

GAO

United States General Accounting Office

**Fact Sheet for the Ranking Minority
Member, Subcommittee on Post Office
and Civil Service, Committee on
Governmental Affairs, U.S. Senate**

March 1995

**GOVERNMENT
CORPORATIONS**

**Profiles of Recent
Proposals**



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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-258951

March 30, 1995

The Honorable David Pryor
Ranking Minority Member
Subcommittee on Post Office
and Civil Service
Committee on Governmental Affairs
United States Senate

Dear Senator Pryor:

You requested our assistance in identifying proposals to create government corporations between November 1993 and December 1994. Government corporations are generally federally chartered entities created to serve a public function of a predominantly business nature. As agreed with your office, we provided you with information on the proposed corporations as we identified them. This fact sheet summarizes and expands upon information we provided your office in briefings over the last year.

As used in this fact sheet, a proposed government corporation refers to a government corporation that met at least one of the following criteria. It was (1) contained in legislation introduced in Congress, (2) proposed in executive department reorganization efforts, and/or (3) recommended in National Academy of Public Administration (NAPA) research studies commissioned by federal agencies. Because of NAPA's government corporation expertise, we used NAPA recommendations as one of these criteria. For example, NAPA issued reports on three of the seven proposed government corporations discussed in this fact sheet.¹

This fact sheet also provides information on the Community Development Financial Institutions Fund, a new government corporation created by the Riegle Community Development and Regulatory Improvement Act of 1994 (see app. VIII).² The Department of the Treasury is assisting with the start of this government corporation.

Results in Brief

We identified the following seven proposed government corporations:
(1) Bonneville Power Corporation, (2) National Petroleum Reserves

¹Reinventing the Bonneville Power Administration, NAPA, Dec. 1993; Restructuring the Naval Petroleum and Oil Shale Reserves, NAPA, Apr. 1994; and Renewing HUD: A Long-Term Agenda for Effective Performance, NAPA, July 1994.

²President Clinton signed P.L. 103-325 on Sept. 23, 1994.

Corporation, (3) U.S. Air Traffic Services Corporation, (4) Federal Housing Administration, (5) Presidio Trust, (6) National Infrastructure Development Corporation, and (7) National Infrastructure Insurance Corporation (see apps. I through VII for profiles of these proposed government corporations). Some of the proposed government corporations currently exist in noncorporate form within federal departments: (1) Bonneville Power Administration and (2) Naval Petroleum and Oil Shale Reserves (within the Department of Energy); (3) Federal Housing Administration (within the Department of Housing and Urban Development);³ and (4) Federal Aviation Administration air traffic control functions to be performed by the U.S. Air Traffic Services Corporation (Department of Transportation). The proposed Presidio Trust, National Infrastructure Development Corporation, and National Infrastructure Insurance Corporation do not currently exist. To date, no legislation has been enacted to establish any of the seven proposed corporations. Any legislation would need to be evaluated to determine whether offsetting spending or tax increases would be required to comply with the Budget Enforcement Act.

Background

Congress has established government corporations to carry out business-type programs that need a high degree of autonomy and flexibility. Existing government corporations cover a range of functions, including producing power (Tennessee Valley Authority), providing insurance and financial services (Federal Crop Insurance Corporation), and promoting commerce (Overseas Private Investment Corporation).

The Government Corporation Control Act names the mixed-ownership and wholly owned government corporations within its coverage but does not otherwise define either type of entity.⁴ This act resulted from a 2-year Senate study that concluded that there was no effective, overall control over government corporations.⁵ The act was intended to make the corporations accountable to Congress for their operations while allowing them the flexibility and autonomy needed for their commercial activities. Government corporations may be exempted from federal statutes and

³The Government Corporation Control Act (31 U.S.C. 9101, et seq.) lists "the Secretary of the Department of Housing and Urban Development as a wholly owned government corporation when carrying out duties and powers related to the Federal Housing Administration (FHA) Fund."

⁴31 U.S.C. 9101, et seq.

⁵U.S. Congress. Joint Committee on Reduction of Non-Essential Federal Expenditures. Report on Government Corporations. Senate Doc. 227. 78th Congress, 2d session (Washington, D.C.: U.S. Government Printing Office, 1944).

regulations governing civil service pay scales and hiring rules, position ceilings, and procurement practices.

Scope and Methodology

To identify proposed government corporations, we obtained information from draft and enacted legislation, congressional hearings and staff, agency corporation proposals, and NAPA studies. We gathered additional background information on proposed corporations by reviewing documents identified through on-line commercial databases and our prior reports on government corporations. We also reviewed literature on government enterprises, analyzed studies on government corporations, and interviewed government enterprise experts. Because legislation has not been enacted to establish the proposed corporations we discuss, the information in this fact sheet is subject to change as the proposals develop. In addition, as agreed with your office, we did not attempt to (1) verify the benefits the proposals claimed would be derived from incorporation and (2) assess the need for the various statutory and regulatory exemptions as stated in each proposal. We updated information on these seven proposals through January 30, 1995.

To the extent data existed, this fact sheet provides information on the following eight topics we agreed upon:

- proposed corporation name;
- purpose of corporation;
- status of proposal;
- sponsor(s) (the Member of Congress and/or executive agency that made the current proposal);
- management structure (a description of the proposed corporation's system of governance, board of directors, and advisory board);
- funding/budget (information on whether the proposed corporation would be included in the federal budget and the sources of revenue that the corporation would use to run its operations);
- staffing (the number and type of employees who would work in the proposed corporation); and
- statutory and regulatory exemptions (exemptions sought by the proposed corporation from federal laws and regulations).

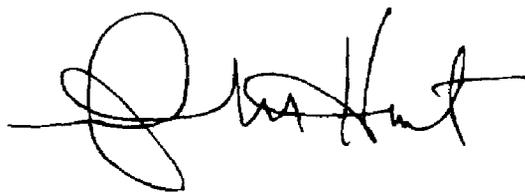
If a corporation proposal did not provide information on one of these topics, we reported such instances in our fact sheet as "information not noted in proposal/to be determined."

We did our work between December 1994 and January 1995 in Washington, D.C., in accordance with generally accepted government auditing standards. From December 1994 through January 1995, we provided sponsors of the proposed corporations and officials in the agencies that are proposed to become corporations with information on their respective proposal for verification, review, and comment. They agreed with our portrayal of their proposals. Technical and background information that these officials provided was included where appropriate.

As arranged with your office, unless you publicly release its contents earlier, we plan no further distribution of this fact sheet until 30 days after the date of this letter. At that time, we will send copies of this report to other interested parties. Copies will be made available to others upon request.

If you have any questions regarding this report or would like to discuss it further, please call either Charles I. Patton, Associate Director, or me on (202) 512-8676.

Sincerely yours,

A handwritten signature in black ink, appearing to read "William M. Hunt". The signature is fluid and cursive, with a large initial "W" and "H".

William M. Hunt
Director, Federal Management
Issues

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Abbreviations

ATC	air traffic control
BPA	Bonneville Power Administration
BPC	Bonneville Power Corporation
CBO	Congressional Budget Office
CDFIF	Community Development Financial Institutions Fund
CEO	Chief Executive Officer
DOD	Department of Defense
DOE	Department of Energy
DOT	Department of Transportation
FAA	Federal Aviation Administration
FACA	Federal Advisory Committee Act
FAR	Federal Acquisition Regulation
FHA	Federal Housing Administration
GCCA	Government Corporation Control Act
GSA	General Services Administration
GSE	Government-Sponsored Enterprise
HUD	Department of Housing and Urban Development
NAPA	National Academy of Public Administration
NPS	National Park Service
NIDC	National Infrastructure Development Corporation
NIIC	National Infrastructure Insurance Corporation
NPOSR	Naval Petroleum and Oil Shale Reserves
OMB	Office of Management and Budget
SEC	Securities and Exchange Commission
TVA	Tennessee Valley Authority
USATS	U.S. Air Traffic Services Corporation

Proposed Government Corporation: Bonneville Power Corporation

Purpose

As proposed, the Bonneville Power Corporation would carry out the power marketing, power transmission, conservation, environmental, and other responsibilities currently performed by the Bonneville Power Administration (BPA).

Status

BPA currently is seeking comments and recommendations from Pacific Northwest regional interests on a draft bill it wrote to establish the BPA as a wholly owned government corporation. According to a BPA official, this draft bill, titled the Bonneville Power Incorporation Act, has not been approved by the Department of Energy (DOE) or submitted to the Office of Management and Budget (OMB) for final clearance.

The House Committee on Natural Resources created a task force on BPA in the 103d Congress that was chaired by Representative Peter DeFazio. In June 1993, Senator Mark Hatfield and Representative DeFazio wrote to BPA's Administrator and recommended that BPA contract with the National Academy of Public Administration (NAPA) to assess alternative structures for BPA.

A December 1993 NAPA report¹ recommended that BPA be constituted as a body corporate—the Bonneville Power Corporation—and be given powers comparable to those of the U.S. Enrichment Corporation and the Tennessee Valley Authority.² NAPA also recommended that the corporation be subject to the policy discretion of the Secretary of Energy concerning matters of national energy policy. Under this arrangement, the Secretary of Energy would be solely responsible for major energy policy issues but not the proposed corporation's management.

Of note, Representative Scott Klug introduced H.R. 310, The Federal Power Administration Privatization Act of 1995, on January 4, 1995, which would authorize the Secretary of Energy to sell the physical assets and terminate the operations of the Federal Power Marketing Administrations (BPA is a federal power marketing administration). H.R. 310 was referred to the House Committee on Resources on January 4, 1994, and subsequently referred to the Subcommittee on Water and Power Resources and the Departments of Interior and Energy for comment on January 13, 1995.

¹Reinventing the Bonneville Power Administration, NAPA, Dec. 1993.

²The U.S. Enrichment Corporation and the Tennessee Valley Authority (wholly owned government corporations) sell goods and services to the public.

Sponsor

Proposed legislation to make BPA a government corporation has not been introduced in Congress.

Management Structure

In the draft BPA bill, the corporation would be managed by a Chief Executive Officer (CEO) appointed by and serving under the Secretary of Energy. The CEO would establish a system to define the duties, compensation, and bonuses of all employees of the corporation and to appoint, assign, and terminate those employees. In its report, NAPA recommended that the corporation be managed by a single administrator appointed by the President, by and with the advice and consent of the Senate, for a 6-year term of office.

Funding/Budget

The proposed corporation's funding would come from its utility and direct service industry customers, as currently is the case with BPA. The corporation would still be able to borrow funds from the U.S. Treasury.

The corporation's fund account would not be considered appropriated funds under the proposed legislation.³ The receipts and disbursements of the corporation, including administrative expenses, and the bonds the corporation issues would be on-budget but would be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States, or other discretionary spending limit.

