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SMALL BUSINESS AND FARM ENERGY EMERGENCY RELIEF ACT OF 2001

MARCH 21, 2001.—Ordered to be printed

Mr. BOND, from the Committee on Small Business, submitted the following

REPORT

[To accompany S. 295]

The Committee on Small Business, to which was referred the bill (S. 295) to provide emergency relief to small businesses affected by significant increases in the prices of heating oil, natural gas, propane, and kerosene, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill, as amended, do pass.

I. PURPOSE

The purpose of the Small Business Energy Emergency Relief Act of 2001 is to provide emergency relief, through affordable, low-interest Small Business Administration Economic Injury Disaster Loans (EIDLs), and loans through the Department of Agriculture's Emergency Loan Program, to small businesses and small farms that have suffered direct economic injury, or are likely to suffer direct economic injury, from the significant increases in the prices of heating oil, propane, kerosene, natural gas or electricity.

II. NEED

Many small businesses are dependent upon heating oil, propane, kerosene, natural gas or electricity, because they sell or distribute the product, because they use it to heat their facilities, or because they use it for other purposes necessary to operate their business. According to the Department of Energy, the cost of heating oil nationally climbed 72 percent from February 1999 to February 2000, the cost of natural gas climbed 27 percent from September 1999 to

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September 2000 and 59% over the past year,[1] and the cost of propane climbed 54 percent from January 2000 to January 2001.

While these national fluctuations capture the larger market trends, they do not demonstrate how some localities have been even harder hit by unpredictable and sudden price spikes because of a greater dependence on a single fuel, insufficient inventories, distribution problems and other reasons.

Last year in New England, for example, the threat of a relatively common cold winter snap put such serious pressure on the insufficient supply of heating oil that Massachusetts declared a state of emergency. With consumers at the mercy of a market, in which demand was up and supply was down, the price of heating oil soared. In a matter of weeks, the average price per gallon of heating oil fuel went up 60 percent, from $1.12 to $1.79. In rural California, businesses are facing doubling propane prices. Prices have risen 96 percent, from about $1.20 in February 2000 to $2.35 per gallon this February.[2]

When operating costs rise gradually, small businesses have time to plan and adjust their pricing and operations accordingly. Rapid shifts in operating costs, however, can disrupt a small company's business plans causing short-term cash flow difficulties. Such volatility can make planning month to month as difficult as planning year to year.

For those small businesses in danger of suffering, or suffering from, significant economic injury caused by crippling increases in the costs of heating fuel or electricity, they need access to capital to mitigate or avoid serious losses. However, commercial lenders typically will not make loans to these small businesses because they often don't have the increased cash flow to demonstrate the ability to repay the loan.

To exacerbate the situation, banks have tightened their lending to small businesses by 45 percent over the past three months. According to the Federal Reserve Board's quarterly survey on lending practices that was released February 5, 2001, banks surveyed said they have tightened credit to small businesses, particularly on riskier loans, by making borrowing more expensive and requiring customers to have less outstanding debt. They have changed their lending policies because they are concerned about "a less favorable or more uncertain economic outlook . . . and a reduced tolerance for risk." While the banks say that only a handful of borrowers canceled their plans under the stricter lending policies, the Committee believes that the Federal Reserve Board's survey reinforces the need for this legislation.

To mitigate the adverse impact on our nation's 24 million small businesses,[3] the Small Business and Farm Energy Emergency Relief Act of 2001 would expand the EIDLs at the Small Business Administration and the Emergency Loans at the Department of Agriculture so that small businesses that suffer direct economic injury by, or are likely to suffer direct economic injury by, significant increases in the prices of heating oil, propane, kerosene, natural gas, or electricity are eligible to apply for those loans.

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[1] Washington Post, March 16, 2001.

[2] Washington Post, February 25, 2001.

[3] According to the SBA's Office of Advocacy, there are 24.8 million small businesses in this country.

