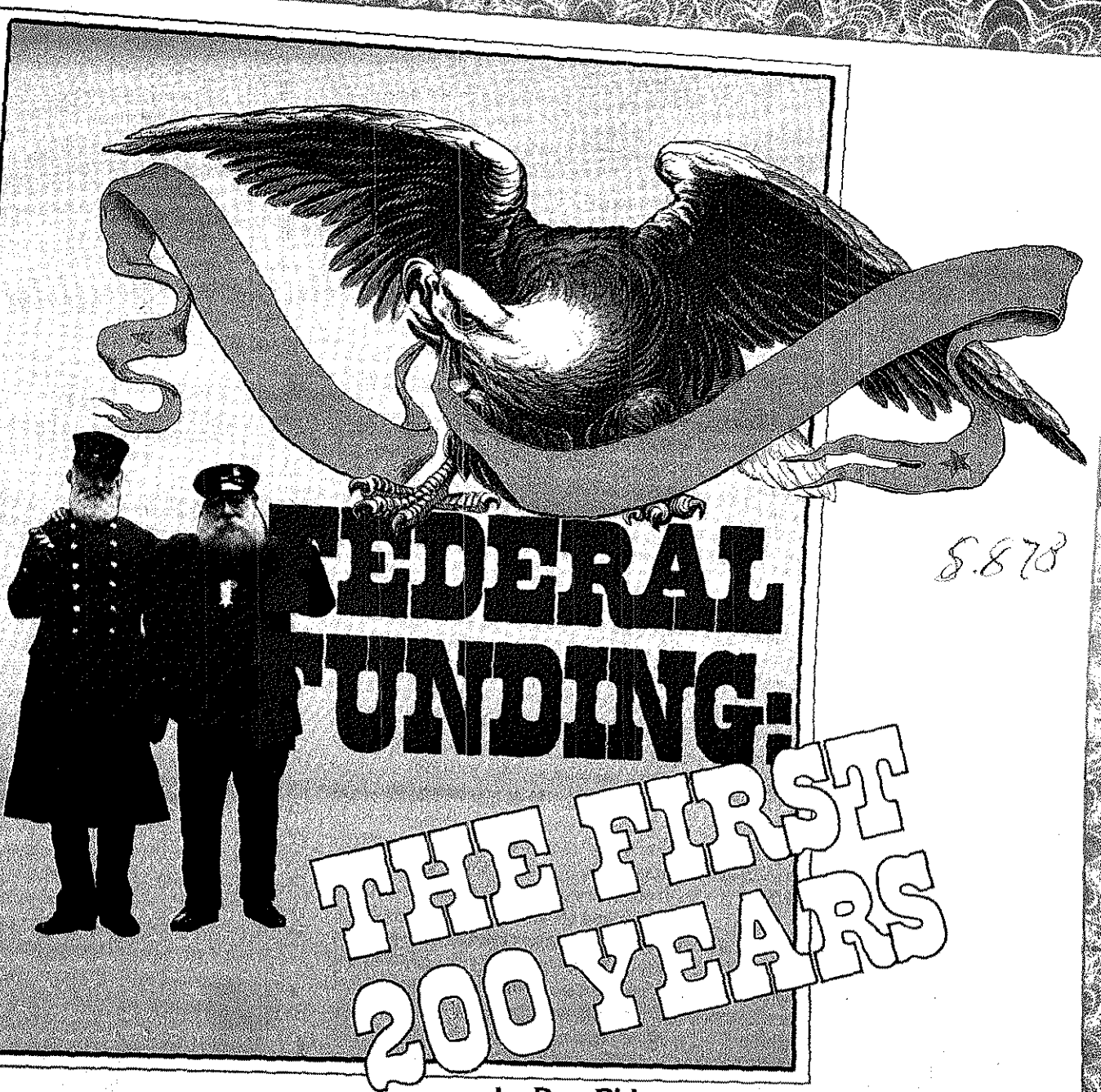

FEDERAL FUNDING: THE FIRST 200 YEARS

by Ron Ridenour

America's early settlers were rugged individuals; "go it alone" was their operating philosophy. But during the Revolutionary period, cooperation between the central government and the states became a matter of survival. The recognition of that interdependence was a first step toward our system of federal grants.

The Articles of Confederation, ratified in 1781, allowed states to enter into a "firm league of friendship with each other for their common defence . . ." Four years later, Congress ordained the first federal grant: the Land Ordinance of 1785, which granted land to soldiers, in lieu of money for their war efforts. Since the earliest beginnings of the Constitution, the courts and the Congress have endorsed the government's power to tax and spend for a broad range of public purposes. Today, the United States is the largest grantor in the world, supporting one-half million institutions in the United States through the grants system.

The United States Commission on Intergovernmental Relations has characterized the history of grants-in-aid in terms of three periods. From 1785 to 1918, education and agriculture were dominant; from 1918 to 1930, highway construction predominated; and from 1930 to the present, welfare has been dominant. A less broad breakdown, used here for easier reference, is: 1985 to the onset of the Depression; the New Deal; the '40s and '50s; the Great Society; and the New Federalism.



POLICY POSITIONS

OF THE

SMALL BUSINESS LEGISLATIVE COUNCIL

CONGRESSIONAL PRESENTATION

1979

*Of the National Small Business Association



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*Of the National Small Business Association

POLICY POSITIONS

OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

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EXPLANATORY NOTE

The 70 trade and professional associations that comprise the Small Business Legislative Council are eligible for membership in the Council by virtue of the fact that 70 percent of their dues income comes from domestic, independent small businesses.

Each of the associations presently enrolled in the Small Business Legislative Council has been provided with an opportunity to vote on the policy positions which follow.

The procedure by which any policy position is adopted begins wtih a vote by the Executive Committee of the Small Business Legislative Council. For the Executive Committee to adopt a policy position, an affirmative vote of 60 percent of the members of that committee must be recorded.

Once the Executive Committee has approved a policy position, the Small Business Legislative Council membership votes on it. As with an Executive Committee vote, an affirmative vote of 60 percent of the total membership must be recorded for a policy position to be adopted.

The policy positions contained herein have all been voted on and approved by this process. Each has been approved by 60 percent, or more, of the member organizations in the Small Business Legislative Council.

# # #

HOW TO ACHIEVE EFFECTIVE SMALL BUSINESS REPRESENTATION WITHIN GOVERNMENT

Programs affecting small business are scattered throughout the federal government. From every side, small business is confronted with activities of the government, but often they are unrelated, uncoordinated and even conflicting. Nowhere within the federal government is there a voice for small business with sufficient strength to be heard in national policy determinations, or to advocate small business interests before the other branches of the government.

In establishing the Small Business Administration the Congress declared:

> "The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed."

The Small Business Administration is often reduced to providing "band-aids" for wounds inflicted by sister agencies or departments of the federal government. The SBA Administrator is not a member of the Cabinet, and is thus not included in the highest level policy determinations. The Administrator of the SBA is considered to be at the same level as an Assistant Secretary of a department.

In many cases, the SBA does not have sufficient funds to carry out its duties. Since 1958 Congress has added programs in a piecemeal method in its effort to solve small business problems as they arise or become apparent. The result: programs don't work efficiently; the agency is increasingly bogged down in its own growing bureaucracy; and more and more it has become a servant of the administration in power rather than an independent voice for its constituency, the small business community. In effect, SBA has become a catch-all for politically-motivated programs.

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competition to entrenched and concentrated industries, including responsibility for:

a. An advocacy role, with teeth, promoting small business programs in all federal agencies.
b. Development of a valid small business data base so that Congress and federal agencies may know the impact of proposed legislation and regulation on small business.
c. Small business research and development.
d. All other activities appropriate to a true advocacy function for small business.

Consideration should also be given by Congress to transfer (from the FTC) to such an agency, of the Bureau of Competition (including Robinson-Patman Act enforcement) and the Bureau of Economics.

In its deliberations we urge that Congress consider transfer of antitrust enforcement programs currently residing within the FTC to the Department of Justice.

Because of the salutary track record of the House and Senate Small Business Committees, we urge that consideration be given by Congress to retention by such Small Business Committees of legislative authority over any new agency of government established to represent small business. We urge further that the House and Senate Small Business Committees' authority be retained over any existing programs of the Small Business Administration, regardless of whether such programs are continued under the Small Business Administration or transferred to other agencies of government.

# # #

EXECUTIVE REORGANIZATION OF THE SMALL BUSINESS ADMINISTRATION (SBA)

It is not clear at this time how President Carter's plans to reorganize the government will affect the Small Business Administration, but in a statement to the National Small Business Association, he said:

> "Currently there are at least nine agencies and departments charged with the direct responsibility of assisting small business. This authority is so diluted that no single agency or department is truly accountable for the health and wealth of small businesses...Because of this confusing bureaucratic maze, the small businessman is generally at a loss in seeking assistance from the federal government. Reorganization and consolidation of these functions involved with SBA programs will be given priority in my administration."

RESOLVED

Any plan to change the SBA, to restructure the agencies involved with small business, or to realign responsibilities for small business programs is a matter of serious concern to small business. The administration must provide opportunity for small business input before any reorganization takes place. Until there is assurance that small business interests will be effectively represented within government, the status of SBA as presently structured should be continued.

# # #

TWO-TIER REGULATION

As the number of Federal regulatory agencies grows, so too does the accompanying regulatory burden upon the private sector. Traditionally, government regulation has been applied equally to all companies across the board, without regard to the company size or impact on the economy. Statutory protection of the well-being of American citizens, while in many areas necessary, need not be the deterrent to economic progress it has become.