The proposed corporation would be exempt from any sequestration order issued under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.⁴ Also, the corporation's budget, and authority to create financial obligations, borrow, and make expenditures would not be subject to apportionment.⁵

³The fund account would be the proposed corporation's account containing (1) the unexpended balance of appropriations and other monies in the BPA fund established by section 11 of the Federal Columbia River Transportation Act and (2) other monies, or entitlement to monies, that are related to functions and activities transferred to the Corporation under the proposed legislation.

⁴BPA currently is exempt from sequestration under this act. Sequestration is the cancellation of budgetary resources provided by discretionary appropriations or direct spending law. Under the draft bill, the corporation's exemption from sequestration would be extended to cover administrative expenses. See 2 U.S.C. 901 et seq.

⁵Chapter 15, subchapter II, of Title 31 U.S.C. Apportionment is the action by which OMB distributes amounts available for obligation, including budgetary reserves established pursuant to law, in an appropriation or fund account.

Staffing

The approximately 3700 BPA employees would become corporation employees on the date that the Bonneville Power Incorporation Act is passed. As corporation employees, they would remain federal employees without a break in their federal service.

The corporation's CEO would have a rate of basic pay equal to that of executives defined under section 5316 of Title 5, U.S.C. The CEO's total compensation and bonuses for a calendar year (less benefits, retirement pay, or voluntary separation incentive payments) would not exceed that of Level I⁶ for executives under section 5312 of Title 5, U.S.C. The Secretary of Energy would appoint an Executive Compensation Committee, which would consist of individuals with experience in setting executive compensation and have no interest in corporation activities, to recommend the CEO's annual bonuses.

Senior corporation executives and other corporation employees would not receive total compensation for a calendar year (less benefits, retirement pay, or voluntary separation incentive payments) that exceeds the annual rate of basic pay for Level I and Level III⁷ of the Executive Schedule, respectively (as defined in sections 5312 and 5314 of Title 5, U.S.C.).

Under the proposed legislation, any salary amounts not paid to the corporation's CEO, executives, or other employees in a calendar year because of compensation limitations would be paid to those employees in a lump sum in the following calendar year. Lump sum payments would not exceed the difference between Levels I and V of the Executive Schedule.

Statutory and Regulatory Exemptions

Under BPA's draft bill, the Bonneville Power Corporation would be exempt from the following laws:

Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)

The purpose of the Federal Property and Administrative Services Act of 1949 is to provide for the federal government an economic and efficient system for the procurement and supply of personal property and nonpersonal services, the use of available property, the disposal of surplus

⁶Level I of the Executive Schedule generally applies to positions at the cabinet secretary level (e.g., the Secretaries of State, the Treasury, and Defense).

⁷Level III of the Executive Schedule generally applies to positions at the under secretary level in departments (e.g., the Under Secretary of Commerce for Export Administration) and the chairpersons of federal boards (e.g., the Chairman of the Merit Systems Protection Board).

property, and records management. Of note, Section 484 of Title 40, U.S.C., which gives the General Services Administration (GSA) the authority to authorize an executive agency to dispose of surplus property, would apply to the corporation. Under this section, the corporation would require Presidential approval before disposing of major assets as surplus property.

Public Buildings Act of 1959 (40 U.S.C. 601-619)

The purpose of the Public Buildings Act of 1959 is to modernize and encompass in one act the provisions of previously existing law vesting in the Administrator of GSA authority and responsibility for acquiring, constructing, altering, repairing, remodeling, improving, or extending public buildings and acquiring the necessary sites or additions to sites in connection with these responsibilities.

Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.)

The Balanced Budget and Emergency Deficit Control Act of 1985 was amended by the Budget Enforcement Act of 1990 to create new enforcement mechanisms for discretionary spending, entitlements, and receipts. The 1990 act established discretionary spending limits for spending provided in appropriation acts as well as adding a pay-as-you-go mechanism to ensure that any legislation increasing entitlements or decreasing receipts would be deficit neutral.

Brooks Act (40 U.S.C. 759)

The purpose of the Brooks Act is to provide for the economic and efficient purchase, lease, maintenance, operation, and use of automatic data processing equipment by federal departments and agencies under the direction and coordination of the Administrator of GSA.

Contract Disputes Act of 1978 (41 U.S.C. 601-613)

The purpose of the Contract Disputes Act of 1978 is to establish a comprehensive statutory system providing legal and administrative remedies for resolving federal government contract claims.

Competition in Contracting Act of 1984 (Public Law 98-369, Title VII)

The purpose of the Competition in Contracting Act is to increase the use of competition in federal government contracting and to impose more stringent restrictions on the awarding of noncompetitive contracts. The act generally requires agencies to use competitive procedures; designates "full and open" as the standard for competition in contracting; strengthens the justification, approval, and notice requirements to safeguard against

**Appendix I
Proposed Government Corporation:
Bonneville Power Corporation**

unnecessary sole-source contracts; establishes competition advocates to enhance accountability; and strengthens the bid protest process.

**Office of Federal
Procurement Policy Act
(41 U.S.C. 401-424)**

The purpose of the Office of Federal Procurement Policy Act is to establish an Office of Federal Procurement Policy in OMB to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

**Stewart B. McKinney
Homeless Assistance Act
(42 U.S.C. 11411-11412)**

The purpose of the McKinney Act is to use public resources and programs in a more coordinated manner to meet the needs of the homeless. Specifically, sections 11411 and 11412 provide mechanisms for the Secretary of Housing and Urban Development to identify surplus or excess federal real property that is unused or underused, as well as surplus personal property, which could be made available to assist the homeless.

**Paperwork Reduction Act
of 1980 (44 U.S.C.
3501-3520)**

The purposes of the Paperwork Reduction Act of 1980 include minimizing the federal paperwork burden and the cost to the federal government of collecting, maintaining, using, and disseminating information; maximizing the usefulness of information collected by the federal government; and coordinating, integrating, and making uniform federal information policies and practices.

**Federal Credit Reform Act
of 1990 (2 U.S.C. 661-661f)**

The purposes of the Federal Credit Reform Act are to measure more accurately the costs of federal credit programs, place the cost of credit programs on a budgetary basis equivalent to other federal spending, encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries, and improve the allocation of resources among credit programs and between credit and other spending programs.

**44 U.S.C. 501-517 and
1101-1123**

These statutory sections provide, with certain limited exceptions, that printing and binding for Congress, the Executive Office, the Judiciary (other than the U.S. Supreme Court), and every executive department, independent office, and establishment of the federal government be done or procured by the Government Printing Office.

Appendix I
Proposed Government Corporation:
Bonneville Power Corporation

31 U.S.C. 3526-3528

These statutory provisions authorize the Comptroller General to settle accounts of the federal government and to determine whether accountable officers and certifying officers can be relieved of liability for losses or erroneous payments.

Apportionment Provisions
in 31 U.S.C. 1511-1519

These sections prescribe procedures dealing with appropriated funds. Generally, these sections require appropriated funds to be apportioned⁸ in accordance with specific guidelines.

5 U.S.C.

The personnel provisions of Title 5 of the U.S. Code generally would not apply to the Bonneville Power Corporation, but many important provisions would continue to be applicable. Some of the provisions which would be made applicable would be modified to a certain extent.⁹ Title 5 provides general personnel policies for the federal government, including the organization and procedural framework under which federal agencies operate as well as statutory policies pertaining to federal employment.

Moreover, the draft BPA bill also states that the following laws would not apply to the corporation or its employees. However, the corporation would adopt policies consistent with its corporate functions and the principles of these laws.

Service Contract Act of
1965 (41 U.S.C. 351-358)

The purpose of the Service Contract Act of 1965 is to provide labor standards for the protection of employees of contractors and subcontractors furnishing services to or performing maintenance services for federal agencies. The act included a requirement that certain minimum and prevailing wages and fringe benefits be paid to these employees.

⁸Apportionment is the action by which OMB distributes amounts available for obligation, including budgetary reserves established pursuant to law, in an appropriation or fund account.

⁹The draft BPA bill states that the following Title 5 provisions would apply to the Corporation and its employees, including: chapter 5 (administrative procedures); chapter 7 (judicial review); section 2301(b) (merit system and whistleblower protection); sections 5517 and 5520 (withholding city and state income or employment taxes); chapter 71 (labor relations), sections 7201-7203 and 7211 (antidiscrimination and right to petition Congress); chapter 73 (suitability, security, and conduct); chapter 81 (compensation for work injury); chapter 83 (civil service retirement); chapter 84 (Federal Employees' Retirement System); chapter 85 (unemployment compensation); chapter 87 (life insurance); chapter 89 (health insurance); chapter 91 (access to criminal history record information); Section 704, Civil Service Reform Act of 1978, note to Section 5343 of Title 5, U.S.C. (relating to certain prevailing rates for employees); Appendix 2 (Federal Advisory Committee Act); Appendix 3 (Inspector General Act of 1978), provided that the Corporation is considered a "federal entity" under section 8G(a)(1) and is not subject to review by DOE's Inspector General; Appendix 5 (Office of Government Ethics); Appendix 6 (financial disclosure); and Appendix 7 (outside income limitations).

Davis-Bacon Act (40 U.S.C.
276a et seq.)

The purpose of the Davis-Bacon Act is to require that wages paid to employees of contractors and subcontractors involved in the construction, alteration, and/or repair of public buildings be the prevailing wage paid to employees in the area in which the work is to be performed.

Walsh-Healey Public
Contracts Act (41 U.S.C.
35-45)

The Walsh-Healey Public Contracts Act requires the federal government to procure and use only goods produced under safe and fair working conditions and contains wage and hour provisions and other standards that contractors who enter into contracts with the federal government have to meet. The broader purpose of the act was to ensure that the government would not enter into contracts with contractors who paid substandard wages and offended fair social standards of employment.

Prompt Payment Act (31
U.S.C. 3901-3907)

The purpose of the Prompt Payment Act is to provide incentives for the federal government to pay its bills on time. Specifically, the law provides for interest penalties and limitations on discount payments for agencies that are delinquent in making payments. The law also requires agencies to submit annual reports to OMB on the amount of interest penalty payments they have incurred.

40 U.S.C. 490b

The purpose of this section is to provide policy guidelines for the provision of child care services for federal employees in federal buildings.

Veterans' Preference Act (5
U.S.C. 1302(b))

The Veterans' Preference Act requires agencies to give veterans preference "in certification for appointment, and in appointment, reinstatement, reemployment, and retention."

Observance of Federal
Holidays

The proposed corporation would observe any legal public holiday and any other day declared to be a holiday by federal statute or executive order.

Related Materials

BPA-prepared draft bill to establish the Bonneville Power Corporation, a wholly owned government corporation, Oct. 11, 1994.

Bonneville Power Administration: Borrowing Practices and Financial Condition (GAO/AIMD-94-67BR, Apr. 19, 1994).

Appendix I
Proposed Government Corporation:
Bonneville Power Corporation

Reinventing the Bonneville Power Administration, NAPA report for the BPA,
Dec. 1993.

