



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF GENERAL COUNSEL

March 31, 1999

Honorable Christopher S. Bond
Chairman
Committee on Small Business
United States Senate
Washington, DC 20510

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.¹ 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

1. 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.