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Changes to the SBA Disaster Loan Program: Proposed Legislation in the 110th Congress

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Changes to the SBA Disaster Loan Program: Proposed Legislation in the 110th Congress

Summary

Members of the House of Representatives and Senate have introduced bills in the 110th Congress (H.R. 1361 and S. 163, respectively) to modify the Small Business Administration's (SBA) response to major disasters. The bills agree on certain fundamental questions, but differ in the details.

Both bills address ways to improve SBA's response to large disasters. There is some congressional concern that following an exceptionally large disaster SBA staff may not be large enough to be able to respond as rapidly as Congress might wish. Both bills would increase disaster staffing and both would augment SBA's staff by allowing certain private lenders to either make loans on behalf of SBA or make loans that SBA would guarantee in a manner similar to SBA's other loan programs. Other provisions would allow for closer congressional oversight of SBA disaster responses.

Under both bills, SBA would continue to make disaster loans to households and businesses. The maximum personal real property limit of $40,000 and the real personal property limit of $200,000 would not change. The maximum size of disaster loans to businesses would increase from $1.5 million to $3 million (House) or $2 million (Senate). Both bills would allow economic impact disaster loans to be made to nonprofits for the first time.

Under both bills SBA would make smaller, quickly approved loans that could be folded into a larger permanent loan. The House would set a maximum for the expedited business loans of $25,000. The Senate leaves the maximum to SBA.

This report will be updated as events warrant.

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Introduction

Since the disastrous hurricane season of 2005, Congress has continued to examine legislative options that would enhance the federal response to natural disasters. Members of both the House of Representatives and the Senate have introduced separate bills in the 110th Congress to improve the Small Business Administration's (SBA) disaster loan programs.[1] Witnesses at hearings held by the House Small Business Committee and the Senate Small Business and Entrepreneurship Committee reported that SBA was slow to start accepting disaster loan applications, issued unclear guidance to those applying for loans, did not adequately coordinate the disaster loan programs with state and other federal agencies, was slow in processing applications, and lacked loan programs that could have sped rebuilding after the hurricanes. SBA has responded by making internal changes.[2]

Federal disaster assistance has a long history. In 1906, Congress appropriated $2.5 million to speed the recovery from the San Francisco earthquake and subsequent fires. Since its creation in 1953, SBA's disaster loans have contributed to the recovery from disasters that have a large impact over a large area. Because SBA disaster loans are the federal government's main disaster relief program, they are available to individuals, businesses regardless of size, and nonprofits. Although SBA disaster loans are not meant to replace insurance against disasters, there is evidence that homeowners do consider flood insurance and disaster loans to be substitutes for each other.[3]

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[1] Rep. Nydia M. Velazquez and 10 cosponsors from both parties introduced H.R. 1361 on March 6, 2007. Sen. John F. Kerry introduced S. 163 on January 4, 2007, with four cosponsors from both parties.

[2] See, for example, U.S. Congress, House Committee on Small Business, "SBA Unprepared to Respond to Future Large-Scale Disasters," February 14, 2007, available at [http://www.house.gov/smbiz/democrats/PressReleases/2007/PR21407DisasterRelief.htm], and Sen. John F. Kerry et al., "Dear Colleague Letter: Support the Small Business Disaster Response and Loan Improvements Act of 2007," May 11, 2007, available at [http://sbc.senate.gov/lettersout/070511-DearColleague-DisasterResponseandLoanImprovementsAct.pdf].

[3] Michael J. Rettger and Richard N. Boisvert, "Flood Insurance or Disaster Loans: An Economic Evaluation," *American Journal of Agricultural Economics*, vol. 61, no. 3 (August

(continued...)

