

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### RED TAPE REDUCTION ACT

Mr. BOND. Mr. President, during the past recess, the third anniversary of the Small Business Regulatory Enforcement Fairness Act, better known as the Red Tape Reduction Act, passed on March 29 with little notice or fanfare.

Let me suggest that while the Red Tape Reduction Act is hardly a household word, it is well worth commemorating, and it is extremely important to the small businesses in America who are oppressed by excessive Government regulation and unthinking regulation imposing unnecessary burdens on them.

I ask unanimous consent to print in the RECORD letters of support that speak to the importance of this law to our Nation's small businesses.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS,  
Washington, DC, April 19, 1999.

Hon. KIT BOND,  
Chairman, Committee on Small Business, U.S.  
Senate, Washington, DC.

DEAR CHAIRMAN BOND: On behalf of the 600,000 small business owners of the National Federation of Independent Business (NFIB), I am writing to join you in commemorating the third anniversary of the Small Business Regulatory Enforcement Fairness Act.

For close to 30 years, NFIB has worked with Congress to secure meaningful regulatory reform for small business. In 1980, the groundwork was laid by the Regulatory Flexibility Act that requires agencies to measure the impact of their regulations on small businesses.

Together, with you and other leaders in Congress, we worked hard to address recommendations from the 1995 White House Conference on Small Business. In 1996, many of those recommendations were enacted as part of the Small Business Regulatory Enforcement Fairness Act. This "Red Tape Reduction Act" gave teeth to the Regulatory Flexibility Act by making agency decisions under the Act judicially reviewable and adding even more small business safeguards to the rulemaking and enforcement functions of government agencies.

Since passage of the Red Tape Reduction Act, NFIB has been committed to ensuring successful implementation of the law. Our small business members have testified on regulatory enforcement before Regulatory Fairness Boards across the country. NFIB members also have participated in panels convened by the U.S. Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) to assist in the development of regulatory proposals. Additionally, we have worked closely with small business trade groups and the U.S. Small Business Administration's Office of Advocacy to ensure that agencies consider the impact on small business prior to regulatory action.

Small business has benefitted from passage of the Red Tape Reduction Act. For 3 years, small business has been guaranteed a "seat

at the table" when government agencies make regulatory decisions. However, more needs to be done. Small businesses with 20 to 49 employees continue to spend, on average, 19 cents out of every dollar on regulatory costs. The very smallest businesses, with 1 to 4 employees, spend almost twice as much per employee on regulatory costs than larger businesses.

Your observance of the Red Tape Reduction Act's anniversary is timely. Congressional oversight on agency compliance with the Act is needed now more than ever. Small business, the employer of over one-half of the private workforce, is in danger if we rest on our laurels. There continues to be obstacles in the way of American small business' economic potential: high taxes, excessive regulations, rising health-care costs, and frivolous lawsuits.

We commend your leadership in ushering the Red Tape Reduction Act through Congress and to the President for signature 3 years ago. Your continued focus on the needs of small business is honorable, and we remain committed to helping you address the challenges faced by small and independent businesses, in America.

Sincerely,

DAN DANNER,  
Vice President.

SMALL BUSINESS LEGISLATIVE COUNCIL,  
Washington, DC, March 24, 1999.

Hon. KIT BOND,  
Chairman, Committee on Small Business, U.S.  
Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Small Business Legislative Council (SBLC) I would like to congratulate you on the third anniversary of your "red tape reduction" law, the Small Business Regulatory Enforcement Fairness Act (SBREFA). Personally, I believe it is one of the most important small business laws of all time. We cannot say thank you enough.

Only now is everybody, including the agencies, beginning to fully appreciate the value of SBREFA. We must continue the momentum created by SBREFA. At your recent roundtable, we offered several suggestions on how we can make a good thing better, such as including the IRS under the Review Panel provisions.

The SBLC is a permanent, independent coalition of eighty trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, tourism and agriculture. For your information, a list of our members is enclosed.

You have built a small business record to be proud of. SBREFA is an important cornerstone. As you know, we are avid supporters of your efforts. As always, we look forward to working with you on behalf of small business. Congratulations!

Sincerely,

JOHN C. SATAGAJ,  
President and General Counsel.

