

(Draft - May 8, 1950)

PROPOSED CHANGES IN DRAFT BILL OF
"SMALL BUSINESS ACT OF 1950"

Strike out all of Title II and substitute the
following:

TITLE II. NATIONAL INVESTMENT COMPANIES

Sec. 201. Section 13b of the Federal Reserve Act is
amended to read as follows:

"SEC. 13b. 1. Purpose. - The general purpose of this
section as amended, in the light of which its provisions
shall be construed and applied, is to provide a means for
supplementing the existing financial activities of banks and
other financial institutions by the establishment of national
investment companies, privately owned and managed, their
formation to be facilitated by authorizing the purchase of
their capital stock by the Federal Reserve Banks with a view to
the ultimate disposal of such capital stock by the Federal
Reserve Banks to member banks of the Federal Reserve System and
to other private investors. Such companies shall be organized
and operated in accordance with general policies established by a
Small-Business Council established hereunder, and shall be
authorized to invest in and make loans to small and in-
dependent business enterprises organized upon sound business
principles which supply an economically useful product or service.

"2. Small-Business Finance Council. - (a) There is hereby established a Small-Business Finance Council, hereinafter called the 'Council'. The membership of the Council, until the formation of one or more companies under this section, shall consist of the Secretary of Commerce, who shall be chairman of the Council, the Secretary of the Treasury, and the Chairman of the Board of Governors of the Federal Reserve System. Subsequent to the formation of one or more companies under this section, two additional members shall be appointed to the Council, one by the Federal Reserve Bank or Banks which have acquired stock in such company or companies, and one by the company or companies formed under this section; and the appointment of such members shall be in accordance with procedures prescribed by the Board of Governors. Thereafter the Council shall consist of five members, as herein provided.

"(b) The Secretary of Commerce, the Secretary of the Treasury, and the Chairman of the Board of Governors of the Federal Reserve System shall receive no additional compensation for services performed as members of the Small-Business Finance Council. The members appointed by the Federal Reserve Banks and the national investment companies shall serve for terms of one year and shall receive such compensation and allowances as may be fixed by the respective boards of directors of such Federal Reserve Banks and such companies, subject to the approval of the Board of Governors. The expenses of the Council shall be met by an assessment levied upon the Federal Reserve Banks by the Board of

Governors of the Federal Reserve System, as provided in Section 10 of the Federal Reserve Act (U.S. Code, Title 12, sec. 243).

"(c) The Council shall be responsible for formulating general policies to stimulate the expansion of investment in and loans to small and independent business enterprises and otherwise to carry out the purposes of this section, except as otherwise provided herein.

"3. Eligible Enterprises. - The Small-Business Finance Council established pursuant to this section shall promulgate standards to determine the eligibility of a small and independent business enterprise for the purposes of this section. In promulgating such standards, there shall be considered the relative size and position of businesses in relation to the trade or industry in which they are engaged, the size and nature of the area of their operations, the size and independence of the groups supplying capital or holding ownership or control of the businesses, and the independence of their management; and no enterprise shall be considered to be a small and independent business enterprise which is controlled by, or is under common control with, any other enterprise which is dominant in the trade or industry or field of business in which it is engaged, unless such other enterprise otherwise qualifies as a small and independent business enterprise under this section.

"4. Organization of National Investment Companies. -

(a) National investment companies, not exceeding in number the total number of Federal Reserve Banks and branches thereof, formed for the purpose of operating under this section, may be organized by one or more Federal Reserve Banks. The articles of incorporation of such a company shall specify in general terms the objects for which the company is formed and may contain any other provisions not inconsistent with this section that the company may see fit to adopt for the regulation of its business and the conduct of its affairs, ^{including provision for accumulative voting in the elect} Such articles may be amended from time to time of directors. The articles of incorporation and amendments thereto shall be forwarded to the Board of Governors of the Federal Reserve System for consideration in accordance with general policies of the Small-Business Finance Council. Such articles shall specifically state —

"first, the name assumed by such company;

"second, the area or areas where its operations are to be carried on, which may be anywhere within the United States, its territories and island possessions;

"third, the place where its principal office is to be located, which shall be within the Federal Reserve district in which it is established, and the place or places where its other offices are to be located;

"fourth, the amount of its capital stock and the number and classes of shares into which the same shall be divided, with or without par value, and the respective participations of such shares in the profits of the company.