Small business is especially hard hit by excessive regulation, particularly when required to comply with regulations tailored to giant corporations. Unlike the larger companies, small business firms often haven't the time, personnel or expertise to meet the requirements of Federal regulations. The small business owner wears many hats in the day-to-day operation of his business -- the time and resources spent meeting often-frivolous government policy objectives erodes his effectiveness as a manager, his competitive stance, and his place in the local economy.

For these reasons, a flexible, tiered regulatory system should be adopted. When General Motors and Joe's Machine Shop are required to meet the same government standards, they are not being treated equally or fairly. With respect to both substance and procedure, small business should in every case bear a different compliance burden.

Since so many regulations have come into effect in an effort to control the practices of the largest companies, small business should not suffer from entanglement in the regulatory net; the social benefits of applying regulations to small firms are always diluted. Small business is different in terms of its ability to comply and also in its economic impact on the community. These facts should be recognized in all instances by the Congress and the regulatory agencies of the government by providing flexibility in all regulations, thereby leading to a reduction in paperwork and compliance burdens borne by small business.

RESOLVED

The Small Business Legislative Council urges the establishment of a flexible, multi-tiered system of regulation in order to equalize the compliance burden of all companies. Congress should by statute determine where flexible regulation and rules would be most applicable; and in addition, other legislative remedies, such as tax incentives to spur compliance, should be seriously considered.

# # #

COST JUSTIFICATION FOR REGULATIONS

Excessive government regulation is a significant inflationary factor. In fiscal 1979, the aggregate cost of government regulation is expected to reach $102.7 billion, a 30 percent increase over fiscal 1978 estimated cost of $79.1 billion.

The current cost of complying with government regulation now is estimated at $3,600 per year for every small business in the land. Most small firms are experiencing inordinate amounts of financial and managerial problems in their attempts to comply with the proliferation of regulations generated by federal agencies.

The time and energy spent on federal paperwork, and the large capital expenditures required to meet environmental standards, job safety standards or other mandatory standards can be a matter of life or death for a small business. The inability of a small business to finance the cost of mandatory compliance is reflected in the higher direct costs a small business incurs.

The current and preceding administrations have attempted to deal with this problem by means of Executive Orders and resolutions. They have not worked and have been adjudged by the courts to "not carry the full force and effect of law."

Many pieces of legislation have been introduced to remedy the situation, but in many cases these bills are too narrowly drafted and apply only to the independent regulatory agencies and do not cover the Executive branch.

S. 93, introduced by Senator Gaylord Nelson, chairman of the Senate Small Business Committee, and other Senators, cover all federal departments, agencies and instrumentalities, and would provide the type of regulatory relief needed by the small business community.

S. 93 would require federal agencies to undertake an analysis of the economic consequences of regulations they propose. This would include an analysis of the impact of the regulations as reflected in increases in consumer prices -- a significant cause of inflation.

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SUNSET LAWS

Once created, regulatory agencies tend to be self-perpetuating -- promulgating more regulations, seeking rulings or test cases against smaller firms before seeking out the bigs, and generally trying always to improve their own prestige and "batting averages" before Congress in order to secure larger appropriations for the following years.

Sunset laws would force periodic reassessment of the need for Government programs and agencies and require concrete justification for their continuance beyond a certain date.

Sunset would be a useful means by which it could be determined if regulations overlapped, conflicted or were unnecessary. Priorities and circumstances change: with a sunset review procedure, regulations no longer needed or proving to be unworkable could be deleted. This would lead to a reduction in Federal spending and with fewer regulations and/or agencies perhaps there would arise a better co-operation between the various agencies and a better implementation of Federal programs.

Sunset would make Congress accountable for the regulations issued by an agency. This should lead to more concise drafting of legislation, rather than Congress setting out a broad outline of policy which is interpreted and implemented by the agencies. In essence, sunset would mandate legislative oversight of on-going Government activities. This would also make it necessary to have a compilation of existing programs -- such a listing is practically impossible to obtain as matters stand now.

The proliferation of agency rules and regulations has increased at an alarming rate in recent years. The effect of these regulations is to overburden the small business owner. Is it not time to review such programs if the economic effect is forcing American small businesses out of business?

RESOLVED

The Small Business Legislative Council urges the use of sunset provisions and Congressional review of the effectiveness of existing programs in all cases. Regulations have dealt a heavy financial blow to the small business community. Sunset provisions can aid small business' recovery.

# # #

PAYMENT OF ATTORNEYS' FEES

Federal regulation of the private sector has burdened small business in particular with paperwork, increasing costs, and general frustration with seemingly frivolous regulations and guidelines. More importantly, though, the small business community has found itself the object of increasing abuse by regulatory agencies which use their statutory authority to seek rulings against small firms which, unlike the large corporations, haven't adequate resources to sustain a protracted legal battle with the government. This statutory abuse by certain agencies not only establishes precedents for rulings against larger firms, but builds the "batting averages" of the agency to justify its very existence and additional appropriations from Congress. Thus, the agency, its staff, and the regulatory process are further entrenched in the government.

A decision, right or wrong, by an official of a regulatory agency has caused more than just a few companies to go out of business. And even if the ruling has been proven wrong, a bankrupt company has no recourse of suing the government or righting the case through the appellate procedures -- it simply cannot afford the cost.

RESOLVED

The Small Business Legislative Council believes that legislation providing for the payment of attorneys' fees to individuals and small businesses prevailing in civil or administrative cases against the federal government is a first step toward restraining arbitrary regulatory proceedings. Since many cases result in a bureaucratic or administrative denial of justice to those unable to afford the extraordinary legal costs involved, legislation providing for attorney fee reimbursement would restore to those abused their right to seek legal redress for damages done.

# # #

CURBING REGULATORY ABUSE BY CONGRESSIONAL VETO

As part of its oversight function, Congress has the duty to determine whether the agencies it has created are issuing rules and regulations contrary to law, inconsistent with legislative intent, and going beyond the statute it is supposed to implement.

When an agency does commit abuse, the damage to small business subject to such rule or regulation may be irrevocable. Therefore a review period of 60 days or longer is essential.

Here are some of the reasons why Congress should exercise veto power over proposed regulations:

*In spite of the fact that the Congress of the United States has ordered the FTC to afford opportunity for oral presentations to all parties desiring to testify in Rulemaking proceedings (P.L. 93-636), the Commission continually ignores the law.

*In another area, the FTC allows staff reports, assumably stating facts, to be entered into the Rulemaking record, yet refuses to allow those staff members to be cross-examined concerning those statements. This practice is being carried on despite a clear legislative imperative opposing the practice (Cong. Record, December 19, 1974, pp. 41405-41408).

*The Magnuson-Moss FTC Improvement Act authorized the FTC to designate those acts or practices which would be henceforth deemed unfair or deceptive on an industry-by-industry basis.

There are now many Rulemaking proceedings being conducted by the FTC in various stages of completion. Uniformly, these Rulemaking proceedings are directed at small business and its customers. The impact of these Rules when enacted will create unfair and unnecessary economic hardships to countless small business enterprises which lack the resources to represent themselves effectively against the institutional attack that tends to undermine their very existence. Congress has warned the Commission concerning this very eventuality, and had built into the text of the law a requirement that the FTC promulgate "a statement as to the economic effect of the rule, taking into account as to the economic effect on small business and consumers." This statement of the competitive impact

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AGENCY FOR CONSUMER ADVOCACY

Since 1967, legislation to establish a consumer agency has been introduced in every session of Congress. By whatever name, we may expect to see yet another version introduced in the 96th Congress. From past experience, it is likely the new legislation would again contain elements granting a consumer agency powers to intervene in proceedings before other agencies, thus leading to further litigation. The indirect control thus assigned a consumer agency through litigation, issuing of subpoenas and interrogatories, and, of course, additional paperwork, would give unprecedented power to an agency which is supposed to have no independent regulatory power.

Small businesses would not have the resources to combat this force -- they are already the targets of other regulatory agencies which find it easier to go after the "smalls" rather than the "bigs." Exempting small businesses would not necessarily alleviate the problem as they would then find themselves "caught in the middle." There is also the fear of an unfounded charge against a business being made public while those making the charge could remain anonymous. A small business could easily be wiped out on the basis of an unsubstantiated charge which could very well have been made by a competitor -- as with all things, it would be the initial charge which would be remembered by the consuming public.

In essence, a bureaucracy would be established which would decide what is best for consumers, then dictate to industry what can be manufactured, to what specifications, and at what cost. There no longer would be any freedom of choice for consumers nor freedom of the marketplace to develop new products and services.

While the public does need protection against unscrupulous business firms, honest firms, in turn, deserve protection from over-zealous consumer activists. The Small Business Legislative Council questions whether the best way to remedy the situation is through the promotion of an atmosphere of suspicion and hostility toward business which would all but destroy free enterprise. It could, in the end, make consumers wary of virtually all the merchandise they buy. Consumers demands <u>can</u> be met by reputable manufacturers who charge a fair price for a product which is safe to use, free of defects and performs as advertised. The free enterprise system on the whole has served the consumer well by providing new and needed products at affordable prices.

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EXPEDITING HEARINGS ON AGENCY RULINGS

Administrative orders, citations and fines affecting small business have increased in number and widened in scope in recent years. Contesting such orders can deplete the resources of a small company. Rapid Administrative review is needed where the sum in controversy is small and the decision requires review of fact-finding rather than the invalidation of a statute, rule or regulation.

