



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

September 6, 2024

Representative Roger Williams
Chairman, House Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515

Representative Nydia M. Velázquez
Ranking Member, House Committee on Small Business
2069 Rayburn House Office Building
Washington, DC 20515

CC: Members of the House Committee on Small Business

Dear Chairman Williams and Ranking Member Velázquez:

On Tuesday, September 10th, this Committee will be considering several legislative proposals that would amend the Regulatory Flexibility Act (RFA), which is the primary statute requiring agencies to assess the impacts of their regulations on small businesses specifically. While Public Citizen opposes each of the bills being considered, this letter does not focus on Public Citizen's concerns regarding those bills which are outlined in a separate letter submitted to the Committee from the Coalition for Sensible Safeguards which Public Citizen co-chairs. Instead, this letter is intended to provide the Committee with information that we believe will help the Committee assess the current Administration's compliance with the RFA as compared to prior Administrations. As the government data we cite below shows, the current Administration has complied with the RFA to a far greater degree than the previous Administration. Thus, any claims that the current Administration is not complying with the RFA is not supported, and in fact contradicted, by the government data we are sharing with the Committee.

One of the most telling indications whether an Administration is in compliance with the RFA comes from the number of so-called "SBREFA" panels that an Administration has conducted as compared to previous Administrations. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), three agencies, the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Consumer Financial Protection Bureau (CFPB) are required to conduct small business review panels prior to proposing regulations that will have a "significant impact on a substantial number of small entities." The Small Business Administration's Office of Advocacy (SBA Advocacy) plays a central role in identifying small businesses to serve on the panel and collect their feedback. SBREFA amended the RFA to require these panels in order to provide small businesses an opportunity to express

concerns to these three agencies when one of their regulations significantly impacts small businesses. To be clear, these three agencies have put in place regulations that have been among the most beneficial in protecting the public.

Our analysis of the number SBREFA panels that occurred from the Obama Administration through the current Administration reveals a clear pattern of robust compliance with the RFA under the Obama and Biden Administrations with the opposite being the case under the Trump Administration. According to data from SBA Advocacy's website,¹ there were a total of 31 SBREFA panels completed under the Obama Administration. By contrast, there were a total of only 3 SBREFA panels completed under the entire Trump Administration. Under the current Administration, there have already been 22 SBREFA panels completed. Thus, the three agencies subject to SBREFA completed a total of 53 panels during the Obama and Biden Administrations, but only 3 panels during the Trump Administration.

Such a significant disparity in the number of SBREFA panels under the current and previous two Administrations should be concerning to the Committee as it gives the strong appearance that the SBREFA panel process is hardly neutral but rather is one-sided in practice by only seeking feedback from small businesses when the three agencies subject to SBREFA promulgate new regulatory protections but not when those regulatory protections are rolled back. The Committee should ensure that when small businesses face a less stable regulatory environment and more regulatory uncertainty due to regulatory rollbacks, the SBREFA panel process is reflecting those concerns as intended.

Additionally, Public Citizen urges this Committee to conduct robust oversight of SBA Advocacy due to longstanding concerns that Advocacy has ignored certain small business viewpoints, namely those that support federal regulations, while favoring other small business viewpoints, namely those that oppose federal regulations, in an unbalanced and asymmetric fashion.² While claiming to be "independent," there is considerable evidence that Advocacy is in reality acting in a partisan and ideological manner by consistently scrutinizing and expressing concerns about new federal regulations that protect the public while doing the opposite when those regulations are rolled back. Certainly, the data regarding the number of SBREFA panels across recent Administrations strongly supports the need for oversight from the Committee.

We hope the Committee will find this information helpful as it is assessing claims regarding the current Administration's compliance with the RFA and considering legislative proposals to amend the RFA that may be predicated on the false belief that the current Administration is failing to comply with the RFA. Public Citizen stands ready to assist the Committee in any potential oversight of agency compliance with the RFA and whether SBA Advocacy is properly carrying out its responsibilities under the RFA in a neutral and unbiased fashion.

Sincerely,
Lisa Gilbert
Co-President, Public Citizen

¹ See <https://advocacy.sba.gov/resources/reference-library/sbrefa/>.

² See e.g. <http://www.gao.gov/assets/670/665104.pdf>.