Reduced interest rates to disaster victims amount to a federal grant to those receiving disaster loans. All disaster loans carry a below-market interest rate, and borrowers who are unable to obtain credit on similar terms elsewhere pay a lower rate than borrowers who can obtain loans from other sources.[4] For example, SBA disaster loans to homeowners to repair their houses following Hurricane Katrina in 2005 were charged interest rates of 2.687% and 5.375%. In comparison, the rates on a private sector 30-year fixed-rate mortgage in the fourth quarter of 2005 ranged from 5.77% to 6.33%. On an average SBA homeowner disaster loan of $45,000, this could save the borrower between $100 and $1,000 over the 30-year life of the loan. According to the SBA, more than 97% of the disaster loans made for the 2005 hurricanes were at the lower rate, and very few loans were at the statutory maximum. SBA has more relaxed underwriting standards than private sector lenders, but it can and does reject applications when the ability to repay is doubtful.[5]

Background

Most SBA programs involve technical assistance, grants to nonprofits that provide technical assistance to small businesses, advocacy, and guaranteeing private sector disaster loans to small businesses, but the agency does make disaster loans directly to renters, homeowners, businesses, and nonprofits. These loans are at lower interest rates than can be obtained from private sector lenders and are made to borrowers who cannot obtain private sector loans on similar conditions.

Currently, homeowners and renters may borrow up to $40,000 to cover unreimbursed personal property losses following a disaster declaration, although there are exclusions for unusually expensive property such as art work. Homeowners may also borrow up to $200,000 to cover unreimbursed real property losses.

Businesses and nonprofits may borrow up to $1.5 million for unreimbursed real property losses. In addition, businesses, but not nonprofits, may borrow up to $1.5 million combined with the previously mentioned real property losses for economic injury, which is the inability to make normal payments for supplies, payroll, etc.

Overview of Congressional Proposals

H.R. 1361 as engrossed and S. 163 as reported seek to speed SBA processing of disaster loan applications by adding and reallocating staff to the agency's disaster loan office, involving the private sector, streamlining processing, and increasing congressional oversight. Both bills also expand the disaster loan programs. The bills take different approaches to implementing these goals.

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[3] (...continued)
1979), pp. 496-505.

[4] 13 C.F.R. 123.104 and 13 C.F.R. 123.203.

[5] Some Federal Emergency Management Agency programs will accept applications only from those who have been denied disaster loans by the SBA.

Similarities

H.R. 1361 and S. 163 take different approaches to modifying the disaster loan programs, but they also share some common features. Both bills would

- allow selected private lenders to make disaster loans under certain circumstances that the SBA would guarantee (H.R. 1361 Section 208, S. 163 Section 202);
- increase the maximum size of disaster loans to $3 million under the House bill (Section 212), and to $2 million under the Senate bill (Sections 102 and 202);[6]
- provide for quickly-reviewed business disaster loans for up to $25,000 under the House bill (Section 203), and an unspecified amount under the Senate bill (Section 204);
- make nonprofits eligible for economic injury disaster loans (H.R. 1361 Sections 201 and 214), or such loans as the administrator determines to be appropriate (S. 163 Section 101);
- require SBA to develop a disaster response plan and to keep it up-to-date (H.R. 1361 Sections 101, 102, 103, 104, 105, 106, 202, 209, and 301, S. 163 Section 105, 109, 110, 111, 112, 113, 114, 115, and 301);
- increase congressional oversight (H.R. 1361 Section 301, S. 163 Section 301);
- direct SBA to study making economic injury disaster loans due to a lack of snowfall (H.R. 1361 Section 218, S. 163 Section 116); and
- require SBA to coordinate its activities with FEMA (H.R. 1361 Section 105, S. 163 Section 219).

Implementation details of these common features differ between the two bills.

