

April 22, 2005

The Honorable Nydia Velazquez
Ranking Minority Member
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Representative Velazquez:

Thank you for the opportunity to provide you and the U.S. House of Representatives Committee on Small Business with additional information related to my testimony on HR 682, the Regulatory Flexibility Improvements Act. This letter addresses the questions that you posed in your letter dated April 4, 2005.

Congress established the Office Advocacy pursuant to Public Law 94-305 to advocate the views of small business before Federal agencies and Congress. Because Advocacy is an independent office within the U.S. Small Business Administration (SBA), these views do not necessarily reflect the position of the Administration or the SBA. For the sake of clarity, I will repeat each of your questions, followed by our responses.

1) A detailed estimate over your signature stating the number of panels Advocacy does per year; the resources allocated to such panels; the number of panels Advocacy expects if HR 682 is adopted without amendments; and, Advocacy's analysis of its cost to Advocacy in resources if the bill passes.

From the enactment of the Small Business Regulatory Enforcement Fairness Act 1996 to the end of fiscal year 2004, the Environmental Protection Agency (EPA) has held 28 panels. The Occupational Safety and Health Administration (OSHA) has held 7 panels. I have attached a table of the panels for your review.

HR 682 requires all agencies to participate in the panel process. Advocacy expects at least 100 additional panels would be held if HR 682 is adopted without amendments. This estimate is based on the number of initial regulatory flexibility analyses that Advocacy reviewed in FY 2004.

Based on estimates from FY 2004, Advocacy estimates that the current panel process requires approximately 400 hours of staff time per panel.

2) Since your office does the most work with the RFA and the panel process, it would be helpful if you could suggest less burdensome procedures than universal panels that could help achieve the RFA goal of educating regulators about the impact of their regulations on small businesses. It is important that these proposals use fewer resources but still retain the ability to focus the agency's attention. For example, could discretion be given to Advocacy and/or OIRA to convene a panel for any agency? If so, what controls would be

reasonable? Should agencies be compelled to reference the studies or data they used to support a proposed regulation in the preamble and make the data publicly available unless classified or privileged?

A workable solution would be to codify Section 3 of Executive Order (EO) 13272. As stated in my testimony, Advocacy has had some success with mitigating the costs of regulations through EO 13272. EO 13272 requires agencies to notify Advocacy of proposed rules that may have a significant economic impact on small entities to Advocacy at the same time that the proposals are submitted to OIRA, or, if no submission to OIRA is required, at a reasonable time prior to publication of the rule by the agency. Early intervention has allowed Advocacy to work with agencies to improve RFA compliance and to develop alternatives that may reduce the economic impact on small entities.

3) Please provide legislative language to carry out the amendments to HR 682.

I suggested the following changes in my testimony:

- a) Require agencies to review all rules periodically
- b) Require agencies to submit their report on periodic review to Advocacy when they send the report to Congress
- c) Strike the portion of HR 682 that amends the panel process
- d) Amend Section 9 to require agencies to consult with Advocacy about size standards for RFA purposes while leaving the authority to determine size standards with the Office of Size Standards at SBA
- e) Amend the RFA to codify Section 3 of EO 13272
- f) Amend SBREFA to require agencies to provide compliance guides for all rules that require a final regulatory flexibility analysis
- g) Amend the SBREFA to require agencies to report annually on their efforts to comply with the compliance guide section

The Office of Advocacy does not retain legislative counsel, but we are willing to work with the Committee to develop the proper language and format for the amendments.

4) Please provide an explanation for the reduction in the number of EPA panels over the past few years. Are there a significant number of regulations stuck in the pipeline? (If so, please list the regulations you expect to be brought out for panels this year.)

Advocacy cannot speculate about why there has been a reduction in the number of rules that require the panel process. We do know that EPA will convene two panels later this month regarding the Federal Implementation Plans for the Clean Air Interstate Rule (CAIR) and North Carolina's Petition Under Section 126 of the Clean Air Act. In addition, we expect EPA to convene later this year additional panels for two air pollution rules: one regarding a Mobile Source Air Toxics rule, and another regarding Small Gasoline Engines (less than 50 horsepower).

5) During your testimony to this committee you stated: "I think Dr. John Graham has been pretty good in looking at some of the numbers, and he recently estimated that the number of new rules from this administration is 75% less than the last one." We have been unable to locate or verify that estimation. Could you clarify your statement or indicate the source of the finding?

The statement was based on Dr. John Graham's testimony before this Committee on May 19, 2004. I have attached a copy of his testimony.

I appreciate the opportunity to provide the requested information.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Cc: The Honorable Donald Manzullo, Chairman
Committee on Small Business
U.S. House of Representatives

Attachments:

- 1) [Letter](#) from the Honorable Nydia Velazquez to the Chief Counsel for Advocacy requesting information to supplement the record from the hearing entitled "Improving the Regulatory Flexibility Act," held on March 16, 2005.
- 2) [Testimony](#) of the Honorable John D. Graham, PhD, Administrator, Office of Information and Regulatory Affairs, from the hearing entitled, "Red Tape Reduction: Improving the Competitiveness of America's Small Manufacturers," held on May 19, 2004.
- 3) [Table](#) of SBREFA panels through FY 2004.