

Legislative Bulletin July 26, 2011

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H.R. 2056 - To Instruct the Inspector General of the Federal Deposit Insurance Corporation to Study the Impact of Insured Depository Institution Failures, and for other Purposes

Order of Business: The bill is scheduled to be considered on July 26, 2011, under a motion to suspend the rules requiring two-thirds majority vote for passage.

Summary: H.R. 2056 requires the Inspector General of the Federal Deposit Insurance Corporation (FDIC) to conduct a comprehensive study on the impact of the failure of insured depository institutions. In conducting the study, the Inspector General is required to address the following:

➤ **LOSS-SHARING AGREEMENTS**

- The legislation requires a study that includes the impact of loss-sharing agreements (LSAs) on the insured depository institutions that survive and the borrowers of insured depository institutions that fail, including:
 - The impact on the rate of loan modifications and adjustments;
 - Whether more types of loans (such as commercial, residential, or small business loans) could be modified with fewer LSAs, or if LSAs could be phased out altogether;
 - The impact on current borrowers seeking loan modification from an acquiring institution with an LSA;
 - The impact on the availability of credit; and

- The impact on loans with participation agreements outstanding with other insured depository institutions
- The legislation requires a study of the effect of FDIC policies and procedures regarding maturing LSAs, including:
 - Any impact LSAs may have on continuing weakness in the real estate market; and
 - The likelihood that banks will sell off assets to take advantage of LSAs before such agreements are no longer available
- The legislation requires a study of the methods of ensuring the orderly end of expiring LSAs to prevent any adverse impact on borrowing, real estate industry and the Depositors Insurance Fund.

➤ PAPER LOSSES

- The legislation requires the study of the significance of paper losses, including:
 - The number of insured depository institutions that have been placed into receivership or conservatorship due to paper losses;
 - The impact on paper losses of raising more capital;
 - The effect of changes in the application of the fair value of real estate accounting rules and other accounting standards;
 - Whether field examiners are using proper appraisal procedures with respect to paper losses; and
 - Methods of stopping the vicious downward spiral of losses and write downs.

➤ WORKOUTS

- The legislation requires the study of the success of FDIC field examiners in implementing FDIC guidelines regarding workouts of commercial real estate, including:
 - Whether field examiners are using the correct appraisals; and
 - Whether there is any difference in implementation between residential workouts and commercial workouts.

➤ ORDERS

- The legislation requires the study of the application and impact of consent orders and cease and desist orders, including:
 - Whether such orders have been applied uniformly and fairly across all insured depository institutions;
 - The reasons for failing to apply such orders uniformly and fairly when such failure occurs;
 - The impact of such orders on the ability of insured depository institutions to raise capital;
 - The impact of such orders on the ability of insured depository institutions to extend credit to existing and new borrowers;
 - Whether individual insured depository institutions have improved enough to have such orders removed; and
 - The reasons for failure where insured depository institutions have not so improved.

➤ FDIC POLICY

- The legislation requires the study of the application and impact of FDIC policies, including:
 - The impact of FDIC policies on the private capitalization of insured depository institutions, especially in States where more than 10 such institutions have failed since 2008;
 - Whether the FDIC fairly and consistently applies capital standards when an insured depository institution is successful in raising private capital; and;
 - Whether the FDIC steers potential investors away from insured depository institutions that may be in danger of being placed in receivership or conservatorship.

➤ PRIVATE EQUITY COMPANIES

- The legislation requires the study of the FDIC's handling of potential investment from private equity companies in insured depository institutions, including:

- The number of insured depository institutions that have been approved to receive private equity investment by the FDIC;
 - The number of insured depository institutions that have been rejected from receiving private equity investment by the FDIC; and
 - The reasons for rejection of private equity investment when such rejection occurs.
- The legislation requires that not later than one year after the date of the enactment of this Act, the Inspector General is required to submit to Congress a report on the results of the study conducted and any recommendations based on the study.
 - Lastly, the FDIC is required to make available from the portion of the FDIC budget allocated to management expenses, sums allowing the FDIC Inspector General to complete this study.

Background: In 2008, the economic crisis causes many large and small banks to fail, and as result of their failure there has been a shortage of credit. H.R. 2056 is a attempt by congress to ensure that the issues that hampered financial institutions and banks will not get in the way of future economic growth.

Committee Action: H.R. 2056 was introduced by Rep. Lynn Westmoreland (R-GA) on 5/31/2011 and the legislation was referred to the Committee on Financial Service. The legislation was amended on July 20, 2011 and reported to the House by voice vote by the Committee on Financial Services.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: No statement from CBO is available

Does the Bill Expand the Size and Scope of the Federal Government?: No

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

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A committee report citing compliance with the rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. However, the resolution does not contain any earmarks.

Constitutional Authority: According the Congressman Westmoreland’s constitutional authority statement, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the United States Constitution.”