GAO Products on Bonneville Power Administration (GAO/RCED-93-133R,
Mar. 31, 1993).

Proposed Government Corporation: National Petroleum Reserves Corporation

Purpose

DOE operates the Naval Petroleum and Oil Shale Reserves (NPOSR). NPOSR was established in the early 1900s as a strategic reserve of fuel supplies for the military. The reserves were largely inactive until Congress passed the Naval Petroleum Reserves Production Act of 1976 (P.L. 94-258) in response to the 1973-1974 Arab oil embargo. This statute changed NPOSR from a strategic reserve for the military to a source of oil for the U.S. economy. As a DOE component, NPOSR is served by and subject to the oversight of other headquarters offices concerned with budgets, personnel, and legal matters.

NPOSR's mission is to manage, operate, maintain, and produce the reserves, located in California, Utah, Colorado, and Wyoming, to achieve the greatest value and benefits to the government with consideration for the interests of its joint owners.

Status

Restructuring or disposition of NPOSR has been studied extensively for a number of years. Divestiture or lease proposals have been made by the executive branch every year except one since 1985, but Congress has not acted on these proposals.

In July 1993, the Senate Armed Services Committee, in its report on the National Defense Authorization Act for fiscal year 1994, directed the Secretary of Energy to study management alternatives for the NPOSR, including the concept of incorporation. According to this report, NPOSR is predominantly commercial in nature, potentially self-sustaining, and particularly suitable for operation by a government corporation. NPOSR contracted with NAPA to conduct this study.¹ The Committee requested that DOE submit a report, with any legislative recommendations, to the Senate and House Armed Services Committees by May 1, 1994. NAPA's April 1994 report recommended that NPOSR be organized as a wholly owned government corporation. On August 2, 1994, DOE's Secretary sent NAPA's study results to Congress and wrote that DOE's assessment of the NAPA report, including a financial analysis, would be provided to Congress by September 30, 1994. However, to date, DOE has not forwarded any analysis to the Committee.

¹NAPA studied three organizational alternatives for NPOSR, including establishing (1) a separate entity within DOE, comparable to power marketing administrations such as the Southeastern Power Administration and the Alaskan Power Administration; (2) an agency within DOE comparable to the Bonneville Power Administration (see app. I) with some, but not all, of the attributes of a government corporation—including a revolving fund and borrowing authority; and (3) a wholly owned government corporation subject to the provisions of the Government Corporation Control Act.

Appendix II
Proposed Government Corporation:
National Petroleum Reserves Corporation

In December 1994, the President announced plans to privatize the Naval Petroleum Reserves in Elk Hills, CA, commonly known as NPR-1.² NPR-1 is one of the 10 largest domestic producing oil fields in the lower 48 states and is also one of the nation's top producing gas fields. NPR-1 produces the most revenue of NPOSR's six fields. The U.S. government owns about 78 percent of NPR-1; Chevron U.S.A., Inc., owns about 22 percent. NPR-1 is operated by Bechtel Petroleum Operations, Inc., under a contract due to expire in July 1995.

Sponsor

According to an NPOSR official, DOE is drafting legislation to incorporate NPOSR, but there is no congressional sponsor for NPOSR incorporation. DOE management supports incorporation as a way to sell the reserves as a commercial-type enterprise.

Management Structure

NAPA recommended that the proposed NPOSR corporation be managed by a single administrator reporting to the Secretary of Energy. The administrator would be appointed by the President, with Senate confirmation, to a 6-year term.

Funding/Budget

NAPA recommended that the proposed NPOSR corporation be allowed to (1) borrow funds up to a limit set by Congress and (2) retain and use its revenues for the business purpose of the corporation. Also, NAPA stated that NPOSR should have the flexibility to determine and incur obligations and expenditures, subject only to laws specifically applicable to government corporations. According to an NPOSR official, the proposed corporation would pay annual dividends to the Treasury, rather than pay federal taxes. According to a draft DOE document, the corporation would, in lieu of taxes, pay 2.5 percent of its gross revenues to state and local jurisdictions, patterned after the policy of the Tennessee Valley Authority.

NAPA reported that NPOSR is more than self-sustaining. In fiscal year 1993, NPOSR expenses totaled \$188 million while revenues from sales totaled \$402 million. However, NAPA added that NPOSR cannot use proceeds from sales to finance capital projects or operations, and each year NPOSR is required to deposit its revenues in the U.S. Treasury's Miscellaneous Receipts account. As a result, NPOSR must seek annual appropriations.

²The administration has announced plans to sell NPR-1 by the end of fiscal year 1997. DOE's Deputy Secretary recommended that private enterprises run NPR-1 because they can do so more efficiently and can tap into private sources of capital for enhanced development.

According to an NPOSR official, from 1976 through 1993, NPOSR had gross revenues of \$15.7 billion and costs of \$2.9 billion, resulting in net revenues of \$12.8 billion for that period.

As of September 30, 1993, NPOSR had no outstanding debt, but it did recognize unfunded liabilities on its balance sheet amounting to \$13.4 million. The liabilities represent obligations to make future payments for nonfederal pensions and environmental restoration costs. However, NPOSR's fund balance was more than enough to cover the unfunded liabilities.

Staffing

According to an NPOSR official, NPOSR currently has about 79 federal employees. The official stated that DOE's intention is that all current NPOSR employees would transfer to the proposed corporation and would remain federal employees.

Statutory and Regulatory Exemptions

In its study, NAPA recommended the following exemptions for the NPOSR:

Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)

The purpose of the Federal Property and Administrative Services Act of 1949 is to provide for the federal government an economic and efficient system for the procurement and supply of personal property and nonpersonal services, the use of available property, the disposal of surplus property, and records management.

Executive Branch Limitations on the Number of Employees

According to an NPOSR official, limits on the number of NPOSR employees are not specified in any DOE draft legislation.

Title 5 does not specify a general limitation on the number of executive branch employees. However, the Federal Workforce Restructuring Act of 1994, P.L. No. 103-226, established a declining ceiling for fiscal years 1994 through 1999 on the total number of full-time equivalent positions in all agencies. This act aims to reduce the number of federal employees. Generally, the number of full-time equivalent positions in each agency is controlled by OMB when the agency submits its budget.

Appendix II
Proposed Government Corporation:
National Petroleum Reserves Corporation

**U.S. Department of Energy
Orders, Directives, Rules,
and Regulations**

DOE orders, directives, rules, and regulations would not apply to the corporation unless specified by the Secretary.

Under 5 U.S.C. 301, the head of an executive branch department or military department may prescribe regulations for the government of his/her department; the conduct of its employees; the distribution and performance of its business; and the custody, use, and preservation of its records, papers, and property.

Related Materials

Naval Petroleum Reserve: Opportunities Exist to Enhance its Profitability (GAO/RCED-95-65, Jan. 12, 1995).

Statement of OMB's Director regarding changes in five agencies, Dec. 19, 1994.

Organizational Alternatives for the Naval Petroleum and Oil Shale Reserves, draft DOE study, June 1994.

Naval Petroleum Reserve: Limited Opportunities Exist to Increase Revenues From Oil Sales in California (GAO/RCED-94-126, May 24, 1994).

Restructuring the Naval Petroleum and Oil Shale Reserves, NAPA report for the Department of Energy, Apr. 1994.

National Defense Authorization Acts for Fiscal Years 1994 and 1995, Committee on Armed Services, U.S. Senate.

Oil Reserve: Impact of NPR-1 Operations on Wildlife and Water Is Uncertain (GAO/RCED-91-129, Aug. 1, 1991).

Proposed Government Corporation: U.S. Air Traffic Services Corporation

Purpose

Under an administration proposal, the U.S. Air Traffic Services Corporation, a wholly owned government corporation, would have the responsibility for operating, managing, and modernizing the air traffic control (ATC) system.¹ The corporation would perform ATC-related functions and activities of the existing Federal Aviation Administration (FAA). FAA would continue to provide safety oversight. Splitting FAA's functions represents a change from the present situation, established by the Federal Aviation Act of 1958,² in which the FAA both operates the ATC system and provides oversight of the system's safety performance. In times of war or crisis, however, the corporation would come under the control of the Secretary of Defense.

The administration's proposal states that in providing safety oversight, FAA would use its existing regulatory functions (such as inspection and surveillance of airlines and the certification of new aircraft).³ FAA's enforcement powers over the proposed corporation would include the power to impose sanctions or override corporation decisions that could lessen safety. Specifically, FAA could issue cease and desist orders for corporation activities.

A bill introduced in the 103d Congress, entitled the Air Traffic Control Service Improvement Act of 1994,⁴ proposed that a wholly owned government corporation be established to operate the nation's air traffic control system. Under this bill, the corporation would (1) plan, initiate, construct, own, manage, and operate by itself, or in cooperation with other entities, an air traffic control system; (2) offer air traffic control services for hire to air transportation common carriers and other operators of civil aircraft; (3) establish reasonable nondiscriminatory fees for the provision of air traffic control services; (4) contract with other entities to operate individual air traffic control facilities on behalf of the corporation; (5) acquire (by construction, purchase, or gift) physical facilities, equipment, and devices necessary to the operations of the corporation, including air traffic control and associated equipment and facilities; and (6) perform or contract for the performance of research and development

¹Air Traffic Control Corporation Study, Report of the Executive Oversight Committee to the Secretary of Transportation, May 1994.

²49 U.S.C., App. 1301 et seq.

³FAA functions not incorporated would retain current relationships with the Department of Transportation, the Department of Defense, the National Transportation Safety Board, and Congress, and be subject to the same budget and oversight controls as they are today.

⁴H.R. 5209, Oct. 6, 1994, 103d Congress, 2d session.

related to the corporation's operations and establish technical specifications of all elements of the air traffic control system.

Status

On May 3, 1994, the Department of Transportation's (DOT) Executive Oversight Committee⁵ study recommended that the Secretary of Transportation create the U.S. Air Traffic Services Corporation, a wholly owned government corporation within DOT, to operate the nation's air traffic control system. The Secretary of Transportation commissioned the Executive Oversight Committee study in response to National Performance Review and National Commission to Ensure a Strong Competitive Airline Industry recommendations to restructure FAA's air traffic control services.

The Senate Subcommittee on Transportation and Related Agencies, Committee on Appropriations, held a hearing on the proposed corporation on May 12, 1994. The Secretary of Transportation, representatives from prior administrations, and aviation industry representatives testified at this hearing. We also testified on the administration's proposal at this hearing.⁶

Representative Joe Barton introduced the Air Traffic Control Service Improvement Act of 1994, on October 6, 1994, which would have established a wholly owned government corporation to operate the air traffic control system of the United States. This bill was referred to the Committee on Public Works and Transportation, but Congress did not take any further action on this bill.

⁵The Executive Oversight Committee comprised executives from FAA, the Office of the Secretary of Transportation, the Executive Office of the President, three other government agencies, and two existing government corporations. The Committee was supported by a task force that comprised career executives from FAA, DOT, other government entities, and FAA labor unions.

