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NATIONAL SMALL BUSINESS REGULATORY ASSISTANCE ACT OF 2002

OCTOBER 9, 2002.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 2483]

On July 24, 2002, the Committee on Small Business and Entrepreneurship considered S.2483, the “National Small Business Regulatory Assistance Act of 2002.” S. 2483 would establish a four-year pilot program to provide resources to Small Business Development Centers (SBDCs) so they may provide free-of-charge, non-punitive Federal regulatory compliance assistance to small business owners. The legislation also establishes statutory privacy protections for small businesses that use SBDC counseling services. Having considered S. 2483, the Committee reports favorably thereon without further amendment and recommends that the bill do pass.

I. INTRODUCTION

The intention of S. 2483 the “National Small Business Regulatory Assistance Act of 2002,” is to utilize existing United States Small Business Administration (SBA) infrastructure to provide regulatory compliance assistance to small businesses. The SBA oversees the operations of Small Business Development Centers (SBDCs). Located in every state, these centers are associated with colleges and universities and provide operational assistance to small business owners. They are authorized to provide regulatory compliance assistance, but they do not have an organized program for providing such assistance and lack the resources to do so. S. 2483 would establish a pilot project for selected State SBDC pro-

grams to develop regulatory compliance assistance programs. The bill mandates that the Administrator of the SBA establish a pilot project in which 20 State SBDC programs will be selected to test whether the centers within those State programs would be an appropriate vehicle for providing regulatory compliance assistance to small business owners.

During the past 20 years, the Federal Register—the compendium of Federal regulatory initiatives and changes—almost doubled in size from 42,000 pages to a record 83,289 pages in 2000. This growth of Federal regulations is of concern to many small businesses that often find it difficult to meet these regulatory requirements while at the same time trying to successfully operate their businesses in an expanding and competitive global environment.

Federal regulations exist to achieve statutory objectives; non-compliance hinders the achievement of these statutory goals. Small business owners want to comply with Federal regulations but often lack the knowledge of how to do so correctly. In 1996, Congress took action in an effort to alleviate this problem. The Small Business Regulatory Enforcement Fairness Act provided that Federal agencies are required to produce plain-English compliance guides for any regulation that would have a significant economic impact on a substantial number of small businesses. Unfortunately, many small business owners do not know about the existence of such compliance guides and may be reluctant to meet with a regulatory agency to learn how to comply with Federal regulations.

The SBA oversees a number of mechanisms for delivering advice to small business owners. One of the most effective is the SBDC program. Operated in conjunction with colleges and universities, the SBDC program assists small businesses in solving problems concerning the operations, manufacturing, engineering, technology, exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, and business strategy development. The SBDCs utilize the resources and the expertise of colleges and universities. In addition, the SBDCs, like the Agricultural Extension Service, also provide a focal point for information retrieval, coordination of Federal and State government services, and referral to experts. Historically, the SBDCs have focused on financial, management, and marketing activities of small businesses despite the requirement that they also provide regulatory compliance assistance.

The Committee believes that SBDCs can provide an effective mechanism for dispensing regulatory compliance information and advice, especially to those small businesses who may not wish to seek advice from a Federal regulatory agency. However, regulatory compliance, unlike many of the other activities undertaken by the SBDCs, has significant legal consequences. Therefore, the Committee believes that a pilot program to examine how the regulatory compliance assistance will operate in selected small business development centers is a preferred strategy to simply providing an authorization of additional funding so that the whole network of SBDCs can provide regulatory compliance assistance.

II. LEGISLATIVE HISTORY

H.R. 203, the “National Small Business Regulatory Assistance Act of 2000”

H.R. 203, the “National Small Business Regulatory Assistance Act of 2000,” was introduced by Representative John E. Sweeney on January 3, 2001. Representatives Juanita Millender-McDonald and Bill Pascrell, Jr. are cosponsors.

