

President Bush's Small Business Agenda Progress Report

Prepared by

House Small Business
Committee Democratic Staff

Nydia M. Velázquez, Ranking Democratic Member

July 23, 2003

MORE THAN ONE YEAR LATER: PRESIDENT BUSH'S SMALL BUSINESS AGENDA

The U.S. economy today is still struggling, with an anemic growth rate of about 1.5 percent over the past two quarters. Since President Bush took office, the economy has shed an average of almost 88,000 jobs per month, which is the worst rate for any administration since World War II. Thirty-seven states and 173 cities have lost jobs since the start of the Bush presidency, and some are calling this the worst fiscal crisis for states since the Great Depression.

The key to turning our economy around is the approximately 23 million small businesses in the U.S. – the economic driver of this nation. These businesses create three out of four new jobs, make up 99 percent of all employers, and generate over half of our private gross domestic product (GDP). They are also high-tech leaders, accounting for 55 percent of all innovations and developing more patents per sales dollar than large businesses.

It is women and minorities who make up the fastest growing small business sectors. In 2002, there were an estimated 6.2 million women-owned firms in the U.S., employing 9.2 million people and generating \$1.15 trillion in sales. Minority-owned firms are also on the rise – according to the latest census data, minorities own 14.6 percent of all U.S. businesses, or more than 3 million firms. These firms had more than \$591 billion in revenues, created more than 4.5 million jobs, and produced about \$96 billion in annual payroll.

Even though small businesses are the backbone of the American economy, they face a series of challenges that hinder their potential – and their ability to pull this country out of the current downturn. These obstacles fall within issue areas that include taxes, health care, federal regulations and government contracting.

Listed previously as the number one small business concern is tax relief. A recent report showed how the U.S. tax code directly and unfairly discriminates small firms – and their owners – compared with large firms. Small businesses could benefit from additional tax incentives, as well as finding simpler, less costly ways to comply with the tax code.

Most recently, health care edged out taxes as the most important issue for small business owners, who along with their employees and their families make up 60 percent of the uninsured in this country. Without access to quality, affordable health care, small business owners are losing their workforce to other companies that can offer better benefits.

Small businesses also encounter challenges when working with federal agencies. Small firms are the most burdened by federal rules and regulations, and find it difficult to sort through the complicated – and costly – issues of compliance. The federal compliance price tag for small firms is high. It has reached nearly \$7,000 per employee per year, which is 56 percent higher than large firms with 500 or more employees.

The \$235 billion federal marketplace – the largest in the world – also remains largely closed to small business in this country. In 2002, government federal procurement dollars rose 7 percent, yet small business opportunities declined by almost double that. Even though the government bought more last year, it still failed to meet a single one of its small business goals for the third straight year.

As a follow-up to his campaign promises to help small businesses and their plight in all these areas, on March 19, 2002, President Bush unveiled his small business agenda. Speaking before more than 1,000 businesswomen from all over the country, the president outlined his five-point small business plan, which encompassed vital small business issues like tax and regulatory relief, health care, and federal contracting.

The president's small business agenda vowed to:

- ❖ Provide new tax incentives so small businesses can make job-creating investments more easily;
- ❖ Give small business owners the ability to offer health care to the uninsured and also provide them with more health care options;
- ❖ Remove regulatory barriers and give small businesses a stronger voice in the federal rule-making process;
- ❖ Save taxpayer dollars by creating a fair and open federal contracting system;
- ❖ And provide small businesses with information they need for success and growth.

The following report by the Democratic Members of the House Committee on Small Business will take a detailed look at Bush's small business agenda. More than one year later, this report examines the Bush plan point by point and summarizes what has been accomplished for small business in each issue area.

The points outlined in the president's agenda are all of critical importance to small business – tax fairness, regulatory relief, access to federal contracting and the ability to afford health insurance. But to date, they require not only the attention of the White House but also swift action if our economy is to rebound in the coming months.

NEW TAX INCENTIVES FOR JOB-CREATING INVESTMENTS

President Bush promised small businesses new tax incentives for job-creating investments. The tax debate of 2003 revealed the administration's priority of favoring large corporations as the vehicle for economic recovery. When the Bush administration decided that some of these targeted provisions would have to come at the expense of the dividend tax cut, it backed down on its promise to provide permanent relief for this nation's small businesses.

While the administration has used small businesses as a reason to usher in tax cuts, the primary beneficiaries have generally been publicly-traded corporations and individuals in the higher marginal tax brackets. The administration tried to justify the lack of small business tax relief by arguing that a reduction in the top rates equates to a small business tax cut. However, only about one percent – or 180,000 – of small business owners benefit from the reduction in the top tax rate. The reality is that over half of small businesses would receive less than \$500 under the president's jobs and growth package.

❖ **Increase small business expensing.**

The single largest priority for the small business community has been increasing the amount they are eligible to expense for equipment they purchase, as opposed to depreciating these purchases over a number of years. This bipartisan proposal is targeted to small companies, allowing for reinvestment back into their businesses, which in turn, would stimulate the economy.

While the tax cut enacted into law in 2003 did provide some expensing relief, the provision was not made permanent. During the debate surrounding the most recent tax cut, small businesses were competing against a number of provisions aimed at benefiting large corporations. Small businesses had good reason to be weary. In negotiations to push through the administration's 2001 tax cut and 2002 economic stimulus package, the small business provisions were removed in the end.

Raising the expensing level from \$25,000 to \$75,000 and making it permanent would have cost \$16 billion, or just 2 percent of President Bush's proposed \$726 billion plan. However, when room had to be made for the dividend tax cut aimed at large corporations, the increased expensing provision was amended so that it would expire in 2005. Therefore, what was included in the final bill was a watered down small business expensing provision as the administration diverted these funds to finance the cornerstone of its plan – the corporate dividend tax cut.