Major Provisions Unique to H.R. 1361

In addition, the House bill would

- revise repayment and disbursement terms (Sections 205 and 206);
- allow the SBA Administrator to make grants of up to $100,000 to certain small businesses that were turned down for SBA disaster

[6] The House bill would allow the administrator to waive the limit in certain cases (H.R. 1361 Section 215).

loans and are located in areas affected by Hurricanes Katrina, Rita, or Wilma of 2005 (Section 210);

- authorize the SBA Administrator to make offsetting grants to victims of Hurricanes Katrina, Rita, or Wilma who receive other aid that must be used to repay SBA loans (Section 211);
- allow the SBA Administrator to refinance existing SBA disaster loans in the Gulf Coast that would allow the borrowers to defer repayment for up to four years (Section 219);
- create the position of associate administrator for disaster assistance to be filled by a presidential appointee with the advice and consent of the Senate (Section 106);
- allow economic injury disaster loans (EIDLs) for ice storms and blizzards (Sections 217);
- allow the administrator to increase the deferment period for repaying disaster loans to up to four years (Section 204); and
- direct SBA to create disaster loan processing redundancy (Section 209).

Major Provisions Unique to S. 163

The Senate bill would

- create a small business energy emergency disaster loan and agricultural producer loans (Sections 401, 402, 403, and 404),
- increase the small business bonding maximum threshold from $2 million to $5 million, which could be increased by the administrator to $10 million in major disasters (Section 106),[7] and
- require SBA to insure consistency between the Code of Federal Regulations (CFRs) and agency Standard Operating Procedures (SOPs) (Section 110).

Table 1 summarizes SBA disaster loan programs (as of January 1, 2007) and changes to borrowing limits under H.R. 1361 and S. 163. In all cases, the amount that can be borrowed is limited to the lesser of the amount for the disaster loan program shown in the "Maximum Amount" column and the actual uninsured losses that are not otherwise compensated.

[7] 15 U.S.C. 694b.

Table 1. SBA Disaster Loan Programs

Loan Program	Eligibility	Maximum Amount	H.R. 1361 As Engrossed	S. 163 As Reported
Personal property	Homeowners and renters	$40,000	No change	No change
Real property	Homeowners	$200,000	No change	No change
Physical disaster	Business regardless of size and nonprofit	$1.5 million combined with EIDL	$3.0 million	$2.0 million
Economic injury disaster (EIDL)	Business (but not nonprofits) regardless of size		Nonprofits would be eligible	Nonprofits would be eligible
Military reservist economic injury disaster	Business regardless of size	$1.5 million	$3.0 million	$2.0 million

Source: H.R. 1361, S. 163, and 15 U.S..C. 636(b).

Analysis of Changes to SBA Planning

Following the 2005 hurricane season, congressional oversight hearings highlighted many shortcomings in the federal government's response. Among the issues raised were inadequate disaster planning, inadequate and inexperienced staffing of SBA disaster loan centers, and a lack of government-wide planning and coordination. The bills seek to address these concerns.

Similar Provisions

This section analyzes provisions in the House and Senate bills that are similar, but not identical.

Required Disaster Planning. The House bill would require the SBA to develop a disaster response plan for each of the SBA's 10 regional offices, based on the types of disasters likely to occur in the region. SBA would determine the resources (such as staff, telecommunications, computers, and office space) required to respond to each type of disaster. The report would be completed in 180 days of enactment of the bill and would be updated at least annually. The plan would be developed, implemented, and maintained by a person with "substantial knowledge in the field of disaster readiness and emergency response."[8]

The Senate bill would direct SBA to update existing disaster response plans within three months of enactment and report to Congress on provisions, including an agency-wide Disaster Oversight Council, ability to respond to different sized disasters, state and local coordination, surge plans, staffing, training, lessons learned from the 2005 hurricane season, and coordination with FEMA.[9]

Annual Disaster Drill. The House bill would require SBA to conduct an annual disaster drill and to report to Congress on the exercise.[10] The Senate bill would require a one-time disaster simulation exercise.[11]

Senior Management of Disaster Planning and Response. The House bill would require SBA to have an Associate Administrator for Disaster Assistance who would be appointed by the President with the advice and consent of the Senate.[12] Directors for disaster planning and disaster lending would be selected from SBA staff and thus would not require a net increase in the number of full-time employees.[13] The Senate bill would require the SBA to hire a full-time disaster planning specialist, but would not establish the level of the job.

