

Congress of the United States

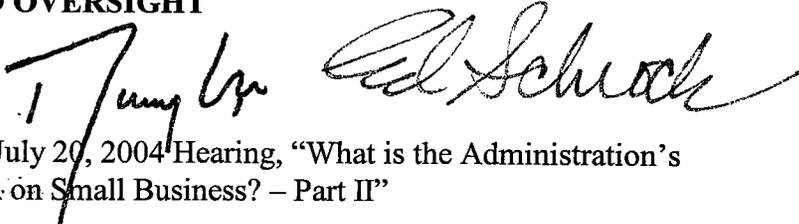
Washington, DC 20515

Corrected Version

July 13, 2004

**MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND
REGULATORY AFFAIRS AND THE SMALL BUSINESS SUBCOMMITTEE ON
REGULATORY REFORM AND OVERSIGHT**

FROM: Doug Ose and Ed Schrock



SUBJECT: Briefing Memorandum for July 20, 2004 Hearing, "What is the Administration's Record in Relieving Burden on Small Business? – Part II"

On Tuesday, July 20, 2004, at 2:00 p.m., in Room 2154 Rayburn House Office Building, the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a joint hearing with the Small Business Subcommittee on Regulatory Reform and Oversight on further implementation of the Small Business Paperwork Relief Act of 2002 (SBPRA). It follows up on the Subcommittees' July 18, 2003 joint hearing entitled, "What is OMB's Record in Small Business Paperwork Relief?," and the January 28, 2004 joint hearing entitled, "What is the Administration's Record in Relieving Burden on Small Business?" The hearing is entitled, "What is the Administration's Record in Relieving Burden on Small Business? – Part II."

Congressional Action on Paperwork Reduction

In 1942, to reduce paperwork imposed on the public, Congress established a centralized review function for proposed paperwork. The Federal Reports Act (FRA) required the Bureau of the Budget (which became the Office of Management and Budget (OMB)) to review and approve each agency paperwork proposal. In 1980, the Paperwork Reduction Act (PRA) replaced the FRA and established an Office of Information and Regulatory Affairs (OIRA) in OMB, whose principal responsibility is paperwork reduction.

In 1995, Congress reauthorized the PRA and set government-wide paperwork burden reduction goals for Fiscal Years (FYs) 1996 to 2001. In 1998, after annual increases in paperwork, instead of decreases, Congress, in a provision in the 1999 Treasury-Postal Appropriations Act, required OMB to issue a report identifying specific expected paperwork reduction accomplishments in FYs 1999 and 2000. In 2000, Congress, in a provision in the 2001 Treasury-Postal Appropriations Act, required OMB to issue a report evaluating paperwork imposed by agency regulations ("regulatory paperwork"), including each major rule imposing over 10 million hours of burden, and identifying specific expected reductions in regulatory paperwork in FYs 2001 and 2002. The Internal Revenue Service (IRS) accounts for over 80 percent of all paperwork burden imposed on the public. In July 2002, after six years of increases in paperwork burden, the Appropriations Committee included a directive to OMB in House

Report 107-575, which accompanied its 2003 Treasury-Postal Appropriations bill, to focus more of OMB staff attention on reducing IRS paperwork.

OMB Attention to Small Business Paperwork Reduction

In its September 2003 final annual regulatory accounting report, OMB did not present an impacts analysis on small business, as required by law. In its February 13, 2004 draft seventh regulatory accounting report, OMB included only a 2-page impacts analysis on small business. In post-hearing questions after the Government Reform Subcommittee's April 20th paperwork reduction hearing, OMB confirmed that it continues to devote less than 1 full-time equivalent (FTE) to IRS paperwork burden reduction. In addition, OMB identified only a few non-e-government initiatives to reduce burden on small businesses, i.e., paperwork reduction initiatives to reduce frequency of small business reporting, introduce thresholds below which reporting is not required, use sampling versus universe reporting, create short forms for small businesses, etc.