Senator Mathias (R-MD) has succinctly outlined the situation confronting small business:

> "When confronted with a Federal order, citation or fine considered unjustified or inequitable, a business generally has two avenues of redress. It can appeal to the administrative agency or it can take the matter to a Federal court. Regrettably, in many of these instances, neither of these options offer an expedient resolution.
>
> "If the small business owner decides to appeal to the administrative agency, he faces a difficult and burdensome task. First, if he cannot afford to send someone to Washington or to a regional office to present the case verbally...he must rely on a written appeal. Too often, under (this procedure) important questions go unanswered or significant details are left unexplained, working to the disadvantage of the business owner. Further...this method...pits one agency employee's decision against another's...
>
> "If the small business owner decides to appeal to the Federal court, the cost of such appeal (is) likely (to) be greater than the fine involved. In addition, given the usual length of time between filing and decision, the prolonged frustration (and the expense and costs of this route) far outweighs the benefits. Small business owners often choose not to go to court, thereby waiving their rights to review."

What is needed is easy access to district courts for a quick magisterial review of agency rulings with the decision being final and not reviewable by any court or Agency.

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Taxation And Fiscal Matters

GRADUATED BUSINESS TAX SYSTEM

The graduated corporate income tax originally advanced by SBLC was enacted in 1978. It provides for a tax on the first $100,000 of taxable income according to the following schedule:

$0	- $ 25,000	--	17%
$25,001	- 50,000	--	20%
$50,001	- 75,000	--	30%
$75,001	- 100,000	--	40%
Over	100,000	--	46%

This was an historic step. Given the difficulty small businesses face in raising capital for investment (compared to the ready access to the capital markets enjoyed by the largest corporations), these lower tax rates will make it easier for small companies to re-invest more of their earnings into expansion and improvement.

Small business still faces many tax law obstacles. Estate and gift taxes are particularly burdensome; businesses shouldn't be forced into the arms of corporate takeover or driven out of business entirely due to excessively heavy taxes at the time of transfer of assets within an estate or family business. Among the most afflicted groups of small business falling into this category are farms -- truly small, family owned businesses.

Depreciation simplification is also backed by the small business community. The current ADR (Asset Depreciation Range) system is far too complex to be effectively utilized by most small businesses. The need for a simplified, straight-line depreciation system has long been recognized by the small business community, and was supported in the 95th Congress. The need persists, and small business must continue to back the needed changes.

RESOLVED

The Small Business Legislative Council continues to urge expansion and further simplification of the graduated business tax system, including investment tax credits, capital gains taxes, estate and gift taxes, and depreciation allowances. The SBLC, recognizing the gains made in the 95th Congress in the adoption of the graduated business tax system, continues to urge further reduction of the minimum rate of corporate taxation to 12 percent, as well as a widening of the brackets to which the graduated rates apply. At a minimum the present $100,000 cut-off point should be increased as a first step to $250,000.

# # #

TRANSFER OF SMALL BUSINESS OWNERSHIP

Small business represents the key ingredient in maintaining competition and offering consumers a market place choice.

This balance can be jeopardized when a small entrepreneur is unable to sell and perpetuate his business because otherwise qualified buyers may not be able to obtain, through present commercial sources, sufficient financing to acquire the business.

A means must be provided by the establishment of a loan guarantee program, whereby qualified buyers, including employees of the firm, could purchase a company which otherwise might be forced to close, liquidate, transfer, or merge with a larger firm.

Adequate financing is available from a seller if the seller holds a long-term note. However, in many cases this note is the primary asset of the seller and may constitute the sole retirement program of the seller. The availability of a loan guarantee to the seller of a business who is willing to hold an installment note for a long-term payout would greatly expand opportunities for small business to be sold as going enterprises to qualified buyers. Such loan guarantees protecting the seller of a business who holds the long-term contract could be at a lower level than the present 90% guarantee when banks are involved. In fact, somewhat greater exposure of a seller would provide an incentive to insure that cooperation and guidance is available to the buyer.

RESOLVED

Congress is urged to explore creation of a funding vehicle to enable small business sale agreements to obtain a federal guarantee of the note held by the seller when given by qualified buyers.

The SBLC recommends that a guarantee program be established under which loan packaging and loan review boards, in cooperation with the banking community, be established within each Standard Industrial Code (SIC) grouping, funded by the respective industry and operated according to standards established by statute or regulations of an existing agency of government.

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JOB CREATION

The 95th Congress refused to extend or expand a job creation tax credit which allowed a business to take a tax credit of 50 percent of the cost of hiring up to two new employees with a maximum credit of $20,000. Instead, Congress created a new targeted jobs credit and extended and expanded the Work Incentive (WIN) program.

Under the new targeted credit, a tax credit of 50 percent of the first $6,000 of wages per employee in a trade or business for the first year of employment, and 25 percent of such wages for the second year of employment, would be provided for hiring members of seven specific groups that have unemployment rates above the national average. The ordinary tax deduction for wages would be reduced by the amount of the credit. Wages eligible for the credit would be limited to 30 percent of the total FUTA wages paid by an employer.

The current WIN tax credit for hiring welfare recipients would be increased so that rates for hiring a business employee are the same as for the targeted jobs credit. The rate for hiring a non-business employee would be 35 percent of the first $6,000 of wages for the first year of employment.

As signed, H.R. 50, the Humphrey-Hawkins bill was a far cry from the massive federal jobs and economic planning bill introduced by the late Senator Humphrey and Rep. Hawkins during the mid-1970s recession. But it retained the central goal of reduction of the unemployment rate to 4 percent by 1983. In addition, the final version tied a new national goal, a reduction of the inflation rate to 3 percent by 1983 and zero percent by 1988, to its unemployment goal.

RESOLVED

In the elimination of current high unemployment, the small business sector should be the employer of the first resort, with the incentive being provided by a job creation tax credit without regard to the status of the individual.

# # #

TAX STATUS OF INDEPENDENT CONTRACTORS

The IRS has initiated a campaign to alter the tax status of small businesspersons filing as independent contractors.

Despite repeated defeats in the courts and sharp criticism from the General Accounting Office, the IRS has increased pressure for changes in the basic make-up of the industries utilizing this status -- that is, the reclassification of independent contractors from small businesspersons to employees of corporations. The major motivations of the IRS in justifying reclassification appear to be a desire to correct alleged under-reporting of income by independent contractors, to bolster the Social Security trust fund by changing from a SECA payment system to a FICA system, and to provide unemployment compensation to these individuals.

The Treasury Department has seen fit to support the IRS position and has considered radically revamping the requirements one must meet to be classified as an independent businessperson to avoid tax burdens not presently levied. These proposed changes, if adopted by Congress, could effectively eliminate millions of small business careers throughout the nation.

The Revenue Act of 1978 provides interim relief from employment tax liability to taxpayers involved in employment tax status controversies. Eligible taxpayers are relieved of all liability for federal income tax withholding, Social Security (FICA) taxes, and unemployment (FUTA) taxes with respect to their workers for any period ending before January 1, 1979, provided the taxpayers had a reasonable basis for not treating the workers as employees. To minimize taxpayers' uncertainty about the proper treatment of workers for employment tax purposes during 1979, the bill also relieves taxpayers prospectively through December 31, 1979, of potential liabilities based on employment status classifications, unless the taxpayers have no reasonable basis for not treating the workers as employees. The bill also prohibits the Department of the Treasury (including the Internal Revenue Service) from publishing any regulation or Revenue Ruling with respect to individuals' employment tax status after enactment of this legislation and before January 1, 1980, or the effective date of any legislation clarifying the employment tax status of individuals, whichever is earlier.

RESOLVED

The independent contractor status is an integral part of our economy and is essential if individual entrepreneurship and small business is to flourish in the country. The reclassification of independent contractors as employees would be anti-small business, with an adverse

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PRODUCT LIABILITY INSURANCE

For a number of years small businesses have been experiencing major difficulties in the area of product liability insurance because of escalating costs for adequate coverage and, in many instances, refusal by the insurance companies to issue any type of product liability insurance coverage. This situation exists even for companies which have never had a claim filed against them.

Although manufacturers may be hit the hardest, the problem also exists for distributors and retailers. Manufacturers may be forced to delay the introduction of new products and distributors may find retailers are unwilling to stock products without proof of coverage, which may result in firms reducing their product lines or going out of business and adding to the unemployment rolls.

Added to the problem for manufacturers is the fact they may be sued for equipment over whose use they have no control. Nor can they exercise any control over subsequent alterations to the equipment they have manufactured once it leaves their ownership. Yet, they, as original manufacturers, are the ones who can be sued by injured employees of companies to whom they supply the equipment -- employees whose injuries probably have already been compensated fully under State Workers' Compensation awards. There has also grown over the years an increasing tendency on the part of consumers to sue. This has led to greatly-inflated monetary awards being demanded which companies have to carry on their books as a contingent liability until the case has been settled. A survey conducted by the National Small Business Association showed there was a vast difference between the inflated amounts being demanded and the actual amounts awarded.

Various proposals have been made in an attempt to achieve a solution to this problem: reform of the tort system; limitations on the size of court awards; and time limits on the manufacturer's liability after the product or equipment is put on the market. Although a long-term solution is most desirable, it is imperative that there be additional short-term relief to help small businesses which are suffering now. The recently-passed Revenue Act contains a first step to alleviating this existing problem. Product liability losses, incurred in taxable years beginning after September 30, 1979, may be carried back 10 years instead of 3 -- if not fully utilized, the loss is then available as a carryforward for the succeeding 7 years.