Reserve Corps. The House bill would require the SBA to create a disaster reserve corps of at least 1,000 people not working full-time at the administration, and who would be able to respond to disasters.[14] An annual disaster simulation with at least half of the disaster reserve corps would be required to test the disaster response plan and the capacity of SBA systems. Members of the corps would receive annual training and would be distributed around the nation.[15]

SBA would be required to develop long-term plans to obtain workspace for the disaster reserve corps to use in times of a disaster. It would be required to have a

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[8] H.R. 1361 Section 101.

[9] S. 163 Section 112.

[10] H.R. 1361 Section 102.

[11] S. 163 Section 112.

[12] H.R. 1361 Section 106. The SBA presently has an associate administrator for disaster assistance, but this position is not explicitly listed among the five associate administrators authorized in 15 U.S.C. 633(b). The position does not require Senate confirmation. The number of associate administrators would not change under the House bill.

[13] U.S. Congress, House Committee on Small Business, *Relief for Entrepreneurs: Coordination of Objectives and Values for Effective Recovery Act of 2007 or "The Recover Act,"* report to accompany H.R. 1361, 110th Cong., 1st sess., H.Rept 110-82, p. 25.

[14] H.R. 1361 Section 103.

[15] H.R. 1361 Section 104.

backup disaster loan processing facility that could be activated within two days if the primary facility were unusable.[16]

The Senate's approach would require SBA to hire a new, full-time disaster planning specialist.[17] At least 800 employees would be assigned to the Office of Disaster Assistance and 750 employees would be assigned to the Disaster Cadre.[18] One employee in each district office would be assigned to be a disaster loan liaison between the disaster processing center and disaster loan applicants.[19]

Coordination with FEMA. The House bill would require that SBA establish regulations to ensure that disaster assistance application procedures are coordinated with FEMA and other agencies within 270 days of enactment.[20]

Analysis of SBA Response Including Reporting

This section analyzes how H.R. 1361 and S. 163 would change SBA response after a disaster occurs.

Revised Disaster Response. Both bills would require SBA to take certain actions as part of its disaster response and mandate new reports to Congress. This section discusses the similarities and differences in approaches.

Communications Tracking. The House would require SBA to (1) track all communications with applicants for disaster loans; (2) keep applicants informed of any additional information that is needed; (3) notify applicants of the decision to approve or deny the loan; and (4) alert applicants when the primary contact person managing the loan application is changed.[21] S. 163 has no similar provision.

Required Reporting. The House bill would require SBA to send Congress an annual report on disaster assistance programs.[22] The report would discuss staffing, operational changes, program effectiveness, and changes to SBA disaster procedures. In the event of an incident of national significance, SBA would submit a monthly report detailing (1) the number of disaster assistance applications distributed and received; (2) the average processing time, the amount of disaster loans approved; (3) the average time for initial disbursement of disaster loans; and (4) the amount of disaster loans disbursed.

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[16] H.R. 1361 Section 209.

[17] S. 163 Section 113.

[18] S. 163 Section 115. It is not clear if the 750 employees in the Disaster Cadre are included in the 800 employees in the Office of Disaster Assistance. SBA requested authorization for 2,123 full time equivalent employees in its FY2008 budget request.

[19] S. 163 Section 114.

[20] H.R. 1361 Section 105.

[21] H.R. 1361 Section 202.

[22] H.R. 1361 Section 301.

The Senate bill would require SBA to send Congress an annual report plus monthly reports on disaster loan programs during periods of a declared major disaster.[23] The report would discuss (1) lending volume and changes in lending volume; (2) the number of disaster loans and dollar amounts; (3) funding spent and available; (4) how long the available funding is likely to last; and (5) details of expenses. During a presidentially declared disaster, SBA would be required to make daily reports to Congress on SBA staffing, applications, processing decisions, disaster loans disbursed, and the dollar amounts involved. Other reports would be required on federal contracting and possible improvements to the disaster loan process.