The House Committee on Small Business held a field hearing to consider predecessor versions of H.R. 203. The hearing was held on September 2, 1999, at the Columbia Greene Community College in Hudson, NY. During that hearing, small businesses expressed concerns about the complexity of Federal regulations, their desire for better understanding of Federal regulatory requirements, and the need for easy access to compliance assistance. The Committee’s Subcommittee on Workforce, Empowerment, and Government Programs held a hearing on H.R. 203 on July 19, 2001. At the hearing, the sponsor of the bill, Mr. Sweeney, noted that he continues to hear from small business owners that they still are being overwhelmed with regulation and need compliance assistance. The Association of Small Business Development Centers also voiced support for the bill. Finally, the American Industrial Hygiene Association also endorsed the bill but suggested that amendments should be made to ensure that regulatory compliance assistance is provided by properly credentialed individuals.

On September 21, 2001, the House Committee considered H.R. 203 and passed it by unanimous voice vote with an amendment. The full House considered H.R. 203 under suspension of the rules on October 2, 2001. H.R. 203 subsequently passed by voice vote.

S. 2483, the “National Small Business Regulatory Assistance Act of 2002”

S. 2483, the “National Small Business Regulatory Assistance Act of 2002,” was introduced by Senators Max Cleland, John F. Kerry, Mary L. Landrieu, James M. Jeffords, Tom Harkin, Jeff Bingaman, Jean Carnahan, Patrick J. Leahy, Joseph I. Lieberman and Tim Johnson on May 8, 2002. Additional cosponsors include Senators Zell Miller, Debbie Stabenow and Maria Cantwell.

On April 24, 2001, the Senate Committee on Small Business and Entrepreneurship held a hearing titled “Protecting Small Business Rights: SBREFA on its 5th Anniversary,” which discussed, among other topics, the need to help small businesses comply with Federal regulations.

During consideration of S. 2483, on July 24, 2002, the Senate Committee’s Ranking Member, Senator Christopher S. Bond, raised concerns that the Senate Committee had not adequately considered the National Small Business Regulatory Assistance Act. In response to these concerns, the Committee Chairman, Senator John F. Kerry, proposed holding a roundtable on the legislation to alleviate these concerns shortly after moving forward with the Committee vote. The Ranking Republican agreed and the legislation was passed, without amendment, by the Senate Committee with an 18–1 vote.

On August 1, 2002, the Senate Committee held a roundtable titled “Promoting Small Business Regulatory Compliance and Entre-

preneurial Education—the Role of the SBDC Network.” During this roundtable, the Senate Committee received evidence that S. 2483 would provide adequate resources to Small Business Development Centers (SBDC) so that they may provide free-of-charge, non-punitive regulatory compliance assistance to small business owners. Small business representatives at the roundtable also stressed the need to provide such assistance in a confidential manner and stressed that many small businesses would prefer to receive compliance assistance from their SBDC, as opposed to a Federal regulatory agency. Furthermore, the Senate Committee received information that despite the best efforts of Federal compliance assistance programs, they often fall short in their efforts to assist small businesses and these programs are often not designed with small businesses in mind.

Small business groups such as the National Small Business United and the National Association for the Self Employed support S. 2483. Representative Sweeney, the sponsor of the House version also submitted a letter to Chairman Kerry in support of the Senate version of the legislation. Additionally, regulatory compliance groups, such as the Clean Air Resource Center, support the legislation.

III. ANALYSIS OF S. 2483, THE “NATIONAL SMALL BUSINESS REGULATORY ASSISTANCE ACT OF 2002”

Purpose

To establish a four-year pilot program, the purpose of which is to provide resources to Small Business Development Centers (SBDCs) so they may provide free-of-charge, non-punitive regulatory compliance assistance to small business owners. The legislation also establishes statutory privacy protections for small businesses that use SBDC counseling services.

Pilot program

The legislation requires the Small Business Administration (SBA) to provide grants to the SBDC programs of two states in each of the SBA’s 10 regions. The grants shall be more than \$150,000, but less than \$300,000 and shall be made without a matching requirement.

