTYRE. That is in the records of Interior?

Mr. KLEIN. Yes.

Senator MCINTYRE. And EDA is under Commerce. What you are saying, then, is the subject is not exactly new but we need to study all ramifications of it, we need to have the opinions of any department that is concerned with it to finally arrive at a formula that will be the most progressive and have the most equity involved in it to try to help these small businesses.

Mr. KLEIN. I believe that is correct, sir.

Senator MCINTYRE. Mr. Klein, does your agency make available to small businesses information on financial assistance and technological advice on solving their problems in these areas?

Mr. KLEIN. We really do not deal directly with firms. The publications that we put out are available, and if they come in for consultation—for instance, from New Hampshire to the regional office in Boston—we have a habit of sitting down, and that is standard operating procedure, with all businesses and all communities and looking over the situation with them and then giving our best opinion as to where to go. We do not put it in writing; otherwise, we would be serving as consultant engineers in areas which are reserved to private consultant engineers to be employed actually in solving the problem for these businesses.

Senator MCINTYRE. Is there a booklet put out by your department that would just summarize the possible sources of support to which a small business wanting to stay, in business, in Colorado or New Hampshire or elsewhere could turn. I am referring to an aggressive, forward-looking business which would say we have a problem here, we are polluting, and we are going to come smack up against it, if not tomorrow, the next year or two—where can we find out what help can be made available to us if any?

Mr. KLEIN. In New Hampshire they would go to the Boston office of FWQA, and this is done. They go to the regional office of FWQA or subregional office and discuss the matter there, and whatever publications are available are given to them at that time and suggestions are made to them as to where they can find the proper answer. The agency does not, however, give the answer to them. They suggest that these are possible alternatives and recommend that they go further either with their own engineers or with private consultants to get the final answer.

Senator MCINTYRE. Do you have any feeling at all—I believe this is on the books—on the approach that tries to give tax incentives to companies that are contending with this sort of problem?

Mr. KLEIN. This was the bill to amend the Internal Revenue Act that the Congress passed last year. We were in favor of the fast tax write off provisions in that bill.

I believe the record will show that there is a 60-month writeoff. In Illinois, when I was in the legislature, we were trying to devise ways and means of having the State recognize the need for tax incentive aid.

We had constitutional problems, but what we could do we did within those limits.

Senator McIntyre. Did that become law, that writeoff in the Senate provision last year?

Mr. Klein. Yes, it was enacted as part of the Tax Reform Act of 1970. It is a 60-month writeoff in the form of depreciation—fast depreciation on antipollution equipment.

Senator McIntyre. Do you happen to have any statistical or other information indicating the extent to which small businesses have been presented with orders to make extensive renovations in order to comply with water pollution control standards?

Mr. Klein. We have no statistics whatsoever on that, sir, except that as far as we know in actual cases there have been no closings of any businesses because of water pollution abatement requirements. We have seen where a great many companies—not a great many even—have closed and have laid the blame at water pollution abatement's doors, and it does not belong there. For instance, on air pollution up in Superior, Wis., U.S. Steel closed a plant, and any economist can tell you, sir that that plant should never have been placed there in the first place. It had grown economically less and less profitable until now it was operating at a deficit, and when they were told to put in antipollution equipment, they could not do so and they closed it. But it would have been closed anyway.

We are faced today, for instance, with all of the soda ash manufacturers, such as Olin at Saltville and Wyandotte outside of Detroit, Mich. There are nine of them in the eastern part of the United States. These people are dumping untold quantities of chlorides in the rivers. Actually these chlorides have made it unprofitable for anybody else to locate on the North Fork of the Bristol. It is my understanding that eight other companies turned down the location below this Olin plant because they could not utilize the water, it had been so badly polluted.

The new soda ash mines out in Wyoming and Colorado are going to put these firms out of business in the next 5 to 10 years anyway as a matter of economics. They can produce soda ash much more economically by mining than the others can by processing salt. Therefore, these eastern plants are faced with the proposition that they have to change their operation so as to stop polluting the water. Their answer has been: "We are not going to do it because in 5 to 10 years we are going to be out of business anyway."

I am sure if somebody really applies some muscle on this soda ash matter these mine processing companies will blame it on pollution abatement control. The real answer is they are going to be out of business anyway. It is the same thing in the stockyards in Chicago which moved because they went to a one story type of plant with automation that required a great deal of cheap land and did not require the skilled labor force available in Chicago. Therefore, the local yards moved out. They have truck transportation all over the Midwest and the use of one section of Chicago with railroad service became outmoded. There are a variety of reasons that come up in these cases; but I am sure that pollution abatement will be blamed for a great many items that it is not to blame for. As far as we know, no present pollution abatement procedures have caused any actual closings. We expect a chicken processing plant in Augusta, Ill., will close if they do not

choose to install proper equipment. It is a small plant and it is a small city.

Senator McIntyre. I think that is one important factor that we must bear in mind in dealing with any legislation along these lines—that we are concerned with a bona fide situation, a company that is genuinely up against it economically as a result of the State or Federal regulations on pollution.

I take it that you do not know how many businesses have actually gone out of business due to a bona fide inability to obtain financing for required changes in the field of pollution?

Mr. Klein. We know of none whatsoever actually on that, Mr. Chairman.

Senator McIntyre. Mr. Klein, thank you very much for being here this morning. We may as the hearings develop, and particularly in view of the fact we are trying to telescope these things in 3 days, desire to submit to you additional questions and obtain your answers for the record.

Mr. Klein. We shall be pleased to answer them, Mr. Chairman.

(The complete statement of Mr. Klein follows:)

Statement of Assistant Secretary Klein, Department of Interior

Mr. Chairman and members of this distinguished subcommittee, I am pleased to have the opportunity today to appear before you to present the views of the Department of the Interior on S. 3258. These comments further explain the position in our legislative report on the bill which you have before you.

We in the Department have long recognized the very valuable direction this Subcommittee and its Members have afforded officials of this Department and its sister agencies of the Executive branch.

S. 3528, which is now before the Subcommittee, reflects Congressional concern for the small businesses of America and a growing concern for the deterioration of the Nation's environment. These concerns are not mutually exclusive as some may think. Industry and government may and should cooperate in meeting this problem.

The President, in his historic Environmental Message of February 10, 1970, expressed his concern for the environmental crisis and his commitment to a swift, efficient, and equitable solution involving every segment of American society.

A key problem that must be solved if we are to progress is the seemingly overwhelming problem of industrial waste and its disposal.

One of the largest sources of waste discharges to the Nation's waters is industrial wastes. Industries discharge the largest volume and most toxic of pollutants into the water environment, and this volume of wastes is growing several times as fast as that of sanitary sewage as a result of the growing per capita production of goods, declining concentration of raw materials, and increasing degrees of processing per unit of product.

In 1968, manufacturing firms discharging directly into water courses produced as estimated 80 million pounds of BOD each day (biochemical oxygen demand—that is, the dissipation of life-sustaining oxygen from the water). Another 19 million pounds of BOD per day are estimated to have been discharged by factories to public sewers—as compared with the estimated 24 million pounds of BOD of domestic sewage carried by public systems. During the period 1964–68, when population growth and expansion of sewerage service added about 900 million pounds of BOD to the annual volume of domestic wastes, annual industrial waste production increased to an estimated 7.2 billion pounds of BOD.

The Federal Water Quality Administration of the Department of the Interior has been tackling the problem of pollution from industrial wastes through both legislative proposals and through proposed changes to regulations.

The Administration's 1970 legislative proposals, S. 3470, S. 3471, S. 3472 and their companion bills in the House would amend the Federal Water Pollution Control Act to provide for swifter, more effective enforcement procedures against dischargers and the adoption by the States of discharge requirements in addition to their water quality criteria and plans of implementation now au-

thorized under Section 10 of the Federal Water Pollution Control Act, as amended. The Secretary has also proposed revisions to the regulations governing the awarding of FWQA grants for waste treatment facility construction which would require detailed data on an entire river basin's sources of pollution, volume of discharge from each source, character of effluent, present treatment, among other requirements. These proposed new rules would also require that if some industrial wastes are to be treated as part of a municipal system's operations, an industry would have to pretreat those wastes to ensure that they would not interfere with the efficient operation of the communiy system. Industries would also be required to institute a system of "cost recovery" if its wastes are to be treated in a plant built with Federal aid.

In this regard, the Deartment of the Interior views S. 3528 as being fully consistent with and complementary to those proposals.

The bill would amend the Small Business Act so as to require that any equipment, facilities, or machinery to be acquired with assistance under this Act be designed to as to prevent, control, or minimize environmental pollution which might otherwise result. The Administrator of the Small Business Administration, after consultation with the Secretary of Health, Education, and Welfare, would be charged with prescribing standards for the design of such equipment.

The bill would direct the Administrator to give priority to those applications which he determines will further the development of utilization of new and improved methods of waste disposal or pollution control.

The bill would amend the Small Business Act by authorizing loans to small businesses to assist them in making such alterations or additions to their facilities as would be necessary to meeet requirements of Federal or State environmental pollution control laws.

We agree with the objectives of the bill which are in keeping with the intent of the National Environmental Policy Act of 1969 that all Federal actions be directed toward the enhancement of environmental quality and the prevention of adverse impact upon the environment.

In this regard we observe that, pursuant to that Act and Executive Order 11514, the agencies of the executive branch are reviewing their authorities and programs to determine what changes, if any, are needed to bring them into accord with the policy in the Act.

Therefore, we have been unable at this time to arrive at a decision as to whether the approach embodied in the bill represents the most effective technique for advancing the purpose of environmental protection through existing Federal programs of assistance for small businesses.

Incentives of the type which the bill would authorize in the form of loans that the Small Business Administration would give to small businesses in effecting plant additions or alterations to aid in water pollution control and water quality enhancement have been considered by several studies in which this Department has been involved. In the most recent comprehensive study, ABT Associates, in its report prepared under contract with the FWQA, *Incentives to Industry for Water Pollution Controls Policy Considerations* (December, 1967), advocated additional financial assistance to small firms in meeting required pollution abatement standards where the cost of abatement imposed a hardshio.

We in the Department are particularly cognizant of the special problem faced by some small businesses in the pollution abatement effort. Some small independent firms lack the volume of the cash flow of their larger competitors, and are more dependent on external sources of credit for financing capital improvements. In addition, older and small establishments must often face particularly high unit costs when initially installing waste treatment facilities, whereas more modern factories are designed to include effective waste handling and treatment procedures so that such design and engineering reduce the incremental capital burden of waste treatment.

This Department views the objectives of the bill as fully consistent with the National Environmental Policy Act of 1969 that all Federal actions be directed toward the enhancement of environmental quality and the prevention of adverse impact upon the environment.

We believe that this type of proposal would be more effective in assisting small businesses to meet the demands that environmental awareness now requires if it were amended in several significant aspects as recommended in our legislative report on the bill. These would make changes in the following two areas:

(1) References to the control or minimization of environmental pollution are too broad and vague. We suggest that reference should be made to

applicable air or water quality standards which have been established pursuant to Federal or State law. This could provide the small businessman with more precise requirements and guidelines.

(2) Since the Secretary of the Interior is the Federal officer with primary responsibility for the water quality enhancement and protection and the pollution control program, we would suggest that his participation in the development and concurrence in regulations concerning water pollution is a necessity.

Furthermore, we believe that the provision in the bill authorizing loans to assist small businesses "in effecting additions or alterations in its plant, facilities, or methods of operation" to meet pollution control requirements should be interpreted to include processing modifications that reduce waste production as well as end-of the-line treatment measures. It has often been demonstrated that production changes such as by-product recovery and transition from hydraulic to mechanical materials handling can reduce waste discharges substantially. Interpreting the bill in this manner will be desirable both in the interest of resource conservation and environmental protection.

We appreciate the opportunity to present our views to you on this very important problem and would be pleased to provide you with any further information or assistance which you may require.

Senator McIntyre. Thank you.

We call as our last witness this morning Col. Frederic A. Frech, Assistant Director, Military Construction for Continental United States, Office of the Chief of Engineers, Department of Defense.

STATEMENT OF COL. FREDERIC A. FRECH, ASSISTANT DIRECTOR OF MILITARY CONSTRUCTION FOR CONTINENTAL UNITED STATES, OFFICE OF THE CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY; ACCOMPANIED BY W. MARKS JAILLITE, CHIEF, CONTRACT SUPPORT DIVISION, DIRECTORATE OF MILITARY CONSTRUCTION, OFFICE OF THE CHIEF OF ENGINEERS, AND RANDALL HEAD, OFFICE OF GENERAL COUNSEL, OFFICE OF THE CHIEF OF ENGINEERS

Colonel Frech. Mr. Chairman, the Department of the Army has been designated to present the views of the Department of Defense with respect to S. 2609 and S. 3699. I represent the Army for this purpose and am accompanied by members of the staff of the Office of the Chief of Engineers. I appreciate the opportunity to testify before this committee on these bills.

The purpose of the bills is to provide assistance to, and encourage small business enterprises who wish to enter the construction business but find it difficult to do so because of discrimination or other reasons.

S. 3699 contains a variety of provisions to assist small business enterprises. The Small Business Administration would be authorized in connection with its financial assistance programs, to make loans in cooperation with persons or organizations, not normally engaged in lending activities, as well as with banks and lending institutions, to extend guarantees on loans in an amount not to exceed 90 percent of the loan, and to make interest subsidy grants. The administration would also be authorized to make grants to public or private organizations to pay the costs of providing business management assistance, including the identification and development of new business opportunities, the encouragement of placement of subcontracts by major businesses with small business concerns owned by socially or economically disadvantaged persons, and the furnishing of business counseling and the

payment of training costs for such persons. The bill also contains provisions to encourage the growth of small business investment companies. While we agree with the objectives of these provisions, we would not be directly effected by them, and defer for comment to other interested agencies.

Both bills contain provisions relating to bonding which are of interest to us. With regard to all construction activity, whether conducted by the Government or by private industry, the Small Business Administration would be authorized, under certain conditions, to guarantee sureties against loss as a result of breach of the terms of a bid, payment, or performance bond required of a small business concern in order to bid on or receive award of a prime or subcontract for a construction project where the small business cannot obtain such bond under the terms and conditions usually available in the industry. Such a guarantee could cover up to 90 percent of the loss. S. 3699 would limit this authority to contracts not exceeding $500,000 in amount.

S. 2609 would also authorize a certification of competency, capacity and credit to be issued by the Small Business Administration to any department or agency of the Government to be accepted by that department or agency in lieu of a required bond of not over $500,000. The issuance of a certificate would be dependent on the small business concern not being able to secure bonding from private sources, and a determination that the concern possesses qualifications normally considered sufficient by the surety industry. In the event the small business concern received a contract, the SBA would be required to charge not more than the bond premiums the concern would have been required to pay to a private surety.

The Department of the Army favors S. 3699 in lieu of S. 2609.

The construction bond guarantee program contemplated by the bills, if adequately funded, should provide adequate assurance of completion of construction programs to the satisfaction of both the Government and all parties dealing with small business contractors. The guarantee would make it possible for a small business low bidder to be eligible for award, where this is not presently possible if the firm is unable to secure bonding.

The Bureau of the Budget advises that enactment of S. 3699 would be in accord with the program of the President.

Mr. Chairman, this completes my statement. We are submitting reports to your committee on S. 2609 and S. 3699 which explain our position and recommendations in more detail. I will be glad to answer any questions you may have at this time.

(The reports appear on p. 69.)

Senator McIntyre. Would you care to comment on Senator Bayh's suggestion that his bill be amended to provide a certificate of competency for bid and performance bonds and then go to the guarantee program for payment bond?

Mr. Head. With regard to the performance bond as such, sir, the particular provision that you have reference to would require a certificate of competency. It is not entirely clear what is meant by certificate of competency here. It may go to more than the certificate of competency now issued by SBA envisions. We are not really clear on what is meant there. The one currently used does cover the question of responsibility of the small business contractor. It does not cover the area of

the integrity and perseverance of that contractor under the Comptroller General's decisions.

In other words, a situation where he may have had a series of defaults in the past which would show lack of perseverance or there is some question of integrity which is left to the contracting officer. This we would want clarified.

Senator McINTYRE. I take it that you buy the administration bill?

Colonel FRECH. Yes, sir.

Senator McINTYRE. Thank you very much.

We stand in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 12 noon, the subcommittee was adjourned, to reconvene at 10 a.m., on Tuesday, June 16, 1970.)

(The following report was received from the Department of the Army:)

DEPARTMENT OF THE ARMY,
Washington, D.C., July 23, 1970.

HON. JOHN J. SPARKMAN,
Chairman, Committee on Banking and Currency,
U.S. Senate.

DEAR MR. CHAIRMAN: This report is submitted in response to your request for the views of the Department of Defense on S. 2609, 91st Congress, a bill "To increase the participation of small business concerns in the construction industry by providing for a Federal guarantee of certain construction bonds and authorizing the acceptance of certifications of competency in lieu of bonding in connection with certain Federal projects, and for other purposes," and S. 3699, 91st Congress, a bill "To clarify and extend the authority of the Small Business Administration, and for other purposes." The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on these bills.

The purpose of the bills is to provide assistance to, and encourage small business enterprises who wish to enter the construction business but find it difficult to do so because of discrimination or other reasons.

S. 3699 contains a variety of provisions to assist small business enterprises. The Small Business Administration would be authorized, in connection with its financial assistance programs, to make loans in cooperation with persons or organizations not normally engaged in lending activities, as well as with banks and lending institutions, to extend guarantees on loans in an amount not to exceed 90 percent of the loan, and to make interest subsidy grants. The Administration would also be authorized to make grants to public or private organizations to pay the costs of providing business management assistance, including the identification and development of new business opportunities, the encouragement of placement of subcontracts by major businesses with small business concerns owned by socially or economically disadvantaged persons, and the furnishing of business counselling and the payment of training costs for such persons. The bill also contains provisions to encourage the growth of small business investment companies.

While we agree with the objectives of these provisions, we would not be directly affected by them and defer for comment to other interested agencies.

Both bills contain provisions relating to bonding which are of interest to us. With regard to all construction activity, whether conducted by the Government or by private industry, the Small Business Administration would be authorized, under certain conditions, to guarantee sureties against loss as a result of breach of the terms of a bid, payment, or performance bond required of a small business concern in order to bid on or receive award of a prime or subcontract for a construction project where the small business cannot obtain such bond under the terms and conditions usually available in the industry. Such a guarantee could cover up to 90 percent of the loss. S. 3699 would limit this authority to contracts not exceeding $500,000 in amount.

S. 2609 would also authorize a certification of competency, capacity and credit to be issued by the Small Business Administration to any department or agency of the Government to be accepted by that department or agency in lieu of a re-

quired bond of not over $500,000. The issuance of a certificate would be dependent on the small business concern not being able to secure bonding from private sources, and a determination that the concern possess qualifications normally considered sufficient by the surety industry. In the event the small business concern received a contract, the Small Business Administration would be required to charge not more than the bond premiums the concern would have been required to pay to a private surety.

The Department of the Army, on behalf of the Department of Defense, favors S. 3699 in lieu of S. 2609.

The construction bond guarantee program contemplated by the bills, if adequately funded, should provide adequate assurance of completion of construction programs to the satisfaction of both the Government and all parties dealing with small business contractors. The guarantee would make it possible for a small business low bidder to be eligible for award, where this is not presently possible if the firm is unable to secure bonding.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that enactment of S. 3699 would be in accord with the program of the President.

Sincerely,

STANLEY R. RESOR, *Secretary of the Army.*

SMALL BUSINESS LEGISLATION—1970

TUESDAY, JUNE 16, 1970

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
SUBCOMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10:05 a.m., in room 5302, New Senate Office Building, Senator John Sparkman (chairman of the committee) presiding.

Present: Senators Sparkman, McIntyre, and Hollings.

Senator SPARKMAN. Let the committee come to order, please.

We expect other Senators to come. Senator McIntyre regrettably had to go to another committee this morning, but he does hope to get here after a time, maybe 30 or 40 minutes.

I have to go to another committee in a short time. Senator Hollings will be in probably within the next 10 or 15 minutes. We have got quite a list of witnesses, and I think we had better get started.

We call first this morning on our colleague, Senator Stevens of Alaska. We are glad to have you with us.

STATEMENT OF TED STEVENS, U.S. SENATOR FROM THE STATE OF ALASKA

Senator STEVENS. Thank you, Mr. Chairman.

My statement is very short. The bill, S. 3528, being considered by this subcommittee today is an important part of our Nation's fight to control the pollution of our environment. We have all been made well aware—through the media and through letters from constituents and conservation groups—that many American businesses have not taken the necessary steps to prevent pollution of our rivers and our air. And Congress and the administration are taking steps to deal with these major polluters.

But we still are a Nation of small businessmen. Many of these businesses have been caught in the recent profit squeeze and are hard pressed to come up with capital for needed improvements. The need for the installation of antipollution devices and the adopting of antipollution techniques grows greater every day in small businesses as well as large.

This bill has two major provisions. The first deals with incentives; the second, with financing.

The incentive provision is a simple priority approach which should prove highly effective. It requires that applications for assistance for the acquisition of equipment which is designed to be less polluting than existing similar equipment shall be given priority. This is no more than

an expression of our national policy to encourage protection and restoration of our environment.

The second provision makes available Small Business Administration loans for the acquisition of antipollution devices or the adoption of antipollution techniques required by Federal or State law. This provision will be of assistance to many small businessmen.

For example, a small prefabricator uses a furnace as part of his processing of materials. He needs a precipitator in order to comply with antismog regulations, but local financing simply is not available for this investment at this time.

A small trucking firm needs to have his trucks equipped with a new exhaust manifold injection system which will eliminate over 90 percent of the air pollutants in the truck exhausts. Again, adequate financing cannot be found.

These are situations which S. 3528 can help resolve in favor of the environment.

Because Alaska is very much a State of small businessmen, I am particularly interested in seeing this legislation enacted. We have a beautiful State and we want to keep it that way. Our businesses need the help that this legislation can supply in order to assure that all reasonable steps to protect our environment can be taken.

I urge the committee to act favorably on this legislation.

Senator SPARKMAN. Thank you very much.

I call your attention to the fact that I am a cosponsor of the bill and I certainly hope out of these hearings that we are having and out of the various bills before us that we may be able to work out a program.

I fully agree with the statement you have made as to the need and I believe we will work out a good bill. I certainly appreciate your consideration.

The next witness is Mr. James T. Lynn, General Counsel with the Department of Commerce; accompanied by Mr. Abraham Venable, Director, Office of Minority Business Enterprise.

We are very glad to have you both. We have a copy of your statement, Mr. Lynn. You understand, I am sure, that the entire statement will be printed in the record.

You may proceed as you see fit, either to read it, discuss it, or summarize it. We are glad to hear you however you may want to proceed.

STATEMENT OF JAMES T. LYNN, GENERAL COUNSEL, DEPARTMENT OF COMMERCE; ACCOMPANIED BY ABRAHAM VENABLE, DIRECTOR, OFFICE OF MINORITY BUSINESS ENTERPRISE

Mr. LYNN. Thank you, Mr. Chairman. I think I will read the statement at this time if I may.

Senator SPARKMAN. Very well.

Mr. LYNN. Mr. Chairman, and members of this subcommittee, it is a pleasure to be with you this morning to discuss S. 3699, the Small Business Amendments of 1970 and S. 2609, a bill relating to construction bond requirements of small business.

Yesterday you heard in some detail from Administrator Hilary Sandoval of the Small Business Administration. He explained to you the needs for this legislation from the standpoint of helping small

business generally. He also explained the particular legislative tools that we are proposing to meet these needs.

I, as a representative of the Department of Commerce, would like to explore with you the special meaning of these proposed amendments for an effort that is particularly close to us. I am speaking for the President's program to "foster the economic status and pride of members of our minority groups" through involvement "more fully in our private enterprise system," "not only as workers, but also as managers and owners."

The President has stated that "encouraging increased minority group business activity is one of the priority aims of this administration"; and toward that end, shortly after taking office, he established in the Department of Commerce the Office of Minority Business Enterprise (OMBE). The legislation you are considering today has, as another dimension, the purpose of responding to this Presidential priority of expanding minority business enterprise.

First I would like to discuss with you the needs that we have identified in our efforts to foster minority enterprise. Then I would like to explain how the administration's proposed legislation meets some of these needs.

The Executive Order No. 11458 creating OMBE directed the Secretary of Commerce to coordinate and focus the Government's efforts to encourage minority enterprise and to mobilize financial and other resources, both public and private.

In the little over a year's time we have spent on these efforts we are very proud of our accomplishments. Significant strides have been made in such areas as Federal procurement, increased sources, and amounts of capital for loan and investment, providing information to minority communities about business opportunities by private companies through franchising and dealerships, assistance to minority-owned banks, and recruiting professionals to give voluntary aid to minority businesses.

As a result of his work in OMBE Secretary Stans has identified four key ingredients for success in our attempts to increase participation by minority citizens in our competitive enterprise system. We must find and develop the man, the opportunity, the money, and the know-how.

Many of the provisions of this legislation—whether designed generally for small business or whether designed specially for the socially or economically disadvantaged, including minorities—are aimed directly at finding and developing these ingredients for success.

Our experience in OMBE has also given us some insight into the needs of other Federal agencies which are trying to advance the cause of minority enterprise. From the outset we have worked closely and successfully with the Small Business Administration. The SBA, under its general programs and under its special programs for the benefit of the socially or economically disadvantaged, has adopted the President's commitment as its own.

In many respects the legislation proposed by the administration responds to the needs that have been revealed through the joint SEA–OMBE efforts. It will go far toward permitting SBA to respond even more effectively than it has up to now.

48-335—70——6

Senator SPARKMAN. I will now turn the chair over to Senator Hollings.

Senator HOLLINGS (presiding). Thank you, Mr. Chairman.

Mr. LYNN. Finally, and of crucial importance, our OMBE experience has proven to us that there is a great storehouse of goodwill and support in private industry for the minority enterprise program. Business is clearly concerned and willing, indeed anxious, to cooperate in our efforts with money, men, and other assistance. We strongly believe that the best way to proceed is to tap these resources that the business community is offering; and the legislation that we have put forth reflects our intention to seize upon this opportunity to maximize private involvement in this important undertaking.

Before turning to the specific legislative proposals, and the ways in which these proposals are tailored to the needs that we have found through OMBE, I would like to mention another basic impetus for this program, the Report of the President's Task Force on Improving the Prospects of Small Business. The task force, composed principally of distinguished representatives from small and large business, made several recommendations for Government action respecting small business. I respectfully commend them to your attention. Those recommendations have been carefully considered and, to the extent deemed appropriate for action at this time, incorporated into S. 3699.

I turn now to a consideration of the specific legislative proposals.

Most of the features of S. 3699, of course, relate to small business generally, and not to minorities alone. Thus, such important provisions as permitting SBA to make interest assistance grants (in section 101 (3)), and allowing SBA to designate particular lenders which can make guaranteed loans without advance SBA approval (in section 101(2)), are applicable to all small businesses. So also, the administration's tax reform proposals that have been submitted to the House of Representatives are applicable to small business in general.

It must be apparent, however, that these proposals will be of substantial benefit to the promotion of minority enterprise. They introduce further incentives for voluntary involvement in and support of small business by the private sector; and in light of the already demonstrated interest of the private sector to commit resources to minority enterprise, I think we can expect marked progress from these new provisions.

In addition to these and other general provisions of the bill, I think that there are four particular provisions that will be of special importance to the socially and economically disadvantaged, including minorities. First, there is the provision in section 101(2) permitting SBA to guarantee loans made by persons other than banks. Second, there is the proposal in section 102 (7) and (8) to increase SBA's authority to pay for the costs of education and training for persons who are socially or economically disadvantaged, and to provide help to such persons seeking Government assistance in connection with small business. Third, the bill would give statutory recognition to and increase the effectiveness of Minority Enterprise Small Business Investment Companies (MESBIC). Finally, S. 3699 would authorize the SBA to guarantee surety bonds up to 90 percent, a provision that is expected to have special impact for minority contractors who, in the past, have had difficulty getting such bonds.

Under the present law, SBA's authority to guarantee loans is restricted to loans by banks and other financial institutions. Our experience, however, indicates that persons other than banks and similar institutions are a potential source for additional small business capital. This is especially true of such potential lenders as foundations, pension funds, trusts, and community groups whose strong interest in the socially or economically disadvantaged is well known. We believe that this additional guarantee authority for SBA will have the desirable result of increasing the flow of capital funds from private sources into minority enterprise. Accordingly, we urge its adoption.

To assist SBA in identifying potential entrepreneurs and giving them the know-how to run a business, the bill proposes an expansion of SBA's authority to make grants for training and education. Under section 102(b)(7), SBA would be empowered to pay the costs, including tuition, of courses and training programs for socially or economically disadvantaged persons, including minorities. These courses and training programs would be designed to develop skills for business management.

The bill also expands the authority for SBA to render advice to the socially or economically disadvantaged who seek the assistance of other Government programs. This provision should increase the effectiveness of SBA's efforts to enhance the opportunities available for minority entrepreneurs.

Last November, the SBA and OMBE inaugurated the MESBIC program. This legislation gives that program a firm and independent statutory basis.

MESBIC's are a variation of Small Business Investment Companies (SBIC's) differing to the extent that the investment policy of MESBIC's is that its investments will be made solely in small business concerns which are owned by socially or economically disadvantaged persons, including minority group members.

The MESBIC program works as follows: Any private group or corporation can form a MESBIC with a minimum of $150,000 capitalization. The Small Business Administration matches that investment, two for one, yielding $450,000 for minority business investment. The minority business recipients can then, in turn, borrow additional money over $2 million with SBA support.

Actually, the average commitment of MESBIC sponsors has been roughly $250,000, which could result in as much as $4 million for minority businesses. When the program was announced last November, a goal of 100 MESBIC commitments was set for June 30. Secretary Stans has well surpassed that goal and we are working on the second hundred commitments. The second hundred becoming operational may mean that as much as $1 billion of investment money will be made available for minority enterprise through the program, with about $750 million of that amount coming directly from the private sector by way of MESBIC capital and loans.

The advantages of MESBIC's are clear: They are a source of equity capital for small minority-owned businesses, and because of their sponsorship arrangements, they are a source of interested expertise for the new and struggling minority entrepreneur.

The legislation under consideration here would bolster the MESBIC program by: (1) permitting banks to become controlling sponsors of

MESBIC's; (2) permitting the SBA to quarantee debentures issued by SBIC's and MESBIC's; and (3) authorizing MESBIC's to be organized as nonprofit corporations. The first provision would allow banks, which have expressed an interest in the MESBIC concept, to participate in the minority enterprise effort in this way. The second proposal would strengthen the capital position of MESBIC's and SBIC's. The third provision, allowing MESBIC's to attain nonprofit status, when coupled with one of the tax law proposals now pending in the House of Representatives, would encourage larger capital commitments to MESBIC's.

We believe that MESBIC's show great promise. We urge favorable consideration of the legislation designed to strengthen our program.

Turning to surety bonds, title IV of the administration bill gives SBA the authority to guaranty surety bonds necessary to obtain private and Government contracts.

The need for Federal assistance in this area seems clear. Congress saw the problem when it considered the Housing and Urban Development Act of 1968. Section 1235 of that act directed the Secretary of HUD to conduct a study of construction bond availability, and a report to Congress on this subject is due June 30.

Apart from this study, however, our experience with OMBE has confirmed the need for legislation, especially in relation to availability of construction bonds for minority contractors. We therefore propose that SBA be given the authority to guarantee sureties as an inducement for these companies to write bonds where the contractor is able to perform but where he cannot obtain bonding at the present time.

In urging the adoption of title IV, we acknowledge indebtedness to S. 2609. Our proposal is very similar and has borrowed from the careful draftsmanship and thought of that bill. There are, however, certain proposed differences deserving mention. S. 3699 is somewhat broader than S. 2609, covering bonds for contracts other than construction contracts.

It is narrower in other respects. S. 2609 provides not only for a program of SBA guarantees, but also for establishing a national construction task force and for expanding the SBA's certificate of competency program so that such certificates would suffice in lieu of a bond for Government contracts. With respect to the advisability of these latter two differences, we prefer to reserve judgment pending the completion and release of the June 30 HUD report. It is our understanding that HUD has engaged a noted insurance authority as a consultant on this project and that a thorough analysis of these approaches and others will be forthcoming.

I have stressed a single but, I believe, important aspect of the Small Business Amendments of 1970. These proposals would confer specific program tools to meet identified needs, especially in connection with our minority enterprise efforts.

Clearly, this legislation does not exhaust all that must be done to bring minority groups into the economic mainstream. It is simply a part of the whole. But it is a very important part since it relates to new and greater involvement in small business. As Secretary Stans has stated, "America began as a Nation of small business. It was built by large corporations or instant tycoons. The road to greatness in American business has been the road up from small beginnings."

Senator HOLLINGS. Thank you, Mr. Lynn. I understand SBA has had difficulty getting banks to participate in the lending programs of small business, and I refer you to the $2 million that you mention in your statement. What assurances from lenders do you have that they would supply that $2 million? If they are not participating already in established business procedures now what makes you think we can get that $2 million participation?

Mr. LYNN. I have had some conversations with people at the SBA about this because, of course, in the OMBE program we are vitally interested in encouraging that bank participation in every way we can. I have the feeling that the Administrator and his people have been making very good efforts and with good results to emphasize the importance of these programs.

I think the things that they have been lining up now by way of changes in their programs will help in addition to these tools. For example, I think the Administrator said yesterday that they are going to a technique whereby the banks can use their own forms. One of the complaints of the banks has been that it is very hard to get loan officers out in branches or downtown to change over from using the forms with which they are fully familiar to some special forms that the Government has prescribed for making loans.

It seems pretty clear to me, and I know it does to the people at the SBA, that if a review of the bank form shows that it has equal protection to that in the SBA form but in different wording, why not do it that way?

The other parts of the program that I have not directed myself to today affect this, too. For example, there is the proposal to give the SBA even further authority to delegate, if you will, responsibility for making SBA guaranteed loans to the banks under very carefully circumscribed circumstances. I think this will help. In other words, anything that can cut down the red tape—because I do think that red tape causes problems—is something that a bank is concerned with.

Further, incentive is provided in other parts of this package for the loans by the banks. One of the things that is proposed is I believe that 20 percent of the income realized by a bank on an SBA guaranteed loan may be treated as a deduction for income tax purposes.

All of these things are useful. One key point I should mention, Mr. Chairman, as to how the MESBIC helps in this. Where you have a MESBIC that is a corporation or a community group which already has strong banking contacts, the muscle, if you will, of that corporation or that group will be put into play to work with the banks to encourage the banks to make these loans.

I think all of these things will come together to result in a much greater involvement by the banks than we have seen in the past.

Senator HOLLINGS. How about the managers of the MESBIC's? Where would you get these managers from?

Mr. LYNN. I would think the management of the MESBIC would come in part in many cases from the corporations which form them. Perhaps even more important will be the fact that even if they were to hire a manager from the outside, the skill of the corporation in selecting that manager would be there and further the manager would know that he had that array of talent behind him in the corporation

no matter what the issue was, whether it was legal, accounting, consulting advice or what have you.

Senator HOLLINGS. Let's speak a little more specifically about the number of MESBIC's. On yesterday Mr. Sandoval told the committee—you were talking about 100 and on the second hundred—Mr. Sandoval talked about 108 commitments to establish these MESBIC's but only 10 have been licensed by SBA and another 17 license applications are pending. The 81—have they applied for licensing?

Mr. LYNN. How many have actually applied for licensing?

Senator HOLLINGS. Yes. How many have applied for licensing? You say this is working fine and that you have exceeded the first hundred and that you are working on the second hundred. But the information we received yesterday from Mr. Sandoval indicated that only some 10 have been licensed and 17 are pending, and the other 81 really have not applied yet? Could you give us the accurate information?

Mr. LYNN. As to the exact details on how many have been licensed, as to how many are in the pipeline, to use the vernacular, and how many of them are yet to submit their formal papers, I think I would have to stand on what the Administrator has said because once the commitment is obtained the matter is, from there on out, that of the SBA. But let me just emphasize that when we talk about the figure of 100 we were talking commitments. We were not talking actual licensing because we were aware at the time we set the goal that the actual follow-through to the establishment to duly licensed MESBICs does take some appreciable time. So, what we are talking about is in terms of commitments as opposed to actual operations. There will be time here in order to have the follow-through that is required to get into actual operation.

Senator HOLLINGS. Back to your "short form" with the bank which was so appealing. Do you have a short form for SBA to get these things licensed?

Mr. LYNN. All I can say on that, Mr. Chairman, is that to the extent our efforts at the Department of Commerce and in OMBE can be meaningful SBA will adopt every shortcut that is feasible. I know they share with us the desire of doing this quickly.

On the other hand, we are presently working within an existing statute that was framed for small business investment companies generally, and the kinds of information that are required here do take some time between the time of application and the time of actually being licensed. We are all trying very hard to shorten that time period.

Senator HOLLINGS. What about an outreach program to inform the minority contractor organizations and the minority businesses that could organize and take advantage? We find so often in the Congress that all these things sound good on paper but it is hard to get that information. Food stamps are 10 years old but 70 percent of those eligible are not participating. What kind of outreach programs does the Department of Commerce have to inform minorities of this particular opportunity?

Mr. LYNN. I think Mr. Venable can speak to that a lot better than I can.

Mr. VENABLE. As you are probably aware, Secretary Stans, along with other Federal officials, including Mr. Sandoval, Bob Brown from the White House and Mr. Kunzig from GSA, have visited nine cities

with major presentations, and that includes Boston, New York City, Baltimore, Washington, D.C., Detroit, Dallas, Los Angeles, and San Francisco.

Senator HOLLINGS. None below the Mason-Dixon Line?

Mr. VENABLE. We were in Atlanta on the 9th. And we will be in Chicago on the 25th. That will be our tenth city to visit out of a total of approximately 25 cities before the end of the year.

By major meetings, we have meeting with a cross section of the total minority community, we have meetings with a cross section of the business community, the majority community. We have meetings with key individuals.

In addition, we have a community organization division in my office, in OMBE, and we are constantly mailing information to more than 950 organizations around the country. We also attend the conventions of just about all the minority organizations around the country. So, we are constantly making speeches and visiting these cities.

Mr. LYNN. If I might, Mr. Chairman, just add one thing to that. I get into this personally from time to time because all of the officers of the Department are very much interested in this program. One of the things that I know Mr. Venable and the others are very much concerned with is to be certain that there is awareness in the communities of where to go to get advice, the preliminary advice that is necessary to trigger off the rest of the steps.

If you have a man who is the best mechanic in a garage and he has always wanted to have his own garage, he must know where to go in that particular community to get preliminary advice on how to learn about keeping books maybe as a preliminary, or if he already knows about that, where to get the financial assistance to go into business.

One of the problems in a number of the cities is that the effort has been diffused. I think Mr. Venable would agree with that, that you will have six or seven organizations, all professing to offer advice in this area. What we are trying very hard to do in cooperation with the SBA is to bring some cohesiveness to that effort and greater awareness in the community as to who those people are that you can go to to get that advice.

We concur with you that there are a number of programs—I have seen them myself in government—where they are there, but the people to whom they are directed are not even aware of their availability.

Senator HOLLINGS. And you have been to Atlanta. What other towns down South? We have that feeling somehow when you get HEW guidelines, with 378 cases pending in the South, and, for example, up until last year only one town in Michigan even had an HEW agent to try to bring equalization to the facilities. All government comes down there when it comes to that proposition, but when it comes down to economic opportunity they send them to Detroit and Boston and they don't even find the South. I don't see the consistency of that, and we would like to have some of that opportunity in small business down in the South where apparently the government in Washington apparently finds a problem.

Mr. VENABLE. We do not plan any major visits in any other southern city. I have personally been in Winston-Salem, Raleigh, Durham,

and Birmingham and I am sure many of my staff members have been in a host of southern cities where we have not implemented the detailed visit program which will be part of the second phase which will commence July 1. Chicago ends the first phase. The other 15 will include many of the smaller cities as opposed to the Bostons, New Yorks, et cetera.

Senator HOLLINGS. Is there a single MESBIC down South at all?

Mr. VENABLE. There is a MESBIC in North Carolina. I was in Winston-Salem and R. J. Reynolds put up the seed capital for a MESBIC, $150,000. In Atlanta we got three commitments while we were there to establish MESBIC's.

Senator HOLLINGS. Suppose you had a MESBIC, a minority business group in the contracting field competing on a bid basis for a regular public contract of any kind, would you find yourself competing with private enterprise, on the issue of obtaining the surety bond if you were a MESBIC or a minority business as compared to small business that was not a minority business but had been operating, say, successfully in a small fashion for the last 25 or 50 years? What challenges do you get or questions asked about unfair competition? Does that enter in at all?

Mr. VENABLE. No; because we have found that in most of the communities that the key thing is that they don't want people to have an unfair advantage, and most of the time we have had assistance from members of the majority community, especially in the contracting field, to assist the minority guys, because there is a shortage of talent, et cetera.

We have had no complaints——

Senator HOLLINGS. You have had no complaints at all?

Mr. VENABLE. Not about that. If I have had, I wouldn't know about it.

Mr. LYNN. Let me add, Mr. Chairman, to that. I believe that the surety bond requirements of the administration bill are not limited to socially or economically disadvantaged people. I believe they are applicable to all small business. So, in the case you present, you would have availability of this program to all of the small businesses. So that if they are in the same situation, they would both qualify for the relief.

Senator HOLLINGS. I was getting to the practical problem of two competitive contracting firms in a bid—you may have $60,000 or $70,000 premiums sometimes on a job, and you just knock that off if you are a MESBIC because that is taken care of and then you can undercut on a competitive basis and bid. You don't find that to be so?

Mr. LYNN. I don't understand the bill to be that way. Under the administration bill we help the small businessman get a surety bond, but that doesn't relieve him of paying for a surety bond. He pays just the way the other fellow pays for a surety bond. The idea is, though, now he has been made equal. In fact he has had to pay something more for it because there is a premium for the efforts of the SBA to arrange the bond for him——

Senator HOLLINGS. The cost of the bond is slightly more than it would normally be?

Mr. LYNN. I think that would be right. Yes; it would probably be higher.

Senator HOLLINGS. Well, good. What about this training and education, the authority to make grants for training and education; can you elaborate on that some and tell us how that works? What kind of training and education programs are you contemplating?

Mr. LYNN. I think in the main that the SBA is a much better source for that information, but let me give an example of the kind of thing that we would have in mind particularly.

There will be men who have excellent skills in producing a particular kind of product or a particular service who have worked for somebody else. That garageman I talked about or the fellow who worked in a restaurant who is a heck of a good cook and who has the idea he can run his own business but he doesn't know the first thing about how to keep books, he doesn't know the first thing about paying taxes and filling out all those darn forms that a businessman has to fill out today. What we hope is this will afford an opportunity for him while he is still working at his other job, I would think, to go to school at night and learn these other things.

It will also afford opportunities, if there is only a particular element of these things that he doesn't understand, to launch his business but go to school a couple nights a week to learn such particular element.

There are many other things you can think of, too. I think this is the kind of a program, however, though, that you have to apply some caution to because otherwise you could have very broad types of programs that really do not give you all the value you want for the dollar. But it does seem to me there will be many kinds of direct impact assistance that can be given under these provisions.

Senator HOLLINGS. Thank you very much, Mr. Lynn. Do you have anything else you or Mr. Venable wish to add?

Mr. LYNN. No.

Mr. VENABLE. No, thank you.

Senator HOLLINGS. We appreciate your appearance before the committee this morning.

We will next hear from Jerome Gulan, the legislative director of the National Federation of Independent Business.

STATEMENT OF JEROME R. GULAN, LEGISLATIVE DIRECTOR, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, WASHINGTON, D.C.

Mr. GULAN. Thank you, Mr. Chairman.

The National Federation of Independent Business thanks you for the opportunity to present testimony on the legislation before the subcommittee today.

With regard to S. 3528 which was introduced on March 2, I am pleased to say that the results of a nationwide poll of our members show that 67 percent support the principles embodied in this legislation. We feel that this bill is indeed timely for in the wake of a strong public outcry against pollution, the anticipated congressional enactment of laws aimed at sweeping away air and water pollution could well sweep away many American small business.

The possibility looms if Congress should impose high antipollution standards which require businesses to spend large sums of money on

new equipment, remodeling, or relocation. These that could not afford to make the changes would be legislated out of business.

Many business owners are concerned that Congress, swept up in the ecological-environmental cause, may force business to meet rigid new standards beyond the financial ability of many firms who do not have access to additional funds from the stock, bond, or debenture markets.

While the antipollution problem is considered a vital one by small businessmen, the cost factors involved raises the possibility that much of the burden will be put on business. This bill would affirm the Government's role in assisting small businesses in meeting this problem. It is on page 2.

I have here a press release which very well sets forth the federation's position on the bill.

Senator. HOLLINS. Without objection it will be included in the record.

(The release follows:)

NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., SAN MATEO, CALIF.

THE BRIEF FACTS

> Passage of strong anti-pollution legislation appears likely in the next few years, and this may include tough standards of compliance for business. Some may not be able to afford costly changes and be forced to close. Legislation prepared by Senator Thomas McIntyre of New Hampshire, S. 3528, would authorize the Small Business Administration to make low-interest loans to small firms needing money to comply with Federal or state anti-pollution laws. In the National Federation of Independent Business poll, 67 percent of the business owners favor this measure, 25 percent are opposed and 8 percent offer no opinion.

The strong public outcry against pollution may bring new Federal laws which will, in time, sweep away air and water pollution . . . and many small businesses as well.

This possibility looms if Congress should impose high anti-pollution standards which require businesses to spend large sums of money on new equipment, remodeling or relocation. Those that could not afford to make the changes would be legislated out of business.

Anticipating this problem in view of tight money conditions, Senator Thomas McIntyre of New Hampshire is sponsoring a bill which would authorize the Small Business Administration to make loans to small businesses unable to meet Federal or state anti-pollution requirements without suffering "substantial economic injury" in the absence of such a loan. These SBA loans would be at rates below commercial rates.

Two-thirds of the nation's independent business owners apparently favor this bill, according to a poll by the National Federation of Independent Business. The actual response was 67 percent for the bill, 25 percent opposed and 8 percent undecided.

Returns from _____ show _____ percent favoring
(Name of State)
the measure, _____ percent objecting, and _____ percent neutral.

Many business owners are concerned that Congress, swept up in the ecological-environmental cause, may force business to meet rigid new standards beyond the financial ability of many firms who do not have access to additional funds from the stock, bond, or debenture markets.

Senator McIntyre, in introducing the bill, said he supports the pollution enforcement goal, adding, "I think we should be aware of the differential impact which anti-pollution enforcement action may have on small businesses as opposed to large corporations . . . I am afraid that many small business concerns will not have the funds available to meet new standards that will be set . . ."

The situation could parallel the one facing many small meat processors and freezer-locker owners resulting from passage of the Wholesome Meat Act, which has created technically impossible standards so that industry sources expect

many small firms to close, unable to make the changes. The Department of Agriculture so far has delayed implementation of the regulations promulgated by bureaucratic interpretation of the law.

Senator Alan Bible of Nevada, chairman of the Senate Small Business Committee, has sought to get SBA loan authorization to help those affected.

The anti-pollution problem is considered a vital one by small businessmen, but the cost factors involved raises the possibility that much of the burden will be put on business. The McIntyre bill would affirm the government's role in assisting small businesses in meeting this problem.

STATE BREAKDOWN FIGURES (DIRECT SBA TO GIVE LOANS TO FIRMS TO COMPLY WITH FEDERAL ANTIPOLLUTION PROGRAMS)

State	Percent in favor	Percent against	Percent undecided	State	Percent in favor	Percent against	Percent undecided
Alabama	70	22	8	Nebraska	65	27	8
Alaska	75	20	5	Nevada	65	28	7
Arizona	56	33	11	New Hampshire	78	18	4
Arkansas	61	32	7	New Jersey	73	21	6
California	65	27	8	New Mexico	60	28	12
Colorado	65	26	9	New York	70	21	9
Connecticut	74	20	6	North Carolina	67	27	6
Delaware	80	15	5	North Dakota	67	21	12
Florida	64	26	10	Ohio	70	23	7
Georgia	72	21	7	Oklahoma	61	31	8
Hawaii	74	18	8	Oregon	71	20	9
Idaho	65	25	10	Pennsylvania	69	24	7
Illinois	67	24	9	Rhode Island	60	40	
Indiana	68	23	9	South Carolina	64	24	12
Iowa	66	25	9	South Dakota	68	26	6
Kansas	61	29	10	Tennessee	63	26	11
Kentucky	69	24	7	Texas	63	28	9
Louisiana	68	27	5	Utah	59	36	5
Maine	68	27	5	Vermont	77	15	8
Maryland	69	22	9	Virginia	67	24	9
Massachusetts	68	25	7	Washington	69	22	9
Michigan	68	22	10	Washington, D.C.	67	33	
Minnesota	71	20	9	West Virginia	70	22	8
Mississippi	65	28	7	Wisconsin	62	30	8
Missouri	64	26	10	Wyoming	61	31	8
Montana	70	22	8				

Mr. GULAN. With regard to S. 3699, SBA's current legislative requests, in general, the federation is quite pleased with the seven point request sent up by the Administration. We have commented on each of the proposals in detail in the attachment to this statement. In the interest of saving time, I shall not go into those details now but would ask that the entire attachment be made a part of this statement when it is printed in the record of these hearings.

Mr. HOLLINGS. It will be so included.

(The attachment referred to is titled appendix A and appears on p. 90.)

Mr. GULAN. I would like to explore a few details contained in the President's Small Business Task Force report which were not reflected in the legislative request. These points are:

1. Leadership;
2. Program intermingling and confusion; and
3. Program planning and analysis.

(*a*) The task force report stated:

> Thus, for example, the Small Business Administration has not had the advantage of continuity of administrative leadership. In the last decade, the average term of office of the agency's administrators has been hardly more than one year. For even the most able and dedicated leadership and staff, this presents great difficulties.

Those of us in the federation who have worked closely with SBA officials during the past 10 years must echo, agree with, and ask that even greater emphasis be placed on this recommendation. The effect which this lack in leadership continuity has had on the morale of the professional staff of the Small Business Administration is difficult to describe.

With each new Administrator have come new reorganization plans, new directives and policies, even to the point where one plan or another has hardly had time to materialize before a new Administrator issues a new, countermanding edict. Those individuals charged with carrying out administrative decisions often hardly have time to effectuate them before they become outdated with the result that confusion reigns supreme. Unless some degree of stability in leadership can be achieved within the agency, we fear that these rapid leadership changes will eventually result in completely undermining the effectiveness and capabilities of the professional staff to the point that most of the ongoing programs of the agency will languish and die. The result, a small business community without any worthwhile advocate at the Federal level.

(*b*) The task force report further said:

> The clear assignment to aid, counsel and protect small business had been confused by the attempt to conform it with efforts to assist members of minorities. We well know that programs of assistance to minorities are essential and recommend that all Government assistance to small business, as such, be rendered according to stated guidelines and that programs for assistance to minority enterprise be separately established.

While it is true that the minority businesses, over the years, have not had an amount of Federal assistance to which they have been rightfully entitled, and while it is also true that SBA, in particular, probably has been as guilty as any other branch of the Government on this point, we now find that on a proportionate basis, the bulk of the agency's programs seem to be oriented to assisting minorities.