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VOLUNTARY WAGE-PRICE GUIDELINES

Small business is one of the sectors of our economy hardest hit by inflation. Government-mandated cost increases are the most burdensome and proportionately more costly to small business since small businesses rarely have easy access to the administrative capacity or technical expertise to comply with complex regulations. The resultant increases in cost must, in many cases, be absorbed by the profits of small businesses, primarily because they are least able to increase prices and hope to remain competitive. Increases in minimum wages, also mandated by Federal and State law, as well as increased Social Security taxes and unemployment taxes, impose a burden on small businesses which must be absorbed or passed on to paying customers. Their competitive stance is thus further weakened.

The anti-inflation program revealed by President Carter on October 24, 1978, and several times since, consists of a series of voluntary wage-price guidelines, as well as a tax rebate program as inflation "insurance" should the rate exceed 7% annually.

The program of voluntary wage and price controls unveiled by President Carter can only succeed if the entire business and labor communities participate (including small business). Despite small business' natural desire to be exempted, it is a fact that the control program of 1972 failed because the Pay Board exempted 70% of the small business community. The resulting increases in wages and prices put the squeeze on larger business that used small firms as sources for supplies, as well as resulting in increased prices to many small businesses' customers. Since small businesses in this country account for almost 50% of the GNP and have created 95% of the new jobs in the past decade, their inclusion and full participation is essential. The competitive edge of the small business community keeps all prices relatively low; full participation by small business can only contribute to the anti-inflation program's chances for success.

It is essential that the Administration seek the participation of all sectors of the economy, because failure of the voluntary program could lead to the implementation of mandatory controls -- the least desirable method of dealing with the inflation problem.

It is quite commendable that the Administration has recognized that the most elemental source of inflationary pressures is Government policy. Through the creation of a regulatory council within OMB, proposed regulations will be monitored and analyzed for their potential cost-increasing (or cost decreasing) impact. Also, the President's proposed crackdown on Federal spending will begin to ease the deficits that have plagued previous administrations and have added fuel to further heat up inflation.

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These types of cost increases may affect the price of a product, but do not increase the profit margin of the individual firm.

8. The $4.00 an hour level for low-wage workers should include the cost of fringe benefits.
9. Existing laws that protect small business, such as the Robinson-Patman Act, should be excluded from any new Executive Order or legislation.
10. A cost-impact analysis at the Office of Management and Budget, relating to inflation, should become part of the legislative process.
11. All governmental programs should be reviewed and evaluated frequently in order to eliminate those programs that no longer benefit the economy and public welfare.
12. Government contracts should be awarded to firms providing products of specified quality, at the lowest cost, without regard to special minimum wage determinations.
13. Competition brings prices down. There must be adoption of policies by the President himself, by his economic advisers, and by Congress that strengthen the small business community so as to permit it to become more competitive. Small Business is the only sector that can effectively challenge the practices of giant unions and giant business.

# # #

MINIMUM WAGE

The 95th Congress provided for the largest minimum wage increase in the 40 year history of the Fair Labor Standards Act, raising the minimum wage to $2.65 in January 1978 and in three steps to $3.35 by January 1, 1981.

The bill also provided for:

---- Reduction in the tip credit from 50% to 40% by 1980;

---- Reduced overtime exemptions for numerous categories of workers, while removing in two steps the partial exemption for hotel, motel and restaurant employees;

---- A new "anti-retaliation" amendment giving a private right of action to employees who suffer discharge or discrimination because they filed a complaint under the Act or co-operated in an investigation;

---- Expansion of the small business exemption in three steps to $362,500 by 1981, and adoption of the Senate-passed provision on child labor.

Proponents of the bill also advocated inclusion of a wage indexing provision. They believed that low-wage workers would benefit by a system of annual increments in their wages, instead of being dependent on congressional action; that a series of smaller increases in the minimum wage would provide greater stability to the wage-setting process; and that employers would benefit by being able to anticipate changes in the minimum on a regular basis. This, though, failed to pass.

Indexing the minimum wage would have a substantial impact on small business, particularly if the "index" used is average hourly wage in manufacturing.

The largest group of employees affected by minimum wage legislation is in the non-manufacturing labor-intensive area that includes many smaller retail and service concerns, as well as agriculture.

Because the manufacturing sector is highly unionized, wages in manufacturing tend to be higher overall than in other industries. While the average hourly manufacturing wage may indeed represent a "general national wage trend," the fact remains that a general national trend in manufacturing may be several years or several steps ahead of wage trends in the non-manufacturing segment, where the bulk of workers (and the bulk of smaller employers) is concentrated. By tying the minimum wage to the average manufacturing wage, smaller employers are being bound by standards that may not be appropriate or practical for their area or industry.

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SOCIAL SECURITY

In 1977, Congress completed action on legislation to better insure the long-term financial integrity of the Social Security System. High unemployment and inflation have continued to threaten the stability of this retirement benefit system, resulting in continued concern about the future fiscal soundness of the program and the need to reform the method of financing.

As approved by President Carter, the Social Security bill:

---- Raised the wage base for employers and employees from the 1978 level of $17,700 to $22,900 by 1979 and in steps to $31,800 in 1982. Automatic inflation adjustments will occur annually after that time to a projected 1987 base level of $42,600.

---- Increased payroll tax rates for employers and employees from the 1978 level of 6.05% in steps to 7.65% by 1990. These increases will primarily affect upper income wage earners. In return for paying more into the fund those with higher incomes will be building up bigger future retirement benefits and will have greater protection while employed.

---- Raised the Social Security contribution for employers of tipped workers who are now required to make payments based on the full level of the minimum wage.

---- Allowed beneficiaries to earn $4,000 in 1978, increasing in steps to $6,000 in 1982. Over this amount a beneficiary would continue to lose 50 cents of benefits for every dollar earned -- those over 72 years of age would be exempted.

---- Adopted a decoupling provision. Decoupling would correct a technical flaw caused by distortion of the automatic cost-of-living increase in the link between wages and pensions in the benefits table.

---- Authorized a study of the differences in treatment of men and women under the Social Security program.

The major fiscal thrust of the new law falls upon employers. While large companies may be able to cut back on private pension arrangements, many small businesses have no such plans and thus must absorb the full effect of an increased tax on all pay over the Social Security tax base. This discourages the adoption of private pension plans by smaller employers and

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LONG-RANGE ANTITRUST ENFORCEMENT PLANNING

Despite elaborate measures undertaken by Congress during the past century to ensure the viability of small competitors, it is today easy to document a "tilt" in antitrust enforcement practices which has adverse impact specifically on the sector of the economy the antitrust laws are designed to protect, the small businesses of this country. At present, enforcement is on an ad hoc basis only. There are no clear guidelines to enforcement authorities to make their efforts effective in critical areas. As pointed out by the former director of the Bureau of Economics of the FTC, "The net result....is that the little guys, not the giants who dominate our manufacturing and trade industries, typically get sued."

Strict enforcement of antitrust laws would result in an enhanced social benefit, as competition would be strengthened from a larger number of healthy competitors. What is needed is a rational set of policy guidelines to direct antitrust enforcement authorities to the areas where their efforts would achieve optimum remedies. Formulation of such a long-range plan by the Congress is a task of surpassing importance in the economy of the coming years, which today is suffering from the difficulty of ensuring a competitive sector in the business community. Efforts to step-up enforcement of antitrust laws must have as its goal the encouragement of the small-scale enterprise as the only realistic check against giantism in business.

RESOLVED

The Congress of the United States must affirm that the antitrust laws exist to preserve the very nature of the competitive economy on which our country is founded, and in doing so, must act to strengthen that sector of the economy which fosters competition, small business. Congress must act to stem the spread of concentration, and in doing so, ensure diversity, choice, and opportunity for future generations of citizens. The specifics

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THE ROBINSON-PATMAN ACT

Antitrust law has a single stated goal: preservation of competition. That goal motivated the U.S. Congress to enact the Sherman Antitrust Act in 1890. The Sherman Act, though, could provide penalties only in those instances in which offenses had already taken place. The 63rd Congress strengthened existing antitrust law with passage of the Clayton Act. The basic intent of the Clayton Act was to prevent monopolies from being formed through the use of unfair, anti-competitive trade practices.

The Clayton Act, however, proved to be ineffective against price discrimination, partially by reason of inadequate enforcement and partially due to judicial interpretation. Under the interpretation of the Clayton Act, there was no mechanism to prevent the stifling of competition through the granting of excessively favorable pricing for items purchased by large buyers.

To remedy this, the Congress, in 1936, overwhelmingly approved the Robinson-Patman Act, which has come to be known as the "Magna Carta" of small business. The Robinson-Patman Act forbids price discrimination between purchasers of goods of like quality in interstate commerce, where the effect of such discrimination "may be to substantially lessen competition or tend to create a monopoly in any line of commerce..."

A jurisdictional requirement of the Robinson-Patman Act allows action under the Act only where the price discrimination may lessen competition or tend to create a monopoly. This essential clause clearly points out that the Act, as originally framed, was created to promote competition, and to discourage increased concentration.

The Robinson-Patman Act does not "reward inefficiency," as its critics claim, but does prevent rewarding the largest buyers in the market simply because of their size. Large buyers may claim a purchasing advantage, but this must be based on the cost-justified volume of their purchases.

RESOLVED

To assist the small business, the Robinson-Patman Act was enacted to stop in the incipiency anticompetitive practices which have plagued this country. The Robinson-Patman Act is a cornerstone

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COOPERATIVE ENDEAVORS

Nowhere is the "tilt" in antitrust enforcement more evident than in respect to cooperative activity between and among small competitors. One firm with a market share of 30 to 60 percent can establish prices for its products, allocate production, share inventory and reap the advantages of large-scale research and development. Yet if two independent firms, each having 5 percent or less of the market, attempt by agreement to accomplish the same purposes, the antitrust agencies do not hesitate to bring legal proceedings on the basis of per se violation theory.