⁶Our testimony at the hearing focused on three main issues: (1) the link between problems with ATC system modernization and FAA's compliance with federal procurement regulations, (2) actions that FAA is taking to better position itself to meet the ATC system's future needs, and (3) financing and safety concerns raised by the proposal that require further analysis. We noted that our work over the past decade does not support the conclusion that exemption from federal procurement regulations would result in ATC equipment being installed more quickly in the field. With regard to safety oversight, we noted that FAA has encountered major difficulties in its oversight of the airline industry. For example, FAA has had problems targeting its inspector resources, carrying out enforcement actions in a timely manner, and developing an early-warning system of safety performance indicators. We noted that FAA would need to expeditiously develop tools and techniques to perform effective oversight of the proposed corporation (see Air Traffic Control: Observations on Proposed Corporation GAO/T-RCED-94-210, May 12, 1994).

Of note, after we completed our audit work, the House Subcommittee on Aviation, Committee on Transportation and Infrastructure, held a hearing on USATS on February 23, 1995, at which we also testified.⁷

Sponsors

Secretary of Transportation, Federico Peña.

Representative Joe Barton.

Management Structure

Under the administration's proposal, USATS would be governed by an 11-member board of directors. The board of directors would consist of a CEO, the Secretary of Transportation (or designee), the Secretary of Defense (or designee), and eight members appointed by the President and confirmed by the Senate. The President would appoint an interim CEO for USATS, to handle the preliminary development of the corporation before the appointment of the board of directors.⁸ The board of directors' functions would include strategic planning, approving major financial decisions, the annual budget, and setting the level of user charges. The CEO of the corporation would be elected by the board and would serve at its discretion. The board would fix the term of employment and compensation of the CEO.

All other board members would serve 5-year staggered terms to assure continuity and leadership for the corporation. The eight board members appointed by the President would be as follows:

- four who represent commercial aviation interests,⁹
- one who represents the views of airports,
- one who represents the views of USATS employees who belong to a union,
- one who represents the views of general business interests, and

⁷Our testimony noted that USATS can be financially viable if certain budgetary, costs, and revenue assumptions are realized. These include exemption from the spending caps contained in the Budget Enforcement Act and exclusion from certain pension and health care costs. We expressed concern about how the proposed safety decisionmaking responsibilities will work in practice and how regulatory disputes will be resolved between the two entities in a timely manner. As for governance, we noted that under a corporation, an important issue facing the Congress will be whether and to what extent USATS should accommodate smaller stakeholders' needs for services and equipment, especially when these stakeholders contribute less financially to the system than they receive in related services (see *Air Traffic Control: Issues Presented by Proposal to Create a Government Corporation* GAO/T-RCED-95-114, Feb. 23, 1995).

⁸Under H.R. 5209, the interim CEO would also appoint a six-member transition team that would be responsible for making USATS operational and would serve until the corporation is operational.

⁹In contrast, H.R. 5209 proposed three members representing commercial aviation interests.

- one who represents the views of noncommercial aviation interests.¹⁰

The board of directors would also have a permanent three-member safety committee.

Funding/Budget

Under the administration's proposal, USATS would be funded through revenues earned by charging fees to users of the air traffic control system. General aviation aircraft and public users of the ATC system would be permanently exempted from fees. The corporation would not rely on appropriations for any of its operating or investment costs.¹¹ The kind and level of user charges would be developed by the board of directors in consultation with system users and would be subject to the disapproval of the Secretary of Transportation. USATS would submit an annual business-type budget to Congress, not subject to line item reviews, as specified by the Government Corporation Control Act.

USATS would have the flexibility to obtain debt financing from the Treasury or private capital markets for construction of facilities and acquisition of equipment. The Secretary of Transportation, in consultation with the Secretary of the Treasury, would have the authority to disapprove corporation borrowing on private markets if USATS tried to (1) borrow funds at levels that exceed a reasonable prospect for repayment; and (2) borrow funds for inappropriate, wasteful, or unreasonably speculative activities. The Executive Oversight Committee's proposal recommended a ceiling on total corporation borrowing of \$15 billion based on the anticipated net asset value of the corporation over the first 10 years of its existence.

According to a DOT official, FAA currently funds capital projects from annual appropriations. FAA does not use debt financing and has no outstanding debt.

Staffing

According to a DOT official, the proposed corporation would consist of approximately 42,000 employees that would include air traffic controllers,

¹⁰In contrast, H.R. 5209 proposed two members representing noncommercial aviation interests.

¹¹For detailed information on the costs of operating the proposed USATS corporation see the administration's Air Traffic Control Corporation Study Financial Update, February 7, 1995, and Air Traffic Control: Analysis of Illustrative Corporate Financial Scenarios, Technical Report prepared by Corporation Assessment Task Force for the Executive Oversight Committee to the Secretary of Transportation, May 3, 1994.

air traffic system maintenance technicians, and support staff. Corporation employees would remain federal government employees.

Statutory and Regulatory Exemptions

Based on the administration's proposal, the USATS corporation would be exempt from a number of statutes and regulations, including the following:

Appropriations Authority

Title 31 of the United States Code, particularly chapters 13 and 15, contain numerous provisions dealing with appropriated funds. These provisions would not apply to funds of the corporation. Under the administration's proposal, USATS would be funded through revenues earned by charging fees to users of the ATC system and would not rely on appropriations for any of its operating or investment costs.

Anti-Deficiency Act (31 U.S.C. 1341)

The Anti-Deficiency Act prohibits officers and employees of the United States from making expenditures or obligations prior to appropriations or exceeding amounts available in an appropriation or fund account.

Budget Enforcement Act of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990)

The Budget Enforcement Act of 1990 modified procedures and definitions for sequestration and deficit reduction and reformed budgetary credit accounting. Under this act, aviation taxes could not be reduced unless offset by reductions in mandatory spending or increases in other taxes.

Federal Aviation Act - Section 303 as Amended (49 U.S.C. App. 1344)

The Federal Aviation Act provides procurement authority for the acquisition and disposal of real property by the Secretary of Transportation, on behalf of the United States. The Secretary could acquire real property by purchase, condemnation, lease, or otherwise.

Brooks Act (40 U.S.C. 759)

The purpose of the Brooks Act is to provide for the economic and efficient purchase, lease, maintenance, operation, and use of automatic data processing equipment by federal departments and agencies under the direction and coordination of the Administrator of GSA.

Competition in Contracting Act of 1984 (Public Law 98-369, Title VII)

The purpose of the Competition in Contracting Act of 1984 is to increase the use of competition in federal government contracting and to impose more stringent restrictions on the awarding of noncompetitive contracts.

The act generally requires agencies to use competitive procedures; designates "full and open" as the standard for competition in contracting; strengthens the justification, approval, and notice requirements to safeguard against unnecessary sole-source contracts; establishes competition advocates to enhance accountability; and strengthens the bid protest process.

Office of Federal
Procurement Policy Act
(41 U.S.C. 401-424)

The purpose of the Office of Federal Procurement Policy Act is to establish an Office of Federal Procurement Policy in OMB to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

Procurement Integrity Act
(41 U.S.C. 423)

The purpose of the Procurement Integrity Act is to specify that certain conduct by contractors and government procuring officials in procuring property or services is prohibited. The act provides for both civil and criminal penalties for violation.

Anti-Kickback Act of 1986
(41 U.S.C. 51-58)

The purpose of the Anti-Kickback Act is to strengthen the prohibition of kickbacks relating to subcontracts under federal government contracts. The act prohibits the practice by subcontractors of granting gifts or gratuities to employees of prime contractors or higher tier subcontractors for the purpose of securing the subcontract.

Ethics Reform Act of 1989
(P.L. 101-194)

The purpose of the Ethics Reform Act of 1989 is to strengthen federal ethical standards, including extending post-employment "revolving door" restrictions to the legislative branch, prohibiting the receipt of honoraria by federal employees, limiting outside earned income by higher salaried noncareer employees, expanding financial disclosure requirements, and creating conflict of interest rules for legislative branch staff.

Byrd Amendment (31
U.S.C. 1352)

The purpose of this amendment is to prohibit the recipient of a federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing, or attempting to influence, an officer or employee of an agency or Congress, or Member of Congress, in order to obtain a contract, grant, loan, or cooperative agreement.

Economy Act (31 U.S.C.
1535-1536)

The purpose of the Economy Act is to authorize agencies to enter into agreements for the inter- and intra-departmental furnishing of materials or performance of work or services on a reimbursable basis. The act provides for the crediting of such payments to agency appropriations.

USATS would also be exempt from the following provisions of Title 5 U.S.C.

Personnel Provisions (the
No Strike Provision in 5
U.S.C. 7311(3) Would
Remain in Effect)

Title 5 of the United States Code provides general personnel policies for the federal government, including the organization and procedural framework under which federal agencies operate as well as statutory policies pertaining to federal employment, selection, promotion, compensation, performance, etc.

The no strike provision, which would apply to Corporation personnel, is 5 U.S.C. 7311(3), which provides that an individual may not accept or hold a position in the government of the United States or the District of Columbia if that individual participates in a strike, or asserts the right to strike, against the government. Also, the criminal provisions in 18 U.S.C. 1918, prevent anyone from accepting or holding a public office who has been convicted of an illegal strike against the government.

Labor-Management
Relations Provisions
(U.S.C. 7101, et seq.)

The Labor-Management Relations provisions of Title 5 of the United States Code prescribe certain rights and obligations of employees of the federal government to join and participate in unions without fear of penalty or reprisal.

Employment Provisions
(Chapters 31, 33, 35 of 5
U.S.C.)

Chapter 31, 5 U.S.C. provides the general authority for each executive agency, and military department, to employ such number of employees as Congress may appropriate from year to year.

Chapter 33, 5 U.S.C. provides for the examination, certification, appointment, transfer, and promotion of employees in the civil service.

Chapter 35, 5 U.S.C. provides for retention preference in the event of a reduction in force, restoration and reemployment rights.

Employee Performance
Provisions (Chapter 43, 5
U.S.C.)

Employee performance provisions provide for the establishment of performance rating plans by agencies.

Pay Rate and Allowance
Provision (5 U.S.C. 5392)

This provision provides the authority for the establishment of special occupational pay systems. This provision establishes procedures for the consideration of alternative approaches for determining the pay for employees in positions in certain occupations or groups of occupations.

Federal Acquisition
Regulation (48 C.F.R. Parts
1-53, et seq.)

The Federal Acquisition Regulation (FAR) was established for the codification and publication of uniform policies and procedures for the acquisition of supplies or services (including construction) through purchase or lease by all executive agencies. The Federal Acquisition Regulation System consists of the FAR, which is the primary document, and agency acquisition regulations that implement or supplement the FAR.