New or Revised Disaster Loan Programs

Both the House and Senate bills would direct SBA to take extraordinary actions in response to "super" catastrophes that exceed the "normal" major disaster actions, but they differ in both what would trigger the extraordinary actions and what the extraordinary actions would be. Under provisions in the House bill, an incident of national significance would activate special programs and call for a stepped up response from the SBA. An incident of national significance is defined in Homeland Security Presidential Directive 5 (HSPD-5) and the Department of Homeland Security's (DHS') National Response Plan, and it includes both potential and actual threats as well as actual disasters regardless of cause.[24] The conditions are more general than a major disaster, which is limited to natural catastrophes, fires, floods, droughts, or explosions that are severe enough for the President to warrant major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).[25]

The National Response Plan mentions Stafford Act major disasters and emergencies as reasons that an incident of national significance might be declared. Any event requiring coordinated federal and state response, such as a political convention, presidential inauguration, or large sporting event, could be declared an incident of national significance. Not every major disaster is an incident of national significance and conversely not every incident of national significance is a major disaster. In short, an incident of national significance includes the most devastating of major disasters along with other events.

An incident of national significance that would activate the mandatory private sector participation could be an event that is not a disaster, such as the visit of an international dignitary or a national political convention.

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[23] S. 163 Section 301.

[24] HSPD-5 is available at [http://www.whitehouse.gov/news/releases/2003/02/20030228-9.html]. The National Response Plan is available at [http://www.dhs.gov/xprepresp/committees/editorial_0566.shtm].

[25] For the Stafford Act, see 42 U.S.C. 5121 et seq.

The Senate bill would create a category of "catastrophic national disasters." It would require the SBA Administrator, the secretary of DHS, and the FEMA Administrator to establish a threshold for catastrophic national disasters and to incorporate the threshold into regulations.[26] Following a catastrophic national disaster declaration, disaster loans could be made to small businesses adversely affected by the disaster throughout in the nation.

Congress might wish to consider the appropriate place for the provisions establishing and defining the category of "catastrophic national disaster"[27] in the Small Business Act[28] or the Stafford Act. In considering the placement, Congress might consider whether a catastrophic national disaster is more an SBA disaster issue or if it has broader implications for the nation's disaster response.

Increased Maximum Business Disaster Loan Size

The House bill would increase the maximum SBA guarantee on a business disaster loan to $3,000,000 from $1,500,000.[29] In the case of direct loans from SBA, the maximum loan amount would be $3,000,000.

The Senate bill would increase the aggregate business disaster loan limit to $2,000,000 and authorize SBA to increase the aggregate disaster loan limit "based on appropriate economic indicators" for the region in which that disaster occurred.[30] The bill would authorize SBA to make all types of disaster loans to nonprofits that are located in a disaster area or are providing services to those evacuated from a disaster area.[31] It would authorize SBA to create a contracting outreach and technical assistance program for small businesses that had a significant presence in a disaster area.[32]

Disaster Loans for Nonprofits

Under current law, a business, but not a nonprofit, is eligible for an economic injury disaster loan (EIDL) if the President, the SBA Administrator, the Secretary of Agriculture, or a state governor finds that a disaster has hurt small businesses.[33] Economic injury is defined as the inability to pay bills and operating expenses as they

[26] S. 163 Section 201.

[27] S. 163 Section 201.

[28] P.L. 85-536 as amended, 15 U.S.C.

[29] H.R. 1361 Section 212. Section 215 would allow SBA to waive the new $3,000,000 limit for loans to major sources of employment, or businesses that would become major sources of employment, in the area.

[30] S. 163 Section 102.

[31] H.R. 1361 Section 101.