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H.R. 2608 – Small Business Program Extension and Reform Act of 2011 (Graves, R-MO)

Order of Business: The bill is scheduled to be considered on Tuesday, July 26, 2011, under a motion to suspend the rules requiring a two thirds majority vote for passage.

Summary: H.R. 2068 will extend by five months programs covered under the Small Business Act (SBA) and Small Business Investment Act (SBIA) of 1958 through December 31, 2011. These acts have previously been extended numerous times, most recently in May 31, 2011—they are now set to expire without reauthorization on July 31, 2011.

Since 2009, the following extensions have been signed into law:

[S. 1082](#) – extended from May 31, 2011 through July 31, 2011¹

[H.R. 366](#) – extended from January 31, 2011 through May 31, 2011

[S.3839 \(amended\)](#) – extended from September 30, 2010 through January 31, 2011

[H.R. 5849](#) – extended from July 31, 2010 through September 30, 2010

[S. 3253](#) – extended from April 30, 2010, through July 31, 2010

[H.R. 4508](#) - extended from January 30, 2010, through April 30, 2010

[S. 1929](#) – extended from October 31, 2009, through January 31, 2010

[H.R. 3614](#) – extended from September 30, 2009, through October 31, 2009

[S. 1513](#) – extended from July 31, 2010, through September 30, 2009

[H.R. 1541](#) – extended from March 20, 2009, through July 31, 2009

Additional Information: In 1953, Congress passed the Small Business Act (SBA), establishing the Small Business Administration to “encourage” and “develop” small business growth and to aid minorities and other disadvantaged peoples in securing loans and learning management techniques. In 1958, Congress passed into law the Small Business Investment Act (SBIA) to ensure a "fair proportion" of government contracts and sales of surplus property include privately operated small businesses.

➤ *Repeals and other Terminations included in this bill:*

- Pollution Control Loans – eliminates the authority for the SBA to provide loans or loan guarantees to finance the planning, design, or installation of pollution control facilities;²

¹ Under S. 1082, the Small Business Innovative Research Program (SBIR) and the Small Business Technology Transfer Program (STTR) were extended until September 30, 2011.

- Small Business Institute – eliminates an institute to provide business counseling and assistance to small businesses through the activities of college students that enables students to receive educational credits for their activities;
- Drug-Free Workplace Grants – eliminates services provided by SBA development centers to provide information and assistance to small businesses with respect to establishing drug-free workplace programs on or before October 1, 2006;
- Central European Small Business Enterprise Development Commission – eliminates this program designed to assist small businesses during the time period where European countries transitioned from socialist to capitalist economies. This initiative has not been funded since 1995;
- Paul D. Coverdell Drug-Free Workplace Program – eliminates this federal program which provides technical and financial assistance services to small businesses which implement drug-free workplace programs;
- Pilot Technology Access Program – eliminates this SBA program that provides small businesses with access to computerized databases containing technical and business information that they typically are unaware of, or cannot afford, and experts knowledgeable in a wide range of technical fields;
- National Veterans Business Development Corporation – eliminates this federally chartered corporation to expand and reinforce monetary assistance to veterans in small businesses;
- Pollution Control Guarantee Program – eliminates this program that was initiated in 1976 to provide SBA-backed bonds for the purchase of pollution control equipment to retrofit existing factories. The program has not offered any pollution control guarantees since the early 1980's;
- Alternative Loss Reserve – eliminates this program that allows Premier Certified lenders to calculate an alternative mandatory loan loss reserve required to repay the SBA for failed loans. The initial 2004 pilot program was scheduled to sunset at the end of 7 quarters. Eliminating the alternate loan loss reserve will save the government future losses by ensuring traditional loan loss reserves.
- Small Business Telecommuting Pilot Program – eliminates this pilot program that requires the SBA to create a program and work with the private sector to promote the benefits of telecommuting through various outreach efforts. Appropriations for this program have not been made to date;
- Emerging Leaders Program – eliminates the SBA's authority to implement this program designed to promote small business entrepreneurial

² According to 15 U.S.C. 694-1, "pollution control facilities" means such property (both real and personal) as the administration, in its discretion determines is likely to help prevent, reduce, or abate control noise, air, or water pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the SBA determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

development. The SBA initiated this program in fiscal year 2009 without congressional approval or authorization of appropriations. The SBA requested \$3 million for this program in its FY2012 request.

- Pilot Programs (in general) – this bill prevents the SBA Administrator from carrying out any new pilot program for the remainder of this year unless the pilot program is specifically authorized by federal statute.

Committee Action: H.R. 2608 was introduced by Small Business Committee Chairman Sam Graves (R-MO) on July 21, 2011 and referred to the House Committee on Small Business, which has taken no public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A Congressional Budget Office (CBO) score is unavailable.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

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

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: The Constitutional Authority Statement accompanying introduction of this bill states: "Congress has the power to enact this legislation pursuant to the following: Art. 1, Sec. 8, cl.3 'To regulate commerce among foreign nations and the several states.'" [The Interstate Commerce Clause]

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