The Committee believes that grant amounts should be relative to a state’s population and the anticipated need of the assistance in that state.

Grant purpose

SBDCs are required to use the grants to provide access to information and resources, including current Federal and State non-punitive compliance and technical assistance programs; conduct training and educational activities; and, offer confidential, free-of-charge, one-on-one, in-depth counseling to the owners and operators of small business concerns regarding compliance with Federal and State regulations derived from Federal law.

SBDCs participating in the program are statutorily required to form partnerships with Federal compliance assistance programs and provide access to information and resources on complying with Federal regulations, including current Federal and State non-puni-

tive compliance assistance programs. Numerous Federal and State agencies have non-punitive compliance assistance programs, such as the federal Occupational Safety and Health Administration (OSHA), and the Committee expects that the participating SBDCs will maintain all necessary information with those Federal and State agencies in developing their programs. Furthermore, the Committee expects that the quality of coordination of these assistance resources will be a significant factor in selecting the SBDCs for the pilot project.

The Committee also expects that selected centers will utilize their contacts with Federal and State agencies to obtain compliance pamphlets, videos, books, and any compliance guides issued pursuant to the Small Business Regulatory Enforcement Fairness Act. In addition, the Committee expects that participating centers will hold lectures and seminars on regulatory compliance including updates on compliance based on regulatory changes.

SBDC reporting requirement

Each SBDC participating in the pilot program would be required to submit a quarterly report that includes a summary of the regulatory compliance assistance provided by the center under the pilot program; the number of small business concerns assisted under the pilot program; and for every fourth report, any regulatory compliance information based on Federal law that a Federal or State agency has provided to the center during the preceding year and requested that it be disseminated to small business concerns.

SBA requirements

The SBA would have responsibility for evaluating the pilot program and making recommendations on the extension of the program to other SBDCs. The SBA must also promulgate final regulations to carry out the pilot program within 180 days of passage.

The Committee expects that such regulations shall be promulgated after the public has been given an opportunity for notice and comment. The Committee believes that the Administrator can and should accomplish the issuance of regulations within the deadline set by statute. The Committee considers this Act to be "some other law" for purposes of section 603 of Title 5 of the United States Code. The regulations shall include the priorities for the type of assistance to be provided, standards relating to the educational, technical, and support services to be provided by the Association to the participating centers, and standards for work plans that the participating centers will provide to the Administrator. The Committee believes that given the potential interest in the program by SBDCs, it is appropriate for the Administrator to have a set of standards to determine which State programs shall be chosen. More importantly, the standards will provide an appropriate baseline for the Comptroller General's evaluation of the pilot project.

Regarding the requirement that the Administrator develop appropriate standards for ensuring the technical qualifications of experts to whom small businesses will be referred, the Committee does not intend that someone must have a college or advance degree to qualify. For example, a contractor licensed in a state with 20 years experience (who is a high school graduate) may be as well-equipped to provide advice on compliance with OSHA construction

standards as a professor of civil engineering. On the other hand, that same contractor might not be an appropriate individual to provide tax compliance advice. The Committee does not expect that this aspect of the Administrator's regulations shall be all encompassing, i.e., delineate every profession and the appropriate qualifications. However, the Committee does expect the Administrator to recognize, as qualified, those individuals that are certified by nationally recognized accrediting bodies (whose members must demonstrate substantial educational and practical experience), meet educational and work standards established by a Federal agency, or are licensed to practice a particular profession or job pursuant to State law. The Committee expects that the regulations will provide participating centers with enough information that the centers can determine whether the person providing the advice is competent in the field of regulation.

Privacy provisions

The legislation contains a provision that prohibits SBDCs from disclosing the name, street address or phone number of a client. Exemptions are made for court orders and audits. SBDC program activity data would still be available to the SBA under this provision for evaluation purposes.