"(b) In determining whether to approve the establishment of such a company and its proposed articles of incorporation, the Board of Governors shall act in the light of the general policies established by the Council and shall give due regard, among other things, to the need for the financing of small and independent business enterprises in the area in which the proposed company is to commence operations, the general character of the proposed management of such company, the number of such companies previously organized in the United States, and the volume of their operations. After consideration of all relevant factors, the Board of Governors may in its discretion approve the articles of incorporation and issue a permit to begin business. The company shall thereafter become and be a body corporate, and, as such, and in the name designated therein, shall have power to adopt and use a corporate seal; to have succession for a period of thirty years, unless extended as provided in this section, or unless sooner dissolved by the act of the shareholders owning two-thirds of the stock or by an Act of Congress or unless its franchise becomes forfeited by some violation of law; to make

contracts; to sue and be sued, complain, and defend in any court of law or equity; by its board of directors, to appoint such officers and employees as may be deemed proper, define their authority and duties, require bonds of them, and fix the penalty thereof, dismiss such officers or employees, or any thereof, at pleasure and appoint others to fill their places; to adopt bylaws regulating the manner in which its stock shall be transferred, its officers and employees appointed, its property transferred, and the privileges granted to it by law exercised and enjoyed; and shall have the other powers set forth in this section and such incidental powers as may be reasonably necessary to carry on the business for which the company is established.

"(c) The Board of directors of each national investment company shall consist of nine (9) members, of which three (3) shall be appointed from the public by the Federal Reserve Bank which organizes the company with the approval of the Council, and six (6) shall be elected by the holders of the shares of stock of the company authorized and issued under the provisions of this section. Three of the nine directors, including one of those appointed from the public, shall be appointed for a term expiring one year from the first of January following the organization of such company; three others, including one appointed from the public, shall be appointed for a term expiring at the

end of two years from such time; and the remaining directors shall be appointed for a term of three years from such time. Thereafter every director shall hold office for a term of three years, except that directors appointed to fill vacancies shall hold office for the unexpired terms of their predecessors. Subject to the provisions of this section, the directors of any national investment company shall have wide discretion in directing the affairs of such company to carry out the purposes of this section.

"5. Capital Stock Provisions. - (a) Each company organized under this section shall have a paid-in capital and surplus equal to at least \$5,000,000 before it shall commence business. Each Federal Reserve Bank which organizes a national investment company shall invest in shares of stock of such company in an amount equal to at least \$5,000,000, or an amount which, when added to the amounts (if any) of shares subscribed by other Federal Reserve Banks, or by member banks, nonmember banks, or other persons, shall equal the sum of \$5,000,000; and each Federal Reserve Bank is hereby authorized, notwithstanding any other provisions of law, to invest in the shares of stock of one or more companies organized under this section; Provided, That in no event shall any Federal Reserve Bank invest in shares of national investment companies if as a result thereof it will hold an amount of such shares aggregating more than 2 per cent of the aggregate amount of the combined capital and surplus of all its member banks, or \$5,000,000, whichever is the greater.

The shares of stock in any national investment company shall be eligible for purchase by member banks of the Federal Reserve System, and each such member bank is hereby authorized, notwithstanding any other provisions of law, to acquire and hold an amount of such shares equal to not more than two per centum of the capital and surplus of such member bank. Subject to the provisions of this section, any nonmember bank or other person not a member bank may acquire shares of stock in any national investment company. Upon the demand of any such member bank, a Federal Reserve Bank which holds shares of stock in a national investment company shall, with the approval of the Board of Governors, sell to such member bank all or a portion of such shares up to the amount which such member bank is authorized to acquire and hold under the provisions of this paragraph; and a Federal Reserve Bank holding such shares of stock may, with the approval of the Board of Governors, sell such shares to any nonmember bank or to any other person. The price at which such shares may be sold by a Federal Reserve Bank under this paragraph shall be subject to the approval of the Board of Governors. The aggregate amount of shares in any such company or companies which may be owned or controlled by any member bank, by any nonmember bank, or by any other person not a member bank, or by any group or class of persons, may be limited by the Board of Governors in accordance with general policies established by the Council; and no one stockholder, other than a Federal Reserve Bank, shall at any time, without the approval of the Board in

accordance with such policies, own or control more than 10 per cent of the total outstanding shares of any such company.