Given the fact that the Small Business Administration serves a constituency of more than 5 million businesses with less than 5 percent of that number falling in the minority business category, we find that this agency is currently devoting one-third or more of its entire effort to minority business problems. Further, given the facts that these efforts are not being made in addition to its long-established programs, rather instead of, it seems abundantly clear that such a disproportionate ratio cannot but lessen the agency's overall effectiveness within the small business community. We find that nonminority small businessmen across the country are increasingly attaching a mental color coding to the agency to the extent that they feel "why ask their help, I'm not a member of a minority so I don't qualify?" While on the surface, this may sound ridiculous, it is a fact that such comments are becoming more and more prevalent.

When SBA established their 8(A) program and began acting as a contracting agency in order to negotiate contracts for minority business firms who were unable to get such contracts on a competitive basis, there was a clear understanding that such contracts were to be broken out of existing contracts currently going to big business, or were to be created wherever possible by the Federal Government. It was also understood that such contracts were not to be taken away from existing

small nonminority firms who had been doing the work as a result of competitive bidding. We are finding now that this criteria no longer applies. Small firms who have been bidding and getting contracts, particularly in service and janitorial areas, are being informed, as their contracts expire, that they will be unable to bid competitively for that same contract as it is being moved into the 8(A) program to be awarded, noncompetitively, to a minority firm. Mr. Chairman, I have two cases here which bear out this fact quite explicitly and I would ask that these cases be made a part of the record.

They are attached as appendixes B and C.

Senator HOLLLINGS. They will be so included.

(Appendixes B and C appear on p. 92.)

Mr. GULAN. We have made inquiries of SBA on this matter and have been told that this is being done and will continue to be done. For justification, it is claimed that the administration has given a clear mandate on aid to minority firms and, therefore, the agency has no choice in the matter. Mr. Chairman, such reasoning is utterly fallacious and indefensible. If these programs are to continue in this manner, what the Government will be doing is nothing more than engaging in a game of numerical semantics. Of what possible advantage to the economy or to the small business community as a whole can it be to arbitrarily take business away from one small nonminority entrepreneur on the one hand and award it to another equal sized minority entrepreneur? This amounts to borrowing from Peter to pay Paul, or simply transferring small change from one pocket to the other. Where is the net gain from such actions? Obviously there is none.

Mr. Chairman, this is but one example of program confusion within the agency and bears out the need for enactment of the task force recommendation that assistance programs for minority businesses be separately established. Further, if minority firms are to be aided to the extent that meaningful assistance is to be provided them, these programs must be separately and sufficiently funded in order to do the job as it should be done.

(*c*) Program planning and analysis—another point of the President's legislative proposal calls for expanded research into small business and states that SBA will expand its program in this area.

Presently SBA research is conducted by its Division of Program Planning and Analysis headed by an Assistant Administrator and staffed by a number of very competent economists. Over the year, the value of SBA's central office's research staff has proven itself time and time again. The current Administrator, Mr. Hilary Sandoval, seems convinced of this fact and as recently as May 4 of this year, he was committed to carrying out the President's mandate for expansion in this area. The Administrator's views are evidenced in part in a letter of May 4, 1970, written by him and I quote from that letter:

> . . . The President has also included a provision which further defines the Small Business Administration's research mandate among the legislative proposals recently submitted to the Congress. While we have broad authority to conduct research under 8(c) of the present Small Business Act, we have been able to secure only limited funding of our contract research program.
>
> We have undertaken some very worthwhile research, using both contract funds and the central office staff. Our study of the impact of crime on small business had a first printing of 10,000 copies—the largest printing of its kind of document ever undertaken by the Government Printing Office. It also laid the foundation for a legislative program that could greatly benefit

small business. Our own research staff has developed the most thorough and firm information base on the status of minority business ownership available in or outside the Government. These are examples of the kinds of worthwhile projects we are committed to continue and expand to the fullest extent of our resources.

These are examples of the kind of work which led to the observation in a recent report by the Research Analysis Corporation to the Department of Commerce that '. . . a good bit of significant economic analysis goes on—principally in the Office of Planning, Research and Analysis in Washington Headquarters.'

One of the promising features of the President's program for small business is the major expansion it envisions in our advocacy role. Research on the problems and needs of small business and on the impact of Federal programs on small business is an essential part of this effort.

Now adding further to our quandry concerning confusion within the agency, we have learned that on May 6, only 2 days following Mr. Sandoval's fine remarks, a recommendation was sent to him from the Acting Assistant Administrator for Management calling for an organizational revision within the agency which would disestablish the Office of Assistant Administrator for Planning, Research and Analysis and to establish an Office of Review Analysis under the authority of the Assistant Administrator for Management. In other words, a definite downgrading of the research facilities of the agency. In view of the task force report, the President's mandate and legislative recommendation and the Administrator's lofty praise and seeming expectation of an expanded effort in this area, we are at a complete loss to comprehend the situation.

As a matter of fact, Mr. Chairman, the federation was so shocked at this action that our president, Mr. Wilson S. Johnson, directed a letter to President Nixon voicing his dismay. The letter is attached to the appendix of this statement.

Senator HOLLINGS. It will be included.

(The letter, entitled Appendix D," appears on p. 93.)

Mr. GULAN. I also understand that the chairman of the Senate Select Committee on Small Business was so disturbed by this proposed downgrading that he, too, sent a letter of protest to the White House.

In conclusion, Mr. Chairman, as your subcommittee is charged with legislative oversight responsibility for the Small Business Administration, we ask that it immediately undertake some sort of detailed study of the agency, its internal operations, programs and functions and following such a study, make whatever recommendations may be necessary so that the Small Business Administration might truly fulfill its function as the strong advocate for this Nation's entire small business community.

Senator SPARKMAN. I appreciate very much your very clear statement this morning.

I am going to have to apologize and leave. I am supposed to be in the Senate at 11 o'clock. Mr. McIntyre will be along momentarily.

At the present time the committee will be in recess for a few minutes until Senator McIntyre can get here.

(Recess.)

Senator MCINTYRE (presiding). The committee will come to order.

I apologize to all of you for this delay, but it is the usual problem of trying to find out how you can be in two places at once. There is a

very controversial issue before Armed Services Committee which is in the last stages of its executive markup, and I found myself part of this debate.

As I understand it, we have heard Mr. Gulan's statement. If Mr. Gulan would return to the stand, we have a few questions we would like to ask him.

It is my understanding that you, like so many others, have pointed out the problems of lack of continuity in the leadership of the SBA. Do you think it would help to solve this problem if the single Administrator were replaced by a Presidentially-appointed commission with staggered terms, with representation from both political parties and a chairman designated by the President? Would that be any help to this situation?

Mr. GULAN. At the present time, Mr. Chairman, I do not see what harm it could possibly do. It is an idea well worth exploring, I think—something like the Federal Trade Commission, I take it, where you would have members from both parties to create some sort of balance.

I think any move which might possibly succeed in removing the Small Business Administration from the realm of pure politics would go a long step toward helping that agency do the job it is assigned to do.

Senator MCINTYRE. Do you believe that if the Administrator were under civil service with career tenure and that sort of thing it would be a step forward?

Mr. GULAN. It certainly would alleviate the problem of having a man there 6 months or 9 months or a year, I am sure, and help fill that void that has been created because of this quick turnover.

Senator MCINTYRE. The views of your organization on the President's small business message attached to your statement contains the statement that "some SBA offices reportedly have encountered difficulties in the loan guarantee program because nonprofessional lenders have made errors in judgment." Would you provide us with any further information concerning these reports?

Mr. GULAN. I have no statistical data with me, but I think we can provide some for the record, Mr. Chairman.

This I believe has come about through some of the conferences our field men have had with bankers and some other lending people, and with the reports we have received from SBA vis-a-vis the action provided.

Senator MCINTYRE. What is your overall attitude on the suggestion of the administration bill that we broaden the source of lending power to those who are not normally associated in the lending field? Do you foresee any difficulties with this, or do you think it is a good idea?

Mr. GULAN. Mr. Chairman, on the surface we think it is a very good idea; however, depending upon what amount of control is exercised in this broadening. We do feel that the Small Business Administration should have the final say on these things.

There does arise the possibility here of bringing in some of these, well, for instance, small loan organizations and groups with whom the Government and private borrowers have had a lot of problems in the past.

If it would be possible to make more private capital available for small business expansion, modernization, whatever the need may be,

by all means, but at the same time having the Federal Government exercise a sufficient degree of control over the lending institutions.

Senator McIntyre. I believe the bill does recommend that any of these institutions not normally in the lending business will have to apply and gain approval from SBA before they would be eligible.

Mr. Gulan. Yes; I believe it does, Mr. Chairman.

Senator McIntyre. But I think we should approach it with caution because of our experience in housing as an example. For instance, I remember an instance where we had a church-related housing venture that got itself into the housing area and we found that under the dynamic leadership of a particular minister that the program went on very well. Then suddenly a year or so later he got a call to a larger parish or a larger congregation and he was supplanted by a man who was probably equally good religiously but who did not have that same business technique, and our program in that particular church-related housing venture suffered.

Mr. Gulan. I imagine the same practical situation could arise under the administration proposal here, the expanded authority.

(Appendixes A through D follow:)

Appendix A

Views of National Federation of Independent Business on Nixon Administration Small Business Message of March 20

Generally we are pleased at the recognition extended to smaller firms. We feel, too, that it will be well received by independents who, judging by comments received in conjunction with our survey responses, are beginning to believe themselves largely overlooked in Executive Branch programs.

Our comments will be limited to the following recommendations:

1. *Interest assistance:* This could be helpful to smaller firms which are clients of SBA on financing. Our survey over the past 15 months has shown a continuing rise in interest rates charged borrowers. Comments by respondents suggest that mounting charges are contributing to the financial squeeze on small firms. However, it must kept in mind that, according to SBA itself, about 2/10ths of one percent of small businesses, at least in 1969, were clients of SBA financing activity. Our own survey would suggest that perhaps as many as 70 percent of small firms normally finance their own gross new business investment from internal sources. Helpful as this recommendation might be to those who borrow from SBA or with its assistance, of far more significance, it would seem, would be injection of additional moneys into the SBA's revolving fund.

2. *Incentives to finance small business:* Long-run these would seem to have the greater potential among the financing recommendations. All too often we have received complaints from members who have approached banks, even branches of larger institutions which have pledged their cooperation with SBA, for guaranteed loans only to receive "the cold shoulder." While we do not think this attitude is warranted, we can understand reluctance on grounds that it is, in fact, more costly for an institution to receive and process 10 separate applications for a total $100,000 than a single application for the same sum. Allowance of a tax credit to lenders might be expected to provide the additional compensation that could help bring about a more cooperative attitude, although it would cause those who refuse to free funds already available for SBA lending on grounds that Government cannot release the money, a loss in revenues.

With regard to recommendations for simplification of SBA guarantee procedures, certainly experience in dealing with independents over the past 27 years would indicate they should encourage private sector cooperation. After all, businessmen—and bankers are businessmen—are more familiar, and work more easily, with their own forms than they do with forms prescribed for them by a second party. More than this, it is conceivable that forms developed for use nationally might raise problems within the fifty state jurisdictions whose requirements or customs might differ, one from the rest.

As to extension of SBA guarantees to more lenders, our only comment is to the effect that SBA at all times must exercise care that their lending transactions

be performed by individuals knowledgeable and experienced in lending money. We are given to understand that in some areas that SBA offices have encountered difficulties because non-professional lenders have made errors in judgment.

3. *SBA advocacy role:* This is perhaps one of the more critically important of these recommendations. For too long a time, it seems to us, the SBA has been regarded as a "poor and relatively insignificant" relation among the galaxy of Executive Branch agencies. This is why, we believe, it has been subjected to repeated "take-over" efforts, why it was allowed at one point to operate for months on end without an Administrator. If the Administration takes a strong stand for the agency, as the President's Executive Order indicates, then and only then, will it be able adequately to fulfill the role charged it under Section 8(c) of its enactment legislation.

4. *Expanded research into small business:* We believe that the SBA is presently equipped with a strong and ably-led and staffed research division, and that expansion of this branch would be very useful.

5. *Bonding:* This recommendation could be very helpful to many smaller contractors. We have received numerous complaints from members involved in this industry, alleging loss of job opportunities due to inability to secure performance bonds.

6. *Liberalized rules for treatment of small business corporations as partnerships for tax purposes:*

(*a*) *Raise limit of allowable number of shareholders from 10 to 30.* The raising of the limit of shareholders from 10 to 30 sounds like a reasonable suggestion. However, I believe it will have extremely limited application. There are very few businesses which are distributing their shares to their employees who operate under a Sub-Chapter S mode of operation. If they keep experiencing a loss, the shareholders normally want to keep this for their own personal use, and if they are experiencing a gain, the gain is not necessarily distributed to the shareholders in cash. If an employee has to report this gain on his income tax, he would not necessarily have the cash to pay the attendant tax on it.

I would say this probably would be a useful device for obtaining a wider capital base to draw upon. In other words, they can bring in more shareshareholders to the business and the Sub-Chapter S corporation would be an attractive form to use for this purpose, particularly if it is a loss corporation.

(*b*) *Allow MESBIC to be a shareholder.* This seems like a reasonable exception to the rule barring corporate stock ownership in Sub-Chapter S corporation.

(*c*) *Simplification of rules—unspecified.* The rules that are to be simplified are not spelled out. Sub-Chapter S has some of the most exacting and demanding rules of any area of taxation. Timing is very explicit, and the possible pitfalls are many and varied. Possibly some provision for extension of time for filling some of the elections required would ease some of the problems involved.

Since allowing the election to lapse puts you in a position where you cannot elect the Sub-Chapter S for a period of 5 years, special provision and allowance should be made for inadvertent lapse of the elections, such as taking on new shareholders and then failing to make a new election in time.

7. *Extension of tax loss carry-forward period for small business:* This is a long needed reform. Of course, getting into the question here of small business being run by individual proprietors as opposed to small businesses being operated in the corporate form. Some small businesses take relatively long periods of time to recoup their initial startup losses. There was a considerable amount of abuse of the ability to transfer these losses to profitmaking corporations in high tax brackets to get the maximum use from these losses by other than the persons who originally sustained the loss. I think it would be good if the loss deductions were limited to give the benefit only to the persons originally sustaining the loss. In other words, if a sole proprietor sustained a loss, he could keep th loss indefinitely and apply it against earnings until he has recouped his loss. If a corporation sustained a loss, either the corporation would continue the loss indefinitely or, if there was a major change in ownership, then the loss would be transferred from the corporation to the owners and these owners would be allowed to write it off against personal income after the termination of their ownership of this corporation.

APPENDIX B

NASH JANITORIAL SERVICE,
Ephrata, Wash., April 16, 1970.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington Building,
Washington, D.C.

Attn. Mr. Jerome Gulan—Legislative Director

DEAR SIR: On 8 April 1970, I received a call from General Service Administration (Federal Center) Denver, Colorado informing me of the intentions of the Small Business Administration in Denver, Colorado to secure a minority group contractor and negotiate a contract with them for the General Service Adminis- This would be janitorial services at the Federal Center, 19th and Stout Street—also intention of the same for the Air Force Accounting and Finance Center, 3800 York Street, Denver, Colorado.

The amount for the Federal Bldg., 1969 and 1970—$315,878.53.

The amount for the A.F.A.F.C. Bldg., 1969 and 1970—$234,593.29.

If this type of procurement that is anticipated on these contracts continues, it would put us out of business as a contractor.

Because of his type of procurement it may jeopardize the operation of this company to the point of disposing and shutting down the operation and laying off of personnel for this office.

As an individual I feel I have been deprived of my constitutional rights as a citizen of the U.S.A. by favoring one group over another, and not being equal with these same people by not being permitted to competitely bid on this with these people by not being permitted to competitively bid on this work or any work that the Federal Government has to offer. It is making me less of a citizen than the minority group, as such are called.

The majority of the personnel we now employ on these two contracts are minority group people. On the Federal Bldg., 19th and Stout Street, 95–98% are from a minority group; on the A.F.A.F.C., 3800 York Street, 99–100 percent minority.

I wish to go on record as opposing the action taken by the Small Business Administration in Denver, Colorado.

MARLIN NASH, *President.*

APPENDIX C

LETTER FROM ERNIE'S RUG AND CARPET CLEANERS

On April 14th at approximately 10 o'clock in the morning two men (James E. Jennings and Love Davis) were admitted into the area of Det 1, 19th Bomb Wing for the purpose of Mr. Jennings showing Mr. Davis the installation which I have the contract for custodial services.

My contract does not expire until June 30 and to my knowledge the new contract had not been let out for bids as yet.

A worker and myself were performing our duties when I saw that the two civilians were being shown through the installation.

I questioned my immediate supervisor about what was going on and was told that one of the men, Mr. Jennings, was from Small Business of Atlanta, Georgia. I told my supervisor that I would like to talk with Mr. Jennings before he left the building and also asked that he get Miss Florence Jones, Warner Robins AFB Procurement Office, on the telephone, which he did. However, Miss Jones denied any knowledge of *Small Business.*

Mr. Jennings then explained to me that there was to be no more bidding and the contract would be awarded to whomever he chose. According to the law, he said that he would have to choose either a *Puerto Rican* or a *Negro.* He also showed me a copy of my current contract which contains price and pertinent information which seems to me should have been strictly confidential between myself and the Procurement Section of Warner Robins AFB. He also said that the contract could be awarded immediately, if he and the man with whom chose to do so.

After that remark, one of our security officers told Mr. Jennings that it would take at least 6 weeks to get a security clearance for the man. Mr. Jennings then informed us in no uncertain terms that the *President of these United States could waiver that.*

At this point I informed Mr. Jennings that I knew what SAC expected and wanted in the way of cleanliness and security which is handed down from the *Commander-in-Chief* of *All Armed Services.*

I told him that I am mostly interested in what I consider our "first line of defense" which, as you know, is partly housed at this installation. The safety and *security* of these people *has* to be our first concern.

The following is the latest information concerning the contract as told to the Commander and myself per telephone, April 20, 1970 by Mr. Bailey, Procurement Officer, Warner Robins AFB, GA.

1. Minority group or "hard core unemployed" will get contract.
2. SBA will pick a subcontractor.
3. AFLC Base Procurement (WRPPS) will negotiate with the subcontractor.
4. If not picked or awarded by 10 May 1970, contract will go out on IFB.

Pertinent facts:

1. Mr. Davis has a job and has been employed by the same company for over 20 years.

2. This contract is my chief means of supporting my family. Even though I have no guarantee of being awarded it for another year, I feel that I, an American citizen, tax payer, and retired serviceman, am entitled to a fair chance to bid for the contract.

3. I think it would be noteworthy that there is another *Custodial Services* Contractor at the Naval Base in Albany who has the contract for *all* buildings on the Naval Base buying such service with the exception of the SAC area. This contract consists of at least 25 buildings and pays over $100,00.00 per year.

These are typical janitorial jobs and would seem to be a very likely area for an inexperienced man to start in—by building, or working for the present contractor.

I tried to bid on this contract at one time, but was unable to and still would be unable to put up the cash guarantee required for bidding, as I am not being backed by any group other than my immediate family.

As far as "hard core unemployed" are concerned, the jobs seem to go begging, because these very people have looked down on janitorial work as not being good enough for them—even at $1.75 per hour (McNamara-O'Hara Service Contract Act).

The contract I have at present is by no means a nine to five "desk job." It is nine hours daily, seven days a week including holidays, and is not just routine mopping and dusting.

It does seem strange, that "Small Business" would choose this particular contract, which requires security clearance and which is my *main source of income*, to give to someone who does not have the desire or ability to work for it himself.

An even stranger, that the "Small Business" representative states before witnesses that our President, Commander-in-Chief of all our troops will just waive the security clearance in the case of a "minority group" or the "hard core unemployed".

ERNEST G. CLEWIS,
Ernie's Rug and Carpet Cleaners,
Albany, Ga.

APPENDIX D

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
San Mateo, Calif., May 28, 1970.

Hon. RICHARD M. NIXON,
The President,
The White House,
Washington, D.C.

MR. PRESIDENT: On behalf of our 300,000 members—all individual establishments in smaller, independent business and the professions, may we offer a hearty "thank you!" for your recent recommendations to the Congress for a vigorous small business program. Please understand that our delay in writing to you has been occasioned only by our desire to study your message thoroughly.

We are indeed impressed with the strong position you have taken on the

Small Business Administration's becoming, in fact as well as in the words of its basic statute, an active, responsible advocate for small business among the Federal agencies. If you succeed in this goal, and we pray fervently that you will, you will have achieved a major break-through for independents.

While we regret that in the tax area you omitted recommendations for a reinstatement of a limited 7 Percent Investment Credit for small business and farmers, we are hopeful that you will push vigorously, and that the Congress will attend sympathetically and quickly, those suggestions which you have offered. We can tell you from our continuing economic survey of the small business sector that independents are undergoing an increasingly severe financial squeeze, and that some measure of relief is imperative.

We are gratified by your recommendation that the Small Business Administration expand its research to provide a clear picture of the problems, the trends and the needs of small business and a clear picture of the impact of government on small business. All of this requires within the agency the presence of a strong, central professional unit that can give necessary informed guidance to this effort.

For this reason, Mr. President, we are shocked at reports that there are plans within the Small Business Administration to eliminate its research and planning function as a separate entity, and to downgrade all research activity within the agency by parcelling out the functions of research, planning, evaluation and analysis among the various operative offices of the SBA. We feel that such a move would absolutely emasculate your fine and most helpful recommendation, and at the same time weaken the SBA as a strong servant of the national interest through attention to the small business sector. After all, if an operative office devises a plan or program, it does so only after it is convinced that it is right. Against such conviction self-analysis can be nothing other than wholly non-productive.

We suppose that there are some who would say that your attention to small business might be expected of a person of small business background (we might mention that your late father's enterprise was at one time a member of this Federation). Nevertheless, it is an all too human characteristic to forget. This certainly you have not done, and may we again offer you a hearty "thank you" for your remembering.

We offer you our continued support for all of your efforts in the direction of this most important small business program.

With all best wishes,

Sincerely,

WILSON S. JOHNSON, *President.*

Senator MCINTYRE. I want to thank you, Mr. Gulan, for being here today. I appreciate your patience in waiting for me to finally get back here. Your help on this has been appreciated.

I call as our next witness Mr. Douglas S. Dillman, Chairman of the Washington Committee of the Smaller Business Association of New England.

I am delighted to welcome you here, Mr. Dillman, because of my own intimate knowledge of SBANE and of the annual presentations you make down here which are always extremely creditable, extremely informative, and in my opinion some of the most worthwhile briefings we get from outside sources. So you may proceed to testify in any manner that you wish.

STATEMENT OF DOUGLAS S. DILLMAN, PRESIDENT, HORN PACKAGING & PAPER CO., CAMBRIDGE, MASS., AND IMMEDIATE PAST PRESIDENT AND DIRECTOR, SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND, INC., BOSTON, MASS.; ACCOMPANIED BY S. ABBOT SMITH, FORMER CHAIRMAN OF THE BOARD, THOMAS STRAHAN CO., CHELSEA, MASS., AND PAST PRESIDENT AND DIRECTOR, SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND, INC., BOSTON, MASS., AND LEWIS A. SHATTUCK, EXECUTIVE PRESIDENT, SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND, INC., BOSTON, MASS.

Mr. DILLMAN. I would like to introduce my associates. On my right is Mr. S. Abbot Smith, chairman of Strahan Wallpapers, also past president and director of SBANE. On my left is Mr. Lewis Shattuck, the executive vice president of SBANE.

We thank you for providing this association with the opportunity to comment on the important small business legislation under consideration. This committee should be commended for taking this progressive, nonpartisan action at a time when small businesses are in great need of legislative solutions to their problems.

On May 20 SBANE made a presentation to members of the Congress which included specific proposals on behalf of small business on several subject areas. Since the association's broad interests include many vital subject areas the SBANE presentation touched on taxation, pension plans, patents, procurement, transportation, et cetera. Mr. Chairman, we ask that the full text of the SBANE proposals for congressional action be included in the record of this hearing.

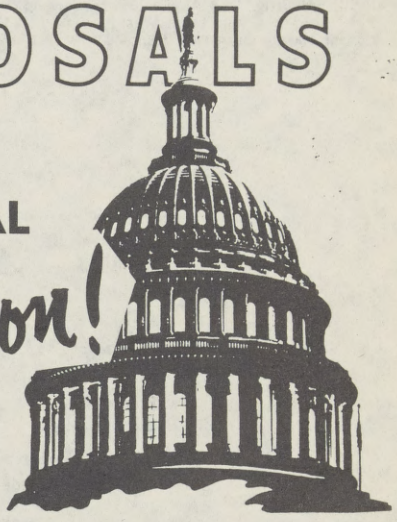
Senator MCINTYRE. Without objection, that will be done.

(The proposals follow:)

SMALLER BUSINESS ASSOCIATION
OF NEW ENGLAND, INC.

PROPOSALS

for
CONGRESSIONAL
action!



ABOUT SBANE

The Smaller Business Association of New England, Inc. is a private, non-profit, non-partisan association of New England small companies. It was founded in 1938 to promote and protect the welfare of small business throughout the six state region. This is accomplished by:

(1) grouping together, articulating the needs of small business, and taking common action;

(2) promoting and supporting legislation and government activities beneficial to small business and opposing those activities and legislation detrimental to the interests of the smaller business;

(3) cooperating with other small business groups; and

(4) the education of the small businessman and others in the problems which they must face in order to be successful, and the education of the small businessman as to matters which both threaten and preserve the system of free, profit-incentive, private, competitive enterprise.

The major emphasis in the programs offered to the membership are in the areas of legislation on the national level and educational programs. Besides appearances before various Congressional committees, the Association appears on Capitol Hill once a year for a Washington Presentation of specific proposals designed to assist small business.

The educational activities are many and varied. They include seminars and conferences held throughout New England often sponsored in conjunction with leading New England universities and Federal agencies such as the Small Business Administration.

Best known of SBANE's educational programs for the past 11 years has been the annual "Live-In" Seminar on the campus of the Harvard Business School. Some 120 New England small business executives gather at the Business School early each year for an intensive three days of case discussions in the subject areas of: Management, Marketing, Labor Relations and Finance.

The Association also publishes a monthly magazine, NEW ENGLAND BUSINESS, containing informational and educational features for the small business executive and news about SBANE's monthly activities.

The Association's services also extend to counselling its members on small business problems and serving as a source of business information. Furthermore, the Association provides governmental liaison, procurement assistance and offers its members group insurance programs and trade missions.

The SBANE offices are located at 927 Statler Office Bldg., 20 Providence St., Boston, Mass. 02116.

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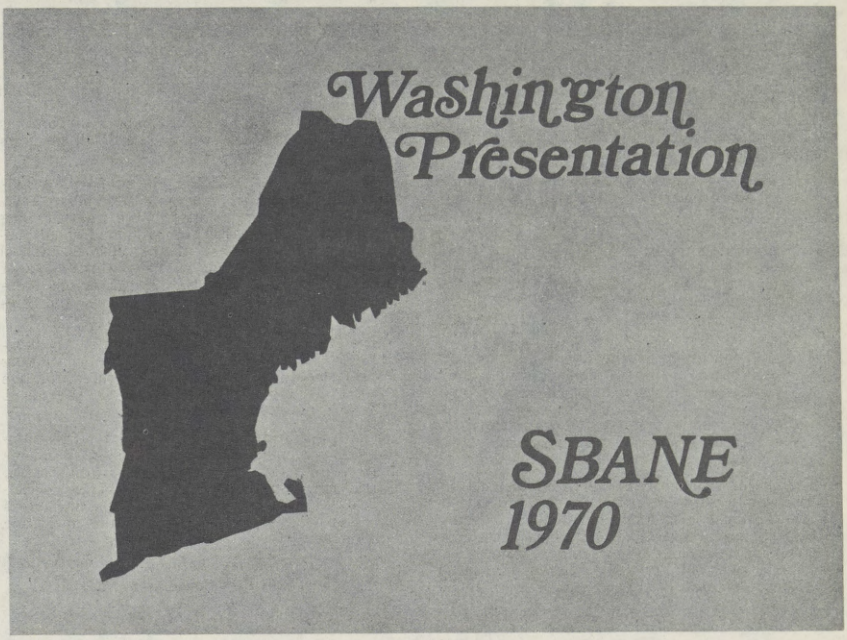


1970
SMALLER BUSINESS ASSOCIATION
of NEW ENGLAND, INC.

PROPOSALS FOR CONGRESSIONAL ACTION
INTRODUCTION

Presented by
RICHARD G. LEE, President
Lee Packaging Machinery Corporation
Needham Heights, Massachusetts
President of SBANE

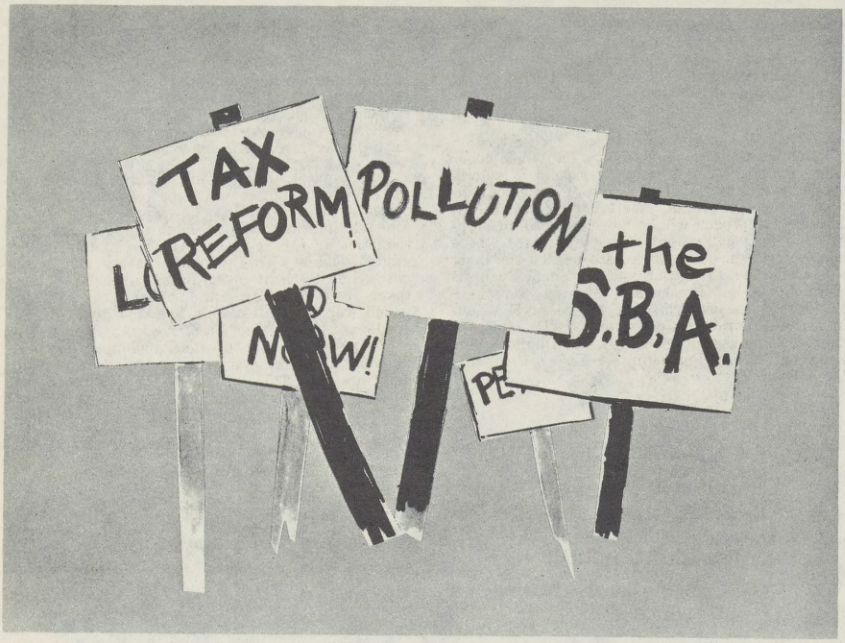
Before presenting our 1970 Proposals for Congressional Action, I thank you for providing this opportunity to offer some constructive suggestions and commentary which we believe vital to a healthy small business environment.

For a better insight into the Association and its purposes, I refer to some of the highlights of the SBANE Fact Sheet as it appeared in the February 3, 1970 CONGRESSIONAL RECORD.

SBANE is a private, non-profit Association of over 800 New England small companies representing manufacturers, retailers, banks, wholesale distributors, lawyers, accountants, and other service firms of every description.

SBANE's services include substantial efforts in the areas of educational-informational programs to encourage self-improvement in executive management.

The SBANE magazine, NEW ENGLAND BUSINESS, features articles circulated to some



1,700 small business subscribers providing an excellent medium for management-educational subjects.

SBANE's "Live-In" Seminar on the campus of the Harvard Business School, has for the last several years had as its Educational Director, Dean Frank L. Tucker, who served on President Nixon's Task Force on Improving the Prospects of Small Business.

The Annual Meeting and Small Business Conference, Breakfast Club, Trade Development Programs, Group Insurance, Unemployment Cost Control Program and Business Counselling are just some of the many additional programs we offer our growing membership.

SBANE is the only regional Association for small business in the country. Although there are national small business associations, their services are almost exclusively legislative. They do not offer the extensive educational programs or membership liaison which our regional Association does.

SBANE's legislative programs, instead of simply pointing to the problems affecting small business, aim at keeping the Congress aware of the legislative needs that can be effected by you, our lawmakers. SBANE makes specific proposals on behalf of the nation's small businessmen — a highlight of our legislative program is today's Washington Presentation. SBANE also appears at various committee hearings and provides the membership with timely Flash Bulletins covering important issues and bills under consideration.

When inserting the SBANE Fact Sheet in the Congressional Record, Congressman F. Bradford Morse, a recent Breakfast Club speaker, stated that since its incorporation in 1938, "SBANE has served with distinction a great number of New England small businesses, and, indirectly, their national counterparts. I personally have had many opportunities to work with SBANE and have come to depend upon it as a valuable and responsible source of small business information. I want to call the attention of my colleagues to SBANE's recently published 'Fact Sheet' which provides an idea of the breadth of its activities."

Senator Alan Bible, Chairman of the Senate Small Business Committee, speaking on the floor of the Senate in February on the occasion of the 20th anniversary of that Committee stated, ". . . and certainly the most dynamic, live-wire and cap-

able regional association is the Smaller Business Association of New England, headquartered in Boston, Mass. These organizations, their individual members and their staffs assist tremendously in the mutual efforts to help the small businessman with his myriad of problems."

Today's visual presentation, at the suggestion of many in the Congress, will be limited to cover three main subject areas rather than a general over-view of the broad spectrum of issues of concern to small business. We trust this more concentrated approach will be more effective in highlighting in greater depth the three areas where your efforts, in our opinion, are needed the most — Tax Reform, Pollution and the Small Business Administration. Presenting proposals on these subjects is the Chairman of the SBANE Washington Presentation Committee and Past President of the Association, Douglas S. Dillman, Vice President, Horn Packaging & Paper Company, Cambridge.

TAXATION

Committee Chairman
Richard M. Glennon, Partner
Peat, Marwick, Mitchell & Company
Boston, Massachusetts

Limited Increase in Surtax Exemption to $50,000

One of the three major problems confronting small business is its need for capital to sustain its operations and to provide for growth. This need is recognized by all who concern themselves with small business. The means for satisfying this need are twofold; infusions of capital from the outside and the retention of internally generated resources. The report of the President's Task Force on Improving the Prospects of Small Business recommends, among other things, the application of tax incentives to aid in accomplishing desired results. The report recommends that those suppliers of credit and equity capital to small business be provided with favorable tax treatment on the income from their loans and that a preferential rate for capital gains on investments in small enterprises be provided. Further, the report recommends the establishment of a ten-year carryover period for net operating losses during the first ten years of business existence and a deduction from taxable income for an addition to a "small business risk reserve." SBANE endorses these proposals. However, we also recommend that the exemption from surtax be increased for small businesses as a means of directly building up working capital.

Since 1938 corporations have paid a tax at a normal rate on the first $25,000 of income and at a surtax rate on the income in excess of $25,000. The difference in tax rate on the first $25,000 has since come to be known as the surtax exemption. The exemption has remained the same for 32 years and in view of the elimination by the Tax Reform Act of 1969 of multiple surtax exemptions, we believe this to be an appropriate time for a limited increase in the exemption to $50,000.

The simplest means of effecting an increase in the surtax exemption would be to make it applicable to all corporations; however, the following schedule indicates that to do so would result in a reduction in the revenue of approximately 368.9 million dollars. This estimate, as are all of the succeeding estimates, is based upon statistics taken from 1965 corporation income tax returns which were the latest data available to SBANE. We do not believe that a reduction in corporate income taxes of such a substantial amount is appropriate at this time as a matter of fiscal policy. In addition, over $258 million of the tax reduction would inure to the benefit of corporations having taxable income in excess of $50,000.

Tax Effect of Unlimited Increase In Surtax Exemption to $50,000

Uncontrolled Corporations Having Taxable Income by Income Categories

No. of Corporations	43,735	20,913	9,187	73,825
Taxable Income	**$26-50M**	**50-100M**	**100-150M**	**Total**
Tax savings (millions)	$ 110.8	135.9	122.2	368.9
Tax savings as % of total tax savings paid by group	24.9%	24.6%	(*)	
Tax savings as % of total tax savings by all	30.03%	36.84%	33.13%	100.00%
Average tax savings per corporation	$2,533	6,500	6,500	
Tax savings as % of total corporation tax revenues collected in 1965				1.41%
Tax savings as % of total taxes collected in 1965				0.32%

(*) Figure not meaningful due to limitations of data.

Since we believe that the increased exemption should apply only to smaller corporations, it becomes necessary to define what a smaller corporation is for this purpose. There are several criteria for distinguishing between smaller and larger businesses, such as gross assets, net worth, and gross sales. However, after a considerable amount of study, it would appear that to restrict the benefit of the increased surtax exemption using one of these standards would result in its inequitable application in many cases. Thus, we believe that a standard that is based on the tax itself would be most direct and equitable.

Accordingly, SBANE proposes an increase in the surtax exemption as follows:

1. Corporations having taxable income of $50,000 or less would have a surtax exemption of $50,000.

2. Corporations having taxable income of more than $50,000 but less than $100,000 would have a surtax exemption of $50,000 reduced by 50% of each dollar of taxable income in excess of $50,000.

3. Corporations having taxable income in excess of $100,000 would have a surtax exemption of $25,000.

Only a single surtax exemption would be available to members of a controlled group of corporations consistent with the provisions of the Tax Reform Act of 1969.

The application of this change in the surtax exemption to corporations having varying levels of income, is set forth below.

Taxable income		$ 40,000
Surtax exemption		40,000
Tax: 22% x $40,000		$ 8,800
* * * *		
Taxable income		$ 80,000
Surtax exemption:		
Basic exemption	$ 50,000	
Less 50% (80,000—50,000)	15,000	35,000
Income subject to surtax		$ 45,000
Tax: 22% x $35,000		7,700
48% x 45,000		21,600
		$ 29,300
* * * *		
Taxable income		$ 120,000
Surtax exemption		25,000
Income subject to surtax		$ 95,000
Tax: 22% x $25,000		$ 5,500
48% x 95,000		45,600
		$ 51,100

The following table sets forth the tax rates presently in effect and after application of the proposed limited surtax exemption to corporate taxable income at various levels from $20,000 to $100,000.

	Present Rates		New Rates		
Taxable Income	Tax (*)	Effective Rate	Tax (*)	Effective Rate	Tax Savings
$ 20,000	4,400	22.0%	4,400	22.0%	-0-
25,000	5,500	22.0	5,500	22.0	-0-
30,000	7,900	26.3	6,600	22.0	1,300
35,000	10,300	29.4	7,700	22.0	2,600
40,000	12,700	31.8	8,800	22.0	3,900
45,000	15,100	33.6	9,900	22.0	5,200
50,000	17,500	35.0	11,000	22.0	6,500
55,000	19,900	36.2	14,050	25.5	5,850
65,000	24,700	38.0	20,150	31.0	4,550
75,000	29,500	39.3	26,250	35.0	3,250
85,000	34,300	40.4	32,350	38.1	1,950
95,000	39,100	41.2	38,450	40.5	650
100,000	41,500	41.5	41,500	41.5	-0-

(*) Excludes surcharge

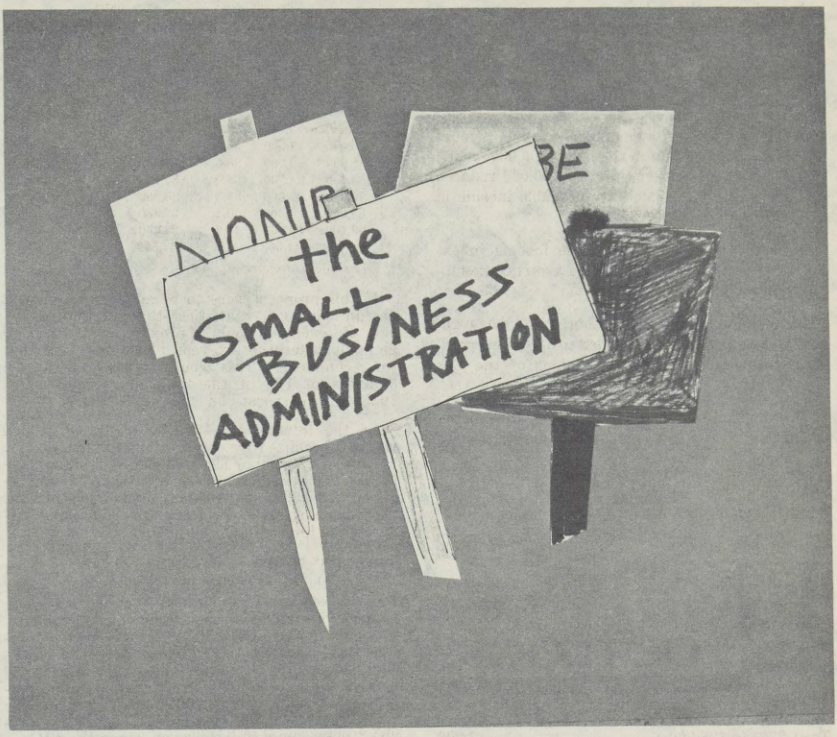
If this proposal were to be adopted we project (again using 1965 statistics) that the total reduction of revenues would approximate $196 million annually after the six year phase-in period that we recommend. This would approximate three-quarters of 1% of the total taxes collected in 1965 from corporations.

Of the total saving, 56.5% or $110.8 million would be realized by corporations having taxable income of $50,000 or less and the remaining benefit would be realized by corporations having between $50,000 and $100,000 of taxable income. The following table sets forth the reduction in tax under the limited increase in surtax exemption.

Tax Effect of Limited Increase in Surtax Exemption to $50,000

Uncontrolled Corporations Having Taxable Income by Income Categories:			
Number of Uncontrolled Corporations	**43,735**	**20,913**	**64,648**
Taxable Income	**$26-50M**	**50-100M**	**Total**
Tax savings (millions)	$ 110.8	85.2	196.0
Tax savings as % of total tax paid by group	24.9%	15.4%	
Tax savings as % of total tax savings by all	56.5%	43.5%	100.0%
Average tax savings per corporation	$2,533	4,074	
Tax savings as % of total corporate taxes collected in 1965			0.75%
Tax savings as % of total taxes collected in 1965			0.17%

We recommend that Congress consider phasing in the limited increase in surtax exemption over the period of time that the multiple surtax exemption is being phased out under the Tax Reform Act of 1969. Benefits of multiple surtax exemptions will be gradually reduced beginning in 1970 and will be completely removed by the end of 1975. We believe that the increase in revenue achieved by such phase-out should be considered in reaching a decision whether the limited increase in surtax exemption should be adopted.



SBANE's interest in the Small Business Administration dates back many years to the preceding agencies such as the Reconstruction Finance Corporation and the Smaller War Plants Corporation which were charged with some of the same responsibilities prior to the creation of the Small Business Administration in 1953.

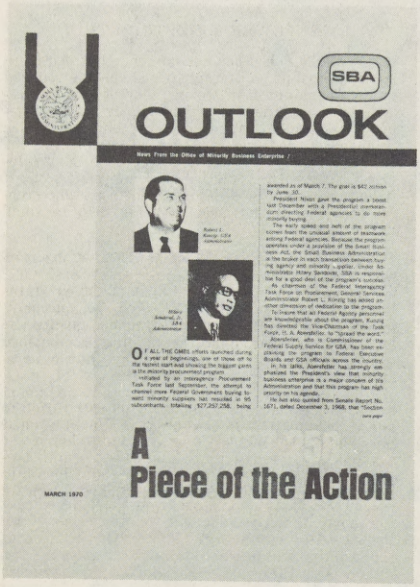
SBANE's role in shaping the SBA Act is well known to the Congress and it is only natural that the Association should continuously scrutinize the functions and operations of the SBA and offer both deserved praise and constructive comment.

INTERVIEW OF FORMER ADMINISTRATORS

To provide a more complete assessment of this agency and its problems, members of the Association have interviewed several former Administrators. Nearly every previous Administrator for the past two decades was interviewed for his evaluations of the agency as its roles and areas of concentration have varied.

This project was initially undertaken in an attempt to determine the cause of the excessive turnover of Administrators especially during the past 10 years. We thought that maybe a pattern could be determined as to why there had been as many as nine Administrators in the last 11 years. We had expressed alarm last year that this short term of leadership made it difficult for the agency to maintain continuity of direction and purpose.

During interviews with these past Administrators, it became evident that there was no single reason for their departure from the SBA except for more attractive offers in related fields of interest. Although job stability in the position of the Administrator was our initial reason for the interviews, they all had additional comments



SBA

OUTLOOK

News From the Office of Minority Business Enterprise

MARCH 1970

A Piece of the Action

about the functioning of this Agency which we will share with you.

First, they mentioned the apparent shifting of the loan policy from a merit basis to one more socially motivated without the usual standard, business-like requirements especially with minority loans. Behind this concern over the SBA's loan procedures lies this question: What will happen to the SBA should facts reveal a high percentage of minority loan failures? The Congress has always held the SBA in high regard and provided good support. However, since the SBA is lending public money, what will happen to the future of the agency should the Congress react if it feels that SBA loans were instead grants or subsidies? It is the feeling of many that safeguards should be developed that will prevent the devastating effects of a possible over-reaction to the SBA on its financial programs.

For this reason, this Association recommends that minority loans be handled through a Special Management-Finance Group within the SBA with its own funding programs. In addition, we believe that the Office of Minority Business Enterprise, established within the Department of Commerce last year to promote and expand business ownership by minority groups, should be the complete responsibility of the SBA. Further, that the SBA should be properly manned to carry out these responsibilities rather than the past policy of manning new programs by shifting personnel into unfamiliar areas at the expense of other important programs.

MINORITY ENTERPRISE STUDIES

Much has been said and written about minority entrepreneurship or compensatory capitalism. This Association has studied the report of Sam Harris Associates that evaluated the SBA and its role in minority economic development from August, 1968 to February, 1969. We were very impressed with this report and its recommendations, and we urge they be given careful thought and consideration.

We also recommend that the committee obtain a copy of a very interesting thesis by W. Bruce Springer, entitled, "The Prospects for Black Business Development." This recent Harvard graduate wrote this thesis after studying a vast number of census reports, studies and books on the subject of black business development.

It is interesting to note some of the similarities of the Harris Report and Springer's thesis.

The first is that SBA's past emphasis has been quantitative rather than qualitative. It would seem that the agency was more interested in the "numbers game" and promoting the establishment of "Mom and Pop" stores rather than emphasizing the growth and development of more stable, promising companies. Both studies also point up the need for more management and technical assistance in developing companies and recommend that the SBA put more emphasis on non-retail businesses, such as services, manufacturing, wholesaling and construction. Both Springer and Harris also recommend more attention be paid to the Local Development Company or "502" loan programs in the black community. We would recommend that, rather than devoting so much emphasis on starting marginal businesses, the SBA develop programs to upgrade existing operations.

SBANE agrees with Springer's recommendation that SBA should scrap its goal of 20,000 minority loans a year and replace it with programs that have qualitative dimensions: for example, $40,000,000 in minority loans a year, at least one-fifth of which is to be granted in loans of $100,000 or more as compared to the average minority loan during the first five months of 1969 which was $19,829.42.

The Harris report stated that 45% of the Minority Entrepreneurship Program (MEP) team members, who felt the effect of Project Own would be insignificant, gave the reason that the "size and volume of loans granted is too small".

We would also recommend that the SBA develop comprehensive data, on the distribution of its loans by size and type of business and, in addition, follow the progress of the companies carefully to determine a pattern and level of progress with which to guide future loan commitments.

Both the Springer and Harris studies represent exhaustive, intelligent appraisals of the SBA involvement in Project Own. The Association believes strongly that the SBA should be the agency to foster entrepreneurship and realizes the great challenges it faces. If the agency is to merely serve as a transfer of resources to marginal companies in the ghetto, then it is wasteful. In our opinion, programs should be developed to provide financial and technical assistance to develop larger, non-retail business firms for minority entrepreneurs and not the present emphasis on number of loans rather than number of dollars loaned.

Many recent studies have revealed the lack of sufficient management assistance follow-up to recipients of SBA loans. Many small businesses have failed after receiving financial assistance and then being left alone to face the many problems that confront beginning business during its formative years. The problem is further aggravated by lack of sufficient manpower to carry out the SBA's mounting responsibilities. To some the SBA is almost exclusively a lending institution. We believe this is wrong. The original Act calls for technical and management assistance programs, among others. We believe the only way this important function can be accomplished is by making the necessary manpower provisions.

MANPOWER REDISTRIBUTION

We would, therefore, recommend that the manpower distribution of the SBA should be reduced in the Washington office in favor of more representatives in the field, particularly in management assistance. When a small business has a problem or needs assistance, he does not have the manpower or time to travel about to seek solutions. The SBA would be much more effective if it had more qualified management assistance representatives in the field to offer help to small businesses.

As of January 1, 1970, some 23% of the total SBA manning was in Washington. (Total 4,032 — Washington 929 — Field 3,103). Many states have but one or two specialists in procurement, management assistance and financial assistance available. A serious workload burden presently exists in many states particularly in the rural states.

With some 5,000,000 small businesses throughout the country, it is obvious that Washington is not "where the action is". Not only should the manpower be redistributed but the Administrator's major emphasis should be on visitations into the field to highlight SBA programs through an extensive program of public information.

POLLUTION

Over 100 years ago a famous New England philosopher, Henry David Thoreau, sounded a warning of our environmental crisis by stating that machines "insult nature." In the ensuing decades man pushed westward industrializing and developing new technologies to meet society's demand for greater consumption and affluence. Now the frontiers are gone and man must truly pay the price of progress by improving the environment and quality of life or he faces extinction.

Business and the government should share the responsibility of improving our environment. For many small businesses cost of pollution control through capital expenditures will be substantial—it may even be insurmountable. Corrective deadlines will be difficult to meet especially in industries where the state of art in pollution control lacks sufficient technology.

What concerns small business most are the methods by which the government requirement will be carried out in directly dealing with the problem. Such government characteristics as overlapping responsibilities, excessive bureaucracy, impersonal, haphazard and unbending interpretation of government regulations and a lack of comprehension of the economic effects of control devices are matters of serious concern to small business everywhere.

One United States Senator has advocated what may be the best approach to alleviate these problems. Senator Edmund Muskie has submitted legislation to create an Environmental Control Administration, "an independent agency charged with the responsibility for developing and implementing Federal environmental quality standards, supporting basic research on problems of environmental quality, stimulating and supporting basic research, control techniques and providing technical assistance to State, interstate and local agencies which would reflect the national commitment we need if we are to avoid ecological disaster."

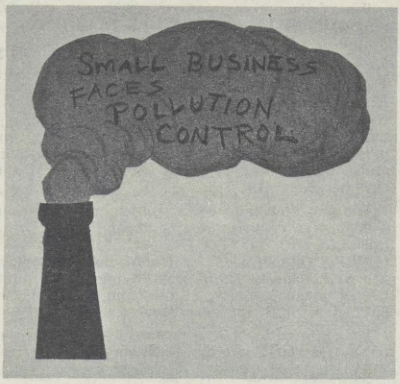
To determine the effect of our environmental quality programs on small business, SBANE recently surveyed its membership. Response was large, immediate and representative. It reflects the intense interest that small business has in this subject. The results of the survey are as follows:

28% indicated they are facing a pollution problem, or were not sure if they were causing pollution.

30% indicated they had no knowledge of federal or state requirements.

62% indicated that the Small Business Administration should give loans correcting pollution a priority.

59% felt that the Small Business Administration should create a separately funded loan program for pollution equipment and abatement.



Our survey indicates that many small businesses either already have or are in the process of solving their contribution to the problem. Some of those that have not yet begun to take corrective measures are hampered by a lack of technology in their particular problem area, or have not yet solved the problem of how to finance their pollution problem. It should be noted that not only will the private capital expenditure produce no financial return, but it will also increase operating costs on a continuing basis.

Based on SBANE's survey and frequent discussion of small business pollution problems, we strongly recommend the following programs to enable small business to meet the environmental crisis.

1. **That the Small Business Committees hold hearings to determine the economic effects of environmental control on small business.**
2. **That the SBA loan program be specifically adjusted to give loans at special rates for pollution control and be placed equal to disaster loans on the loan priority list. Similar to Senator McIntyre's Bill, S.3528.**
3. **That the SBA through its Technology Utilization Program, establish Field Specialists to assist small businesses in pollution control counselling.**
4. **The creation of tax incentives to spur business to correct pollution problems.**

The three subject areas we have portrayed visually are the most pressing needs for your Congressional action. In addition, we have included in our printed booklet additional proposals in the subject areas of Labor, Patents, Pension Plans, Procurement and Transportation. We believe these recommendations will be helpful to you in making a determination on legislation as it would effect small business.