MEMBERS OF SMALL BUSINESS LEGISLATIVE  
COUNCIL

ACIL  
Air Conditioning Contractors of America  
Alliance for Affordable Services  
Alliance for American Innovation  
Alliance of Independent Store Owners and  
Professionals  
American Animal Hospital Association  
American Association of Equine Practi-  
tioners  
American Bus Association  
American Consulting Engineers Council

American Machine Tool Distributors Association  
American Nursery and Landscape Association  
American Road & Transportation Builders Association  
American Society of Interior Designers  
American Society of Travel Agents, Inc.  
American Subcontractors Association  
American Textile Machinery Association  
American Trucking Associations, Inc.  
Architectural Precast Association  
Associated Equipment Distributors  
Associated Landscape Contractors of America  
Association of Small Business Development Centers  
Association of Sales and Marketing Companies  
Automotive Recyclers Association  
Automotive Service Association  
Bowling Proprietors Association of America  
Building Service Contractors Association International  
Business Advertising Council  
CBA  
Council of Fleet Specialists  
Council of Growing Companies  
Direct Selling Association  
Electronics Representatives Association  
Florists' Transworld Delivery Association  
Health Industry Representatives Association  
Helicopter Association International  
Independent Bankers Association of America  
Independent Medical Distributors Association  
International Association of Refrigerated Warehouses  
International Formalwear Association  
International Franchise Association  
Machinery Dealers National Association  
Mail Advertising Service Association  
Manufacturers Agents for the Food Service Industry  
Manufacturers Agents National Association  
Manufacturers Representatives of America, Inc.  
National Association for the Self-Employed  
National Association of Home Builders  
National Association of Plumbing-Heating-Cooling Contractors  
National Association of Realtors  
National Association of RV Parks and Campgrounds  
National Association of Small Business Investment Companies  
National Association of the Remodeling Industry  
National Chimney Sweep Guild  
National Community Pharmacists Association  
National Electrical Contractors Association  
National Electrical Manufacturers Representatives Association  
National Funeral Directors Association, Inc.  
National Lumber & Building Material Dealers Association  
National Moving and Storage Association  
National Ornamental & Miscellaneous Metals Association  
National Paperbox Association  
National Society of Accountants  
National Tooling and Machining Association  
National Tour Association  
National Wood Flooring Association  
Organization for the Promotion and Advancement of Small Telephone Companies  
Petroleum Marketers Association of America  
Printing Industries of America, Inc.  
Professional Lawn Care Association of America  
Promotional Products Association International  
The Retailer's Bakery Association  
Saturation Mailers Coalition  
Small Business Council of America, Inc.

Small Business Exporters Association  
 Small Business Technology Coalition  
 SMC Business Councils  
 Society of American Florists  
 Turfgrass Producers International  
 Tire Association of North America  
 United Motorcoach Association

MED AMERICA DENTAL AND  
 HEARING CENTER,  
 Mt. Vernon, MI, USA.

DEAR SENATOR BOND: Three years ago, the SBREFA bill you authored became law. This was a good bill that became good law. The goal was to cause a sea change in how federal regulatory agencies did business. A change from:

They being the good guys and small businesses being the bad guys

They being the cops and us the crooks  
 Enforcing compliance by coercion to working together for the safety of our employees.

We have made some progress towards that goal. Some agencies are getting the message. And, some are not. Some divisions, districts, and inspectors are trying to move forward. And, others have been doing it the old way so long that one wonders if they are capable of change. Still others appear to possess a bias towards any free market business trying to provide goods and services, jobs for Americans, and a decent profit.

The Regulatory Fairness boards, established by SBREFA, have worked very hard to get the word out about small businesses rights to regulatory fairness. We have talked with all the federal regulatory agencies regarding their statutory requirements under this law. Some are seeking to comply. Others are performing heroic contortions of logic beyond all reason to avoid compliance with this law. Even today, some inspectors and small business advocates appear unaware of the rights of small businesses for regulatory fairness.

Some agency departments, such as OSHA in the Kansas oil fields and in the Colorado construction trades, are working with small businesses to develop good safety practices where there are clear measurable issues of workers being harmed. Yet, the same agency, OSHA, seeks to slam dunk repetitive motion regulations, when most such injuries are related to computer games and sports outside of the work place. Thus, creating an expensive and time consuming conflict between employers and employees.

The regulatory fairness boards, comprised of small business owners who are quite busy running their own businesses, have worked very hard to communicate with small business owners about their rights to regulatory fairness. We have taken some compelling testimony regarding excessive and over-zealous enforcement of federal regulations. Last year, the most compelling was HHS and HCFA campaign against the Home Health Care Industry. Your good efforts to halt this campaign are greatly appreciated.

Other compelling examples have been forwarded to Congress. The regulatory fairness boards, rightly so, have no authority over the federal regulatory agencies. That is left to Congress and the Administration. We have gathered the comments and high-lighted areas of abuse. Our future success greatly depends upon the actions taken by Congress in response to these abuses. I pray for your courage and success.