The loans authorized by this legislation are made directly from the Small Business Administration and the Department of Agriculture, rather than through lenders who are working in partnership with the Small Business Administration to make government guaranteed loans and who are often reluctant to make loans for these purposes. In fact, according to the SBA, it cannot identify any loans originated under its 7(a) guaranteed business loan program that were made last year to help small businesses trying to cope with the energy spikes.

SBA defines substantial economic injury as the inability of a business to meet its obligations as they mature and to pay its ordinary and necessary operating expenses. Lack of profit or loss of anticipated sales alone is not sufficient to establish substantial economic injury. Some indicators of economic injury are larger than normal volume of receivables, a lower sales volume, slow inventory turnover, and the development of delinquencies in trade payables, current accruals and debt repayments.

SBA's economic injury disaster loans give affected small businesses necessary working capital until normal operations resume, or until they can restructure or change their business to address the market changes, in order to meet financial obligations a small business owner could have met had the disaster not occurred.

This legislation really gets at helping those who have nowhere else to turn. The Committee feels strongly that the SBA's mission is to help small businesses succeed and improve their access to affordable loans. The Committee recognizes that the Agency's existing disaster loan program is an appropriate way to assist small businesses struggling with the energy price spikes. As such, it is justified an obligatory to make sure this program is available to such small businesses.

The Committee recognizes that the SBA Disaster Loan Program and the USDA Emergency Loan Program were initially established to help individuals, small businesses and farms recover from natural disasters, such as floods, tornadoes, or fires. However, there are precedents for extending the SBA Economic Injury Disaster Loan program for severe disruptions other than natural disasters. For example, the SBA authorized the loans to help small businesses hurt by riots in the late 1960s and early 1990s, and to help small businesses hurt by the Mexican Peso devaluation and currency exchange freezes in 1983.

Building on the SBA's Disaster Loan program so that small businesses, adversely affected by spikes in heating fuel and electricity prices, are eligible to apply for economic injury loans complements our efforts last year. Last year Congress encouraged the SBA to market aggressively its government guaranteed loan programs, such as the 7(a) program, through the press and its lending partners to small businesses that might need access to credit to make it through the energy problems. The SBA did this, and the Committee urges SBA and its lending partners to continue to publicize and provide guaranteed loans to affected small businesses. It creates a comprehensive approach to helping small businesses across the nation get the assistance they need.

The Committee also wants to emphasize that this is a responsible way to help small businesses and small farms. By providing assistance in the form of loans which are repaid by the small businesses and small farms to the U.S. Treasury, the SBA and USDA disaster loan programs help reduce the Federal emergency and disaster costs, compared to other forms of disaster assistance, such as grants.

III. COMMITTEE INTENT

The Small Business and Farm Emergency Energy Relief Act of 2001 is designed to provide emergency relief, through affordable, low-interest Small Business Administration Economic Injury Disaster Loans (EIDLs), and loans through the Department of Agriculture's Emergency Loan Program, to small businesses that have suffered direct economic injury, or are likely to suffer direct economic injury, from the significant increases in the prices of heating oil, propane, kerosene, natural gas or electricity.

The Committee included small businesses that "are likely" to suffer substantial economic injury because one goal of this legislation is to mitigate the losses to a small business. Rather than waiting until a small business has already suffered and is in serious economic trouble, the Committee wants small businesses to get assistance when there is an anticipated need. The purpose of the legislation is, to the extent possible, to keep small businesses healthy, maintain stable tax bases stable and retain jobs. It should be sufficient for a small business to show need through circumstances such as a projected inability to cover operating costs because the heating fuel bills are consuming both cash flow and reserves. The Committee urges the SBA to be as responsibly creative and generous as possible in assisting relevant small businesses applying for these economic injury disaster loans.

The Committee also wants to make clear that, consistent with the SBA's Economic Injury Disaster Loan program and USDA's emergency loan program, the loans are intended to help small businesses directly affected by the sharp and significant increase in the price of heating fuels; if not for the economic injury caused by the energy price spikes, the small businesses and small farms could meet their ordinary obligations. The loans are not intended to help with indirect impact, such as higher prices in inventory, which were raised to cover the higher cost of production or the higher cost of transporting the product.

