

NATIONAL SMALL BUSINESS REGULATORY ASSISTANCE
ACT OF 2001

SEPTEMBER 21, 2001.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. MANZULLO, from the Committee on Small Business,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 203]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 203) to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a pilot program to provide regulatory compliance assistance to small business concerns, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Small Business Regulatory Assistance Act of 2001”.

SEC. 2. PURPOSE.

The purpose of this Act is to establish a pilot program to—

- (1) provide confidential assistance to small business concerns;
- (2) provide small business concerns with the information necessary to improve their rate of compliance with Federal and State regulations;
- (3) create a partnership among Federal agencies to increase outreach efforts to small business concerns with respect to regulatory compliance;
- (4) provide a mechanism for unbiased feedback to Federal agencies on the regulatory environment for small business concerns; and
- (5) utilize the service delivery network of Small Business Development Centers to improve access of small business concerns to programs to assist them with regulatory compliance.

SEC. 3. DEFINITIONS.

In this Act, the definitions set forth in section 36(a) of the Small Business Act (as added by section 4 of this Act) shall apply.

SEC. 4. SMALL BUSINESS REGULATORY ASSISTANCE PILOT PROGRAM.

The Small Business Act (15 U.S.C. 637 et seq.) is amended—

- (1) by redesignating section 36 as section 37; and
- (2) by inserting after section 35 the following new section:

“SEC. 36. SMALL BUSINESS REGULATORY ASSISTANCE PILOT PROGRAM.

“(a) DEFINITIONS.—In this section, the following definitions apply:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Small Business Administration, acting through the Associate Administrator for Small Business Development Centers.

“(2) ASSOCIATION.—The term ‘Association’ means the association, established pursuant to section 21(a)(3)(A), representing a majority of Small Business Development Centers.

“(3) PARTICIPATING SMALL BUSINESS DEVELOPMENT CENTER.—The term ‘participating Small Business Development Center’ means a Small Business Development Center participating in the pilot program.

“(4) PILOT PROGRAM.—The term ‘pilot program’ means the pilot program established under this section.

“(5) REGULATORY COMPLIANCE ASSISTANCE.—The term ‘regulatory compliance assistance’ means assistance provided by a Small Business Development Center to a small business concern to enable the concern to comply with Federal regulatory requirements.

“(6) SMALL BUSINESS DEVELOPMENT CENTER.—The term ‘Small Business Development Center’ means a Small Business Development Center described in section 21.

“(7) STATE.—The term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

“(b) AUTHORITY.—In accordance with this section, the Administrator shall establish a pilot program to provide regulatory compliance assistance to small business concerns through participating Small Business Development Centers, the Association, and Federal compliance partnership programs.

“(c) SMALL BUSINESS DEVELOPMENT CENTERS.—

“(1) IN GENERAL.—In carrying out the pilot program, the Administrator shall enter into arrangements with participating Small Business Development Centers under which such centers will provide—

“(A) access to information and resources, including current Federal and State nonpunitive compliance and technical assistance programs similar to those established under section 507 of the Clean Air Act Amendments of 1990;

“(B) training and educational activities;

“(C) confidential, free-of-charge, one-on-one, in-depth counseling to the owners and operators of small business concerns regarding compliance with Federal and State regulations, provided that such counseling is not considered to be the practice of law in a State in which a Small Business Development Center is located or in which such counseling is conducted;

“(D) technical assistance; and

“(E) referrals to experts and other providers of compliance assistance who meet such standards for educational, technical, and professional competency as are established by the Administrator.

“(2) REPORTS.—

“(A) IN GENERAL.—Each participating Small Business Development Center shall transmit to the Administrator a quarterly report that includes—

“(i) a summary of the regulatory compliance assistance provided by the center under the pilot program; and

“(ii) any data and information obtained by the center from a Federal agency regarding regulatory compliance that the agency intends to be disseminated to small business concerns.

“(B) ELECTRONIC FORM.—Each report referred to in subparagraph (A) shall be transmitted in electronic form.

“(C) INTERIM REPORTS.—During any time period falling between the transmittal of quarterly reports, a participating Small Business Development Center may transmit to the Administrator any interim report containing data or information considered by the center to be necessary or useful.