❖ **Simplify taxes for small businesses.**

Despite obvious solutions and strong demand, the administration has failed to simplify the tax code for small businesses. Under the current system, small businesses are forced to spend billions of dollars a year to comply with the costly, complicated and time-consuming accrual method of accounting required by the Internal Revenue Service (IRS). Small business groups have clamored for such relief since the start of the recession and have even provided a clear framework showing how to provide it.

The president's small business agenda cited one success that still falls short. While the IRS did issue rules (IRS Notice 2001-76) allowing small business service providers with average gross receipts of \$10 million or less to use the cash method of accounting, many small businesses outside the service sector still must comply with the cumbersome accrual method rules. In addition, the Treasury Department has consistently been unable to identify ways to simplify taxes for small businesses, reflected in the agency's failure to finalize regulations on capitalization of intangible assets, as had been originally promised.

The inaction on simplifying the tax code cannot be blamed on the lack of input from small businesses. In 2001, the most comprehensive review of the complexity of the tax code was addressed in a report issued by National Small Business United (NSBU). The study revealed the inequities existing in the U.S. tax code that unfairly burden small businesses and outlined suggested reforms. Such reforms included simplifying the requirements for setting up retirement plans and ensuring small firms can provide quality health care to their employees in the same way that large corporations can.

The report also highlighted numerous examples where small businesses are unable to deduct expenses that large corporations can, simply because of structure. These inequities had less to do with the intent of legislators and more about the failure to recognize the needs of small businesses. Correcting these problems is not costly, but they have yet to take priority over corporate reforms.

❖ **Permanently repeal the death tax.**

One of the primary concerns for many small business owners who want to pass their businesses onto the next generation is the estate tax. The president included the repeal of the estate tax as part of his small business agenda, but there has been no conclusive action to date. Due to the budgetary restraints caused by the last three tax cuts and a mounting deficit, it has made it impossible to provide such relief to small businesses.

The administration has also failed to examine alternative approaches to the estate tax issue. There are two approaches to provide estate tax relief: Immediate repeal of the estate tax with extremely high revenue costs or gradual repeal of the estate tax while providing immediate relief to those hit the hardest – family-owned small businesses. In 2001, President Bush refused to compromise on the permanent repeal, leaving both small business owners and the very wealthy without any real benefit.

In 2003, while there was bipartisan support to increase the exemption level on the estate tax, the administration refused to push for a deal. Raising the exemption level so that fewer small business owners are subject to the estate tax is a common sense approach. However, rather than settling on an affordable resolution that gradually raises the exemption and maintains it, the administration refused to budge. A Republican bill passed out of the House last month, and the administration will only accept a proposal that provides immediate relief to the mega-estates. As a result, small business owners will continue to suffer, left with the uncertainty about whether they can afford to pass their businesses onto the next generation.

MORE POWER TO PROVIDE HEALTH CARE FOR UNINSURED EMPLOYEES, AND BETTER HEALTH CARE OPTIONS FOR EMPLOYEES WHO HAVE INSURANCE

Small businesses are facing a health care crisis in this country. Over the last three years, health care premiums for small employers have skyrocketed. According to the Kaiser Family Foundation, health insurance premiums for employers increased on average by 12.7 percent between 2001 and 2002. Premiums increased even faster for small businesses – among firms with fewer than 25 workers, premiums rose nearly 15 percent.

In order to remedy this crisis, the administration has proposed two reforms as part of its health care agenda for small businesses. President Bush has called for the implementation of Association Health Plans (AHPs) and the improvement of Medical Savings Accounts (MSAs). Despite the urgent need for access to affordable, quality health care – especially within the small business community – other legislative initiatives have taken precedent.

❖ Permit associations to provide health insurance.

Association Health Plans (AHPs) would help to rectify two of the main problems facing small businesses – cost and choice. AHPs would allow small businesses to band together as part of bonafide trade associations in an effort to collectively pool risk and manage a self-funded plan or purchase a fully-insured plan from an outside provider. Despite strong support from the small business community and Congress, AHP legislation has yet to be enacted into law.

While Republicans control Congress, which should allow them to deliver on the president's pledge, this legislation has only recently passed out of the House. The committee of jurisdiction in the Senate has not even held a hearing on the issue. Even though President Bush has continually expressed concerns about the problems confronting small businesses in the health care market, the administration has yet to make the AHP solution a primary part of its overall domestic agenda.

A reflection of the president's priorities can be seen in the fact that he has failed to mention AHPs during his visits around the country and in speeches. There was speculation that the administration would include it in each of the last two State of the Union addresses and both times the president failed to mention it. In fact, President Bush has only mentioned AHPs a handful of times since the start of his administration in 2001. When he unveiled his small business agenda and put AHPs at the top of his list, he then went an entire year before he publicly mentioned it again.

One likely reason for the failure by the administration to garner the support needed in Congress to pass AHPs into law is due to the adamant opposition being voiced by insurance companies that have traditionally monopolized the small group market. AHPs would mean that these insurers would now have to negotiate costs with small businesses rather than apply the "take it or leave it" attitude to them. Supporters of AHPs, including the administration, must forge ahead against this strong opposition by the insurance companies if small businesses are to see any relief ahead in health care costs for themselves, their employees and their families.

❖ **Dramatically improve Medical Savings Accounts.**

In addition to AHPs, President Bush has also included the expansion of Medical Savings Accounts (MSAs), which have shown little success to date in helping small businesses tackle the health care crisis. President Bush has called for increasing the availability of Medical Savings Accounts (MSAs), which have been in existence since 1996 when they were created as a pilot to explore interest in this concept.