The following Committee Chairmen will be pleased to cooperate with you and your staff in providing additional information. The Chairmen are:

TAXATION — Richard Glennon, Partner, Peat, Marwick, Mitchell & Co., Boston.
SMALL BUSINESS ADMINISTRATION and

POLLUTION — Douglas Dillman, Vice President, Horn Packaging & Paper Co., Cambridge

LABOR — Benjamin Gordon, Attorney, Gordon & Leiter, Boston

PATENTS — Robert Dunn, Attorney, Bedford

PENSION PLANS — Norman Minor, Actuary, Johnson & Higgins, Boston

PROCUREMENT — Donald Barry, President Container Service, Inc., Lowell

TRANSPORTATION — Gordon Fay, Associate, Systems Analysis & Research Corp., Cambridge

Thank you for your interest and support of small business.

LABOR

Committee Chairman
Benjamin E. Gordon, Attorney
Gordon & Leiter
Boston, Massachusetts

1. Injunctive Relief Against Unlawful Types of Picketing and Strikes.

SBANE recommends legislation to amend the Norris-La Guardia Act so as to permit injunctive relief in the exceptional cases involving the kinds of union picketing and strikes which are illegal because:

a. They involve violence or seizure of property

or

b. They are in violation of a no-strike pledge in a collective bargaining agreement.

The Norris-La Guardia Act was passed in 1932 at a time when unions were weak and ineffective, a condition due in great part to wide-spread and perhaps indiscriminate use of the labor injunction particularly in the early years of this century. Forbidding the use of the injunction in a labor dispute appeared, at the time, a necessary measure to effectuate the salutary national policy of ensuring full freedom of self-organization and designation of representatives of ones own choosing. Since that time, however, the underlying condition has changed and the cure may be seen to have gone far beyond the malady. The organized labor movement no longer needs special privileges and immunities, such as this immunity from effective legal remedy in cases of unlawful conduct, in order to grow and survive. The strong, established international labor union is no longer at a disadvantage vis-a-vis the business enterprise. Though there may perhaps be a "standoff" with the major corporation, the small businessman is at an acute disadvantage vis-a-vis the large union representing his employees. The small businessman who lives up to his legal responsibility to deal with a union of his employees' choosing finds the same union disregarding its own legal responsibilities with the knowledge that its special immunity prevents effective relief even in cases where it openly engages in violence or a breach of contract.

An awareness of the change in the underlying conditions, in our system of law should dictate a change in the legislation governing those conditions. Yet the Norris-La Guardia Act has not been amended since 1932. It still contains, in Section 8, the blanket prohibition against immediate injunctive relief by the Federal Courts regardless of the legality of the strike or picketing activity.

At present, injunctive relief is not available to the employer, no matter the degree of violence with which he is confronted, before he has gone through the process of arbitration, even if there is no "dispute" that can be resolved by arbitration and even though this would involve so much time as to force capitulation because of the effect of unlawful violent activities. Many of our Courts, State and Federal, have decried this condition, but have deemed themselves bound by the Anti-Injunction Act that permits of no exception. Therefore, we urge that the Norris-La Guardia Act be amended to authorize the Federal Courts to grant injunctions in the exceptional cases of Union conduct involving violence, mass picketing, interference with peaceful ingress to or egress from private property, and actual seizure of private property.

Similiarly, the Courts have considered themselves bound by Norris-La Guardia prohibition even in cases of admitted breach by a union of its no-strike pledge in its contract. Even our Supreme Court has recently indicated the unfairness of, and its frustration with, being bound by this unyielding law. At present, the only relief available is a damage suit in the courts or before arbitrators which, again, can involve such an amount of time, with the customary procedural delays, as to force capitulation to the unlawful union acts. Therefore, we propose, as a second exception to its blanket ban, that the Norris-La Guardia Act be amended to authorize the Federal Courts to grant injunctive relief against a union strike in defiance of a contractural no-strike pledge.

Our two proposed exceptions will do no more than ensure the preservation of peace, of law and order during the peaceful resolution of a dispute, in the first instance, and, in the second, ensure

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that unions abide by the terms of their agreements just as all others must do.

2. Require Secret Ballot Election for Union Recognition

The Congress, in enacting the National Labor Relations Act, as amended in 1947, while wisely preserving the guarantee to employees to designate representatives of their own choosing for collective bargaining, also wisely established the secret ballot election as the vehicle for making that choice. Since then, the National Labor Relations Board has disregarded the Congressional intent, as well as our democratic processes, by ordering employers to recognize unions as the bargaining representative of their employees where they either were not given the opportunity to vote in such an election or even where an election was conducted in which the union was rejected.

The obligation thus imposed, by the NLRB theory, is based upon employee signatures on union authorization cards. These are usually secured at the time of initial employee contact by the union, and have often been shown to have been secured by coercion, fraud and misrepresentation. Thus, they have been viewed by many as altogether unreliable indicia and not reflective of the true desires of the employees. Despite the criticism by many Federal Courts of this device for establishing a union's representative status without a successful secret ballot election, the U.S. Supreme Court in June, 1969, in the case of NLRB V. GISSELL PACKING CO., approved of it.

Thus, this year, with the Supreme Court having upheld the NLRB theory, legislation is necessary so that the Congress can ensure adherence to its expressed intention and reestablish the use of secret ballot elections for choice of bargaining representation in every case. Therefore, SBANE supports such legislation as was offered by Rep. Fisher in the 1st Session of this Congress, H. R. 12917, which would amend the National Labor Relations Act to require bargaining only with unions who representative status has been established by a secret ballot election among the employees.

3. Prohibit Involuntary Union Membership

While we favor the principle of voluntary union membership, we are opposed to that of compulsory membership. We see no justification for forcing and requiring any employee to join, and pay dues to, any labor union against his will in order to obtain or keep a job. The declared purpose of our labor laws is to preserve and protect the individual employee's freedom of choice. Compulsory membership in a private organization not only violates this principle but is foreign to a democratic system which should preserve individual liberties and the rights of the minority as well as the majority.

The issue is dramatized this year because of the Senate's action in December, 1969 in defeating Senator Fannin's amendment to the tax-reform bill which would have removed the tax-exempt status of organizations that use membership dues or other charges for political purposes. Thus, in effect, there has been legislative approval of the practice of labor organizations, in which membership is compulsory, to use compulsory membership dues in support of political activity which they favor, but which may not be favored by their members. As a result, today there is required not only union membership but also the obligation to support political causes favored by the organization leadership. To us, this heightens the need for legislative reform on the compulsory membership question.

In 20 states, compulsory union membership has been declared illegal by legislative action pursuant to Section 14 (b) of the National Labor Relations Act. But a uniform, national policy is the only fair way for all. Therefore, we urge that the Act be amended to permit only voluntary union membership.

To the argument of the leadership of the organized labor movement's power structure that anything short of compulsory union membership will weaken and destroy the labor movement, we can only rejoin by quoting Justice Louis D. Brandeis who said:

> "The union attains success when it reaches the ideal condition, and the ideal condition for a union is to be strong and stable and yet to have in the trade outside its own ranks an appreciable number of men who are non-unionist. Such a nucleus of unorganized labor will check oppression by the union as the union checks oppression by the employer."

PATENTS

Committee Chairman
Robert T. Dunn, Patent Attorney
Bedford, Massachusetts

A U. S. Department of Commerce study published in 1967 reported that some $100 billion had been spent in the past 20 years on research and development, a large share, by big business with the facilities and manpower. Despite this enormous investment, over 50% of the technical innovations in the U.S. are the creation of individual inventors and small business. For this reason during the past three years, this Association has given careful study to the recommendations of former President Johnson's Commission on Patent Reform and legislation that has been filed in the Congress as a result of this study.

We would urge your opposition to any legislation that would curb this individual and small business incentive to invent and innovate.

1. Favor "First to Invent" over "First to File"

Of particular interest to small business is the proposal to change the system of priority from "first to invent" to "first to file" or various modified "first to file" rules that have been submitted to the Congress.

SBANE opposes legislation that would change the present system under which patents are issued to the first inventor.

The average cost of a patent application to an inventor is from $500 - $1,500 and higher in complex cases. These changes in the patent laws would impose a serious financial burden on small business and the private inventor who often lacks the funds to file patent applications that have not demonstrated commercial utility. These inventors must conserve their funds to develop inventions for which there is substantial expectation of commercial use and value. Large businesses, however, can afford to file and prosecute patent applications on all likely inventions without knowing their commercial value.

The present cost to the Patent Office in conducting first invention contests and interferences is about $350,000 with a staff of 20 employees. This low expenditure of manpower and money to insure the patent goes to the first inventor is a good indication of the efficiency, economy and reasonableness of the present system. Furthermore, interferences are won by the inventor second to file as often as they are won by the inventor first to file. The proposed changes would encourage half-baked applications that would lead to more expensive contests and a greatly increased workload on the Patent Office.

These proposed changes would preclude an inventor from contesting the priority of an invention merely because he failed to file a patent application within a prescribed period before another who claims the same invention.

We ask that you resist any changes in the patent laws from the present first to invent system that has successfully protected and encouraged American inventiveness for so many years.

The two bills in Congress, S.2756 and S.1569, propose changes in the patent system. SBANE in general, favors these bills because they both preserve the "first to invent" priority system. However, certain parts in these bills are disapproved by SBANE as follows:

A. SBANE disapproves of an arbitrary limitation on the date of invention which can be accorded to a party in a priority contest.

B. SBANE disapproves of the requirement that the applicant pays expenses in the Court of Appeals if the Patent Office takes an appeal.

C. SBANE disapproves of the publication of applications without the consent of the applicant.

D. SBANE disapproves of more than one re-examination after a patent has issued.

E. SBANE disapproves of the re-examination of patents after issuance with request to public use and prior inventorship.

2 U.S. Trademarks

A bill in the Congress, S.766, The McClellan-Scott Bill, amends the Trademark Act of 1946. It broadens and puts more teeth in the Trademark Act. The bill is broadened to protect not just registered trademarks, but to protect against "unfair competition" which is generally defined in four categories: (1) that which is likely to cause confusion or deception as to the origin of products or services, (2) that which falsely represents goods or misrepresents other's goods, (3) that which wrongfully discloses or misappropriates trade secrets and, (4) that which otherwise misrepresents or misappropriates.

The Bill is strengthened by allowing recovery of profits, damages, court costs and attorneys' fees and permits the court to take possession of all violating paraphernalia.

SBANE favors the changes proposed by this bill because of the broadened protection against unfair competition and the increased recovery. The latter makes litigation less burdensome from an economic standpoint and so benefits small business. SBANE is generally opposed to any trademark legislation which would permit rights in a trademark to be gained even though the mark has not been used. Consequently, SBANE is opposed to S.1568 which would afford registration rights to trademarks where only "intent to use" has been expressed.

3. United States Government Relations to Patents

A. Inventions Infringed by Government Contractors (H. R. 2898 — 90th Congress)

It has been proposed by the American Bar Association and H.R. 2898, that Federal agencies adopt as a policy that the govenment procure a patent license from the owner of any patent which will be infringed by a government procurement and that the government pay the owner a royalty no greater than the lowest commercial rate for the license. H.R. 2898 proposes that the government royalty be added to the bid of all unlicensed bidders. The ABA proposes that invalidity or non-infringement of the patent can be shown by the non-licensed bidders, whereas, H.R. 2898 proposes that the government decide these matters.

Small business may gain more than it loses from the general proposition of pre-procurement licenses. Small business usually bids only on government procurements for which it has particular competence, which usually means some patents. H.R. 2898 will put such a small business in a better bidding position.

NASA has practiced on a limited scale "Instant Licensing" which is similar to pre-procurement li-

censing for over a year. It has been reasonably successful and does get the work done.

B. NASA and AEC Contracts

The contractor with these agencies gets **no** title to any inventions conceived or first reduced to practice in performance on the contract. The contractor can petition the agency for a waiver of title (subject to a government license) and succeeds by showing the contractor's ability to promote the invention for the public's benefit. Big business can do this, but small businesses frequently cannot.

SBANE proposes that small business not be obliged to show the capacity to promote the invention, but only show a willingness to license others to promote the invention, in order to qualify for a waiver of title.

C. Armed Forces Contracts.

The contractor with these agencies gets title subject to government license according to ASPR provisions. Clearly, these inventions are not the subject for "Instant Licensing" or pre-procurement licenses provided for in H.R. 2898.

SBANE proposes that exceptions be made to the ASPR provisions with respect to particularly significant inventions made by the contractor. SBANE proposes that the contractor in such cases need not give a royalty free license to the government; but enable the contractor to give a license for minimum royalty similar to the pre-procurement license proposed in H.R. 2898. Thus, the contractor would be rewarded for his significant invention even though he would not be able to compete with larger businesses in the implementation of the invention for government use.

PENSION PLANS

Committee Chairman
Norman R. Minor, Actuary
Johnson & Higgins
Boston, Massachusetts

Last year SBANE discussed the concepts of Vesting, Portability, Reinsurance and Minimum Funding that have been contained in proposed Pension legislation. The Association is opposed to concepts such as these which will tend to limit or prohibit small businesses from establishing pension plans. Legislation is still being filed which contains the four objectionable elements.

This year rather than repeat the arguments of last year, we will take just one of these elements: vesting, and demonstrate why we oppose such legislation.

Prior to the early 1940's, pensions were usually paid on an out-of-pocket basis, similar to salary. The unfortunate thing was that the retirement benefit was dependent on the employer's cash flow, even after retirement. But whatever pension was paid had to be paid in that way, because of the inflexible federal tax law of the day. So, as a result, employers paid as little pension as possible, and competed for employees on the basis of wages.

Then, in the early 1940's, two changes affecting pensions were legislated by the Congress: wage controls and deferred taxes. The problem was solved; private pensions were reborn. Employers, no longer free to compete for all-too-scarce labor on the basis of wages, used the pension as a weapon in their fight for workers. Unpredictable costs no longer presented a problem, since the employer could prefund the cost of the pensions, and get immediate tax relief. This was indeed a fine solution to a vexing problem. Employees got higher pensions; employers got their labor force; Uncle Sam agreed to wait for his taxes.

How many people saw in that solution the seeds of today's problem? From that time, pensions took on an aspect of "wages", both from the point of view of the employee, the employer and the Internal Revenue Service.

So what's the problem? Pensions are wages; wages belong to employees. Thus the concepts of vesting and portability are sound ideas.

But wait —

First, the employee is not taxed on the money put into a qualified plan when it is put in; and

Second, neither employer nor employee pays taxes on the investment earnings during the prefunding period.

These two points are not true of wages received and invested.

So maybe pensions aren't "exactly" wages.

So what are they?

WHAT ARE PENSIONS?

We feel that if everyone really understood what a pension is, the question of pension legislation could be dealt with quite effectively.

But, pensions are a mumbo-jumbo of actuarial jargon quite obviously beyond human interpretation.

Suppose an employer says: "I will give you $100 this minute." How much money does he need? That's easy, $100.

Now suppose he agrees to give you $100 one year from now. How much money does he set aside **now** to guarantee you the $100?

You don't know — but if he said: "how much money should I set aside if I will be earning 5% on the amount," you would know the answer, since $100 ÷ 1.05 = $95.24. Which means, in effect, that if he sets aside $95.24, it will grow, with in-

terest at 5%, to $100 at the end of the year. Then he will give you the $100.

In the first instance, the employer needs $100; in the second instance $95.24. In the second case there is a condition attached; this being that the $100 is not paid until a year has elapsed.

Suppose our employer offers to pay you $100 in one year **if** you are still alive? Similar to the second illustration, he says that —

(1) He will earn 5% on the amount;

(2) the probability that you will die before one year has elapsed is 2%.

Now how much money should he set aside: If you said $93.33 you're correct again, since (100 ÷ 1.05) x .98 = $93.33. This is to say: one must first "discount" for interest, then multiply by the probability that you will be alive to receive the $100.

Now the employer says: "I will give you $100 one year from now if you do not quit your job in the meanwhile." What amount should he set aside? Here, we are face with still another concept. The amount set aside will grow with interest at 5%; it will be paid if you are alive (probability: 98%) **and** have not quit your job. Similar to the above, we know that there is a 7% chance that you'll quit your job before the end of the year. The amount to be set aside is (100 ÷ 1.05) x .98 x .93 = $86.80. (That is, $100, discounted at 5% interest, then multiplied by the probabilities that you will be **alive** and in the same employ at year-end, equals the required amount.)

As before, we have determined the value, or wage-equivalence, at the **beginning** of the year of a benefit paid at the **end** of the year. (When talking money, **time** is of the essence.)

To re-cap: An employer says: "I'll pay you $100 **one year from now** if you satisfy certain conditions and here's the value **now** of that promise. You agree, and since you won't get the $100 until and unless all conditions are satisfied, you will not pay taxes on it until that time." And I.R.S. says: "Fine, I'll wait patiently for my taxes until you get your $100."

Notice that as we attached more conditions, we reduced the "price". Similarly, if the **price** were fixed, addition of "conditions" would increase the benefit.

Based on the wage-equivalent value of the $100, we set the benefit level, according to what value the employee has to the employer.

Suppose now some third party steps into the picture after the employer has made his promise to you, and set aside $86.80, and says that he insists the agreement be changed so as to provide that you will get a payment if you're simply alive at year-end. Now what happens?

To begin with, that third party has no right to interfere in a legally valid contractual agreement between two private parties. Our right to contract in private is constitutionally protected.

Yes, but suppose we forgot that archaic idea for a while.

Well, you say, something's got to give. Either the employer must come up with more money, or I have to settle for less than the $100.

But $86.80 is your value to the employer, as both agreed; so you'll have to be content with $93.00. ($86.80 x 1.05 ÷ .98: or, simply, the value of the $86.80 at year end, with "benefit of interest and survivorship", as the Actuaries say.)

Well, you say, I'm sure glad our rights to contract in private are protected by the Constitution. This third party could sure mess up our arrangement.

Now it is granted that we have not presented a polished actuarial treatise in our example. We have been crude in our approach to such actuarial niceties as multiple-decrement theory, gain and loss, theory of a group valuation, etc., etc. (We have even assumed that 2% of a person could die in a year.) But the point is made very clearly.

We have demonstrated that pensions are a **form** of wages. But they are **not** wages in the sense of cash salary. When benefits are pre-funded, there is no instant right to the benefit. A condition must first be satisfied. The fact that there is no immediate taxable income to the employee certainly supports this argument. The pre-funding is simply an orderly way of "smoothing" the cost of the pension. It is also a way to ensure that persons may elect to retire in a given year and not have to be concerned about the employer's cash flow situation and whether or not there is money for their pensions.

Probably the clearest appreciation of the wage-equivalent theory of pensions arises in the case of the so-called "Taft-Hartley" plans. In each of these cases a committee, representing in equal voting strength the employee and the employer, decides how best to spend a sum of money over which the committee has no control. The money comes as a result of a collective bargaining agreement between Union and Management. It is the only source of funds. Employee and employer consider the benefits available in terms of a fixed budget. There are retirement benefits, death benefits, termination benefits, disability benefits, etc., etc. Each has a price tag. Benefits and benefit levels have to be juggled until a plan fits the budget. If we have just a retirement benefit, the pension level is so much; if we want a death benefit, the pension level must be lower; if we want a death benefit and a termination benefit, the pension level is still lower. Once we put a benefit package together that fits the budget, there's no money to add more benefits. If the committee has decided to omit a termination benefit in favor of a higher pension, that's that. You can't have your cake, etc.

This is similar to an individual who considers the purchase of life insurance. He looks at "Term"

insurance, which provides a benefit only at death during the term and sees he can afford $10,000 of coverage. He looks at "Endowment" insurance which provides a benefit if he dies during the period **or** if he survives the period, and sees that, for the same money, he can afford $3,000 of coverage. After considering the relative advantages he elects to buy the Term coverage. Then, to his dismay, he is still alive at the end of the term and so gets no benefit. Has he been "gypped?" Of course not. He bought a conditional benefit. Had he satisfied the condition his money would've been returned "One hundred-fold". He didn't, and should not expect to get a refund. Should the Congress legislate such a refund? We think not.

Insurance companies also sell "life" annuities, whereby a person pays, say $1,000, and gets an annuity for life. Should the Congress legislate a refund if his life happens to end after one monthly payment of $10. Of course not.

These examples suggest that a contingency, or a condition, has a price-tag. The tougher the conditions: the greater the prize. This has always been the case. To legislate otherwise is to destroy the basis of the insurance industry.

CONCLUSION

We have taken just one of the many recurring elements of proposed pension legislation and discussed it, seeking its real meaning. We have shown that Vesting, so often purported to be a "protection" of the employee, is nothing more than a termination benefit, and, like the other benefits, has a price tag.

We have taken this tack, not only to demonstrate the fallacy in the treatment of Vesting in proposed legislation, but to suggest an approach for considering **all** elements of pension legislation.

SBANE is vitally interested in the Congress's passing legislation that will encourage the growth of private pensions and so alleviate the burden on the public pension system, and thus ease the tax burdens of the country.

SBANE suggests that poor pension legislation will force companies to discard the private pension, and go back to competing for employees on the basis of salary, thus adding to the problem of inflation, as well as forcing Social Security benefits, and taxes, up.

It is the feeling of SBANE that as the company prospers, so does the employee. Thus we believe that the views presented to the Congress over the years are equally compatible with both employee and company interests.

This mutuality of interest is amply demonstrated by the fact that the SBANE 1970 Pension Committee, chaired by an Actuary, included representatives of both labor and industry.

SBANE suggests that the private pension, so vital to this country's well-being, be accorded the type of examination suggested in this Presentation before legislation regarding it is passed.

PROCUREMENT

Committee Chairman
Donald F. Barry, President
Container Services, Inc.
Lowell, Massachusetts

In 1961 President Kennedy notified the Department of Defense of his alarm over the declining small business percentage of total procurement—it was then at 16%. The results of this Presidential concern resulted in a steady increase in total procurement percentage to a peak of 21.8% in fiscal year 1966. At present, due to several adverse factors, the small business percentage is now back to 16%.

SMALL BUSINESS PERCENT OF TOTAL PROCURMENT

Fiscal Year	1966	21.8%
	1967	20.6%
	1968	18%
	1969	17.8%
July - Nov.	1970	16.3%

Of serious consequence to small business is also the fact that the percentage of small business set asides of total government procurement has declined by 30% in the last five years from 6.3% in 1965 to 4.1% in fiscal year 1970.

SET ASIDES PERCENT OF TOTAL PROCUREMENT

Fiscal Year	1965	6.3%
	1966	5.0%
	1967	4.7%
	1968	4.4%
	1969	4.5%
July - Nov.	1970	4.1%

Based on the experience of many SBANE members in government procurement, we offer the following recommendations to stop this alarming trend in the serious small business decline in procurement.

1. SBANE RECOMMENDS MANDATORY SET ASIDES

When the Federal Government places enormous contracts requiring large financing, production and engineering capabilities, it has an adverse effect on small business participation. When voluntary programs do not produce desired results, incentive and/or mandatory programs must be installed.

The concept of weapons system management through total package procurement restricts small business participation on many items that normally they could produce. The program vests the contractors with maximum authority to manage the total package, eliminating the possibility of the government contracting direct with small business for the many thousands of parts and components required not only to introduce but to sustain a system in the defense inventory.

At the present time other than a voluntary small business subcontracting program, there is no way for the Department of Defense Small Business Specialists or the Small Business Administration to require participation in a definite subcontracting program.

Despite the efforts of the DOD Small Business Specialists and the Small Business Administration in coaxing and pleading with larger businesses to participate, we feel that a voluntary subcontracting program will not provide what is intended by Congress. A review of the record of the performance of the 100 largest government contractors will substantiate the fact that there are some dedicated large firms with good programs but many making only a minimal effort with a great amount of rhetoric.

For many years, SBANE has advocated a change in the weighted guidelines to provide incentive to large business for subcontracting to small business. This has been supported by Congress, small business, large business and most recently, by the President's Task Force on Small Business. We ask Congress to initiate legislation requiring a change in the weighted guidelines.

SBANE also would like to see a subcontract set aside program established in connection with the total package procurement program to be negotiated prior to the award of the prime contract. At the present time, the DOD Small Business Specialists and the Small Business Administration are powerless in efforts to channel work to small contractors.

A contractural obligation to subcontract is necessary if it is hoped to give the small businessman an opportunity to compete and participate in the total package procurement program.

2. SBANE RECOMMENDS THAT DOD SMALL BUSINESS SPECIALISTS BE TRANSFERRED TO THE SBA

After careful study of the present DOD Small Business Specialists' role in overseeing procurements for small business, this Association believes that an independent champion responsible to the SBA is needed. We believe the Small Business Specialists should be transferred from DOD to the SBA to provide them with a freer rein in their surveillance of procurements. SBANE realizes the helpfulness of the Small Business Specialists but realizes no man can equitably serve two masters, i.e. the DOD and SBA, and recommends a transfer to the Small Business Administration, so that their prime responsibility will be to help small business.

3. DIRECT SUBCONTRACT APPEALS

SBANE has long advocated the need of the small subcontractor to have access to the contracting officer in the event of a contract dispute. In a report prepared for the Senate Select Committee on Small Business, by Professor Harold C. Petrowitz, dated July 28, 1966, the compelling logic for a "disputes clause" are well-presented:

"The federal boards have steadfastly refused to decide direct subcontractor appeals of any kind giving as a reason the specious argument that the subcontractor is not in privity of contract with the government. It is noted that the privity argument presents no obstacle when the government desires to enforce certain contract policies such as minimum wage requirements, examination of records, contract termination regulations to name a few. It seems clear that as far as government contracts and subcontracts are concerned, the privity concept has become outworn tradition."

4. PROCUREMENT STUDY COMMISSION LACKS SMALL BUSINESS REPRESENTATION

This Association regrets that the newly established Procurement Commission does not contain a member from the small business community. The Commission contains representatives of Congress, government agencies and larger businesses. We call your attention to the minority views of the House Committee on Government Operations which stated, "Unless the appointment of Non-Congressional members of the proposed Commission is to be made with the greatest degree of care and circumspection, a bias could well develop in favor of contractors, or in favor of Government Procurement Agencies, **or in favor of large businesses over small businesses,** (emphasis added) or in favor of the status quo, or in favor of Government in house capabilities over private enterprise, or in favor of almost any special interest over the taxpayers' interests."

We are looking forward with much interest to the report of this extremely important study Commission.

TRANSPORTATION

Committee Chairman
Gordon H. Fay, Associate
Systems Analysis & Research Corporation
Cambridge, Massachusetts

1. **Need for Small Claims Court**
2. **Support H.R.-8138, S.1653**
3. **Position Against Carrier Concealed Loss and Damage Claim Rules**

Members of SBANE and other shippers and receivers of freight throughout the United States are vitally concerned about fair and reasonable settlements from transportation companies for merchandise lost or damaged during shipment. There are two areas of immedate concern where Congress can significantly improve small business's ability to receive prompt and equitable payment on loss and damage claims.

The first area of concern is fair consideration by transportation companies of smaller loss and damage claims. The second involves rules recently promulgated by the carriers which limit their liability for concealed loss and damage.

Settlement of freight loss and damage claims by carriers is not subject to ICC jurisdiction except for certain rules providing for time limits on acknowledgement and decisions on claims. There is no remedy for disputes except through the courts. The problem for small businesses is that most claims are less than $1,000 not justifying long and costly court proceedings. As a result, carriers pass off many valid claims by just saying "No" because they have learned that small business has neither the technical knowledge nor financial resources to fight. Larger companies with professional traffic managers can fight and have established a record for winning, so carriers handle their claims with more consideration.

Small businesses need a means to require carriers to give fair, impartial and timely consideration to small claims. SBANE urges that Congress take action by, (1) creating a small claims court system within the Federal courts, and (2) passing H.R.-8138 which permits the recovery of reasonable attorneys' fees in cases of successful action for recovery of damages sustained in the transportation of property. (This bill passed the Senate as S.1653.)

The first action, the establishment of a loss and damage small claims court, is necessary because state and local small claims courts are inadequate to meet the needs. Two immediate problems arise with the local courts. First, as many claims involve interstate shipments by carriers domiciled in jurisdiction other than the claimant, the question of what court has jurisdiction can be an obstacle to seeking relief under present small claims procedures. Second, the maximum amount of claims which will be heard in small claims courts varies by state, but in general the maximum is $200. Establishment of a Federal small loss and damage claims court would provide uniform maximum claim standards (recommended level is $2,000) and would solve the jurisdictional problem by providing that the claimant's residence would govern.

The second action, passage of H.R.-8138, is a direct attack at the heart of the whole loss and damage claim problem which is the reluctance of carriers to honor valid claims. Requiring carriers to pay reasonable attorneys' fees to successful claimants should stimulate them to make reasonable settlements before the claimant brings court action. Small business does not usually bring suits against carriers because of high attorneys' fees and court costs which can easily exceed the value of the claim.

Carriers are aware of this and use this financial barrier to protect themselves when offering inadequate settlements of valid claims. H.R.-8138 removes this artificial protection and provides small business with a significant weapon in the fight to receive fair treatment.

The second major area of concern to SBANE involves rules promulgated in August 1969 by motor carriers, railroads and freight forwarders, concerning the settlement of concealed loss and damage claims. These claims cover items which were received by the consignee in apparently good condition, but upon subsequent inspection (opening of cartons, for example) the shipment was found to be damaged.

The new motor carrier rules have the effect of limiting the carrier's liability for concealed loss and damage claims and set forth numerous restrictions on the filing of such claims. Briefly, the rules state that the motor carriers will pro-rate the payment of claims among the carriers handling the shipment, taking into consideration intervening public or private warehouse handling. While appearing to be a fair method of allocating the liability over those who might have caused the loss or damage, the rule has the effect of reducing carrier liability and thereby lowering the amount which a shipper or consignee might otherwise recover. The key is the inclusion of warehouses in the pro-rate because the carriers can not collect from warehouses for their "share" and the shipper has little recourse to them under the law.

The following is an example of how the rule works. Suppose a shipment valued at $1,000 is made by common motor carrier from Cleveland to a warehouse in Columbus. After storage it is shipped via another common motor carrier to Boston, thence via a third to Portland, Me. for final delivery. The consignee inspects the package and signs the bill of lading indicating receipt of an undamaged shipment. Upon opening the package a week later, the consignee finds the contents damaged beyond repair and then files a $1,000 concealed loss and damage claim with the delivering motor carrier. The carrier accepts the claim as valid and pays the consignee $750 because under the rule the warehouse is responsible for ¼ or $250 of the claim. The warehouseman would decline payment of the claim in absence of clear proof of negligence on the basis that his only obligation is to handle materials as if it were his own. The consignee is out $250 unless he can collect from the shipper on the basis that he was the one who chose to warehouse the product.

The railroad and freight forwarder rules are even more restrictive than those imposed by the motor carriers. On concealed loss and damage, the railroads and freight forwarders set the maximum payment at 50% of the "proven net monetary loss." This means that a consignee must fully and carefully inspect every item, including opening every package, in a rail shipment at the time of delivery if he wants to recover the full value of any loss or damage. As a practical matter, such an inspection is difficult without destroying packaging to the point of making resale, stor-

age or transportation to another location difficult. Imagine the housewife's reluctance to buy goods in opened packages which are labeled "do not accept if seal is broken!"

Aware of the concern about the rule, the Association of American Railroads (AAR) cancelled the rule effective February 1, 1970. However, the AAR advised that individual railroads may still apply the principle of the rule so that the shippers and consignees are still in the burdensome position of having to take unreasonable steps to protect themselves from the reduced liability under concealed loss and damage procedures. The freight forwarder rules are still in effect.

Clearly, the new rules put a burden on the shipper and consignee to which they have little recourse. These rules were not submitted to nor approved by the Interstate Commerce Commission (ICC). As a result of increasing shipper pressure, the ICC in December 1969 established Docket No. 35198 to investigate ICC jurisdiction over concealed loss and damage claim rules and practices of regulated carriers. On February 9, 1970 the ICC established ExParte No. 263, "Rules, Regulations, and Practices of Regulated Carriers with Respect to the Processing of Loss and Damage Claims." This proceeding is consolidated with Docket No. 35198 and has been established to review not only concealed loss and damage rules, but also to investigate charges by shippers and receivers of deliberate and unreasonable delay by carriers in the payment of claims where the carrier has already admitted liability.

It is the position of numerous shipper groups that the ICC does have jurisdiction and should investigate the lawfulness of the rules. SBANE urges Congress to be aware of the outcome of ExParte 263 and to be prepared to take action on legislation to protect shippers from carrier action which unduly limits their liability.

SBANE
thanks you
for your interest
and attention...

United States of America

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House of Representatives

SMALL BUSINESS ASSOCIATION OF NEW ENGLAND

HON. F. BRADFORD MORSE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 3, 1970

Mr. MORSE. Mr. Speaker, the Small Business Association of New England—SBANE—has, since its incorporation in 1938, served with distinction a great number of New England small businesses, and, indirectly, their national counterparts. I personally have had many opportunities to work with SBANE and have come to depend upon it as a valuable and responsible source of small business information. I want to call the attention of my colleagues to SBANE's recently published "Fact Sheet," which provides an idea of the breadth of its activities.

SBANE FACT SHEET

WHAT IS SBANE?

SBANE is a private, non-profit Association of some 700 New England small companies who believe that through collective and cooperative action, the vital needs of small business in such areas as legislation on the national level and educational programs geared to the small business executive, can be fulfilled. The Association broadly defines a small business as a company with from 1 to 500 employees. The 700 members in the six New England states represent every facet of small business enterprise. Although some 50% of the members are in manufacturing, the growing membership rolls include service firms of every description, retailers, banks, wholesale distributors, consultants, lawyers, CPA's, data processing, etc.

WHY DO BUSINESSMEN JOIN SBANE?

For the SBANE member who participates in just some of the varied programs and services during the course of a year, membership is a good investment. The returns are much greater than the nominal annual dues. Vital services are being added constantly. The Association offers the small businessman a pooling of talent and resources to help him in the day-to-day operation of his enterprise.

WHO RUNS THE ASSOCIATION?

SBANE is not typical of many business organizations where the Officers and Directors hold fancy titles and take bows. SBANE is an active organization. The Officers each have major responsibilities, the Board of Directors meet monthly and a professional staff carries out the policies established by the leadership. Over a dozen committees in a variety of areas are meeting constantly to explore and expand the programs and services. The most important entity in the Association is the members and the leadership strives to fulfill their needs as determined by frequent contacts and communications.

WHAT ARE THE SBANE SERVICES?

Legislation on the national level

SBANE's legislative program is aimed at keeping the Congress, particularly the members of the New England Congressional Delegation and the House and Senate Small Business Committees, abreast of legislative needs and problems that can be affected by our lawmakers. Instead of simply pointing to the problems that affect small business, SBANE makes specific proposals on behalf of the nation's small businessmen. The highlight of the legislative program is a Washington Presentation delivered to members of the Senate and House, usually in May, that consists of Proposals for Congressional Action. Subjects covered in the Washington Presentation in the past have included: Procurement, Taxation, Labor, Penston Plans, Patents, Transportation and Small Business Investment Companies/Small Business Administration.

SBANE is also called upon frequently to testify at various committee hearings on subjects of interest. SBANE's experience in Washington has earned the Association the highest regard of our national lawmakers. Various committees with SBANE study proposed legislation to determine its effect on small business. The Association is in close liaison with members of the New England Congressional Delegation as to the feeling of the membership on current legislation. Timely Flash Bulletins are sent out to the members whenever important bills are under consideration.

Education

SBANE believes that in order for a small business to succeed, its management must have a continuing desire to improve their skills as an executive by participation in seminars and conferences. Throughout the year several programs are held sometimes in conjunction with a leading New England university. For instance, in the past months SBANE has cooperated with Northeastern University's Small Business Institute in putting on conferences dealing with "Venture Capital" and "Mergers and Acquisitions". Conferences were also held with Boston College on "Corporate Fringe Benefits".

SBANE magazine—New England business

Ten times a year the Association publishes a magazine, NEW ENGLAND BUSINESS, to inform New England small business of the activities of the Association, plus, management educational articles geared to small business. The magazine has a circulation of some 1,700 and is an excellent marketing device for the small business advertiser who wants to reach some of the fastest growing businesses in the area.

"Live-in" seminar—Harvard Business School

The best known of the SBANE continuing educational programs is the three-day "Live-In" Seminar held on the campus of the Harvard Business School. Employing the case study method and four senior professors, this "Live-In" Seminar has provided over 1,000 small business executives, in the past 11 years, with the unique opportunity to live at this renown business school and discuss a total of 12 cases in the areas of Management, Marketing, Finance and Labor Relations. It is an excellent program, reasonably priced and some 120 executives are expected to attend the January 18–21 seminar.

Caribbean seminars

For the past seven years the Association has sponsored a one-week Caribbean Management Seminar under the direction of David T. Barry, President, David T. Barry Associates, Wellesley, Mass. A faculty of experts and extensive teaching materials are employed. Classes are held in the morning and the afternoons are free for recreation and sightseeing. The purpose of these programs is to allow attendees to get away from their businesses and learn in a pleasant environment how to be better managers.

Breakfast Club

The program to provide the small business executive with an opportunity to hear speakers of special interest with a minimum of time interference with company activities has been established in the Boston area and is expected to spread to several key New England areas. Known as the SBANE Breakfast Club, the program begins at 7:30 a.m. at the Sheraton Lexington Motor Inn. Following announcements of the SBANE activities, a speaker of particular interest to small business is invited to address the gathering and answer questions.

Annual meeting

Every Fall the Association conducts an Annual Meeting and Small Business Conference consisting of symposiums and guest speakers of interest to the small business community. This one-day program also consists of an Exhibition which offers members an opportunity to rent exhibit space and show their products and services to the hundreds in attendance. The program also consists of the annual Election of Officers and Directors.

Trade development

SBANE believes tht one way the small businessman can expand his market is through overseas trade development. In 1969 the SBANE European tour of 34 attendees explored business opportunities. Past trade missions have also included the Far East and Mexico. SBANE works closely with the Department of Commerce, Pan Am and the foreign trade departments of several leading banks in its trade development programs.

Group insurance

Insurance plans not otherwise available to small busine's are offered through the Association. To date, they include the Voluntary Accidental Death, Dismemberment and Permanent Total Disability Insurance for

employees of Association members and two programs of Income Protection Insurance featuring Lifetime Accident Benefits and five years' sickness benefits. Additional group insurance programs are under constant study by the Association for eventual offering to the membership.

Mergers and acquisitions clearinghouse

A Mergers and Acquisitions Clearinghouse program has been established to offer the members an opportunity to register should they plan to either merge, acquire or sell their companies. Companies registered for either a "buy" or "sell" situation are listed by Standard Industrial Classification (SIC Code). Interested parties are matched whenever mutual interest is expressed.

Reduced auto rental

SBANE has entered into an agreement with Avis Rent A Car Systems, Inc. whereby members of the Association receive a 20% discount.

Unemployment cost control

Special arrangements have been made with Gates, McDonald & Company, a nationwide unemployment cost control firm, for members to subscribe to this cost saving program at a reduced fee. Many New England small businesses are not aware of the advantages of close professional scrutiny to keep down the company's experience rating.

Bay State business world

The Association pays each new members subscription fee to the Bay State Business World, a weekly business tabloid, covering news of business and industrial interests. Once a month the Bay State Business World carries a full page of news about SBANE and its programs and activities.

Executive placement

As a service to its members, SBANE maintains resumes' of executives interested in employment in New England small companies. These executives are referred to the Association by members, banks, accounting firms, consultants, and representatives of the academic community. This service is rendered at no charge to the member or the job seeker.

Business counselling

Membership in SBANE affords an "extra office" which the member can call upon as a source of information, contacts and references he can pursue for additional information. SBANE through its 32 years of existence has built a close liaison with key people in the academic, governmental, consulting, financial, legal and major New England business community. Many of these people are members of the Association and are always eager to help a member in need.

Governmental liaison

SBANE works closely with virtually every branch of the government that has programs or services available to small business. The SBANE staff and members communicate quite frequently with the SBA, Department of Commerce, Defense Supply Agency Services Region/Boston, and Small Business Specialists at the various defense installations.

Are there any other associations like SBANE?

SBANE is the only regional Association for small businesses in the country. Although there are other national small business associations, their services are almost exclusively in legislation. They do not offer the extensive educational programs, etc. that SBANE does. The advantage of SBANE as a regional Association is that it is in constant contact to its members through frequent mailings, correspondence and telephone calls to and from the membership. To quote a leading small business official in Washington, SBANE is, "more live-wire than others" and is able to draw grassroots interest and participation.

One vital by-product of SBANE's extensive programs is the opportunity it affords the membership in meeting their fellow small business executives to exchange ideas, thoughts and experiences.

Membership dues

The cost for one year's membership in SBANE is $50 plus 50¢ per employee up to a maximum of $200 per year, tax deductible.

There is also an individual membership offered on a very limited basis to employers with no employees and members of large businesses otherwise not eligible to become a member because they employ over 500 people.

Membership in SBANE is an investment in your company and its future through a unified organization dedicated to the growth of the free enterprise system.

SBANE Leadership

Each year the Association meets in October to elect Officers and a Board of Directors for a one-year term. The Board of Directors meets monthly to establish the policies of the organization and develop programs to meet the changing needs and problems facing the New England small business community.

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Mr. DILLMAN. As Chairman Alan Bible of the Senate Small Business Committee stated a few months ago, "danger signs are flying" indicating many small businesses are experiencing great difficulty in operating their companies. We have noticed several once healthy small businesses going bankrupt through little fault of their own. This would indicate that time is ripe for congressional action to bring relief to this segment of the economy which is the foundation of free enterprise.

Today we would like to address ourselves to legislation that is presently being considered for which there is great need, and also offer suggestions in areas equally important but which have not yet received legislative attention.

First, this association has responded at length to President Nixon's legislative recommendations of March 20 at the request of Charles W. Colson, Special Counsel to the President. Mr. Chairman, we ask that a copy of our letter to Mr. Colson be included in the record for this hearing.

Senator MCINTYRE. Do you have such a copy with you?

Mr. DILLMAN. Yes, sir. It is attached to the printed statement.

Senator MCINTYRE. It will be included in the record.

(The letter follows:)

SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND, INC.,
Boston, Mass., June 3, 1970.

Mr. CHARLES W. COLSON,
Special Counsel to the President,
The White House,
Washington, D.C.

DEAR MR. COLSON: As I indicated to you in my letter of April 13, as a result of your request for SBANE's comments and suggestions on the President's legislative program for small business, a more detailed response would follow.

All of the 32 members of the SBANE Board of Directors received The Report of the President's Task Force on Improving the Prospects of Small Business and the President's Message to the Congress of March 20. The following comments are a compilation of many leaders in this Association who have followed closely the progress of small business legislation and the various activities of the Small Business Administration.

1. With respect to "directing the SBA to emphasize its role as the advocate of the interest of small business." We discussed this matter personally with the Administrator, Hilary Sandoval, Jr., during a recent trip to Boston and find its prospects exciting.

In almost every instance of changes in rules and regulations of major executive agencies, they will be found to affect small business to some degree. Small business sorely needs expertise to call attention to such effects and protect its interests such as changes in the Interstate Commerce Commission rules, Regulations and Practices and Tariffs, etc. However, in our opinion, if the SBA is to take on these new areas of responsibilities, it must have increased competent personnel to do the job effectively. In recent years, we have found the SMA's role enlarged, with new areas of emphasis but with the responsibility given to specialists often unfamiliar with their added role.

We believe there are many present responsibilities as outlined in the SBA Act that are neglected because of a severe dilution of responsibilities. In summary, the role of the SBA as an advocate of Small Business is very popular with our membership.

2. "Proposing legislation to expand research to provide a clear picture of the problems, the trends and the needs of small business and a clear picture of the impact of government on small business." SBANE believes this proposal is already covered in the present SBA Act. We believe, however, that not enough work is being done to pinpoint the impact of government on small business in its many manisfestations. Further, we believe the SBA in Washington tends to become too heavily involved in statistical research

that we seriously question the value and use of much of the present material now available through the Planning, Research and Analysis Office. It seems that much of this material could be obtained from the Federal Reserve Bank and its regional offices.

3. In reference to the President's proposal for an Assistant Secretary in the Department of Commerce for the Office of Minority Business Enterprise, this Association believes that OMBE should be the responsibility of the SBA because under the SBA Act, it is charged with the duty of looking after the welfare of *all* small businesses. In our opinion, OMBE is a duplication of effort.

4. Although the President's Task Force found one-fifth of those businessmen consulted thought that financing was first among their problems, SBANE believes that good sound management ranks ahead of money. However, due to the current economic crisis, we favor all of the President's recommendations regarding making financial assistance more available to small businesses.

5. Tax Reforms—We support the President's recommendation for a ten year tax loss carry forward. There are other excellent recommendations in the President's Task Force Report that we wish he had included in his small business legislative package. In particular, we strongly urge a "small business risk reserve", a deferred tax exemption, to retain earnings in the early stages of a small business to finance receivables and inventories. The Task Force also brought out the severe impact on small business of the elimination of the Investment Tax Credit under the Tax Reform Act of 1969 and outlined the need for a limited credit in order to allow small businesses to modernize and to compete more efficiently. This is strongly endorsed by members of SBANE.

6. SBANE favors the President's recommendation on federal assistance for small business in obtaining surety bonds.

7. We strongly favor the President's recommendation for expanding the Job Opportunities in the Business Sector Program. As stated by the President, JOBS Program has catered to the larger corporations. We have personal knowledge of an association of smaller companies in a particular industry that have undergone great difficulty in their attempt to train personnel through a consortium. Their problems with the Department of Labor have been serious and expensive to the association and to make matters worse, ever since they told their story before the House Small Business Committee, they have been subjected to deliberate bureaucratic harassment that has been costly and discouraging.

Our concern over the future of the JOBS Program as it pertains to small business is heightened by reports that the Labor Department has "quietly decided to reduce this program". *The Boston Globe* of May 4 stated that the Labor Department wants to reallocate JOBS money to other training programs. We hope this report is inaccurate since we believe with wholehearted government cooperation the JOBS Program could receive tremendous assistance if small business was allowed an opportunity to participate.

8. In reference to the proposed legislation which would provide management training for the disadvantaged, we would recommend that management training be available to *all* present and potential entrepreneurs. We would comment further on this recommendation but, it is not clearly stated how the management assistance program will be operated. We have felt for some time the need for more and better management assistance programs in the SBA.

A major disappointment to our Association in the President's recommendations were the key subject areas that were left out, particularly, government procurement. Although the Task Force suggested an improvement in the Weighted Guidelines which this Association has recommended for some time, there are many other serious problems now existing for small businesses engaged in government procurement. The enclosed SBANE Proposals for Congressional Action on Pages 14–15 cites the statistical landslide in the declining proportion of government procurement going to small business. The most complete study in this area was conducted by the Sub-Committee on Procurement of the House Small Business Committee dated January, 1967. This report touched on all of the major problems the small businessman encounters if he wants to do business with the government. Unfortunately, since this report, the problems have become even more severe.

There are other areas that are of vital concern to small business that were not touched on by the Task Force or by the President in his Small Business Message to the Congress. We believe Transportation, Pension Plans, Patents and the creation of a Capital Bank should have been included in the Report.

This Association recommended in its May 20 Presentation that the SBA Loan Program be geared to meet the pollution problem and that the SBA Technology Utilization Programs be redirected to provide information to small businesses in need of pollution control counselling. We would also support the creation of tax incentives to spur small business to correct pollution problems.

We believe it would be helpful if someone on the President's White House staff were assigned as a focal point to provide ready assistance to the SBA Administrator in dealing with high level problems such as policy, personnel and other problems that are bound to arise, in the course of the Administrator serving as the Advocate of Small Business.

We realize that the President's Message to the Congress is an indication that President Nixon is paying more direct attention to small business than any of his predecessors and we applaud these efforts. However, sincerely hope that these initial legislative recommendations will be supplemented to cover other vital areas such as pollution and procurement that have lingered too long, we believe, without attention at the highest level.

SBANE believes that studies by Task Forces and Commissions are helpful because they do focus attention on serious situations. The impetus of the President's initial attention to small business shows that now is the time for action. Thanks to the President's Message, it appears very likely that extensive small business legislation will be undertaken within a year. Hearings already have been scheduled by the Small Business Sub-Committee of the Banking and Currency Committee in the Senate, and SBANE will be testifying on June 16.

It seems to us that the time is ripe for a broader approach to cover all of the important areas at one time, and we would hope the President will include some of these other subjects in his overall legislative package.

We appreciate this opportunity to comment directly on the President's Small Business Message to the Congress, and we sincerly hope that our suggestions will be helpful.

If we can provide additional information, or if you believe a meeting with the SBANE Legislative Committee members will be helpful, we would be pleased to make the necessary arrangements.

Very sincerely,

LEWIS A. SHATTUCK,
Executive Director.

Mr. DILLMAN. The association's overall reaction to the President's legislative proposals coincides with a statement of some members of this committee that the "proposed legislation does not go far enough * * *." Frankly, we are more concerned about what was left out of the White House message and in supporting some of the other findings of the President's Task Force on Improving the Prospects of Small Business.

In general we are very grateful that the President has indicated his interest and support of small business through expansion of such programs as financial assistance, management assistance, and in particular in the JOBS program.

In the President's message he directed the SBA to assume a more active role as the advocate of the interest of small business. The advocacy role of the SBA has drawn a great deal of support from our membership.

Nearly every change in rules and regulations by Government agencies will affect small business. As an advocate the SBA could watch such changes as Interstate Commerce Commission regulations, tariffs and any other Federal agency actions which could result in a far-reaching impact on the small business.

In fact, an active advocacy role by the SBA might well cover some of the responsibilities outlined in section 103 of S. 3699 which is designed to research the needs of small business.

Although we believe that the role of the SBA should be expanded and improved as outlined in S. 3699, it is SBANE's firm belief that the addition of new responsibilities without manpower and money to do the job will be extremely harmful to the effectiveness of the present responsibilities of this agency. In short, we see a danger in diluting the agency by piling on new programs without the people and budgets to carry them out.

We realize that financial assistance portions of S. 3699 are designed to make available more funds to hardpressed small busineses and should be supported. At the same time this association believes that any encouragement to the public or private sector to enter into small business loan programs should be accompanied by cautious safegaurds that will provide the SBA with final screening responsibilities.

SBA's role should be to insure that these financial assistance programs are conducted on a businesslike basis since the American taxpayer is directly or indirectly underwriting the cost.

However, financial assistance programs alone will not insure the success of many small companies. We believe that the SBA should be equally concerned with the results of several recent studies revealing the lack of sufficient management assistance programs to both participants and nonparticipants of SBA loans.

The SBA should be regarded as more than a lending institution. We recommend management assistance programs staffed by experts who can go out in the field and conduct programs for all small businesses.

The association's main recommendation regarding the Office of Minority Business Enterprise is that this office be transferred into the SBA since the original act charges that it is the duty of this agency to look after the welfare of all small businesses. In SBANE's opinion, OMBE is a duplication of effort.

SBANE recently interviewed several past SBA administrators. They expressed concern over the apparent shifting of the loan program from a merit basis to one more socially motivated without the usual standard businesslike requirements especially with minority loans.

Behind this concern over the SBA's loan procedures lies this question: What will happen to the SBA should facts reveal a high percentage of minority loan failures?

The Congress has always held the SBA in high regard and provided good support. However, since the SBA is lending public money, what will happen to the future of the agency should the Congress react if it feels that SBA loans were instead grants or subsidies?