The Committee has been contacted on a number of occasions by SBDCs that employees of the SBA have attempted to obtain the names and addresses of businesses that sought the services of the SBDCs. The Committee is greatly troubled by these statements and believes that any attempts by the Administrator or the employees of the SBA to obtain the names and addresses of persons seeking SBDC assistance is inappropriate because it would act as a disincentive for small businesses to utilize the centers.

S. 2483 provides for two exceptions to the privacy requirements: (1) if the Administrator is ordered by a court in any civil or criminal action initiated by Federal or State agency; or (2) the Administrator requires the information while undertaking a financial audit of the SBDC. To ensure that the Administrator does not unduly abuse the second exception for disclosure, the legislation requires the Administrator to promulgate regulations specifying when such disclosures in an audit shall be made. Access by the Administration to program activity data for administrative purposes is not restricted.

The Committee expects the regulations to strictly limit disclosure during the audit process and severely circumscribe those individuals who will have access to the audit information during the audit. The Committee recognizes that the information collected during the audit may have to be retained for a variety of purposes, such as management reviews by the Inspector General or congressional oversight. The Committee expects the Administrator's regulations to cover who, if anyone, shall have access to the raw data, including the names and addresses of the SBDC's users, after the audit is complete. The Committee does not intend information obtained during the audit concerning identifiable individuals or businesses and retained by the Administrator to be released pursuant to the Freedom of Information Act.

The Committee is concerned that SBDCs have been asked by SBA personnel to reveal, for functions unrelated to the financial

and programmatic auditing of SBDCs, the names of businesses that seek advice from SBDCs. The Committee believes that such requests by SBA personnel are inappropriate. The committee expects that participating SBDCs will only respond to formal agency requests such as civil investigative demands, subpoenas, requests from Administrator's Associate Administrator for SBDCs when performing a financial audit of the SBDC, or requests from the Inspector General of the SBA. The Committee expects the SBDCs will not provide information concerning the identity of businesses simply upon the verbal request of a Federal or State agency.

IV. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following votes were recorded on July 24, 2002. A motion by Senator Kerry to adopt S. 2483, the "National Small Business Regulatory Assistance Act of 2002," was approved by a 18-1 recorded vote, with the following Senators voting in the affirmative: Kerry, Bond, Levin, Harkin, Lieberman, Wellstone, Cleland, Landrieu, Edwards, Cantwell, Carnahan, Burns, Bennett, Snowe, Fitzgerald, Crapo, Allen and Ensign. Senator Enzi voted in the negative.

V. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who make use of the services provided.

VI. CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirement of rule XXVI (12) of the Standing Rules of the Senate in order to expedite the business of the Senate.

VII. COST ESTIMATE

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 31, 2002.

Hon. JOHN F. KERRY,
*Chairman, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2483, the National Small Business Regulatory Assistance Act of 2002.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 2483—National Small Business Regulatory Assistance Act of 2002

Summary: S. 2483 would require the Small Business Administration (SBA) to establish a pilot program for small business development centers (SBDCs) to counsel small business owners on compliance with federal and state regulations. SBDCs are cooperative efforts of the private sector, schools, and federal, state, and local governments to provide management assistance to current and prospective small business owners.

S. 2483 would authorize the appropriation of \$5 million a year during the 2003–2006 period to fund the new program. Based on the SBA’s historical spending patterns, CBO estimates that implementing the bill would cost \$20 million over the 2003–2007 period, assuming the appropriation of the authorized amounts. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 2483 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would benefit state, local, or tribal governments receiving grants under this bill, and any costs incurred would be voluntary.

Estimated cost to the Federal Government: The estimated budgetary impact of S.2483 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATIONS					
Authorizaiton Level	5	5	5	5	0
Estimated Outlays	4	5	5	5	1

Pay-as-you-go-considerations: None.

Intergovernmental and private-sector impact: S. 2483 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit state, local, or tribal governments receiving grants under this bill, and any costs incurred would be voluntary.