Real Property and General
Services Administration
Regulation (41 C.F.R. Part
101)

The Real Property and General Services Administration Regulation is prescribed by the Administrator of General Services and applies to federal agencies. The regulation prescribes policies, procedures, and delegations of authority pertaining to the management of property, and other programs and activities of the type administered by GSA, except procurement and contract matters contained in the FAR.

Related Materials

Air Traffic Control: Issues Presented by Proposal to Create a Government Corporation (GAO/T-RCED-95-114, Feb. 23, 1995).

Air Traffic Control Corporation Study Financial Update, DOT, February 7, 1995.

Air Traffic Control Service Improvement Act of 1994, draft bill, H.R. 5209, 103d Congress, 2d Session, Oct. 6, 1994.

Air Traffic Control: Observations on Proposed Corporation (GAO/T-RCED-94-210, May 12, 1994).

Air Traffic Control Corporation Study, Report of the Executive Oversight Committee to the Secretary of Transportation, May 3, 1994.

Air Traffic Control: Analysis of Illustrative Corporate Financial Scenarios, Technical Report prepared by the Corporation Assessment Task Force for the Executive Oversight Committee to the Secretary of Transportation, May 3, 1994.

Air Traffic Control: Management Attention Needed for Future Investment Decisions (GAO/T-RCED-94-195, Apr. 24, 1994).

Air Traffic Control: Agency Faces Key Management Challenges on Major Issues (GAO/T-RCED-94-191, Apr. 19, 1994).

Air Traffic Control: Status of FAA's Modernization Program (GAO/RCED-94-167FS, Apr. 15, 1994).

Advanced Automation System: Implications of Problems and Recent Changes (GAO/T-RCED-94-188, Apr. 13, 1994).

Aircraft Certification: FAA Can Better Meet Challenges Posed by Advances in Aircraft Technologies (GAO/RCED-94-53, Oct. 20, 1993).

Aviation Research: Issues Related to FAA's Research Activities (GAO/T-RCED-93-68, July 29, 1993).

Air Traffic Control: Improvements Needed in FAA's Management of Acquisitions (GAO/T-RCED-93-36, May 5, 1993).

Air Traffic Control: Uncertainties and Challenges Face FAA's Advanced Automation System (GAO/T-RCED-93-20, Apr. 19, 1993).

Air Traffic Control: Status of FAA's Modernization Program (GAO/RCED-93-121FS, Apr. 16, 1993).

Air Traffic Control: Advanced Automation System Problems Need to Be Addressed (GAO/T-RCED-93-15, Mar. 10, 1993).

Air Traffic Control: Justifications for Capital Investments Need Strengthening (GAO/RCED-93-55, Jan. 14, 1993).

Air Traffic Control: Advanced Automation System Still Vulnerable to Cost and Schedule Problems (GAO/RCED-92-264, Sept. 18, 1992).

Appendix III
Proposed Government Corporation: U.S. Air
Traffic Services Corporation

Air Traffic Control: Challenges Facing FAA's Modernization System
(GAO/TRCED-92-34, Mar. 3, 1992).

Proposed Government Corporation: Federal Housing Administration

Purpose

The Federal Housing Administration (FHA) was established under the National Housing Act of 1934¹ to encourage improvement in housing standards and conditions, provide an adequate home financing system by insurance of housing mortgages and credit, and exert a stabilizing influence on the mortgage market (24 CFR 200.3). FHA was consolidated into the newly established Department of Housing and Urban Development (HUD) in 1965 (P.L. 80-174) and is currently subject to the provisions of the Government Corporation Control Act (GCCA).² As part of HUD's recent reinvention plan, FHA would be transformed into a government-owned corporation.

Currently, GCCA lists "the Secretary of the Department of Housing and Urban Development as a wholly owned government corporation when carrying out duties and powers related to the Federal Housing Administration Fund." FHA's Special Assistant to the Assistant Secretary for Housing/FHA Commissioner said that FHA does not have a corporate charter and does not currently operate as a government corporation. According to NAPA, in 1965 Congress assigned the corporate powers of FHA to the Secretary of HUD, who has delegated them to the Assistant Secretary for Housing/FHA Commissioner.

NAPA concluded that because of FHA's integration with HUD, "FHA functions more like an executive branch agency that receives funding solely from congressional appropriations than as a corporate entity that generates substantial revenue—which it is and does." However, NAPA reported that FHA's Commissioner does not have the flexibility to adjust the FHA product to changing market conditions, such as fluctuating interest rates, and that the Commissioner must operate within the budgeting and administrative parameters of a traditional federal agency.

In its July 1994 report,³ NAPA recommended that Congress transfer FHA's corporate powers from the Secretary of HUD to the proposed corporation, permitting it to function with greater operational autonomy within HUD. To minimize confusion over FHA's current organizational structure, we will provide information that refers to FHA as a "new corporation."

The new FHA corporation would consolidate FHA's existing insurance programs into two general insurance authorities: single family and

¹12 U.S.C. 1701, et seq.

²31 U.S.C. 9101, et seq.

³Renewing HUD: A Long-Term Agenda for Effective Performance, NAPA, July 1994.

multifamily. According to HUD, the FHA corporation would rely on partnerships with well-capitalized, sophisticated, financial institutions including government-sponsored enterprises, the Federal Home Loan Banks, private mortgage insurance companies, state and local housing finance agencies, and community-based organizations to design a variety of products meeting market needs and ensure that FHA insurance and credit enhancement is delivered as efficiently and effectively as possible.

A new debt restructuring group within the new FHA corporation would be responsible for restructuring, project-by-project, the debt on the nation's portfolio of assisted housing in a process known as "marking-to-market." By using this process, the debt would be established on the basis of the property's true market value, so HUD could stop providing above-market rent subsidies to keep projects alive.

FHA's restructuring plan would subject assisted housing projects to competitive market forces, aimed at improving their financial management and the living conditions of their tenants. Housing opportunities for existing tenants would be ensured through a combination of portable certificates, use of the Affordable Housing Fund, and wherever appropriate, continuing project-specific use restrictions.

Status

Mr. Nicholas Retsinas, Assistant Secretary for Housing/FHA Commissioner, conducted a study of FHA's organizational structure at the request of Henry Cisneros, Secretary of HUD. This study was to answer two questions: (1) Is FHA appropriately structured to carry out its mission today and in the future? and (2) If not, how might FHA be better organized? According to Mr. Retsinas' Special Assistant, two initial assumptions that guided this study were that FHA should not be (1) privately owned or (2) placed outside the HUD Secretary's control.

Mr. Retsinas, with assistance from Harvard University's Joint Center for Housing Studies, hosted eight public forums in cities across the United States (from July 27 through November 3, 1994) to gather information to assist in the FHA study. According to the Special Assistant, Mr. Retsinas is expected to present a report on the FHA forums, which Harvard's Joint Center is also working on, to Secretary Cisneros at the end of March 1995.

In addition, the Special Assistant said that, in advance of completing the final report, the HUD Secretary adopted the Assistant Secretary/Commissioner's recommendation to transform FHA into a new

government corporation. This recommendation was also accepted by the President and included in the Reinvention Blueprint describing the administration's proposal for reinventing HUD. In addition, the administration is now preparing a concept paper for Congress describing the legislation necessary to create the new corporation.

NAPA made the following three recommendations to Congress on the FHA: (1) transfer the corporate powers of FHA from the HUD Secretary to the corporation, permitting it to function with greater operational autonomy within HUD; (2) vest management of FHA in a single administrator appointed by the President, with Senate confirmation for a 6-year term of office (administrator to be compensated at the same level as the chief executive officer of comparable government corporations); and (3) commission an analysis of the advantages and disadvantages of a possible merger of FHA and the Government National Mortgage Association.

Sponsor

HUD Secretary, Henry Cisneros, requested the FHA organizational structure study.

Management Structure

According to a November 1994 draft of HUD's plan to reinvent FHA, the proposed new corporation's administrator, appointed by the President with Senate confirmation, would act under the policy direction of HUD's Secretary.

NAPA concluded that vesting management in a single administrator—without a formal advisory board—would provide the best structure to clarify lines of authority, provide unity and continuity of leadership, and ensure accountability and responsiveness to Congress, the President, and the public.

Funding/Budget

The corporation, according to HUD's draft plan, would have an annual business-type budget, the flexibility to design its own products and pricing, the authority to manage financial assets to preserve value and protect against interest rate risk, and the ability to use its earnings from profitable lines of business to carry out the corporation's activities. In the draft plan, HUD states that the corporation could sustain its activities without appropriations if it were authorized to restructure and to mark-to-market FHA's existing portfolio of multifamily housing, generate

revenue-producing lines of business, and balance its public purpose goals and target markets.

However, FHA had a funding deficiency of almost \$6.3 billion as of September 30, 1993, that resulted from operating losses in prior fiscal years. This deficiency will require funding for FHA to meet its future operating needs. In addition, FHA had outstanding debt to external parties of \$1.793 billion as of the end of fiscal year 1993.

Moreover, NAPA reported that FHA has not been self-sustaining and will not likely become so under a corporate structure. FHA will use insurance premium income to fund staffing, overhead, direct operating expenses, and some program activities. NAPA explained that even in a corporate structure there are inherent risks in providing insurance to the families and businesses FHA serves; if there were not, the private sector would provide it. In addition, the nation will still have to devote considerable funds to subsidize multifamily housing, which often works in tandem with FHA insurance programs.

Staffing

According to a draft HUD document, eventually the corporation would have a small, but highly-skilled staff.

Statutory and Regulatory Exemptions

According to HUD's draft plan, the corporation would have business-like flexibility in employment, contracting, and deployment of resources. However, this document did not specify particular statutory or regulatory exemptions.

Related Materials

Office of Inspector General testimony before the Subcommittee on VA, HUD, and Independent Agencies, House Committee on Appropriations, Department of Housing and Urban Development, January 24, 1995.

Housing and Urban Development: Major Management and Budget Issues
(GAO/T-RCED-95-89, Jan. 24, 1995).

Housing and Urban Development: Major Management and Budget Issues
(GAO/T-RCED-95-86, Jan. 19, 1995).

Reinvention Blueprint, HUD, Dec. 1994.

A Reinvented FHA, draft HUD study, Nov. 30, 1994.

Mortgage Financing: Financial Health of FHA's Home Mortgage Insurance Program Has Improved (GAO/RCED-95-20, Oct. 18, 1994).

Credit Reform: Appropriations of Negative Subsidy Receipts Raises Questions (GAO/AIMD-94-58, Sept. 26, 1994).

Renewing HUD: A Long-Term Agenda for Effective Performance, NAPA, July 1994.

Mortgage Financing: Financial Health of FHA's Home Mortgage Insurance Program Has Improved (GAO/T-RCED-94-255, June 30, 1994).

Audit Report: Federal Housing Administration Audit of Fiscal Year 1993 Financial Statements (94-FO-131-0002), Office of Inspector General, HUD, June 8, 1994.

Multifamily Housing: Status of HUD's Multifamily Loan Portfolios (GAO/RCED-94-173FS, Apr. 12, 1994).

