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EXECUTIVE OFFICE OF THE PRESIDENT

14-Jun-1994 11:22am

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6/14  
10-PM*

TO: (See Below)

FROM: Margaret P. Smith  
Economic and Domestic Policy

SUBJECT: Reg. Flex. Act Meeting Change

The meeting today on the Regulatory Flexibility Act will be held in Bob Rubin's office (WW-2nd Floor). The time remains 4:00-4:30pm.

Distribution:

- TO: FAX (9205-6802, Frances Gray)
- TO: FAX (9456-6212, Jack Quinn)
- TO: Linda J. McLaughlin
- TO: Josephine D. Marino
- TO: Sally Katzen
- TO: Patricia E. Romani
- TO: Erin A. O'Connor
- TO: Carola McGiffert
- TO: Paul A. Deegan
- TO: Elisabeth L. Lindemuth
- CC: Peter M. Yu



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

CAROL PASCO

ADD'L BACKGROUND  
FOR MEMO: 4PM MTG

OFFICE OF THE ADMINISTRATOR

MEMORANDUM

TO: Bob Rubin  
Assistant to the President

THRU: Peter Yu  
Director, National Economic Council

FROM: Erskine Bowles  
Administrator 

DATE: June 13, 1994

SUBJECT: Regulatory Flexibility Act ("Reg Flex")

BACKGROUND

Reg Flex, which became law in 1981, directs agencies to analyze the impact of their proposed rules on small entities and to try to lessen the burden of regulation on such entities.

Under Reg Flex, an agency first considers whether its proposal will have a "significant impact on a substantial number of small entities". If an agency head certifies that there is no such impact, no further analysis is required. If an impact is acknowledged, the agency must conduct an initial (and then a final) regulatory flexibility analysis.

Currently, neither the certification of "no impact", nor the adequacy of the agencies' analysis to determine if there is a way to reduce the impact on small business, is subject to judicial review. Oversight responsibility rests with OMB (OIRA). If the agencies and OIRA do not enforce Reg Flex, small entities have no recourse except general litigation alleging that the rule is arbitrary.

The small business community believes the problem of burdensome regulation has worsened since 1981, and that Reg Flex has not been effective in easing that burden. Review by OIRA has not overcome the tendency of regulating agencies to pay lip service to Reg Flex and its objectives. Individual small business owners are increasingly resentful of government regulation. Their trade association representatives channel this resentment into support for a lobbying effort to put teeth in Reg Flex by making its enforcement subject to judicial review.

Legislative efforts to authorize judicial review are pending in the Senate (S.4) and House (H.R. 830, which has more than 250 co-sponsors). The small business trade groups are pushing hard to win passage. They believe they will succeed, and view Administration opposition as the only possible roadblock.

Memorandum to Bob Rubin  
June 13, 1994  
Page 2

As we are seeing in the White House Conference on Small Business process, the Reg Flex effort (i.e., the proposal to authorize judicial review) has become political shorthand for the effort to reduce the burdensome impact of regulation on small business. In the absence of legislation, this topic will take on increasing urgency as the White House Conference process continues.

#### ANALYSIS OF OPTIONS

If the Administration opposes judicial review altogether (Option 1), the President and Vice President may be perceived as indifferent to the plight of small business. After 13 years of ineffective oversight, OIRA lacks credibility as an enforcer of Reg Flex. Even if administrative enforcement improves as expected under the leadership of Sally Katzen, the small business community fears that future leadership at OIRA will not sustain the effort.

If the Administration supports Option 2, which authorizes judicial review only as to the adequacy of a Reg Flex analysis (but not of the agencies' prior certification that no Reg Flex analysis is required), the Administration will have accomplished little, if anything, in the eyes of the small business community and may even be thought of as trying to be devious. Under the way Option 2 is now presented, agencies would be able to circumvent the analysis requirement by simply certifying that their rules will not impact small entities significantly. Since these certifications would be subject to review only by OIRA (or in a lawsuit challenging the entire regulation as "arbitrary"), the small business community will see this as a loophole so large as to simply make the Administration's changes meaningless, i.e., all an agency need do is certify that a proposed regulation has no adverse effect on small business and therefore no analysis would need to be performed and therefore no meaningful Reg Flex enforcement occurs.

Support of the current House or Senate proposals is not the only alternative to these two Options. The improved language of Option 2 (restricting the statute of limitations, standing, available remedies, and the applicable standard of review) could be used in extending judicial review to agency certification of "no impact" (Option 3A). Agencies making reasonable assessments of impact would not be unduly burdened by litigation, but small businesses would feel empowered to challenge abuses.