"6. Borrowing Power. - Each national investment company shall have authority to borrow money and to issue its debentures, bonds, promissory notes or other obligations under such general conditions and subject to such limitations and regulations as the Board of Governors may prescribe, but in no event shall any such company issue obligations which would cause the amount outstanding at any one time to exceed the amount of its paid-in capital stock and surplus.

"7. Direct Loans. - Each national investment company shall have authority to make or acquire loans with or without security to small and independent business enterprises which are eligible therefor, or to purchase obligations of such enterprises. Such loans, purchases or other acquisitions shall be subject to such maximum interest rates and maximum fees as the Board may prescribe and may be made either directly or in cooperation with banks or other lending institutions, through agreements to participate or by the purchase of participations, commitments to purchase, or otherwise, as the company may determine.

"8. Equity Financing. - Each national investment company shall have authority to acquire, and to resell to the issuer or to others, the income debentures, bonds, common

or preferred stocks, or other capital shares of small and independent business enterprises eligible under this section.

"9. Aggregate Limitation. - Without the approval of the Board of Governors, the aggregate amount of obligations or securities acquired or for which commitments may be issued by any national investment company under the provisions of this section which exceed the sum of \$500,000 for any single enterprise shall not exceed 33-1/3 per centum of the combined capital and surplus and authorized indebtedness of the company.

"10. Exemptions. - (a) The loans of any national banking association which are purchased by any national investment company or for which a commitment to purchase is issued hereunder shall not be subject to the limitations on real estate loans prescribed in section 24 of the Federal Reserve Act, as amended.

"(b) Paragraph (2) of subsection (a) of section 3 of the Securities Act of 1933, as amended, is hereby amended by adding at the end of such paragraph the following: 'or any security issued by or representing an interest in or a direct obligation of a national investment company organized under

section 13b of the Federal Reserve Act, as amended;'. Paragraph (3) of subsection (c) of section 3 of the Investment Company Act of 1940, as amended, is hereby amended by changing the period at the end of such paragraph to a semicolon and adding the following: 'or any national investment company organized under section 13b of the Federal Reserve Act, as amended'. Paragraph (4) of subsection (a) of section 304 of the Trust Indenture Act of 1939 is hereby amended by changing the semicolon at the end of such paragraph to a comma and adding the following: 'or any security issued by or representing an interest in or a direct obligation of a national investment company organized under section 13b of the Federal Reserve Act, as amended;'.

"11. Miscellaneous. - (a) Wherever practicable the financing operations of a national investment company shall be undertaken in cooperation with banks or other financial institutions, and any servicing or initial investigation required for loans or acquisitions of securities by the company under the provisions of this section may be handled through such banks or other financial institutions on a fee basis.

"(b) Each national investment company may make use, wherever practicable, of the advisory services of the Federal Reserve System and of the Department of Commerce which are available for and useful to industrial and commercial businesses, and may provide consulting and advising services on a fee basis and have on its

staff persons competent to provide such services. Subject to the supervision and direction of the Board of Governors of the Federal Reserve System any Federal Reserve Bank is authorized to act as a depository or fiscal agent for any company organized under this section. Such companies may invest funds not reasonably needed for their current operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States.

"(c) The Board of Governors is authorized to prescribe regulations, not inconsistent with general policies established by the Council, governing the operations of national investment companies and to carry out the provisions of this section in accordance with its purposes. Each national investment company shall be subject to examinations made by direction of the Board of Governors of the Federal Reserve System or by a Federal Reserve Bank designated by the Board by examiners selected or approved by the Board, the cost of such examinations, including the compensation of the examiners, to be fixed by the Board and to be paid by the company examined; and every such company shall make such reports to the Board of Governors at such times and in such form as the Board may require. Copies of any such reports shall be furnished to the Council upon its request.

"(d) Each national investment company is authorized to act as agent for the Secretary of Commerce, when so designated by him pursuant to section 108 of the Small Business Act of 1950, in granting and administering insurance under Title I of that Act.