Congressional Action on Small Business Burden Relief

Both in March 1998 and February 1999, the House passed small business burden relief bills (H.R. 3310 and H.R. 391, respectively) by wide margins (267-140 and 274-151, respectively). Among several provisions, both bills required agencies, in the case of first-time paperwork violations by a small business, to impose no civil fine unless the violation had the potential to cause serious harm to the public, would impede the detection of criminal activity, or if the violation concerned very delinquent tax collection.

In June 2002, the President signed the "Small Business Paperwork Relief Act of 2002" (SBPRA, P.L. 107-198). This Congressional initiative required OMB to do the following by June 28, 2003: (a) publish the first annual list in the Federal Register and on OMB's website of all compliance assistance resources available to small businesses; (b) have each agency establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements and the control of paperwork; and, (c) report to Congress on the findings of an interagency task force, chaired by OMB.

During the first year, the task force was charged with: (a) identifying ways to integrate the collection of information across Federal agencies and programs; (b) examining the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system, and with synchronized reporting; and, (c) examining the feasibility and benefits of publishing a list of paperwork applicable to small business. This list would be organized (1) by NAICS codes, (2) by industrial sector description, or (3) "in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply."

The law also specified three more reporting requirements to Congress by December 2003, June 2004, and December 2004. The two December reporting requirements related to agency enforcement actions in which civil penalties were assessed for paperwork, regulatory or other violations. The first set of agency reports, due December 31, 2003, covered the 1-year period

beginning on October 1, 2002. The December reports were required to include information on: (a) the number of enforcement actions in which a civil penalty is assessed; (b) the number of these actions against a small entity; (c) the number of these actions in toto and for small entities in which the civil penalty was reduced or waived; and (d) the total monetary amount of reductions or waivers in toto and for small entities.

SBPRA required OMB's second year task force report, due in June 2004, to: (a) make recommendations to improve electronic dissemination, and (b) recommend a plan for the development of an interactive governmentwide Internet program to identify applicable Federal requirements and facilitate compliance.

Implementation of P.L. 107-198

On May 9, 2003, OMB published its draft task force report. On May 21st, four Chairmen – Senate Governmental Affairs Subcommittee Chairman George Voinovich, House Small Business Committee Chairman Donald Manzullo, House Government Reform Subcommittee Chairman Doug Ose, and House Small Business Subcommittee Chairman Edward Schrock - submitted a joint comment letter to OMB, citing numerous omissions and problems with its draft report.

On June 27th, OMB published two documents in the Federal Register. The first was an incomplete listing of compliance assistance resources and contact information for agency single points of contact (SPOCs). In total, 33 of the 71 agencies with federally-approved paperwork had not yet identified a SPOC and OMB did not include compliance assistance resource information for 21 agencies. As of OMB's June 28, 2004 followup listing, some agencies are still without a SPOC (including OMB, which has paperwork clearance for its SF-LLL, Disclosure of Lobbying Activities) or have incomplete or totally missing compliance assistance resource information. For example, the Department of the Treasury has no compliance assistance information for several of its principal bureaus (such as the Alcohol and Tobacco Tax and Trade Bureau, which has 116 OMB-approved paperwork requirements and which took 16,203 enforcement actions in FY 2003 against small entities) and the General Services Administration (GSA) has no compliance assistance information whatsoever.

OMB's second June 27, 2003 document was a notice of availability of its final task force report. This document did not address the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system. And, it recommended against a list organized (1) by NAICS codes, (2) by industrial sector description, or (3) "in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply." Instead, it recommended a new electronic system with the burden on each individual small business "to self-identify applicable criteria that profile their business" and "to self-identify a comprehensive list of applicable requirements."