“(D) LIMITATION ON DISCLOSURE REQUIREMENTS.—The Administrator may not require a Small Business Development Center to disclose the name or

address of any small business concern that received or is receiving assistance under the pilot program, except that the Administrator shall require such a disclosure if ordered to do so by a court in any civil or criminal enforcement action commenced by a Federal or State agency.

“(d) DATA REPOSITORY AND CLEARINGHOUSE.—

“(1) IN GENERAL.—In carrying out the pilot program, the Administrator shall—

“(A) act as the repository of and clearinghouse for data and information submitted by Small Business Development Centers; and

“(B) transmit to the President and to the Committees on Small Business of the Senate and House of Representatives an annual report that includes—

“(i) a description of the types of assistance provided by participating Small Business Development Centers under the pilot program;

“(ii) data regarding the number of small business concerns that contacted participating Small Business Development Centers regarding assistance under the pilot program;

“(iii) data regarding the number of small business concerns assisted by participating Small Business Development Centers under the pilot program;

“(iv) data and information regarding outreach activities conducted by participating Small Business Development Centers under the pilot program, including any activities conducted in partnership with Federal agencies;

“(v) data and information regarding each case known to the Administrator in which one or more Small Business Development Centers offered conflicting advice or information regarding compliance with a Federal or State regulation to one or more small business concerns;

“(vi) any recommendations for improvements in the regulation of small business concerns; and

“(vii) a list of regulations identified by the Administrator, after consultation with the Small Business and Agriculture Regulatory Enforcement Ombudsman, as being most burdensome to small business concerns, and recommendations to reduce or eliminate the burdens of such regulations.

“(e) ELIGIBILITY.—

“(1) IN GENERAL.—A Small Business Development Center shall be eligible to receive assistance under the pilot program only if the center is certified under section 21(k)(2).

“(2) WAIVER.—With respect to a Small Business Development Center seeking assistance under the pilot program, the Administrator may waive the certification requirement set forth in paragraph (1) if the Administrator determines that the center is making a good faith effort to obtain such certification.

“(3) EFFECTIVE DATE.—This subsection shall take effect on October 1, 2001.

“(f) SELECTION OF PARTICIPATING STATE PROGRAMS.—

“(1) IN GENERAL.—In consultation with the Association and giving substantial weight to the Association’s recommendations, the Administrator shall select the Small Business Development Center programs of 2 States from each of the following groups of States to participate in the pilot program established by this section:

“(A) Group 1: Maine, Massachusetts, New Hampshire, Connecticut, Vermont, and Rhode Island.

“(B) Group 2: New York, New Jersey, Puerto Rico, and the Virgin Islands.

“(C) Group 3: Pennsylvania, Maryland, West Virginia, Virginia, the District of Columbia, and Delaware.

“(D) Group 4: Georgia, Alabama, North Carolina, South Carolina, Mississippi, Florida, Kentucky, and Tennessee.

“(E) Group 5: Illinois, Ohio, Michigan, Indiana, Wisconsin, and Minnesota.

“(F) Group 6: Texas, New Mexico, Arkansas, Oklahoma, and Louisiana.

“(G) Group 7: Missouri, Iowa, Nebraska, and Kansas.

“(H) Group 8: Colorado, Wyoming, North Dakota, South Dakota, Montana, and Utah.

“(I) Group 9: California, Guam, Hawaii, Nevada, and Arizona.

“(J) Group 10: Washington, Alaska, Idaho, and Oregon.

“(2) DEADLINE FOR SELECTION.—The Administrator shall make selections under this subsection not later than 60 days after promulgation of regulations under section 5 of the National Small Business Regulatory Assistance Act of 2001.

“(g) MATCHING NOT REQUIRED.—Subparagraphs (A) and (B) of section 21(a)(4) shall not apply to assistance made available under the pilot program.

“(h) DISTRIBUTION OF GRANTS.—

“(1) IN GENERAL.—Each State program selected to receive a grant under subsection (f) in a fiscal year shall be eligible to receive a grant in an amount not to exceed the product obtained by multiplying—

“(A) the amount made available for grants under this section for the fiscal year; and

“(B) the ratio that—

“(i) the population of the State; bears to

“(ii) the population of all the States with programs selected to receive grants under subsection (f) for the fiscal year.