The Committee also recognizes the Administration's concern that the scope of this legislation regarding the authority to declare a disaster could be misinterpreted to apply to the entire SBA Disaster Loan program. That is not the intent of the Committee. The Committee intends for the disaster declaration authority in this legislation to be limited to the purposes of this legislation, which is economic injury caused by the sharp and significant increase in the price of heating oil, natural gas, propane, kerosene or electricity.

Chairman Bond included a provision in the substitute amendment that limits to two years the operation of the loan programs authorized by the legislation and requires the Administrator of the Small Business Administration and the Secretary of the Agriculture to issue separate reports on the effectiveness of the program authorized under this legislation. The Committee intends to use the reports to evaluate the efficiency and effectiveness of these programs, to determine whether the programs need improvements, and to determine if they merit re-authorization or should sunset after two years, as currently set forth in the legislation.

The Committee intends for this assistance to be available to small businesses and small farms not just for future energy problems that could arise over the next two years, but also for parts of 2000 and early 2001, regardless of when Congress passes the legislation and the President signs it into law. The Committee included these times frames within the scope of the legislation because the data shows that the prices began to spike in June 2000 for electricity and in November 2000 for heating fuels.

IV. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following votes were recorded on February 28, 2001. A motion by Senator Bond to adopt the substitute amendment by Senator Kerry to the Small Business Energy Emergency Relief Act of 2001 passed by unanimous voice vote. A motion by Senator Kerry to adopt the Small Business Energy Emergency Relief Act of 2001 was approved by an 18–0 recorded vote, with the following Senators voting in the affirmative: Bond, Kerry, Burns, Bennett, Snowe, Enzi, Fitzgerald, Crapo, Allen, Ensign, Levin, Harkin, Lieberman, Wellstone, Cleland, Landrieu, Edwards, and Cantwell.

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 utilize the services provided.

VI. CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirement of section 12 of rule XXVI 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 (CBO). The CBO cost analysis was not completed at the time the Committee Report was filed, and it will be submitted for the official record just as soon as it is received by the Committee.

VIII. SECTION-BY-SECTION

Section 1. Sets forth the short title of the bill, the "Small Business and Farm Energy Emergency Relief Act of 2001."

Section 2. Delineates the Congressional findings and the need for the legislation.

Section 3. Amends the Small Business Disaster Loan Program so that small businesses adversely impacted by the sharp and significant price increases of heating fuels are eligible to apply for Economic Injury Disaster Loans.

Subsection (A) designates the four types of heating fuels (heating oil, natural gas, propane, and kerosene) covered by the legislation and gives the Administrator of SBA the authority, in consultation with the Secretary of Energy, to define the meaning of "sharp and significant increase" in the price of the covered heating fuels. While SBA is knowledgeable about and experienced in efficiently making disaster loans to small businesses, the Department of Energy (DoE) is knowledgeable about issues related to energy. Together they are expected to develop a definition of "sharp and significant increases" that captures conditions that could have an adverse impact on small businesses and cause financial hardship that could justify the need for economic injury disaster loans. Though the Committee defers to the SBA and DoE to define this term, the Committee does not intend for businesses to be eligible for economic injury disaster loans if the price of energy increases in consecutive years and the second year's increase is relatively negligible or minimal. Small businesses should be able to budget for the latter year and therefore should not need a loan to maintain adequate working capital to meet their obligations in the second year.

Subsection B gives the Administrator of SBA the authority to make Economic Injury Disaster Loans to small businesses that have suffered or are likely to suffer substantial economic injury as the result of a sharp and significant increase in the price of heating fuel or electricity.

Subsection C requires that all economic injury disaster loans made for the purposes described in this legislation be made at the same interest rate of existing economic injury disaster loans. SBA Disaster Loans are made at interest rates of 4 percent or less.

Subsection D, with one exception, caps each economic injury disaster loan to a small business at $1.5 million. However, consistent with existing law, if a small business is a major source of employment in its surrounding area, the Administrator of SBA has the discretion to waive the cap.