Previous CBO estimate: On August 13, 2001, CBO transmitted a cost estimate for H.R. 203, the National Small Business Regulatory Assistance Act of 2001, as ordered reported by the House Committee on Small Business on August 1, 2001. The provisions and the estimated costs of H.R. 203 are very similar to those of S. 2483, except that H.R. 203 would authorize the appropriation of \$5 million for this program in 2002 and every year thereafter.

Estimate prepared by: Federal Costs: Ken Johnson, Impact on State, Local, and Tribal Governments: Greg Waring; and Impact on the Private Sector: Cecil McPherson.

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

VIII. SECTION-BY-SECTION ANALYSIS, S. 2483

Section 1. Short Title

This Act is titled the “National Small Business Regulatory Assistance Act of 2002.”

Section 2

Sets out the purpose of the legislation.

Section 3

Establishes the Small Business Regulatory Assistance Pilot Program.

Section 4

Requires the Administrator of the Small Business Administration to establish regulations for the pilot program within 180 days of enactment.

Section 5

Amends Section 21(c) of the Small Business Act to add paragraph (9), which establishes privacy requirements for Small Business Development Centers.

XI. ADDITIONAL VIEWS

Since becoming Chairman of the Committee on Small Business (Committee) in January 1995, we have had discussions about legislation to enable the Small Business Development Centers (SBDCs) to provide regulatory compliance assistance to help small businesses cope with a myriad of complicated and burdensome Federal regulations. The SBDC Program, one of the hallmark programs of the Small Business Administration (SBA), has demonstrated that its centers, located in each State, have the ability to assist small businesses in ways that Federal and State entities cannot. I have long been an advocate of making greater use of the tremendous resources that exist within the SBDC program to benefit the small business community. In that regard, I was encouraged when the House of Representatives passed H.R. 203, the “National Small Business Regulatory Assistance of 2000,” on October 2, 2001. The bill was subsequently referred to the Committee.

The practice of providing regulatory compliance assistance for small businesses is not a new one before the Committee. In 1998, the Committee approved legislation on this subject, which subsequently passed the full Senate but was not taken up by the House of Representatives. Specifically, in April 1998, Senator Conrad Burns introduced S. 1957, the “Small Business Regulatory Assistance Act of 1998.” This bill was designed to establish a system of confidential voluntary compliance assistance for small businesses. Senator Burns’ bill would have this program delivered by the SBDCs. After introduction of S. 1957, the Committee conducted a hearing entitled “Environmental Compliance Tools for Small Business” (Senate Hearing 105–663).

Subsequently, on September 15, 1998, the Committee conducted a mark-up of S. 1957 and other pending legislation. As a substitute to S. 1957, the Committee approved an amendment offered by Senator Burns to H.R. 3412, the “Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998.” The purpose of Senator Burns’ amendment was to establish the Advisory Committee on Small Business Environmental Assistance Programs. The Amendment would have also established a pilot program to provide assistance to small businesses to improve their compliance with environmental laws and regulations. H.R. 3412, as amended, passed the Senate unanimously on September 30, 1998; however, the House of Representatives failed to act on the bill prior to adjournment later that year.

On October 3, 2001, the House-passed H.R. 203 was referred to the Committee. On April 24, 2002, the Committee held a hearing highlighting the Fifth Anniversary of the enactment of the Small Business Regulatory Enforcement Fairness Act, Public Law 104–121 (Red Tape Reduction Act). The Red Tape Reduction Act is legislation I introduced in 1995 to protect small businesses from ex-

cessive Federal regulations. During the course of the April 2002 hearing, we heard testimony on the need for regulatory compliance assistance for small businesses. Later, on July 24, 2002, Senator Kerry chaired a mark-up of several bills pending before the Committee, including S. 2483. S. 2483 is substantially similar to H.R. 203 and was introduced by Senator Max Cleland on May 8, 2002, the month following the Committee hearing on the Red Tape Reduction Act.