“(2) MINIMUM AMOUNT.—Notwithstanding paragraph (1), the minimum amount that a State program selected to receive a grant under subsection (f) shall be eligible to receive under this section in the fiscal year shall be \$200,000.

“(i) EVALUATION AND REPORT.—Not later than 3 years after the establishment of the pilot program, the Comptroller General of the United States shall conduct an evaluation of the pilot program and shall transmit to the Administrator and to the Committees on Small Business of the Senate and House of Representatives a report containing the results of the evaluation along with any recommendations as to whether the pilot program, with or without modification, should be extended to include the participation of all Small Business Development Centers.

“(j) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to carry out this section \$5,000,000 for fiscal year 2002 and each fiscal year thereafter.

“(2) LIMITATION ON USE OF OTHER FUNDS.—The Administrator may carry out the pilot program only with amounts appropriated in advance specifically to carry out this section.”.

SEC. 5. PROMULGATION OF REGULATIONS.

After providing notice and an opportunity for comment and after consulting with the Association (but not later than 180 days after the date of the enactment of this Act), the Administrator shall promulgate final regulations to carry out this Act, including regulations that establish—

(1) priorities for the types of assistance to be provided under the pilot program;

(2) standards relating to educational, technical, and support services to be provided by participating Small Business Development Centers;

(3) standards relating to any national service delivery and support function to be provided by the Association under the pilot program;

(4) standards relating to any work plan that the Administrator may require a participating Small Business Development Center to develop; and

(5) standards relating to the educational, technical, and professional competency of any expert or other assistance provider to whom a small business concern may be referred for compliance assistance under the pilot program.

SEC. 6. PRIVACY REQUIREMENTS APPLICABLE TO SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c) of the Small Business Act (15 U.S.C. 648(c)) is amended by adding at the end the following:

“(9) PRIVACY REQUIREMENTS.—

“(A) IN GENERAL.—No Small Business Development Center, consortium of Small Business Development Centers, or contractor or agent of a Small Business Development Center shall disclose the name or address of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, except that—

“(i) the Administrator shall require such disclosure if ordered to do so by a court in any civil or criminal enforcement action commenced by a Federal or State agency; and

“(ii) if the Administrator considers it necessary while undertaking a financial audit of a Small Business Development Center, the Administrator shall require such disclosure for the sole purpose of undertaking such audit.

“(B) REGULATIONS.—The Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under subparagraph (A)(ii).”.

PURPOSE

The purpose of H.R. 203, the “National Small Business Regulatory Assistance Act of 2001,” is to utilize existing Small Business Administration infrastructure to provide regulatory compliance assistance to small businesses. The United States Small Business Administration oversees the operations of Small Business Development Centers. Located in every state, these centers are associated with colleges and universities and provide operational assistance to small business owners. They are authorized to provide regulatory compliance assistance but they do not have an organized program for providing such assistance. H.R. 203 would establish a pilot project for selected small business development center state programs to develop regulatory compliance assistance programs.

The bill mandates that the Administrator of the United States Small Business Administration establish a pilot project in which twenty small business development center state programs will be selected to test whether the centers within those state programs would be an appropriate vehicle for providing regulatory compliance assistance to small business owners. It is the expectation of the Committee that the program should be expanded to include all small business development centers should the pilot program prove successful.

NEED FOR LEGISLATION

During the past twenty years, the Federal Register—the compendium of federal regulatory initiatives and changes—almost doubled in size from 42,000 pages to a record 83,289 pages in 2000. This crush of federal dictates is particularly troubling to small businesses who find it increasingly difficult to meet these burgeoning regulatory requirements while at the same time trying to successfully operate their businesses in an expanding competitive global environment. Often, small business owners do not learn about their failure to comply with a regulation or that a new regulatory requirement has been imposed until an inspector or auditor walks through the door.

The result is neither beneficial to the small business owner nor the federal government. Federal regulations exist to achieve some statutory objective; noncompliance hinders the reaching of these statutory goals. Small business owners certainly would be more interested in complying with federal regulations than paying penalties and fines. However, the amount of information, including regulations and concomitant guidance, simply overwhelms small business owners.