Multifamily Housing: Information on Selected Properties Owned by HUD (GAO/RCED-94-163FS, Apr. 11, 1994).

Housing Finance: Characteristics of Borrowers of FHA-Insured Mortgages (GAO/RCED-94-135BR, Apr. 6, 1994).

Federal Home Loan Bank System: Reforms Needed to Promote Its Safety, Soundness, and Effectiveness (GAO/GGD-94-38, Dec. 8, 1993).

Housing Finance: Expanding Capital for Affordable Multifamily Housing (GAO/RCED-94-3, Oct. 27, 1993).

Federal Credit Reform: Information On Credit Modifications and Financing Accounts (GAO/AIMD-93-26, Sept. 30, 1993).

Homeownership: Actuarial Soundness of FHA's Single-Family Mortgage Insurance Program (GAO/T-RCED-93-64, July 27, 1993).

Government National Mortgage Association: Greater Staffing Flexibility Needed to Improve Management (GAO/RCED-93-100, June 30, 1993).

Multifamily Housing: Impediments to Disposition of Properties Owned by the Department of Housing and Urban Development (GAO/T-RCED-93-37, May 12, 1993).

FHA Internal Controls (GAO/RCED-92-227R, Sept. 30, 1992).

Mortgage Credit Enhancements: Options for FHA in Meeting the Need for Affordable Multifamily Housing (GAO/T-RCED-92-52, Apr. 3, 1992).

Fiscal Year 1992 Annual Management Report, FHA/HUD.

Financial Management: Analysis of Selected VA and FHA Housing Program Accounting Methods (GAO/AFMD-92-8, Nov. 25, 1991).

Property Disposition: Information on Federal Single-Family Properties (GAO/RCED-91-69, Mar. 29, 1991).

Homeownership: Loan Policy Changes Made to Strengthen FHA's Mortgage Insurance Program (GAO/RCED-91-61, Mar. 1, 1991).

Federal Housing Administration: Monitoring of Single Family Mortgages Needs Improvement (GAO/RCED-91-11, Feb. 7, 1991).

Financial Audit: Government National Mortgage Association's 1989 Financial Statements (GAO/AFMD-91-8, Oct. 30, 1990).

Impact of FHA Loan Policy Changes on Financial Losses and Homebuyers (GAO/T-RCED-90-95, July 10, 1990).

Impact of FHA Loan Policy Changes on Its Cash Position (GAO/T-RCED-90-70, June 6, 1990).

Financial Audit: Federal Housing Administration Fund's 1988 Financial Statements (GAO/AFMD-90-36, Feb. 9, 1990).

Impact of FHA Loan Policy Changes (GAO/T-RCED-90-17, Nov. 16, 1989).

Proposed Government Corporation: Presidio Trust

Purpose

The corporation, proposed in H.R. 3433, would seek to revitalize the Presidio, a historic military base that became a unit of the Golden Gate National Recreation Area—an existing unit of the National Park Service (NPS)—in San Francisco, CA, on October 1, 1994. The Presidio Trust would be a “nonprofit public benefit government corporation” within the Department of the Interior.¹ This Trust has been proposed to rehabilitate, lease, and manage the bulk of the Presidio’s properties. NPS would manage the Presidio’s open space areas.

The Secretary of the Interior may use the Presidio’s resources to provide for and support programs and activities that foster research, education, or demonstration projects, and that relate to the environment, energy, transportation, international affairs, arts and cultural understanding, and health and science.

NPS’ proposed action would establish public-private partnerships to preserve and interpret the cultural and natural resources of the Presidio while minimizing the cost to the U.S. Treasury. According to H.R. 3433, this action would make efficient use of private sector resources that could be used in the public interest. To this end, the Trust would negotiate and enter into agreements, including contracts, leases, and cooperative agreements, with any person including any governmental entity for the occupancy of any property within the Presidio that the Trust manages.²

Status

Representative Nancy Pelosi introduced H.R. 3433 on November 3, 1993. The bill was referred to the House Committee on Natural Resources. The Senate Committee on Energy and Natural Resources did markup on H.R. 3433 and made two significant changes on the Trust’s ability to obtain appropriations and its borrowing authority. H.R. 3433 did not pass in the 103d Congress.

Senator Barbara Boxer introduced S. 1639 on November 8, 1993. The bill was referred to the Senate Committee on Energy and Natural Resources. S. 1639 did not pass in the 103d Congress.

¹On September 30, 1994, the Department of the Army transferred the Presidio to the Department of the Interior in accordance with P.L. 92-589, October 27, 1972. P.L. 92-589 provided that the Secretary of Defense could transfer all or any substantial portion of the Presidio to the Interior when the Department of Defense (DOD) determined the Presidio to be in excess of DOD needs.

²The Secretary of the Interior is to initially transfer eight Presidio properties to the Trust and any others that the Secretary deems appropriate.

In addition, Representative Pelosi introduced H.R. 5231 in the 103d Congress' second session. According to an Interior official, H.R. 5231 was a final attempt to create a Presidio Trust—this bill also did not pass in the 103d Congress.

Sponsors

Representative Nancy Pelosi.

Senator Barbara Boxer.

Senator Dianne Feinstein.

Management Structure

The Trust would have a 13-member board of directors to be appointed by the Secretary of the Interior. The board members would include the NPS Director, Secretary of the Army,³ Administrator of the Environmental Protection Agency, and 10 individuals who are not federal government employees.

Each member would serve a 5-year term. However, the Secretary, in making initial appointments to the board, would appoint 3 directors for a term of 2 years and 3 directors for a term of 3 years.

Funding/Budget

Proceeds from the leasing of Presidio properties managed by the Trust would have been retained by the Trust without further appropriation and used to offset the costs of administration, preservation, restoration, operation, maintenance, repair, and related Trust expenses for such properties. As previously mentioned, the House and Senate versions of H.R. 3433 differ in two key aspects: appropriations and borrowing authority.

The House bill would have capped appropriations for purposes of the Presidio, including the Presidio Trust, at \$25 million in any fiscal year. However, the Senate version of H.R. 3433 would have placed the \$25 million appropriations cap on the Presidio alone, thus allowing the Trust to obtain additional funding, if necessary.

The House version of H.R. 3433 would have allowed the Trust to borrow from the Treasury and from private sources as needed to carry out the

³The Secretary of the Army shall serve on the board until the Sixth Army Headquarters ceases to exist at the Presidio. At that time, the Secretary of Energy will replace the Secretary of the Army on the board.

Trust's duties, obligations, and responsibilities. In the Senate version, the Trust would have only been able to borrow from the Department of the Treasury and have outstanding obligations of up to \$150 million at any one time. The purpose of providing borrowing authority to the Trust was to have provided a means to accomplish the repair and rehabilitation of Presidio buildings and structures transferred to the Trust without relying on appropriated federal construction dollars. According to a July 1994 House report, the Presidio would have generated substantial income through a reuse of buildings and facilities, but only if those buildings are in a condition to be leased. In order to accommodate public use, hundreds of buildings must meet building code requirements for seismic, accessibility, health, and safety requirements. The total cost to repair and rehabilitate Presidio structures is estimated to be \$490 million.

Staffing

Information not noted in proposal/to be determined. However, the Trust would have been able to accept volunteers as provided for under the Volunteers in Parks Act of 1969.⁴

Statutory and Regulatory Exemptions

Both versions of H.R. 3433 would have raised the dollar limitations applicable to the Trust in the following two statutes:

Federal Property and Administrative Services Act of 1949 (40 U.S.C. 253(g))

The purpose of the Federal Property and Administrative Services Act of 1949 is to provide for the federal government an economic and efficient system for the procurement and supply of personal property and nonpersonal services, the use of available property, the disposal of surplus property, and records management.

Under the proposed legislation, the Secretary may authorize the Trust, in exercising authority under section 303(g) of the Federal Property and Administrative Services Act of 1949,⁵ which relates to simplified purchase procedures, to use as the dollar limit of each purchase or contract under that subsection an amount which does not exceed \$500,000. Under the Federal Acquisition and Streamlining Act, the dollar limit for agencies is \$100,000.⁶

⁴16 U.S.C. 13g, et seq.

⁵41 U.S.C. 253(g).

⁶P.L. 103-355.

Office of Federal
Procurement Policy Act
(41 U.S.C. 416)

The purpose of the Office of Federal Procurement Policy Act is to establish an Office of Federal Procurement Policy in OMB to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

Under the proposed legislation, the Secretary could authorize the Trust, in carrying out the requirement of section 18 of the Office of Federal Procurement Policy Act,⁷ to furnish to the Secretary of Commerce for publication notices of proposed procurement actions, to use as the applicable dollar threshold for each expected procurement an amount which does not exceed \$1 million. The dollar limit established by section 4202 of the Federal Acquisition and Streamlining Act for agencies is \$25,000.

Related Materials

Senate Report on the Presidio, 103d Congress, 2d Session, Report 103-429, Nov. 30, 1994.

H.R. 5231, 103d Congress, 2d Session, Oct. 8, 1994.

H.R. 3433, 103d Congress, 2d Session, Aug. 23, 1994 (Senate version).

House of Representatives Report on the Presidio, 103d Congress, 2d Session, Report 103-615, July 21, 1994.

Presidio Corporation Establishment Act, S. 1639, 103d Congress, 1st Session, Nov. 8, 1993.

H.R. 3433, 103d Congress, 2d Session, Nov. 3, 1993 (House version).

Department of the Interior: Transfer of the Presidio From the Army to the National Park Service (GAO/RCED-94-61, Oct. 26, 1993).

Department of the Interior: Transfer of the Presidio From the Army to the National Park Service (GAO/T-RCED-94-64, Oct. 26, 1993).

Military Bases: An Analysis of the Commission's Realignment and Closure Recommendations (GAO/NSIAD-90-42, Nov. 29, 1989).

Base Realignment and Closures (GAO/T-NSIAD-89-24, Apr. 12, 1989).

⁷41 U.S.C. 416.

Appendix V
Proposed Government Corporation:
Presidio Trust

The Presidio Corp., B-225714, Feb. 20 1987, 87-1 CPD, Para. 195 (CG Decision).

TeQcom, Inc., B-224664, Dec. 22, 1986, 86-2 CPD, Para. 700 (CG Decision).

Proposed Government Corporation: National Infrastructure Development Corporation

Purpose

The proposed National Infrastructure Development Act of 1994 would have created the National Infrastructure Development Corporation (NIDC). As expressed in Executive Order 12893 of January 26, 1994, which sets out guiding principles for federal infrastructure investments, a well-functioning infrastructure is vital to sustained economic growth. According to Representative Rosa DeLauro, the proposal's sponsor, a self-supporting national level entity could develop new uniform financing mechanisms to promote increased public-private partnership investments and expand the resources available to address unmet infrastructure needs. In addition, the act called for the corporation, within 5 years of the act, to prepare a strategic plan for NIDC's transition to a government-sponsored enterprise (GSE)¹ and for the sale or transfer to investors other than the federal government.