Three years ago, thanks to SBREFA, we began a long marathon to roll back the tide of regulatory burdens on America's small businesses. We are making progress. It's a marathon. Not, a sprint. I ask that you do not lose heart. I pray that we will not.

Thank you for your strong support of America's small businesses.

SCOTT GEORGE.

NATIONAL TOOLING &  
 MACHINING ASSOCIATION,  
 Ft. Washington, MD, April 2, 1999.

Hon. KIT BOND,  
 Chairman, Committee on Small Business, U.S.  
 Senate, Washington, DC.

DEAR CHAIRMAN BOND: With the anniversary of the Small Business Regulatory Enforcement Fairness Act (SBREFA) upon us, now is the appropriate time to say "Thank You" once again for all your work on that important law. SBREFA has put the needed teeth into the Regulatory Flexibility Act of 1980, allowing judicial review of agency rules and the new panel process involving small businesses and the agencies that regulate them.

NTMA's future Chairman of the Board, Roger Sustar, recently completed his work on a SBREFA panel with OSHA regarding the draft ergonomics program standard. This was NTMA's first experience in the panel process—and it was amazing! Seeing OSHA sit down and listen to the real small business people this standard would affect was something we would not have dreamed of just a couple of short years ago. While there is still a month before the final panel report is printed, it was a terrific experience to have input before a final ergonomics rule was proposed. I am looking forward to the panel report's recommended changes to the proposed standard, based on the input of small business entity representatives.

It is also appropriate to say that the SBA's Office of Advocacy played a key role in the panel process, and that their help was invaluable. Jere Glover and his staff, particularly Claudia Rayford and David Schnare, ensured that small business' voice was heard during the process. NTMA is very supportive of the Office of Advocacy and all they do. We actively support, and have asked for, increased funding in the Budget for this vital part of our government.

I know there is a possibility that SBREFA will be expanded to cover the Internal Revenue Service. NTMA fully supports that proposal. If there is anything I can do in that endeavor, just call on me.

As the chief sponsor of SBREFA, I congratulate you on the anniversary of this law and applaud your efforts to help small businesses across this country get a fair hearing with the federal government. You have always been a true friend to small business.

Sincerely,

JOHN A. COX, JR.,  
 Manager, Government Affairs.

Mr. BOND. Mr. President, we have heard a lot about the need for oversight to find out what Government agencies are doing with the laws we pass. Today, I am here to report on the oversight of the Small Business Committee, because we want to make sure that the small businesses get the fair treatment they are entitled to under the law.

Unfortunately, while we have made some progress and offered hope to many small businesses, we have found a number of agencies have failed to make the grade. So in a few moments, I am going to announce a new series of awards for small-business-pressing Government agencies who deserve to have some help in unclogging the regulatory pipelines in their office.

For several decades, small business owners have watched with dismay as Federal regulations have proliferated. These regulations are taking increasingly large amounts of time and money

to interpret, and compliance costs have soared. Until recently, we were shocked by the general assumption that small business owners spend 5 percent of their revenues to prepare their taxes.

Last Monday, in a hearing we had in the Small Business Committee, we found it worse than we imagined. The committee heard testimony from Brian Gloe, the co-CEO of Rosse Lithographing Company in Kansas City, that his business, for example, pays more than 16 percent of its net income just to figure out how much it owes the IRS. That is even before they write the check to pay the taxes.

As my colleagues well know, the IRS is just one Federal agency. Other agencies imposing huge burdens on small businesses include the Environmental Protection Agency, the Department of Labor, and the Occupational Safety and Health Administration. Add to that list the countless other agencies a small business must deal with, depending on what products it sells or services it provides. Each of these agencies has thousands of requirements which must be followed under penalty of fines or even prison time.

In short, the Red Tape Reduction Act was long overdue. I was very pleased that this body passed the measure unanimously. It passed the House on a consent calendar. It was signed into law on March 29, 1996. It was designed to provide tools to small business owners to assure regulatory fairness and reduce unnecessary regulatory burdens.

The new law contains important innovative provisions. One, it gives small entities the ability to take an agency to court for failing to consider ways to reduce the economic impact of their new regulations.

Two, it requires agencies to prepare "plain English" compliance guides so that small business owners will not have to hire a team of lawyers just to interpret the regulations.

Three, it makes it easier for small businesses to recover attorney's fees when agencies make demands for outrageous fines and penalties that are not sustainable in court.