[32] S. 163 Section 105.

[33] 15 U.S.C. 636(b)(2)(D)(3)(iii). There are also military reservist economic injury disaster loans that would not be affected by this provision.

become due or the inability to market or conduct normal business activities. Both bills would authorize economic injury disaster loans to nonprofits.[34]

Post-Disaster Mitigation Loans

Currently, homeowners and businesses may borrow an additional 20% of the disaster loan amount for post-disaster mitigation.[35] The House bill would authorize SBA to make or guarantee post-disaster mitigation loans to small businesses that receive other disaster loans as the result of an incident of national significance.[36] The amount of a mitigation loan could be up to 20% of the damages incurred regardless of insurance or reimbursement. Nonprofits and businesses in the areas affected by Hurricanes Katrina, Rita, and Wilma would be eligible also for these mitigation loans after an incident of national significance.

The Senate bill would modify the existing 20% post-disaster mitigation loan limit to make the limit 20% of the amount of destruction, not 20% of SBA disaster loan.[37]

Quick Decision Business Small Disaster Loans

The House bill would authorize private lenders to make immediate business disaster loans of up to $25,000 to businesses that apply for disaster loans.[38] SBA would guarantee 85% of the expedited loan amount. SBA would have 36 hours after receiving an application for an immediate loan to make a determination on whether or not to grant the loan. The proceeds of a regular business disaster loan could be used to repay the immediate business disaster loan.

The Senate bill would require SBA to create a program of immediate, short-term disaster loans within one year after enactment of the bill.[39] No loan amount is specified in the bill. A regular business disaster loan could be used to refinance the expedited loan, and the maximum interest rate on the expedited loan would be one percentage point over the prime rate.

Revised Terms

The House bill would make several changes to make it easier to repay a disaster loan.

Delayed Repayments. It would prohibit any requirement to start repaying a disaster loan for the first 12 months after the final loan disbursement is made and

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[34] H.R. 1361 Sections 201 and 214, S. 163 Section 101.

[35] 123 C.F.R. 107, and 123 C.F.R. 204.

[36] H.R. 1361 Section 201.

[37] S. 163 Section 102.

[38] H.R. 1361 Section 203.

[39] S. 163 Section 204.

authorize the administrator to allow deferments of up to four years.[40] Repayment, presently based on the amount applied for, would become based on the amount disbursed.[41] SBA would be prohibited from imposing a "supplemental payment" on disaster loans in excess of $1 million during the first five years of repayment.[42] The Senate bill has no similar provisions regarding repayments.

Collateral Requirements. The House bill would prohibit SBA from requiring a business owner to use his or her home as collateral on disaster loans of $100,000 or less.[43]

The Senate bill would raise to $14,000 from $10,000, the amount that could be borrowed under the disaster loan program without requiring collateral. SBA could raise the amount in the event of a catastrophic national disaster.[44]

Disbursement Schedule. The House bill, but not the Senate bill, would establish new disbursement schedules based on the amount of the loan.[45] **Table 2** summarizes these provisions. In all cases, the first disbursement could be less if the borrower and SBA agree.

Table 2. H.R. 1361 Revised Disbursement Schedule

Maximum Loan Amount	Maximum Disbursement			
	First	Second	Third	Fourth
$1-$150,000	40%	50% of remaining	Remaining amount	
$150,001-$500,000	20%	30% of remaining	25% of remaining	Remaining amount
More than $500,000	$100,000	Amount and number of disbursements to be determined by SBA, but the amount must be at least $100,000		

Source: H.R. 1361 Section 206.

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[40] H.R. 1361 Sections 204 and 205.

[41] H.R. 1361 Section 205.

[42] H.R. 1361 Section 212.

[43] H.R. 1361 Sections 204 and 207.

[44] S. 163 Section 201.

[45] H.R. 1361 Section 206.