While small businesses have been able to access the MSA demonstration project, their participation has been minimal. If MSAs were truly the answer, more small firms would be providing such coverage to their employees instead of struggling to offer traditional health insurance plans. The lack of interest from small businesses for this proposal is one of the reasons that the administration has been unsuccessful in moving it forward.

One factor in the decision of many small businesses to not back the expansion of MSAs is because such a move could create more problems than it solves. Any gains in coverage are likely to be outweighed by the adverse effects this proposal imposes on the traditional employer-based health insurance system.

In particular, analyses by a number of respected research institutions have found that widespread use of MSAs could adversely affect the employer-based health insurance market. It would do this by causing the cost of traditional, low-deductible insurance coverage that provides comprehensive benefits to spiral out of control.

Separating the sick from the healthy will lead to higher rates in the small employer health insurance market where employees in ill health will be forced to go. As a result, significant numbers of employers might no longer be able to afford traditional plans for their employees. The loss of such plans would place large numbers of older and sicker employees in jeopardy who particularly need such coverage.

While the House passed a modified version of MSAs in 2003, it still presents these same adverse selection issues. The legislation would make Medical Savings Accounts – renamed Health Savings Accounts (HSAs) – universally available, and increase the amounts that can be deposited annually into them. People with chronic health conditions are unlikely to enroll voluntarily in these plans – they are designed to appeal to healthy people who have high marginal tax rates. As with the MSAs, separating the sick from the healthy will lead to elevated rates in the small employer health insurance market where sick employees will have to turn for coverage.

Research by the RAND Corporation, the Urban Institute, and the American Academy of Actuaries has found that premiums for traditional insurance could more than double if MSA use becomes widespread. The proposed changes by the House's Republican leadership and the administration are more about increasing tax-deferred vehicles for the wealthiest Americans than solving the cost issue of health care for small businesses. Due to the failure to enact any health care reform, many small employers are either being forced to drop health insurance, pass the costs onto their employees, or absorb these costs which could be reinvested in their businesses. Without real reform, the situation will only get worse with estimates that 51 million Americans will be uninsured by 2009.

TEAR DOWN REGULATORY BARRIERS TO JOB CREATION AND GIVE SMALL BUSINESS OWNERS A VOICE IN THE COMPLEX AND CONFUSING FEDERAL REGULATORY PROCESS

Small businesses in America face many challenges to success – one is understanding and complying with the overwhelming array of federal regulations. Many times small business owners find themselves buried under a mountain of paperwork when they could be helping their customers, filling orders and expanding their enterprises.

Recently, it was noted that the Federal Register – the publication that lists all proposed and implemented regulations issued by agencies – increased to more than 75,606 pages in 2002, or about 1,000 pages above the record set during the final year Clinton was in office. The Cato Institute has documented that these regulations cost businesses and consumers about \$860 billion, which is 8 percent of this country's GDP.

The one-size-fits all approach taken by federal agencies impose the heaviest burden on small and medium-sized firms because they are unable to absorb the high overhead costs of paperwork, attorney fees and staff time. Congress acknowledged this problem more than two decades ago and put measures in place, including the Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement Act (SBREFA), and created entities like the SBA's Office of Advocacy to help protect small businesses and advocate for their interests in the federal regulatory process.

❖ Strengthen the SBA Office of Advocacy.

As part of his small business agenda, President Bush promised that he would strengthen the one federal entity that is exclusively charged with advocating on behalf of small businesses during rulemaking – the SBA Office of Advocacy.

Congress created the Office of Advocacy in 1976 to serve as the independent voice for small business within the U.S. government and to measure the impact of federal laws and regulations on small enterprise. However, the ability of the Chief Counsel of Advocacy to act as an independent watchdog for small business is hindered by its current structure.

In the past, Advocacy fell victim to undue influence from the SBA, the Office of Management and Budget (OMB), and other federal agencies with the desire – and power – to silence it. These offices have compromised Advocacy's independence and freedom to take positions that support small business, especially when they are contrary to the administration's policies or regulatory actions.

While an independent Office of Advocacy has broad bipartisan support, the administration has proposed nothing to reach this goal. Even though it is a priority for small businesses that continue to see rising costs associated with lawyers and accountants they hire to decipher federal rules and regulations, there has been no action. Despite the consensus about Advocacy's purpose and mission, the only movement to date has been H.R. 1772, the Small Business Improvement Act of 2003, which does little to guarantee true independence.

Although H.R. 1772 passed the House, it was not without controversy. Under this proposal, Advocacy will have a separate line item and submit its budget request to OMB and Congress concurrently. The problem with the legislation is that it will give OMB – the agency that has one of the greatest incentives to limit Advocacy’s effectiveness – even more authority to cut Advocacy’s funding. If this legislation became law, a scenario would develop where the Chief Counsel criticizes OMB and the administration’s policies, and then must go to the very entity it criticized for funding.

This legislation also fails to solve the problem of a meddling SBA Administrator. Advocacy will continue to remain in the SBA building and rely on the agency for office space, human resources, etc. where the Administrator could begin charging for such services. In addition, what would more than likely result – even if services were not charged for (which is highly unlikely) – is a system where the office space used and the staff support provided by SBA is, in the end, of poor quality.

This typifies an administration that is more interested in style than substance. Passing legislation for the mere sake of checking a list is not sound public policy. While the administration may claim the process of developing an independent Advocacy is moving forward, a closer look reveals that it is not.