In the June 2002 enactment of SBPRA, Congress intentionally delayed submission of initial agency enforcement reports until December 31, 2003, to allow agencies sufficient time to adjust their data systems to ensure that they could fully meet the Congressional reporting requirements. The legislative history, embodied in the Senate document entitled “H.R. 327 – Consensus Amendment, Purposes and Summary, Section-by-Section Description, and Legislative History,” states, “the Consensus Amendment provides lead time by establishing the first due date on December 31, 2003” (148 CR S4736, May 22, 2002).

OMB did not provide any guidance to the agencies until October 28, 2003. As a consequence, many agencies had not adjusted their data systems for their December 2003 reports, as Congress expected. In addition, since OIRA’s guidance was only addressed to the President’s Management Council, 20 agencies (including the Small Business Administration (SBA)) were unaware of this statutory reporting requirement until the Subcommittees, in January 2004, requested a copy from each agency of its enforcement report. As of today, 30 of the 69 applicable agencies have not yet submitted their enforcement reports. This includes incomplete or totally missing information for four Cabinet departments - Defense, Homeland Security, Justice, and Veterans Affairs – and several key independent agencies, such as GSA and Federal Energy Regulatory Commission.

On May 5, 2004, OMB published its draft second task force report. On June 3rd, three Chairmen – House Small Business Committee Chairman Donald Manzullo, House Government Reform Subcommittee Chairman Doug Ose, and House Small Business Subcommittee Chairman Edward Schrock - submitted the attached comment letter to OMB. On June 28th, OMB published a notice of availability of its second final task force report.

The second year’s draft task force report did not provide an update on the followup actions, if any, taken by the Administration to effectuate the findings in the first year’s task force report. The three Chairmen asked OMB to include such a discussion in the second year’s final report; OMB’s final report did not include this requested information. Also, most of the recommended actions had not yet taken place and the two with scheduled completion dates were both after the June 28, 2004 deadline for the final report. The two forthcoming dates were: September 2004 for Phase I (a business “metasite” with links to various Federal websites rather than a true portal) of the Business Gateway project and October 2004 for the completion of the two pilot burden reduction programs (on trucking and surface coal mining). The three Chairmen asked OMB to include anticipated completion dates for expected followup actions, including for Phases II (a true business portal) and III (a portal with small business content and services in a common technology platform) of the Business Gateway project. OMB’s final report did not include this requested information.

Witnesses

The invited witnesses for the July 20, 2004 hearing are: Dr. John D. Graham, Administrator, OIRA, OMB; Jesus Delgado-Jenkins, Acting Assistant Secretary for Management and Budget & Chief Financial Officer, Department of the Treasury; Felipe Mendoza, Associate

Administrator, Office of Small Business Utilization, GSA; Joseph Acker, President, Synthetic Organic Chemical Manufacturers Association; Anita Drummond, Director of Legal and Regulatory Affairs, Associated Builders and Contractors, Inc.; and, John DiFazio, Assistant General Counsel - Legal/Regulatory Affairs, Consumer Specialty Products Association.

Attachment

Congress of the United States

Washington, DC 20515

June 3, 2004

BY FACSIMILE

The Honorable Joshua B. Bolten
Director
Office of Management and Budget
Washington, DC 20503

Dear Director Bolten:

This letter provides our comments on the "Draft Report of the Small Business Paperwork Relief Act Task Force," which was published on May 5, 2004, by the Office of Management and Budget (OMB) for public comment. The Small Business Paperwork Relief Act of 2002 (SBPRA, Pub. L. 107-198) established an interagency task force, chaired by OMB, and required OMB to submit reports on the task force's analysis to Congress by June 28, 2003 and June 28, 2004.

The law required the task force to examine integration and consolidation of paperwork requirements within and across agencies so that small businesses "may submit all information required by the agency – (A) to 1 point of contact in the agency; (B) in a single format, such as a single electronic reporting system, with respect to the agency; and (C) with synchronized reporting for submissions having the same frequency." OMB's May 9, 2003 draft report stated, "Our review indicates that while each of these options outlined in the law may be desirable and feasible under the appropriate circumstances, there are several barriers that need to be addressed" (68 FR 25172). Congress intended that OMB use the task force's analysis to relieve small businesses of paperwork burdens. As you know, in a May 21st letter, four Chairmen asked you to remove such barriers and move ahead with the needed simplification for small businesses.