In 1966, Congress took action in an effort to alleviate this problem. The Small Business Regulatory Enforcement Fairness Act provided that federal agencies are required to produce plain-English compliance guides for any regulation that would have a significant economic impact on a substantial number of small businesses. Of course, if small business owners do not know about the regulatory changes, the existence of such compliance guides does little to assist them. Some mechanism must exist to make small businesses more aware of their regulatory obligations.

Even more important than making small businesses aware of the regulations is providing them with assistance needed to understand

and comply with the regulations. A regulation may only take up ten or eleven pages of text, but the explanation for what those ten or eleven pages mean may encompass as much as three hundred pages of dense, triple-columned, single-spaced pages in the Federal Register. Most small business owners do not have the time to go through this dense prolixity. And even if they did, they would not understand it unless they were knowledgeable in the field. The Committee believes that greater assistance must be provided to small business owners in helping them comply with complex regulatory issuances. Otherwise, a divide could develop between those businesses, usually large, with the resources to comply and those, usually small, without such resources. The small business will be at risk for penalties, fines, and audits while large businesses will not. A regulatory compliance assistance program operated through the small business development centers could provide substantial assistance in ensuring such a divide does not occur.

The Small Business Administration oversees a number of mechanisms for delivering advice to small business owners. One of the most effective is the Small Business Development Center program. Operated in conjunction with colleges and universities, the small business development centers assist small businesses in solving problems concerning the operations, manufacturing, engineering, technology, exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, and business strategy development. The small business development centers utilize the resources and the expertise of colleges and universities. In addition, the small business development centers, like the Agricultural Extension Service, also provide a focal point for information retrieval, coordination of federal and state government services, and referral to experts. Historically, the small business development centers have focused on financial, management, and marketing activities of small businesses despite the requirement that they also provide regulatory compliance assistance. See §21(c)(3)(H) of the Small Business Act (codified at 15 U.S.C. §648(c)(3)(H)).

The Committee believes that small business development centers can provide an effective mechanism for dispensing regulatory compliance information and advice. However, regulatory compliance, unlike many of the other activities undertaken by the small business development centers, has significant legal consequences. Therefore, the Committee believes that a pilot program to examine how the regulatory compliance assistance will operate in selected small business development centers is a preferred strategy to simply providing an authorization of additional funding so that the small business development centers can provide regulatory compliance assistance.

COMMITTEE ACTION

The Committee on Small Business held a field hearing to consider predecessor versions of H.R. 203. The hearing was held on September 2, 1999 at the Columbia Greene Community College in Hudson, NY. During that hearing, small businesses testified concerning the complexity of federal regulations, their desire for better understanding of federal regulatory requirements, and the need for easy access to compliance assistance. The Committee's Sub-

committee on Workforce, Empowerment, and Government Programs held a hearing on H.R. 203 on July 19, 2001. At the hearing, witnesses, the sponsor of the bill, Mr. Sweeney (R-NY), noted that he continues to hear from small business constituents that they still are being overwhelmed with regulation and need compliance assistance. The Association of Small Business Development Centers also voiced support for the bill. Finally, the American Industrial Hygiene Association also endorsed the bill but suggested that amendments should be made to ensure that regulatory compliance assistance is provided by properly credentialed individuals.

CONSIDERATION OF H.R. 203

At 10:00 a.m. on August 1, 2001, the Committee on Small Business met to consider and report H.R. 203. Following a brief opening statement by the Chairman, he declared the bill open for amendment.

Ms. Valázquez (D-NY), the Ranking Democratic Member, introduced an amendment which was accepted by unanimous voice vote, a quorum being present. Mr. Pence (R-IN) then introduced an amendment which was accepted by unanimous voice vote, a quorum being present. Chairman Manzullo then moved the bill be reported, and at 10:30 a.m. by unanimous voice vote, a quorum being present, the Committee passed H.R. 203, as amended and ordered it reported.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designates the bill as the “National Small Business Regulatory Assistance Act of 2001.”

Section 2. Purpose

This section expresses the purpose of the legislation—to establish a pilot project within certain Small Business Development Centers to provide and coordinate regulatory compliance assistance to small businesses.

Section 3. Definitions

The definitions of the Small Business Act shall apply to this pilot program unless a different definition is utilized in the new § 36 created by this Act. In those cases in which the definition is different, the definitions in new § 36 shall apply to the pilot program created by this Act.

Section 4. Small Business Regulatory Assistance Pilot Program

This section establishes the pilot program by creating a new Section 36 of the Small Business Act.