Grants. The House bill would authorize two types of grants. The first SBA grant would be up for to $100,000 to small businesses in certain counties and parishes affected by Hurricanes Katrina, Rita, and Wilma.[46] To be eligible for the grant, a business must have been in existence for two years before the hurricane, certify that it intends to reestablish itself in the same or certain other counties or parishes, and must have been rejected for an SBA disaster loan.

The second type of grant would be to an individual with losses due to Hurricanes Katrina, Rita, or Wilma who received an SBA disaster loan and is required to use benefits from other sources (such as Louisiana's Road Home program) to pay off the SBA disaster loan.[47] The grant would be limited to the amount of the repayment to SBA. The grant would not be considered a duplication of benefits.

Ice Storms and Blizzards. The House bill (but not the Senate) would allow economic injury disaster loans for ice storms and blizzards.[48] Both the House and Senate bills direct SBA to study the possibility of providing disaster loans for the lack of snow.[49]

Private Sector Participation in Disaster Loan Program. The House bill would allow SBA to create a program in which selected private lenders could process, approve, close, and service disaster loans.[50] These would be SBA loans. SBA would pay private lenders a fee not to exceed 2% of the total loan amount. Most of the time, private lender participation would be at SBA's discretion. During an incident of national significance or when SBA approval time for disaster loans averages 30 days or more, private sector participation would be activated by statute.

Private lenders with inordinate default rates in the program could be denied further participation. A high default rate could also be used to exclude a private lender from SBA's Preferred Lenders Program.

The Senate bill would permit "qualified private lenders" to make SBA-guaranteed small business disaster loans.[51] On-line disaster loan applications would be permitted. SBA could not charge the lender a fee for the guarantee. Subject to available funding, SBA could reduce the interest rate on private disaster loans by up to 3 percentage points.

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[46] H.R. 1361 Section 210.

[47] H.R. 1361 Section 211.

[48] H.R. 1361 Section 217.

[49] H.R. 1361 Section 218 and S. 163 Section 116.

[50] H.R. 1361 Section 208.

[51] S. 163 Section 202. SBA would guarantee up to 85% of the loan.

House Only Provisions

The following provision in H.R. 1361 has no comparable provision in S. 163.

Military Reservist Economic Disaster Loans Application Period. Presently, SBA makes military reservist economic injury disaster loans to small businesses that suffer or are likely to suffer substantial economic injury as the result of an essential employee being called to active military duty during a period of military conflict. The small business can apply for the loan starting on the date that the essential employee is ordered to activity duty and not later than 90 days after the essential employee is released from active duty. The House bill would extend the 90 days to one year.[52]

Senate Only Provisions

Several provisions in S. 163 as ordered reported have no comparable provision in H.R. 1361.

Special Grants to Small Business Development Centers (SBDCs). SBDCs are nonprofits that obtain some of their funding from the SBA; they provide training and advice to small businesses in a specific geographic area. Currently, SBA can make special grants to SBDCs in areas where small businesses have reduced employment because of closing of a large business or government facility. The Senate bill would authorize SBA to make grants of up to $100,000 each to SBDCs for future closings.[53] SBA would be given the authority to make larger grants in extraordinary situations. SBA could authorize SBDCs to provide assistance outside of their normal geographic areas when there is a disaster declaration.[54]

Surety Bonding Threshold. Some contracts, including many government contracts, require the business doing the work to post a financial guarantee that the work will be completed as specified in the contract. This guarantee is called a surety bond and either can be money posted by the business or by a pledge by a surety bonding company, which charges the business a fee for the service. SBA currently guarantees surety bonds on contracts of $2 million or less. The Senate bill would allow SBA to guarantee small business surety bonds on contracts of up to $5 million. This could be raised to $10 million at the request of the head of another government agency.[55]

Energy Emergency and Agricultural Producer Loans. The Senate bill would create a new loan program for small businesses that have suffered or are likely to suffer economic losses as the result of increased heating fuel prices since October

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[52] H.R. 1361 Section 216.