"(e) Should any national investment company violate or fail to comply with any of the provisions of this section, all of its rights, privileges, and franchises derived herefrom may thereby be forfeited. Before any such company shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this section shall, however, be determined and adjudged by a court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which the principal office of such company is located, which suit shall be brought by the United States at the instance of the Board of Governors of the Federal Reserve System or the Attorney General.

"(f) Any national investment company may at any time within the two years next previous to the date of the expiration of its corporate existence, by a vote of the shareholders owning two-thirds of its stock, apply to the Board of Governors for its approval to extend the period of its corporate existence for a term of not more than thirty years, and upon approval of the Board of Governors as provided in subsection 4(c) hereof such company shall have its corporate existence extended for such period unless sooner dissolved by the act of the shareholders owning two-thirds of its stock, or by an Act of Congress or unless its franchise becomes forfeited as herein provided.

"(g) Whenever in the judgment of the Board of Governors of the Federal Reserve System any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this section or of any regulation thereunder, the Board may make application to the proper district court of the United States, or the United States Courts of any Territory or other place subject to the jurisdiction of the United States, for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and such courts shall have jurisdiction of such actions and upon a showing by the Board that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

"(h) Section 1014 of Title 18 of the United States Code is amended by inserting the phrase 'or a national investment company organized under section 13b of the Federal Reserve Act' after the words 'Federal Reserve Bank'.

"(i) Notwithstanding this amendment to this section 13b, the Federal Reserve Banks, for a period of one year after the effective date of this amendment, shall continue to possess and have the right to exercise all authority conferred upon them by the provisions of this section as it existed prior to the effective date of this amendment. Nothing herein shall affect the

power of any Federal Reserve Bank at any time to carry out, or protect its interest under, any agreement or transaction heretofore or hereafter made or entered into in carrying on operations pursuant to such authority. All or part of the assets held by any Federal Reserve Bank which have been or may hereafter be acquired by it pursuant to such authority may be purchased by any national investment company organized under this section with the consent of such Reserve Bank and the Board.

"(j) Within sixty days after the effective date of this amendment, each Federal Reserve Bank shall pay to the United States the aggregate amount which the Secretary of the Treasury has heretofore paid to such bank under the provisions of this section as heretofore existing; and such payment shall constitute a full discharge of any obligation or liability of the Federal Reserve Bank to the United States or to the Secretary of the Treasury arising out of subsection (e) of this section as heretofore existing or out of any agreement thereunder. The amounts paid to the United States pursuant to this paragraph and any remaining balance of the funds set aside in the Treasury for payments under this section as heretofore existing shall be covered into miscellaneous receipts.

"(k) Neither the United States nor any Federal Reserve Bank shall have any liability with respect to any obligations entered into, or stocks issued, or commitments made, by any company organized under this section.

"12. Tax Provisions. - * * *."

[No definite recommendation except that the tax provisions should be liberal enough to facilitate the chartering and successful operation of the investment companies.]

Changes in Provisions of Draft of
"Small Business Act of 1950" Other Than Revision of Title II

1. Change section 108 to read as follows:

"Sec. 108. In granting and administering insurance under this Title, the Secretary may designate and utilize as his agent any national investment company established under section 13b of the Federal Reserve Act, as amended, on such basis, including the payment of fees, as may be agreed. It is the policy of Congress that the Secretary shall so designate and utilize national investment companies for this purpose to the greatest extent practicable in order to facilitate the prompt and widespread availability of insurance under this title."

2. In section 302(a), strike out the last sentence of the proposed new paragraph (2) of section 4(a) of the Reconstruction Finance Corporation Act which now reads: "A national investment company established under the Small Business Act of 1950 shall be deemed to be a small-business enterprise for the purposes of this section."

3. Eliminate Title IV relating to "changes in Federal Reserve authority" and renumber succeeding Titles. The substance would be contained in the proposed substitute for Title II.

4. Change the first sentence of section 603 to read as follows:

"For the purposes of administering the provisions of this Act other than Title II hereof, the Secretary shall establish such classifications of business enterprises as he deems appropriate."

5. In the second line of section 605, change the words "Titles I and II" to read "Title I".

6. In subsection (g) of section 605, eliminate the last clause reading "and in particular to advise and assist in the establishment of national investment companies authorized under Title II of this Act".

7. In section 605(j), strike out "and Title II".

5/8/50