Any legislative proposal must ensure that the Chief Counsel can carry out his/her duties without interference from the SBA Administrator or OMB. As the forces preventing Advocacy from becoming independent are strong, so must the measures designed to ensure its independence.

❖ **Increase coordination between OIRA and the SBA Office of Advocacy.**

Often times in the regulatory process, federal agencies fail to accurately project the true cost of their regulations on small business. While the Regulatory Flexibility Act (RFA) requires agencies to take these costs into account, many times this requirement is overlooked.

Two important entities that ensure regulations are proceeding in a fair and orderly manner are the Office of Information and Regulatory Affairs (OIRA) at OMB and the Office of Advocacy. While these two entities play an important role in the regulatory process, they each have a separate and distinct focus.

Advocacy is charged with guaranteeing small businesses are not adversely impacted by federal regulations. This agency is charged with making sure that in developing their rules, agencies take into account the true costs on small businesses associated with them while examining less burdensome options.

On the other hand, OIRA is not solely focused on mitigating the effects of agency regulations on small business, but instead takes a much broader view of federal rulemaking. This inevitably creates tension between the two as Advocacy can disagree with OIRA’s assessment and may even recommend a different course of action.

By reducing the friction between these offices to the extent that they can work together and employ strong communication networks only improves the likelihood that small business will be treated fairly. In an effort to accomplish this, a Memorandum of Understanding (MOU) was enacted between Advocacy and OIRA on March 19, 2002. This document was touted as a means of strengthening the working relationship of these two entities.

While the MOU was heralded as a groundbreaking move, in reality it does little more than encourage greater communication and a less inhibited flow of information between Advocacy and OIRA – something that should already be happening if the regulatory process was functioning properly.

The agreement essentially fails to provide Advocacy with any new powers in the federal regulatory process. While the MOU makes it appear that OIRA and Advocacy are now working more closely together to review agency regulations, in fact, there is very little in it to actually alter the current relationship. In fact, section VI.a.1, which deals with the responsibilities of Advocacy, states “barring OIRA review of rules, OIRA *may* consult with Advocacy on whether the agency should have prepared a Regulatory Flexibility (Reg Flex) analysis.”

This is a move OIRA can already make if it chooses to – nothing in the MOU would turn this from a choice into a requirement. Under the MOU, OIRA could still bypass Advocacy if the director felt that a specific regulation was potentially contentious or if significant disagreement could arise. The end result is that the views of Advocacy and the small businesses it protects will still be left out of significant regulation discussions and decisions which affect them.

Another major portion of the MOU being touted is the sharing of information between OIRA and Advocacy. Once again, this is something that should already be happening – nothing in the MOU guarantees that Advocacy will have any more of a right to receive such items as draft rules under Section VI.b. of the MOU, dealing with OIRA’s responsibility to “ensure adequate interagency coordination.” The MOU states OIRA *may*, as appropriate, provide Advocacy with draft proposals and accompanying regulatory analysis, but includes no language requiring this to happen.

Finally, the MOU neglects to address the major problem in the current regulatory process – agencies failure to undertake the proper economic analysis their rules have on small businesses. Even the president recognized this issue when he announced his small business agenda, expressing his concern that many agencies are not complying with the RFA and the need for them to do a better job.

If the MOU was to truly have any teeth, it should have allowed Advocacy, if it determined an agency had done an inadequate regulatory analysis of a proposed rule, to return it to the agency with instructions outlining how to comply with the RFA. By failing to seize this opportunity, the MOU lost an opportunity to improve the regulatory environment for this nation’s small businesses. But the MOU provided no such powers to Advocacy – if that had been done, it would have ensured that Advocacy’s Chief Counsel was able to play a significant role in the federal regulatory process.

The MOU also raises the possibility of one unintended consequence that could actually harm the small business voice in the regulatory process – compromising the independence of Advocacy. Currently one of the hallmarks of Advocacy is the fact that it operates outside of the traditional administration structure to voice the concerns driven by the small business community.

With the MOU, Advocacy is brought into the regulatory process possibly compromising its objectivity, but with no real power to balance this loss of independence. This may create a situation where Advocacy’s perspective shifts from the intended mission of protecting small businesses to one that is more sympathetic to agencies and their rulemaking process. Such a change would most certainly strip the small business feedback from the federal rulemaking process.

Now more than a year after this MOU, which was represented as laying the groundwork for greater coordination between Advocacy and OIRA, the scenario has changed very little. There are no demonstrated instances where regulations have been returned due to inadequate or improper RFA analysis even though Advocacy has identified ones from the Department of Housing and Urban Development (HUD), the Federal Communications Commission (FCC) and the Department of Transportation. After the issuance of the MOU, the regulatory environment for small businesses is still as burdensome and complicated as ever.

❖ **Allow small businesses to earn interest on their checking accounts.**

Small businesses face an array of barriers to accessing the capital they need for start-up, operation and expansion. One of these barriers, which could be easily solved by Congress, is a Depression-era law that prohibits interest bearing checking accounts.

The law, enacted as part of the Banking Act of 1933, was meant to keep banks solvent during the Great Depression. But almost 70 years later, the law is still in effect, despite evidence that it is no longer valid – or necessary. Even a 1996 joint report issued by the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision stated that the law prohibiting payment on business checking accounts “no longer serves a public purpose.”

This law creates a double standard – one for small business and another for large companies. Small businesses are banned from receiving interest on their business checking accounts when large corporations can exploit loopholes in the system, utilizing their vast resources, to avoid the ban. While small businesses are forced to struggle with this law and hope for a change, corporate America continues to reap the benefits.