According to the act, before the transition to a GSE, NIDC would not have been an agency of the United States. NIDC would have complied with all federal laws regulating the budgetary and auditing practices of a government corporation, except as provided in the proposed act. After becoming a GSE, NIDC would not have been considered an agency, instrumentality, or establishment of the United States; a government corporation; or a government-controlled corporation for any purposes of federal law; except as provided in the proposed act.

The act's sponsor estimated that for every \$1 billion of federal appropriations used to capitalize NIDC, at least \$10 billion of new project work would result, and 225,000 to 300,000 new jobs would be created. NIDC's mission would have been to

- make senior and subordinated loans² and equity based investments to assist states and private entities develop revenue-based infrastructure projects;
- assist projects by lending funds to state revolving funds or directly to projects;
- provide financial insurance, through its insurance corporation subsidiary (see app. VII), on taxable and tax-exempt debt, particularly for smaller or

¹GSEs are federally established, privately owned corporations designed to increase the flow of credit to specific economic sectors. Examples include the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

²The term "subordinate debt" is sometimes also referred to as "junior debt," which means debt which is legally subordinated to (not due before) payments on the remaining "senior" portion of a debt offering sold to finance a project. By subordinating some bonds to the remaining senior portion of a debt offering, the issuer enhances the investment grade quality of senior debt.

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- start-up projects that have difficulty obtaining conventional credit enhancement;
- provide development risk insurance for critical preconstruction and other development phase costs;
 - facilitate pension fund infrastructure investments through the issuance of investment grade infrastructure securities;
 - create an opportunity, through a transition plan, for these funds to purchase a controlling interest in NIDC from the federal government; and
 - guard the public interest by the use of strict project selection criteria and by application of the Davis-Bacon Act wage provisions to NIDC-assisted projects.

The proposed National Infrastructure Development Act of 1994 also stated that state and local authority to approve and regulate an infrastructure project would not have been superseded by NIDC assistance.

According to the Counsel, Commission to Promote Investment in America's Infrastructure,³ NIDC, in essence, is a national level revolving fund intended to facilitate the financing of projects that can be self-sustaining based on user charges or other dedicated revenue sources. This financing, in turn, would have freed up federal and state grant money for those projects that cannot be self-sustaining.

NIDC, as proposed, would have provided financial support to potentially self-sustaining infrastructure projects, such as establishing a commuter rail service, building new toll roads, repairing a tunnel, or redecking an existing free bridge and converting it to a toll facility.

In February 1994, the Congressional Budget Office (CBO) reported on creating a noncorporate infrastructure development organization in three ways, as (1) an on-budget agency, (2) a government-sponsored enterprise, or (3) a special-purpose finance company. CBO summarized the characteristics of each option but did not recommend any organizational form.

³In 1991, Congress created this Commission to identify new ways of encouraging investment in the nation's stock of physical infrastructure. The Commission found that current levels of spending and traditional means of financing are inadequate to meet current and future U.S. infrastructure needs. The Commission, in their February 1993 report, made three major recommendations: (1) create a national infrastructure corporation to leverage federal dollars and boost investment in infrastructure projects with a capacity to become self-sustaining through user fees or dedicated revenues; (2) create a new range of investment options to attract institutional investors, including pension funds, as new sources of infrastructure capital; and (3) strengthen existing infrastructure financing tools and programs by making federal incentives more consistent and by providing uniform treatment for investment in infrastructure projects.

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Proposed Government Corporation:
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Status

On September 28, 1994, Representative Rosa DeLauro introduced a bill entitled the National Infrastructure Development Act of 1994. The 103d Congress did not pass the bill. This bill would have established NIDC, and a subsidiary to be called the National Infrastructure Insurance Corporation (NIIC), as wholly owned government corporations.

Sponsor

Representative Rosa DeLauro.

**Management
Structure**

As proposed, NIDC would have had a 12-member board of directors, of which 9 would have been appointed by the President and 3 would have been officers of the corporation. Of the nonofficer directors appointed to the board, a minimum of six would have been selected from private sector representatives as follows:

- two representatives from organized labor,
- two individuals involved in the field of public-private infrastructure finance and related disciplines, and
- two individuals selected by the President after consulting with and considering the recommendations of the National Governors' Conference.

A majority of nonofficer members of the board would have appointed the NIDC president, who also would have served on the board. The NIDC president would have selected two executive officers to be appointed to the board, subject to confirmation by a majority of the board.

The terms for directors first appointed by the President would have been as follows: one-third of the directors for 2 years, one-third for 3 years, and one-third for 4 years. After this initial appointment, presidential appointees are to have a term of 4 years. Officer directors are to serve for a period of 1 year or until they cease to be officers of the corporation.

Funding/Budget

The act would have authorized \$30 million to be appropriated to the Secretary of the Treasury to facilitate NIDC's initial operations. In addition, NIDC would have received start-up capital through the sale of common stock to the U.S. Treasury, authorized at \$1 billion for each of the fiscal years 1995 through 1997.

Thereafter, NIDC would have been self-sustaining through revenues generated by income from loan repayments, fees, and charges. The act

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prohibited any additional federal financing after the initial start-up capitalization and specified that NIDC's obligations were not to carry a federal government guarantee. According to the Counsel, Commission to Promote Investment in America's Infrastructure, NIDC would not have a line of credit at the Department of the Treasury.

The act would have created a category of financial instrument called "public benefit bonds" designed to help facilitate pension plan investment in the development of infrastructure facilities.⁴ The projected additional revenue to the U.S. Treasury generated by the Public Benefit Bond is anticipated to offset the amount of the federal investment in NIDC. The act also provided for a transition plan under which the federal government's investment in NIDC would have been repaid.

According to the proposal's sponsor, sources of private capital, including the more than \$4.5 trillion in assets held by institutional investors such as pension funds, have expressed a growing interest in public-private infrastructure investment opportunities that provide competitive rates of return.

According to a member of Representative DeLauro's staff and an official from Lehman Brothers,⁵ before NIDC's transition to a GSE, it would have been treated as on-budget for the purpose of scoring⁶ its federal capital contributions according to the Federal Credit Reform Act.⁷ However, the proposed corporation's on-going activities would not have been subject to further fiscal year appropriation or apportionment.

⁴Public and private pension plans would be permitted to purchase Public Benefit Bonds issued to finance infrastructure facilities. The interest income would be distributed tax-free to the plan member at retirement, passing the tax benefits through the plan beneficiaries. According to the proposal's sponsor, these bonds would be of particular interest to defined contribution plans which could offer their participants new competitive investment opportunities tied to infrastructure development. Public Benefit Bonds would include bonds, which are currently tax-exempt, as well as infrastructure debt, which is otherwise taxable.

⁵Lehman Brothers assisted Representative DeLauro to prepare case studies of infrastructure projects that could have benefited from the National Infrastructure Development Act of 1994.

⁶Scorekeeping is the process of estimating the budgetary effects of pending and enacted legislation and comparing them to limits set in the budget resolution or legislation. Scorekeeping tracks data such as budget authority, receipts, outlays, the surplus or deficit, and the public debt limit.

⁷The Federal Credit Reform Act of 1990 requires that the net present value of the estimated long-term cost to the government of new direct loans and loan guarantees be financed from new budget authority and be recorded as budget outlays at the time the direct or guaranteed loans are disbursed.

Staffing

According to a member of Representative Rosa DeLauro's staff, the number of staff that NIDC would have employed was never determined.

Statutory and Regulatory Exemptions

Exempt Securities

All equity and debt securities and other obligations issued by the NIDC under the act would have been exempt securities under laws administered by the Securities and Exchange Commission (SEC) to the same extent as securities that are direct obligations of, or obligations fully guaranteed as to principal or interest by, the United States.

The SEC is responsible for registering securities and reviewing disclosure statements before their issuance. The proposed legislation provided that all equity and debt securities and other obligations issued by the NIDC would have been exempt from regulation by the Securities and Exchange Commission in the same way as those issued or guaranteed by the U.S. government.

Federal Reserve Act, Section 14 and 31 U.S.C. 3124

NIDC obligations would have been deemed obligations of the United States for the purposes of the provision designated as (b)(2) of the second undesignated paragraph of section 14 of the Federal Reserve Act and section 3124 of Title 31, United States Code. By specifying that the obligations of the corporation are deemed obligations of the United States for certain purposes, the proposed bill would have allowed these obligations to be bought and sold by any Federal Reserve Bank and to be exempt from state and local taxation.

31 U.S.C. 3713

Generally, 31 U.S.C. 3713 provides that a claim of the U.S. government against a debtor would be paid first. The priority established in favor of the United States by 31 U.S.C. 3713 would not have applied concerning any indebtedness of NIDC.

Related Materials

National Infrastructure Development Act of 1994, draft bill, H.R. 5120, 103d Congress, 2d Session, Sept. 28, 1994.

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Proposed Government Corporation:
National Infrastructure Development
Corporation**

**National Infrastructure Development Act of 1994, Summary,
Representative Rosa DeLauro, House of Representatives, 1994.**

**National Infrastructure Development Act of 1994, draft summary,
Representative Rosa DeLauro, House of Representatives, Sept. 6, 1994.**

**Description of Public Benefit Bonds, Representative Rosa DeLauro, House
of Representatives, 1994.**

**Prototypical Case Studies of Infrastructure Projects Benefiting from the
National Infrastructure Development Act of 1994, Representative Rosa
DeLauro, House of Representatives, 1994.**

**An Analysis of the Report of the Commission to Promote Investment in
America's Infrastructure, Congressional Budget Office, CBO Papers,
Feb. 1994.**

**Financing the Future, Report of the Commission to Promote Investment in
America's Infrastructure, Feb. 1993.**

Proposed Government Corporation: National Infrastructure Insurance Corporation

Purpose

The proposed National Infrastructure Development Act of 1994 would have created the National Infrastructure Insurance Corporation (NIIC) as a subsidiary of the National Infrastructure Development Corporation (NIDC) (see app. VI). NIIC would have provided insurance and reinsurance for taxable and tax-exempt obligations used to finance the development of smaller and start-up infrastructure projects that have difficulty accessing the private bond insurance market. In addition, the act called for the NIDC, within 5 years of the act, to prepare a strategic plan for NIIC's transition to a GSE and for its sale or transfer to investors other than the federal government.

According to the act, before the transition to a GSE, NIIC would not have been an agency of the United States. NIIC would have complied with all federal laws regulating the budgetary and auditing practices of a government corporation, except as provided in the proposed act. After becoming a GSE, NIIC would not have been considered an agency, instrumentality, or establishment of the United States; a government corporation; or a government-controlled corporation for any purposes of federal law; except as provided in the proposed act.