It is the feeling of many that safeguards should be developed that will prevent the devastating effects of a possible over-reaction to the SBA on its financial programs.

One area that has been left out in all of the current legislation is small business procurement. Section 102(b)(5) of S. 3699 encourages procurement of subcontracts by major businesses with small businesses owned by the economically disadvantaged.

A serious decline of small business participation in Government procurement points to a serious need for legislation to meet the

serious difficulties small business is experiencing in doing business with the Government. The small business percentage to total procurement has declined from 21.8 percent in fiscal year 1966 to 16.3 percent and set-asides from 6.3 percent in 1965 to 4.1 percent during fiscal year 1970. Also, the percentage of subcontracting by the primes decreased considerably.

SBANE recommends that S. 3699 be amended to make the present voluntary small business subcontracting program mandatory. Presently there is no way for DOD small business specialists or the SBA to participate on behalf of small business in a weapons system procurement. Voluntary subcontracting programs of the 100 largest contractors are simply not working. Many treat their small business programs with indifference. Small business participation statistics kept by the contractors, often furnished to the Congress, are of doubtful value since they are often greatly exaggerated.

This situation is serious enough to warrant a recommendation to amend S. 3699 to call for a mandatory program such as a unilateral set-aside established through a prime contractural relationship specifying the portion to be subcontracted. This would give the prime contractor freedom to operate, the contracting officer a base for negotiation, and the small business community a firm program.

The association endorses Senator Thomas J. McIntyre's Bill S. 3528 to assist small businesses in financing pollution control. In addition, this association recommends that this bill be amended so that the SBA would give pollution loans the same priority and interest rate as disaster loans.

We further recommend that SBA's technological utilization program redirect its emphasis into providing information on technological information to small businesses which do not have now the know-how to correct their pollution problems.

A pollution survey of the SBANE membership reveals that some 30 percent were not familiar with the Federal and State requirements covering pollution control. Here is an opportunity for the SBA to take an existing program and update its objectives in the vital areas of pollution control which would certainly be more useful than the current SBA utilization program.

Mr. Chairman, SBANE appreciates this opportunity to comment and offer suggestions on this important legislation. We will be pleased to offer any additional information and observations that should prove useful.

We thank you for your time and consideration.

Senator McIntyre. Mr. Dillman, you express some concern over the fact that the President's message and the administration's bill S. 3699 does not reflect some of the findings of the President's Task Force on Improving the Prospects of Small Business. Would you care to point out some specific portions of the task force report which are not dealt with in the administration's legislative proposals, other than the Government procurement which you have just discussed?

Mr. Shattuck. I think our main concern is with the lack of legislative proposals connected with procurement problems, Senator. That was the primary area.

Senator McIntyre. One problem that was pointed out in the task force report that is not dealt with in the administration's proposal is

the lack of continuity in the Office of the Administrator of SBA, the average length of tenure in that office being only about 1 year. What do you think the reaction of the small business community would be to a proposal to substitute for the Administrator, a presidentially appointed commission with representation from both parties and staggered terms of office and with the chairman to be designated by the President?

Mr. DILLMAN. We think this would be good, Mr. Chairman, provided we have a strong man as chairman. The SBA needs continuity of leadership. We have expressed concern on this matter for several years. It is necessary to have a dedicated leader as the SBA Administrator or Chairman of such a commission.

Senator MCINTYRE. For one thing, of course, whether they had a dedicated leader or a topnotch man or what have you, a commission would in some respects lend some continuity of leadership at SBA, would it not?

Mr. DILLMAN. It would, yes, sir.

Senator MCINTYRE. I think there was some testimony yesterday and today, and the preceding witness indicated that perhaps he would prefer that the job of heading the SBA be a career type job.

Mr. DILLMAN. I think this is a question that faces us in many departments other than the SBA. I feel that the policy decisions must be passed down from an administrator and that he must take his direction from the administration. Therefore, if it were put under Civil Service, I feel we would lack that. We may not agree with some of the administration's programs or policies, but we do have an opportunity to express ourselves on this. If it were Civil Service I am afraid this would not be the case.

Senator MCINTYRE. Mr. Dillman, with respect to the lack of any proposals in the administration's legislative package on procurement, it might be noted that the task force made a specific proposal in this regard. It recommended that the weighted average guidelines of the Department of Defense and any similar list of factors influencing profit allowance by the Government agencies and the Renegotiation Board include a specific guideline sufficient to motivate contractors to subcontract to small business. In your opinion, would this recommendation, if adopted, have the same effect as your suggestion that S. 3699 be amended to make the present voluntary small business subcontracting program mandatory?

Mr. DILLMAN. It would help. The Smaller Business Association has requested a change in weighted guidelines for a number of year. This was also a suggestion by the Advisory Committee to the Senate Select Committee on Small Business. Mr. Smith served on this advisory committee to the Senate, and this was one of their recommendations of years past.

This was discussed by an ad hoc committee set up at the suggestion of the House under SBA. I served as a member. Members of that committee consisted of Department of Defense, NASA, the large agencies, plus several large businesses, plus myself.

Large business at that time agreed with the program of weighted guidelines, endorsed it at that particular time. SBANE has always endorsed it. I think we are waiting for the Department of Defense to make some move.

Senator McINTYRE. Although you endorse the bill to provide loan assistance to small business in order to meet Government pollution control standards, you suggested it be amended to give such loans the the same priority and interest rate as natural disaster loans. Under the bill as it stands these loans would be made under the economic injury disaster loan provision and the interest rate would be derived under the same formula as loans to coal mines under the recently enacted Coal Mine Health and Safety Act. At present rates I believe this comes out to some 6⅝ percent. Are you suggesting that the interest rate for those loans be set at the 3 percent level provided for natural disaster loans?

Mr. DILLMAN. Yes, sir.

Senator McINTYRE. Do you think that setting the interest at this low rate might discourage small businesses from taking voluntary action to solve their pollution problems, preferring instead to wait until they are placed under a regulatory order and thereby qualifying for the much lower interest rate?

Mr. DILLMAN. No, sir. I think some of the costs involved with pollution are almost insurmountable as far as businesses generally. Most small businesses, unless they are very well established, just cannot afford the cost of pollution control. I do not think they would tend to go in this direction. I think by using some sensible guidelines this would be done as is the case with the SBA loans now, refused by banks before you can apply for an SBA loan.

Senator McINTYRE. I might point out to you in the past opposition has been substantial where we have attempted to include economic injury situations under the 3 percent rate. If opposition to the 3 percent rate was so great as to jeopardize this bill, what would your feeling be about 6⅝'s?

Mr. DILLMAN. I would not go for the rate. I think we need the bill desparately.

Senator McINTYRE. So if we can't get the 3 percent or if the opposition to the 3 percent is such that it endangers the passage of the bill, you would not be discontent with 6⅝'s today?

Mr. DILLMAN. No, sir, not at today's rates.

Senator McINTYRE. I am glad you point out the need for technological assistance to small businesses in the pollution field. This is an important problem. I was interested in your suggestion that SBA's technological utilization program be redirected to this area. Could you tell us the present status of this program since I was under the impression that it was being phased out?

Mr. DILLMAN. We were asked last year to review some of the information that was coming out on the utilization program. We did not know it was being phased out. To our knowledge it has been more or less inactive. We don't see very much of it to be quite honest.

Senator McINTYRE. Mr. Dillman, I want to thank you and your association for being here this morning. I again apologize for being so late.

Mr. DILLMAN. We thank you for the opportunity.

Senator McINTYRE. I hope you and your organization will continue to bring to the Congress the needs for assistance in this very important field of small business. My compliments to you and your associates and your organization, which I think is one of the finest that I have seen

working in this field to help us by bringing to our attention the actual grass roots situation as opposed to some of the theories that we deal in down here.

Mr. DILLMAN. Thank you.

Senator MCINTYRE. We call as our next witness, Mr. Joseph Debro, chairman of CONTROL.

We are glad to welcome you here this afternon, Mr. Debro, and I repeat my apologies to you as I have to others, but I got so tied up I could not be here to chair this hearing, and I asked other members of the full committee to help us out.

You may feel free to testify in any way you desire. We would be very happy to hear what you have to say about these proposals.

STATEMENT OF JOSEPH DEBRO, CHAIRMAN, CONTROL; ACCOMPANIED BY BLYTHE S. BREWSTER, PRESIDENT, ASSOCIATION OF UNITED CONTRACTORS OF AMERICA, INC.

Mr. DEBRO. Thank you, Mr. Chairman.

I would like to introduce Mr. Blythe Brewster who is a member of the board of CONTROL. He is also a practicing architect from the State of New York and president of the Minority Contractor Organization in the city of New York.

We have submitted 45 copies of our testimony, and I would like to include a reprint, an article which I authored and which was published in 1970 as a part of this testimony.

Senator MCINTYRE. Without objection, it will be so done.

(The prepared statement of Mr. Debro together with the article referred to, appears on p. 136.)

Mr. DEBRO. Mr. Chairman, ladies, gentlemen, my name is Joseph Debro. I am the chairman of CONTROL, a national organization of minority building contractors who are working together to obtain economic control over the construction process in the inner city ghetto.

Our board of directors consists of 12 minority building contractors from all over the country, each prominent in the minority building industry of his community. We have formed this organization because we are deeply troubled by the way in which public money has been consistently used to create private fortunes for white people. We are troubled and angered by the way the Federal Government has seen fit to rebuild the inner city ghetto: With white architects, white lawyers, white bankers, white planning consultants, white contractors, white suppliers, white craftsmen—in short with white control over a process designed to provide housing and community facilities for minority people.

In some cases Federal programs have given our people better housing, but they have not built this housing. Instead both the economic benefits of the construction and the control over the construction has gone to outsiders.

The poverty of the inner city ghetto is not measured only by a lack of money, but also by the lack of control the community has over its own growth.

The minority contractor is one of the most important agents in rebuilding the inner city ghetto. Not only does he provide jobs for

community residents, but he also gives a measure of control over the rebuilding of the community to its residents. Typically, minority contractors are involved in the political and social life of their communities. They help to make community decisions and are in turn affected by the community's desires. Jobs performed by minority contractors help to increase the dignity and self-reliance of the community. These benefits do not occur when a white contractor has a job in the inner city ghetto.

Congress has passed laws which require integrated work forces on federally assisted programs, but if they will not pass the necessary laws to make mandate more than a sham to placate the community, the community must then resort to self-help. If Congress does not act to make minority participation in the construction process a reality, the inner city ghetto community will lose faith in the empty promises of the Federal Government and will look to other avenues of enforcement.

Already the temper of the community has been strained to the breaking point. In Seattle, Chicago, Pittsburgh, Newark, the community has clearly stated that the reconstruction of the inner city ghetto must take place with minority participation or it will not take place at all.

We building contractors have come together as a last resort to try to use the formal legislative process to effect change. I am here today to ask Congress to pass laws which will enable the minority contractor to fully participate in the rebuilding of his community.

The Senate has taken the first step in assuring that Federal construction contracts go to residents of the area in which the project is to be built with passage last year of S. 2610. This bill was signed into law December 1969.

When and if regulations are written to implement this law, the benefits to the community will begin to be a reality. But area residency is only the first requirement for a healthy minority construction industry. Today, many minority contractors are unable to participate on an equal basis in the construction industry even if jobs were available because of the cruel legacy that discrimination has left them. Denied training by discrimination, they cannot get the jobs to increase their skills and hence their job capacity.

The result of this discrimination is that both in numbers and in job volume, the minority share of the construction industry is small indeed.

There are four main obstacles which keep minority contractors from participating fully in the construction industry and which will prevent them from participating in federally assisted projects unless changes are made. The first is lack of skilled labor and craftsmen, the second, lack of technical management assistance, both off and on site, and the third is lack of capital, while the fourth is bonding. All these problems are aggravated by the inaction of city leaders in the unions, government, private business, and universities who should be devoting their time to mobilizing resources on a local level to cope with the exclusion of minorities from all phases of the construction industry.

The minority contractors contacted during the NAACP census said that the lack of skilled manpower was the greatest problem they had. Large new construction projects required construction skills that can

only be found in unions, but many minority contractors feel that they cannot use union labor until their brothers are admitted to union training programs and regular union membership.

CONTROL urges adoption of a legislative program that would aid minority contractors in upgrading their existing crew's skill, as well as a program designed to eliminate discrimination from those construction unions which practice it.

The second obstacle to the development of a minority construction firm is the lack of technical management assistance, both off and on-site. As the pressure increases for the minority contractor to undertake larger and larger jobs, the very assets he had for doing the small jobs—operating his office out of his pocket which cut down overhead expenses, are now liabilities. A large job requires full-time attention to the books, to the arranging of financing, bonding, and the on-site work. Technical assistance is needed by the minority contractors if they are to develop their full potential.

CONTROL is pleased that the administration bill, S. 3699, directs itself to this need in section 102 of title I by authorizing SBA to extend grants to public and private organizations to pay the cost of providing business management assistance and related technical aid to disadvantaged persons. CONTROL endorses this measure, but warns that for such a program to be effective, the amount of money needed by minority contractor organizations alone will run over $200,000 in each city affected by this program.

The third obstacle in the development of a strong minority construction industry is money for working capital. Working capital is crucial, for it limits the size of the job a contractor can do. Commercial lending institutions have traditionally been reluctant to loan minority contractors this money.

To combat the problem of working capital, CONTROL urges Congress to require SBA to set aside moneys at low interest revolving funds to be established by local organizations of minority contractors. The sum of money for this should be sufficient to insure that minority contractors be able to undertake at least 15 percent of all Federal construction contracts.

The fourth obstacle to the development of minority contractors is the bond. CONTROL feels that the problem of bonding for minority contractors is really a combination of the capital problem and the management problem. Overt discrimination has been attested to by many minority contractors, but this is difficult to prove. Bonding companies have also required a 10-percent working capital figure before issuing a bond. The combination of the capital requirement and the lengthy paperwork has successfully prevented many minority contractors from obtaining a bond on a job they successfully bid.

Gentlemen, pending before your committee today are two bills which if passed would considerably alleviate the problem that bonding presents to minority contractors. One was introduced by Senator McIntyre on behalf of the administration, S. 3699; and the other by Senator Bayh, S. 2609. Essentially CONTROL endorses the intent of both bills, but would like to make a few specific recommendations.

Both S. 2609 and S. 3699 empower the Small Business Administration to guarantee the bond on any construction project for a minority contractor. CONTROL endorses the concept wholeheartedly, but we

warn that the Federal procedures for eligibility must be more consistently applied. The bonding companies must also be a part of this program or less the intent of the bill will be subverted.

CONTROL also feels that both amounts which have been allocated to carry out this measure will be inadequate.

S. 2609 also would empower the Small Business Administration to issue a certificate of competency to a contractor in lieu of a bond on federally assisted construction. This concept is an important one because it puts a contractor in an independent position regarding bonding. In areas where the economic life of the community is controlled by a few people, a certificate of competency would free the contractor from being at the mercy of a few men.

CONTROL also recommends that the ceiling on federally assisted construction not requiring bonds be raised from $2,000 to $50,000. We note that most Federal construction is so highly structured and carefully monitored that for many projects a bond is not necessary. A certificate of competency in lieu of a bond and raising the ceiling on nonbonded work would open up much new construction for bidding by minority contractors while at the same time it would lower construction costs to the Goverment.

In addition, CONTROL feels that the bonding problem could also be alleviated if Federal construction were let out in smaller units. Many minority contractors can be bonded for a smaller job than are currently being let by the Federal Government.

Finally we come to the problem that the lack of support by local businessmen and Government officials poses. S. 2609 calls for funding of staff for the Construction Task Force. This task force has up to the present not fulfilled its responsibility in mobilizing private and local government resources to insure minority participation in construction. We recommend that a paid staff be available to the task force so that it may supplement the activities of the local minority contractor organizations.

Gentlemen, I urge you to take action now. The growth of the inner city ghetto depends to a great extent upon the way in which Federal money is used there. If public money is not used to increase minority participation and control over the rebuilding of the ghetto, this rebuilding will not take place. The ghetto will no longer tolerate public money being turned into private white fortunes.

CONTROL urges you to pass legislation that will help to turn public money for the inner city ghetto into housing and jobs for the people who live there.

Senator McIntyre. I think it would be appropriate, Mr. Brewster, if we asked you to go ahead and make your statement, and then I can direct questions to both of you.

You may testify in any way you like.

Mr. Brewster. Mr. Chairman, ladies, gentlemen, my name is Blythe Brewster. I am president of the Association of United Contractors of America, an organization of minority building contractors in New York, and am on the board of directors of CONTROL.

I would like to endorse the remarks made by Joseph Debro and join him in calling for strong Federal action to assure the full participation of minority people in the construction industry.

Although minority participation in the national economy has long been one of the favorite cliches of the Government and the Congress to date the minority contractor occupies a very marginal position within the construction industry. The Small Business Administration estimates that there are only about 8,000 visible minority construction firms, which is less than 1 percent of the total 876,000 construction firms in the United States today. The NAACP survey found that over 50 percent of the minority construction firms they contacted had an annual gross volume of under $50,000. In numbers and in percentage of jobs undertaken as well as profit, the minority share of the construction industry is small indeed—very small.

In the United States the construction industry forms a base upon which the rest of the economy rests. For every dollar spent on construction $300 is generated in related activities. Minority people have been shunted to lesser positions of control within our economy, and our participation has been limited to low paying jobs which no one else wants.

Since the construction industry occupies such a crucial role in our national economy, we believe that once the problem of minority participation and control of the construction industry is solved, minority participation in the national economy will be assured.

Participation by minority people within the construction industry cannot, however, occur by fiat. Black and Spanish speaking people have been excluded from the traditional ladders of social mobility by discrimination and this has left a profound effect upon their capabilities and hopes. For the building contractor, this has meant that he cannot get the jobs to get the experience to get larger jobs. Discrimination has given the minority builder four major problems:

1. Discrimination has meant that the minority contractors cannot find the skilled labor needed to do large construction, unless he goes to the unions, many of which actively discriminate against his brother, and many of which until recently would not even sign a hiring contract with him.

2. Discrimination has meant that the minority contractor cannot obtain working capital loans from banks and other lending institutions as can an equally qualified white contractor. Instead most minority contractors have financed jobs from their savings, which severely limits the size job they can undertake.

3. Discrimination has meant that the minority contractor has not been able to get or hire the necessary business and management skills to cope with the increasing complexity of new construction.

4. Discrimination has meant that the minority contractor has been excluded from bidding a job by a bid bond requirement in the Federal construction field, and by restrictive bidding lists and sweetheart contracts in the private sector.

The problem of restrictive bidding is the one that we are addressing today. Bonding is presently required for about one-third of the $96 billion spent annually on contract construction in the United States. The other two-thirds of construction consists of larger jobs contracted for by sweetheart contracts, or small rehabilitation jobs which are the stepchildren of the industry. Major construction which does not require bonding is not open to bidding by all contractors. Instead, only those contractors on a restrictive bidding list can bid.

If the job is not bid it is negotiated, and usually not with a minority contractor. Thus only small-scale rehabilitation and bid jobs requiring bonds are really open for minority contractors. Therefore, if a contractor cannot get bonding, he is necessarily restricted to the low-paying segment of the construction industry.

Essentially there are two types of bonds: Bid bonds and performance bonds. Although obtaining a performance bond presents a problem to the minority contractor, we are most concerned with the bid bond. The bid bond is one which must be obtained even before a contractor can bid on a job. Gentlemen, if a contractor is denied a chance to bid on a job because a bonding company will not issue a bid bond for whatever reason, he is denied any chance of obtaining the job.

We have here a situation in which a bonding company determines who is to bid on a job unless he has cash in lieu of a bid bond.

Bonding companies are supposed to be in the surety business, not in the business of selecting a contractor. Bonding companies by the nature of their business must be conservative. But we feel that the standards they use to judge the ability of a contractor to do a job do not fairly apply to minority contractors. They have turned down bond applications for minority contractors who had the ability and the financial backing to do jobs because of the lack of past experience doing bonded jobs. Yet in some cases contractors sought bonding waivers or obtained letter of credit in lieu of bonding and successfully completed the job bonding companies felt they could not do.

My colleagues in Boston told me the experience of a minority construction firm that could not get bonding on three separate Federal housing projects totaling about $3 million. They turned to a large gas company for aid, and this company arranged a letter of credit in lieu of bonding. Today these projects are completed. The quality of the contruction is excellent and the company made a profit. In Los Angeles a construction firm had a million dollar contract for a health center. They tried 12 different bonding companies but could not get a bond. Fortunately they were able to get the bond waived and successfully completed the job.

These examples can be supplemented by many more, but they all illustrate the fact that present procedures used by bonding companies do not accurately determine whether a minority contractor can do a job or not. When these same procedures are used for issuing bid bonds, they effectively restrict competition to old-line, mostly white firms, who have long records of experience.

It has only been within the past 10 years that minority contractors have emerged on the national construction scene in any significant way. Minority contractors are presently trying to get bonding track records that will enable them to be bonded, but they cannot do this unless they can get bonding to begin with. Bonding requirements as they are presently interpreted and administered prevent the minority contractor from breaking into the one-third of the construction that is really open to him.

I have five recommendations on bonding that I feel will help to assure bonding for minority contractors:

First of all, I urge passage of the bond guarantee concept in Senate bill S. 2609, introduced by Senator Birch Bayh, and S. 3699, introduced by Senator McIntyre for the administration. I would hope that

this guarantee would make bonding companies more responsive to the needs of minority contractors. I have noticed that S. 3699 provides for this Federal guarantee only up to contracts of $500,000, but I urge that this guarantee apply to all contracts.

Secondly, since the issue of bid and performance bonding is such an important one, I feel that this committee should pass the certificate of competency section of S. 2609. This would enable the Small Business Administration to issue a certificate of competency to a qualified contractor in lieu of bonding on federally assisted construction. This is urgently needed to assure that the benefits of public money at least go to minority people as well as white people.

I must warn this committee that if the Small Business Administration uses the same criteria that bonding companies have traditionally used, the effect will be to continue to deny qualified minority contractors bonding just as before.

Thirdly, I am pleased to find in Section 102 of Senate bill S. 3699 authorization for the Small Business Administration to extend grants to organizations to provide technical and management assistance to disadvantaged persons. These grants will almost certainly be sought for by local minority contractor organizations to provide needed assistance to their members in office and onsite management skills. This technical assistance will also be crucial in preparing minority contractors to seek bonding.

I therefore endorse this section wholeheartedly and feel that its passage will do much to give minority contractors the opportunity and skills to enter the mainstream of construction. I feel that this provision would be enhanced by funding for staff for the National Construction Task Force in order to maximize the self-help efforts of the minority contractor organizations and to coordinate them with the resources of private industry and local governments.

Fourthly, I also feel that the ceiling on federally assisted construction which does not require bonding should be raised from $2,000 to $50,000.

A bill introduced by Senator Bayh, S. 2611, is now before the Judiciary Committee which would raise this ceiling to $20,000. In New York City the Port Authority has already raised its bond ceiling to $50,000 at the insistence of the Association of United Contractors of America, and the Board of Education is currently contemplating this step.

Finally, I would recommend that federally assisted construction be let out for bidding in smaller units. Many minority contractors can capably perform a $500,000 contract, but not a $10 million one. Effort should be made to reverse the trend of larger contract units or minority contractors will never be able to undertake Federal construction.

Minority people have been waiting for a long time to participate on an equal basis in the control of our economy. We have been shunted into lower paying positions, and away from positions of control for too long. I strongly urge you gentlemen to make it possible for the minority contractor to participate equally in the construction industry. For as the minority contractor participates, so does his community and his people.

I thank you very much for this opportunity to make these comments.

Senator McIntyre. Thank you.

Mr. Debro, you said that while your organization endorses the bond guarantee provisions of S. 2609 and S. 3699, the procedures for eligibility must be more relaxed than those presently used by bonding companies. Would you please give us some specific examples of the kinds of procedures which you feel are too stringent?

Mr. DEBRO. I think I should have said that the procedures should be more consistent as opposed to more relaxed. Our experience has been that although sureties' home offices and those in large cities are fairly consistent with their requirements, we find that in the smaller communities where most of our minority contractors are located the requirements are applied in a discriminatory manner.

For example, a balance sheet and how it is evaluated has a lot to do with a determination about the liquidity of a particular contractor. In Calexico where a Mexican American wanted to build a $15,000 house he presented a balance sheet which did not have the required liquidity according to the local process agent. So that meant that everybody in that town and in that valley made the same determination about his balance sheet. On examination it turns out the same kind of balance sheet had been presented by a white contractor and it was granted.

So, all we are looking for is a recourse to a judgment of that kind. I think I should have said that we were really looking for consistent judgment on eligibility for bonding as opposed to a relaxed standard.

Senator MCINTYRE. We can put on the books laws that attempt to be objective, but we can't very well reach out and get into the subjective decisions of some bonding company that may want to discriminate. Can we?

Mr. DEBRO. No; I think that a part of that would have to do with the fact that bonding companies are not regulated. Under the Miller Act there are provisions for the Treasury Department to regulate bonding companies, but the only regulations which they have, are concerned with the issue of the liquidity of the bonding company and the fact that they are in fact corporations. There are no other requirements.

I suspect that one of the things we might urge is for the Treasury Department to write in some regulations which would at least give contractors some recourse to arbitrary determinations on the part of bonding companies.

Senator MCINTYRE. Mr. Brewster, do you believe that the existence of the Federal guarantee would in itself encourage bonding companies to be less stringent or to be more fair?

Mr. BREWSTER. I would like to draw as an example the fact that for many years in the ghettos—I am referring to our experience in Harlem—we had white banks and saving companies making mortgages which did not give mortgages to black people on their homes. A few years later a black bank was established which gave mortgages to black people. This almost immediately prompted the white banks to change their policy and they start to give mortgages to black people also. I believe therefore that the Federal guarantee will help the surety companies to take a second look at their practices and through a competitive alternative, so to speak, they will be more willing to make bonds to black contractors.

Senator MCINTYRE. Mr. Debro, you indicated that your organization endorses the proposal in Senator Bayh's bill authorizing SBA to

issue certificates of competency in lieu of the required bond on Federal construction projects. This proposal has been criticized on the grounds that it makes no provision for paying subcontractors, material suppliers or workmen if the contractor defaults. What is your feeling in this matter?

Mr. DEBRO. I think that is a crucial issue, and I might say that one of the committee's staff members suggested an alternative which I found rather exciting. For the material bond and the bond that would protect the subcontractor, we would use the guarantee portion of the act. This would mean that we would seek this particular bond from the sureties on a guarantee basis so that we could protect the subcontractor.

Senator MCINTYRE. I take it you would like to see this certificate of competency with this addition that you suggested, and that Senator Bayh did too, to be included in this overall bill.

Mr. DEBRO. Yes. I think the certificate of competency gives the kind of alternative which I alluded to in answer to your previous question, and that is a contractor at least can feel that if a decision which has been reached by a private agency was arbitrary that he has an appeal mechanism. I think the certificate of competency provides that appeal mechanism. So, I think that that is a very valuable or ought to be a very valuable part of that bill.

Senator MCINTYRE. Shifting a little bit, are you familiar at all with the MESBIC program that is over in the Department of Commerce?

Mr. DEBRO. Yes.

Senator MCINTYRE. Do you think this should be retained in its present form under Commerce or should it be transferred back to SBA, or have you had a chance to think about that at all?

Mr. DEBRO. Yes. As I understand it now, the licensing procedure is at SBA. Commerce has, I believe interdicted the normal regulations to help draft regulations permitting a MESBIC to be incorporated as a member SBIC. I think SBA has essentially the tools to do this, even though SBA in our community has traditionally been looked upon to be as hostile as the local banker. But I think under current administration SBA has moved to be meaningful in our community. I think around the country we are finding support for programs which ought to be sponsored by SBA, and I think under the current administration SBA is doing the kind of job we would like to see it do. So I think the MESBIC program and other programs which relate to minority enterprises and development most assuredly should be with SBA.

Senator MCINTYRE. I am glad to hear you say that SBA is beginning to show some interest.

Mr. DEBRO. I have been one of SBA's severest critics up until maybe 3 or 4 months ago, and I am beginning to see around the country a change in direction and a recognition of the fact that SBA does have some enormous tools, and these tools are now being lent to correct some of the problems which we find in our cities. I think that the administration should be commended in that particular situation.

Senator MCINTYRE. I am sure you are aware that despite the SBA's various programs, its enormous ability to help, it has been severely handicapped in the past 3 or 4 years by lack of that all important green stuff.

Mr. DEBRO. I feel it has been more an administrative thing. I have talked quite often about the relevance of the way money is spent. When we talk about housing and rebuilding inner cities, it seems to me if we spend the money in such a way that we not only train contractors but we train workers, then the people who live there will have money to service the debts of the housing that we are building. SBA, for example, has innumerable programs and I suspect to a large extent a lot of money. But they have not been using that money in relevant ways, relevant to the needs of the cities.

There is a program called 502 program which has to do with development of loans for shopping centers. The loan guarantee program has not been used very effectively up until very recently, the 406 program, title II and so on. All these programs when used effectively can go a long ways toward curing the problems in the core city.

I think the administrative needs of SBA have been neglected, and as somebody said previously there was a change in the administrator of that organization every year. There were three or four administrators in the last 3 or 4 years, and I think that does something to damage the continuity and the possibility of administrative practices.

I think under the current administration it is moving ahead and it is moving to meet some of those problems.

Senator MCINTYRE. I am glad to hear that.

You may have heard me speaking about the difficulty and the long-standing criticism of SBA insofar as its turnover of administrators is concerned. As we look around and try to find some answer to this problem—and it is not new with this committee—it has been suggested that we take a hard look at the commission-type of organization where you might have three members of the SBA Commission, one of whom would be chairman, and hopefully this would give some continuity and perhaps some leadership that could be sustained instead of the ups and downs we have had. What would be your comment on that?

Mr. DEBRO. I get a little apprehensive when people start talking about commissions and boards of directors because more often than not minorities are excluded from those boards of directors. FNMA, for example, which was recently spun off by the Federal Government, doesn't have minority representation. It is an agency which is involved in problems that concern us, but it doesn't have on its board people who are sensitive to those problems. I would be afraid of that kind of thing happening with SBA.

I think there has to be a search for sensitivity as well as forcefulness when leadership is sought. I fear that a commission would mean that we would get three more political appointees who are not necessarily sensitive to the problems we are talking about. So that would mean it would be more difficult.

I think instead of going in and sitting in Mr. Sandoval's office I would have to sit in three offices if we had a commission, and for people who have no, or relatively few, resources it is a lot easier to deal with one person than three or four, because there is a shifting of responsibility. I would not object to that, but I would be a little apprehensive and I would examine it very carefully.

(Prepared statement and reprint of article by Mr. Debro follows:)

STATEMENT OF JOSEPH DEBRO, CHAIRMAN, CONTROL

(CONTRACTORS ORGANIZED TO LOBBY)

Mr. Chairman, Ladies, Gentlemen, my name is Joseph Debro. I am the chairman of CONTROL, a national organization of minority building contractors who are working together to obtain economic control over the construction process in the inner city ghetto. Our board of directors consists of 12 minority building contractors from all over the country, each prominent in the minority building industry of his community. We have formed this organization because we are deeply troubled by the way in which public money has been consistently used to create private fortunes for white people. We are troubled and angered by the way the federal government has seen fit to rebuild the inner city ghetto: with white architects, white lawyers, white bankers, white planning consultants, white contractors, white suppliers, white craftsmen—in short with white control over a process designed to provide housing and community facilities for minority people.

The white construction industry has gotten fat off the misery and poverty of our people. Our people have indeed obtained better housing in some cases, but they have not built this housing. Instead both the economic benefits of construction and the control over the construction has gone to outsiders. So the poor people have become poorer. The poverty of the inner city ghetto is not measured only by a lack of money, but also by the lack of control the community has over its own growth.

The key to the growth of the inner city ghetto does not lie in physical development alone. It does not lie only in the bricks and mortar of new buildings, but in the hands that lay the bricks and mortar, in the hands that draw the plans for the building and in the hands that direct the building process. To achieve the economic and social development of the ghetto, the money spent by HUD on construction must be used to generate jobs and control for the people who live where the construction takes place. For every $1 spent on construction, $300 is generated in related services. The money and jobs that new housing generates must be used to enrich the neighborhood in which the housing is built, not to line the pockets of outsiders.

The minority contractor is one of the most important agents in rebuilding the inner city ghetto. Not only does he provide jobs for community residents, but he also gives a measure of control over the rebuilding of the community to its residents. Typically, minority contractors are involved in the political and social life of their communities. They help to make community decisions and are in turn affected by the community's desires. Jobs performed by minority contractors help to increase the dignity and self reliance of the community. These benefits do not occur when a white contractor has a job in the inner city ghetto.

Congress has passed laws which require integrated work forces on federally assisted programs, but if they will not pass the necessary laws to make this mandate more than a sham to placate the community, we will resort to self help. The legislative mandates which Congress has passed are becoming a mockery because they are words and not action. If Congress does not act to make minority participation in the construction process a reality, the inner city ghetto community will lose faith in the empty promises of the federal government and will look to other avenues of enforcement. Already the temper of the community has been strained to the breaking point. In Seattle, Chicago, Pittsburgh, Newark, the community has clearly stated that the reconstruction of the inner city ghetto must take place with minority paricipation or it won't take place at all. In these cities, the inner city ghetto residents have been forced to stop construction by all-white construction crews because the federal government would not enforce its own laws.

We building contractors have come together as a last resort to try to use the formal legislative process to effect change. I am here today to ask Congress pass laws which will enable the minority contractor to fully participate in the rebuilding of his community. Minority contractor participation in the reconstruction of the inner city ghetto will lead to greater community control and participation in such rebuilding.

The Senate has taken the first step in assuring that federal construction contracts go to residents of the area in which the project is to be built with passage last year of a bill introduced by Senator Birch Bayh, S2610. This bill was signed into law December, 1969. When and if regulations are written to implement

this law, the benefits to the community will begin to be reality. But the area residency is only the 1st requirement for a healthy minority construction industry. Today, many minority contractors are unable to participate on an equal basis in the construction industry even if jobs were available, because of the cruel legacy that discrimination has left us. Many minority craftsmen, unable to obtain entrance into many unions, turned to contracting as a way of obtaining some measure of control over his economic life. But denied training by discrimination, he cannot get the jobs to increase his skills and hence his job capacity.

The vicious cycle which discrimination has placed the minority contractor has been broken by some minority contractors who either through an enormous amount of will power, or through an outside change agent, have been able to obtain the skills, capital and labor necessary to do jobs over a million dollars. But the number of minority contractors who have a job capacity over a million dollars is small. Only 1 or 2 such contractors exist in the larger cities of the United States. Far more numerous are the minority contractors whose gross volume is only $50,000 a year. The NAACP survey indicated that over 50% of those surveyed had a total gross annual volume of under $50,000. This ladies and gentlemen is not profit, nor the job capacity of the firm. This figure represents the total amount of the total cost of the jobs done by a single contractor over the period of a year. In addition, the Small Business Administration estimates that there are only about 8000 visible minority construction firms. This is less than 1% of the total 876,000 construction firms in the United States today. In numbers and in job volume, the minority share of the construction industry is very small indeed. Congress has mandated HUD to assure that these minority contractors participate in the rebuilding of the inner city ghetto. But unless Congress also passes supportive legislation to overcome the obstacles that have put the minority contractor in such a marginal position, he will not be able to take his rightful place in the mainstream of the American construction industry.

There are four main obstacles which keep minority contractors from participating fully in the construction industry and which will prevent him from participating in HUD assisted projects unless changes are made. The first is lack of skilled labor and craftsmen, the second, lack of technical management assistance, both off and on site, and the third is lack of capital, while the fourth is bonding. All these problems are aggravated by the inaction of city leaders in the unions, government, private business and universities who should be devoting their time to mobilizing resources on a local level to cope with the exclusion of minorties from all phases of the construction industry.

The minority contractors contacted during the NAACP census said that the lack of skilled manpower was the greatest problem they had. Many minority contractors feel that they cannot use union labor until their brothers and neighbors are admitted to union training programs and regular union membership. But at the present time, with the exception of the south, the union has the only pool of labor skilled enough to undertake large new construction jobs. CONTROL would endorse a legislative program that would aid minority contractors in upgrading their existing crew's skills, as well as a program designed to eliminate discrimination from those construction unions which practice it.

The second obstacle to the development of a minority construction firm is the lack of technical management assistance, both off and on-site. A few years ago, when minority contractors were just emerging as a force on the American construction scene, the minority contractor was fully competent to manage the size job he undertook because of its small size. As the pressure increases for the minority contractor to undertake larger and larger jobs, the very assets he had for doing the small jobs—operating his office out of his pocket which cut down overhead expenses, are now liabilities. A large job requires full time attention to the books; to the arranging of financing, bonding and the on-site work. Technical assistance is needed by the minority contractors if they are to develop their full potential. CONTROL is pleased that the Administration bill S. 3699 directs itself to this need in Section 102 of Title I by authorizing S.B.A. to extend grants to public and private organization to pay the cost of providing business management assistance and related technical aid to disadvantaged persons. CONTROL endorses this measure, but warns that for such a program to be effective, the amount of money needed by minority contractor organizations alone will run over $200,000 in each city affected by this program.

The third obstacle in the development of a strong minority construction industry, is money. The NAACP survey revealed that the largest source of working capital for the minority contractors is their own savings. Working capital is

crucial, for it limits the size of the job a contractor can do. He must have enough money to meet the payroll through the first progress payment or he will lose his crew. The larger the job, the larger the crew and the larger the payroll. The contractor must somehow have access to this money or he cannot undertake the job. Commercial lending institutions have traditionally been reluctant to loan minority contractors this money.

To combat the problem of working capital, CONTROL urges Congress to require S.B.A. to set aside monies at low interest revolving funds to be established by local organizations of minority contractors. The sum of money for this should be sufficient to insure that minority contractors be able to undertake 15% of all federal contruction contracts. This revolving fund should be used by those contractors unable to secure loans elsewhere, and first priority should be given to those contractors with a federal contract, but the fund should also be used to develop the capacity of minority contractors to be able to undertake federal contracts.

The fourth obstacle to the development of minority contractors is the bond. Bonding is presently required on all federally assisted projects. If a contractor cannot get a bid bond, he cannot even bid on federally assisted construction. CONTROL feels that the problem of bonding for minority contractors is really a combination of the capital problem and the management problem. Overt discrimination has been attested to by many minority contractors, but this is difficult to prove. In any case, the technical requirements for bonding present a formidable obstacle for many minority contractors unused to the volume of paper work and the financial records that bonding requires. Bonding companies have also required a 10% working capital figure before issuing a bond. The combination of the capital requirement, and the lengthy paperwork has successfully prevented many minority contractors from obtaining a bond on a job they successfully bid.

Gentlemen, pending before your committee today are 2 bills which, if passed, would considerably alleviate the problem that bonding presents to minority contractors. One was introduced by Senator McIntyre on behalf of the Administration; S. 3699, and the other by Senator Birch Bayh, S. 2609.

CONTROL applaudes the unanimity which both parties have in their determination that the bonding problems of minority contractors must be dealt with. Essentially CONTROL endorses the intent of both bills, but would like to make a few speciffic recommendations.

Both S. 2609 and S. 3699 empower the Small Business Administration to guaranteed the bond on any construction project for a minority contractor. The former bill appropriate $5 million to carry out this guarantee, while S. 3699 appropriates $10 million. CONTROL endorses the concept wholeheartedly, but we warn that the federal procedures for eligibility must be more relaxed than are present procedures used by bonding companies or else the intent of the bill will be subverted CONTROL also feels that both amounts which have been allocated to carry out this measure will be inadequate. CONTROL recommends that $30 million be allocated for this purpose.

S. 2600 also would empower the Small Business Administration to issue a certificate of competency to a contractor in lieu of a bond on federally assisted construction. The certificate of competency concept is an important one because it puts a contractor in an independent position regarding bonding. In areas where the economic life of the community is controlled by a few people, a certificate of competency would free the contractor from being at the mercy of a few men. CONTROL also feels that the bonding would present less of a problem to minority contractors if the ceiling on federally assisted construction requiring bonding were to be raised from $2,000 to $50,000. A bill introduced by Senator Bayh, S. 2611 is now before the Judiciary Committee which would raise this ceiling to $20,000. We must note that most federal construction is so highly structured and carefully monitored that for many projects a bond is not really needed. A certificate of competency in lieu of bond and raising the bonding ceiling would open up much new construction for bidding by minority contractors, while at the same time, would lower construction costs.

In addition, CONTROL feels that the bonding problem could also be alleviated, if federal construction were let out in smaller units. Many minority contractors can be bonded for a smaller job than are currently being let by the federal government.

Finally we come to the problem that the lack of support by local businessmen and government officials poses. S. 2609 calls for funding of staff for the Construc-

tion Task Force. This task force has up to the present not fulfilled its responsibility in mobilizing private and local government resources to insure minority participation in construction. We recommend that a paid staff be available to the Task Force so that it may supplement the activities of local minority contractor organizations.

Gentlemen, I urge you to take action now. The growth of the inner city ghetto depends to a great extent upon the way in which federal money is used there. If public money is not used to increase minority participation and control over the rebuilding of the ghetto, this rebuilding will not take place. The ghetto will no longer tolerate public money being turned into private white fortunes. CONTROL urges you to pass legislation that will help to turn public money for the inner city ghetto into housing and jobs for the people who live there.

[From the Labor Law Journal, May 1970]

The Minority Builder

(By Joseph Debro)

Traditionally, minority group contractors have had to content themselves with the small, low-profit jobs while the lucrative contracts went to the large firms partly because the small companies could not afford the necessary surety bond. Recently, however, steps have been taken to provide money for interest-free revolving funds to be used by minority contractors to overcome the surety-bond problem. This type of economic self-help program, the author asserts, is singularly helpful in overcoming discrimination in the construction industry.

The Housing and Urban Development Act of 1968 projects the construction or rehabilitation of 26 million residential units— including 6 million units for low- and medium-income families—to be built under federally assisted programs over the next ten years. If these goals are achieved and if the general economy maintains the rate of growth experienced over the past decade, construction will be the fastest growing segment of our economy. The value of new construction, plus the maintenance and repair of existing structures has exceeded $100 billion. By 1980, the volume will be close to $200 billion.

OPPORTUNITY IN CONSTRUCTION

The construction industry has always been a stronghold of small business concerns. The larger firms will increase in number, scale and share of the market in a period of sustained expansion. This trend will be offset by continued heavy reliance on subcontractors, thus permitting a significant net growth in the total number of firms in the industry.

Historically, minority group construction contractors have been outside the mainstream of the construction industry. Although the nation has approximately 870,000 general and specialty contractors, fewer than 2,000—or 2/10 of one per cent—are black. While a reliable estimate of the number of contractors among other minorities is not available, it seems safe to assume that they, too, have very little representation. The development of minority contractors becomes increasingly important as the nation contemplates a growth in the construction industry to $200 billion in 1980, an increase of $100 billion over the present decade.

The development of minority contractors has not kept pace with the industry's growth and there is little reason to assume that, without assistance, the gap between minority contractors and other contractors will not continue to drastically widen.

This gap between present opportunity and present capacity is the product of a number of factors which have inhibited the growth and development of minority contractors. These include inadequate sources of financing and bonding, and limited entrance opportunities into construction craft unions.

As a consequence, the minority contractor has generally been restricted to small projects not requiring him to meet institutional demands for broad experience or permitting him opportunity for growth.

Thus, now, when the doors to large construction projects may at last be opening, minority contractors are unable to participate.

An accompanying manpower problem has developed, in part, because of the minority contractor's exclusion from the mainstream on construction activity. Of approximately 435,000 minority construction workers—most of whom are laborers or belong to the trowel trades—over 60 per cent are past the age of 35; in contrast, the median age for all black Americans, for instance, is 21. Among other things, this disparity reflects a view of the construction industry prevalent among young minority workers: without meaningful job or advancement opportunities, the industry is regarded as a last resort for failures. Most often the term "construction work" has been synonymous in the minds of the under-30 group with "laborers," the lowest paid, the dirtiest, and the hardest jobs in the construction industry.

NEW CAREERS FOR MINORITIES

The rebuilding and renewing of ghetto and blighted areas, coupled with recent government "affirmative action" programs to ensure equal job opportunities, offer new career openings for minorities in the construction industry and related fields.

The 10 million units which the Kaiser report indicated will be needed in our core cities in the next decade reflect a housing market unparalleled in our history.

The minority contractor situation is much like the weather—everybody talks about it but nobody does anything about it.

There is a wealth of misinformation, misunderstanding and misstatements of facts. The unions, the sureties, the government and the large contractors are all defensive about their positions in matters relating to this problem.

Civil rights groups, community organizations, management consulting firms and government agencies are all contributing to the problem and to the confusion. It has become more important to be recognized for some imagined contribution to this field than to effect real solutions to some very real problems.

Civil rights groups and community organizations use their involvement in this area to justify their funding requirements to funding sources and to satisfy their need for relevance to their constituency. Management consulting firms use their involvement as a marketing device to lead into what appears to be a growing government-supported market. Government agencies are making inadequate responses with an insufficiency of resources. Decisions are made on political grounds and in response to clear and present dangers. Visibility of support is more important than the viability of the program supported.

SEVERAL OBSTACLES

The unions are still advocating preapprenticeship and apprenticeship programs while 85 per cent of their current membership acquired union cards by methods other than those of apprenticeship.

The members of the Associated General Contractors still sign any suggested pre-award compliance agreement—as well as a union hiring hall agreement—and blame the union for the lack of non-whites in their work force. Owners and builders agree to any plan—the Philadelphia plan, the Chicago plan, or any combination of the two. They do this with the full knowledge that any excuse for nonperformance will be accepted once the job is underway.

The sureties contend that what they are being asked to do will lower their standards. The minority contractor's request has always been for a consistent and fair evaluation of the experience and balance sheets submitted by minority contractors—not a lowering of standards.

The solution to the bonding problem does not require, nor does it seek, a lower standard of bonding—it seeks a consistent standard.

The American Insurance Association (AIA) defines a construction project bond as: "a form of security—the demand for which invariably derives from the person for whom the work is to be performed." The furnishing of the security as a prerequisite to bidding or to obtaining a contract for work is required by the owner and/or lender, or by the general contractor on his subcontractors. The bond is used to protect the owner, lender, general contractor and the supplier.

The owner, as the one who pays the bond premium as a part of the job cost, expects the surety to qualify the proposed contractor as to his ability to perform the contract, for the contract price, within the time set for completion of the project. This involves an examination of the proposed contractor's intergrity, experience, know-how, equipment and working capital.

The surety must indemnify the owner for any reasonable costs in completing the project—which are in excess of the agreed price—and for the work, to the extent of the amount fixed in the bond.

The surety must guarantee that persons who furnish labor and material for the project to the contractors or their immediate subcontractors will be promptly paid.

The AIA—in its open letter to the Small Business Administration—seems to labor under the illusion that minority contractors wish them to unilaterally disregard the needs of the owners, the lenders or the general contractors, and to adopt a radical concept of underwriting premised on the needs of the bond applicant rather than on the needs of the owner or his designee.

THE MINORITY CONTRACTORS' POSITION

Minority contractors have no such wish. There is complete agreement within the minority-contractor community with the current surety concepts articulated by the surety industry. The disagreement is with the difference between the industry's stated position and minority-contractor experience at the operational level of the surety industry.

The AIA calls the statement—that the bonding requirements are a stumbling block to minority group advancement in the construction economy—a commonly held misimpression.

The figures used to support this argument reflect a total lack of understanding of the problems of minority contractors in this country. They do not support the Association's argument that it is a misimpression that the bonding requirements are a stumbling block to minority group advancement in the construction economy.There is general agreement with the AIA that of the roughly $75 billion of annual construction in the United States, only in the field of public works is a bond a common prerequisite to bidding and obtaining a contract; that public work involves about $15 billion a year; that of the remaining $60 billion of construction, traditionally about 20 per cent at most is required by owners to be bonded. This means $12 billion of bonded private work.

The grand total of bonded work, public and private, therefore amounts to about $27 billion—leaving $48 billion of normally unbonded work.

What the Association fails to point out, however, is that there is no requirement that any construction in the private sector go to open, competitive bid. Even if the majority of the work in the private sector was not done through a selected bid list or other sweetheart arrangements, the bonding process is still the largest single identifiable constraint to access to 35 percent of the construction market.

Construction in the public sector represents the greatest opportunity for minority builders since there exists the legal requirement of open, competitive bids. Moreover, sweetheart arrangements between owner and builder often found in the private sector appear to be generally absent.

Access to public construction projects is restricted by a constraint authorized by an Act of Congress dated July 30, 1947, as amended (6 U.S.C. Secs. 6–13). This constraint is called the Miller Act, and it requires that sureties be used to bond all federal construction projects.

Best's *Insurance Reports, Property Liability* (1960) lists 26 classes in insurance business. Surety is one of the classes of business listed. The loss ratio of all 26 classes averages 74.4 percent. The loss ratio of the surety class is 28.4 percent.

Only two operating ratios need be determined to reasonably interpret the true underwriting experience of a company. These are: (1) ratio of combined losses; and (2) loss adjustment expenses incurred to earned premiums. If the total of the two ratios is under 100 percent, the difference reflects the approximate profit margin.

The Combined loss and expense ratio of the surety business is 84.4 percent. Therefore, the approximate profit margin is 15.6 percent—the highest of all classes of insurance business.

The United States Treasury Department regulates these sureties under the Department Circular No. 297, as supplemented.

DISCRIMINATORY TENDENCIES

There are 230 companies holding certificates of authority from the Secretary of the Treasury—under Sections 6–13 of the United States Code—as acceptable sureties on federal bonds. None of these companies have any non-white Americans on their boards of directors or in their executive suites. Non-whites have also been generally excluded from employment in this industry.

This marginally profitable, equal opportunity employer has consistently prevented blacks from entering the growth phase of the construction industry by not issuing bid bonds and/or completion bonds for proposed projects.

In cases where bonds are being issued the requirements for minority contractors are often twice as rigorous as those imposed on non-minority contractors under similar circumstances.

Trans-Bay Engineers and Builders, Inc.—a new minority-owned construction firm formed in Oakland, California—was required to show $70,000 in cash on its financial statement before a bond would be issued. The job in question was site work on the West Oakland Health Center. The contract price was $473,239.

Trans-Bay was led to believe that a bond would be issued if it showed $45,000 in cash on its statement and if all of the members of its board of directors signed an indemnification agreement; this was done. On the day the bond was to be issued, and after Trans-Bay had signed the contract for the West Oakland Health Center, the bonding company demanded another $30,000 in cash before it would issue a bond. Thirty minutes after the bond was issued, the surety company tried to cancel this bond.

This surety company represents the best effort of the industry. No other surety company contacted would even respond to the Trans-Bay request for a bond.

Evaluation of assets and evaluation of experience is the area of subjectivity in which bonding companies have a poor history vis-a-vis minority firms.

DISPARITY IN TREATMENT

Non-cash assets often make up a major fraction of the balance sheet of non-minority construction firms. These assets are often evaluated in such a way that the cash requirements are considerably less than 10 percent. Real property, equipment and other such assets are often evaluated at the discretion of and in accordance with the best information obtainable by the locally authorized process agents.

Prior to 1967, surety companies were not only reluctant to bond minority contractors, but refused to say why. They were simply non-responsive to requests made by minority contractors.

In late 1966, the Ford Foundation initiated discussions with several major surety companies. The companies acted partly in response to requests from minority contractors in various parts of the country and partly at the suggestion of representatives of the federal government.