This latter approach could be a big plus for the President. The small business community would credit the Administration with sensitivity towards its regulatory plight. With little or no risk to "good government", the Administration would be able to claim substantial credit for meaningful reform of Reg Flex.

THE WHITE HOUSE  
WASHINGTON

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SECOND FLOOR, WEST WING  
THE WHITE HOUSE  
WASHINGTON, DC 20500  
(202)456-2218 PHONE  
(202)456-2878 FAX

TO: PAUL WEINSTEIN  
FAX #: 6-7028  
FROM: CAROL H. BASCO  
DATE: July 20, 1994  
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(202)456-2216 PHONE  
(202)456-2878 FAX

TO: PAUL WEINSTEIN  
FAX #: 6-7028  
FROM: CAROL H. RASCO  
DATE: July 20, 1994  
NUMBER OF PAGES (including cover sheet): 5 pgs.  
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U.S. SMALL BUSINESS ADMINISTRATION

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SUBJECT: SECOND SMALL BUSINESS FORUM Total Pages + Cover = 4

TO: Carol H. Rasco White House (202) 456-2878
FROM: RON MATZNER SBA/OGC (202) 205-6846 (202) 205-6642

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

OFFICE OF THE ADMINISTRATOR

JUL 19 1994

Carol H. Rasco  
Assistant to the President for  
Domestic Policy  
White House, 2nd Floor, West Wing  
Washington, DC 20500

Dear Ms. *Carol* Rasco:

The U.S. Small Business Administration (SBA) and the Office of Information and Regulatory Affairs (OIRA) at OMB will co-sponsor the Second Small Business Forum on Regulatory Reform on July 27, 1994, from 1:30 to 3:30 p.m., in the 7th floor auditorium of the Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C.

As you are aware, the initial Forum held March 17, 1994 launched a serious initiative to identify, recommend and implement specific changes in the regulatory process as it relates to small business. After receiving input from the small business community in a series of public meetings, five interagency industry-specific working groups are preparing reports and recommendations to be presented at the second Forum. Senior representatives from the participating agencies (the Departments of Labor, Justice and Transportation; the Environmental Protection Agency, the Food and Drug Administration and the Internal Revenue Service) are expected to participate on a panel which we are co-chairing to receive and respond to the working group reports.

As an attendee at the first Forum, we know that you share the President's desire to ease unduly burdensome impacts of regulation and recordkeeping on small business. Your attendance at the second Forum to hear the reports of our working groups would underscore the significance of the undertaking and the importance being placed upon regulatory reform within the administration.



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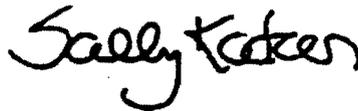
Please confirm that you will be able to attend the Forum on July 27, 1994. If you wish, you may have an additional staff member attend, but limited space requires that you limit the number of attendees to two. Please complete the enclosed response form and fax it back to SBA at (202) 205-6846 as soon as possible.

If you have any questions about the Forum, please do not hesitate to contact John Spotila at the SBA (202 205-6642) or Don Arbuckle at OIRA (202 395-7340). We look forward to seeing you on July 27th.

Sincerely,



Erskine B. Bowles  
Administrator  
U.S. Small Business Administration



Sally Katzen  
Administrator  
Office of Information and  
Regulatory Affairs

Enclosure



OFFICE OF GENERAL COUNSEL

## RESPONSE FORM

### *Second Small Business Forum on Regulatory Reform*

The Second Small Business Forum on Regulatory Reform will be held in the 7th floor auditorium of the Internal Revenue Service ("IRS"), 1111 Constitution Avenue, N.W., in Washington, D.C., from 1:30 p.m. to 3:30 p.m., on Wednesday, July 27, 1994.

A security clearance is required for admittance to the IRS. In this regard, please fill out all of the information requested on the form below, and fax it to us not later than 7:00 p.m. on Friday, July 22nd. On the day of the Forum, please enter the IRS at the Main Entrance on Constitution Avenue. You will need to present a picture ID at this time, so please bring one with you.

If there are any changes to your response form after July 22nd, please notify us of the appropriate information immediately. It may not be possible to accommodate changes received after Monday, July 25th.

Please return this response form as soon as possible to:

Ronald F. Matzner  
Associate Deputy General Counsel  
FAX: (202) 205-6846  
VOICE: (202) 205-6642

FULL NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ORGANIZATION: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

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