And finally, it allows Congress to review and disapprove certain new agency regulations that are extreme or are not what Congress intended.

Despite the straightforward nature of this law, it seems some agencies are ignoring Congress' commonsense mandate to make things simpler for the little guy and other agencies are actively fighting against it. On March 10, Senator KERRY, the ranking Democrat on the Small Business Committee, joined me in hosting a roundtable with representatives of small business on of the Red Tape Reduction Act. We learned that many agencies have failed to fulfill their obligations under the new law and under the Regulatory Flexibility Act which preceded it.

These important laws apply to all regulations, unless the head of any

agency can demonstrate that a new rule will not have a significant impact on a substantial number of small entities. That makes sense to me. When new regulations will affect small businesses, the agency should comply with the law so the burdens on small businesses will be identified and reduced.

You would think that agencies would embrace gladly the opportunity to help, rather than impose unnecessary burdens on the smallest of businesses. Regrettably, that just is not the case. A closer look shows that these agencies are using every trick in the book, exploiting every known loophole, and creating new ones not to comply with the law. Rather than help, they work to exempt the regulations from the law.

Here are a couple of examples: No. 1, false and ridiculous claims. EPA is infamous for its legalistic dodge, asserting that the national ambient air quality standards for ozone and particulate matter would not affect small entities. This flies in the face of our experience, when they jack the standards up so hard it requires punitive measures that harshly burden small businesses. I have heard from many government officials in towns throughout Missouri who are concerned that their constituents will lose jobs as a result of those standards.

Two, raising the bar. Agencies avoid compliance with the law by erroneously asserting a rule would not have a significant impact on small businesses. But data from the affected small businesses clearly show otherwise. They are being affected in large numbers.

Three, the artful dodge. Agencies like the EPA and OSHA avoid the law by issuing guidance and permits rather than rules subject to notice and comment. I guess they have not heard the old saying: If it walks like a duck and it quacks like a duck, it must be a duck—even if they want to call it a permit or guidance.

Fourth, the plain old loophole. The Health Care Financing Administration, HCFA, in particular has abused a narrow "good cause" exception to avoid following these laws.

These are just a few examples of ways to get around the law. Instead of implementing simple, needed reforms, the agencies thumb their noses at Congress and the millions of small business owners. Their sleight of hand has not gone unnoticed. I am not going to stand idly by. Too often in Washington, when we pass a law in Congress, we move on to something else and forget about it. The agencies write the regulations, implement the laws however they want to, and your unsuspecting constituents find out the law they think was passed is something else entirely once the regulators write the regulations. That is why we need to change the views of some of the Washington bureaucrats.

I am not going to look the other way. I am going to make sure the agencies do what the new law requires them to do and what is required under the Reg-

ulatory Flexibility Act. Several months ago, I asked the General Accounting Office to assess agency compliance with the provisions of the Reg Flex Act. Today, I am releasing GAO's report and findings.

While the Reg Flex Act has been the law for 18 years, GAO found that the agencies' knowledge of the actual requirements is lacking and that non-compliance is widespread. Agencies are failing right and left to meet the basic requirements of the law passed by Congress and enacted on a bipartisan, unanimous basis by the Congress in 1996.

Congress told them to look over the agency's regulations to see if there is any way we can change or eliminate regulations to make life easier for small business. That is all—just a review, just a recommendation. But they are not even doing that.

The GAO identified seven agencies that have consistently issued regulations affecting small business but have failed to conduct the periodic reviews required. What is the holdup? The agencies have thousands of employees. It seems the administrators might be able to use one or two of them to look at the regulations and see if any can be changed, particularly in this administration which touts its so-called "reinventing Government" plan.

Perhaps this award we are announcing today will remind them. Today I am awarding the "Plumber's Best Friend Award," a plunger, to each agency which has failed to get the process moving, those agencies which need to unclog their pipelines and review existing rules. I am sending the head of each agency a letter explaining the requirements for periodic review and asking them to outline the steps they will take to get the agency in compliance.

And now for that moment you all have been waiting for. The winners of the first "Plumber's Best Friend Award" are: Department of Commerce, Department of Health and Human Services, Department of the Interior, Department of the Treasury, Federal Communications Commission, and the Securities and Exchange Commission.

But the grand prize winner in my book is the Small Business Administration. Believe it or not, the agency whose mission it is to safeguard the interests of and to assist small business owners has failed to follow this small-business-friendly law. Think about it; SBA should be the advocate for small business at the Cabinet table, ensuring Government-wide compliance, not showing indifference to the law. I was stunned that the SBA cannot get a passing grade.