The surety companies would not bond minority contractors because of their lack of construction-contract experience and lack of demonstrated managerial capability. Minority contractors could not gain the required experience because of the lack of a contract. A contract could not be obtained because of the lack of a bond.

The surety companies expressed a willingness to cooperate with the Ford Foundation in the design of a program which would result in an increase in the number and size of surety bonds issued to minority contractors.

The initial result of these explorations was a three-year demonstration program in Oakland, California.

The Oakland Bonding Assistance Program was announced June 9, 1968. One hundred-fifty thousand Dollars was granted to the General and Specialty Contractors Association for an interest-free revolving fund, and an additional $150,000 was granted to the same association to be used to purchase administrative services and technical assistance for contractors using the revolving fund. These funds were to be used over a three-year period to increase the job capacity of minority contractors in Oakland.

Prior to funding, in order to insure the support of the total community there was established a broad-base advisory board. The following organizations were represented: The Management Council for Bay Area Employment Opportunity; Building and Construction Trades Council of Alameda County; Carpenters Bay Counties District Council; The Bank of America; Kaiser Industries Corporation; General and Specialty Contractors Association; The San Francisco Human Rights Council; and The Oakland Small Business Development Center.

This advisory board recommends policy and personnel. The recommendations of the board were always accepted, even though the contractors had the option of ignoring any recommendation of the board.

The Program was directed at meeting the growth needs of minority contractors who had demonstrated ability both as craftsmen and as businessmen; men who were small because of the constraints placed on them by an unjust system and not by lack of ability on their part.

THE HOPE OF THE PROGRAM

It was estimated that the 60 general and specialty contractors who made up the Association were collectively grossing less than 2.5 million dollars per year (an average of $40,000 per contractor). A three-year projection of five million dollars was made in the proposal. It was estimated that over 100 new jobs would be developed and that another 100 minority group chaftsmen—who were employed by the Association membership at a fraction of their work potential—would be upgraded to full journeyman status. The Association membership, 18 months later, grossed more than 20 million dollars. There is currently a backlog exceeding 25 million dollars.

More than 200 new jobs have been generated. The average number of hours worked, by community craftsmen, has risen from 970 to 1,600. The average wage-per-hour has gone from three dollars to six dollars as the subcontractor has moved from the status of nonunion to union shop.

This process has generated more non-white union journeymen in the high-wage crafts than in the entire history of the local hiring-hall process. This great growth can be attributed directly to the revolving fund and to the funds allocated for its effective use.

The Ford Foundation revolving fund grant represented a major conceptual breakthrough. The poor and the powerless had never before been given both the opportunity and the resources with which to effectively use funds for their development and growth. The community of the poor had always been required to consume and/or return any funds received.

This revolving-fund concept has been discovered and used, to a limited extent in some model cities programs around the country. The first contractor to use this fund had not done a job larger than $130,000, although he had 15 years' experience as a general contractor. His proposal was to do a job which was estimated to cost $250,000. He needed $25,000 in cash according to the sureties.

He was able to raise $10,000 from his own resources. The Bonding Assistance Program, after careful analysis of the job and the applicant, loaned him $15,000 interest free. The $25,000 was then placed in a joint account on which the applicant and the bonding manager signed. All progress payments were received into, and all disbursements were made from this account. The contractor had no other work in progress at this time. The bonding manager inspected the job daily and the critical-path method was used throughout the job. All discounts were taken and subcontractors were promptly paid. At the end of the job, no funds were paid to the contractor until a lien release was obtained from all subcontractors and the owner released the bond.

On this particular job the contractor lost money. In spite of that fact, the subcontractors, the suppliers and the owner were all satisfied. The Bonding Fund had to take back an interest bearing note for its $15,000.

Because of the knowledge and experience gained by both the Bonding Program and the contractor, he was able to negotiate a $500,000 job which the owner agreed to put on a cash basis. This job is currently in progress and is on schedule. It appears that the contractor will make a profit on this job and that he will be able to retire his note to the Bonding Program. The next job that this contractor will be able to undertake will be at the $1 million level.

A PROFITABLE FIRST-TIME VENTURE

To cite an example which developed a profitable posture on the first job might be instructive.

Trans-Bay Engineers and Builders wanted to build the West Oakland Health Center. This company was able to raise $20,000 from its own resources. The job amounted to $473,239. The sureties required $70,000 in cash. The Bonding Assistance Program approved an interest-free loan of $50,000.

The $70,000 was placed in a joint account on which Trans-Bay and the bonding manager signed. All progress payments were received into, and all disbursements were made from this account. The contractor had no other work in progress at this time. The bonding manager inspected the job daily and the critical-path method was used throughout the job. All discounts were taken and subcontractors were promptly paid. At the end of the job, when the owner signed a bond release, there was $96,000 left in the account. This represented $26,000 in profit which Trans-Bay had earned on its first job—a four-month effort.

Trans-Bay now has under-contract $5 million worth of work: A Bank of America building, Navy housing, a West Oakland elementary school, and 126

residential units in West Oakland. The company's projection for 1971 is $12 million.

The U.S. Department of Housing and Urban Development, on October 17, 1968, issued FHA Circular 4200.2—whose subject was assurance of completion of construction requirements. The circular advised of the issuance of amendments to to the regulations to establish new and uniform requirements for the assurance of completion of all projects involving the insurance of advances, except Title X propects:

"For propects where FHA estimate of construction or rehabilitation is $200,000 or less, no corporate surety bond will henceforth be required, provided a personal indemnity agreement (Personal Undertaking, FHA Form No. 2459) is executed by the principle individual or individuals responsible for construction or rehabilitation of the project.

"In the absence of such a personal undertaking the requirements set forth in this letter shall apply to such projects, except that no assurance of completion shall be required for rehabilitation projects of 11 units or less to be insured under Section 221(d)3 or 221(h), or Section 235(j) or Section 236 of the National Housing Act (unless more than two such rehabilitation projects involving the same mortgagor or general contractor are under construction at one time).

"For walkup garden type structures where the estimated cost of construction or rehabilitation is $2,000,000 or less, a 10 per cent performance bond and a 10 per cent payment bond shall be provided.

"For walkup garden type structures where the estimated cost of construction or rehabilitation exceeds $2,000,000 a 25 per cent performance bond and a 25 per cent payment bond shall be provided.

"For high rise elevator type structures, a 50 percent performance bond and a 50 per cent payment bond shall be provided.

"As an exception to the foregoing requirements, a cash deposit or a letter of credit equal to one-half of the amount of the indicated performance bond or 10 per cent of the estimated cost of construction or rehabilitation which ever is greater, may be accepted in lieu of the performance and payment bonds. The amount of bonds, cash deposits or letters of credit will in each instance be calculated on the FHA estimate of construction or rehabilitation cost.

"Also excepted from the foregoing will be projects within the states of California, Florida, Louisiana and Texas, where statutes are in effect requiring for adequate protection, either a 50 per cent performance and a 50 per cent payment bond. Bonds must comply with the local statutory requirements, and cash deposits or letters of credit will not be acceptable in those four states. Personal undertakings will be acceptable for projects of $200,00 or less and the special exemption for rehabilitation projects of 11 units or less shall apply in those four states as in all other states."

FHA Circular 4200.2 demonstrates what is possible under the existing legislation. Other departments of the government should examine their own posture with respect to this circular.

ANOTHER VIABLE PROGRAM

The Small Business Administration has also been active vis-a-vis the minority-contractor bonding problem. The 8A Program, which allows the Small Business Administration to become the prime contractor in small business set-aside contracts, is now being used in the construction industry. Care must be exercised, however, to insure that the only contracts that are set aside are not the ones on which agencies do not get bids due to lack of profitability.

The Small Business Administration—in its loan-guarantee program—has begun to make guarantees on loans which are subordinate to the interest of the surety. This device permits the use of the Small Business Administration's guaranteed capital to meet the elevated liquidity requirements of the surety industry.

The usefulness of this device would be increased if lenders would make this money—which is gauranteed against loss—available at the same rate as is obtained on Treasury bills. Since these loans are made out of reserve funds, and since these loans generate demand accounts which show reasonable average balances, and since these loans generate consumer-loan relationships in the communities served by this kind of effort the banks can hardly afford to do otherwise.

In 1968, the Small Business Administration convened a National Construction Task Force to study the minority-contractor bonding problem. It was charged with the responsibility of coordinating the previous fragmented efforts of the private sector, the government and other interested groups.

The National Construction Task Force created a field organization in a number of cities across the country. This organization—called the Action Construction Team (ACT)—consisted of volunteer members representing each of the four working task force committees: Financial assistance; management and technical assistance; federal assistance; and community resources. These Action Construction Teams had no staff funds, no program money and no minority contractors.

The National Construction Task Force was composed of many interest groups who had nothing to gain by the kind of change which the Task Force advocated. Not a single minority contractor was a member of this Task Force.

Despite the dedication of some of the members of this Task Force, the ACT efforts have been successful in very few cities.

OTHER PROBLEM-SOLVING MEASURES

There are currently a number of major efforts being proposed to help bring about some solution to the problems of minority builders. The American Assembly, in its study of black economic development, recommended that legislation might be needed which would permit public works construction to be put on a cash basis. This is a device currently in use in California. Payout comes to the contractor as needed. He doesn't have to wait until 20 per cent of his job is complete for the first payout. This kind of transaction is handled through a builder's control. The fee which the owner pays is about the same fee that would be charged by the surety. FHA projects can currently use this device, provided the government insurance is not required until the final close of the escrow.

A builder's control receives and disburses all construction-project related funds. It estimates the job prior to funding and it inspects the progress of the general contractor and his subcontractor prior to disbursements. Disbursements are made as they are needed.

In the First Session of the 91st Congress, Senator Bayh introduced S. 2609, S. 2610, and S. 2611.

S. 2609 was a bill "to increase the participation of small business concerns in the construction industry by providing for a federal guarantee of certain construction bonds and authorizing the acceptance of certification of competency in lieu of bonding in connection with certain federal projects and for other purposes."

S. 2610 was a bill "to amend Section 3 of the Housing and Urban Development Act of 1968." It has been enacted into law.

S. 2611 was a bill "to amend the Act of August 24, 1935 (commonly referred to as the Miller Act) to exempt construction contracts not exceeding $20,000 in amount from the bonding requirements of such act." The current exemption limit is $2,000. Congressman William S. Moorehead introduced similar legislation in the House of Representatives.

The law firm of Arnold and Porter is currently petitioning the United States Treasury as the regulatory agency which has the licensing responsibility for the surety industry. The petition raises the issue of the subjectivity involved in the bonding process and the issue of recourse and remedy.

The National Urban Coalition and the National Association of Minority Contractors have an effort underway to establish a National Minority Contractors Institute. This effort would use the techniques developed in the Oakland project in some 15 cities in order to develop some strong minority builders.

Finally, there seems to be a growing movement in the minority-contractor community to establish a minority-controlled surety company. The National Association of Minority Contractors views the surety dilemma as they viewed the life insurance industry 15 years ago. At that time, only black companies would issue life policies on minorities without rating them. Once the life insurance companies understood that the minority community was a profitable market, they changed their practices. They now write life policies on the total population without regard to race. There is hope that the surety companies may be educated in the folly of their current practices.

OVERTURES BY GENERAL CONTRACTORS

A number of large general contractors across the country are beginning to make some relevant responses to the minority-contractor bonding problem.

Once a job is bonded by the general contractor, he has the option of not requiring his subcontractors to bond. The general contractor is in a position to negotiate a contract with a minority subcontractor—to put the subcontractor on a cash basis by providing funds to suppliers as needed. The general contractor can then

provide technical assistance and management help to a minority subcontractor who is working on a job over which the general contractor has control. The trade off in such a situation has been market penetration and acceptable affirmative action in the area of minority employment and training.

There is a very critical interrelationship between the bonding problem which we have defined and the problems of manpower, markets, management and contract compliance. All of these problems must be defined and solutions to them sought if we are going to be able to build viable minority-contractor firms. John Gardner has said "we know what our problems are, but seem incapable of summoning our will and resources to act. We are seized by a kind of paralysis of the will.

The 1968 Housing Act projects the construction of six million units of low- and medium-income housing units. These units, or an equivalent amount of industrial and public-works construction, must be built on turf occupied by the community of the poor. Trade offs for access to this enormous construction market may provide a means by which the national paralysis of the will might be cured.

The community of the poor has a responsibility to husband access to this enormous market. Trade offs must be developed between the indigenous community and the building trade councils, between the indigenous community and the contractors who propose to exploit this market.

CULPABILITY FOR DISCRIMINATION

In developing this marketing method, there must be a firm understanding of who creates and perpetuates the problem of underemployment and unemployment in the construction industry for minorities. It is true that some craft unions are guilty of discrimination. Craft unions, however, are not employers. They do not hire craft union workers. They do not train craft union workers—contractors do. The subcontractor often serves as a business agent for craft unions. The excuses which he gives for discriminatory practices are not relevant to the cause of minority unemployment.

The employer, in the construction industry, is the contractor. He must be held accountable for his employment practices and for his training practices. The excuse most frequently used by the contractor is that the hiring-hall agreement which he signs results in non-minority group referrals. Thus, the union is at fault. However, contractors who work in states which have right-to-work laws and thus no hiring-hall agreements to sign, have no better record in employment and training than do those who must sign such agreements. There is no law which limits the number of trainees a contractor can train on his job; there is no law which compels the contractor not to hire skilled minority workers through the subcontracting process. Minority subcontractors have minority work crews; these crews are paid prevailing wages. These firms are union shops or are prepared to become union shops, provided the union accepts their work force.

Ray Dones, the president of the National Association of Minority Contractors and the chief executive officer of Trans-Bay Engineers and Builders, said in a speech before a regional conference of his Association that "my firm is constructing an elementary school on one side of a street; a white construction firm is constructing some residential housing on the other side of the street. The work force, on the earth moving equipment on Trans-Bay's job is all non-white; the work force on the earth moving equipmnet, on the other company's job site is all white. Our unbonded subcontractor couldn't find any qualified white operating engineers and the other company's subcontractor couldn't find any qualified non-white engineers. Discrimination is illegal in California."

THE UNIONS' SHARE OF THE BLAME

Confusion arises regarding the leverage point because unions control the apprenticeship program. This control is confused with the actual training process. Apprentices are trained and paid by contractors—not by unions. Unions add to the confusion because they guard their absolute power over the apprenticeship program very jealously. They have been able to sell the pre-apprenticeship and the pre-preapprenticeship method of keeping themselves free of pressure in this area.

Most of the card-carrying skilled craftsmen (85 per cent) who are now a part of the union hiring-hall process were not admitted through the apprenticeship process. Among those who *have* been admitted through the aprenticeship program, many have made use of some form of nepotism. Minority contractors understand

the nepotistic urge; they share it and believe that the many other avenues which are currently being used for admission of non-minority members are more productive than is the apprenticeship method.

A most frequently used, non-apprenticeship method of entry into the hiring-hall process requires that a craftsman work for 24 months in a shop which has signed a union agreement. There are numerous other devices. Unfortunately, there has not been a full understanding of the various methods of entry into the craft unions. A full study of these methods might be instructive.

The manpower goal of the minority contractor is to develop and upgrade craftsmen and to enable them to become regular members of their local building trade unions within a limited time frame. This goal recognizes the need to absorb into the construction industry those members of urban communities who are beyond the apprenticeable age, who are partially trained in various crafts, and who are marginally employed. These workers may now have only limited access to training programs which will permit them to become journeymen; but they could be trained by programs which absorb the cost of their training. On-the-job training programs which pay contractors—not unions—a productivity differential will permit many craftsmen to become fully productive.

For example, the upgrading process can be applied to the existing members of the labor unions. Many laborers have had much experience helping plumbers. They should be able to be upgraded at a very rapid rate thus creating more openings in the laborer's union ranks.

FULL IMPLEMENTATION

Minority contractors must be trained on the job; they must not be expected to learn how to solve their business problems only in a classroom. We must somehow build in support for the cost of minority contractors' learning on the job. Giving technical assistance and management support to an unemployed contractor or to one who is only marginally employed may be acceptable as a part of an affirmative action program, but it is considered non-responsive to the needs of the minority-contractor community.

Senator McIntyre. I want to thank you, Mr. Debro and Mr. Brewster. The hour is getting pretty late, and I do appreciate your coming here. Your statements are excellent and they will be given serious consideration by the comimttee.

The committee stands in recess until 10 a.m. tomorrow.

(Whereupon, at 1 p.m. the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, June 17, 1970.)

SMALL BUSINESS LEGISLATION—1970

WEDNESDAY, JUNE 17, 1970

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
SUBCOMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommitee met, pursuant to adjournment, at 10 a.m. in room 5302, New Senate Office Building, Senator Thomas J. McIntyre, chairman of the subcommittee, presiding.

Present: Senators McIntyre and Percy.

Senator MCINTYRE. The committee will come to order.

This morning the committee is very happy to welcome the distinguished chairman of the Select Committee on Small Business, Senator Alan Bible of the great State of Nevada. We are delighted to see you, Mr. Chairman, and as usual you may proceed to testify in any manner that you see fit.

STATEMENT OF ALAN BIBLE, U.S. SENATOR FROM THE STATE OF NEVADA, CHAIRMAN, SENATE SELECT COMMITTEE ON SMALL BUSINESS

Senator BIBLE. Thank you very much, Mr. Chairman. I have a lengthy statement and with your permission, and I know you are very happy to have a statement shortened up, I will just hit the highlights and ask permission to file the full statement in the record.

Senator MCINTYRE. Without objection it shall appear in full.

(The complete statement follows:)

STATEMENT OF ALAN BIBLE, U.S. SENATOR FROM THE STATE OF NEVADA

As Chairman of the Senate Committee on Small Business, I would like to express my appreciation to this Subcommittee for its conscientious attention to small business legislation. These three sessions, I believe, constitute the second set of public hearings on small business bill during the 91st Congress. I feel that the commitment and the alert attention of the Senator from New Hampshire (Mr. McIntyre) and other members of the Subcommittee well serve the people of New England and the small business communities across the country.

My appearance is in response to the Chairman's kind invitation and is in behalf of S. 1750, and Senator McIntyre's related bill, S. 3528. My statement this morning will depart from the text prepared for the Record, in order to focus upon the questions which emerged in yesterday's session.

Since 1965, Congress has often taken the initiative and has set in place many milestones of consumer legislation, including the Water and Air Quality Acts of 1965 and 1967, the Wholesale Meat and Poultry Acts of 1967 and 1968, the Fair Packaging and Truth in Lending Laws, and the Motor Vehicle Air Pollution Control Act.

This is really a splendid record, and one that is deserving of public recognition. However, the problem (which is well known to this Subcommittee, but less

familiar to other Members of Congress and the public) is that the 95% of U.S. firms which are small business are far less financially capable of making extensive improvements under a short-term deadline, particularly during a time of record-high interest rates. Accordingly, one refinement which I believe is urgently needed to carry this record of accomplishment forward is to provide equitably for the thousands of small businesses which must, in a very short period of time, comply with the more stringent standards required by these laws.

Every one of these statutes imposes a deadline for compliance. No doubt, there will be additional laws of this type in the future. This morning's *Washington Post*, in fact, reports that a House Committee yesterday cleared a bill which: "would give the Federal Government broad new powers to set industrial health and safety standards." ("Safety Lines Drawn on Industry," June 17, 1970, p. A14:3)

Three major questions arose in the testimony of the past two days—the urgency or non-urgency of the need for relief; the possible form of such relief; and whether the cost to the Treasury would make any effort at relief too expensive.

May I dispose of the third issue first. A program of emergency assistance such as that proposed by S. 1750 and S. 3528 should be substantially at no cost at all to the Treasury. This follows from what, in shorthand, is known as the "cost-of-money formula."

This formula is presently in the Small Business Act where it applies to business displaced by Federally-aided urban renewal or highway construction. It reads as follows:

". . . In the case of a loan made pursuant to paragraph (3), the rate of interest on the Administration's share of such loan shall not be more than the higher of . . . (B) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum, plus one-quarter of 1 per centum per annum."

During this Congress, we have further applied this cost of money formula in a new subsection 7(b)5 to small coal mines under the Mine Safety Act. (P.L. 91–173)

Thus, the income from the loans will more than match the interest cost. With rare exception, the entire principle of the loans will be repaid. During this period, the business will be generating federal, state, and local taxes. Neither the revolving fund nor the Treasury should be affected under either of these bills, and the "extra" ¼ of 1% and the tax revenues would provide a margin for covering any incidental costs.

Let me next address the question of urgency of need which seems from the position of the Small Business Administration to be in some dispute.

As one example of this need, there are 14,000 small meat processors which must conform with 73 pages of Federal specifications by December 15, 1970.[1] If these firms do not or cannot comply, an official of the meat inspection division of the U.S. Department of Agriculture will be able to close them down. It should be emphasized that these closings would, so far as I am able to determine, be without a hearing, without compensation, without consideration for the service these firms perform for their community or the sacrifices involved in building and maintaining such businesses over the years; and without provision for the effect of these waves of closing on the concentration of industry or the balance of employment between urban and town life.

The difficulties for conscientious businessmen attempting to fulfill these conditions, against the current of interest rates which have surged to their loftiest peaks in 100 years, have been extraordinary.

We need not imagine what these problems are. Two small meatpackers appeared before this Subcommittee last July. Both had compliance-plans approved by the Department of Agriculture. One stated he could obtain financing for his new facilities at 10 to 12 percent interest. The other stated he could find no available financing at all, even at this level of 50 percent over the prime rate. As the Chairman pointed out Monday, one out of three meat processing plants in New

[1] Perhaps as many as 7,000 of these businesses would be exempted from the Wholesome Meat Act by S. 3592 with respect to custom slaughter and the purchase and sale of Federal-inspected meat. This bill passed the Senate on June 5, 1970, and is presently pending before the House Committee on Agriculture. It does not, however, reach the problems of the conventional, commercial meat packer or processor.

Hampshire has already shut its doors. Testifying last July, Dr. Garvin, the SBA Assistant Administrator for Research, stated "We visited Nevada . . . and found there acute problems . . . of the two or three packers that we examined, we found none that looked as though they could make the grade."

Because of the tight money situation, many other opportunities for modernization will simply be precluded or will be possible only at exorbitant rates of interest.

In my opinion, emergency financial assistance, for the purpose of tiding small businesses over this crisis period, is an urgent necessity. Without such help, the U.S. Government takes the responsibility, wanted or unwanted, of forcing thousands of firms out of business without practical legal recourses. This seems to me almost tantamount to the taking of property without due process of law. It is quite possible that the U.S. Government might thereby bring forth a rash of law suits. However, the more likely result is that hundreds of these small family and community firms will not have the resources for protracted litigation, and will therefore quietly give up the struggle.

It would be tragic for small business and the free enterprise system to make small business the victim of our national environmental and consumer advances of the past five years. Legislation such as S. 1750 and S. 3528 are designed to provide a practical remedy to prevent this.

Both bills proceed upon the legal theory that the deadlines have created an imminent emergency, and therefore legal justification for treating the financial need as similar to those of subsections 7(b)3 and 7(b)5 of the Small Business Act.

Another positive consideration is that funds are presently available pursuant to section 7(b) in the separate disaster revolving fund created in the 1966 legislation, about $168 million as of April 30, 1970. Congress has been shown it is sympathetic to replenishing this fund. The mechanism proposed by S. 1750 and S. 3528 was, in fact, carefully worked out with the technical people at SBA. It has the approval of at least its 13 sponsors in the Senate, and there are Congressmen who are considering this matter in the other body. S. 3528 adds to the list of those concerned and makes the welcome supplementary proposal of aiding in some of the preventive aspects of waste disposal and pollution control.

One further point regarding the form of possible relief. I agree with the Chairman that complete reliance upon the guaranty loan system is hazardous. The first drawback is that the interest rates at the market level, which, it was pointed out yesterday, currently range to a least two points above rate.

The second, and more dangerous drawback is that the private banking sector may, for reasons sufficient to itself, decline to make money available for such loans. The Subcommittee is aware that, in the District of Columbia, and probably in other places, banks are actually cutting back the amounts of their loans in 1970. Under these circumstances, I seriously question whether it is proper for the Government, which created these compliance problems for small business, to claim it is discharging its responsibilities by placing the matter in the hands of the private banking system, which is strapped for liquidity and already rationing its loans. What assurance would the Senate have that a small firm, threatened with closing, would recieve a loan from a local bank? No assurance at all, I maintain.

In conclusion, I would respectfully invite the Subcommittee's attention to the fact that small firms in many industries confront definite calendar deadlines—in the meat industry it is December 15, 1970. I might therefore suggest that the Subcommittee infuse the SBA with a sense of urgency so that the study it has undertaken in the light of Senate Resolutions 290 and 176 be completed by an equally definite date. That date should, I feel, be early enough to enable this Subcommittee to take timely action on the legislation before it comfortably prior to the adjournment of this session that would allow the House to consider this legislation and that if it is passed, to have appropriate SBA regulations drafted and ready to meet the need. The cost of delay will, I fear, be the elimination of thousands of small businesses.

Additional material on this subject is contained in my statement of July 8, 1969, and the Appendixes thereto.[2] My hope is that the efforts of the Congress, the SBA, and of all concerned will resolve this problem so that small businesses currently battling federal deadlines in addition to their other manifold problems, will continue to have a place in the American economy of the future.

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[2] "Small Business Legislation, 1969" Hearings before the Subcommittee on Small Business of the Senate Banking and Currency Committee, pp. 1–20.

Senator BIBLE. Let me first express to you my appreciation for the splendid work you and the subcommittee are doing in the field of small business.

I think the three sessions you have had this week constitute the second set of public hearings during the 91st Congress. Your alertness, your interest and your attention to this very vital problem of the small business communities is of great importance to them, and we trust eventually that legislation will move forward which will be of practical assistance to them.

I appreciate your invitation to appear today.

My statement this morning departs from the text prepared for the record in order to focus upon questions which emerged in Monday and Tuesday's session.

Since 1965 Congress has often taken the initiative and has set in place many milestones of consumer legislation, including the Water and Air Quality Acts of 1965 and 1967, the Wholesome Meat and Poultry Acts of 1967 and 1968, the fair packaging and truth in lending laws, and the Motor Vehicle Air Pollution Control Act.

This is really a splendid record and one that is deserving of public recognition. However, the problem which is well known to this subcommittee, but less familiar to other Members of Congress and the public, is that the 95 percent of U.S. firms which are small business are far less financially capable of making extensive improvements under short-term deadline, particularly during a time of record-high interest rates. Accordingly, one refinement which I believe is vitally needed to carry this record of accomplishment forward is to provide equitably for the thousands of small businesses which must, in a very short period of time, comply with the more stringent standards required by these laws.

Every one of these statutes imposes a deadline for compliance. No doubt, there will be additional laws of this type in the future. And some of them have been mentioned even in our current newspapers within the last several days.

Three major questions arose in the testimony of the past 2 days—the urgency or nonurgency of the need for relief; the possible form of such relief; and whether the cost to the Treasury would make any effort at relief too expensive.

The first issue I know is somewhat troublesome because so many questions on the merits of legislation always seem to get back to the matter of money. It does appear to me that a program of emergency assistance such as that proposed by S. 1750 and S. 3528 would be substantially at no cost at all to the Treasury. This follows from what, in shorthand, is known as the "cost-of-money-formula."

The formula is presently in the Small Business Act, where it is applied to businesses which are displaced by federally aided urban renewal or highway construction, and I detail the section of that act in full here and won't burden you with reading sections which are very familiar.

During this Congress, we have further applied this cost of money formula in a new subsection 7(b)(5) to small coal mines under the Mine Safety Act (Public Law 91–173).

Thus, the interest income from the loans will more than match the cost of that interest to the Federal Government. With rare exception,

the entire principle of the loans will be repaid. During this period, the businesses assisted, will be generating Federal, State and local taxes. Neither the revolving fund nor the Treasury should be affected under either of these bills, and the "extra" one-quarter of 1 percent and the tax revenues would provide a margin for covering any incidental costs.

Let me next address the question of urgency of need which seems from the position of the Small Business Administration to be in some dispute.

As one example of this need, there are 14,000 small meat processors which must conform with 73 pages of Federal specifications by December 15, 1970. If these firms do not or cannot comply, an official of the meat inspection division of the U.S. Department of Agriculture will be able to close them down.

It should be emphasized that these closings would, so far as I am able to determine, be without a hearing, without compensation, without consideration for the service these firms perform for their community or the sacrifices involved in building and maintaining such businesses over the years; and without provision for the effect of these waves of closing on the concentration of industry or the balance of employment between urban and town life.

The difficulties for conscientious businessmen attempting to fulfill these conditions, against the current of interest rates which have surged to their loftiest peaks in 100 years, have been extraordinary.

We need not imagine what these problems are. Two small meatpackers appeared before this subcommittee last July. Both had compliance-plans approved by the Department of Agriculture. One stated he could obtain financing for his new facilities at 10 to 12 percent interest. The other stated he could find no available financing at all, even at this level of 50 percent over the prime rate.

As the chairman pointed out Monday, one out of three meat processing plants in New Hampshire has already shut its doors.

Testifying last July, Dr. Garvin, the SBA Assistant Administrator for Research, stated, "We visited Nevada—and found there acute problems—of the two or three packers that we examined, we found none that looked as though they could make the grade."

Because of the tight money situation, many other opportunities for modernization will simply be precluded or will be possible only at exorbitant rates of interest.

In my opinion, emergency financial assistance, for the purpose of tiding small businessess over this crisis period, is a pressing necessity. Without such help, the U.S. Government takes the responsibility, wanted or unwanted, of forcing thousands of firms out of business without practical legal recourse. Whatever their legal rights, I doubt whether many small and family firms would have the recourse for the lengthy litigation which would be needed for court tests of these laws.

It would be tragic for small business and the free enterprise system to make small business the victim of our national environmental and consumer advances of the past 5 years. Legislation such as S. 1750 and S. 3528 are designed to provide a practical remedy to prevent this.

Both bills proceed upon the legal theory that the deadlines have created an imminent emergency, and therefore legal justification for

treating the financial need as similar to those of subsections 7(b)(3) and 7(b)(5) of the Small Business Act.

Another positive consideration is that funds are presently available pursuant to section 7(b) in the separate disaster revolving fund created in the 1966 legislation, about $168 million as of April 30, 1970. Congress has also shown it is sympathetic to replenishing this fund.

One further point regarding the form of possible relief. I agree with the chairman that complete reliance upon the guaranty loan system is hazardous. The first drawback is that the interest rates for guaranteed loans at the "market" level. It was pointed out yesterday that these interest costs currently range to at least two points above the prime rate.

The second, and more dangerous drawback is that the private banking sector may, for reasons sufficient to itself, decline to make money available for such loans. The subcommittee is aware that, in the District of Columbia, and probably in other places, banks are actually cutting back the overall dollar levels of their loans in 1970.

Under these circumstances, I seriously question whether it is proper for the Government, which created these compliance problems for small business, to claim it is discharging its responsibilities by placing the matter in the hands of the private banking system, which is strapped for liquidity and already rationing its loans. What assurance would the Senate have that a small firm, threatened with closing, would receive a loan from a local bank? No assurance at all, I maintain.

In conclusion, I would respectfully invite the subcommittee's attention to the fact that small firms in many industries confront definite calendar deadlines—in the meat industry it is December 15, 1970.

I might therefore suggest that the subcommittee infuse the SBA with a sense of urgency so that the study it has undertaken in the light of Senate Resolutions 290 and 176 be completed by an equally definite date. That date should, I feel, be early enough to enable this subcommittee to take timely action on the legislation before it comfortably prior to the adjournment of this session that would allow the House to consider this legislation and that if it is passed, to have appropriate SBA regulations drafted and ready to meet the need.

The cost of delay will, I fear, be the elimination of thousands of small businesses.

Additional material on this subject is contained in my statement of July 8, 1969 and the appendixes thereto.

My hope is that the efforts of the Congress, the SBA and of all concerned will resolve this problem so that small businesses currently battling Federal deadlines in addition to their other manifold problems, will continue to have a place in the American economy of the future.

Senator McIntyre. I want to thank you, Senator, for a fine statement.

I want to comment, too, that the scope of your bill, which we don't have before us at this time but on which hearings were held last year, bore very heavily, it seems to me, on the problem that we are trying to deal with in S. 3528, namely that as Government attempts to regulate industry in the public interest, many times it is the small business element of that particular industry that finds itself in a economic bind in order to live up to the increased regulation.

I think we have a dramatic example of that in our drug industry, and I am sure our late and beloved friend, Senator Estes Kefauver, who fought so hard to bring some of these rules to the drug industry, would be appalled to see how many of the smaller companies have fallen by the wayside or have merged with the larger companies as a result.

You refer to the 73 pages of regulations that the meat-packing industry has to live up to. So, too, as we look forward to the antipollution momentum that I am sure will be appearing on our Senate floor and the acts of Congress in the near future, we find that small business will find it very difficult to live up to some of these rules.

That is why we have introduced our bills.

Senator BIBLE. I wholeheartedly support your bill, S. 3528, Mr. Chairman. I think it is a splendid bill. Whatever type of legislative refinement it needs, and it may need very little, we are trying to get the same objective. We are trying to help the little guy. That is doubly hard to do in the climate of high interest rates.

Senator MCINTYRE. The Small Business Administration opposed your bill S. 1750, which is similar in purpose through broader in scope than mine, S. 3528, on the grounds that the disaster loan programs under which these economic injury loans would be made operated at a substantial loss and would place too great a drain on the Treasury.

They repeated this statement on Monday with respect to my bill, S. 3528. However, SBA's position seems to be based on a misconception that the loans proposed in these two bills would be at the 3-percent interest rate provided for natural disaster loans. Is it not true that the loans proposed in your bill, S. 1750, and mine, S. 3528, would be made under an interest rate formula which at present would come to about 6⅝ percent?

Senator BIBLE. I think it figures out to about that figure, and it is a cost-of-money formula that is worked into a number of bills which are already operational in statutes of the United States. So, I don't think their criticism of your bill or of my bill or of either bills is valid on that point.

I think what you say about the current cost of borrowing the Federal Government being that 6⅝ percent range is correct I don't have the exact statistics, but I am sure you are right.

Senator MCINTYRE. Interestingly enough, since the interest subsidy provision of the administration bill, S. 3699, contains a formula under which the effect of the interest rate for regular SBA loans would come out to 5.5 percent, would the return to the Government not be greater, and the cost less, under S. 1750, your bill, and my bill, S. 3528, than under this provision of the administration bill?

Senator BIBLE. It seems to me your conclusion is completely valid. I agree with you.

Senator MCINTYRE. I want to thank you very much and yield to the distinguished Senator from Illinois, Senator Percy.

Senator PERCY. I would merely like to express my pleasure at having the distinguished chairman of the Select Senate Committee on Small Business as our leadoff witness in this third day of hearings.

I would like to apologize for not being here the first 2 days; I was out of the city, but I have been briefed by my staff on the hearings.

I am a cosponsor of Senator McIntyre's bill, S. 3528. I am pleased

that he has pointed out that this is not a big drain on the budget, and I support doing this.

I don't see how you can compel small business to meet standards that previously never existed without giving them some help. By not having that help you might drive them out of business.

Senator BIBLE. I couldn't agree with you more.

Senator PERCY. I think also if you can find in this budget the money for the SST, hundreds of millions of dollars that will pollute the atmosphere, noise pollution, sound pollution, every other form of pollution, you ought to be able to find the money to help business fight the problem of pollution with the new high, rigid standards that have been established.

So, I commend you, Senator Bible, for your testimony and the support which you have offered to this bill.

Thank you very much.

(An additional statement of Senator Bible was supplied for the record and follows herewith:)

ADDITIONAL STATEMENT OF ALAN BIBLE, U.S. SENATOR FROM THE STATE OF NEVADA

As Chairman of the Senate Committee on Small Business, I would like to express my appreciation to this Subcommittee for its conscientious attention to small business legislation. This morning, I believe, begins the second set of public hearings on small business bills during the 91st Congress. I feel that the commitment and the alert attention of the Senator from New Hampshire (Mr. McIntyre) and other members of the Subcommittee well serve the people of New England and the small business communities across the country.

My appearance is in behalf of S. 1750, and Senator McIntyre's related bill, S. 3528.

The problem, briefly, is that between 1965 and 1968 Congress set in place many milestones of consumer legislation, including the Water and Air Quality Acts of 1965 and 1967, the Wholesome Meat and Poultry Acts of 1967 and 1968, the Fair Packaging and Truth in Lending Laws, and the Motor Vehicle Air Pollution Control Act.

This is really a splendid record, and one that is deserving of public recognition. One refinement which I believe is urgently needed to carry this record of accomplishment forward is to provide equitably for the thousands of small businesses which must, in a very short period of time, comply with the more stringent standards required by these laws.

Every one of these statutes imposes a deadline for compliance. For instance, in the meat packing industry alone there are 14,000 small meat processors which must newly conform with 73 pages of Federal specifications by December 15, 1970.[1] If these firms do not or cannot comply, an official of the meat inspection division of the U.S. Department of Agriculture will be able to close them down—without a hearing; without compensation; without consideration for the service they perform for their community, or the sacrifices involved in building and maintaining such businesses over the years; and without provision for the effect of these waves of closing on the concentration of industry or the balance of employment between urban and town life.

The difficulties for conscientious businessmen attempting to fulfill these conditions, during a period when interest rates have been at their highest peaks in 100 years, have been extraordinary.

We need not imagine what these problems are. Two small meatpackers appeared before this Subcommittee last July. Both had compliance-plans approved by the Department of Agriculture. One stated he could obtain financing for his new facilities at 10 to 12 percent interest. The other stated he could find no available financing at all, even at this level of 50 percent over the prime rate.

[1] Perhaps as many as 7,000 of these businesses would be exempted from the Wholesome Meat Act by S. 3592 with respect to custom slaughter and the purchase and sale of Federally-inspected meat. This bill passed the Senate on June 5, 1970, and is presently pending before the House Committee on Agriculture. It does not, however, reach the problems of the conventional, commercial meat packer or processor.

Last year the Secretary of the Wisconsin Department of Agriculture, Mr. McDowell, stated:

"As time goes on, pressure will be applied continually to improve and upgrade physical and structural facilities in increasing stricter compliance with Federal law. This could mean major alterations of small plants with respect to such things as 11′ heading rails, 16′ bleeding rails, doors of specified widths . . . Limited funds and personnel, coupled with supreme authority and direction given to the Federal agencies by the Wholesome Meat Act could conceivably force thousands of small plants out of business . . .[2]

Comparable situations, with comparable deadlines, are developing in industry after industry. Your Subcommittee files contain ample correspondence transmitted by members of the Select Committee, which illustrate persuasively that the threat of small business closings has become a well-established pattern.

I believe the Senator is familiar with the example of the cheese-making plants in his neighboring State of Vermont.[3] In that matter, 18 cheese manufacturers were forced by Federal and State water pollution authorities to discontinue the dumping of whey into Vermont streams by January 1, 1969. Their immediate alternatives were to construct a $30 million sewage treatment plant or go out of business.

Fortunately, in that case, the State Technical Services Program, which was still in existence then, came to the rescue by discovering that the whey (which was a waste product) could be converted into a commercially valuable protein concentrate. As a result, 70 jobs were saved in the cheese production facilities and 54 new direct jobs were created at the new by-product plant.

However, as the Subcommittee is aware, both the Department of Commerce and the Small Business Administration have abolished their technology transfer services, so that the small business community will not be able to rely on such highly constructive support in the near future, at least, in making the transitions required by the many laws which I have listed.

Because of the tight money situation, many other opportunities for modernization will simply be precluded or will be possible only at exorbitant rates of interest.

What is therefore needed, in my opinion, is emergency financial assistance to tide over the small businesses affected. Without such help, the U.S. Government will be forcing thousands of firms out of business without practical legal recourse. This seems to me tantamount to the taking of property without due process of law, and it is possible that the U.S. Government might thereby give rise to a rash of law suits. However, the more likely result is that hundreds of these small family and community firms will not have the resources for protracted litigation and will therefore quietly give up the struggle.

It would be tragic for small business and the free enterprise system to make small business the victim of our national environmental and consumer advances of the past five years. Legislation esuch as S. 1750 and S. 3528 are designed to provide a practical remedy to prevent this.

S. 1750 proceeds upon the legal theory that the deadlines have created an emergency, and therefore legal justification for treating the financial need is similar to other disaster situations pursuant to section 7(b) of the Small Business Act. Relocation because of urban renewal and highway construction are dealt with in existing subsection 7(b)3.

Under section 7(a), that is the regular business loan program, it is difficult to draw distinctions between different classes of need. Priorities, or guidelines, which do not have the force or clarity of statute are elusive and difficult to administer.

It is also well known that the direct and participation lending of the Small Business Administration was cut 58½ percent in 1969. As a result, the amount available for direct lending is presently about $18 million for the entire year for all of the 50 States.

Furthermore, some funds are presently available pursuant to section 7(b) in the separate disaster revolving fund created in the 1966 legislation, and Congress has shown it is sympathetic to replenishing this fund. The mechanism proposed by S. 1750 has thus been carefully worked out with the technical people at SBA.

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[2] "Implications of the Wholesome Meat Act," by D. N. McDowell, Winter 1968 Edition of *State Government* Magazine.

[3] "Program Evaluation of the Office of State Technical Services," Report to the Department of Commerce by the Arthur D. Little Co., Selected Cases (Oct. 1969), p. 13.

It has the approval of at least its 13 sponsors in the Senate, and there are Congressmen who have considered this matter in the other body. S. 3528 has added others to the list of those concerned and is a welcome supplement to the thinking in this field.

In May, SBA formally circulated a questionnaire to a sampling of about 2,500 firms in the meat industry in order to gather data on the cost of compliance changes, and the relative availability of private capital at reasonable rates for these purposes. It is pertinent to point out that this action was first suggested by S. Res. 290 of the 89th Congress, introduced by Senator Sparkman and myself in mid-1968. S. Res. 176 repeated this request in the 90th Congress. I would respectfully invite the Subcommittee's attention to the fact that small firms in this industry face a definite calendar deadline of December 15, 1970. I might therefore suggest that the Subcommittee direct the SBA study be completed by an equally definite date. The reporting date should, I feel, be early enough to enable this Subcommittee to take timely action on the legislation before it prior to adjournment of this session. The cost of delay will be the elimination of thousands of small businesses.

Additional material on this subject is contained in my statement of July 8, 1969, and the Appendixes thereto.[4] My hope is that the efforts of all concerned will resolve this problem facing small business within the deadlines which the Federal Government has itself imposed.

Senator McINTYRE. The Honorable Fred R. Harris, U.S. Senator from the State of Oklahoma, a cosponsor of the bill S. 3528, has a statement which, without objection, I will place in the record at this point.

(The statement follows:)

STATEMENT OF FRED R. HARRIS, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Mr. Chairman, as a co-sponsor of S. 3528 I just wanted to take this opportunity to once again express my wishes concerning the proposed legislation.

As you so ably pointed out in your remarks upon introduction of this legislation, the growing awareness in this country about the problems resulting from pollution of our environment has made it necessary for thousands of small business operations to alter their plants and equipment in order to guard against polluting the environment. The legislation we are considering today would require the Small Business Administration to consider environmental aspects in their future loan programs and would authorize the SBA to make laws to assist small businesses in their efforts to meet the new standards and requirements which we have adopted with respect to air and water pollution.

Furthermore, this legislation will give priority to those loan applications which might further the development and utilization of new pollution control methods and devices.

Mr. Chairman, we all agree that steps must definitely be taken to guarantee the quality of our environment and to control and abate the pollution which has been taking place for years by government, industries, and private citizens. Standards have been developed which I feel must be met, but I also feel that we should be careful that our actions to avert one crisis do not create another.

If legislation similar to that we are considering here today is not enacted, I feel that the financial burden placed on the small businessmen throughout the country who are required to install pollution control equipment might be so great that it would create an economic crisis in the small business community. I, therefore, feel that this legislation should be adopted in order to make loans available to these small businessmen for the control and abatement of pollution in order that they might be able to continue in business and continue to make their contributions to our economy in our society which we have benefited from over the years.

Mr. Chairman, I therefore hope that the committee will act favorably on this legislation and that it will be enacted into law at the earliest possible date.

Senator McINTYRE. I call as our next witness the Honorable G. William Whitehurst, a Congressman from the Commonwealth of Virginia. I am glad to see you here. You may proceed to testify in any manner you see fit.

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[4] "Small Business Legislation, 1969" Hearings Before the Subcommittee on Small Business of the Senate Banking and Currency Committee, pp. 1–20.

STATEMENT OF G. WILLIAM WHITEHURST, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. WHITEHURST. Mr. Chairman, I have a statement which I will submit for the record. For the sake of time, I will pass over the initial thought of my prepared statement and direct my testimony to the particular legislation I have introduced in the House.

(The full statement appears on p. 159.)

Mr. WHITEHURST. First I have two reservations concerning the President's legislative recommendations of the new programs as a supplement to the direct loan program rather than as a replacement.

The second reservation concerns the absence of a comprehensive recommendation to correct detrimental effects of newly enacted Federal laws or regulations on small business.

I have recently introduced legislation in the House of Representatives—H.R. 17796—which would extend the 7(b) loan provisions of the Small Business Act to all small business detrimentally affected by newly enacted Federal laws and regulations.

This is similar in principle to S. 3528 and S. 1750.

Mr. Chairman, in our efforts to make long overdue corrections in areas of pollution abatement, consumer affairs, and occupational health and safety, we must not create the financial burdens similar to those we created in the early days of urban renewal.

When a neighborhood was declared an urban renewal area, older people who had paid for their homes, and many poor young families, had to shoulder the financial burden of relocating in more expensive homes elsewhere.

Now, when this situation arises, the Federal Government provides financial assistance by paying allowances to make up the difference between the cost of the previously owned home and the newer one.

Gradually, this same theory was applied to another important social and economic component of the neighborhood, the small business. The rate of failure of small business is historically high. To add an additional burden, one not of their own making and one usually affecting an established small proprietorship, was not fair.

Now, when a small business is forced to relocate because of urban renewal, financial assistance in the form of long-term, low-interest loans can be arranged.

It is this principle of assisting the innocent bystander that I advocate in my bill. When we pass a new law that requires plant facility changes, or the purchase of new equipment, we in effect are passing a law that establishes retroactive guilt and charges a fine for that guilt.

This is an immense burden to put on any business, but it is particularly hard on a small business that does not have the equity or collateral to finance such sweeping changes. Nor do many small businesses have the ability to carry high-interest loans because of their already high debt-to-income ratio.

Many small businessmen stay in business not so much for profit, but as a labor of love. It does not seem fair to me that through no fault of his own, the small businessman could be wiped out with the stroke of a pen.

Mr. Chairman, thank you again for giving me this opportunity to testify on this subject. I certainly hope the committee can not only

approve the new programs aimed at assisting those interested in opening or expanding a business, but can also approve the provisions as embodied in H.R. 17796, S. 1750 and S. 3528.

Mr. Chairman, I thank you for this opportunity.

Senator McIntyre. I want to thank you for a very fine statement, Congressman.

It is my understanding that your bill on the House side is similar to Senator Bible's.

Mr. Whitehurst. It dovetails with your own, I understand.

Senator McIntyre. You noted that last year on the Senate bill, the witnesses for the SBA objected to it because of what they thought would be the substantial disaster cost involved. It was agreed that a study would be undertaken by SBA to try to find out what the actual facts were down in the field, so to speak.

When the chairman was over here the other day, I asked him about the study but the study is apparently making very slow progress.

I want to commend you on your efforts in this field. While the bill I have introduced is relatively narrow in scope as compared to yours or Senator Bible's, I do think this entire field where we move in to regulate an industry in the public interest, is of tremendous importance since we do cause a byproduct that is very, very hard on small business.

Mr. Whitehurst. I couldn't agree with you more. I have seen several examples of this in my own district which, in fact, have prompted us to take this legislation up.

Senator McIntyre. I want at this time to excuse myself. The Armed Services Committee is in executive markup. Today we will be discussing the ABM, and at this time I am going to turn the chair over to my distinguished friend from Illinois, Senator Percy.

Senator Percy (presiding). Thank you very much, Mr. Chairman.

Congressman Whitehurst, I do wish to express an appreciation to you for your fine contribution, for your deep interest in this field, and the contributions you have made to small business. I find your testimony exceedingly helpful and I am grateful to you for it.

Mr. Whitehurst. Thank you, Senator; I appreciate that.

(The prepared statement of Congressman Whitehurst follows:)

Statement of Congressman G. William Whitehurst, a Representative in Congress From the State of Virginia

Mr. Chairman and members of the committee, it is indeed an honor for me to appear before this committee, particularly on a subject of such vital importance as small business.

Today there are approximately 5.5 million small businesses in our Nation. They employ over 54% of our labor force and had gross receipts of $409,251,000,000 in 1969.

There is no denying the importance of small business to our economy, nor the unique role it has played in our history. Over the years, small business has been the backbone of our economy just as the family has been the backbone of our society.

On March 20 of this year, the President sent his message on small business to Congress. I found his legislative package extremely comprehensive. I am pleased to see the provisions for increased activities in the area of guaranteed loans, particularly relating to the granting of interest subsidies for the first few years of the loan, the most crucial years for any new business.

I am also pleased to see that authority is being requested which will permit the small business administration to seek out sources of funds in the private sector of the economy that heretofore have been untouchable. Sources such as

foundations, trusts, pension funds, and other similar sources cannot under current law be classified as lenders will prove most fruitful as an additional source of long term money. This, along with the expanded guaranteed loan program and the interest subsidy program should prove to be beneficial tools for the Small Business Administration's regular programs as well as their more recent involvement in the area of minority enterprise.

These programs should be supported; however, I do have two reservations concerning the President's legislative recommendations.

The first deals with the apparent withdrawal from the direct loan program. It is my hope that Congress will view the recommendations of the new programs as a supplement to the direct loan program rather than as a replacement.

The second reservation concerns the absence of a comprehensivee recommendation to correct detrimental effects of newly enacted Federal laws or regulations on small business.

I have recently introduced legislation in the House of Representatives (H.R. 17796) which would extend the 7 (b) loan provisions of the Small Business Act to all small businesses detrimentally affected by newly enacted Federal laws and regulations. This is similar in principle to S. 3528 and S. 1750.

Mr. Chairman, in our efforts to make long overdue corrections in areas of pollution abatement, consumer affairs, and occupational health and safety, we must not create the financial burdens similar to those we created in the early days of urban renewal.

When a neighborhood was declared an urban renewal area, older people who had paid for their homes, and many poor young families, had to shoulder the financial burden of relocating in more expensive homes elsewhere. Now, when this situation arises, the Federal Government provides financial assistance by paying allowances to make up the difference between the cost of the previously-owned home and the newer, more expensive one.

Gradually, this same theory was applied to another important social and economic component of the neighborhood, the small business. The rate of failure of small business is historically high. To add an additional burden, one not of their own making and one usually affecting an established small proprietorship, was not fair. Now, when a small business is forced to relocate because of urban renewal, financial assistance in the form of long-term, low-interest loans can be arranged.

It is this principle of assisting the innocent bystander that I advocate in my bill: When we pass a new law that requires plant facility changes, or the purchase of new equipment, we in effect are passing a law that establishes retroactive guilt and charges a fine for that guilt.

This is an immense burden to put on any business, but it is particularly hard on a small business that does not have the equity or collateral to finance such sweeping changes. Nor do many small businesses have the ability to carry high-interest loans because of their already high debt-to-income ratio.

Many small businessmen stay in business not so much for profit, but as a labor of love. It does not seem fair to me that through no fault of his own, the small businessman could be wiped out with the stroke of a pen.

Mr. Chairman, thank you again for giving me this opportunity to testify on this subject. I certainly hope the committee cannot only approve the new programs aimed at assisting those interested in opening or expanding a business, but can also approve the provisions as embodied in H.R. 17796, S. 1750 and S. 3528.