[53] S. 163 Section 103.

[54] S. 163 Section 104.

[55] 15 U.S.C. 694b.

1, 2004.[56] The energy loan program would require the President, SBA Administrator, or a governor to make an appropriate declaration of economic impact following an increase of 40% in heating fuel prices. The maximum loan amount of $1,500,000 could be waived by SBA. A similar program for small agricultural producers would be created in the Department of Agriculture.[57]

Analysis of Additional Issues

Some additional issues that Congress might wish to consider are the impact of the disaster loan program on participation in other government programs and the influence that disaster loans might have on the decisions of people and businesses to locate in disaster-prone areas. Policy analysts frequently examine the relationship between meeting the legitimate needs for assistance following a disaster, minimizing the cost to the government and taxpayers, and encouraging prudent behavior.[58]

People and businesses make decisions about where to locate and to undertake economic activity by considering the costs and benefits of alternative decisions. A new or expanded disaster loan program could affect these decisions by providing low-cost funds for recovery. An enlarged disaster loan program could also affect decisions to engage in pre- or post-disaster mitigation. As mentioned earlier, some may view a disaster loan as a good substitute for optional flood insurance.

Analysts view subsidized loan programs as a way to transfer risk from the private sector to the government. Few would argue against this transfer when it is because of the failure of federal programs such as a federal levee or dam to perform according to specifications, or when the private sector has failed to respond as in the case of flood insurance. Some might argue that the federal government should not intervene in other cases where alternative resources including local government or private planning are available.

In considering whether to extend disaster loan coverage to more types of disasters such as ice storms, blizzards, and the lack of snow, one concern might be if these are a normal or regular occurrence that should be anticipated and whether the expansion of the disaster loan program would encourage businesses to undertake activities with less regard for the risk than they would without the program expansion. For example, would including the lack of snow shift a ski resort on the margin from adding snow making equipment or locating in another location to one that depends on economic injury disaster loans?

Both bills recognize the need for exceptional federal response when the magnitude of the problem is extremely large by historical standards. Because of the

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[56] S. 163 Sections 401 and 402.

[57] S. 163 Section 403.

[58] See, for example, U.S. Congress, Senate Bipartisan Task Force on Funding Disaster Relief, *Federal Disaster Assistance*, 104th Cong., 1st sess., S.Doc. 104-4 (Washington: GPO, 1995).

interrelatedness of decisions to rebuild along the Gulf Coast after the 2005 hurricane season, extraordinary federal assistance was offered. Congress appears to have decided to institutionalize this experience by expanding SBA's disaster response team and authorizing private sector participation. The two bills differ on what would trigger this response. The House bill would trigger the private sector's participation during an incident of national significance or when the average loan processing time for a single disaster exceeds 30 days. The Senate bill would trigger the private sector's response following a major disaster or catastrophic national disaster. Congress might wish to consider whether the new category of "catastrophic national disaster" is more appropriate than the "incident of national significance," which includes many other events besides natural disasters. It might wish to consider whether a catastrophic national disaster should be part of the Stafford Act (which might imply that it would be used by other disaster response and recovery programs) or if it should be part of the Small Business Act (which would imply that it would be used only by SBA).

Both bills would create small, expedited disaster loans. With the rapid approval there will be less time to review the loan applications, and it is likely that the loss rate will be higher than on other disaster loans. On the other hand, the loans would be smaller, which would reduce the dollar amount of losses.

Legislative Status

H.R. 1361 was introduced in the House on March 6, 2007. The House Small Business Committee reported it to the full House on March 30, 2007. The House approved the bill on April 18, 2007 by a vote of 267 to 158.

S. 163 was introduced in the Senate on January 4, 2007. On May 7, 2007, the Senate Committee on Small Business and Entrepreneurship reported it out with an amendment in the nature of a substitute to the Senate where it was placed on the legislative calendar.