Subsection E requires that a disaster be declared in one or more states, or portions of states, in order for the SBA to be able to make such Economic Injury Disaster Loans, and so sets forth the terms for declaring a disaster. There are three ways for a disaster to be declared under this legislation. The President may declare a disaster. The SBA Administrator may declare a disaster. Or, in lieu thereof, a governor may certify to the SBA Administrator that small businesses in the state have suffered economic injury caused by a sharp and significant increase in the price of heating fuel or electricity and that financial assistance is not available to those businesses elsewhere in the area on reasonable terms. Once SBA receives the certification, in accordance with existing practice, the SBA Administrator will evaluate the certification and may authorize the Agency to make loans under this program.

The disaster declaration authority in this legislation would be limited to the purposes of this legislation, which is economic injury caused by the sharp and significant increase in the price of heating oil, natural gas, propane, kerosene or electricity.

Subsection F allows small businesses approved for EIDLs under this program to use the loan proceeds not only for working capital, as required under the existing program, but also for capital to convert their systems from using heating fuel or electricity to those using renewable or alternative energy sources, such as fuel cells or wind energy. Small businesses cannot qualify for these loans solely to convert their systems. They must demonstrate they have suffered economic injury and must make clear in their application that they intend to use the proceeds for both purposes.

Section 4. Amends the emergency loan program in the Consolidated Farm and Rural Development Act (Act) (7 U.S.C. 1961(a)) at the U.S. Department of Agriculture (USDA) to make disaster loans available to small farms and small agri-businesses that suffer or are likely to suffer economic injury due to sharp and significant increases in the prices of the heating oil, natural gas, propane, kerosene or electricity, or inputs derived from energy sources. This is necessary because only non-farm small businesses are eligible for SBA's Economic Injury Disaster Loans. The Act authorizes the President or the Secretary of Agriculture to declare a disaster.

Section 5. Directs the Administrator of the SBA and the Secretary of Agriculture, within 30 days of the date of enactment, to publish any guidelines deemed necessary to implement the two programs established by this legislation. The Committee believes that prompt implementation is necessary to address the needs of small businesses, small farms, and small agri-businesses, that are suffering from the soaring costs of heating fuels or electricity.

Section 6. Requires the Administrator of the SBA and the Secretary of the Agriculture to each issue reports on the effectiveness of the program authorized under this legislation. Their reports should be sent to the Committees on Small Business of the Senate and the House of Representatives not later than 18 months after the date on which they publish their respective implementing guidelines required by this legislation. At the same time, the report from the USDA should be submitted to the Committees on Small Business of the Senate and the House of Representatives as well as the Committee on Agriculture, Nutrition, and Forestry of the Senate and to the Committee on Agriculture of the House.

Section 7. Establishes the effective and sunset dates of the programs authorized under this legislation. It also establishes the dates for determining when sharp and significant increases in the prices of heating fuels and electricity can be used for program eligibility.

At the SBA, the program shall operate for two years after the Agency publishes the final implementing guidelines. The legislation establishes separate time frames for purposes of determining the beginning of the price increases of heating fuel and electricity. For heating fuels (heating oil, natural gas, propane, or kerosene), the Administrator of the SBA must consider data covering the period since November 1, 2000; for electricity, the Administrator of the SBA must consider data covering the period since June 1, 2000.

This means that small businesses that have suffered, or are likely to suffer, economic injury caused by the sharp and significant increases in the price of heating fuel that started on or after November 1, 2000, shall be eligible to apply for these loans. Similarly, small businesses experiencing, or likely to experience, economic injury by the sharp and significant price increases of electricity that started on or after June 1, 2000, shall be eligible to apply for these loans.

At the USDA, the program shall operate for two years after the Department publishes the final implementing guidelines. For declaring a disaster caused by the price increases of heating fuels (heating oil, natural gas, propane, or kerosene), electricity, or input costs, the Secretary of USDA must consider covering the period since June 1, 2000.

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