Senator PERCY. At this time we will call Mr. Melvin L. Stark of the American Insurance Association.

We are delighted to have you with us. We have your testimony. You are free to read your statement or summarize it if you wish.

STATEMENT OF MELVIN L. STARK, AMERICAN INSURANCE ASSOCIATION; ACCOMPANIED BY DAVID Q. COHEN, STAFF COUNSEL, AMERICAN INSURANCE ASSOCIATION

Mr. STARK. Thank you.

We have a statement that is rather brief, and I hope you will bear with us in the reading of it. Of course, we will be prepared to answer any questions you may have.

I would like to introduce to you my colleague, Mr. David Q. Cohen, staff counsel for the American Insurance Association, who is an expert in the field of suretyship and who I am sure will be able to handle some questions that you will ask.

We appreciate the invitation to testify before this subcommittee with respect to the proposed legislation concerned with surety bonds for construction contracts involving "small business concerns."

The American Insurance Association is a trade association of insurance companies writing property, casualty, and surety lines of business. Insofar as the surety line of business is concerned, our membership underwrites a very substantial portion of the annual premium volume.

Our comments will be mainly directed to part B of title IV of S. 3699, relating to Surety Bond Guarantees, which is to be found on pages 10 through 14 of the printed bill.

The first paragraph of section 411 of S. 3699 reads as follows:

Section 411(a) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss, as hereinafter provided, as the result of the breach of the terms of a bid bond, payment bond or performance bond, by a principal on any contract up to $500,000 in amount subject to the following conditions:

Section 411(a) of S. 2609 is substantially similar. As we understand it, the draftsmen of S. 3699 have drawn heavily on Senator Bayh's bill. The principal differences, broadly speaking, between S. 2609 and S. 3699, lie in two areas. Senator Bayh's bill is limited to "construction contracts" and would also grant authority to the Small Business Administration to use its presently existing certificate of competency authority as an alternative method for meeting suretyship requirements.

S. 3699 deals with "contracts" in an unidentified way and does not purport to broaden the SBA certificate of competency powers. S. 2609 also calls for establishment of a National Construction Task Force composed of representative membership that would work toward "broadening the participation of small business enterprise in the construction industry" through instructional and informational programs.

We think that S. 2609's alternative procedure whereby the SBA certificate may function as a surety bond is deficient in that it provides no security whatsoever for unpaid labor and material performed for, or furnished under, the construction contract.

Such protection is absolutely essential particularly for public works construction, where, with few exceptions in the United States, no right of lien is available to unpaid labor and material men. Furthermore, the certificate of competency alternative of S. 2609 does not purport to and cannot possibly affect the bonding procedures of most public contracting bodies and private owners. Its application would be solely to Federal projects.

Whether the surety bond guarantee authority proposed to be granted to SBA by section 411(a) of S. 3699 (or of S. 2609) will have any appreciable effect in furthering the presumed purpose of the section to structure a mechanism for obtaining more contract surety bonds for economically disadvantaged contractors will depend in large measure upon the exact nature of the "terms and conditions" that the SBA may prescribe for obtaining the guarantee.

Without advance knowledge of these "terms and conditions" no one can presently say to what extent the proposed plan is feasible. Certainly, we believe it is imperative to better define the dimensions and characteristics of the "contractor problem" which these two bills seek to remedy.

Notwithstanding the absence of that exact knowledge, we can tentatively comment on those provisions already set out as subparagraphs of section 411(a), which lay down conditions for obtaining the guarantee to the surety. In that connection, we wish the subcommittee to consider the following matters:

As to subparagraph (1), the term "small business concerns" is not defined in the bill. We presume that the meaning intended is that found in the Federal Procurement Regulations (section 1–1.701–1(b)) which describes a "small business concern" as one whose average annual receipts for its preceding 3 fiscal years did not exceed $7.5 million. This definition, if applied to the instant legislation, would comprehend at least 90 percent of all American contractors. Consequently, sureties for such contractors might be eligible for guarantees on all contracts up to $500,000 undertaken by such contractors.

Is it intended by this legislation to make sureties for such a large class of contractors eligible for guarantees? Most contractors who would fall within the present definition of "small business concerns" are not economically disadvantaged and have had no difficulty in obtaining surety bonds.

We feel, therefore, that the committee should give thought to refining the meaning of "small business concern" for the purpose of these two bills, and to reducing the $500,000 contract limitation to not more than $50,000.

As to subparagraph (3), we wonder as to the nature of the proof which will be required from the contractor who claims that he cannot obtain the required bond in the normal commercial surety market without the guarantees envisaged by this bill.

We believe that the condition laid down in subparagraph (5) that "the contract meets requirements established by the Administration for feasibility of successful completion and reasonableness of cost" is impractical and unnecessary. The necessity for a performance and payment bond arises only after the owner has satisfied himself, as evidenced by his tentative award of the contract to the bidder, that successful completion is feasible for the price bid, and that the surety applying for the SBA guarantee thinks there is something more than just a bare possibility of performance by the bidder warranting its participation in the risk.

Therefore, we do not understand why SBA should be given authority to "second guess" the subject of "feasibility of successful completion and the reasonableness of cost." If SBA is required to reexamine such matters, processing delays will be inevitable.

As to subparagraph (6), relating to SBA review of the bond terms, we doubt that SBA will have any influence on those terms. In the case of public works contracts, the terms and conditions of the bonds they require are governed by Federal, State, or municipal legislation or regulations.

Usually, the surety has no choice other than to sign the bond or refuse to issue it in the form prescribed by the contracting authority. We

do not think it is practical to expect public bodies, and more so private owners, to revise their normal bond provisions simply as an accommodation to what SBA may think desirable as a condition of its guarantee to the surety.

It must be remembered that for every bidder that may need the assistance of the SBA facility for bond guarantees, there will be a number of others who can, without recourse to the facility, immediately comply with the usual bonding procedures of the public or private owners.

As to section 411(b), which would limit the amount of the SBA guarantee to the surety to "a sum not to exceed 90 per centum of the loss incurred by the surety," we can only speculate as to its implementation and the mechanics involved.

If the Congress feels that the "guarantee" experiment should be participated in by private business, it can only be done if 100 percent of the sureties' loss cost and expense is subsidized by the Government, the surety acting only in the capacity of a fiscal or managerial agent for the Government.

There is an analogy here to research and development types of contracts whereby many Federal agencies purchase management expertise and "know-how" of private industry to develop a program which is too hazardous for the private sector to develop with its own funds.

As to section 411(c), which mandates that SBA "shall fix a uniform annual fee which it deems reasonable and necessary for any guarantee issued," we do not know what is embraced by the phrase "uniform annual fee." Would this be the same for a bid bond as for a performance or payment bond? Such fee may exceed the very nominal bid bond premium.

Furthermore, on construction contract bonds, a single premium is paid even though the work may have a completion date 2 years in the future. We think the subcommittee's attention should be drawn to the need for expeditious processing of the guarantee to the surety because suretyship must be available to a contractor before certain dates set in the bidding and contractual documents.

Without enumerating them in specific detail, we find there are other technical ambiguities existing in these measures that require clarification.

It will be of interest to the subcommittee to know that our organization cooperated with the Ford Foundation study and later held extensive meetings with officials of the Small Business Administration in 1968. As a result of the SBA discussions, teams that included representatives of the surety business were set up in a number of cities.

These groups are providing expertise and information to small contractors presently. We favor the expansion of this voluntary program and hereby renew our promise of cooperation.

Within recent weeks, a sampling has been taken among a number of surety companies to determine the number of minority contractors on their books for whom bonds are presently being written. On the basis of incomplete returns, we have found that 21 of these companies have 246 minority contractors on their books as customers.

In closing, we repeat what was stated on behalf of our membership as recently as June 5, 1970, before the Subcommittee on Housing of the House Banking and Currency Committee relative to the bonding aspects of H.R. 13666 and H.R. 15470:

We appreciate that the increased efforts to bring minority contractors into the construction industry mainstream have been difficult. In such efforts, we foresee the necessary involvement of not only surety companies, but also all segments of the construction industry, lending institutions and organized labor so that the skills vital to the construction industry can be acquired and improved.

Without enhancement of opportunity to acquire such skills, the probability of upstream progress for the minority groups from construction journeymen to entrepreneurship is indeed bleak. We therefore support federal, state and private efforts to better educate and train potential workers and entrepreneurs in the construction field.

We note that section 102 of S. 3699 would provide for various programs to enhance the opportunity of the economically disadvantage to acquire skills necessary for advancement in our economy. We also note the provisions of S. 2609 calling for the establishment of a national construction task force. We support these two provisions in both bills.

We believe that your subcommittee is aware that under the National Housing Acts of 1968 and 1969, the Secretary of Housing and Urban Development is obligated by June 30, 1970, to report to the Congress on "reinsurance and other means to help assure * * * adequate availabiilty of surety bonds for construction contractors in urban areas."

This study project may suggest feasible ways by which minority group construction contractors and the surety companies may more adequately participate in achieving the goals sought by S. 2609 and S. 3699. We look forward to that report and will comment upon it when it is made available.

If there is additional information required of our organization, we shall be happy to furnish it at your request.

Thank you, sir.

Senator PERCY. Thank you, Mr. Stark.

In your statement you raise the question of SBA's review of the bond terms. Do you believe that this would result in one bond for those contracts guaranteed by SBA and another bond for those contracts not so guaranteed? Would SBA's bond be more favorable to the Government? What is your feeling on this?

Mr. STARK. I think generally speaking, sir, what we have tried to speak to, both in this statement and previously to the other subcommittee last week, is that in terms of the guarantee program, which is suggested, there has to be some delineation and some specification of that program totally aside from the normal surety business.

We think the definition of this new concept, this experimental program, has somehow to be made more specific. It cannot use the same criteria as used now in the surety business, and I think in any effort to achieve the goals that these two bills seek there would have to be considerable consultation to draw up guidelines, guideposts, if you will, to try to define this particular segment of the business in the interest of giving it this special treatment.

Senator PERCY. On behalf of Senator McIntyre, I ask this question: You have pointed out, as have other witnesses, that there is a problem with respect to the certificate of competency in lieu of bonding provision of S. 2609 in that there is no provision for paying off subcontractors, material suppliers, or workmen if the contractor defaults.

Would it solve this problem if the bill were amended so that the certificate of competency would be alluded to substitute only for bid and performance bonds and not for payment bonds?

Mr. STARK. I am sure later we will be prepared to answer that in detail. Mr. Cohen may want to speak to it briefly for the record.

Mr. COHEN. It is the payment bond which normally provides for labor/material and unpaid labor/material to be paid. If you limited the bond only to a performance bond, the likelihood is you wouldn't run into that payment proposition.

But there is some danger even if you have a performance bond alone, because the performance bond picks up the obligations which you find in the contract between the owner and the contractor, and if the contract says that the contractor shall furnish and pay for all labor and material, the judicial decisions will pick up the payment obligations within the performance bond.

It is a rather delicate bit of surety law that is involved there.

Senator PERCY. I thank you very much indeed. On Senator McIntyre's behalf, there are four additional questions which because of the number of witnesses this morning I will insert in the record and send a copy to you and ask that you give us a written reply.

I thank you for being with us.

(The questions and answers referred to follow:)

AMERICAN INSURANCE ASSOCIATION,
Washington, D.C., July 20, 1970.

Senator THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business of Senate Banking and Currency Committee, Old Senate Office Building, Washington, D.C.

DEAR SENATOR MCINTYRE: On June 17, 1970 we testified before your Subcommittee with respect to the captioned legislation. In the course of our prepared testimony, we were asked to respond to supplemental questions for the Record furnished us shortly thereafter by Subcommittee staff. In response to those questions, we are submitting this letter for the Record, listing the questions propounded and our respective answers.

Question 1. You state on page 4 of your statement that you recommend that the 90% guarantee provided in S. 2609 and S. 3699 be increased to 100%, and that the surety would act only as a "fiscal or managerial agent for the government."

Will you please expound on the role that you would expect the surety to play under this concept?

Answer 1. What we meant in our statement of June 17, 1970 as to the surety acting as "fiscal or managerial agent for the government" in connection with the government subsidy of 100% of the surety's loss, cost, and expense, is that any surety company interested in participating in the program will entertain applicants, for bid, performance and payment bonds for minority group contractors through licensed agents or brokers, in the same way as it entertains applications normally. It will review the applicant's finances and capability to perform the contract he proposes to bid upon, and will determine if there is a reasonable probability that he can do so. If there is, the surety, would write the bond on its own responsibility if the risk measured up to the surety company's reasonable underwriting standards. If the company were not satissfied with the risk, the government would be advised and then, if directed by the government, the surety, acting on a commitment by the government to reimburse it for 100% of any loss, cost, and expense in handling the case, will issue the bond or bonds in its corporate name and thereafter will supervise all aspects of such bonding in the same way as it handles its normal book of business. It will collect the premium for the bond and account for it to the government as its agent and will handle all claim procedures and loss payments which may be necessary in the same way as

it usually does on its unguaranteed bonds. If no loss arises from the bond, the interested surety would expect to be reimbursed by the government on a non-profit basis for its expenses in handling the matter.

Question 2. Mr. Sandoval testified that SBA would ask the surety industry to cooperate in working out an insurance program as contemplated by these bills S. 2609 and S. 3699.

I presume the surety industry will cooperate with SBA on this program?

Answer 2. Recognizing that our Association can only state the general policy position reached by our membership and that individual surety companies will make their own decisions concerning actual participation in the program, we wish to emphasize that underwriting the operations of contractors through undertakings of surety companies can be risky even under optimum circumstances. Therefore, in contemplating the establishment of a new program of suretyship with underwriting criteria and standards having marginal application, the likelihood of success is diminished even further. We think it is important to put that fact in sharp focus because of the continuing to success that hinder the small contractor, totally unrelated to his success in securing a bonding commitment. We, of course, refer to lack of labor skills, lack of managerial expertise and lack of capital or credit standing. Certainly, we will cooperate with SBA in setting up a program for participating surety companies which we hope will encompass not only our own membership but also other surety companies not affiliated with the American Insurance Association. If a 100% guarantee arrangement is worked out, the chances for such participation would be greatly increased, recognizing that our up-to-date survey revealed 21 surety companies do have 246 minority contractors on their books as clients. We use the term "minority contractor" advisedly to distinguish this group alone in our discussion of "small contractors" where the numbers are considerably larger.

Question 3. Mr. Stark, you pointed out, as have other witnesses that there is a problem with respect to the certificate of competency in lieu of bonding provision of S. 2609 in that there is no provision for paying off subcontractors, material suppliers or workmen if the contractor defaults. Would it solve this problem if the bill were amended so that the certificate of competency would be allowed to substitute only for bid and performance bonds and not for payment bonds?

Answer 3. It must be noted that the proposed SBA certificate of competency procedure in S. 2609 will only be applicable to surety bond requirements on construction contracts to be awarded by the federal government. It is significant that S. 2609 as a whole is not limited in its application to federal government construction contracts. Its guarantee program, for example, would comprehend any surety bond required by any public body (federal or otherwise) and also private contracts. The acceptance of the SBA certificate in lieu of normal bonding requirements by public bodies, other than federal, would require legislation in each state. As to private owners requiring bonds we cannot envisage any legal way whereby either the Congress or state legislation can force upon private owners an acceptance of an SBA certificate of competency in lieu of their own surety bond requirements.

There is unquestionably a serious problem which would arise in any case even if the Congress, state legislators, and private owners, were willing to mandate or accept (as in the case of private owners) an SBA certificate of competency limited only to the hazard of nonperformance.

In addition to obtaining a guarantee against default by the contractor in processing the construction project, another important reason for surety bonding as found in federal and state public works procurement statutes is the protection of subcontractors, labor and materialmen who without surety bond payment protection would be bereft of any security (other than the personal responsibility of the person with whom they deal) for the labor and materials incorporated in the work. The reason for this lack of any security lies in the general rule, based upon public policy, that public works cannot be liened for the value of the labor performed or the materials furnished in the construction process. Since 1894, subcontractors, labor and materialmen on federal public works have been protected by payment bond coverage. They expect such protection and its existence has become part of the credit practices relative to public work. (Substantially every state, by statute, requires payment bond protection for subcontractors, labor and materialmen.)

While the question contemplates that the SBA certificate of competency will be applicable only to federal public works it is interesting to consider the impact of the payment bond in the area of private construction.

In the case of private construction work, while mechanics lien remedies are available to subcontractors, labor and materialmen, the procedures are notoriously very technical and stringent. Often the remedy is abortive if the contractor defaults in performance giving rise to an offset to the owner which is greater than the amount still unpaid for the work. In that case, the mechanics lien is valueless. Subcontractors, labor and materialmen prefer surety bond rights to mechanics lien rights because the owner's right of offset is not available against them. Furthermore, private owners often require payment bond coverage for labor and materialmen because it frees them from embroilment in mechanics lien disputes which arise between subcontractors, laborers and material suppliers. The payment bond requirement on public and private construction work is induced also by the practical fact that the payment bond is underwritten in the surety industry as part of a "package" of coverage which costs no more premium-wise as a "package" than for a performance bond alone.

One must be aware also that the failure to protect subcontractors, laborers and materialmen through an SBA certificate of competency procedure limited only to the performance hazard is a two edged sword. If the program is adopted, there are likely to be many minority group prime contractors acting under a certificate of competency who will of necessity be dealing with minority group subcontractors, laborers and materialmen. What protection will these minority group people have in the event the unbonded minority group prime contractor runs into financial or performance difficulties under the contract? There being no right of mechanics lien against federal public works projects, how will such minority group subcontractors, laborers and materialmen be paid for what they have contributed to the public works job?

In addition, without a firm payment obligation, it is doubtful if construction material credits will be readily available to prime contractors whose competency only has been certified by SBA. The construction industry knows from long experience that if such credit is made available it will be only at a price for the material which is higher than normal by reason of a credit loading which will be made to compensate against the ever present contingency of nonpayment. This will have the inevitable tendency to raise the costs of constructing federal public works.

In short, our experience tells us that the certificate of competency procedure contemplated by S. 2609, if adopted, will prove in practice to be unworkable because economically disadvantaged contractors, a class which the bill seeks to assist, will have serious problems in obtaining labor and materials on an unsecured credit basis.

Question 4. You say that the surety bond guarantee proposal will work only if 100% of the sureties' loss cost and expense is paid by the Government rather than the 90% specified in the bills before us. Why do you say that—since bonding agents now have no such guarantee, I should think a 90% guarantee would represent a considerable inducement?

Answer 4. The reason we have said that participation by private business in the surety bond guarantee program "can only be done if 100% of the sureties' loss, cost and expense is subsidized by the government" is that member company executives have told us that any bonding of so-called economically disadvantaged contractors is too hazardous a risk to be borne by privately capitalized business. It must be remembered that the surety industry is not sponsoring this legislation. The legislation is premised upon an inducement to the surety industry to participate in the program in order to make bonding available to persons who are generally viewed in the surety business as substandard risks—substandard in the sense that they do not meet the normal underwriting criteria of surety companies because of deficiencies in finances and in expertise of "know how." It is only because these risks do not meet such critica that the guarantee program is in contemplation. It is most extraordinary in surety underwriting practice for surety bonds to be issued for risks known to be substandard at the time the bond is written. Broadly speaking, the surety industry feeling is that if it is to experiment in issuing surety bonds to substandard risks in order to subserve some social policy for a class of risk that prudent underwriters have heretofore invariably rejected as impractical for suretyship, that experiment can only be conducted on the basis of a complete government subsidy of the surety's loss, cost and expense in the handling of that class of a risk.

When a risk does not measure up to normal underwriting standards, a Government guarantee to pay 90% of any loss would likely still leave the surety in a loss position. The bond premium is a fee charged primarily to compensate the surety for prequalification service designed to assure the owner that there is every likelihood the contractor will perform satisfactorily and to pay his bills. It is only secondarily intended to pay unexpected losses. The premium could not be and is not intended to pay 10% or any portion of losses which develop on substandard risks.

We believe that there is a fallacy in the question in that it assumes that the risks usually underwritten by surety companies are of the same kind as those which the guarantee program is aimed to benefit. The fact of the matter is that they are not the same. If the economically disadvantaged contractor did not present an abnormal risk to the surety industry, there would be no need for the guarantee program whatsoever. Minority group contractors who meet normal surety company criteria, as we previously indicated in the reply to question 2, are being bonded in the surety industry without regard to race, creed or color. Our prepared statement pointed out the need for special definition and boundaries for the types of aplications envisioned in this special program. It is the abnormality of the risk of loss which impels the surety industry to say that the guarantee program for substandard risks must be completely subsidized by government if it is to encourage participation therein by a privately capitalized industry.

We hope that our answers have served to clarify our prepared statement and other information presented to the Subcommittee on June 17, 1970. If there is additional information desired, we shall be happy to cooperate with you and your Subcommittee staff in providing further material.

Very truly yours,

MELVIN L. STARK, *Vice President.*

Senator PERCY. I would like to call on Mr. Russell H. Ewert, vice president of the First National Bank of Chicago.

Mr. Ewert is the only witness from Chicago, and we would like to welcome you. On behalf of the First National Bank—not speaking for them, but the knowledge that I have of the dedication of one of the most gifted bankers in the country, one of the most respected voices that we have—I would like to say that the bank led by the chairman of its board has pioneered in carrying forward a program of higher risk loans in the black community. We are very pleased not only to have had Mr. Gale Freeman's active participation at a significant meeting of all bankers that was held at Chicago but also to have you here this morning to tell us first hand of your experience in this field.

STATEMENT OF RUSSELL H. EWERT, VICE PRESIDENT, THE FIRST NATIONAL BANK OF CHICAGO

Mr. EWERT. Thank you very much.

I find it difficult to compress all of my experiences and views into a short statement, so I will restrict myself to commenting on black economic development.

First we must define the goal of black economic development. It is not the establishment of a few black capitalists, but rather the uplifting of the entire black community. Economic activity is but one of many weapons used in fighting this problem. We must relate to the black community to understand their needs, to receive input, to identify the potential businessman, to identify the potential market and to insure the success of the individual business.

Two things we have learned:

1. A program that sounds good in the Loop of downtown Chicago or in the Government offices here in Washington may not go down well in the black community.

2. Without the support of the community, no business, white or black, will succeed.

This means we must relate, support and finance such broad based indigenous groups as the Breadbasket Commercial Association, Inc., an organization of 300 black businessmen. This organization is divided into five divisions based on activity, that is, producers, transportation, scavengers, exterminators, and contractors.

Each division meets weekly to receive management assistance and direction and to provide strength through unity. You should hear their views on the effectiveness of the Government programs and unfortunately also the practices of the established business community.

Another example is the Westside Community Development Corp., an amalgamation of five broad based community organizations representing over 200,000 people on the West Side of Chicago.

They currently operate a wastepaper collection plant, a fast food franchise, a gas station, and they plan to open several other businesses. An unfortunate interpretation of the current Small Business Administration regulations has precluded their working with us in solving their financial problems. I might add this interpretation has just been changed.

Fortunately we have received assistance from private corporations such as Container Corp. and McDonald's, Inc. Organizations of this type are highly visible to a vast number of people in the area and the establishment and success of these businesses is more meaningful than all of the public relations handouts.

In reviewing testimony before the Senate Committee on Small Business previously, I noticed the question was repeatedly asked, "How do we get the story out into the community?"

There are several ways, but no method is more effective than for the community to be a part of the viable economic program.

Specifically, the inability of the Small Business Administration to work with the Westside Community Development Corp. vitiates all of the good publicity, the establishment of government men in the community and all other programs. I recommend the Small Business Administration amend its regulations to enable them to work with community-based organizations whether formed under a not-for-profit statute or as a cooperative.

This is the same authority you are proposing to give the Small Business Administration in licensing MESBIC's.

The Chicago bankers interested in minority economic development have formed the Bank Advisory Group, which meets monthly to exchange information, coordinate efforts and improve communications with Government and private organizations.

Since its inception in September 1968, the members of this group have made over $10 million in soft loans to over 300 minority businesses.

These are disbursed loans and not applications. The organization has proven uniquely successful and something I would recommend to other banking communities.

Senator PERCY. What has been done by the Chicago banking community to get the word out to banks across the country in other communities as to the success you have had with the Bank Advisory Group?

Is there anything that you think of that this committee might do working in cooperation with ABA or other organizations to get out the information and practical experience that you have that would encourage just as much initiative in the private sector as possible?

Mr. EWERT. Individually, we attempt to do many things. I travel to many cities across the country, meeting with bankers attempting to tell them of that. I think the most immediate answer is through Secretary Stans' trips to the various communities.

One of his staff members came to Chicago. I invited him to attend the Breadbasket Commercial Association meeting but also a Bank Advisory Group meeting. He was impressed and went back to Secretary Stans and recommended that he meet with these groups and get some understanding of what is going on.

My understanding is that Secretary Stans will not be meeting with either group.

Senator PERCY. I notice in your next paragraph you mentioned Robert Dwyer, commending him on his administration of the local Small Business Administration office. I am very pleased to see this because I sponsored enthusiastically his appointment. He ran for Lieutenant Governor and lost, and I cannot think of anything better for a man who has not achieved an elected office for him to make himself available to the administration for service in this way.

Mr. EWERT. I am very impressed that he got the job which on the surface would be a very thankless, difficult task, and he has succeeded admirably.

The Bank Advisory Group has gone on record commending the local Small Business Administration office and the efforts of Bob Dwyer, Bernie Moust, and their associates; however, we are working under unnecessary constraints.

The original Small Business Administration philosophy and resulting regulations are out of tune with today's needs. There is the basic 7–A program as amended by the economic opportunity loan program I, economic opportunity loan program II, minority enterprise program, Project Own and Operation Midstream, plus interpretations and oral understandings.

This patchwork of amendments and programs leaves a set of regulations I defy any of you to understand without the help of the Small Business Administration.

I am a lawyer; I am a graduate of Senator Mondale's course, and I cannot understand them.

One example: We had a black businessman who was denied a guarantee because he was buying a business from another black businessman, not a white businessman, as is apparently required by the regulations. This led my cynical black associate who was handling this loan to remark that perhaps the Small Business Administration program was not designed to put the black man into business but to enable the white ghetto businessman to unload a worthless business. I would not have read the regulations that way.

The inability to interpret the regulations leads me to two recommendaions: No. 1, the Small Business Administration should codify all programs, amendments, and interpretations into one workable document. Unless this occurs, and we can use our own forms as opposed to the Small Business Administration forms; No. 2, I would

prefer the adoption of the 3-day rule that has proven successful in Illinois as opposed to the proposed automatic approval. If we had made the loan previously referred to, black man buying from black man, we could have been subject to a denial of liability by the Small Business Administration.

There are several specific changes required to make the Small Business Administration program more attractive to the banking industry and hence more beneficial to the black community.

The Small Business Administration historically has provided term financing for fixed asset acquisition. This is financially unsound, as the small businessman should not make a large investment in fixed assets.

In addition, with the growth of modern leasing procedures and the growth of service businesses that do not require significant fixed assets, the need is very great for the Small Business Administration to guarantee a line of credit. This allows the businessman to borrrow the money only as he needs it and to repay it according to the nature of his business.

I recommend the Small Business Administration be allowed to guarantee a line of credit.

A second recommendation is in support of a new procedure currently being considered by the Small Business Administration.

Under the current practices, when a loan is in default, the bank makes application to the Small Business Administration to purchase their interest in the note. After a delay, which has been as long as 1 year, the Small Business Administration makes payment. The proposed procedure would allow the Small Business Administration to buy the defaulted note upon application, and if subsequent investigation leads the Small Business Administration to deny liability, then they would proceed against the bank to recover their funds.

The Bank Advisory Group has had excellent experience with the Small Business Administration where we have had to proceed against the guarantee, but this new proposal would be most welcome, especially by my colleagues in the banking fraternity who are not currently active in this program.

Another part of the proposed legislation concerns management assistance and management development. This is a most basic need and largely unfilled by any current program. It is only the exception that makes the success of any existing program. As a rule, they are not successful. They report in terms of quantity rather than quality. They play the numbers game for two reasons. The qualitative information is difficult to assemble and the results would be unimpressive.

I include in this our own effort at management assistance which I list as our greatest failing. What is required is something new and imaginative such as the programs proposed by Dr. Charles Hurst of Malcolm X College or Sam Beard of Capital Formation in New York.

The proposed legislation to provide SBA guarantee of bonds for contractors only solves part of the problem. We have worked extensively with minority contractors financing over $1,500,000 in construction to nine black firms.

The minority contractor requires management, financing, and bonding. All three must be provided—one or two alone will not do the job.

The proposed legislation does not provide for financing, and I see at

least three objections by the SBA to extending their guarantee to provide financing:

No. 1: The loan should be a line of credit and not a term loan, the only allowable terms under current SBA regulations;

No. 2: The bonding company would take a lien on the assets leaving no collateral for the bank as required by the SBA; and

No. 3: The SBA is limited to $350,000 investment per company. Remedial legislation is required in this area.

The SBA is starting a pilot project to assist minority contractors, but I am from Chicago where we have considerable interest in the black community in the construction industry as evidenced by the strikes last year. Those strikes resulted in the vaunted "Chicago plan" for training black workers for the construction trades.

Amongst other failings, it does not provide for jobs and it is my impression that these jobs will have to be provided by black-owned construction firms, and they need assistance now.

Finally, there is a need to consolidate the many Government programs and resulting overhead. For example, in Chicago, just speaking of equity money for business—not loans, not management assistance, we have the SBA, Economic Development Administration, Office of Economic Opportunity, and Model Cities providing programs, plus a State program, a private program, and now the minority enterprise small business investment companies.

The combined money available is not overwhelming and an extraordinary amount of those funds will be used in duplicated and unnecessary administrative expenses.

I am glad I do not know what it costs to provide the relatively small amount of badly needed equity funds to relatively few black businesses that will receive them.

In summary, I would like to restate my general and specific recommendations. The general recommendations are:

No. 1, we should attempt to relate to the black community;

No. 2, the SBA should codify their regulations;

No. 3, an attempt should be made to create bold and imaginative techniques for management assistance and development;

No. 4, the Government should consolidate their programs.

My specific recommendations are that:

No. 1, the SBA guarantee should be extended to:

a. not-for-profit community-based organizations;

b. those situations requiring a line of credit;

c. contractors;

No. 2, the SBA should adopt universally the 3-day rule for the approval of guarantees, unless they clarify the procedures.

No. 3, the Small Business Administration should adopt the immediate repurchase of their defaulted notes. This is one of the most productive programs that the private and the public sector working together have for solving one of the toughest problems facing all of us today.

The Small Business Administration should be commended. The enactment of Senate bill 3699 would greatly facilitate the achievement of these objectives. It would permit the Small Business Administration to effect urgently needed improvements in the financial assistance programs currently conducted for the benefit of small busi-

ness concerned, especially those owned by blacks and other disadvantaged persons. Accordingly, I am hopeful that this subcommittee will take early and favorable action on this bill.

Thank you.

Senator PERCY. I wonder if you could update as to the status of the Chicago plan for training black workers. Where does that stand now, and what is your outlook for success?

Mr. EWERT. I am really not qualified to answer that. The feeling that I have from the community is not one of great hope. Breadbasket is starting a program that is not in competition but they feel it will be more effective.

Senator PERCY. The implication of your comment, "I am glad I do not have to know what the costs to provide the relatively small amount of badly needed equity funds," leads me to believe that maybe we ought to find out what it does cost.

Mr. EWERT. I would hope so, not only in equity but also in all of the other duplicative programs. Since everyone has their own little fiefdom, they have excessive staffs and extensive budgets in which very large sums of money are being spent in disbursing relatively small amounts of money.

Senator PERCY. It might be well for me to defer that question to my own Government Operations Committee staff and see what we can do. I have always maintained that in the poverty program sometimes the level of bureaucracies and the cost of it is such that too little trickles down to the poor. In the areas of loans, possibly far too large a part of our cost goes into overhead structure and expense that we ought to be able to cut through.

I wonder if you could lastly give us your experience with OMBE and what your evaluation is of the MESBIC program based on your broad experience with an SBIC and with MESBIC?

Mr. EWERT. Let me quickly answer OMBE first.

I have a couple of friends who went to work for OMBE, one of whom has resigned and the other is resigning. That is the only real intercourse that I have had with them, except that I heard Mr. Roeser's speech to the Cosmopolitan Chamber of Commerce which was shocking. It was the most damning detailed exposé of a Government program I have ever heard given to virtually an all black audience indicating that OMBE was a PR program.

It has not, I believe, been effective. For example, an article appears in Fortune magazine listing the problems that automobile dealers have and the tremendous difficulty they are in. Within a week OMBE issues a release saying that they have commitments to open minority automobile dealers. There is no talk in terms of training or of development to insure the success in terms of operating these dealerships. My experience has been, particularly with Ford Motor Co., they have worked very diligently to train people.

I was 3 years with our small business investment company in 1962, and I find it shocking that the Government did not learn anything from that time to this.

We learned at that time that the minimum size $150,000 capital SBIC could not operate. It could not be effectively managed. I believe to establish a $150,000 MESBIC is going to create tremendous problems—$150,000, this does not allow you a budget to do any kind of

administration that is required. It does not allow you to do any screening, nor any evaluation. In addition to that, I do not believe the program is being properly sold. I have attended Government sponsored meetings, here in Washington; I have attended the traveling road show in Chicago where people from Washington came out. There was no indication there of the cost of administration. The appeal was made to businessmen to invest $150,000 and you could generate a million dollars in loans to minority business. No one discussed the fact that it cost $60,000 to $70,000 a year for administrative costs, so that a businessman would have to put up $150,000 originally and then an additional $60,000 to $70,000 a year to operate it.

I think it is an excellent concept if it is sold properly. But a minimum size SBIC has proven to be inadequate, and I think that applies to MESBIC's as well.

Senator PERCY. I wish to express appreciation to you for the precision of your recommendations, both the specific and general recommendations. I concur with many of them, and we will do the best we can to see that they are incorporated in the markup of this legislature.

I also appreciate very much your refreshing candor.

Thank you very much for being with us.

The President is giving his much awaited economic message at 12 o'clock today, and I know that many of the men in this room would like to hear it. So I would like to call the remaining three witnesses to constitute a panel for the next hour: Mr. Thomas Crosby, president of the National Association of Small Business Investment Companies; Mr. William S. Jones, president of the National Jobbers Council, and Mr. Carl A. Beck, chairman of the Board of the National Small Business Association.

If you could come to the table together.

If you have advisers or counsel, they would be perfectly welcome also.

Within the confines of the time limit of the next hour, you are free to read your testimony or summarize it, and then we will proceed with questions.

Suppose we start with Mr. Thomas Crosby.

STATEMENT OF THOMAS CROSBY, PRESIDENT, NATIONAL ASSOCIATION OF SMALL BUSINESS INVESTMENT COMPANIES

Mr. CROSBY. Thank you, Senator.

With your permission I will just hit the high points of the written testimony which you have in your hand. (The full statement appears on p. 177.)

As president of the National Association of SBIC's, I first would like to say that our trade association endorses wholeheartedly President Nixon's small business message. To our knowledge, I think this is the first message on small business to be made by a President of the United States. We think it is greatly needed.

Title III of S. 3699 on surety bond guarantees I think has been well covered. We are certainly in favor of it.

I will now talk very briefly about the MESBIC program. Our trade association last November again endorsed the concept of the MESBIC program. Actually, we were here in December, Senator

Percy, testifying before your committee on this very subject, and at that time we did emphasize our own opinion in working with some minority groups ourselves that the MESBIC program should be based on the profit motive, it should not be based on a grant-in-aid concept.

We have not changed our mind on that. We think the MESBIC program will be effective only if it is based on profit and it will be perpetuated only if the profit motive is there.

We have had some experience in this area with our own SBIC, having invested approximately $600,000 in three black enterprises. We hope they will be profitable. We can't guarantee it.

Also, we mentioned back in December it will be a fine thing if we can assist in the training and education of the executives operating the MESBIC. I believe there are nine MESBIC's licensed now; there are many more in process.

The first two are members of our trade association. All MESBIC's that have a charter are being invited to attend an executive seminar at the Harvard Business School, a 4-day affair to be held in late August. We hope that will assist in their operation.

We have read with great interest the report of the President's Task Force on Small Business, and a phrase that is often used "to protect the opportunity of small business" often comes out. With today's tight money market, an interest subsidy will protect small business opportunity. We think this can be of great benefit.

We also wholeheartedly endorse the provision covering investments in unincorporated business—this particularly helps the MESBIC program.

We now would like to address ourselves to a chronic problem of funding for small business. We won't belabor the point. There is a great deal in this testimony that can substantiate this point. Direct funding for the SBA and the SBIC program have been available in only about half the number of years the programs have been in operation.

Oftentimes the money is not there when it is most needed, namely, in a tight money market.

This has terrible effects on small business in that many of the very prosperous ones which they have expansion plans, are unable to go to the public market for funds. The banks, many of them, are on an allocated basis. Often the successful small businesses are forced to join with a major company to achieve their own objectives which they would much rather achieve by remaining independent.

The SBA and the SBIC's can have a great effect in helping them achieve their objectives. So we ask you and your good office to do what you can to obtain for direct funding for both the SBA and the SBIC program.

We also would direct your attention to our capital bank proposal which you will find on page 5 of the testimony. This is a program that a great deal of thought has been given to. Last year the SBA drew away from it; we wish they would return to the subject.

Also, the President's message recommends a guarantee program to persuade financial institutions to make loans to SBIC's. We heartedly endorse a guarantee program of the SBA to permit funding of the SBIC's. We might also add, and this is not in our testimony, that we

met in the months of February and March with about six major insurance companies in the East to see if we could interest them in a debenture fund to assist small business. This would be on the basis of them making available 15-year subordinated money to the SBIC's that meet their standards. The fund would get a percentage of the equity in the small businesses that SBIC's financed.

It is too early to give you any more details. They have expressed an interest. The program is really just in its infancy, and as is the case with many things, it will probably take a year or two to work it out if at all.

This I believe, Senator Percy, covers our direct testimony. If I may have just a few more minutes, I would like to speak extemporaneously on some of the severe problems of small business.

I will mention just two examples in our own portfolio of 25 companies. One is called Andrew Engineering. We assisted the manager in purchasing a controlling interest in this company. He has a very sophisticated electronic device to aid machine tools in cutting in effect a predescribed piece of metal, and the machine tool business is off.

A year ago his backlog of orders was 9 to 10 months. Today it is down to two or three. And everyone and his brother, including a man on my staff, is out trying to get him orders. We will see him through.

But there are many cases like this where there is not a combined source of private and Government funds to see these worthy businesses through this money crunch.

Another example is the highly sophisticated company called National Computer Systems. The president, incidentally, is a graduate of a vocational high school in Minneapolis. He has brought this company literally from nothing. He has invented the computer equipment which in effect sorts in about 8 seconds a yard-long objective test used by schools, colleges, the government, and his business is terribly good now. He is selling a great many of these units to schools.

Schools often cannot afford to pay so they lease for a year or 2 years. This puts a great financial strain on the manufacturer. We have to provide the financing somehow. I don't know how we will do it.

Lastly, we had a directors' meeting of our SBIC yesterday. I was talking over with some of our directors my presence in Washington today, and one of our directors, the dean of the business school at the University of Minnesota, said to me that there is a great parallel in SBIC's and the GI loan bill after World War II which provided a college education for goodness knows how many millions of our servicemen.

This investment by the Government in our veterans in giving them a high level of education has done untold good for our country. I am sure no one would ever have any way of measuring it.

In the same way I think the small business investment company program with competent management counseling as well as capital can help the small businessman grow.

Thank you very much.

(The prepared statement follows:)

STATEMNT OF THOMAS M. CROSBY, PRESIDENT, NATIONAL ASSOCIATION OF SMALL BUSINESS INVESTMENT COMPANIES

Mr. Chairman and members of the subcommittee. I am Thomas Crosby, President of the National Association of Small Business Investment Companies; I am

also President of Northwest Growth Fund, Inc., a privately-owned SBIC in Minneapolis. With me today are Walter B. Stults, Executive Vice President, and Charles M. Noone, General Counsel of NASBIC.

We thank you for this opportunity to testify on S. 2609, S. 3528, and S. 3699, three small business bills before you today. I shall not testify on S. 2609, since its major aim is also contained in S. 3699. The purpose of S. 3528 appears to us to be eminently desirable and the utilization of SBA's disaster loan authority to assist small firms forced to revamp their plants or equipment to meet Federal or State pollution controls should be unanimously endorsed.

Quite naturally, we are particularly interested in the various provisions of S. 3699, the legislation which most members of this Subcommittee sponsored to carry out the recommendations of President Nixon's Small Business Message. Incidentally, the members of NASBIC congratulate Mr. Nixon for being the first President ever to devote such a Message to the problems of American small business; we trust that his initiative will serve as a useful springboard for prompt Congressional action on a number of small-busines fronts.

Title I of S. 3699 covers several new provisions not directly applicable to the SBIC program. We believe all the new powers granted to SBA are desirable and should assist the small business community. I would like to make several brief comments, however. First, I trust that SBA will exercise sound judgment in extending its guarantee programs to non-financial lenders; I also hope that SBA will be cautious in waiving its right of prior approval in putting its guarantee on loans. Injudicious use of these new powers could well hurt, rather than help, SBA and small business.

I skip now to Title III of S. 3699 and will return to Title II later. We feel that a program of surety bond guarantees could mark a significant advance for the thousands of small business firms now handicapped by their inability to obtain bid or performance bonds. I am not qualified to express an opinion on the mechanics of this proposal, but NASBIC supports its aim whole-heartedly.

Title II is the part of the bill which bears upon the SBIC program most directly and upon which I will concentrate my testimony.

Let me say at the outset that NASBIC believes in the MESBIC concept and has been working closely with those in Government and outside who have been fostering the MESBIC program. The first two MESBICs licensed are NASBIC members. We believe it is wise to make specific mention in the Small Business Investment Act of the MESBIC program and to refine the regular SBIC legislation in whatever way is necessary to meet the unique needs of the MESBICs.

Section 202 of S. 3699 authorizes SBA to license MESBICs which are chartered as non-profit corporations. We can understand why such a charter might be useful in some cases—particularly where another non-profit organization might find its own status jeopardized if it were a major shareholder in a chartered-for-profit MESBIC. On the other hand, we have sponsored a number of extensive discussions of the new program and have concluded unanimously that the MESBIC undertaking will be successful only if every one of them functions with a profit orientation. Specifically, we do not believe that any branch of the SBIC industry should be considered as a grant-in-aid operation. A MESBIC should lend to a business only if it feels that business and its manager are capable of making a profit and repaying the loan. We are convinced by the statements of dozens of minority business leaders that giving dollars to businesses that have no chance of success is no favor to anyone.

Section 303 of the bill would allow commercial banks to own 100% of the stock of MESBICs, but would retain the "less than 50%" rule for regular SBICs. Our Association finds that no fault with the proposal, since there may be situations where a bank would like to form a MESBIC, but could find no partners to join with it in the endeavor.

Section 204 of S. 3699 would give SBA strong legal authority to guarantee loans made to SBICs by private lenders. We wholeheartedly support this goal, as well as the specific language in the bill. As you know, the regular SBIC program has been cut off from promised Government loans for more than half of the eleven years that the program has been in operation. Last summer, this Subcommittee took the lead in clarifying SBA's authority in this area and the Senate followed your recommendations by passing S. 2540. Unfortunately, the House of Representatives did not follow suit. We hope very much that you will support Section 204 and we shall continue to work for its passage in the House.

Section 205 of the bill would encourage all SBICs to finance unincorporated businesses—which are usually the smaller firms in our business community. For at least ten years, NASBIC has pressed for this amendment to our basic statute and we were encouraged when your Subcommittee and the Senate passed S. 2815 last August, since that bill contained the same language. Here again the House took no action, but we hope the momentum provided by the President's Message will bring a different result this year.

Section 206 removes some confusing language from the Small Business Investment Act and we support its enactment.

Those, then, are our specific comments about the recommendations made by President Nixon and contained in S. 3699 which was sponsored by the majority of the members of this Subcommittee. With your indulgence, I should like to make several more general observations on both the SBIC program and the broader Government small-business program.

Gentlemen, I make one plea to you from the bottom of my heart: please do not enact this legislation—or any legislation—and feel the problem is surely solved. Please never make the mistake of equating passage of authorizing legislation—no matter how perfect that legislation may be—with actual performance.

When Congress passed the Small Business Act in 1953, and made SBA a permanent agency in 1958, many thought that the millenium had arrived and that independent business would from that time on receive the full support of the Federal Government. We all know that it has not worked out that way.

There are many complex reasons why actual performance falls so far short of our goals—so many that I shall not even try to enumerate them. But I shall dwell on one very specific reason.

Do you realize that the Small Business Administration has been unable to operate its direct lending program for many of the years since 1953? NASBIC estimates that SBA has completely shut down—or substantially closed off—all its direct lending activities for at least half of the past 17 years.

Similarly, as I mentioned earlier, for over half of the 11 years our program has been in existence, SBA has been unable to fill the applications for loans made by SBICs under the provisions of our Act. SBICs were organized and privately-capitalized with the understanding that the Federal Government would lend SBICs $2 for every $1 in private capital. Now in 1970, more than 11 years after the first companies were licensed, we find that we have been able to obtain less than 70 cents for every private dollar we have invested in our SBICs.

During the present tight money period, SBICs have been unable to assist literally thousands of worthy independent businesses, just because we haven't been able to get our borrowed dollars from SBA. Even worse, we have seen many of the good, growing, profitable small businesses in our portfolios suffer because we have not been able to give them more money when they urgently needed expansion funds. Many such companies have been forced into mergers with major corporations, because that has been the only way in which they could get the dollars they required.

We hope and pray that this Subcommittee, which has supported the SBIC industry and all other small business programs so effectively in the past, will help us find solutions to the nagging funds problem. Without exception, SBA has been unable to make loans to small businesses when money was tight—and that's exactly the time when small business needs SBA the most. Without exception, SBA has been unable to make loans to SBICs just at those times when it has been impossible for SBICs, or their portfolio companies, to raise funds through any other channels.

We have placed great hope in establishing a secondary financial institution, what we have called a Capital Bank, to help overcome these recurring credit crunches. Last summer, your Subcommittee held hearings on a bill to establish such a Small Business Capital Bank. The bill had strong backing on this Subcommittee and SBA had long said that it favored some sort of Capital Bank. Unfortunately, though, SBA was forced to testify against S.1213 on the grounds that it was technically deficient. We are terribly disappointed that the Administration said "NO" and then turned its back on the entire matter. We had hoped that it would work with the Committee and with the industry to come up with proper language and proper techniques.

On this point, I call your attention to Section 308 (g) (2) (A) of the Small Business Investment Act which specifically directs the SBA to give to Congress "The Administration's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small

business investment companies to replace Government financing of such companies."

That language was inserted by the 1967 Amendments to our Act; so far as I know, neither the Administration nor SBA has made any recommendations to Congress in 1968, in 1969, or in 1970.

Gentlemen, I stress this point not only because I am sad that the lack of timely Government loans has greatly decreased the size and effectiveness of the SBIC program; I say it because I want to warn all branches of the Government against the high expectations now being held for the MESBIC program. Commerce Secretary Stans may be correct when he says that 100 MESBICs will be on the road toward licensing by June 30, 1970. He may be right in saying that these 100 MESBICs will be able to inject a minimum of $225-million into minority businesses. But if the Administration (this one or any succeeding one) fails to back its promises with money for the MESBIC program, as it has failed to back its promises for the regular SBIC industry, then you should cut off the entire operation right now rather than allowing it to get underway with this euphoria—only to be shot down by broken promises next year or the year after.

I am sorry that I must make these pessimistic statements, since I believe so strongly that it is right for the Federal Government to support the small-business segment of our economy.

Furthermore, I remain excited by the potential of the SBIC program even after I have suffered through its growing pains and frustrations for the past ten years. My own SBIC has given significant assistance to dozens of new and growing businesses; those businesses, in turn, have employed hundreds of new employees and have paid hundreds of thousands of additional tax dollars to the Federal Government. The SBIC program has been a great investment for Uncle Sam and has reflected great credit, I believe, on the members of Congress who established it twelve years ago.

But, our industry could have done, and could now be doing, much more than has been possible with the continual funding problems we have faced.

Members of the Subcommittee, on behalf of the SBIC industry, I urge your support of the provisions contained in the legislation before you at this time. I also ask your continuing support in trying to overcome other trouble areas in the Government's various programs of assistance to small business.

Thank you.

Senator PERCY. Thank you.

Mr. Beck?

STATEMENT OF CARL A. BECK, CHAIRMAN OF THE BOARD, NATIONAL SMALL BUSINESS ASSOCIATION; ACCOMPANIED BY HERBERT LIEBENSON, LEGISLATIVE VICE PRESIDENT, NATIONAL SMALL BUSINESS ASSOCIATION

Mr. BECK. Thank you.

For the record my name is Carl A. Beck and I appear before you on behalf of the National Small Business Association. We have, of course, filed a written statement, and I would like to emphasize three points in the testimony we have submitted.

First we are glad to note that members of the legislature are becoming aware of the very serious impacts that new legislation can have both directly and indirectly on the small business community.

In furtherance of the remarks of Senator Bible this morning, I think it is extremely important to note that such impact to the extent possible be appraised before the fact rather than after such legislation becomes law.

I would like if I might to include as part of our testimony an article appearing in this morning's Washington Post which bears on this subject by the Associated Press entitled "Safety Lines Drawn on Industry." Here is another case where small business may be hurt if

proper cognizance is not given to the situation that is developing.

(The article referred to appears on p. 202.)

Mr. BECK. In this connection, we are particularly pleased to note the sponsors and the supporters of these bills and that the subcommittee had contact with the Small Business Administration and we hope that such liaison now underway will continue.

In our testimony, if I may refer to it just briefly, we have said also that we feel there are many other additional areas which need study. For many years those of us who were concerned with the development of national policy for small business have lacked adequate statistical or technical data to give committees of Congress on the impact of the proposed legislation on the small business community.

We believe the very capable staff economist of SBA under Dr. Garvin can help give Congress these answers if the SBA staff is given the money and the manpower to do the job.

I would like also to refer to another aspect of the same subject. In the recently issued SBA economic review, it says with respect to developments of numeric control and computer application:

> Developments of this type highlight the necessity for small business to keep abreast of changing technology and to share in the benefits of the research and development.

In spite of all the efforts and lip service that has gone to small business sharing in the benefits of research and development, this hasn't really happened and it hasn't happened to small business to the extent that we feel it might possibly be done.

The third point I would like to refer to is that we are concerned that in one particular area the legislation being considered does not go far enough. Although we are generally in agreement with the concepts of broader authority for the Small Business Administration under these amendments, we are also aware that these changes are in a large measure directed primarily to increased aid for minority enterprises.

We are in wholehearted support of this, but we feel that more needs to be done in the area of education for the entrepreneur. Having had some experience both as a small businessman and in the area of management and education, I would like to explain and emphasize our concern in this area.

For example, in Senator McIntyre's bill, S. 3699, section 102(b)(6), there is reference to management "training"—"of such scope and duration to develop entrepreneurial and managerial self-sufficiency . . ."

I would like to call to the attention of the subcommittee that this is a nonsequitur, since any accepted definition of the word "training" will not provide education in the entrepreneurial understanding in depth or the development of axiological or value knowledge.

I think we can agree in any enterprise there are three major factors that enter into any undertaking, and they have to do with resources, environment, and knowledge.

If I may explain what I mean briefly, the environment determines the need, establishes quality, and quality of performance levels for the product or service or other output. It also generates a broad range of constraints and opportunities that affect the undertaking.