But it gets even worse. Nine other agencies completely failed to report to Congress by March 29 on their efforts to help small business as required in the act. All agencies that regulate small entities were to provide informal compliance assistance and penalty reductions for those small businesses

seeking to comply in good faith. As we have learned, if we do not require progress reports, no progress is made. So we gave everyone 2 years to figure out how to do the right thing. But nine Federal agencies could not even get a report out on time. Ask yourself what happens to a small business woman running a business out of her home if she does not get an IRS, OSHA, or EPA form filed on time. They do not just overlook it; they come down on and crack hard on the small business.

The agencies failing to even report were the Departments of Defense, Justice, Veterans Affairs, the General Services Administration, the National Archive and Records Administration, the National Space and Aeronautics Administration, the Office of Management and Budget, and the Architectural and Transportation Barriers Control Board.

But, again, most outrageous among the nine agencies that missed the deadline: the Small Business Administration. In fact, when I brought this to the SBA Administrator's attention, the SBA's general counsel had the audacity to claim the SBA was not covered by certain provisions of the law because SBA was not a regulatory agency. So today I am sending another letter to SBA, explaining why they are covered by the Red Tape Reduction Act and calling on the Administrator to take immediate steps to comply with the law.

I ask unanimous consent these three letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,  
COMMITTEE ON SMALL BUSINESS,  
Washington, DC, April 19, 1999.

Hon. AIDA ALVAREZ,  
Administrator, U.S. Small Business Administration, Washington, DC.

DEAR ADMINISTRATOR ALVAREZ: On March 16, I requested an explanation as to why the Small Business Administration (SBA/Agency) failed to report to Congress as required under sections 213 and 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Act of SBREFA) (Title II of P.L. 104-121). My letter also asked SBA to report to Congress on its implementation of sections 213 and 223 of SBREFA, which require agencies to provide informal compliance assistance and penalty reductions/waivers to small entities. On March 31, 1999, I received a reply from SBA's General Counsel Michael D. Schattman. Unfortunately, SBA's response was inadequate and raises additional concerns regarding SBA's understanding of and compliance with the Act. In preparing this letter, I consulted with the Congressional Research Service and the Senate Legislative Counsel, and they concurred with my analysis and conclusion that SBA's explanation for its noncompliance is inconsistent with the statue on its face, a legal analysis of the statute, and the intent of Congress as documented in the legislative history.

In SBA's letter, Mr. Schattman asserts that SBA did not need to report to Congress because SBA is not a regulatory agency or, at least, not the type of regulatory agency SBA believes was covered by sections 213 and 223. The rationale behind this strained, interpretation appears to be that SBA is not covered by sections 213 and 223 because: (1)

SBA's programs "aid, counsel and protect small business;" (2) SBA does not "impose penalties for regulatory violations"; and (3) SBA allegedly does not "force small businesses to comply with laws and regulations that require them to conduct their businesses in a certain way." I strongly differ with the basis for SBA's rationale.

First of all, sections 213 and 223 invoke the definition of "agency" found in section 551 of title 5, U.S. Code. SBA is not expressly or implicitly excluded from this definition. SBA's attempt to excuse its noncompliance by claiming not be a "regulatory agency" also fails because the term "regulatory agency" is again based on the definition of "agency" found in section 551 of title 5, U.S. Code, which pertains to administrative procedures and rulemaking.

In general, an agency is a regulatory agency if it has statutory authority to issue rules and enforce compliance with them. SBA is, therefore, a regulatory agency. SBA issues regulations that govern the participation of small business, small governments, and small not-for-profits in the programs it administers. For instance, SBA issues regulations that determine which small businesses qualify as a small disadvantaged business (SDB), a HUBZONE small business concern, or a 7(a) lender. SBA audits compliance with and enforces the requirements of these and other regulations. If a small business is not in compliance with the regulations, SBA has the authority to remove a small business from the list of approved SDBs or HUBZONE small business concerns. SBA can disqualify a financial institution from eligibility as a 7(a) lender or a certified development company under section 504 of the Small Business Investment Act. Consequently, SBA's strained interpretation is not supported in law or fact.