The law also required the task force to examine the feasibility and benefits to small businesses of OMB's publishing a list of small business paperwork "organized – (A) by North American Industry Classification System code; (B) by industrial sector description; or (C) in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply." OMB's May 9th draft report discussed a variety of technical issues and concluded by stating, "Neither approach – a listing by NAICS code or a listing using multiple categories [e.g., an industry sector identification] – would fully meet small business needs" (68 FR 25174).

OMB's conclusion answers a question that Congress did not ask, namely that OMB use this analysis to "fully meet" the needs of small business. Rather, Congress intended only that OMB identify and implement a means of organizing and publishing small business paperwork requirements that would allow small businesses to "more easily identify [paperwork] requirements." A system that does not "fully meet" the needs of small business may, nevertheless, help them "more easily identify" applicable requirements. As you know, four Chairmen also asked you to find an organizational structure for OMB's listing to assist small business compliance.

Despite that letter, OMB's June 27, 2003 final task force report was largely nonresponsive to Congressional intent. For example, it recommended against a list organized by NAICS codes, by industrial sector description, or in another manner by which small business concerns can more easily identify applicable requirements. Instead, it recommended a new electronic system with the burden on each individual small business "to self-identify applicable criteria that profile their business" and "to self-identify a comprehensive list of applicable requirements." On July 22nd, we held a joint hearing on the disappointing first year final report.

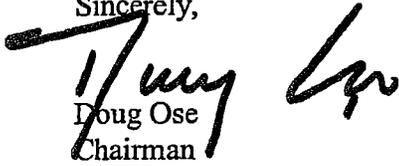
The second draft task force report is also disappointing. First, it does not provide an update on the followup actions, if any, taken by the Administration to effectuate the findings in the first year's task force report. We ask that you include such a discussion in the second year final report.

Second, most of the recommended actions have not yet taken place and the two with scheduled completion dates are both after the June 28, 2004 deadline for the final report. The two forthcoming dates are: September 2004 for Phase I (a business "metasite" with links to various Federal websites rather than a true portal) of the Business Gateway project and October 2004 for the completion of the two pilot burden reduction programs (on trucking and surface coal mining). The draft states, "The timeline for subsequent phases are to be determined" (69 FR 25153). In the final version, please include expected completion dates for Phases II (a true business portal) and III (a portal with small business content and services in a common technology platform) of the Business Gateway project. In addition, please include expected completion dates for any other expected followup actions.

Third, in the final report, please identify the 43 departments and agencies that are expected to have their Federal forms included in the "single point of entry for 'Government to Business' (G2B) and 'Government to Citizen' (G2C) Federal forms and forms systems" (69 FR 25154). Also, please send us a copy by June 16, 2004 of each agency's SBPRA implementation plan, which the draft report recommends for augmentation (69 FR 25151).

If you have any questions about this letter, please contact Barbara Kahlow at 226-3058. Thank you for your attention to this request.

Sincerely,



Doug Ose
Chairman

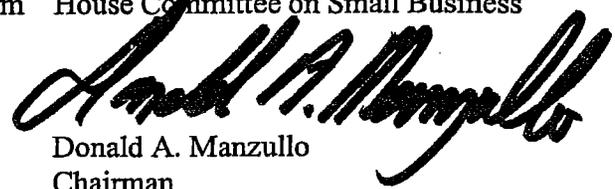
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs
House Committee on Government Reform



Edward L. Schrock
Chairman

Subcommittee on Regulatory Reform
and Oversight

House Committee on Small Business



Donald A. Manzullo
Chairman

House Committee on Small Business

cc: The Honorable Tom Davis
The Honorable John Tierney

The Honorable Nydia M. Velazquez