According to CBO and the Commission to Promote Investment in America's Infrastructure, NIIC would have provided a financial guarantee by offering primary insurance of principal and interest for investment grade bonds below single-A,¹ similar to the operations of the College Construction Loan Insurance Association (Connie Lee). According to the Counsel for the Commission to Promote Investment in America's Infrastructure,² NIIC is to operate primarily in the BBB/BB underlying credit range, where coverage by existing bond insurers is limited.³ NIIC would have also provided reinsurance to existing bond insurers to free up additional capacity for them.⁴ The Commission assumed that half of the proposed corporation's debt would be tax-exempt and half would be taxable. At the same time,

¹There are two general categories of investment. The lower-risk/higher-quality category is called investment-grade. For example, Standard and Poor's (S&P) bond ratings from the highest to lowest investment-grade are AAA, AA, A, and BBB. Riskier categories of bonds are called speculative-grade. S&P's alphabetic range from highest to lowest grade of speculative debt are BB, B, CCC, CC, C, and D. Moody's investment-grade ratings are Aaa, Aa, A, and Baa, and their speculative-grade ratings are Ba, B, Caa, Ca, and C. Moody's Aaa rating means that the interest payments are protected by a large or exceptionally stable margin and the principal is secure. Further, foreseeable changes are unlikely to impair the fundamentally strong position of such bonds.

²See NIDC's "Purpose" section in app. VI for more information on this Commission.

³A minimum of 75% of the primary insurance issued by NIIC would have been for smaller or start-up projects whose debt is often rated at BBB and BB.

⁴Reinsurers enter into contracts with the primary insurer to reimburse the primary insurer for part of any default loss on the bond.

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NIIIC would have been required to maintain sufficient reserves to receive the highest national rating (AAA) on its claims-paying ability.

Examples when NIIIC would have supported projects include providing primary bond insurance, secondary reinsurance (which would free up new insurance underwriting), and development phase risk insurance.

In February 1994, the CBO reported on creating a noncorporate infrastructure insurance organization in two ways, as (1) an on-budget agency or (2) a municipal bond insurer. CBO summarized the characteristics of each option but did not recommend any organizational form.

Status

On September 28, 1994, Representative Rosa DeLauro introduced a bill entitled the National Infrastructure Development Act of 1994. The 103d Congress did not pass the bill. This act would have established NIDC and NIIIC as wholly owned government corporations.

Sponsor

Representative Rosa DeLauro.

**Management
Structure**

NIIIC would have had a 12-member board of directors elected by NIIIC stockholders. The board would have comprised individuals who demonstrated expertise and experience in the field of credit enhancement or insurance and related disciplines. A minimum of nine members would have represented the private sector. The proposed corporation's initial directors would have been appointed by NIDC's board of directors for a term of 2 years.

Funding/Budget

According to the Commission to Promote Investment in America's Infrastructure, NIIIC would have charged premiums and operate on a self-supporting basis, similar to Connie Lee. In addition, NIDC may have purchased common stock in NIIIC as NIDC's board of directors deemed appropriate. However, not more than 25 percent of NIDC's capital, surplus, and retained earnings may be invested in NIIIC without the consent of the Secretary of the Treasury.

Staffing

According to a member of Representative Rosa DeLauro's staff, the number of staff that NIIC would have employed was never determined.

Statutory and Regulatory Exemptions

Exempt Securities

All equity and debt securities and other obligations issued by NIIC under the act would have been exempt securities under laws administered by the SEC to the same extent as securities that are direct obligations of, or obligations fully guaranteed as to principal or interest by, the United States.

The SEC is responsible for registering securities and reviewing disclosure statements before their issuance. The proposed legislation provided that all equity and debt securities and other obligations issued by the NIIC would have been exempt from regulation by the SEC in the same way as those issued or guaranteed by the U.S. government.

Federal Reserve Act, Section 14 and 31 U.S.C. 3124

NIIC obligations would have been deemed obligations of the United States for the purposes of the provision designated as (b)(2) of the second undesignated paragraph of section 14 of the Federal Reserve Act and section 3124 of Title 31, United States Code. By specifying that the obligations of the corporation are deemed obligations of the United States for certain purposes, the proposed bill would have allowed these obligations to be bought and sold by any Federal Reserve Bank and exempt from state and local taxation.

31 U.S.C. 3713

Generally, 31 U.S.C. 3713 provides that a claim of the U.S. government against a debtor would be paid first. The priority established in favor of the United States by 31 U.S.C. 3713 would not have applied concerning any indebtedness of NIIC.

Related Materials

National Infrastructure Development Act of 1994, draft bill, H.R. 5120, 103d Congress, 2d Session, Sept. 28, 1994.

**Appendix VII
Proposed Government Corporation:
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**National Infrastructure Development Act of 1994, Summary,
Representative Rosa DeLauro, House of Representatives, 1994.**

**National Infrastructure Development Act of 1994, draft summary,
Representative Rosa DeLauro, House of Representatives, Sept. 6, 1994.**

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America's Infrastructure, Congressional Budget Office, CBO Papers,
Feb. 1994.**

**Financing the Future, Report of the Commission to Promote Investment in
America's Infrastructure, Feb. 1993.**

New Government Corporation: Community Development Financial Institutions Fund

Purpose

The Community Development Banking and Financial Institutions Act of 1994¹ created the Community Development Financial Institutions Fund (CDFIF). CDFIF is intended to promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing their liquidity.

CDFIF may provide (1) financial assistance through equity investments, deposits, credit union shares, loans, and grants and (2) technical assistance directly, through grants, or by contracting with organizations that possess expertise in community development finance. CDFIF may also be used to facilitate small business capital enhancement. Participating states may apply to CDFIF for assistance to (1) promote economic opportunity and growth, (2) create jobs, (3) promote economic efficiency, (4) enhance productivity, and (5) spur innovation.

Status

On September 23, 1994, President Clinton signed the Riegle Community Development and Regulatory Improvement Act of 1994. The Department of the Treasury is assisting with the start-up of CDFIF.

CDFIF is in a transition period during which the Secretary of the Treasury may assist in the establishment of CDFIF administrative functions and hire staff. The act defined the transition period as beginning on the date of its enactment and ending on the date on which the CDFIF Administrator is appointed.

Sponsor

Senator Donald W. Riegle, Jr., former Chairman, Senate Committee on Banking, Housing, and Urban Affairs, introduced the Community Development Banking and Financial Institutions Act of 1993 on July 21, 1993.²

Representative Henry B. Gonzalez, then Chairman, House Committee on Banking, Finance, and Urban Affairs, introduced The Community Development Banking and Financial Institutions Act of 1993 on November 9, 1993.³

¹The Community Development Banking and Financial Institutions Act of 1994 is Title 1, Subtitle A, of the Riegle Community Development and Regulatory Improvement Act of 1994, P.L. 103-325.

²S. 1275, 103d Congress, 1st session.

³H.R. 3474, 103d Congress, 1st session.

Both the Riegle and Gonzalez bills proposed the establishment of the Community Development Banking Financial Institutions Fund.

Management Structure

CDFIF is a wholly owned government corporation in the executive branch.

CDFIF is to be managed by an administrator to be appointed by the President, with the advice and consent of the Senate. The CDFIF Administrator is to appoint a Chief Financial Officer (CFO) who is to have the authority and functions of an agency CFO as specified by the CFO Act of 1990.⁴ The administrator may also appoint other such officers and employees of CDFIF as the administrator deems necessary or appropriate.

The act established a 15-member advisory board to CDFIF, known as the Community Development Advisory Board, which is to be operated according to the provisions of the Federal Advisory Committee Act (FACA).⁵ However, section 14 of FACA, requiring that an advisory committee must terminate after 2 years unless it is renewed, does not apply to the board. Board members are to include the secretaries of Agriculture, Commerce, Housing and Urban Development, the Interior, the Treasury, or their designees; the Administrator of the Small Business Administration, or his or her designee; and nine private citizens appointed by the President.

Funding/Budget

To promote economic revitalization and community development through investment in and assistance to community development financial institutions, the following amounts are authorized to be appropriated to CDFIF and to remain available until expended: \$60 million (fiscal year 1995); \$104 million (fiscal year 1996); \$107 million (fiscal year 1997); and \$111 million (fiscal year 1998).

Of the amounts authorized to be appropriated to CDFIF, not more than \$5.55 million may be used by CDFIF in any fiscal year to pay for its administrative costs and expenses.

Staffing

During the transition period for CDFIF, the Secretary of the Treasury may hire not more than six individuals to serve as employees of CDFIF and not more than two of them may be Treasury employees.

⁴Section 902 of the CFO Act specifies that agency CFOs report directly to the head of their agency and oversee all financial management activities related to the programs and operations of their agency.

⁵P.L. 92-463.

Statutory and Regulatory Exemptions

Government Corporation
Control Act (31 U.S.C.
9107(b))

The Government Corporation Control Act (GCCA) mandates audit, accounting, and budget requirements for mixed-ownership and wholly owned government corporations. CDFIF financial assistance in the form of deposits in insured community development institutions is exempt from section 9107(b) of GCCA, which provides that the Secretary of the Treasury has authority over deposits of government corporations.

Federal Advisory
Committee Act, Section 14
(5 U.S.C. App. 2, 14)

The Community Development Advisory Board, established to advise the CDFIF Administrator, is exempt from section 14 of the Federal Advisory Committee Act, which requires that an advisory committee must terminate after 2 years unless it is renewed.

Administrative
Classification and
Compensation

CDFIF transitional employees are not covered by the federal employee classification system requirements under 5 U.S.C. Chapter 51 and the General Schedule and Executive Service compensation system under 5 U.S.C. Chapter 53. These employees may not be paid more than the rate payable for Level V⁶ of the Executive Schedule, established under 5 U.S.C. 5316.

Related Material

Riegle Community Development and Regulatory Improvement Act of 1994, P.L. 103-325, Sept. 23, 1994.

⁶Level V of the Executive Schedule covers a range of executive positions within departments (for example, the Administrator of the Agricultural Marketing Service, Department of Agriculture; General Counsel, Department of the Navy; and Inspector General, Department of the Interior).

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Staff Acknowledgements

In addition to those named above, the following individuals made important contributions to this report:

Bruce Goddard, Bob Heitzman, Jim Rebbe, and Paul Thompson, Office of General Counsel, provided legal research assistance on all laws cited in this report.

John Davis and Greg Kutz, Accounting and Information Management Division, provided budget and financial information on all corporation profiles.

Andy Finkel, Patricia Gleason, Cheryl Kramer, Bob Levin, Belva Martin, Margaret Reese, and Mathew Scire, Resources, Community, and Economic Development Division, provided information on the BPA, FHA, NIDC, NIIC, NPOSR, Presidio Trust, and USATS corporation profiles.

Teresa Anderson, Mark Gillen, and Tom McCool, General Government Division, provided assistance in developing the CDFIF, NIDC, and NIIC corporation profiles.

Tony Ellis, Donita Ferguson, Glenda Hudson, and Audrey Ruge, Office of Information Management and Communications, provided legislative history research assistance.

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