Resources are basically in three categories: Materials and physical resources, human resources, and financial resources. The latter cate-

gory, financial resources, includes the various tools and skills and competence which finances can procure. This is where most of the effort seems to be directed toward supplying money.

But the third aspect of knowledge is basically of two kinds. Pragmatic knowledge or skills having to do with technology and day-to-day operations, and value knowledge having to do with the selection of important alternatives—what is important vis-a-vis the merely relevant, particularly in the evaluation of decisional alternatives where there is no or limited information, data, or precedents on which to rely.

In the area of value knowledge is the essence of entrepreneurialship. Mr. Ewart referred to management development in his testimony, and I think we are certainly on the same wavelength as far as the need for this kind of managerial training.

It is this kind of knowledge of judgment which is not normally classified as operating skills or normal management skills which is the essence of the entrepreneurial function. This is what dichotomizes, if you will, the employer from the employee or the top executive from the supervisor or the entrepreneur from the management-technician.

Our fundamental goal, it seems to me, in this area of minority enterprise should not be just one helping enterprises to get started, but rather to provide an opportunity for a major portion of our population to be constructively participating in the economy or the ecology of the American way of life.

This cannot be done simply by supplying capital and training and operational skills, but must also include education in the conceptual skills of managing and the deeper understanding of long-range relationships between an activity and diverse environments.

I have taken the liberty of including with my testimony some two unsolicited proposals of some time ago, one by our association, one by another association with which we have worked from time to time, bearing on suggested methods of finding long-range solutions to the problem of minority participation in our economy.

I hope that a reading of the introductory information to these two statements, these two unsolicited proposals may explain in more detail our concern in this area.

If it is the intent of Congress to encourage the development of minority enterprises which can remain viable and contributing over a longer period of time, I would hope you might consider the concept of "individual development" for the entrepreneur in addition to just "training."

I will readily admit that such a concept is not easy to implement, since it is a phase of education where we certainly have limited experience. This is perhaps because we have given so much attention to evaluating the student in an educational experience and so little to evaluating the educational process.

But significant work has been done in this area of education for value knowledge, and an attempt should not be vitiated simply because it is difficult.

We certainly appreciate this opportunity to appear before the subcommittee, Senator Percy, and thank you for giving us this opportunity.

(The prepared statement with attachments follows:)

STATEMENT OF CARL A. BECK ON BEHALF OF NATIONAL SMALL BUSINESS ASSOCIATION

Mr. Chairman, my name is Carl A. Beck. I am Chairman of the Board of Trustees of the National Small Business Association. I am also president of the Charles Beck Machine Corporation, of King of Prussia, Pennsylvania, a company which builds machinery for the converting and packaging industries.

NSB represents approximately 40 thousand members of the American small business community, encompassing more than 500 independent segments of industry and commerce.

We appreciate this opportunity to appear before your Subcommittee to state our position and concern regarding pending legislation to amend the Small Business Act.

S. 3528

Our initial comments are directed to Senator McIntyre's bill, S. 3528, which would amend the Small Business Act and assist small business concerns in meeting federal pollution control standards. The companion bill S. 1750 introduced by Senators Bible, Sparkman and eleven additional co-sponsors is similar to S. 3528 in the type of loan relief provided but is much broader in scope. In the past few years the Congress of the United States has established standards for the business community in many areas. Among these are standards included in the Fair Packaging and Labeling Act; the Wholesome Meat Act; the Pension and Welfare Fund Disclosure Act; and the Mine Safety Act. Congress is expected to act in the near future on the Occupational Health and Safety Act and pollution controls.

The present shortage of capital makes it extremely difficult—in some cases, impossible—for small business to conform to standards established by Congress or a federal agency having administrative authority to establish regulations. The standards required under the Wholesome Meat Act, by way of example, caused such grave problems for small firms in the meat packing and processing industries that implementation of the Act had to be postponed for one year.

There are many additional bills pending before committees of Congress (and many recommendations from governmental agencies) that would also establish standards for consumer products. If Congress takes unto itself the responsibility of establishing standards for the business community, it aslo has a responsibility to give the Small Business Administration authority to grant loans on an emergency basis to small firms who must comply with those standards or else go out of business.

Recently Congressman Whitehurst introduced H.R. 17796 authorizing low-interest loans by the Small Business Administration to assist small business in constructing, expanding, or altering facilities to comply with the requirements of newly-enacted federal laws.

"It is this principle of assisting the innocent bystander that I advocate in my bill: When we pass a new law that requires plant facility changes, or the purchase of new equipment, we in effect are passing a law that establishes retroactive guilt and charges a fine for that guilt.

"As an example, the Wholesome Meat Act cost the private sector of our economy millions of dollars, because with a stroke of a pen they were, for all practical purposes, found guilty of a crime they had never committed. This is an immense burden to put on any business, but it is particularly hard on a small business that does not have the equity or collateral to finance such sweeping changes. Nor do many small businesses have the ability to carry high-interest loans because of their already high debt-to-income ratio."

While Congressman Whitehurst did not mention the impact of strikes on a small firm not involved in the labor dispute, we believe that firms forced to shut down because of labor disputes of others should be covered under the definition of an "emergency" under the Small Business Act.

We support the principle embodiment in Senator McIntyre's bill with respect to assist to small business in meeting federal pollution control standards. We urge extension of this principle along the lines of S. 1750 and H.R. 17796. This "blanket authority" to SBA is a necessity because of ever-increasing legislation imposing standards on business.

For the information of the members of the Committee we are attaching a copy of Congressman Whitehurst's bill to our statement.

S. 3699/S. 2609

Since S. 2609 is similar to Title III of S. 3699, our comments will be directed to S. 3699.

Section 101 is designed to encourage private capital to invest in small business enterprise. NSB supports and encourages such activities. We are all aware of the difficulties experienced by small firms in obtaining capital in a tight money market. Large borrowers will continue to receive preferential treatment from banks and other lending institutions. Recommendations that provide any incentive for Welfare and Pension Fund trustees, foundations and others to invest in small business should be supported.

Section 102 (a) and (b) authorizes SBA to extend grants to public or private organizations providing business management assistance and related technical aid to minorities.

We are concerned that in one particular area the legislation being considered does not go far enough. Although we are generally in agreement with the concepts of broader authority for the Small Business Administration under these amendments to the Act, we are also aware that these changes are primarily directed toward increased aid for minority enterprises. We are in wholehearted support of this, but feel that more needs to be done in the area of education for the entrepreneur. Having had some experience both as a small businessman and in the area of management education, I would like to explain and emphasize our concern in this area.

Any enterprise, if not indeed any undertaking, has three major input areas: Resources, Environment, and Knowledge, and although intimately related these three things are distinct.

The environment determines need, and establishes quality and performance levels for the product, service, or other "output". It also generates a broad range of constraints and opportunities which affect the undertaking.

Resources are basically in three categories: Materials and physical resources, human resources, and financial resources. The latter category includes the various tools, skills, and competences which finances can procure.

Knowledge is basically of two kinds: Pragmatic knowledge having to do with technology and intellectual skills, and Value knowledge having to do with the selection of alternatives, what is important vis-a-vis the merely relevant, particularly in the evaluation of decision alternatives where there is no information, data, or precedent on which to rely.

In the area of value knowledge is found the essence of successful entrepreneurship, for it is this kind of knowledge and understanding which dichotomizes the employer from the employee, the top executive from the supervisor, or the entrepreneur from the management technician.

In S. 3699, Sec. 102(b)(6), there is reference to management "training"—"of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency—". I would like to advise you that this is a non-sequitur, since any accepted definition of the word "training" will not provide education in the entrepreneurial understanding in depth or the development of axiological or value knowledge.

Our fundamental goal, it seems to me, in this area of the development of minority businesses, should not be just on helping such enterprises to get started, but rather to provide an opportunity for a major portion of our population to be constructively participating in the ecology of the American democratic way-of-life. This canont be done simply by supplying capital and training in operational skills, but must also include education in the conceptual skills of managing and the deeper understanding of long-range relationships between an activity and its diverse environments. I have taken the liberty of including, for members of this Subcommittee, two unsolicited proposals of some months ago bearing on suggestions for finding long-range solutions to the problem of minority participation in our economy. I hope that a reading of these may explain in more detail our concern in this area.

If it is the intent of Congress to encourage the development of minority enterprises which can remain viable and contributing over a longer period of time, I would hope you might consider "individual development" for the entrepreneur, in addition to "training". I will readily admit that such a concept is not easy to implement, since it is a phase of education where we have limited experience. This is because, perhaps, we have given so much attention to evaluating the student and so little to evaluating the educational process. But significant work has been done in the area of education for value knowledge, and an attempt should not be vitiated simply because it is difficult.

With respect to Section 103, we wholeheartedly support the expansion of the research facilities of the Small Business Administration. Under Section 103, research and studies would be conducted to identify categories of small businesses which lack growth possibilities and to identify those with growth possibilities.

NSB believes, however, there are many additional areas which need study. For many years those of us who are concerned with the development of national policy for small business have lacked adequate statistical or technical data to give to committees of Congress on the impact of proposed legislation on the small business community. To illustrate, with questions currently arising from bills presently before Congress:

(1) Hearings will soon begin in the House Labor Committee on increases in the minimum wage to $2.00 in 1971 and $2.50 in 1972. The Labor Department has insisted in the past that increases in minimum wages do not have an adverse effect on the economy or unemployment. In a very practical sense we know that many small businesses cannot afford these increases in the minimums and have in the past found it necessary to reduce the number of people employed. Can SBA assist in determining through surveys or other methods the impact of the last increase in minimum wages on employment and prices?

(2) What would be the impact of *mandatory* standards under the Fair Packaging and Labeling Act?

(3) What would be the impact on small business of the bill now before the House Government Operations Committee and Senator Ribicoff's proposal to disclose to the public the results of product testing by brand name, when you may have a thousand small manufacturers producing a single consumer product?

(4) Would product standardization by government destroy competition and new product innovation by small firms?

(5) Would class action legislation drive many small firms out of business?

(6) What is the impact on small business suppliers and their employees when their major customers are shut down by strikes?

Congress should *know* the impact on small business before legislation is passed rather than gamble that small business can survive the effects of the legislation. We believe the very capable staff of economists at SBA under Dr. Garvin can help give Congress these answers, if the SBA staff is given the money and manpower to do the job.

TITLE II

Our Association has followed the SBIC program quite closely over the 12 years since the Small Business Investment Act was passed. We believe that it has proven to be an effective way to assist small businesses who need equity capital and long-term loans. We also are convinced that it has been a good investment for the Federal Government in providing initial capital start-up businesses and additional equity for growing firms—both of whom hire workers and pay Federal taxes.

On the other hand, we agree with the National Association of Small Business Investment Companies that the funding mechanism established for the SBIC program has been demonstrated as faulty. SBA has been unable to meet loan applications from SBICs for many months and years during the past 11 years and we can understand why present SBICs have hesitated about raising additional capital, why a number of good SBICs have left the program, and why new SBICs refrain from entering the industry while this system of funding remains so imperfect. We urge this Subcommittee to take action on improving this serious flaw.

BASIC BENEFITS FOR SMALL BUSINESS

Since 1935 when the Social Security Act was enacted, the group of public programs loosely culled under the term Social Security has greatly expanded. The unemployment insurance or unemployment compensation program as part of the social security package was designed to provide regular cash payments to involuntarily unemployed workers for a limited number of weeks.

Although the program was originally intended to provide income security for a relatively short period of unemployment, it has subsequently been expanded under both federal and state laws. In some states today even workers who are involved in a labor dispute and on strike can receive unemployment compensation benefits. Large manufacturing organizations continue to pay managerial and executive personnel their full wages even though a plant may be shut down because of a labor dispute.

In some states the employees of small employers receive unemployment compensation if their plant is shut down because of strikes or for other reasons. However, the employer who has contributed to the unemployment compensation fund through his U.C. tax payment cannot receive any benefit from the fund although his firm has been shut down because of strikes in his industry. As the Congress has adjusted its thinking in the area of social security to provide for the self-employed under the Old Age and Survivors Insurance program, and has allowed the self-employed to establish pension programs under H.R. 10, we believe the time has come for Congress to consider a voluntary program to provide a minimum income to small employers, who have involuntarily become victims of strikes or natural disasters. We believe that rules may be adopted similar to the rules already in existence under which employees are covered by these programs. If it is logical that a small firm be charged for benefits paid to its workers when a labor dispute in which the firm was not involved causes the closing of a plant, then it is also logical (and most certainly equitable) that the employer of those employees also receive compensation. However, we realize that substantive changes in the U.C. area are beyond the jurisdiction of this Committee.

We appreciate the opportunity to appear before you and express our thoughts. Thank you very much.

A Proposal To Conduct a Preliminary Study, To Plan, and To Draft, a Basic Master Plan for Implementation of an Approach To Solving This Problem: To Convert the Vast Majority of Those Individuals Who Are Judged To Be Below an Acceptable Standard of Living From Claimants on Society to Contributors to Society

INTRODUCTION

The officers and staff of the National Small Business Association recognize the existence of a problem about which only limited progress has been made toward a solution. The subject matter is concerned with that segment of the population which is unemployed or underemployed, to a degree which necessitates a drain on the resources of the ecology rather than a contribution to its productivity and advancement. NSB has a real concern in this area, because NSB believes in: the dignity and worth of the individual, the preservation of a responsive and responsible government of laws, the proven superiority of an open society, the need to preserve and strengthen individual initiative, the value of maintaining the optimum climate for the development of small business.[1] Recent history has proven, beyond any doubt, that the ability or inability of society to solve this problem has a direct influence, beneficial or perjorative, on the preservation of these NSB beliefs.

Among the Basic Objectives of NSB are these:[2]

Analyze and develop programs of national policy that are of significant concern.

Establish a two-way communication about these programs.

Present facts and opinions as a guide to government in decision-making.

Build effective cooperation through recognition of interdependence between professions, business, industry, labor and government.

National Small Business has grown strong and viable in the 33 years of its existence because its leadership has been dedicated to activities which are progressive, dynamic, and constructive. We therefore want to propose action which we believe can make a major contribution to the alleviation of the present problem, a major step toward its ultimate solution, and a framework to inhibit its recurrence.

STATEMENT OF THE PROBLEM

The problem has been variously defined as "employment for the unemployable," "opportunity for the disadvantaged", "elimination of the poverty-stricken", and similar varied semantic labels, depending on the political or emotional appeal desired. A better definition, in macrocosm, would be:

The problem is to convert the vast majority of those individuals who are judged to be below an acceptable standard of living, from *claimants on society to contributors to society.*

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[1] From "This Is National Small Business," (p. 3) published by the Association, February 1968.

[2] Ibid. (p. 4).

Since all generalizations contain inherent fallacies (including this one) some additional observations are germane:

Contribution to society, whether intellectual or physical, is meant to exclude activity which is unlawful or unacceptable to existing mores of the social environment and its democratic and accepted economic institutions. It is meant to include such contributions which provide benefit and satisfactions to individuals other than the contributor.

Claimants on society are individuals who receive benefits and satisfactions from public, private, or individual resources.

Interpretations of those who are primarily claimants or significant contributors, as well as the definition of an acceptable standard of living, will vary with time, location, and individual attitudes, which in turn also change with time and place.

The operative word in the above definition is the verb " to convert", which it will be noted, goes beyond the concepts of fitting men to jobs, training in productive skills, "getting people off the dole", providing job opportunities, motivating people to work, or many other limited or circumspect aspects of the problem as a whole. It should also be noted that "conversion" implies permanence of change, thereby discouraging retrogression and implying long-range rather than just temporary solution.

Although our immediate interest is in our national problem, it should be recognized that the solution to the problem as here defined is also indigenous to the progress of economic development of other less-developed countries, if we are to continue our national interest in global development and international peace.

Since "converting" is the *activity*, it becomes the focus of this proposal, and situations, environmental factors, and resources must be considered in the degree to which they contribute to or detract from the desired conversion process.

A MANAGEMENT APPROACH

The essence of the managerial task lies in the ability to face a situation, identify its principal elements and what they mean, analyze relevant environmental factors, and select those trends and variations which can be augmented or retarded to encourage the attainment of the objective.

The situation we face has been identified as the existence of a large, and perhaps growing, segment of our population which has been labeled poor, disadvantaged, hard core unemployed, etc. Recent history has demonstrated that these individuals and others who support them actively are employing a different sense of values or value system than that normally acceptable to democratic peoples and institutions in an open society. This means a growing feeling of dichotomy between the "haves" and the "have-nots", leading to frustrations, rebellion, and their further alienation from the rest of society. The "conversion" referred to in the statement of the problem therefore must attack this trend as well as provide worthwhile activity. The other side of the situation is that there have been, at least in the last few years of high business activity, a need for productive people—jobs that cannot be adequately staffed.

Standards have been set to define the unemployed, the poverty level, etc., but no standards or measures have been developed to adequately delineate manpower needs. The "unemployed" have been identified to a limited degee, in broad terms of groups or geographical areas. The job opportunities have been identified only by chance or serendipity, frequently by an attempt to create work where none existed. This is not meant in any way to criticize the good work done by the NAB and its JOBS program or other worthwhile endeavors, but only to indicate that the essence of the problem has not been met. Job creation, where demand does not exist, merely transfers people from public to private charity—it is only a temporary expedient, and has little permanent benefit.

Up to 99% of all business firms may be classified as "small business",[3] and of the remaining 1% only a handful of a few hundred have had "recognized" programs of employing the disadvantaged. Yet 40% of all employees are in firms of less than 100 people.[4] Firms with under 100 employees make 46% of all sales.[5]

Of primary and crucial importance therefore, is a more full analysis and identification of present *and potential* job opportunities.

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[3] From 19th Annual Report of the Select Committee on Small Business, United States Senate (91st Congress, 1st Session, Report No. 91–627) page 71.
[4] Ibid. (p. 72).
[5] Ibid. (p. 71).

If there is to be any confluence of specific job opportunities with specific individuals, there must also be individual identification of potential, strengths and limitations, since not all individuals are equally uneducated, equally disadvantaged, equally motivated, or all for the same reasons or as a result of the same historical experience. Matching people and available jobs, if this is part of the answer to our problem, must be done on an individual not a mass basis.

Not only are there considerable variations among potential employees, there are similar variations in the supply of potential job availability. In the spring of 1969 most businesses were at high levels of sales and production, but now in the spring of 1970 a great many small businesses have already cut back to a less than full work week. Economic reports may indicate the strengths of various sectors of the economy, but not the strengths of various businesses within that sector. Long-range trends indicate growth in demand of service versus manufacturing, but overgeneralization is misleading when level of activity of the large companies masks the variation of activity level of the small companies.

An effective sales program must recognize the changing situation of each customer, and the timing of a successful sale must take into account and utilize these variations and individual trends if an effective sale is to be consumated. Our "product or service" is the consummation of a long-term contract between an individual and a segment of society, and is subject to the same constrictions and opportunities as any other business contractual relationship, and sales are never consumated "en masse", but on a level of individual decision-making.

CONSTRAINTS AND OPPORTUNITIES

The differences between people and situations are constraints tending to delimit and circumscribe action in particular cases, but if viewed from the aspect of indicating proper timing, they can be equally categorized as a developing series of opportunities. In addition, there are other constraints, the proper recognition of which can in turn increase the effectiveness of the overall program.

One of the most important constraints in the solution of the problem is lack of knowledge and understanding, in terms of both parties to the contract—the prospective employee; and the employer and that segment of society which he represents. This lack of knowledge is at various levels, and there may be need for education at several levels. The first, requiring practice but little intellectual application, has to do with muscular controls; manual dexterity and physical labor, for example, even though the knowledge required for walking may be different for a child and a crippled person. A second level is generally classified as pragmatic knowledge, and involves higher level skills and training, involving mathematics, language, sciences, etc., and the ability to store, recall, and utilize data and information. A third level, normally referred to as axiological knowledges or value knowledge has to do with what is important and what is not. This involves judgment, values and value systems, motivation, and the ultimate resources and tests for all conscious and most sub-conscious decision-making. If an individual is to live effectively within, or change or influence, an environment, he must have adequate knowledge of himself and his environment in these three levels of knowledge. A more common expression of this (though overly simplified) is that we not only need to develop skills but insure proper attitudes. The belated recognition of this need in previous programs was illustrated by the adoption of a program of individual coaching and personal guidance by a fellow employee—sometimes a case of the beginner being instructed by the novice!

Other constraints to effective implementation of activities designed to solve the problem are excessive regimentation and control. The sole purpose of measurement and control is to evaluate effectiveness and efficiency in order to provide a continuing opportunity for program improvement. Other paperwork and "red tape", where required, should be handled by organizations able to cope with it, so as not to discourage or detract from accomplishment of objectives.

PLANNING

Although the oft-repeated and well-discussed aspects of the problem have been omitted here, it is recognized that the problem and any attempt at solution is a many-faceted and involved situation. If a lasting and worthwhile solution is to be developed, it requires sufficient analysis and evaluation of needs and expectations to permit development of an effective and efficient plan of organization. The organizing function should have, as a participative contribution, recom-

mendations of acceptable standards of performance by persons and organizations involved. Trade associations and other business groups can be called on for responsible contributions on various subsections of the organizing function.

Through wide-spread and responsible involvement in the planning and organizing, a major forward step has been made toward the integration of effort in effectuation of the activity, as well as responsible and meaningful reporting and measuring to improve program performance. This planning phase is of such scope that it is a major activity, and should be the first step of any activity. NSB can provide the people, investigation, and non-financial resources to implement this planning.

OTHER CONSIDERATIONS

To prevent a "dead-end" project, any planning activity must include provision for further extension of the problem—through programs of upgrading, advancement, further business and manager education. Included in Appendix C is the prelinminary proposal for a program to encourage entrepreneurship (prepared two years previously) which would better be "a further step" on this foundation than a separate project, as previously proposed.

The National Small Business Association is uniquely equipped to undertake the project proposed:

1. During its three decades of existence it has developed a reputation of integrity and reliability in its relations with government, of which we are justifiably proud.

2. Its broad based membership permits active involvement of all kinds of endeavor (with *very few* exceptions) in the planning and execution of the plan to solve the manpower problem.

3. Since it is *not* a trade association or a "Chamber of Commerce", but has such organizations as group members or has established excellent working relationships with such groups, it is in an ideal position to elicit the cooperative assistance and involvement of these organizations, as well as organizations related to labor, community improvement, and similar groups. Under its broad umbrella NSB can communicate with almost 4 million business operations and is not normally subject to inter-association competition or conflict which might otherwise hinder implementation of such a project.

4. NSB can communicate more effectively (as a private non-profit organization representing small business) than can government, well-known foundations, or organizations thought of as representing "Big business", big government", or "big labor".

5. Above all, the staff, officers, and trustees of NSB are sincere, dedicated, and knowledgeable in their respective fields, and are willing to measure up to a challenge as significant as this endeavor.

SUMMARY

NSB proposes that it be provided funds to develop preliminary plans and structure to provide an effective guide to further implementation of the solution of the problem as herein defined.

To cover the costs of preliminary study, planning, and drafting of a basic Master Plan for implementing this approach to solving this economic problem, we estimate an expenditure of between $40,000 and $50,000.

The resources which will be used by NSB will include, but not be limited to, the following people and categories:

Several consultants in the areas of management and government with whom NSB has established contacts and relationships.

Several NSB members, whose business and background equip them to make meaningful contributions to the planning stage.

Staff of trade associations and community organizations—many of whom already have working relationships with the Association through its group membership category.

It is proposed that these people will be coordinated into planning teams to contribute in individual areas of responsibility to the development of a comprehensive plan.

The comprehensive plan should include the following sections:

1. A method of relating the timing of a program in a particular industry with an evaluation of the immediate and long-range health of that industry or sub-group.

2. A timetable of activity for installation, operation, and measurement of effectiveness for typica lindustry group.

3. A means of adequate involvement of both management and prospective employees in the detail planning and operation of the program for such industry group.

4. A means of establishing acceptable and adequate measurement standards and methods which will provide both:

(*a*) Adequate control of the expenditure of outside funds;

(*b*) Adequate information and knowledge of progress which will permit ongoing review and appraisal for improved performance and effectiveness of programs.

5. A clearly defined method of organizing which will adequately define lines of delegation, authority, and areas of accountability at various levels of involvement.

6. A plan of communications in the following areas:

(*a*) Publicity and public relations to properly recognize and promote the activities at all levels of involvement, including government, cooperating associations and organizations, cooperating business and industries, etc.

(*b*) Rapid communication methods for immediate "problem-solving" of those "where the action is".

(*c*) Effortless reporting and evaluation information.

(*d*) Analysis and correlation of significant data (computer techniques) for "real time" ongoing evaluation of progress by NSB coordinating staff and government persons involved.

(*e*) Cross-fertilization to other segments of the economy (beyond the businessman and employee involved) to stimulate environmental acceptance, encouragement, and support.

7. Establishment of criteria for off-the-job supplemental training and education in various levels of knowledge which will properly supplement on-the-job training and counseling activities.

8. A clear recognition is that in addition to the obvious social advantages in this program, the economic advantages to all parties must be emphasized.

9. Provision for the creation of a small "Review Board", whose members represent business, labor, government, and other sections of the ecology, who as a group will *periodically* and *regularly* review operations and results for modification of concepts, premises, and plans of the undertaking as a whole, toward continual enhancement of the program.

Building Business

FOREWORD

A key to economic development of underdeveloped areas is the creation and development of small businesses managed, and in part owned, by residents of such areas. Primary attention should be focused on businesses whose "value added" contributes to the "creation of wealth." "Exporting" of products from ghetto areas and consequent in-flow of money provides a means for capital formation in the ghetto, and makes a contribution to economic growth, in apposition to "receiving" aid and assistance by charity or other paternalistic programs. Although all business opportunities should be eligible, major attention should be given to products or services which can be classified as "manufacturing services" to other businesses outside the ghetto areas.

Five broad categories of resources are needed for such a program: Money, People, Skills, Environmental Relationships, and Value Knowledge. A sixth factor, coordination of these resources, should be provided through a non-governmental organization.

Ultimate success or failure of such a program of Small Business Development rests upon its long-range viability, rather than just initial establishment of new concerns. The key factor is the judgment and decision-making of the "entrepreneur" or top executive in the business. Such judgment depends on his attitudes and system of values, not only in regard to internal matters, but also in regard to interdependent relationships between the enterprise and its several environments. This Value Knowledge cannot be "taught" (in the usual sense of educational practice) and is frequently classified under "experience", but previous back-

grounds, and the need to compress time, demand an accelerated method of acquiring such knowledge by the entrepreneur-manager.

The Advanced Management Council has knowledge, experience, and resources to provide a "Small Business Manager Course" which can provide an educational experience through which such Value Knowledge can be learned. In this way it can make a significant—and unique—contribution to economic development of ghetto areas, which will help solve existing social problems and at the same time contribute to the economic progress of the American ecology.

This presentation develops the problem, proposes a program for its solution, outlines the background of A.M.C. and the contribution it can make, and presents a specific plan to accomplishing this.

THE PROBLEM

"Underpriviledged", "backward", "retarded", "ghetto", "underdeveloped", "impoverished" and many similar words have been used to describe or focus attention on ecologies, polities, or groups of people, both in our country and abroad, who apparently are unable *as a group*, to "pull themselves up by their bootstraps." As a result, these words today have a broadened connotation evoking sympathy, concern, and a general societal desire to "do something about it."

Early attempts to provide economic aid through gifts, charity, and broad governmental responsibility for changing conditions, have met with singularly unsatisfactory results. Some programs with limited funds and a high level of involvement by the citizens of the ecology have been markedly successful. Looking at the extremes in the above two categories will not provide a key to what makes some programs succeed, but does give an indication of the *kinds* of concepts which must be considered if effective answers to problem areas are to be found.

If we were to redefine the objective as a need to provide a means for a large percentage of these people to move up from "*lower class*" to "*middle class*" citizenship, the challenge and possibilities are now seen from a new perspective! We cannot generate new middle-class citizens by charity, food programs, or paternalistic endeavors. Welfare programs perpetuate a dependent society, and do not provide the self-confidence and self-reliance needed by these peoples to advance into the mainstream of American society. These kinds of activities can *at best* provide adjustment to their circumstances, or preservation of the "status quo." More meaningful activities are needed to provide long-range changes. What is necessary, therefore, is to identify those conditions which are the "sine qua non" of middle-class identity, and how these conditions can be created.

THE NEED FOR SMALL BUSINESS DEVELOPMENT

In today's world of materialistic measures of success or worth, it is easy to enumerate both possessions and personal interrelationships which, through the statistical leger-demain of averaging, can define middle-class citizenship for both individuals and groups. Attitudes and value systems are more difficult to categorize, except broadly. These measurements are necessary to classify persons and people, but give little help in identifying the factors of "middle-class society" in an ecology as a whole. The "sine qua non" of the middle-class is the existence of individual entrepreneurship, with its opportunity and challenge for personal gain, advancement, individual growth, status, and the myriad of real and psychological measures of personal progress and success.

Recognizing the inexorable need of the mass production of large companies and their economic contribution to today's advanced societies, democratic institutions cannot survive without small businessess as a major segment of the economy. And without small business, a "middle-class" cannot exist. A society of *only* large business and "workers" (in a "ghetto" or selsewhere) can only dichotomize society into an "owner/worker" separation, no matter how it might be labeled or identified. New industries which employ ghetto residents but are run and owned only by "non-ghetto" persons do not provide the freedom of choice and growth opportunities, needed to change the basic economic conditions of the ghetto.

The creation, therefore, of a growing number of viable, successful small business enterprises, and the concomitant development of entrepreneurial drive, is the major ingredient of long-range ecological progress. This conclusion is equally valid whether applied to "underdeveloped countries" or "underdevel-

oped neighborhoods", varying only in scope and environmental factors. But the "ghetto" exists *within* a larger economic structure, against which and within which it is competitive, and its institutions and enterprises must likewise be competitive against those of its immediate environments. It is therefore necessary to delineate the kinds of small business enterprises or opportunities, which will provide both maximum viability *and* major contribution to economic development and societal progress of the ghetto areas.

TYPES OF SMALL BUSINESSES NEEDED

As Abraham Lincoln once said, we cannot create wealth by taking from the rich and giving to the poor. A small business which is created or encouraged, and can continue to prosper, only at the expense or sacrifice of a direct competitor, has little ultimate chance of success. But in today's high level economy, there are many real *needs* which are not now being met. Foremost among these are the "manufacturing services" industries and job shops, who do not have a *product* as such, but for whose services a *market exists*. Plating, welding, and similar items are usually subcontracted out by manufacturers whose needs are not large enough to justify installing their own facilities. Today the need for such services outstrips their availability, and a company specializing in *one kind* of service selected from a *grouping* of similar kinds of work may well be more economical than the established company, and provide that *part* of the established company's service which it, in turn, would be happy to get rid of. Technical knowhow is needed, but there must be many employees of existing companies who would relish using their technical experience in a company of their own. Some individuals who have served in the Armed Forces have similarly had an opportunity to acquire such skills.

A second area is manufacturing an article for a company which is looking for a "second source of supply," or a source of supply which does not now exist, or which for geographical reasons can be procured more economically. This provides an operating basis which is *competitive on its own right*, rather than competitive on the basis of special favor or artificial economic advantage.

Because local labor, although unskilled perhaps, is locally available, new ghetto area small businesses have a natural advantage where the labor cost of a product or service is a high percentage of the total. The "value added", and hence capital inflow to the area is thus higher, than items where outside purchases of materials and components bulk large. A high labor/value ratio in its sales also helps generate the status of the business as a recognized part of the community.

Retailing and franchising operations should not be discouraged, but have lesser value for certain psychological reasons. The ghetto dweller sees the major portion of his purchasing dollar going through the retailer's hand to the *manufacturer, outside the ghetto*. A local resident as a retailer can gain stature more effectively as a member of a *team* of local businessmen, of which only a limited percentage are retailers or franchisers of "outside" products. On the other hand, a retailer whose customers are principally other businesses does not have this psychological problem, whether his customers are within or without the ghetto area. In addition, manufacturing operations can increase the value-added/investment ratio since inventory costs are lower.

Further delineation of these general concepts can provide a detailed evaluation program for individual and specific needs and opportunities in a given area. Such a developed Standard of Opportunity Evaluation can be used—not to eliminate or discourage the less valuable, but to focus effort and resources on encouraging those which have the greatest potential value to societal and economic goals, without as well as within given ghetto areas.

A PROGRAM FOR SMALL BUSINESS DEVELOPMENT

The creation and successful prosecution of a small business entrepreneurial activity requires a multitude of "inputs", which may be grouped into five basic categories. For simplicity, these can be called: Money, People, Skills, Environmental Relationships, and Value Knowledge. In focusing on a "program" for underdeveloped neighborhoods, however, a sixth factor of Coordination must be added.

Money

In this category fall not only the need for capital of various kinds, but those commodities, resources, and assistance which money can buy. It is not necessary, in many cases, that these be provided in cash, either as loans or investment. For example, credit can be substituted for working capital, rental or deferred payment can be substituted for ownership of fixed assets and tools, etc. Cash, where needed, can be supplied by collateral of others, as in the use of loan guarantees.

Since personal risk is the essence of entrepreneurship, the individual business man or prospective business man should be required to invest some of his own "money" into the enterprise. But individual companies, groups, and organizations can supply assets to the new business, undertaking some of the overall risk, but not necessarily on an "unprofitable" basis. The greater the "cooperative risk-sharing" and the lesser "paternalism", the better the long-range changes for success of the new enterprise.

Banking institutions loan funds on the proverbial "three C's" of credit: Character, Capacity to repay, and Collateral. They may have to be a little "riskier" in the use of their shareholders resources: using character evaluation of others instead of their own judgment; using more lenient evaluation of repayment probabilities instead of "balance sheet analysis"; and relying on credit of equipment suppliers, Small Business Administration guarantees of loans, and future potential in place of current accomplishments. They must also be ready and willing, when asked, to contribute more time and effort in individual guidance and counseling.

Money—in cash or kind—must be avaliable for investment in more than articles or capital assets. Training in skills, research and development work, planning and organizing activities, control and evaluation procedures, all require "investment" and provide "assets" that do not appear on the balance sheet. The funds for these activities, or the know-how which substitutes, are generally brought to a new business by its founder—but in the new businesses we are concerned with here, they may have to be supplied by others. Yet with the interests of many people today, a considerable amount of effort is probably available to contribute these "assets" as a desire to help meet a social need. And these contributions must be based on empathy rather than sympathy—as cooperation rather than paternalism, if they are to have maximum effectiveness.

People

With the effort at present to provide "jobs" for ghetto residents, their is obviously no dearth of manpower for new businesses within these areas. Training in skills and techniques can be obtained with "money" or the equivalent in individual and group contributions. What is needed, however, is effective communication. The existence of a very real "language barrier" must be recognized and overcome, and methods are needed to promote acceptance or "reception" of communication. That this barrier can be overcome has been well demonstrated by the work of such people (in the Philadelphia area) as Rev. Leon Sullivan and Mr. Herman Wrice. In many cases, the concept of step-by-step progress may have no meaning, since previous "solutions" have turned out to be dead-end roads. Opportunities, therefore, may even be viewed as "threats" rather than possibilities for change for the better.

Skills

Aside from the "teachable" skills referred to above, there are other skills, techniques, and practices which are best learned "on the job". Most management skills and techniques fall into this category, as well as certain clerical, planning, accounting, and procedural techniques. The idea proposed by Administrator Howard Samuels of utilizing the experience and knowledge of persons such as the "Executive Service Corps" or those "on loan" from industry is an ideal method of filling this need. What is essential, however, is creation of suitable attitudes and value systems on the part of the "learner", not only to receive and accept such guidance, but to be able to profit by it and carry on when such a "coach" has departed.

Skills training is available from many sources: Producers of business forms, systems, and accounting and control methods have customer education personnel. Preliminary contact has been established with the American Society of Training and Development personnel, who are apparently anxious to make a meaningful contribution of time and effort in this area. Franchisors have their own teams for training personnel of new franchise locations, including basic managerial

skills required for such operations. Businesses have expressed willingness to "loan" their company personnel to assist in developing small and new businesses in similar or complementary fields of endeavor—and even competing companies where there is demonstrable need and market! There are innumerable seminars and conferences led by knowledgable people, and though the method might have to be changed, the skills and techniques to be learned are still basic.

There is indeed a plethora of educational opportunities, a wealth of "teachers" available, and a great deal of knowledge about teaching methods. What are needed are organized, planned programs of learning to fit with and be integrated into the specific needs of a new business, in a selected industry, in a selected area, in consonance with an identified development program for a specific enterprise.

Environmental relationships

That "no man is an island", is an accepted truism in the economic interdependency of today's world. The misguided individuals who have proposed a total "black community", for example, overlook the need to buy raw materials, parts, tools, and even credit standing and governmental aid, from a largely "non-black" world. The successful integration of any business enterprise with its environment is the necessary ultimate goal of any company's chief executive or individual entrepreneur. But various facets of this "business integration" can be facilitated.

The development of markets is usually a difficult undertaking for a new business. Existing companies looking for "alternate sources of supply" or more economical sources due to geographic reasons, can provide guaranteed markets for items with acceptable quality, quantity, and time (delivery) performance—without unfairly mitigating against other small business enterprises or sectors of the competitive enterprise economy. Government purchases, "set-asides", and sub-contracting can be directed toward such new businesses, without undue hardship on current suppliers of goods and services. New inventions and patents can be exploited, with just compensation for the "inventor", and thus provide a "new industry" which will contribute to economic growth and development of the private sector. The "manufacturing service" type of business, referred to on page 6, also precludes a major sales problem, because it meets an identifiable need. In many such ways, "marketing" can be partially assured; or even guaranteed for the first year or two.

There are other more elusive areas of business-environmental relationship which are equally important. Attention must be given to "social responsibility", the acceptance of an enterprise by its immediate community, its contribution to "building a middle-class community from a ghetto", its contribution to encouraging more "enterprise" among its own employees and others. These are the things which depend on attitudes, judgment, and a sense of values, rather than the skills and techniques that can be learned by example and practice. This is the area of "value knowledge" in contrast to "pragmatic knowledge."

Value knowledge

This is the key asset in an individual which provides for ultimate success. Herein lies the drive and motivation of the entrepreneur. This is the kind of *evaluation* needed to make the important decisions—the ones where the facts and data are not available or are insufficient, the decisions where there are no precedents or similarities to fall back on.

Pragmatic Knowledge can be taught, by example and practice, by historical experience of others, by knowledge accepted from others. Value Knowledge can not be learned this way—it cannot be adopted, plagiarized, or purchased. It can be learned the hard way—"through experience," yet the *cost* of acquiring value knowledge this way may well outweigh the *value* of such value knowledge so acquired.

There are innumerable decision areas requiring entrepreneurial judgment and decision-making. Ambition and desire for independence mean nothing without a willingness to accept responsibility and accountability. Planning is meaningless without personally-identified goals, for the entrepreneur himself and his enterprise. Only then can he begin to identify—for himself and his business—what is "success." Accounting is a useful tool, but does not identify the difference between profitability and cash flow. The concept of a balance sheet, or the concept of depreciation and its many interpretations, do not provide data which prove how much capital investment is "adequate". The recognition of "marginal profitability concept" also requires the knowledge of when to "make a killing": the time when the

added value of time or availability provide an excess value to the customer that fairly warrants the high-profitability pricing. All the words that have been written on personnel realtions cannot replace the judgment of the chief executive in how best to "set the company climate." This kind of knowledge: attitudes, concepts, value systems and sense of values—cannot be "taught", but can be learned. In general, it is not dependent upon level of formal education, but a minimal educational level is necessary for adequate "communication", so that learning can take place.

It is in this area of value knowledge education that the Advanced Management Council has singular experience and capability.

Coordination

Although many governmental, private, and individual resources can contribute to the Small Business Development program, it is readily apparent that they can be effective and efficient only if properly coordinated. This is an activity which should *not* be the prime responsibility of government or a governmental agency, for many reasons. A government agency, such as the Small Business Administration, which is supplying funds, guarantees, and general guidance, should be expected to set down objectives, responsibility, standards of performance, and require minimal reporting and feedback to insure proper performance of the program. But the actual coordination and operating programs, the planning, organizing, integration of efforts, and measurement of results should be centered in a group from the private sector, who in turn should be held fully accountable for the program. The National Small Business Association, for example, well known and well-respected in both the government and private sectors, has a broadly-based membership and awareness of the small business community and its operations, and is not subject to the "labels" of either big business or government.

Working with and through such an organization, the Advanced Management Council can provide manager or entrepreneunal education, integrate the training and development needs of individual enterprises, and provide specific and overall measurement procedures and evaluations for continuing program development and improvement.

THE SMALL BUSINESS MANAGER COURSE

The primary purposes of this course are:

A. To develop in the participants the attitudes, values, and value systems needed by an entrepreneur in the successful conduct of his business, both short and long-range.

B. To develop in the participants the awareness of the need, and the means of meeting that challenge, of personal involvement in the upgrading of his environment and its people, for improved economic and societal relationships and progress.

C. To serve as a communication link between the manager's environment and the broader economic environment, so that resources can be made available for practical and profitable application to solution of economic problems.

The A.M.C. concept of manager development is based on the balanced integration of three aspects of the learning process:

I. The "horizon-broadening" experience of finding new ways to look at problems and situations, through individual preparatory assignments.

II. The opportunity to reassess, arbitrate the conflicts of, and reassemble one's sense of values and system of values, through participation in meaningful, guided discussion groups.

III. The application of the concepts and knowledge learned, through day-to-day on-the-job experience, and feedback from the job to the discussion groups, by proper spacing and timing of subject matter in relation to job activity.

A specific course outline is not given here, since part of the program is development of subject matter to provide a course which specifically focuses on the needs of the participants. A method and plan for such course development is outlined below. The preparatory work for the participants and the focus of the discussions will be developed by using practical business tools, equipment, and procedures as "vehicles" on which concept formulation can be based. For example, learning to operate a cash register can well be the springboard for understanding the concepts and need for cash-flow analysis, cash receipts and disbursements, etc. Work schedules provide a basis for understanding planning, the integration of effort toward organizational goals, etc. The subject matter thus

needs innovation and inventiveness in applying it to course concepts, but the most important factor is the judicious selection of subjects.

Experience has shown that in this kind of program participant groups should consist of 11 to 15 participants. Three- to four-hour discussion sessions, weekly or biweekly for 16 to 20 sessions, provide time for preparation as well as opportunity for feedback from the job situation. It also permits the manager to take time from his job without jeopardizing the work situation. Experience may indicate some reasons to revise such a schedule for this course application.

In addition to the Small Business Manager Course itself, the communication channels available through the Course provide an opportunity for the Course Administrator to counsel, advise, and make available data on training and other needs for the businesses of the participants. He can thus provide an important link in providing coordination between the various resources and the application of those resources.

DEVELOPING THE COURSE

The persons who have been associated with the Advanced Management Council cover a broad spectrum of background and experience, yet there is general acceptance of the concept that an educational experience, to be effective, must bear a close relationship to what the "students" *think* is important. Although certain basic subject matter must be covered, it must be presented in a way which is meaningful *to the "student."* The development of this course is therefore focused on finding out *what is important to the participant*, and building this into a meaningful framework.

The plan is to have a Research Director responsible for developing the Course content, under the general guidance of the A.M.C. Board of Directors and Officers. The proposed "research" activities, in addition to available literature, would be meeting with groups to discuss course content. These groups would be:

1. Selected Advanced Management Course Graduates, in a series of limited areas.
2. Selected small business entrepreneurs in a series of limited areas and/or industries.
3. Selected small or individual management consultants.
4. Selected managerial personnel who are conversant with this type of manager development.
5. Members of the Board, Officers, and Course Administrators from A.M.C.

Group meetings would be guided discussions, led by the Research Director, for a series of 3 or 4 meetings for each group. In addition to focusing on meaningful subject matter for a "new entrepreneur", such meetings would probably also develop many business opportunities, as an aid to the overall Small Business Development Program.

The second major function of the Research Director would be integrating these specific needs of the Small Business manager into the conceptual framework of knowledge required for the managerial function, as has been done in the existing Advanced Management Course. This includes the development of lesson plans, discussion questions, and selection of preparatory assignment for participants.

As the course content is being developed, a Course Director will be responsible for providing arrangements: facilities, tools, printing of Course materials, etc. He will also be responsible for coordination with other activities and organizations, relative to selected areas, selection of participants, etc.

SELECTION OF PARTICIPANTS

A coordinated effort of Small Business Development will include a pre-selection of entrepreneurial talent potential, and potential managerial personnel. Although such persons are to be ghetto residents or individuals with whom such residents can identify, additional classifications would provide automatic screening. For example, a search for potential candidates should be made among retired or discharged service personnel of officer or non-commissioned officer rank, probably sergeant or higher. A public relations program should encourage volunteers, now employed in industry, who are motivated to managerial responsibility with the help this program can supply.

A preliminary screening of hopefuls should be conducted. There are no such tests currently available, but they can be developed. Preliminary investigation with the Psychological Corporation indicates the development and application of such tests should cost between five thousand and twenty thousand dollars, depending upon the depth of evaluation required.

Evaluation of the effectiveness of the *educational program*, beyond the evaluation of the *participants*, before and after this educational experience, is also important to the Course's continuing value. Pre-testing programs for participants can also be structured to integrate with post-testing of the graduates, evaluation of the *Course* effectiveness, and success of the Small Business Development program.

FINANCIAL BUDGET

To develop, prepare, and establish this new course for the Small Business Manager, the following estimates have been developed:

Function	1st 6 months	2d 6 months	2d year	3d year
Research director	$12,500	$12,500	$25,000	
Secretarial staff	5,000	5,000	5,000	
Traveling and expenses	2,500	2,500	5,000	
Ad hoc assistance	5,000	1,000		
Course director		7,500	15,000	$15,000
Secretarial staff		2,500	5,000	5,000
Expenses		2,500	5,000	2,500
Training course administrators		5,000		
Printing, binding, etc., and other course materials		15,000		
Total	25,000	53,500	60,000	22,500

The above estimates assume that the first courses will begin during the second six-month period, or a total expenditure of $78,500 during the first year, at the end of which some courses should be in operation. After two years of operating, the demand should be great enough to be self-sustaining, providing enough income for operating expenses, plus continuing updating and revision.

In order that the course become self-sustaining, a fee of $500 per participant is proposed. This fee would cover the fees paid to the Course Administrators, the various course materials, meeting facilities, administrative overhead, etc., in addition to providing a reserve for updating and revision. If first-year courses proved valuable, it might well be desirable to provide a more advanced, "follow-up" course for first course graduates. This could also be provided out of the proposed fee schedule.

The $500 fee per participant, of course, would cover the series of 17–20 sessions of 3 to 4 hours each. It is hoped that interested companies, foundations, or other groups would subsidize participants, in whole or in part, to this extent.

Although the budget shows the Course operation to be "self-sustaining" after two years operations, this does not include any allowance for "advertising and promotion" of the course. It is expected that, as part of the overall program for Small Business Development, participants will be selected and earmarked for the Course in coordination with the balance of the overall program.

A CONCLUDING WORD

The persons involved with the Advanced Management Council recognize and are deeply aware of the need for upgrading the lower-scale segment of our population. We propose a broad program of attack on this problem—a solution which is practical and economical, and which will provide long-range rather than just temporary solution.

We are acutely aware of the need for the type of managerial education which A.M.C. is uniquely equipped to provide. A.M.C. does not have the funds to undertake the development of this program on its own, but is willing and anxious to provide this contribution if initial funding can be provided.

We hope that the importance of this contribution will be recognized, and that funds will be made available to undertake this important assignment.

AMC—WHAT IT IS

The Advanced Management Council, Inc. is a non-profit corporation chartered by the Commonwealth of Pennsylvania. The overall guidance is by a Board of Directors who serve without compensation. Three members of the Board are nominated by the Society for Advancement of Management; which provided the original resources through which the present Course was first created. Other Board members are selected from individuals all of whom have had first-hand experience with the creation of this type of manager education. Provision is also

made for Board representation by a foundation or other organization which may contribute to the efforts and resources of the Council.

A part-time Executive Vice President and part-time services of clerical personnel, printing services companies, etc. provide for maintenance of day-to-day operations of currently operating groups.

There are several individuals who have served or are presently serving as Course Administrators. These individuals are assembled in periodic meetings as an Administrator's group and with the Board, to assist with and recommend revisions, conduct, and updating of the course. Course Administrators are paid for the Courses they administer, as a part-time activity. Course promotion is by the Administrators themselves, by individual chapters of the Society for Advancement of Management or other sponsoring groups, and by a few interested persons who undertake to promote the course personally—on a part-time basis. A portion of the registration fee is allocated to the sponsoring organizatin or individual.

Because of the limited quantity of courses in operation at any one time, the Advanced Management Council is, and has for some time, been in a deficit position with respect to current finances; this is, to a degree, because of substantial payments against a major capital obligation. However, several individuals hold the Council in such high regard, and are so favorably impressed with its objectives and actions, that current funds have been advanced by one of the Officers as need arose.

AMC'S ROLE IN MANAGER DEVELOPMENT

Technological advancement of the last few decades has produced an exponential growth in data and information. It has also produced a less exaggerated but accelerating rate of growth of pragmatic knowledge, including application of technical data and concomitant development of skills and techniques. Yet it is recognized that the development of interpersonal relationships, value knowledge, and the understanding of mutual interdependence between peoples and individuals, is progressing at a very slow rate. This growing divergence—of rapid transmittal of information, the increased mobility of persons and goods, and other technological advances—from interpersonal and intergroup understanding and empathy—has not only left age-old problems unsolved, but has created many new ones.

The responsibility of managers, especially in an open society, is primarily the intelligent direction of the efforts of people. Much is available today to guide, assist, and train managers at first level supervisory and lower middle management positions. But at higher levels of management responsibility, the manager finds himself face-to-face with the overt manifestations of the conflicts created by this dichotomy of ecological progress. As a manager's self-development advances him up the management ladder, he not only must grow from a "specialist-technician" to a "generalist" type of manager, he must also develop an understanding of his functional responsibility as it relates to the overall goals of the enterprise.

The chief executive of an organization usually has an understanding of the relevance of capital accumulation ("profits") to the continuing existence and/or growth of the organization. He also is generally well aware of and actively concerned with the "social obligations" of the organization—to its customers, employees, and the many other public and private groups, which influence the environment in which his organization must operate. Although the depth of understanding and degree of awareness—of this interdependency between an enterprise and its environment—will vary from one individual to another, it is the "sine qua non" of managerial leadership, whether chief executive of a large "institutionalized" corporation or an individual entrepreneur. Long-range success in overall managing of an enterprise thus demands the creation of an individual system of values which takes cognizance of these diverse, and often conflicting, internal and environmental demands, and gives proper weight to their relevance and significance, in day-to-day decisions and overall guidance of the enterprise.

The Advanced Management Council is dedicated to Manager Education in this critical area of knowledge. Many organizations have given attention to education in management skills and techniques, but until recently there has been little attention given to education in "conceptual skill" required for managerial leadership. We have had education for "manager-employees", but not for "manager-employers" or enterpreneurs! The Advanced Management Council knows from experience, that this kind of education, although difficult, is indeed possible. Its efforts are focused on bridging this gap in manager development.

THE ADVANCED MANAGEMENT COURSE

Purposes

This Course is designed for managers who have already been exposed to and educated in the basic skills, techniques, and tools of managing. It is directed toward those managers who aspire to or have been selected for further advancement to top management responsibility. It has several concurrent objectives:

1. *To bridge the gap between top management outlook and upper middle management thinking.*

The strategy developed by top management for effectiveness of overall business operations is conceived from the viewpoint of opportunities for future profitable service which might be rendered to the economy. The timeliness of effective implementation of such strategy is limited by the difficulties of communication with top middle management, whose profit motivations tend to be restricted by a narrow viewpoint, focusing on the costs and efforts of the specific functions which they manage. For effective communication across this "interface", and hence effective action to implement top management decisions, middle management in "top" positions must understand top management's viewpoint. The Course helps the participants think in terms of total and limited resources of the enterprise in relation to its environment, in addition to the specific resources of their own related functional areas.