The statement that "SBA does not believe the SBREFA reports were required" only makes sense if two points are assumed correct: (1) that sections 213 and 223 apply only to agencies that impose monetary penalties or fines; and (2) SBA does not impose monetary penalties or fine. While I might concede that section 223 speaks to penalties and fines, section 213 is not limited to compliance assistance related to regulations that carry penalties or fines. SBA's argument is further flawed because not only does SBA's enforcement authority have financial implications for small businesses, but SBA has the authority to impose monetary penalties and Mr. Schattman's letter lists four such instances. SBA appears to have gotten scarred away with its post hoc analysis of why it did not comply with these sections and their respective reporting requirements. As the Chairman of the Committee that authorizes SBA's programs, I cannot agree with the statement that "[i]n no circumstances can SBA regulate, control or penalize a small business in the conduct of its enterprise." This statement does not square with SBA's statutory authority. For instance, section 687 of title 15, U.S. Code, authorizes SBA "to prescribe regulations governing the operation of small business investment companies, and to carry out the provisions of this Act. . . ." SBA's claim is also contradicted by its inclusion in the November 9, 1998-edition of Unified Agenda of Regulatory and Deregulatory Actions and the publication of SBA's regulatory plan, outlining the Agency's regulatory priorities, and SBA's semiannual regulatory agenda. It is clear that SBA must be enforcing the regulations it promulgates.

In addition, Mr. Schattman's letter lists four instances where SBA can impose monetary penalties on Small Business Investment Centers (SBICs) or individuals obtaining disaster loans. This fact alone appears to dis-

credit the assertion that SBA is not covered by section 213 and 223. SBA's argument is further undermined by the fact that many SBICs meet SBA's definition of a small business and a small business concern can be a borrower under the disaster loan program. Consequently, we need look no further than SBA's own letter to identify situations that trigger SBA's obligation to comply with sections 213 and 223. Ironically, SBA's authority to enforce its regulations and impose penalties is by no means limited to these four situations.

While I believe SBA's narrow definition of what constitutes a regulatory agency is without merit, even conceding this strained definition for argument's sake, SBA's letter contradicts itself further. In the letter, the Agency confirms it is covered by section 222, which created the Small Business and Agriculture *Regulatory Enforcement Ombudsman* and Small Business *Regulatory Fairness Boards*, (emphasis added.) The Ombudsman listed SBA as a covered agency in its reports covering 1997 and 1998, and Mr. Schattman's letter notes that SBA gladly accepts credit given it by the SBA-appointed Ombudsman. This appears to conflict with SBA's assertion that it does not regulate small businesses. In fact, in the Ombudsman's 1997 report, SBA is the subject of two complaints from small businesses that "involved enforcement or compliance activity undertaken by a federal regulatory agency with regard to a small business." When the SBA-appointed Ombudsman provided SBA with a copy of the draft report for review, SBA wrote back stating it had no comment on the report. In its letter regarding the next year's draft report, SBA alleged that it was not a regulatory agency; however, in that same letter, SBA says that it will give small businesses notice of their right to comment to the Ombudsman when "we engage in enforcement procedures." The letter also references SBA's "enforcement and compliance activities." Again, I fail to see how SBA can argue that it is covered under section 222 and not sections 213 and 223.

Mr. Schattman's letter failed to mention that numerous small businesses complained to the Ombudsman about SBA's enforcement actions. In fact, the Ombudsman's recent report states that SBA was mentioned in 18 written comments and by 16 people that testified before the Enforcement Ombudsman and Fairness Boards. While some of these complaints may not fall within the Ombudsman's authority, they would seem to imply that SBA's rules and regulations do indeed affect the operations of small businesses. As an example, one small business complained about SBA's denial of a guaranteed loan. In response, SBA informed the company why the "good cause" waiver of the 7(a) loan program's "prior loss rule" did not apply. SBA's own corrective action, informing the District Offices of the procedures to follow, further suggests that the requirements of section 213 and 223 are applicable to SBA.

In addition, Mr. Schattman wrote that "SBREFA only addresses enforcement proceedings. . . ." Quite to the contrary, the Act amended chapter 6 of title 5, U.S. Code (commonly known as the Regulatory Flexibility Act) to address explicitly rulemaking activities affecting small entities. In fact, SBA's Office of Advocacy, which is referenced in the letter, is actively involved in the Small Business Advocacy Review Panels created under the Act and is exercising its authority to file amicus briefs in cases initiated by small entities aggrieved by agency noncompliance with the requirements of the Regulatory Flexibility Act. While improving fairness toward small entities during agency enforcement actions is an important part of the Act, the law also addresses agency rule-

making and informal compliance assistance with statutes and agency regulations.