Congress has provided that the Attorney General may permit the formation of small business groups so as to enable them to compete with dominant firms more effectively, and without the threat of antitrust liability. The Small Business Act of 1958, as amended in 1967, ostensibly permits the cooperation of small business firms for the purposes of obtaining raw materials, inventory, supplies, research and development, and equipment, so as to permit more effective competition with a large-scale firm by a smaller-scale business.

RESOLVED

It is recommended that Congress should expand opportunities for small firms to participate in cooperative endeavors to enable them to compete with giant companies, thereby countering the accelerating trend toward concentration.

# # #

MERGER POLICY

In the area of merger and acquisition policy, enforcement agencies have neglected the intent of the law, and enforced these policies to the detriment of small businesses, while allowing continued concentration in the largest firms. While major conglomerates are allowed to acquire new subsidiaries, or merge with other successful firms almost at will, the provisions to allow a small business to participate in a merger, under the legally recognized failing company defense, have been strained to the limit by enforcement authorities. As a result, a company attempting to employ this route in selling the business must often wait until the "failing company" is actually bankrupt. Under these conditions, it is virtually impossible for a firm to sell its assets on advantageous terms.

RESOLVED

It is clearly the intent of merger and acquisition policy to inhibit monopoly growth of the large. However, present application of antimerger policy is most punitive to smaller companies. Application of these policies with respect to the "failing company" needs re-evaluation.

# # #

EXPEDITING SMALL BUSINESS COURT ACCESS FOR ANTITRUST LITIGATION

Because of various expense impediments to small business plaintiffs, and incentives in the present system encouraging defendant delay, no effective way exists for small business to enforce, on its own, antitrust and other statutes, even though it may now have a nominal right to go to court.

Outlined here are proposals -- described as the Small Business Court Access Act -- being considered by the Department of Justice, in cooperation with the Small Business Legislative Council, to streamline and make less expensive the ground rules employed in small business suits.

1. The removal of several impediments to collective, or class, small business relief is essential if small business is to have effective, privately initiated antitrust remedy when price fixing, price discrimination, or monopoly power is found. Government enforcement of some antitrust laws of great importance to small business has been virtually at a standstill. The magnitude of the problem facing small business is illustrated by the In re Cessna Distributors antitrust litigation, a Robinson-Patman action. There litigation over whether the suit should proceed as a group, or class, action on behalf of small business distributors has consumed $120,000 of small business out-of-pocket costs (exclusive of attorney's fees) over a six year period. The parties have yet to reach inquiry into the merits of the underlying claims. This case graphically illustrates that no effective means is now available for small businesses to enforce on their own initiative this and other federal statutes.

2. Present requirements determining when small business can join together to sue as a class now encourage a proliferation of unnecessary and unrelated factfinding. All this rewards the litigant with the superior resources.

The Small Business Court Access Act simplifies greatly the standards governing the possibility of collective action so the court can identify quickly and directly those actions appropriate for collective relief. Such reform would permit expeditious treatment of the merits of small business actions.

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7. When involved in antitrust class damage actions small businesses are on the plaintiff side 80 percent of the time. Small businesses who bring legitimate actions may find them disfavored by courts influenced by the propensity of some attorneys to bring frivolous cases solely to secure fees. Not only are legitimate small business plaintiffs indirectly harmed, but defendants are put through unnecessary time and expense, often causing these defendants to be less reasonable in the context of a legitimate suit.

The preliminary hearing, mandated in the Small Business Court Access Act, addresses this problem by allowing the court to put aside extensive procedural inquiry and first see if the lawsuit has any basis. Not only would this eliminate nuisance suits that may indirectly harm small business, but it would give small business an early look at the possible judicial success of its suit, an insight which would be invaluable in determining the resources to be expended.

8. Some defendants, when confronted by serious small business class actions, will attempt to use their superior litigation resources to employ motion practice and factfinding procedures to delay, or to reduce the size of the class. As a stratagem to reduce the class, the defendant may propound questions to all small business class members. Or lengthy interviews may be conducted with them. Members of the small business class can be barred from recovery if they do not respond or participate in these maneuvers. Often very little of the material developed is ever used in the litigation. Such strategies also force counsel for the small business class to expend much unproductive time.

The Small Business Court Access Act would limit early factfinding on the threshold issues determining whether collective small business relief is appropriate. In addition, there is a prohibition on factfinding aimed against class members, unless court permission is obtained after a showing that the information is necessary for the advancement of the action and cannot be obtained without undue hardship by other means. Failure of the small business to respond to such discovery when ordered will not bar it from recovery in a successful action.

9. The Small Business Court Access Act would also regulate the fees an attorney could charge to the recovery of small businesses and other class members. There is a need to reform existing fee procedures to assure that only those hours which are necessary for effective resolution of the action are charged.

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urgently needed if there is to be vigorous private enforcement of the antitrust and other laws. When small business' entitlement to a free and competitive market has been denied, it can rely on government action only to a small degree. Small business has always relied on private initiative. The Small Business Court Access Act would allow small business to do so in this area and to pursue its remedy under law, rather than suffer its antitrust wrongs in silence.

As steps to enable small business to secure quick, inexpensive, and efficient redress from antitrust violations, the Small Business Legislative Council supports, in principle, (a) a revision of court procedures to allow small businesses to join together in collective actions to secure redress for injury suffered by the same illegal conduct, and in particular supports legislation to make this redress less complex, less costly and more efficient, and financial assistance to pursue such remedies; (b) legislation designed to allow greater small business reliance, as a matter of proof, on prior government judgments when small business brings subsequent suits based on the same conduct found to be illegal; and (c) legislation designed to reduce the financial incentive which larger business has under the existing Tax Code to delay the day of damage judgment when sued by small business since such costs incurred in pursuing a strategy of delay are deductible.

Small Business Legislative Council similarly supports allowing small businesses to join together in collective action in the matter of court review of rule-making by the Federal Trade Commission and specifically urges that the complete record of rule-making hearings, in such form as acceptable to a court, be made available at government expense to the plaintiffs in such collective actions.

# # #

PROCUREMENT AND INNOVATION POLICY

For decades, Administrations of both parties have promised small business a "fair" or "adequate" share of federal procurement (currently running close to $80 billion a year.) The share of contracts actually awarded to small business has ranged from 16 percent to 23 percent, and small business subcontracting requirements have not been applied to all large federal contract agreements.

Expenditures for federal research and development have been even more concentrated towards large business. Less than 5 percent of the federal R&D dollar now goes to small businesses, which have historically been the most fertile spawning ground for innovations in technology. In many cases the large corporations have a vested interest in continued use of existing technologies and products, which creates a conflict of interest in their R&D work for the government.

Even in the face of growing economic concentration in other areas, studies by the Department of Commerce and the Office of Management and Budget indicated that in 1975, small firms and individual inventors continued to account for more than one-half of all inventions and innovations. Government policy should encourage this inventiveness by making funds for research and development, as well as production capital, more readily available to small business.

RESOLVED

The Small Business Legislative Council urges that the federal government set firm goals of 50 percent of prime contracts and 75 percent of sub-contracts for award to small businesses. In addition, the federal government should implement policies that reward innovation and encourage the traditional small business willingness to explore and expand in new directions by increasing small business share of federal R&D expenditures five-fold to at least 25 percent of the total.

# # #

AN EQUITABLE POLICY FOR SMALL BUSINESS PATENTS ON INVENTIONS MADE WITH FEDERAL ASSISTANCE

One of our nation's greatest problems is the decline in the rate of productivity growth, and a major factor in this decline has been the discouragement of innovation at the small business level. Less than 5 percent of all federal research and development dollars go to small business, yet both a Department of Commerce study in 1966 and an Office of Management and Budget study in 1977 show that small business accounted for more than half of all scientific and technological developments since the beginning of this century. A National Science Foundation study for the period between 1953 and 1973 found that small firms produced 4 times as many innovations for every research and development dollar as medium sized firms and 24 times as many as the largest firms.

It has become increasingly evident that many small innovative companies are avoiding the federal research grant process simply because of the uncertainty over whether or not they will be allowed to retain patent rights on inventions made under research sponsored by federal funds. This is a problem which appears to have a fairly simple solution -- allowing small businesses to obtain limited patent rights on discoveries they have made with federal money.

Experience has shown that unless the private sector (including universities, individual inventors, and non-profit organizations) is given sufficient incentive to bring new innovation to the marketplace, the development of new technologies will decline. Given the rapid drop in U.S. productivity increases over the past few years, it is apparent that new technology development in the U.S. must be encouraged.

The federal government itself is a prime disincentive for innovation development -- inventions made under various agency grants have been allowed to waste away in government storerooms benefiting no one. The Departments of Energy and Health, Education, and Welfare, for example, often take months and in some cases years to review petitions for patent rights on inventions developed with federal grants. And, when the government decides to retain patent rights on these inventions, there is little chance that they will ever be developed. Of the 30,000 patents that the government presently holds, less than 4 percent are ever successfully licensed. This is very little return on the billions of dollars that are spent every year on research and development.