The obvious solution to this problem is to repeal the law banning the earning of interest on checking accounts. In a 2001 survey conducted by the National Federation for Independent Business (NFIB), 86 percent of small business owners said they should be able to earn interest on their checking accounts.

When President Bush announced his small business agenda, one of the focal points was repealing the ban on interest bearing checking accounts. He stated that “for many small businesses, the interest income on checking account balances would defray other significant costs.” But to date, there has been no concrete action by the White House to turn this rhetoric into reality.

To right this small business wrong legislatively, H.R. 758 was introduced in the House to repeal this antiquated law. H.R. 758, the Business Checking Freedom Act of 2003, has the support of small business and banking associations, however, it has yet to be made into law by this Congress and the administration.

While it has been more than three months since the House passed H.R. 758, the legislation waits for the Republican leadership to give it the priority it deserves. There is a simple legislative solution to solve this problem, yet small businesses must remain at a competitive disadvantage with corporate America. Until this legislation moves, small businesses will just have to continue paying the price in increased expenditures and less capital for a law that no longer serves any valid purpose.

❖ **Seek comments from small businesses on ways to improve regulations.**

Small businesses understand that regulations are in place to guarantee a clean environment and a safe workplace. But many small business owners can find solutions to accomplish the goals of regulations in a manner that is less costly and burdensome. This is a win-win situation as small firms find a much more workable solution which, in turn, makes compliance higher.

While promising to make rulemaking more inclusive of small businesses, the president’s plan has failed to follow through on this commitment. Rather than charting a new course, the administration has decided to simply work within the confines of current programs, which has resulted in the exclusion of small businesses from the regulatory process.

When he unveiled his small business agenda, the president initially called on small business owners to send their problems to OMB. But since this request, there has been nothing from the administration or OMB to follow through and address small business concerns or to produce any report showing the results of the correspondence they received from the small business community. Congress recently directed the OMB to convene a task force to streamline requirements for small business, calling on each department and independent agency to establish by June 28, 2003, one point of contact for small enterprise. To date, these single points of contact have yet to be identified and listed.

The OMB has failed to implement any new programs and has thus been unable to raise the profile of these issues to gain the real insight of small business owners. OMB has failed to give small businesses the contact information they need to provide comments to federal agencies with regard to their regulations, or create a system in which they identify specific regulations that affect targeted economic sectors. This means small businesses will continue to be closed out of the regulatory process perpetuating a system that creates regulations that impose far too large a burden on this nation’s entrepreneurs.

❖ **Strengthen Enforcement of the Regulatory Flexibility Act.**

Since federal regulations disproportionately place economic hardship on small businesses, which takes them away from the work they do best – creating jobs and stimulating economic growth – Congress created the Regulatory Flexibility Act (RFA or RegFlex) in 1980.

The RFA requires agencies to consider ways to reduce regulatory burdens on small entities. This goal is accomplished by ensuring that federal agencies consider the potential economic impact their federal regulations have on small business. It also directed agencies to examine regulatory alternatives to minimize the impact on small businesses while still achieving their public policy goals.

Then in 1996, Congress amended the RFA with the Small Business Regulatory Enforcement Fairness Act (SBREFA). SBREFA allowed small businesses to seek judicial review if federal agencies failed to comply with the RFA.

In August of 2002, President Bush issued Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking. The E.O. calls on agencies to establish policies and procedures to promote compliance of the Reg Flex Act.

It also calls on Advocacy to take three specific actions – notify agency heads about the requirements of RFA, provide training to agencies about the act, and provide comment on draft rules an agency proposes to OIRA. In testifying recently before Congress, more than a year after the issuance of the Executive Order, the Office of Advocacy has still not implemented a formal training program for agencies on compliance with RFA.

Given the president's demand that federal agencies enforce the RFA, the Executive Order fails to have any real impact on federal rulemaking as it relates to small business. It is simply the restating of current law. The Executive Order requires federal agencies to prepare documentation about abiding by a statute with which they already comply. The procedures agencies adopt will be published but are not necessarily binding.

The Executive Order also calls on federal agencies to provide copies of significant rules to the Office of Advocacy, which they are currently required to do by the RFA. In addition, the agency – not Advocacy – determines if the rule is significant or not. In an agency's final rule, it will now have to respond to Advocacy's comments, when current law – specifically the Administrative Procedures Act – dictates that federal agencies respond to any relevant comments.

Laws like the Administrative Procedures Act and RFA already require agencies to take into account the impact their rules have on small enterprise in America. Since 1980, administrations have been active in issuing Executive Orders to reduce this problem. Every president since Ronald Reagan has issued orders to agencies to combat the increasing regulatory burden.

Yet the Executive Order fails to make significant change to the current system, accounting for the new record high in federal regulations under this administration. To reduce the burden on small businesses, the strengthening of the statute would be most effective. This could include bringing agencies like the IRS and CMS under the SBREFA panel process, just like EPA and OSHA. A move such as this one would most certainly create a more conducive rulemaking environment for small firms.

SAVE TAXPAYER DOLLARS BY ENSURING FULL AND OPEN COMPETITION TO GOVERNMENT CONTRACTS

Accounting for \$235 billion in 2002 alone, the federal contracting arena is one of the largest potential markets for small businesses. Given the vast array of products and services purchased by the United States government, federal procurement should provide limitless opportunities for our nation's small firms. And fair competition is the linchpin of small business participation and success in the federal market.

However, due to the failure of federal agencies to meet small business procurement goals, ineffective efforts to "streamline" the contracting process, and the consolidation of small contracts into mega procurement packages, known as contract bundling, opportunities for small companies in government contracting have substantially deteriorated over the years.