In conclusion, there is nothing in Mr. Schattman's letter that relieves SBA of its obligation to comply with sections 213 and 223. Moreover, there is nothing in the law that allows SBA to forego the requirement to report to Congress on its implementation of these sections. While SBA may not be a regulatory agency of the magnitude of the Environmental Protection Agency or the Occupational Safety and Health Administration, the scope of SBA's activities, its programs and rulemaking activities are consistent with the definition of a regulatory agency. The simple fact that SBA has the authority to issue regulations that affect small entities—positively or negatively—triggers the need to comply with the Act. Furthermore, the Act provides agencies with broad discretion to implement the general requirements of these sections in accordance with the agency's underlying statutes and programs.

It would be an oversight if I did not express my disappointment with SBA. Indeed, I would have expected SBA to lead the charge to comply with this law, which was enacted in great part to implement recommendations from the 1995 White House Conference on Small Business. However, it appears that rather than engaging its attorneys in an effort to comply with the law, SBA instead asked them to devise a rationale to justify noncompliance. This is unacceptable. Consequently, I request that SBA immediately implement programs to provide compliance assistance to small entities and to offer penalty reductions, or waivers, where appropriate, and keep this Committee apprised of your efforts. I look forward to receiving a response by 3:00, April 29, 1999, detailing the steps you will take to bring SBA into compliance with SBREFA.

Should you need additional information, please contact me or Suey Howe, the Committee's Regulatory Counsel, at 224-5175.

Sincerely,

CHRISTOPHER S. BOND,  
*Chairman.*

U.S. SENATE,  
COMMITTEE ON SMALL BUSINESS,  
Washington, DC, March 16, 1999.

Hon. AIDA ALVAREZ,  
*Administrator, U.S. Small Business Administration, Washington, DC.*

DEAR ADMINISTRATOR ALVAREZ: The Small Business Regulatory Enforcement Fairness Act of 1996 (Act) required federal agencies that regulate the activities of small business to implement programs to provide informal compliance assistance and penalty reductions/waivers to small entities, including small businesses, small governments and small not-for-profit organizations. All such federal agencies, including the Small Business Administration (SBA or Agency), were to report to Congress on implementation of these programs no later than March 29, 1998—nearly one year ago. To date, SBA has not submitted to this Committee the reports to Congress required under Sections 213 and 223 of the Act.

As Chairman of the Senate Committee on Small Business and as the principal author of the Small Business Regulatory Enforcement Fairness Act, I request a detailed explanation why SBA failed to fulfill its statutory obligation to report to Congress on SBA's implementation of the requirements under Sections 213 and 223. Furthermore, I request that SBA provide these reports to this Committee, as well as the other committees named in the statute to receive the reports, by March 31, 1999. Moreover, should SBA fail to meet a statutory deadline in the future, I expect the Agency to advise this

Committee of its failure in writing, describing why the deadline was missed and when the required activities will be completed. In closing, and perhaps most importantly, SBA's failure to comply with these reporting requirements raises questions regarding the Agency's commitment to fulfilling its responsibilities under the Act, which was enacted by Congress to ensure that federal agencies treat small businesses fairly in rulemaking and enforcement activities.

Should you need additional information, please contact me or Suey Howe, the Committee's Regulatory Counsel, at 224-5175.

Sincerely,

CHRISTOPHER S. BOND,  
*Chairman.*

U.S. SMALL BUSINESS ADMINISTRATION,  
OFFICE OF GENERAL COUNSEL,

Washington, DC, March 31, 1999.

Hon. CHRISTOPHER S. BOND,  
*Chairman, Committee on Small Business, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: I have been asked by Administrator Alvarez to respond to your letter of March 16, 1999, to provide you with my legal interpretation of the Small Business Regulatory Enforcement Act (SBREFA). The Small Business Administration (SBA) strongly supports SBREFA. As an Agency we are very sensitive to the problems that small businesses face in dealing with regulatory agencies that impose penalties for regulatory violations and force small businesses to comply with laws and regulations that require them to conduct their businesses in a certain way.

However, SBA is in a different category. All of our programs and activities are specifically designed to aid, counsel and protect small businesses. Unlike regulatory agencies that set policies with which small businesses must comply, SBA provides assistance and counseling. As you know, SBA reports annually, and in many cases more often, on its program activities and the assistance it provides. Therefore, SBA does not believe the SBREFA reports were required.

Rather than regulate small businesses, we provide small businesses access to capital indirectly by guaranteeing loans made by our lending resource partners. Through our Small Business Development Centers, we counsel and train small businesses to start or grow their businesses, often by providing them with information on SBA's programs. Also, SBA assists small businesses in obtaining government contracts through our procurement programs and through working with other Federal agencies to encourage them to contract with small businesses.