Small businesses should be allowed to obtain limited patent protection on discoveries they have made under government-supported research if they provide the additional resources needed to successfully commercialize the product. This change would provide the American marketplace with additional innovative product developments and remove the

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UNDERFUNDING OF THE U.S. PATENT AND TRADEMARK OFFICE

The United States traditionally has been a leading innovative nation, the creator of new industries in electronics, lasers, antibiotics, synthetic fibers, and instant photography, to name but a few. Most of these industries sprang from inventions by small business entrepreneurs.

Although our present patent system has contributed significantly to an environment conducive to innovation, there has been a marked decrease in the rate of innovation and in the amount of R&D investment devoted to new product lines and basic research.

As a result of this concern for the status of industrial innovation in the United States, President Carter directed the formulation of the Industrial Innovation Coordinating Committee under Secretary of Commerce Juanita M. Kreps. An Advisory Committee was also established to serve as a forum for public comment on the innovation problem, and its "Patents" subcommittee was asked to examine what effect the present United States patent system has on the innovation process.

The Patents subcommittee's draft report notes that while there is general consensus that the patent system has served the country well, and that no major overhaul is recommended, there are problems of a procedural nature within our patent process which have a detrimental effect on innovation -- particularly in the small business community.

Under the present system, before a patent can be granted to any individual, tests of utility and novelty must be met. Before granting a patent, an Examiner in the U.S. Patent and Trademark Office (PTO) undertakes a manual search through the prior publications available in order to determine whether the same or similar invention has been disclosed.

These prior publications consist of over 4 million U.S. patents, a like number of foreign patents, and countless literature references. Prior art is classified into 80,000 classes and subclasses with cross references. The information listed in this manner is thus a useful tool, but only if it is complete and readily accessible.

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TECHNOLOGY TRANSFER

The small business community is currently plagued by severe limitations in its ability to adequately acquire and utilize existing and developing forms of technology. Small business' access to appropriate technology has been relatively catch-as-catch-can and often accidental. Small firms are often not equipped with the manpower, financial resources or even the most fundamental types of knowledge necessary to take advantage of recent or existing technological advances. In all cases, this problem is exacerbated by the chronic lack of informational and referral services to which small business people can turn to find an answer to a specific technology problem.

Because the small business community has such a defined need for assistance that will enable it to take advantage of the vast amounts of federally-funded R&D work now being done, an effective Technology Transfer program would provide for the identification of technical information, alert a small business owner to new processes, products, systems and techniques, and supply direct, personal and practical technical assistance that is largely unavailable and unobtainable today.

America's stance in the world marketplace has grown continuously weaker. Our increasing balance-of-trade deficits with our major trading partners -- i.e., the Common Market countries and Japan -- our declining productivity growth rate, and our waning technological innovation and development have all contributed to this weakened economic condition. A major reason is this country's disinterest in a truly innovative and productive small business community. A technology delivery system to serve small business needs could play a significant role in reversing the U.S. economic slide.

Most industrialized nations have government-subsidized technology dissemination and research programs for their small businesses so that these firms can take the lead in technology development and application. For these countries, a major benefit of such assistance programs is a heightened ability of small businesses to compete in foreign markets, and the result is a more effective method of maintaining a healthy balance of trade. The same result can be achieved for the United States should such a program be developed.

First steps in the formation of Small Business Development Centers were taken in the 95th Congress. Unfortunately the legislation was vetoed.

RESOLVED

The Small Business Legislative Council urges enactment of effective technology transfer programs to assist small businesses in solving problems concerning development, application, and availability of emerging knowledge.

# # #

REVISION OF NATIONAL LABOR RELATIONS ACT

The month-long filibuster which sent the Labor Reform bill back to the Human Resources Committee in July, 1978, eventually resulted in its failure to be reconsidered during the 95th Congress. The measure was introduced to help bolster slipping union memberships which has resulted in less money for the powerful Washington-based unions.

The filibuster withstood a record six cloture votes. Though the 41 Senators who opposed the measure were in the minority in the Senate, they had substantial support from people across the country. One public opinion poll after another clearly showed that the citizens of the nation were not supportive of a program that would give additional wealth and power to the international labor unions.

RESOLVED

The Small Business Legislative Council supports revision of the National Labor Relations Act if such amendments are balanced, constructive, and equitable to all interests -- the public, the employer, and employee. The Small Business Legislative Council opposes any amendments to the National Labor Relations Act which would be detrimental to the public, the employer and the rights of the individual employee.

# # #

COMMON SITUS PICKETING - SECONDARY BOYCOTTS

Under current law, both the U.S. Congress and the U.S. Supreme Court have determined that the practice of common situs picketing, or allowing the employees of one company on a construction site to close down the entire site because of a dispute with their employer, constitutes a secondary boycott. And "secondary boycotts" have been ruled unfair labor practices, and thus illegal.

Despite the fact that membership in the building trade unions has grown steadily in the years that common situs has been prohibited, the AFL-CIO has placed passage of the common situs bill high on its list of priorities for the 96th Congress.

There are many arguments against the legalization of common situs picketing and secondary boycotts. Among them:

(1) Common situs would increase dramatically the power of the construction unions in settling labor-management disputes with union contractors.

(2) Even on all-union projects, varying contract expiration dates among the various employers could result in periodic total stoppages, and increase the pressures on each employer to negotiate wage and benefit increases.

(3) At the same time, legalized secondary boycotts would allow union employees of one company to force non-union employees of other contractors off the job site. Despite the prohibition in prior bills of picketing where discrimination on the basis of membership or non-membership in a union is the object of the picketing, the effect would be the same even where the ostensible "object" is something else.

(4) Because minority tradesmen have been denied membership in the building trade unions, legalization of secondary boycotts would similarly affect the ability of minority contractors to win contract awards, despite the prohibition in prior bills. Likewise, the rights of individual minority tradesmen of any race employed by open-shop contractors would be affected by the ability of unions to force their employers off the site.

(5) Common situs would in effect make general contractors responsible for the labor policies of their subcontractors, and vice versa.

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(6) Common situs would "polarize" the construction industry by making job sites either "union" or "non-union," ending the current common practice of "mixed sites" with contractors selected on the basis of competitive bidding alone. The threat of having a total stoppage on the site while legality of the picketing "object" is determined in court would be enough to keep a unionized general contractor from making a contract award to an open-shop subcontractor, or vice versa.

Because of all the above problems that would be created, many small construction firms could be forced out of business. While legalization of secondary boycotts would affect all companies involved in the construction business, the smaller firms would suffer most because they would be least able to survive lengthy picketing, and least able to afford costly litigation to determine the legality of a particular secondary boycott. In addition, prior bills did not exempt residential construction. Thus common situs could be used against the mainly smaller firms that are involved in homebuilding as well as in commercial construction situations.

RESOLVED

The Small Business Legislative Council is opposed to the legalization of common situs picketing, or secondary boycotts, because of the overall detrimental effect on the construction industry and the national economy, but particularly because the impact of legalization would be greatest on the small businesses in all sectors of the construction industry.

# # #

If, after tests of utility and novelty are met through scanning of prior art, a patent is issued, all others are excluded from making, selling and using the invention disclosed in the patent. However, if the prior art references are not complete or sufficient to disclose an already-existing patent, the patent issued by the Examiner is thus subject to challenge in the courts. Challenges of this kind include further searches of prior art and most of the time better art will be found. In the district court level, 50% of the patents will be declared invalid; at the appeals court level that figure climbs to 72%; and finally, at the Supreme Court level, the invalidity percentage approaches 100%. For small businesses dependent on a particular patent, a declaration of invalidity can mean bankruptcy.

Part of the cause of this problem lies within the PTO itself, and SBLC believes that if the PTO is to remain an effective patent-granting and innovation-promoting agency, then the reliability of its patent-granting process must be improved.

RESOLVED

Since 1976, the total actual appropriation for the PTO has actually declined, after adjusting for inflation. The Small Business Legislative Council urges the Executive branch to request, and Congress to appropriate, sufficient funds beginning with the Fiscal Year 1980 to insure an adequate number of examiners and systems support so as to make the PTO more effective and achieve shorter pendency of applications and greater reliability in the validity of U.S. patents issuing from the U.S. Patent and Trademark Office. These actions will increase the integrity of prior patent search files and increase the number of publications available to patent examiners, and enable the PTO to employ modern methods for storing and retrieving the information in these expanded files. The net result will be an improved innovation and productivity outlook for the U.S.