Despite a 7 percent increase in government contracting dollars, small businesses saw their share of federal contract dollars drop by 14 percent. From fiscal year 1991 to 2000, small business prime contracting declined from 26,500 to less than 11,700. According to a report prepared for the president by the Office of Management and Budget (OMB), "contract bundling" has attributed to a more than 50 percent decline in new prime contracts awarded to small businesses over this 9-year period.

For the past three years, the federal government has failed to achieve any of its small business goals. These mandated requirements are designed to ensure the contracting process at all federal agencies is open to small companies. Each year that the government does not meet these requirements, small businesses lose billions of dollars. In 2002, for example, small companies lost out on \$900 million in contracting opportunities, because the federal government failed to reach its small business goal.

Small disadvantaged businesses saw their goal achievement fall to 4.36 percent in 2002, costing them \$1.5 billion in lost federal contracting opportunities. Participants in the SBA's 8(a) program, which was designed to increase opportunities for minority businesses, lost an estimated \$44 million in contract opportunities from 2001 to 2002. The 8(a) goal achievement was down from a high of 3.84 percent in 1994 to just 2.39 percent last year.

Like minority-owned businesses, women-owned firms fared poorly as well. Despite a 5 percent goal, the women-owned business achievement was only 2.9 percent in 2002, costing these firms almost \$5 billion in lost contracting opportunities.

When the president unveiled his small business agenda, he stated, “wherever possible, we’re going to insist we break down large federal contracts so that small business owners have got a fair shot at federal contracting.” However, it appears there will be few possibilities for small businesses under the current administration’s watch.

❖ **Ensure that government contracts are open to all small businesses that can supply the government’s needs.**

Historically, small businesses have provided the federal government with the highest quality products and commitment to service. When given the opportunity, small businesses can compete in the federal market with large corporations at comparable costs. In fact, there is substantial concern that the government procurement arena is being systematically closed to small businesses simply because it is easier for federal agencies to consolidate contracts, regardless of additional costs to taxpayers.

Recognizing this discrepancy, the first initiative on the president’s agenda regarding government contracting was to ensure that small businesses have fair access to federal contracts. The president’s proposal was very clear: “Contracting should be accomplished through full and open competitive procedures.”

To address this agenda item, the president ordered the Director of OMB to determine whether agencies with substantial contracting dollars were using “full and open competition” in their procurement practices. In addition, small businesses were to be consulted on this issue, with an OMB report on the results ready in 180 days. More than 400 days later, no action has been taken on this initiative, making it yet another part of the president’s small business agenda that remains unfinished.

According to the National Association of Women Business Owners (NAWBO), one-third of businesses are women-owned, yet they represent less than 3 percent of all federal contracts. The government systematically fails to meet its 5 percent statutory women-owned small business goal, costing these firms billions each year.

Recognizing these facts and the need for the federal market to be as inclusive as possible to all small businesses – especially those already battling an uneven playing field – Congress enacted the Women’s Procurement Program in December of 2000. Through this program, women-owned businesses compete against each other for government contracts in areas where they have been historically under-represented.

The Women’s Procurement Program held great promise to help women business owners gain access to the federal market in these elusive industries. However, more than two and a half years after this provision became law, the administration has still not implemented this program.

President Bush has not only failed to increase small business access to federal contracts, but the administration has also actively solidified the continued exclusion of small companies in the procurement arena. Perhaps the most egregious example thus far of the administration's disregard for ensuring federal contracting opportunities for small businesses was during the establishment of the Department of Homeland Security (DHS).

The terrorist attacks of September 11 shook the foundation of our nation, and exposed domestic security weaknesses. Every sector of our society felt its impacts, depending now on the effectiveness of our national response. The newly established cabinet-level Department of Homeland Security requires unprecedented coordination between the federal government, the business community, and health, safety and law enforcement officials at the state and local levels.

If this agency is to be truly successful, it must tap the cutting-edge resources of small businesses, and capitalize on their flexibility. The innovative contributions provided by our nation's small businesses should be harnessed by federal agencies to protect our nation and its citizens, and fight terrorism at home and abroad.

The establishment of this new agency actually provided the rare opportunity to create a fair and open government contracting system from the ground up, rather than trying to wade through the bureaucracy of procurement requirements already in place at federal agencies. This was a chance to implement a national model for the federal market, and highlight the president's commitment to full small business competition. The administration, however, squandered this opportunity, and once again abandoned small businesses.

The administration's proposal for establishing DHS requested that the new agency – which will have a budget in excess of \$40 billion – be exempt from Federal Acquisition Regulations. These regulations require federal agencies to set and meet small business procurement goals, and establish plans for providing small businesses with subcontracting opportunities.

Many Members of Congress from both sides of the aisle balked at the exemption for DHS, and at the objection of the White House, restored many of the small business protections the president sought to eliminate. Ultimately, the final version of legislation establishing DHS did not include the exemption, however it significantly weakens Federal Acquisition Regulations requirements for the agency.

Consequently, the White House has ensured that small businesses will have fewer opportunities to compete with large corporations in meeting the needs of the DHS. And as a result, the agency will not have all possible resources readily available to meet our homeland security demands, including the products and services from technology and communications firms, security companies, and other small businesses.

❖ **Avoid unnecessary contract bundling.**

Federal agencies use bundling tactics to combine small federal contracts into large procurement packages. These bundled contracts often include a broad range of products and services, from janitorial maintenance to technology support to food services, and only large corporations are capable of meeting all the requirements. As a result, small businesses that can provide some of these services cannot compete for the bundled contract, even if they offer greater savings to the American taxpayer.