SBA is committed to ensuring that we meet both the spirit and dictates of SBREFA. We provide support to the National Ombudsman and the Regulatory Fairness Boards. As you know, the Office of the National Ombudsman is fully staffed and can draw on the resources of the Agency whenever necessary. After consulting with the National Ombudsman, we established a process to respond speedily and thoroughly to small business issues raised with the National Ombudsman.

In fact, we received special mention in the Ombudsman's Report filed with you on March 1, 1999, for our commitment to using high-level, independent staff to process SBREFA comments. Additionally, we are constantly developing new ways to reach as many small businesses as we can to tell them how to take advantage of our programs.

SBA is not a "regulatory" agency. It does not, except in very rare instances, impose penalties or conduct enforcement activities. In fact, there are only four instances in

which SBA can impose a monetary penalty. (The four instances are: SBA may impose a penalty on an SBIC for failure to cooperate in an examination or for providing books and records in poor condition; SBA may impose a penalty on an individual who wrongfully applies disaster loan proceeds; SBA may impose a penalty on an SBIC for every day that an SBIC fails to report pursuant to the Small Business Investment Act; SBA may impose penalties on a lender or a fiscal transfer agent in certain circumstances.) None of these four penalties are imposed against small businesses—two may be imposed on Small Business Investment Companies, one may be imposed on individuals receiving disaster loans, and one may be imposed on lenders or fiscal transfer agents. In no circumstance can SBA regulate, control or penalize a small business in the conduct of its enterprise.

However, SBA is covered by other sections of SBREFA and has been very responsive to the Regulatory Fairness Program (RegFair) developed by the National Ombudsman and Regional Fairness Boards. For example, we eagerly participate, as an Agency, not just through the Ombudsman's Office, in regional RegFair meetings.

While SBREFA only addresses enforcement proceedings, I would be remiss in not mentioning SBA's Office of Advocacy. The Office of Advocacy works with Federal agencies in developing regulations that address small business concerns. The Office of Advocacy helps ensure that agency policies are structured in such a way that agencies, using fair enforcement policies, can achieve their missions with the least possible burdens on small entities.

SBA strongly supports your efforts on behalf of small business and believes that, working together, we can provide a more positive atmosphere in which small businesses can flourish. I would be glad to meet with you or your staff to discuss this further.

Sincerely,

MICHAEL D. SCHATTMAN,  
*General Counsel.*

Mr. BOND. For the Reg Flex and Red Tape Reduction Act to deliver the benefits intended by Congress, the agencies must comply with the law. It is that simple. Too many agencies, too many officials, unfortunately, in this administration seem to have the attitude that they are Olympians on the hill who know what is best for the peasants in the valley, when it really is the other way around. We should be listening to what the people who create the jobs and the economic well-being in our country, the small business sector, are saying.

Perhaps these plungers will help unclog things. But if sunshine and friendly persuasion will not work and if a plumber's friend cannot get it unclogged, it may be time to put civil penalties and fines in place so the agencies know we are serious. The job we are telling them to do is simple: Help small business, don't hurt it. If they will not do it, if the plumber's best friend won't help them, then we will change the law again and impose some penalties.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. First of all, I have a couple of unanimous consent proposals.

#### AUTHORIZING THE USE OF THE EAST FRONT OF THE CAPITOL GROUNDS

Mr. THOMAS. Mr. President, I ask unanimous consent the Senate proceed to immediate consideration of H. Con. Res. 52, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 52), authorizing the use of the East Front of the Capitol Grounds for performances sponsored by the John F. Kennedy Center for the Performing Arts.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. THOMAS. I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the resolution appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 52) was agreed to.

#### PERMITTING THE USE OF THE ROTUNDA OF THE CAPITOL FOR A CEREMONY IN HONOR OF THE FIFTIETH ANNIVERSARY OF THE NORTH ATLANTIC TREATY ORGANIZATION

Mr. THOMAS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H. Con. Res. 81.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 81) permitting the use of the Rotunda of the Capitol for a ceremony in honor of the Fiftieth Anniversary of the North Atlantic Treaty Organization (NATO) and welcoming the three newest members of NATO, the Republic of Poland, the Republic of Hungary, and the Czech Republic, into NATO.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. THOMAS. I ask unanimous consent the resolution be agreed to and statements relating to the resolution appear in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 81) was agreed to.

Mr. THOMAS. Mr. President, I rise to introduce a bill called the No-Net-Loss of Private Lands Act. If I may have 10 minutes to do that, please.

THE PRESIDING OFFICER. The Senator from Wyoming is recognized.