2. *To broaden the horizons of top and top middle management.*

Most managers begin their careers as "specialists", applying what they know, or could easily learn. Further self-development progresses through becoming *more expert "technicians"*, then through applying the *fundamentals of managing*. Functional responsibility demands recognition of the interdependence of several functions or departments. Similarly, higher management responsibility requires awareness of interdependence between companies, between industries, and with various company environments. Such understanding has been learned through close association between a manager and his superior, but demands on a manager's or executive's time preclude effective implementation of this developmental activity. Yet the effectiveness of this development through the superior-subordinate relationship is enhanced by external broadening and stimulation from additional sources. This improves teamwork between these levels of management, and thus top management can be freed for longer range consideration of strategy, which will in turn feed back to the next level. Further, these broadened managers who arrive at the top level will be better prepared to make this transition in responsibilities.

In the inter-company course, there is additional broadening of outlook, through the participant's arbitration of the viewpoints of managers from other companies, businesses, and industries. The intra-company group, on the other hand, is able to coagulate and synthesize a broader understanding of its own company's environmental relationships and company purpose.

3. *To develop understanding of the interdependence of various national and international economic systems.*

The selection of preparatory readings, the discussion questions, and choice of Session Topics organizes the work of managing in a way which continually relates it to environmental situations. With the growing internationalization of business institutions, it is necessary that this course material relate to foreign as well as domestic economies, governmental and market influences, etc. These environments are in turn analyzed from the viewpoint of the basic economic problems on which production and marketing concepts are built.

4. *To demonstrate the significance of "practical economics".*

There is a gap in the understanding of the generalizations of macroeconomics and the microeconomics of specific marketing and investment projects. AMC is directed to showing participants how the workings of individual competitive businesses fit into the proper concepts of macroeconomics. This is further enhanced by the consideration of international and foreign markets referred to above.

5. *To assist managers in developing and restructuring their set of values.*

Course methods and the juxtaposition of reading are so designed as to challenge the forms, patterns, and institutions in which (old) values have become enmeshed, thus forcing a rethinking of position in many areas. These new perspectives not only reform and create a new value system for the individual, they also help arbitrate conflicts of value knowledge, and strengthen existing values.

6. *To direct attention to the demands of professional leadership.*

The broad range of readings arranged in spiral configuration directs attention first to world problems; later, sessions concentrate on national concern. Finally,

attention is called to the role of the professional manager in leadership involving the survival and growth of the specific enterprise, which generates a feedback to national and international levels. As a result the participant has the opportunity to develop the professional management viewpoint, so necessary for top management responsibility, without the necessity to "live through" the actual business experiences which could teach this to him.

Uniqueness of the AMC approach

In the past, the majority of research on mental processes has been done on infants and the mentally-deranged. We have learned how to teach "animal knowledge"—the skills and techniques of muscular and physical tasks. We are making tremendous strides in improving the teaching of "pragmatic knowledge"—the study of data, information, communication, technologies, etc. We have even made inroads into learning the processes of innovation and discovery. What is not well understood is the process of education for "value knowledge"—on which judgment and critical decision-making must be based.

Value knowledge, and the development of value systems, are related to the creation of individual philosophy. Yet the only positive ways known to change a person's philosophy have been: through religious conviction (or traumatic experience), glandular adjustment, psychoanalysis, and brain surgery! Yet experience has shown that the AMC approach can accomplish such "philosophical development".

Discussion Groups.—This is the central key of the AMC approach. The usual educational method is two-directional: from the lecturer, book, and audio-visual material to the student, and back through answers and tests. Group discussion is a developmental process because each member of the group contributes a different viewpoint or presentation. Unorganized discussion, however, elicits opinion and data, and little actual knowledge is shared. Organized, unstructured discussion can encourage participants to contribute from personal experience, conviction, beliefs, doubts—if properly stimulated.

Preparation.—One source of stimulation (in addition to personal experience) is a group of carefully selected readings. These readings, in the Advanced Management Course, are somewhat profuse, often profound, and wherever possible, also contradictory. They thus both confirm and conflict with a participant's own value system, or at least present a new area where value judgments should be developed.

The "topic", or subject matter of the session, is further developed through the introductory remarks in the lesson plan material. A series of discussion "questions"—for which there are no circumscribed "answers"—provide points of departure for the group discussion. Properly organized, therefore, the preparatory material is so structured that first, during preparation for the discussion, and second, to paticipate intelligently during the discussion, the participant has no other recourse than to *think!* As a result, an environment is created in the discussion group wherein experience and knowledge are more demanded by the group than opinion and prejudice. Learning is thus possible!

Role of the Course Administrator.—There has been considerable study and experimentation with "sensitivity-training" or "T-groups" as they are called. In any such closely knit group as this (12 to 17 participants) exercising dynamic and thoughtful intercourse, group dynamics are ever present. But this is *not* a focus of the experience, since it is subject-oriented rather than personality-oriented.

Group training techniques such as roll-playing and the case method are also absent. Focus is, instead, on "real time"—personal viewpoints and experience of current "live case histories", not "fictitious" situations.

As a result, the Course Administrator is not a "discussion leader" in the ordinary sense of the term. His function is to provide the organization and guidance of the group toward the objective of *developing understanding.* His own orientation and preparation for his role is significant, and requires both broad knowledge and understanding as well as experience. The selection and development of Course Administrators must be done with care and thoroughness.

"Home base" of operation.—A third ingredient of this educational experience is "application". The readings stimulate, the discussions provide new insights, but the knowledge gained can be lost if not "applied". Manager development away from the job, in a different environment, frequently acquires "unreality" when the student returns to the day-to-day business environment. To promote the "reality" of manager education, the AMC program is conducted locally, near the manager's place of work, almost "on the job". It is extended over a period of

time, and thus both the preparatory work and the discussion sessions become integrated into the daily business-operation experience.

From the company viewpoint furthermore, the expense of living-away is avoided, and replacement for the manager is not required, since his absence is a few hours periodically, instead of continually for a protracted period. It is often the man who "cannot be spared" who is the best candidate for and prime beneficiary of this type of manager development program.

Self developed conceptual values.—Since the role of the Course Administrator is almost the guiding of a "self-administered" course, he is more an "organizing participant" than discussion-leader. His broader familiarity with the course material and experience with previous groups enable him to draw out underlying assumptions, find diverse points of view, and create insecurity of conclusion—to preclude *opinion and prejudice* from usurping the significance of *conviction built on understanding.*

Thus the concepts and values which emerge or are discovered, during the course experience, are developed by the group itself, and are not accepted by "imposition by an outside authority" unless supported by knowledgeable credibility.

The AMC educational process is thus not a "course to be taken" or a serious of "meetings to be attended"—but an organized, integrated program "to be experienced."

Value to society of the AMC approach

Since the Advanced Management Council has a truly unique approach to a new area of adult education, it is in a position to make a significant contribution to economic development. During the last decade its successes have been gratifying, in spite of the limitations of its resources. Inter-company group courses have been conducted in a dozen locations. Intra-company courses have been key manager development programs in several organizations, with the number of participants ranging from a dozen or so (one group) to hundreds of top management personnel (ongoing year-to-year series of groups)—sometimes starting with the President and Chairman of the Board as participants in the initial group of the course.

Beyond the obvious purpose of broadening and increasing the competence of individual managers participating, the Advanced Management Course has several longer-range implications.

1. *More responsive management.*

The genius of the American businessman is his ability to get things done. He is most typically a problem solver and a doer. The tremendous material prosperity of this country is the result of this genius.

However, the growing complexity and interdependence, not only of this nation but of the world, means that we must greatly expand our scope of things that need doing. We must not only produce goods efficiently, but also provide full employment. Our plants must be functional, beautiful and keep the air and water clean at the same time. Our investments abroad should produce both profit and good will.

This broadening of scope and vision is a primary objective of AMC. In effect it provides the broadest range of problems and challenges to which management can respond and for which management can share responsibility with government and society at large.

2. *A firmer economic business base.*

For many reasons—not least being growth of technology and its analytical and rational approaches—a concept that "management" is now largely "problem-solving" is widely heard, and in many nations. But in business the manager's real job is to anticipate, and either prevent or at least "shape" the problems. In essence, entrepreneurial leadership is called for, not "crying into spilt milk", or bureaucratic adroitness to make only "methodological decisions."

Between technology and politics today, the economic base of business is being insidiously eroded. The Advanced Management Course is designed to meet this erosion head-on, yet recognizing the value of and the areas where business-government cooperation is constructive, even essential.

3. *Improved international understanding.*

Old alliances, and the pressures and conditions on which they were built, are tired—and international relationships are under ever-increasing strain. New sources of comity, and workable continuity of contracts, cry for discovery.

Trace and commerce plainly can help to fill the breach. The initiative and resourcefulness of the business leader are more needed than ever; and trade contacts, which can be mutually beneficial, are both necessary and feasible at the

international level. The principles of the Advanced Management Course offer a true and lasting common language to facilitate new arrangements in such difficult times.

4. *Strengthened international competitive position.*

Despite encroachments of all kinds of governmental subsidies—whether open or skillfully concealed—the ultimate strength needed can come to a business only through imaginative, courageous and competent business leadership. And the ultimate strength needed by a society is also dependent upon imaginative, courageous, and competent business leadership. Providing this at home is clearly the solid foundation competitively for both national and international economic progress.

The responsible concepts which undergird the Advanced Management Course provide best insurance for such genuinely competitive advances; fortunately they are substantially as applicable in a "foreign" country as in the United States industrial community.

[From the Washington Post, June 17, 1970]

SAFETY LINES DRAWN ON INDUSTRY

The House Education and Labor Committee, on a party line vote, approved a bill yesterday that would give the federal government broad new powers to set industrial health and safety standards.

The committee overrode strong opposition from business interests and rejected an administration-backed compromise before approving the bill by a vote of 21 to 13.

The bill would empower the Secretary of Labor to issue health and safety standards, send inspectors into plants, and order plants shut down when unsafe or unhealthy conditions were found.

A similar bill was approved by the committee two years ago but never reached the House floor and Republican committee members predicted the same fate awaits the present bill.

Senator PERCY. Thank you very much, Mr. Beck.

I am impressed with several sections of your report, particularly your comments with respect to the encouragement that should be offered to a large part of our population constructively in the technology of the country.

You pointed out some very, very useful and challenging areas. They might be controversial in some respects, but we will have adequate time for organized labor, perhaps, to give some rebuttal to some of these comments, but they are certainly very, very stimulating.

At this time we will hear now from Mr. Gregg Potvin.

STATEMENT OF GREGG POTVIN, EXECUTIVE VICE PRESIDENT, NATIONAL OIL JOBBERS COUNCIL

Mr. POTVIN. Thank you, Senator.

I will, if I may, simply file the statement and then summarize it, hopefully quite briefly.

(The statement appears on p. 204.)

Senator PERCY. I would like to say that the complete testimony of each of the witnesses will be incorporated in the record as well as the newspaper insert that was mentioned by Mr. Beck.

Mr. POTVIN. Our president, Bill Jones, had hoped to be here today. Unhappily, he had a prior commitment to address one of our State member associations.

I want to thank you for this opportunity. The purpose of the appearance is to discuss S. 3528. Unhappily, I cannot offer you an Illinois witness, but I would make this observation as a federation:

We are pleased to point out that one of our largest and most active State members is indeed from the State of Illinois, and we are here in their behalf as well as our other members.

It has been encouraging in recent months to note the increasing support for the concept of treating our total ecology as a kind of huge system and the growing realization that it is going to require the same amount of zeal and sophistication to preserve and to maintain that ecosystem as we have spent in the past extracting goods of various sorts from the system.

The rub, of course, is that it takes technology, and very expensive technology at that.

I know, Senator, that you are familiar with the controversy over unleaded gasoline. This is pointed out in some detail in the statement. I shall not burden you with it at this time.

As a practical matter, the impact upon the Nation's small business community, and specifically independent petroleum marketers, will be the apparent necessity for the third pump in each of the Nation's service stations to dispense the unleaded regular gasoline.

Again, I shall not burden you with the statistics as to the total cost which has been estimated as high as $6 billion, but would commend to your attention the specific examples of individual jobbers and the impact upon them in our statement.

We would like really to make two salient points. First, we feel that if a third pump, underground tank, and the fittings are to be required to dispense unleaded gasoline to diminish the amount of air pollution resulting from automotive emissions, that this should be treated as an air pollution device in precisely the same sense as a mechanical device for an industrial smokestack.

We submit the situations are in fact the same thing. Beyond the scope of my prepared statement, Mr. Chairman, I would like to point out to you a further difficulty. I think it is one of almost transcendent importance.

I happen to share with you the philosophy that it is always better to achieve objectives voluntarily rather than through mandatory legislation or regulation. In the case of the unleaded gasoline, many major oil companies have already moved or indicated that they are going to very shortly.

Whether there is legislation requiring unleaded gasoline or whether it is done voluntarily, the objectives are the same, the economic impact upon the small businessman is the same, and it does seem to me that the Congress would be most remiss if they did not take this into account.

In other words, to simply make available long-term, low-interest loans in those cases where antipollution devices were mandatory I would fear would have the total effect of discouraging the voluntary cleanup.

I would hope that in your considerations you might give some thought to what considerations should be extended to not just our industry but to all industries that have the foresight, vision, and the concern for the public welfare to act voluntarily rather than waiting for the enactment of legislation requiring environmental cleanup.

Thank you.

(The prepared statement follows:)

48-335—70——14

STATEMENT OF WILLIAM S. JONES, PRESIDENT, NATIONAL OIL JOBBERS COUNCIL

Mr. Chairman, I would like to thank you on behalf of the members of the National Oil Jobbers Council for this opportunity to appear before you and present our views concerning S. 3528.

The 10,000 independent petroleum marketers represented by the National Oil Jobbers Council dispense approximately one-third of the automotive gasoline consumed in the United States. The overwhelming majority of all oil jobbers are small businessmen. The average number of their employees is 8.7. 73.2 percent of all oil jobbers are corporations. The remaining 26.8 per cent are either partnerships or sole proprietorships.

The average annual gross income of the corporate jobber was just slightly more than $1 million. For the partnerships and sole proprietorships, the average was approximately one-third of a million dollars in annual gross sales. In addition to carrying out the wholesale function, jobbers are also integrated retailers. The average jobber owns 5.5 service stations.

I am proud to be here as their spokesman. Traditionally, oil jobbers are the most efficient marketers in the industry. Their competition comes primarily from those refiners who are also their suppliers. Typically, the jobber is representative of the best of the American small business tradition. They tend to be resourceful and independent as well as efficient.

As you know, Mr. Chairman, both proposed legislation, as passed by the other Body and presently before the Senate for its consideration, and proposed regulations as articulated by former Secretary of Health, Education, and Welfare Finch, would require that all service stations dispense automotive gasoline in a form that would minimize its air pollution potential.

This would take the form of either unleaded regular (under 97 Reseach Octane Numbers gasoline) or so-called low-lead regular, which would contain a half gram of lead rather than the present four grams per gallon. Additionally, of course, for the foreseeable future, leaded premium gasoline will also be marketed.

We are most hopeful that any requirement as to lead elimination would also prohibit the sale of regular leaded gasoline. There are, however, many difficulties here. First, it is not clear to what extent the present automobiles can function adequately on unleaded regular, which will tend to center around the 92 octane level rather than the 94 or more octane found in today's leaded regular. Additionally, some major suppliers have indicated that, unless prohibited by law, it is their intention to market both leaded and unleaded regular.

As a practical matter, the impact upon independent petroleum marketers of the unleaded gasoline controversy will be the requirement of supplying a third pump and tank and underground fittings and lines to supply this new product. The aggregate cost of this to the Nation's oil jobber will be both vast and prohibitive.

To say that the Nation's oil jobbers are concerned would be a vast understatement. They are not just concerned; they are *alarmed.* Indeed, many of them quite properly regard the transition to unleaded gasoline as a crucial threat to their very existence. Let me explain why this is so by providing you with specific instances of the sort of economic impact that the installation of a third pump and tank to dispense lead-free regular gasoline (in addition to regular leaded and premium leaded) would have upon independent petroleum marketers.

A small country jobber in the southeast portion of the United States tells me that he presently makes an annual profit of $25,000 a year and takes a depreciation for tax purposes of some $12,000 per year. All of this, together with an additional two or three thousand dollars would be required to pay for the conversion to the third pump.

An upper midwest-western jobber, with 150 retail outlets, estimates his cost of transition at one million dollars.

A south central jobber, with between 60 and 65 stations, estimates his total cost at $720,000.

This gentlemen, vividly portrays the harsh nature of the economic impact which will be inflicted on jobbers by the proposed transition. It comes, as you know, at a time when the money market is tight, when interest costs are reaching an historic high and the forces of inflation have increased prices substantially.

Mr. Chairman, the only hope of survival for many oil jobbers, if this third pump is required of us, is the availability of long-term, low-interest Small Business Administration loans. We submit that a third pump to dispense gasoline tailored to reduce air pollution is as much of an antipollution device as the equipment placed in industrial smoke stacks for the same purpose. Oil jobbers are being asked collectively with gasoline refiners and automotive manufacturers to absorb the entire social cost for any changes in the manufacture and distribution required to reduce those pollutants in the air resulting from automotive emissions.

The oil jobber is being singled out in the typical American town as the only local citizen being asked to pay a part of the price for any transition needed to clean up the atmosphere, it seems to us that he has the right to ask that consideration be given to the problems thereby created for him.

My purpose in appearing here today is to voice our full support for the principles contained in S. 3528 and to urgently request that any legislation enacted and any SBA regulations issued to implement that legislation be drafted in a manner that will expressly make SBA loans for obtaining a third pump available to the Nation's independent small businessmen who make their livelihood from dispensing petroleum products.

Senator PERCY. Thank you very much, indeed.

Mr. Crosby, you indicate that you have concluded that MESBIC's will be successful only if every one of them functions with a profit orientation. Do you think this would seriously curtail those MESBIC's which are formed by nonprofit corporations?

Mr. CROSBY. That is a very hard question to answer, Senator, because in a way it is a contradiction. I would hope that even a nonprofit corporation would establish the premise with the minority business that it be for profit, simply because that particular business could not perpetuate itself if it were not based on that motive.

Senator PERCY. Will a MESBIC require more specialized management than a regular SBIC? Wouldn't the MESBIC management have to be more management-counseling oriented than the management of a regular SBIC?

Mr. CROSBY. I think that is perhaps true, sir, in an area of dispensing and disbursing the smaller loans and investments. I know we find in our case that more counseling is necessary.

Senator PERCY. I understand that yesterday Mr. Lynn testified that if the SBA's licensed 200 MESBIC's it could mean as much as $1 billion to be made available for minority enterprise with about $750 million coming directly from the private sector.

In your own experience, do you think that this is an attainable goal?

Mr. CROSBY. I hope it is attainble. I think so much will depend upon the experience of the early MESBIC's. Certainly the service, both financial and counseling, of MESBIC's are sorely needed.

Senator PERCY. Mr. Potvin, what advantages accrue to the plan to have SBA make grants to organizations to supply management and technical assistance to socially or economically disadvantaged persons as compared to a comprehensive Government program providing such assistance through regional centers?

Mr. POTVIN. Senator, I would like, if I may, to draw on my experience as a staffer on the House side. We had very extensive hearings on black capitalism perhaps a year ago. It was my observation at that time that a number of private associations have been highly motivated in a way I am sorry to say I haven't noticed with the Federal agencies.

I think that many times organizations, such as ICBO, by drawing on the total resources of the private sector come up with ideas, with

approaches that too often are stifled in the many layers of bureaucracy through which they must pass within either State or Federal governmental agencies.

Senator PERCY. Mr. Beck, section 101(3) gives SBA the authority to make direct grants to small businesses involved in SBA loans to defray part of the cost of the interest on the loans.

Assuming that these grants would not be available to every borrower, what criteria should be established to decide who gets the interest cost offset?

Mr. BECK. Oh, that is a hard one. I don't think right offhand that I can give you a fair answer on that. Certainly, it is a gray area in anything like this where you are talking about Government supporting directly or indirectly a portion of our economy and not other small businesses who might be directly competitive.

There certainly is a wide gray area, and I would think that this would take some study. I don't think there is an easy answer to that, Seantor Percy. I am sorry. We would be glad to look into it and submit something in writing if you would like.

Senator PERCY. Maybe I could put it this way. In your judgment should grants be made available at varying times in the business cycle, that is, when interest rates are high or when they are low? Should they extend in perpetuity or should it be just a shortrun measure?

Mr. BECK. I think that Mr. Ewert had a very good point, which I agree with, that in many cases a business needs an established line of credit rather than just a specific loan for a specific activity. I think it depends to a great extent on the kind of business, the kind of operation we are talking about.

A franchising operation is one thing, for example. A manufacturing operation requiring a considerable amount of capital investment is, of course, an entirely different situation. And I think each of them would have to be looked at separately, and this is perhaps something too which would have to be developed somewhat from experience.

Senator PERCY. Mr. Crosby, would you care to comment on this question?

Mr. CROSBY. I don't think I can add to what Mr. Beck said. I think it does need more study, and I think again as in our business you have to be terribly flexible in terms of the needs of the client.

Senator PERCY. Mr. Crosby, section 202 of S. 3699 would make it possible to establish a MESBIC as a nonprofit corporation and thus make it eligible for certain tax advantages. What would be the advantages and/or disadvantages in taking the profit motive out of the MESBIC program?

Mr. CROSBY. We are fearful that if the profit motive is taken out of the MESBIC program that the disadvantaged person attempting to operate a business will find that he must have in effect a permanent crutch of Federal or State funds when we think that with proper training and education he can do it himself.

Mr. BECK. Could I comment on that, Senator Percy?

Senator PERCY. Yes.

Mr. BECK. I say this because for the more than three decades that our organization has been in existence we have always opposed the unfair competition of "profitmaking" cooperatives with the small business private enterprise community, and I think this is the kind of

thinking we should keep in mind here, even in the bills that are suggested here that talk about cooperatives.

Certainly we have no objections to the exempt status given in our tax laws to the true cooperative. We object to tax advantages being granted to the large cooperatives which have gained disproportionate economic power through the fiction that they are nonprofit organizations and who use this disproportionate economic power to compete unfairly and to the detriment of taxpaying small- and medium-sized businesses.

The fact that they are a cooperative or the fact that it is a nonprofit organization shouldn't give them more benefits that would unfairly permit them to compete with unfair advantages against competitors in the same field. I think this is a basic principle that we should keep in mind continuously.

Senator PERCY. I would like to ask each of you or either one of you that would want to comment on this question:

Section 101(1) of S. 3699 authorizes SBA to guarantee loans up to 90 percent made by persons and organizations not normally engaged in lending activity. That would involve churches, foundations, private organizations, and the like. Would you anticipate many problems of control by SBA in permitting these persons to engage in loan activities with the benefit of the SBA guarantee?

Mr. CROSBY. I think we see considerable dangers in it. I think the SBA, if they are to guarantee any of these loans, must have the right to a prior approval, because else I don't see how they can be held responsible unless they do.

Mr. BECK. I would concur on that.

Senator PERCY. Mr. Potvin, any comment?

Mr. POTVIN. I would think that might well lead to just all sorts of problems. It sounds highly dangerous to me, frankly.

Senator PERCY. Finally, section 101(2) of S. 3699 authorizes the SBA to guarantee automatically loans by financial institutions and other persons or organizations without SBA first reviewing the individual loan.

This procedure worked well on a trial basis in Chicago when banks and other lending institutions were the only parties giving the loans. We could rely on those institutions' business acumen to properly screen the loans. This bill now permits loans to be extended on the expedited basis without prior SBA review by persons not normally engaged in the lending activity.

Would you anticipate any problems because of this? If so, how serious would the problems be?

Mr. BECK. Speaking as a bank director for some years, and again it is difficult to spell out in chapter and verse exactly what the knowledge required of a person such as a lending officer of a bank might be, but nevertheless there is a considerable amount of—again I use the words value knowledge and understanding having to do with lending activity that a bank which is involved in this kind of activity on its own certainly has that other people do not have.

I would think that if this kind of authority were to be extended it should be done very carefully, and it should primarily be extended step by step to those organizations—banks or others—who have proven that they do have some real capability in this field from prior experience and track records, so to speak.

Again I think this bears on the other one, that if we are too loose with it we can open up funds and money and lose a lot of Government money that we shouldn't. I think that there has to be a recognition that banks do have a certain amount of knowledge in processing and judging loans and so on that others not in that activity might not have at the outset.

Mr. CROSBY. I don't think I can add much to what Mr. Beck said, Senator, except if this were to go ahead as it reads now, I think it might make the banks less cautious in their lending activity if they knew they did not in effect have a partner who was looking at it as hard as they are.

Mr. POTVIN. I would be flatfootedly in favor of it, but there is this caveat, Senator. As you will recall, there was an episode about a year and a half ago when the SBA got into a certain amount of trouble on some loans having been made to some rather notorious members of the Mafia in New York City. That was done under the expedited program.

So, there are some dangers there, but on the whole I should think the amount of expediting that could be done, the elimination of unnecessary redtape, would be most helpful.

Senator PERCY. Gentlemen, I wish to thank you very much indeed for your thoughtfulness in being here. Your testimony has been exceptionally helpful, and on behalf of the chairman I call these hearings recessed subject to the call of the Chair.

(Whereupon, at 11:40 a.m., the hearing was recessed, to reconvene at the call of the Chair.)

APPENDIX

Additional Statements and Material Supplied for the Record

JUNE 9, 1970.

Senator THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business, Committee on Banking and Currency, U.S. Senate, Washington, D.C.

DEAR TOM: The enclosed information has come to me from a nationally known custom cured foods company, Harrington's, of Richmond, Vermont. I would appreciate it if you would give this problem your personal attention for I understand that there are some 14,000 small meat packers who are affected in a similar fashion by the Wholesome Meat Act.

I understand that you are going to hold a hearing on June 15 on legislation which would authorize a special interest subsidy for small companies which have to meet costly new Federal standards, such as those the Wholesale Meat Act imposes on Harrington's.

Sincerely yours,

GEORGE D. AIKEN.

HARRINGTON'S CUSTOM CURED FOODS,
Richmond, Vt., May 20, 1970.

Senator GEORGE AIKEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR AIKEN: Before the end of the current year, our company will have to invest between ten and fifteen thousand dollars of additional capital to maintain our USDA license.

Ever since the enactment of the Wholesome Meat Act, I have been reading about the availability of funds from the SBA. In a verbal application to the SBA regional office in Montpelier, I have been assured that direct funds are *not* available, the paradox being that we are too good a credit risk. The bank will lend us the funds we need, at nine percent, making us ineligible for a direct SBA loan at five and one-half percent.

I do not have to tell you that our USDA license has been a costly experience, which is probably the reason we are the only processor in the State of Vermont with a USDA number.

The additional burden of debt service, resulting from the expenditures to be made, required by the end of the year, will certainly be a hardship for our business. I would only hope the policies of the SBA, as they apply to small processing plants, would allow them to provide real *assistance*, rather than what appears to be lip service, simply because we maintain a credit rating in which we have considerable pride.

I would welcome your comments.

With warm regards.

Sincerely,

JOHN.

HARRINGTON'S CUSTOM CURED FOODS,
Richmond, Vt., June 2, 1970.

Senator GEORGE D. AIKEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR AIKEN: On the sheet attached I have estimated the expenditures involved to maintain our USDA license. These are to be completed, incidentally, by the end of this year.

While the banks with which we do business are happy to lend us this money at 9%+, the SBA is not, simply because the banks will. As you point out, the necessity for these funds results from Federal Regulations. Yet, financing of them at a reasonable rate of interest, through the Federal Government, isn't available.

I certainly encourage your efforts to bring about some reasonable understanding, which would make compliance with USDA regulations economically feasible.

With best regards,

JOHN.

Estimates of work to be completed by December 31, 1970

Air conditioning:	
(50 degrees) processing area, with necessary construction involved	$8,000
New waterline from main	500
Wall repairs	500
Black top drive	150
Equipment: Meat retainer storage pallets, metalized doors, light covers, recording thermometers, smokehouse cleaner	2,000
Total	11,500

THE AMERICAN BANKERS ASSOCIATION,
Washington, D.C., June 30, 1970.

Senator THOMAS MCINTYRE,
Chairman, Subcommittee on Small Business, Senate Committee on Banking and Currency, New Senate Office Building, Washington, D.C.

DEAR SENATOR MCINTYRE: The American Bankers Association is pleased to have the opportunity to comment on S. 3699.

As we understand it, the bill is an outgrowth of a report by the President's Task Force on Improving the Prospects of Small Business, and its major features are intended to: (a) augment the authority of the Small Business Administration in connection with that agency's present financial assistance programs; (b) make certain additions and amendments to the Small Business Investment Company (SBIC) program; (c) provide certain incentives to small businessmen and small business lenders; and (d) amend the Small Business Investment Act of 1958 to authorize a surety bond guarantee program for small construction firms.

The A.B.A. supports the general intent and objectives of this legislation. This support is consistent with our often reiterated position in favor of measures designed to assist the small business sector of our economy.

More specifically, the A.B.A. strongly endorses those provisions of S. 3699 which are designed to provide increased management assistance for small business and more flexible access to equity capital through the instrument of SBICs. This is particularly true with regard to minority enterprise and MESBICs.

We fully endorse the SBA's current desire to revise its procedures so that a bank, with SBA approval, can use its regular loan forms rather than the special SBA forms. This modification, and its new "three-day approval" plan, are fully consistent with the Administration's desire to eliminate "red tape" and streamline the delivery system of the various federal programs.

However, the A.B.A. has strong reservations concerning the full delegation of SBA guarantee approvals to individual banks. We feel the three-day guarantee program now being tested in several cities throughout the country fully meets the banking industry's need for timely SBA approvals, without dilution of the necessity for the Federal Government to retain its responsibilities for review and evaluation of the obligation of public funds.

The A.B.A. fully supports the proposal authorizing SBA to guarantee up to 90 percent of performance bonds up to $500,000 for small contractors. A special revolving fund, initially capitalized at $10,000,000, would be established in SBA to support both the proposed surety bond guarantees and the SBA's presently authorized lease guarantee program. We are concerned that Congress has not established guidelines for this program, to protect the public against possible abuse of its credit. We believe that close attention should be paid to the administration of this program if it becomes law.

There is one proposal contained in S. 3699 that causes the A.B.A. great concern; that is, the proposal pertaining to direct interest subsidy grants to small businessmen. First, the amount of the interest subsidy (even during times of high interest rates) more than likely will not be sufficient to make substantial difference in the outcome of an enterprise. Payment of interest historically has not been a severe cause of failure of small business. Furthermore, if the small business is failing, the amount of subsidy involved would not generally be sufficient to alleviate problems.

However, aside from our judgment of the effectiveness of such a subsidy, the A.B.A. has grave reservations about making any subsidy—regardless of size—directly available to the small business involved. A.B.A. believes such funds could easily be misused. Their use and application to the business would be extremely difficult to trace and police. A better approach, if the subsidy is to be applied at all, is to provide the subsidy amount directly to the lender, eliminating the policing problem for the Government. A normal working relationship has already been established between SBA and the lending institution. Congress made this basic decision in deciding to initiate programs relying largely on the private, highly regulated, banking system. While this approach would place an additional servicing burden on the lending institution, it could be offset by the compensating use of such funds' acting as an incentive.

The A.B.A. congratulates the Committee for expediting consideration of these measures. Except for certain reservations, we feel these proposals are vitally needed to assist small businesses—particularly minority enterprises—become a viable part of our economy.

Thank you for the opportunity to express our views.

Sincerely,

CHARLES R. MCNEILL.

STATEMENT OF GARLAND C. GUICE, EXECUTIVE DIRECTOR, CHICAGO ECONOMIC DEVELOPMENT CORP.

The sponsors of the "Small Business Amendments of 1970", S. 3699, are to be commended for introducing this important piece of legislation. This bill is another step in the right direction toward providing meaningful assistance to our country's struggling business community.

It is encouraging to see the "light in the darkness" as the Nixon Administration begins to focus in on the serious problems confronting this nation's disadvantaged and minority groups: Small Business Investment Companies and their "shadows", Minority Enterprise Small Business Investment Companies; and small general and specialty contractors in the construction industry. These are areas that warrant special attention.

Since most of my views on minority-owned businesses are already a part of the record as a result of my testimony before this distinguished Subcommittee during the hearings on Federal Minority Enterprise Programs last December, I will limit myself in this statement to those portions of the bill (S. 3699) which should be examined very closely if the proposed legislation is to fulfill its promise to improve the lot of small businesses.

Let me begin with Title I, Sec. 101(2). In my opinion, the automatic guarantee provision, if enacted, will stimulate more bank participation in the Small Business Administration loan guaranty program. This is a logical sequence to the successful, pilot three-day automatic loan guarantee program instituted by SBA in Illinois. In addition, it should speed up action on loan applications by eliminating one step in the decision-making process.

I concur with the recommendation made by Mr. Russell Ewert, Vice-President of The First National Bank of Chicago, before this Subcommittee that SBA should have the added authority to guarantee a line of credit in addition to their traditional guarantee for term loans. This added flexibility is needed to provide financial assistance to the increasing number of service-oriented businesses.

Although the concept of interest-subsidy grants (Sec. 101(3)) is meritorious, the provision as written does not appear to have adequate safeguards for preventing lenders from reaping large profits with little or no direct benefit to the small businessman. The small businessman will not be helped if the lender simply increases the rate of interest on the unsubsidized portion to equal the normal rate charged their business customers. An alternate approach that would

assure some degree of help to small firms would be to peg their interest rates at the current rate charged by SBA on direct loans. Presently, that rate is 5½%. Small firms eligible for SBA direct loans should not be penalized because SBA is unable to deliver and they are forced to seek help from the private sector. The differential between SBA's rate and the prevailing market rate for small firms should be absorbed by the subsidy.

Another suggestion for the consideration is to offer deposits of Federal funds as an incentive to banks which make loans to small businesses at the SBA rate. The commitment to link deposits with loans on a matching basis would be relatively simple to execute and inexpensive to administer. Illinois has been successful in stimulating loans to minority groups by using link deposits. The concept warrants careful study.

The proposed repeal of Section 406 of the Economic Opportunity Act and its inclusion as Section 102 of the Small Business Amendments is significant to those of us who have been following the baby (minority enterprise) from the orphanage to its rightful home. We would suggest that administration of the program be delegated to the Office of Minority Business Enterprise since that office has been given prime responsibility for developing minority businesses.

My views on the important need for equity capital as a stimulus for minority business development were spelled out in a recent speech which I delivered before the Midwest Regional Association of Small Business Investment Corporations' 1970 Annual Meeting:

"When Milton Stewart first asked me to address this group, I informed him that I would welcome the opportunity to do so since I had some unpleasant things to say about the SBIC industry's failure to make investment monies available to minority-owned businesses.

"I cannot categorically attribute the slow growth rate of black businesses directly to the absence of SBIC investment funds because the problem predates SBIC's. I can say, unequivocally, that much greater progress would have been made with your active support and participation.

"It is a recent phenomenon that equity capital has begun to be channeled into the black community. Prior to the current emphasis on 'black capitalism', the only available sources of financing for black businesses were personal loans from relatives, friends, finance companies or juice men and loan sharks. Banks would not lend moneys to blacks on the convenient basis that the businesses did not have the necessary equity to debt ratio or the person applying for a loan to start a business venture did not have sufficient investment funds to satisfy their requirements.

"The potential black entrepreneur, therefore, was stopped by this tactic and subconsciously believed that he was being discriminated against. The influx of investment funds by SBIC's into potentially profitable black firms could have forced the banking industry to come to grips with the problems of minority businesses much sooner than it did.

"I have heard most of the arguments as to why the SBIC's did not, and to a great extent today, have not participated in more business ventures with blacks. The arguments range from the statement that the SBIC industry, as a whole, has been unprofitable to the expression: "We do not know where to find them or how to deal with them when we do find them". I differ with those statements. It has been the practice of SBIC's to gain expertise in other areas through personal study or the hiring of staff and/or consultants with knowledge in a given field. The same approach could have been used in developing a portfolio in the black community. SBIC's could have acted as brokers in bringing black and white entrepreneurs together to form joint ventures or corporations. They could have assisted promising blacks in finding or developing businesses within, or possibly outside of, the ghetto where better opportunities for growth normally exist.

"Allow me to review with you some of the progress that has been made by blacks in Chicago since the first trickle of funds became available about five years ago—starting from a low base line, there are at least:

"(4) black-owned new car dealerships;
"(4) black-owned new shoe stores;
"(2) black-owned metal stamping plants;
"(2) black-owned banks;
"(1) black-owned broom manufacturer;
"(1) black-owned electronics firm;
"(1) black-owned chemical firm;

". . . and assorted cosmetic, soap and food producers; wholesale juice, beer and liquor distributors; and retail and service type businesses.

"Some older firms have had excellent growth, such as the Johnson Products Company which "went public" last year after gross sales exceeded $10 million.

"The absence of SBIC participation in the minority business arena has spurred the development of another program to do the job—NESBIC's.

"The Small Business Administration must share a portion of the blame for not making more venture capital available to minority groups. This could have been done by simply granting licenses to SBIC applicants desirous of serving inner-city communities. Instead, until recently, SBA placed very little emphasis on licensing SBIC's organized by minorities or other groups willing to concentrate their efforts on developing black enterprises. Now, big business has been asked to rush in with "nickle and dime" MESBIC's to fill the void. By so doing, they will, in all probability, be-inventing the wheel and making the same mistakes CEDC made five years ago and SBIC's made ten years ago. The corporations should consider their investments in MESBIC's as just that—*investments*—rather than contributions which they never expect to recoup. A logical conclusion could then be drawn: the business assisted must be sound if they are to recoup their investment in the MESBIC."

My remarks should not be construed as opposing the MESBIC program. Quite the contrary—*it has my wholehearted support.* My concern is that we do not repeat the mistakes made in the past. Experience with the SBIC industry has shown that an average capital base of approximately $2 million is needed to sustain a typical operation at a reasonable profit level. We do not need to create another "poverty" level approach to providing equity capital to minority-owned businesses at a time when we are seriously discussing ways to move minority groups into the business mainstream.

Title IV, Part B on Surety Bond Guarantees addresses itself to one problem I mentioned during my previous testimony before this Subcommittee. Its enactment would alleviate the difficulties presently associated with obtaining contract awards. The extension of SBA guarantees for lines of credit to these small contractors and the provision for technical and management assistance would provide a comprehensive framework for more rapid growth of small contractors in the building construction industry.

In summary, I believe S. 3699 offers an excellent opportunity to transform the Federal Government's desire to help into tangible programs for making a real contribution to this country's small business community. The following are a few specific recommendations which, I believe, can strengthen the bill:

(1) Extend SBA authority to include the guarantee of a line of credit for a small firm.

(2) a. Use the interest-subsidy program to guarantee SBA interest level borrowing capacity for small firms.

b. Use link deposits as an incentive for stimulating below market interest rates for small concerns.

(3) Incorporate MESBIC program into the Small Business Investment Act, but encourage the creation of larger, more viable MESBIC's to improve their survival probability rate.

(4) Expand contractors program to include SBA guarantee of a line of credit for small contractors and provision for technical and management assistance in addition to proposed Surety Bond Guarantees.

I cannot over emphasize the importance of the proposed legislation. I would hope that Congress, in its wisdom, will give serious consideration to this important bill.

NATIONAL INDEPENDENT MEAT PACKERS ASSOCIATION (NIMPA) RESOLUTION IN SUPPORT OF SENATE RESOLUTION 176, S. 1750, AND S. 3528

Whereas Senate Resolution 176, S. 1750, and S. 3528 recognize the task facing the small meat packer not previously subject to the Federal meat inspection regulations in complying with strict standards under Federal or State law as a result of the passage of the Wholesome Meat Act of 1967 (P.L. 90-201): and

Whereas Senate Resolution 176, S. 1750, and S. 3528 are designed to offer Federal assistance to small business enterprises for which compliance with the Act may require substantial outlays of capital for new machinery and plant facilities; and

Whereas Senate Resolution 176, S. 1750 and S. 3528 request the Small Business Administration to undertake a study of the financial needs of small business concerns in complying with the Act and the extent to which Small Business Administration funds would be available for such assistance; and

Whereas Senate Resolution 176 requests the Small Business Administration to report the results of its study to the Senate no later than 30 days after Senate approval of Senate Resolution 176; now therefore be it

Resolved, That the National Independent Meat Packers Association urges the prompt approval by the Senate and House of Representatives of the United States of America in Congress assembled of Senate Resolution 176, S. 1750, and S. 3528.

UNIVERSITY OF NEW HAMPSHIRE,
Durham, N.H., June 26, 1970.

Senator THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business, Committee on Banking and Currency, Old Senate Office Building, Washington, D.C.

DEAR SENATOR MCINTYRE: The concern of the Subcommittee on Small Business for Federal efforts to develop minority business enterprise is clearly reflected in the measures proposed in Bill S. 3699 which you introduced on April 9, 1970 on behalf of yourself and Senators Bible, Javits, Packwood, Percy, Proxmire, and Tower. I have read the Bill with great care and would like to suggest a minor amendment which I believe would materially enhance the ability of the Federal government to achieve the objective cited in Section 102, (b), (6)— . . . providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served;".

The suggested amendment is attached hereto. It will have the effect of emphasizing the development of entrepreneurial management training programs for socially or economically disadvantaged persons as a joint-effort on the part of the business community and the academic community. I believe the emphasis on a jointly developed and implemented program to be desirable for the following three reasons:

1. The business community and the academic community working together would combine the pragmatism and realism of the business world with the training experience and resources of the academic world. College and University schools of business now recognize that much of the traditional college and graduate level management training curriculum is inappropriate for the development of entrepreneurs, and, in particular, for taining minoity entepenreurs with plans for relatively small enterprises and often with limited educational backgrounds. Two recent quotations illustrate this point:

a. Excerpts from a paper entitled "Minority Enterprise: The Role of the American Marketing Association" delivered by Thomas A. Klein, Associate Professor of Marketing, College of Business Administration, the University of Toledo, to the American Marketing Association Educators' Conference, Cincinnati, Ohio, August 26, 1969.

" . . . (3) Educational materials are sorely needed in two areas:

(a) Persons conducting training sessions for businessmen in ghetto areas have little to assist them in teaching modern marketing concepts and their application to actual problems. College texts and related materials simply do not "get across" to men with little feel for theoretical constructs, abstraction, and generalization—they feel the here and now in extremely concrete and practical terms and can only be reached on that wave length. While teaching aids in such traditional areas as merchandising, display, and advertising are plentiful, a personal judgment is that much of this is both bad marketing and bad education—a combination unlikely to produce good marketing education . . . "

b. Excerpts from an article entitled "Black Business Development" by Fred C. Allvine appearing in the *Journal of Marketing*, April, 1970.

" . . . Developing Business Skills . . .

While man-to-man or team consulting is important for dealing with the particular problems of individual businesses, a more formalized approach to developing basic business knowledge is also needed. One of the pioneering efforts in this area is the Free School of Business Management. The Cos-

mopolitan Chamber of Commerce of Chicago has primary responsibility for the program. Its co-sponsor is the Small Business Administration. Their program consists of 16 two-hour class sessions taught by businessmen on a wide range of subject matters. More than 800 students have attended and completed the course. Now specially designed courses in fundamentals of business are needed, including accounting and finance, production, marketing, and personnel. One might hope that the academic community will step forward with some creative programs . . . "

It seems highly probable that a combination of business and academic resources would lead to the development of the most effective entrepreneurial management training programs for socially or economically disadvantaged persons.

2. Business firms assisting in the development of minority enterprise, as for example through the MESBIC venture capital program, are now turning to college and university schools of business for assistance in training qualified managers. For example, Robert O. Dehlendorf, II, President of Arcata National Corporation of which Arcata Investment Company, the pilot MESBIC, is a subsidiary, was quoted on December 9, 1969, in testimony before the Subcommittee as follows:

Excerpts from the Statement of Robert O. Dehlendorf II, President, Arcata National Corporation before the Subcommittee on Small Business, Committee on Banking and Currency, United States Senate, December 11, 1969.

". . . From the outset Arcata Investment has pursued the following method of operation: . . .

12. Arcata Investment functions as the management of its parent company does every day of the week. It puts dollars behind the right man, with the right product or service, to meet a market need. It is not "do-gooding" in the true sense of the word, nor is it attempting to fill the role of the social worker or the educator, functions which most corporations are totally ill-equipped to perform.

"From experience over the past eighteen months we have learned the following: . . .

4. Small Business management training is essential.

5. Large minority-owned establishments and more sophisticated businesses cannot be anticipated until greater numbers of minority businessmen gain greater on-the-job management experience, and formal business education results in more trained minority managers . . .

As the Committee is aware, the Department of Commerce recently announced Operation Enterprise involving the MESBIC concept. In my opinion, it is a major step forward. Its success, however, will depend upon the following: . . .

5. Establishing specially developed minority small business management educational programs at college and university schools of business. A federally financed scholarship program might be considered."

A combination of business resources and academic resources in the design of appropriate training programs and opportunities to offer programs combining "classroom" and "on-the-job" training seem to hold the most promise for developing the necessary management talent for establishing successful, self-sufficient minority-owned enterprises. College and university schools of business, where training and education are primary rather than subsidiary functions, are also in a position to maintain the substained long term training effort that will be required to close the so-called "ownership gap."

3. My final point concerns the extent of the interest and the resources available in the academic community to deal with the development of minority management talent. The following quotation reflects the recognition on the part of schools of business of the need to make major alterations in traditional management curriculum:

Excerpts from an article entitled: "New Frontiers in Encouraging Minority Enterpreneurship—The Role of the Business School" by Roger Dickinson, appearing in a special issue of the *Journal of Small Business* devoted to the subject of minority enterprise, dated April–July 1969.

". . . The business school has many alternatives and combinations of alternatives open to it: . . .

Fundamentally Change the Curriculum. A further way to help the ghetto is to develop a curriculum in small business. The curricula of the Schools of Business have been weighted more and more to developing managers for the larger enterprise. Much of the teaching is irrelevant to small business, and neither student nor faculty may get any exposure to small business. But black

capitalism may depend on developing blacks who are expert and interested in the problems of small business. If the business school is to contribute to minority enterprise formation, substantial changes are needed in its attitude toward small business in general. More research is needed on the entrepreneur, his role, function, background, etc.—and curricula to reflect these findings. It is probable that demands will be heard for a business curricula to reflect these findings. It is probable that demands will be heard for a business curriculum relevant to the needs of the minority cultures just as other elements of the University are hearing these demands today."

A recent publication of the Office of Minority Business Enterprise, *Higher Education Aid for Minority Business*, contains an extensive inventory of programs already underway at a selected list of collegiate schools of business. The final paragraph of the Introduction reads as follows:

"The combined total of 107 business schools represented in this publication is impressive evidence of the interest of Universities in minority business endeavor—the special concern of the Office of Minority Business Enterprise."

Over the past months, the Whittemore School has been working closely with the Division of Manpower Development and Training in the U.S. Office of Education in development of an entrepreneurial management training program designed to meet the special needs of socially and economically disadvantaged persons. The Division of Manpower Development and Training in the U.S. Office of Education has been most helpful in this work, and I would cite in particular the efforts of Timothy D. Halnon, Richard Hobson and Dr. Howard A. Matthews, Director. This Federal agency seems well suited to the task of coordinating academic programs in the field of management training.

In conclusion, the suggested amendment to Bill S. 3699 is proposed in a belief that the Federal government can most effectively aid in the training of minority business management talent by supporting programs developed and implemented jointly by the business community and the academic community. I appreciate this opportunity to present my reasoning and conclusions to the Subcommittee and hope that they will contribute to your efforts to promote minority business enterprise.

Very truly yours,

WILLIAM E. WETZEL, Jr.,
Assistant Professor.

SUGGESTED AMENDMENT TO BILL S. 3699

TITLE I

SEC. 102(b) (6) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community *in cooperation with the resources of the academic community*, including the development of management training opportunities in existing businesses, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

THE URBAN COALITION ACTION COUNCIL,
Washington, D.C., June 29, 1970.

Senator THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business, Committee on Banking and Currency, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Traditionally, minority construction contractors have faced a wide range of problems which have blocked their participation in and deterred their advancement in the American construction industry. Entry in the past has been hampered by a number of factors, including (1) a lack of broad-gauge managerial skills, a result of restricting minority contractors to small projects which have not afforded them broad experience in areas such as cost estimating, accounting, and non-residential construction, (2) inadequate short-term funding, and (3) inability to obtain bid, performance, and payment bonds generally required for large jobs.

For more than a year, the National Urban Coalition has been working to establish the Minority Contractors Assistance Project to help overcome these prob-

lems. The work of the Project has led the Urban Coalition Action Council to conclude that the surety bond requirement is the foremost problem among these constraints. Therefore, the Action Council wishes to express its strong support for new legislation that will permit the Government to guarantee construction bonds or authorize competency certifications and thus dispense with the need for bonding on certain Federal construction projects.

While surety bonds provide essential security for most of the construction industry, they have become a major obstacle to the growth of minority contractors, since most minority contractors find it difficult to obtain bonds on jobs of any substantial size. Moreover, these contractors find themselves caught in a vicious circle since the very lack of experience which makes it impossible for them to be bonded further prevents them from gaining that experience. At a time when it is estimated that 26,000,000 new dwelling units will be needed to house our growing population and to replace existing substandard housing during the next ten years,* it is essential that this country maximizes its construction capabilities by allowing minority contractors to share fully in the economic benefits of this industry.

The Minority Contractors Assistance Project seeks to provide significant working capital, effective technical assistance, and manpower skills to minority contractors in fifteen selected cities. Even with this kind of help, however, most minority contractors will still be effectively foreclosed from even bidding on many government jobs by their inability to obtain surety bonds. Therefore, the Urban Coalition Action Council believes there is a pressing need for new legislation in this area that will (1) provide for a Federal guarantee of construction bonds and (2) authorize the acceptance of certifications of competency in lieu of bonding in connection with the performance of Federal construction projects. At a minimum, such legislation should provide the following:

(a) A provision should be enacted authorizing the Federal Government to guarantee surety companies up to 90 percent of the cost incurred by the surety due to the failure of a contractor to perform in accordance with the terms of his contract;

(b) A Federal revolving fund of several million dollars should be established for this purpose;

(c) HUD, the Small Business Administration, or some other appropriate government agency should be authorized to issue to any department or agency of the government a certification of competency of a small construction contractor to bid upon and carry out a Federal construction project. Such certification would be accepted by the department or agency in lieu of bid, payment, or performance bonds. This authority would be limited to contracts under $1 million dollars. The service fee paid by the contractor for such certification could be used to create a loss reserve fund for this program. This service fee should not exceed nominal surety bond premium rates;

(d) A national construction task force should be established to provide technical information and counseling to minority contractors regarding the operation of construction concerns. Moreover, provision should be made for the dissemination of information to such contractors concerning Federal construction opportunities.

The Urban Coalition Action Council urges the Committee to give favorable consideration to the provisions of S. 2609, introduced by Senator Bayh, which would authorize these steps.

We respectfully request that this letter be included in the official record of these hearings.

Sincerely,

LOWEL R. BECK, *Executive Director.*

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*Report of the Kaiser Commission, the President's Commission on Urban Housing.

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