# # #

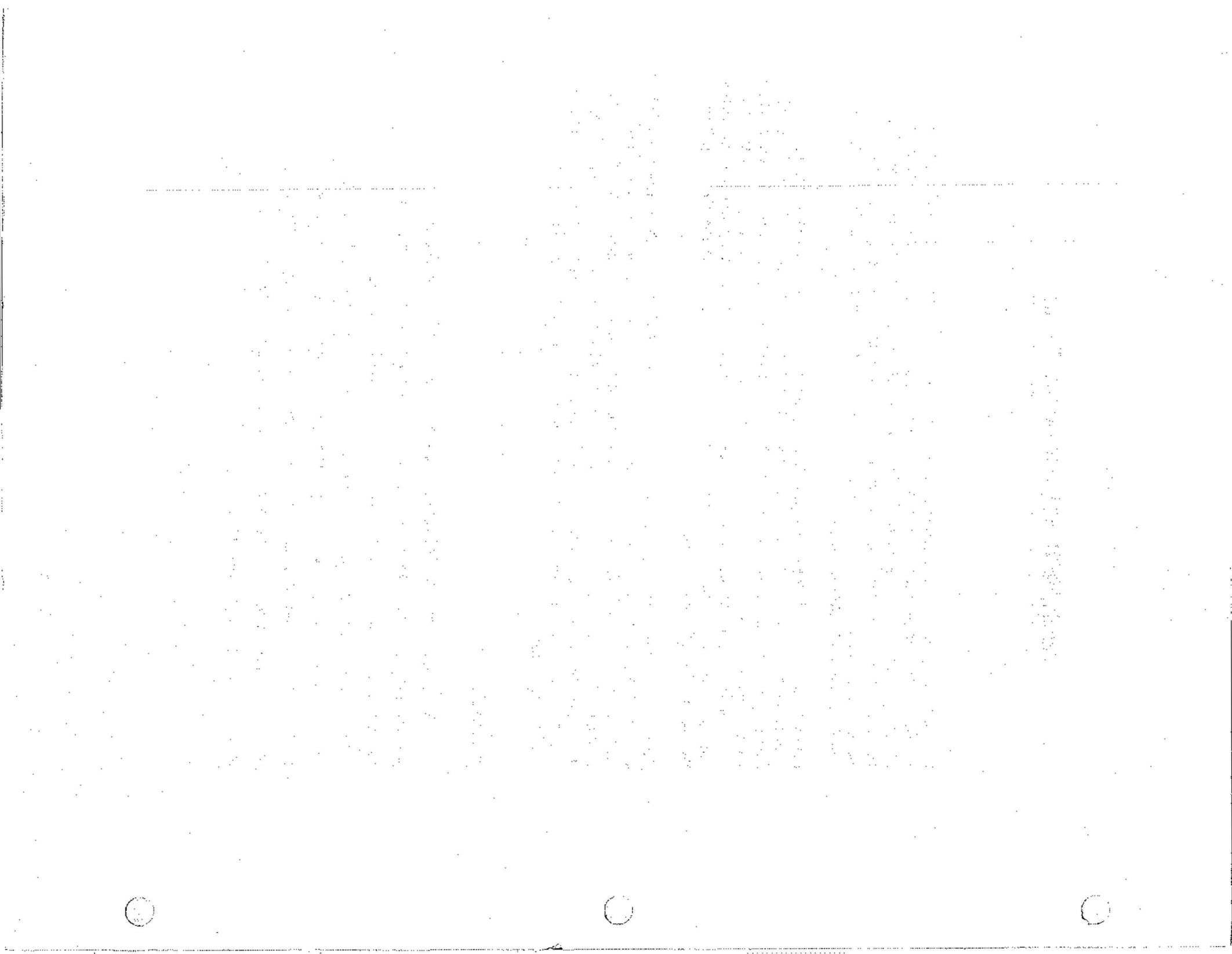
disincentive to many small companies from participation in the federal R&D process. The benefit is not only for small business, but the American economy, as well, since small firms have been the greatest source of new jobs in the past decade.

Under present practice, the government lets an R&D contract to a small business having the expertise as evidenced by background know-how. The patents devolve to the government, but when it comes to supplying the hardware, the conventional practice is for government to go to larger business, who can manufacture with impunity,in derogation of the proprietary rights of the small business contractor. This should be changed by legislation stating that no funding agreement with a small business firm shall contain a provision allowing the federal government to require the licensing to third parties of inventions owned by the small business firm which were not conceived in the performance of work under a federal R&D grant. The only exception would be that such a provision had been approved by the head of the agency and a written justification had been signed by the head of the agency. Such action by the agency head should be subject to judicial review.

RESOLVED

The Small Business Legislative Council urges and supports changes in current government patent policy to allow small businesses patent protection on inventions made under government-sponsored research, provided that allowance is made to permit the government to recoup its initial funding under certain circumstances. Small business innovations developed under federal contract should be patentable by the contractor, allowing that business a reasonable time to develop the new idea commercially. Failing that, the government should provide exclusive license to such innovations, with preference to small business. These actions will provide an increased incentive to the traditionally innovative small business sector to seek R&D contracts and to commercialize new and beneficial products for the marketplace.

# # #



10. Presently, when one or several small businesses bring an action for redress under antitrust or other statutes, they will receive, if victorious, compensation only for the injury inflicted upon them at the time the law was violated. Typically they will not receive any interest on the value of this injury to compensate for the several months required to secure redress.

The Small Business Court Access Act would ensure that small businesses are compensated not only for their injury, but for the period they must bear the burden of this injury. This is needed not only to compensate more fully small businesses, but also to remove an incentive for defendant delay. If defendants are not required to pay interest, then they have every incentive to delay settlement or trial in order to use the funds likely to be paid as a judgment at the going market interest rate during the pendency of the action.

11. Often a government antitrust judgment will suggest that small businesses also have a right to redress for the injury inflicted by the violation. However, the government normally will not seek as part of its judgment compensation for such injury. It will rely on the initiative of private attorneys, who will use the government judgment to secure compensation for the businesses. However, the federal antitrust law determining the weight given in the subsequent proceeding to the prior government judgment has been construed by the courts in a restrictive manner. Some courts find that the defendant is entitled to assert all his defenses notwithstanding the rejection of such defenses in the prior government action. Small business is required to relitigate at great expense all these issues.

The Small Business Court Access Act would accord the government proceeding full force in these subsequent suits. To the extent particular issues were litigated, or could have been litigated, the result would be binding upon the defendant. This position is supported by the Antitrust Division and the National Commission for the Review of the Antitrust Laws and Procedures. Its implementation would materially assist in expediting individual and class antitrust litigation on behalf of small business and reduce its cost by limiting the need for wasteful relitigation.

RESOLVED

The present justice system has failed small business. Small business cannot afford to pay the freight necessary to secure its rights. Procedural reform is essential. Comprehensive solutions are

3. The Small Business Court Access Act mandates that there be an early evaluation of the merits of a small business class damage action under the antitrust laws and other federal statutes. Small business can use this tentative judicial evaluation to assess the wisdom of pursuing the action and sinking further dollars and time into it. This requirement will also encourage the judge to take early, firm control of the litigation. Discouraged will be open-ended, expensive litigation battles to determine facts only of slight importance, and other forms of procedural delays. Such strategies have been conducted by some defendants who desire to exploit their superior litigation resources.

4. In those collective actions involving a range of small and large injuries to small business, the Small Business Court Access Act would also make available government funds to pay the expenses of private attorneys representing small businesses and others. The funds would not come from the general treasury, but from unclaimed portions of prior class action recoveries. Use of these funds to pay the costs of private attorneys representing small businesses and others would be a significant step forward. It would help to alleviate the well-known financial pressures on the small business attorney, who, in many cases, will be advancing expenses. Such pressures encourage an attrition strategy by the other side and can force low settlements. These funds will also help offset government enforcement inertia in certain areas.

5. The Small Business Court Access Act would also make available up to $10,000 to a small business which detects and advances the prosecution of an antitrust violation such as price fixing or price discrimination. This incentive would encourage detection where the actual injury to a particular small business is slight, but where the aggregate injury inflicted on the large numbers of these businesses is large. In the past no one has had enough at stake to go after the violator.

6. A basic theme prompting the class action portion of the Small Business Court Access Act is the need to break large, complex antitrust actions into manageable phases. If judicial officers were given the tools to follow an orderly litigation progression (including the ability to conduct early inquiries into the merits before extensive expenses are incurred by small business classes), small businesses alleging important, complex, innovative theories under the antitrust laws would have a much greater chance of achieving a settlement or trial determination within a reasonable period. Further it is much less likely that small business class actions would be dismissed on the grounds that they are unmanageable. Such dismissals are not entered without analysis of the underlying merits of the small business claims.

which small business stands behind, and any effort to erode its principles is opposed,since this would lead to a weakening of the segment of our society which has built this country. The "administrative repeal" of the Robinson-Patman Act must be reversed, and funds specifically for Robinson-Patman Act enforcement need to be appropriated. The FTC must be required to show the effects of its enforcement of "The Magna Carta of small business."

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of long-range enforcement planning should include the following elements:

(a) That prior to the institution of government antitrust proceedings, a competitive impact statement be filed in the court, setting out the reasons why the government believes it essential that the matter be litigated; the reason why the defendant or defendants were selected; and the objective of the litigation -- what the government seeks to achieve.

(b) That the rigors of per se rules of antitrust culpability be determined inapposite and inappropriate in reference to smaller-scale enterprise.

(c) That antitrust enforcement be tailored to restore competition in a target industry in the direction of a realistic norm, keeping in mind that the best vehicle for restoration of competition is a healthy and thriving small business component. Current policy allows selection of a relatively small component in a given industry, usually a small to medium-size business, and then harsh punishment with antitrust sanctions for the purpose of "setting an example."

(d) That the impact of the challenged market behavior be based on actual empirical evidence rather than the application of theoretical rules. Under the present system, the application of arbitrary rules tends to suppress healthy and desirable competitive practices employed for the purpose of gaining a foothold in a market, or meeting the deep pocket competition of giant-scale conglomerate enterprises. What is proposed is attuning enforcement to the realities of the marketplace, rather than in a manner consistent with a priori notions.

# # #

encourages their termination. The burden will not be borne equally, however, and for some businesses the added payroll tax will force the organization into a deficit position. In other cases, foreign competitors will be given a cost advantage. In total, the result will be added costs, increased prices and more inflation.

RESOLVED

The proposals to put the Social Security System on a sound financial basis are, for the most part, desirable. However, general revenues should not be tapped just because it is easy to do so. Employers should not be taxed on pay that the employee is not taxed on because that is a convenient way to get money. The program should continue to be financed 50-50 by employee and employer alike.