Contract bundling has shut small businesses out of the federal market for nearly 10 years, resulting in a decade of contracting windfalls for large corporations. Its damaging impact on small businesses is well documented, and has been a primary focus of the House Small Business Committee since federal agencies adopted the practice.

The president appeared to recognize this inequity, and included rectifying it as a top priority on his small business agenda. In response to the president's challenge, on October 31, 2002, OMB issued a report entitled, "Contract Bundling: A Report to the President on Increasing Federal Contracting Opportunities for Small Business." This report included an analysis of contract bundling's impact on small companies. OMB found that "significantly fewer small businesses are receiving federal government contracts." To counter the effects of contract bundling, OMB proposed 9 recommendations, not one of which has actually been put into place.

In this rule, OMB seeks to redefine contract bundling, establish thresholds for bundling reviews, and place new demands on Procurement Center Representatives (PCR). In fact, the proposed regulations are so weak and unworkable, it is unlikely that any small business will see increased federal contract opportunities when they are finalized.

The proposed rule establishes first-time dollar thresholds for evaluation of contract consolidations. Currently, federal agencies are required to justify all contracts they bundle, which offers some protections to small businesses in the federal market. The administration's proposal would eliminate this requirement for smaller contract bundles – and open the door to unabated bundling on contracts below these thresholds.

For example, under this rule the Department of Defense would be able to bundle all contracts under \$7 million. However, the majority of small businesses in the federal market compete for these more modest contracts. Therefore, this proposal fails to help small businesses and jeopardizes their access to current procurement opportunities.

Further jeopardizing the ability of small businesses to compete for federal job opportunities, is the White House proposal to redefine contract bundling. The interpretation of the definition of "contract bundling" has been a significant barrier to federal market access for small businesses.

Agencies have exploited loopholes to bypass the definition and refer to bundling by other terms. Using phrases like prime-vendor, virtual prime-vendor, and third party logistics to describe their contracts, agencies have successfully circumvented statute requirements designed to increase small business participation in the federal contracting arena.

The administration has recognized that the current “contract bundling” definition is flawed, yet the proposed rule makes only minor modifications to it. These cosmetic changes do not address the most glaring problems in the definition that hurt small businesses.

The proposed rule is also even more ambiguous than the existing definition. It is clear from reports prepared for the SBA’s Office of Advocacy that most contract bundling is accomplished through “accretive bundling, where diverse, but related, tasks are added to existing contracts.” The proposed rule is vague as to whether task or delivery orders added to existing contracts will be covered by the definition and reviewed, or whether only task or delivery orders over certain dollar thresholds will be examined.

Meanwhile, this rule does not extend to areas of consolidated federal contracts, such as numerous construction projects that have historically been excluded from the definition, despite the obvious procurement opportunities they would offer small businesses. Lastly, the proposed definition change does not address current contracts that small businesses could perform if provided full and open access.

Without addressing all aspects of the definition of “bundling” that has allowed agencies to short-circuit statutory requirements, this proposed change will be ineffective, and in many cases, make federal procurement even more difficult for small businesses.

Adding to the president’s record of failing to follow through on his anti-bundling agenda are the rule’s provisions on the Small Business Administration’s PCRs. PCRs are the first line of defense for small businesses interested in contracting with their government. But these proposed regulations can be characterized as giving additional duties to these individuals who have no real authority and insufficient resources to perform their current functions.

The PCRs will now be required to: 1) review contracts not set-aside for small businesses and identify alternate strategies to increase small business participation; 2) review acquisitions within 30 days of the agency issuing the solicitation; 3) work with agency small business specialists; 4) review agency acquisition strategies and analyses; 5) review agency oversight of its subcontracting programs; 6) review agency assessments of contract or compliance with subcontracting plans; and 7) revise agency acquisition strategies to increase small business teaming.

This is in addition to their other duties of: 1) working directly with small business to counsel them on the federal market; 2) identifying agency sources for small business products and services; 3) now conducting agency surveillance reviews; and 4) acting as part time Commercial Marketing Representatives.

There are currently less than 50 PCRs across the country – not even one per state. In addition, there are only 4 Commercial Marketing Representatives (CMRs), who are responsible for ensuring subcontracting opportunities for small businesses.

The president has provided no additional resources – either in the form of travel dollars or funding to hire additional staff – to handle these new responsibilities. In testimony before the House Small Business Committee, even the administration’s top procurement policy official acknowledged the lack of resources devoted to meeting the objectives of this plan. However, the White House has taken no action to rectify the situation.

Perhaps most importantly, the proposed regulations also violate the Regulatory Flexibility Act (RFA). The RFA requires agencies to identify alternatives that minimize the impact on small businesses. In the case of the proposed bundling regulation, no alternatives were identified – only one plan was proposed that will have a negative impact on small business access to the federal marketplace.

The president’s lack of commitment to avoiding contract bundling is also evident in his overlooking of consolidated contracts since announcing his small business agenda. Shortly after the president’s plan was unveiled, Democratic Committee Members issued a report citing ten examples of contracts that had been consolidated, resulting in lost job opportunities for small businesses. Democratic Members challenged the president to break up those contracts as proposed in his small business agenda. Not one of the contracts was opened up for small businesses to participate as prime contractors, despite the president’s promise to remedy the problem.

The administration’s rhetoric painted a picture of support for small businesses and their access to the federal market. However, the reality has been a series of failures, broken promises and a complete abandonment by the president to fulfill the contracting portion of his small business agenda.

❖ **Streamline the appeals process for small businesses that contract with the federal government.**

This proposal was designed to “streamline” the eight agency boards of contract appeals into one board. However, on this item, the administration simply got it wrong. The appeals process that is most in need of restructuring relates to contract bundling.