At the Committee mark-up, Senator Kerry agreed to schedule promptly a Committee Roundtable at which time legislation on small business regulatory compliance assistance could be discussed in detail. At the same time, the Committee agreed to report out S. 2483 to the Senate, but it was agreed and understood that the record of the Roundtable would likely result in changes being offered to the bill on the Senate floor.

Statements and testimony on behalf of H.R. 203 and S. 2483 in many instances highlighted the importance of establishing partnerships comprised of SBDCs and Federal, State and local compliance assistance programs. The statements focused on the need to provide assistance to small businesses to comply with Federal and State regulations that confront them daily.

Establishing partnerships is a notable goal that will likely be of significant assistance to our Nation's small businesses and their employees. However, the bills pending before the Committee during the July 24, 2002 mark-up, while mentioning partnerships, neither addressed how the partnerships would be formed nor what would be expected of such partnerships.

At the same time, the legislation focused on regulatory compliance assistance to small businesses confronted by environmental rules and health and safety rules. The bills appeared to set the SBDCs apart from the ongoing compliance assistance programs being carried out by the Environmental Protection Administration (EPA) and the Department of Labor's Occupational Safety and Health Administration (OSHA). After reviewing the ongoing programs at the EPA and OSHA, it became apparent that a better approach would be to create a pilot program. The pilot program would unite the SBDCs with the key compliance assistance providers in each State to form partnerships mandating that each entity would work with one another to the advantage of small businesses.

As discussed at the Committee Roundtable on August 1, 2002, the EPA already provides regulatory compliance assistance through its Small Business Ombudsman, which has one-stop small business assistance between businesses and EPA offices. Further, the Section 507 Small Business Assistance Program (SBAP) provides technical assistance to small businesses in all 50 States through state-operated programs. In addition, the EPA Office of Compliance Assistance provides Internet-delivered virtual compliance assistance centers to a variety of business sectors, such as printing and local government.

The Office of the Administrator at the EPA also provides opportunities for small businesses to participate in the regulatory process. Since enactment of the Red Tape Reduction Act in 1997, small businesses have been able to weigh in on 23 different rule makings and in the development of six compliance guides.

Significantly, in December 2001, OSHA and the Association of Small Business Development Centers (ASBDC) entered into a partnership with the Department of Labor's Office of Small Business Programs (OSBP) to help small businesses improve their safety and health performance. The OSHA-ASBDC Partnership Agreement established a comprehensive effort to improve the safety and health performance of small businesses that receive outreach and training services. Under the agreement, the partners will:

- (1) identify interested small businesses that wish to learn more about safety and health, need assistance with program development, or
- (2) be recognized through OSHA's Voluntary Protection Program (VPP) or the Safety and Health Achievement Recognition Program (SHARP), which is designed for small businesses that undergo free comprehensive safety and health consultation.

While the Federal attention in these areas might rest primarily on two Federal agencies, there are an array of regional and state entities that could be involved in this effort. The legislation before the Committee neither defined nor explained the relationship between the SBDCs and those entities that deliver regulatory compliance assistance. In order for the SBA to select participating SBDCs and to approve up to \$5 million in grants to SBDCs each year, the legislation must establish parameters and goals for these partnerships.

In conclusion, nothing said at the Roundtable deterred my interest in and support for providing regulatory compliance assistance to small businesses. I remain convinced the SBDCs in our fifty states can bring very valuable help to the process. Therefore, when S. 2483 comes before the Senate for debate, it is my intention to offer an Amendment in the Nature of a Substitute that will create a new "Partnership Statewide Plan" that will establish clearly the partnership between the SBDCs and the Federal and State providers of compliance assistance. It is not my intention for the Substitute Amendment to replace H.R. 203 and S. 2483. Rather, I see the Substitute Amendment as taking the role of the SBDCs and weaving it into an effective partnership that takes advantage of the strengths of the SBDC program in combination with existing compliance assistance programs designed to help small businesses.

CHRISTOPHER S. BOND.