# # #

While the indexing provision was defeated in the 95th Congress, Congress did provide for a Minimum Wage Study Commission to conduct a study of the Fair Labor Standards Act of 1938 and the social, political, and economic ramifications of the minimum wage, overtime, and other requirements of that Act.

RESOLVED

In view of the uncertainty of minimum wage benefits to low-wage workers, and the undesirable economic effects of indexing the minimum wage, the Small Business Legislative Council opposes automatic increases in the minimum wage based on the average hourly manufacturing wage. Minimum wage is an economic policy tool that deserves close attention by the Congress and the President to determine its effectiveness. By indexing the minimum wage in regard to the average hourly manufacturing wage, this determination is eliminated. Basing minimum wages, throughout American business, on the average hourly wage in manufacturing will have a disproportionate impact on the small business sector of the economy.

# # #

Another area for Government's attention should be ways to increase productivity. Wage increases greater than productivity increases cause unit costs to rise, with the increases being passed on to consumers. As a way of retarding this adverse cycle, fundamental economic principles call for awarding wage increases only with accompanying increases in productivity. The resulting rise in consumer and production cost is offset by a greater labor yield and a greater supply of goods and services.

RESOLVED

1. The Small Business Legislative Council supports the concept of voluntary wage and price guidelines. This program can only succeed if the entire business and labor communities participate, including small business.
2. To make less than mandatory controls work, all elements of government -- federal, state and local -- must be brought under the program's guidelines. Fiscal and monetary restraints, elimination of the federal deficit, and a move to slow the proliferation of government rules and regulations must be undertaken by the federal government.
3. Inflation will be slowed if the government focuses major attention on methods of increasing productivity.
4. Some provision must be made for preventing reopening of labor contracts before the full contract period has terminated, coupled with a no-strike clause during the contract period and for six months after the expiration of controls.
5. Any new labor-management contract should anticipate the price increase due to distribution, and include that percent in the original settlement.
6. Cost-of-living escalations built into union contracts should be limited to a one-time pass-through, and a "cap" must be placed on future cost-of-living increases.
7. Cost increases beyond the control of smaller firms, i.e. raw materials, transportation, etc., should not be charged against the standards set by the Council on Wage and Price Stability.

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This new law also allows for the accumulation of reasonable amounts to pay for future product liability losses. However, amounts cannot be set-aside in a tax-exempt trust fund, as would have been the case in the PLITE legislation, which would have allowed companies and professionals business deductions for payments made into a reserve fund where the funds would be deductible as a business expense and tax-exempt while they remained in the trust. Another legislative proposal, which would have granted immediate relief, would have allowed reinsurance to be offered which would protect the insurance company's reserves from excessive losses and thus result in lower premiums and more availability.

RESOLVED

The Small Business Legislative Council supports the concept of such tax-free reserves as outlined in the PLITE bill and will urge adoption of such measures in the 96th Congress, recognizing, however, the advisability of pursuing other legislative remedies which will provide a more satisfactory long-term solution to the overall product liability problem. The administrative functions for a reinsurance proposal should be placed in a Federal Insurance Agency.

# # #

effect on the job market,as well as causing an adverse effect on anti-inflation efforts by increasing costs of doing business and reducing competition. We support a legislative initiative to permanently implement recommendations of the Conference Report on the Tax Reform Act of 1976, prohibiting the IRS from applying any new or changed position in this area, inconsistent with a general audit position, regulation, or ruling in effect on January 1, 1976.

# # #

In this way a loan guarantee, as part of a buy-out transaction, would be reviewed by individuals within the industry, packaged by a bank, and then presented to the appropriate agency of government whose primary responsibility would be to insure that all information is properly assembled and the agency's requirements are met. Servicing of the loan would then be the responsibility of a bank operating in much the same manner as under the existing SBA loan guarantee program.

Existence of a program as outlined above would:

1. Encourage transfer of existing businesses which have a much greater potential for survival than do newly-created businesses.
2. Relieve demand pressure on the money market by having the seller carry a long-term note.
3. Assure employees of job continuation.
4. Make careers in Small Business more attractive for younger people who would be willing to forsake higher short-term earnings when presented with an opportunity for ownership without the need of amassing large amounts of capital normally necessary for a business buy-out.

# # #

RESOLVED

The Small Business Legislative Council supports legislation authorizing a small business to petition a district court for a magistrate to review a fine, citation or order of an Agency within 30 days of the ruling, where the direct dollar value of such fine, citation or order, or any part thereof, is $2,500 or less and such review does not require invalidation of statute. If the magistrate determines that the citation, order or fine is inappropriate to the alleged offense, inconsistent with previous interpretation of pertinent regulations or inequitable, he may order the Agency to rescind or modify the citation, order or fine. Where a small business has petitioned a district court for a magistrate to conduct pending proceedings, the fine, citation or order shall not be enforceable until a decision has been rendered, except when failure to enforce the fine, citation or order would result in imminent danger to the health or safety of any person.

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Finally, it is a complete fallacy to believe that a single agency in Washington could solve the problems of more than 200 million individual consumers or to believe that such an agency would actually give consumers a true voice in government decision-making processes.

RESOLVED

The Small Business Legislative Council opposes the establishment of any agency purporting to represent consumers and having the power to intervene in proceedings before other Federal agencies and in the courts. SBLC does support a more adequate functioning of consumer interest sections in existing agencies. SBLC decries attempts at placating small businesses by any "so-called" exemptions. By Executive Order, the President's Consumer Advisor has been granted oversight authority over consumer programs in all agencies of government, thus negating the need for a separate agency.

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of the proposed Rule on small scale enterprise should be made when the promulgation of the Rule is initially proposed. Such competitive impact statements should also be subject to administrative fact finding and require a full opportunity for judicial review as an essential pre-condition to the adoption of such a Rule.

The need for overseeing the bureaucracy and its regulatory activities and for action to curb abuses of such activities is widely recognized. President Carter has named a Regulatory Council for the express purpose of reforming regulatory procedures, and eliminating areas of duplication, overlap and inconsistency.

However, more needs to be done. The Regulatory Council is composed of representatives of the Executive branch regulatory agencies and departments, but has no authority, power or relevancy to the regulatory activities of the independent regulatory agencies which are not a part of the Executive branch of the government, and are not subject to oversight, supervision or direction from the President or any of the departments under his control. Consequently, these independent regulatory agencies, as arms of the Congress, have only one overseer: The Congress.

RESOLVED

Small Business Legislative Council supports, IN PRINCIPLE, the establishment of a uniform procedure for Congressional review of the activities and regulations of "independent regulatory" agencies (those agencies which are not in the Executive branch but are arms of Congress, such as the ICC, FTC, FCC, SEC, CAB, and FRB) which may be contrary to law or inconsistent with Congressional intent, and permitting either the House of Representatives or the Senate to prevent an objectionable regulation from going into effect by passage of a simple resolution.

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POLICY POSITIONS

OF THE

SMALL BUSINESS LEGISLATIVE COUNCIL

CONGRESSIONAL PRESENTATION

1979

*Of the National Small Business Association

RESOLVED

The Small Business Legislative Council urges passage of broad-based legislation to reform the regulatory system, by way of imposing cost justification requirements upon the regulators prior to implementation of regulations, and recommends that the same requirements be placed upon the legislative process.

# # #

A stronger SBA, while desirable, is not enough. Incremental additions to the SBA's authority and programs would merely continue the "patchwork" approach to small business that characterizes federal actions to this point. If small business is to get the recognition from Congress that it deserves, a complete reorganization of programs affecting small business is necessary.

It is clear that small business needs a truly independent voice within government, and it does not have this today. It is clear that Congress needs independent advice on probable impact of proposed legislation and regulation on the small business community, and does not have this today. It is clear that Congress needs independent advice on new legislation and programs that will stimulate and promote growth of the small business sector, and it does not have this today.

It is clear that current functional programs of the Small Business Administration could be transferred without any sacrifice of program efficiency to other existing departments and agencies of government. It is clear that public interest demands the restoration of small business to a truly competitive position in the marketplace to counter growing concentration. It is clear that the antitrust laws simply have not worked to achieve their purpose.

The time has come for a complete re-thinking of the government's role in fostering a vigorous competitive economy by utilizing the latent strength of the sector -- small business -- comprising 98 percent of the nation's businesses and generating almost 50 percent of the nation's economic activity.

RESOLVED

The Small Business Legislative Council urges Congressional hearings to study how best to achieve the most effective representation of the interests of small business within government. Such an analysis should include consideration of the establishment of a truly independent agency (an independence comparable to that of the Securities and Exchange Commission but without its regulatory authority) to represent small business within government and promote from the small business community truly vigorous

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National Burglar & Fire Alarm Association
National Candy Wholesalers Association, Inc.
National Concrete Masonry Association
National Electrical Contractors Association, Inc.
National Family Business Council
National Fastener Distributors Association
National Hay Association, Inc.
National Home Furnishings Association
National Home Improvement Council
National Independent Dairies Association
National Independent Meat Packers Association
National Insulation Contractors Association
National Office Machine Dealers Association
National Office Products Association
National Paper Box Association
National Paper Trade Association, Inc.
National Parking Association
National Patent Council, Inc.
National Pest Control Association
National Precast Concrete Association
National Shoe Retailers Association
National Small Business Association
National Society of Public Accountants
National Tire Dealers & Retreaders Association, Inc.
National Tool, Die & Precision Machining Association
National Tour Brokers Association
National Wine Distributors Association
Printing Industries of America, Inc.
Sheet Metal & Air Conditioning Contractors' National Association
Small Business Service Contractors Association
The Roller Skating Rink Operators Association
Wine & Spirits Wholesalers of America