Currently, when an agency has a proposed bundled contract, the agency itself decides if the contract meets the definition of “bundled.” If the agency determines it does not, it may proceed with the contract. The SBA has no authority to step in. If the agency decides the proposed contract is a “bundle,” the SBA may appeal the contracting strategy back to the agency that made the decision to consolidate the contract in the first place. SBA has only prevailed in one case, yet there have been at least 5 Administrator-level appeals. If the agency decides the contract is not a bundle, SBA has little recourse.

In an attempt to correct this flawed process, the Committee on Small Business unanimously reported legislation that would have ensured that agencies were not the final decision maker on appeals of contract bundling actions. This legislation would have put this authority in the president’s direct chain of command using a neutral third party. The bill would also have allowed small businesses additional time in assembling teams to bid on bundled contracts.

Rather than supporting this important initiative, the administration blocked the bill from receiving floor consideration during Small Business Week in 2002. As shown in this and other instances, the administration's lack of commitment to small businesses certainly contributes to the overall decline in federal contracting opportunities for them.

PROVIDE SMALL BUSINESSES WITH THE INFORMATION THEY NEED TO SUCCEED

Each day, small business owners and their employees are confronted with a multitude of tasks and constant streams of information. Wading through all this information makes it difficult for them to focus on what is important – operating their businesses smoothly, retaining their workforce, and maintaining the profit margins necessary to stay afloat in a weak economy.

Yet understanding that quick, easy access to reliable information, especially from the federal government is key to helping small businesses thrive, President Bush put this as the last action item on his Small Business Agenda.

In this section of the president's agenda, only five Web sites were listed, which fell far short of a comprehensive list of federal information sources available to small businesses. Missing on the list were such sites as www.business.gov, sponsored by the Small Business Administration (SBA), www.regulations.gov, and many others that are available to serve as important information tools for small businesses.

In addition, the president's agenda only lists Web sites, even though there are many small businesses, especially in rural areas of this country, that are unable to access the Internet. In fact, statistics show that only about one-half of small businesses in the U.S. have access to broadband, or high speed Internet service. Along with the Web sites, phone numbers should have been included so that those small businesses without Internet access could tap into these services.

Out of the Web sites listed, the Business Compliance Self-Service One-Stop, promised to be ready in 2003, is still not up-and-running. The administration's cross-agency initiative to reduce the regulatory burden on small businesses has not been realized.

The new site was originally presented by the administration as complimentary to the businesslaw.gov site by providing compliance assistance. On the businesslaw.gov site there are a handful of links that were developed "as part of the Business Compliance One Stop Business Gateway," but no mention of the new site or when this project will be accomplished.

In fact this March, an OMB Associate Director testified before Congress that the Business Compliance One-Stop would be deployed over the next few months. Yet according to a recent article in Government Computer News, the Office of Management and Budget (OMB) is supposedly "refocusing" the SBA's Business Compliance One-Stop project.

The agency has already changed the initiative's name to the Gateway Project and is now working to "develop an e-forms system" to reduce the number of federal forms by a supposed 10 percent, shifting focus now to a particular type of burden. The administration claims it did this because it is easier to "measure return on investment." To date, there has been no indication of when or even if the new site – or the new e-forms system – will be available.

CONCLUSION

Small businesses are a powerful force in the American economy. It is Main Street – not Wall Street – that is responsible for giving the majority of individuals in this country their first paychecks. Small businesses are the main drivers of economic growth, expansion and stability in our local communities.

The small business agenda unveiled by the president in March 2002 would have gone a long way in not only assisting this nation's entrepreneurs but also to reviving our sagging economy. On his agenda, President Bush did underscore some of the most pressing issues for small businesses – tax and regulatory relief, access to health care, federal contracts and information to help navigate the U.S. government's policies that affect them most.

But failure to make any real gains on this agenda has contributed significantly to the continued economic slide witnessed by our nation. As of June, the unemployment rate jumped to 6.4 percent – the highest since April of 1994. The unemployment rate for minorities jumped to almost 12 percent for African Americans and 8.4 percent for Hispanics. The number of unemployed has risen to 9.4 million with the long-term unemployed rate more than tripling since President Bush took office.

The one sector of the economy that can lift this country out of the doldrums and create jobs for the millions of unemployed Americans is small business. But instead, when given the opportunity, this administration has not made assisting small businesses a priority.

Like many other sectors of our economy, small businesses have been suffering due to a variety of factors. They are battling rising health care costs, tax and regulatory environments that unfairly burden them, and little access to the multibillion dollar federal marketplace. Yet when each agenda item is closely examined, it is evident that this administration's claimed accomplishments are more cosmetic than substantive.

In the past, when the President and his party want to get something done and commits to the cause, history shows that it happens. During the mid-1990s when President Clinton was in office, the Republicans controlled Congress. During this time, the *Contract With America* was introduced by then-Speaker Gingrich. With determination, the Republicans brought all provisions of the contract to a floor vote in the House in the first 100 days of the new Congress, as promised.

Today, almost a year and a half since the president's announcement of his agenda and approximately 200 days since the Republicans took control of both Chambers of Congress, not a single point of the agenda has been accomplished. If there was real commitment to helping small businesses – and by extension – the American economy as a whole, the items on this agenda would have been implemented, especially given the fact that many of them have bipartisan support.

Only with such commitment from the White House and the Republican-controlled Congress, will the rhetoric finally match the action. Small business is big business in America. Until priority is placed on the small business agenda, positive change and improvements to the system will be slow to occur, undermining the ability of small enterprise to act as the catalyst for our economic recovery.