Section 36(a)(1) defines the term “Administrator” as the Administrator of the Small Business Administration.

Section 36(a)(2) defines the term “Association” to be the association established pursuant to Section 21 of the Small Business Act which represents the majority of small business development centers. That organization is the Association of Small Business Development Centers.

Section 36(a)(3) defines the term “Participating Small Business Development Center” as a small business development center selected to participate in the pilot program established under this section.

Section 36(a)(4) defines the term “Pilot Program” as the three-year program established under this section.

Section 36(a)(5) defines the term “Regulatory Compliance Assistance” as assistance provided by a participating small business development center to a small business concerning compliance with federal regulations.

Section 36(a)(6) defines the term “Small Business Development Center” means a small business development center described in section 21 of the Small Business Act.

Section 36(a)(7) defines the term “State” to include all fifty states and the District of Columbia, the Virgin Islands, and Guam.

Section 36(b) authorizes the Administrator of the Small Business Administration to establish a pilot program for selected small business development centers to provide small businesses with regulatory compliance assistance.

Section 36(c)(1) authorizes the Administrator to enter into arrangements with the small business development centers selected under this section for the provision of regulatory compliance assistance.

The participating small business development centers are required to provide access to information and resources on regulatory compliance, including contact information for federal and state compliance and technical assistance similar to those established under section 507 of the Clean Air Act Amendments of 1990. Numerous other federal and state agencies have non-punitive compliance assistance programs (such as the federal Occupational Safety and Health Administration) and the Committee expects that the participating small business development centers will maintain all necessary contact information with those federal and state agencies. Furthermore, the Committee expects that the quality of coordination of these assistance resources will be a significant factor in selecting the small business development centers for the pilot project.

Section 36(c)(1) also requires that the selected small business development centers establish various training and educational activities. The Committee expects that selected centers will utilize their contacts with federal and state agencies to obtain compliance pamphlets, videos, books, and any compliance guides issued pursuant to the Small Business Regulatory Enforcement Fairness Act. In addition, the Committee expects that participating centers will hold lectures and seminars on regulatory compliance including updates on compliance based on regulatory changes. The Committee expects that the Administrator will consider the quality of proposed educational programs in determining which centers are selected to participate in the pilot program.

Section 36(c)(1)(C) also mandates that the selected small business development centers provide confidential counseling on a one-on-one basis at no charge to small businesses seeking regulatory compliance assistance. The Committee recognizes that compliance with regulations inculcates legal rights and responsibilities of small business owners. Therefore, section 36(c) prohibits any regulatory

compliance counseling that would be considered the practice of law in the jurisdiction in which the small business development center is located or in which such counseling is conducted. Furthermore, the Committee supports efforts in which the participating development centers establish contacts with lawyers in the community willing to provide seminars and other consultative service on regulatory compliance matters.

Section 36(c)(1) also requires the provision of technical assistance. Such counseling may include the arrangement of meetings with technical experts known to the participating small business development centers as long as such counseling again is done on a one-on-one basis at no charge to the small business.

Section 36(c)(1)(E) makes explicit the Committee's concern that small businesses are directed to those individuals who have appropriate credentials and certifications to provide regulatory compliance assistance. While the Committee fully understands that many very successful businesses, including Microsoft, Apple, and Dell Computer, started in garages and those businessmen are quite capable of providing advice on starting, financing, and marketing a business, they are not necessarily qualified to provide guidance on compliance with OSHA, EPA, or IRS regulations. In fact, due to the potential legal consequences resulting from a small business owner following incorrect guidance, the Committee determined that it is necessary to make explicit the requirement that the participating centers only refer businesses to individuals with appropriate expertise in the regulatory compliance matter for which advice is sought.

Section 36(c)(2) requires each participating center to file a quarterly report with the Administrator. The report shall provide a summary of the compliance assistance provided under the pilot program. The report also must contain any data and information obtained by the participating small business development center from a federal agency concerning compliance which the federal agency intends to be disseminated to small business concerns. The Committee believes that this latter requirement will enable the Administrator or the Chief Counsel for Advocacy to raise issues of agency inconsistencies, to the extent that they exist, to the appropriate decisionmakers.

Section 36(c)(2) requires that reports be filed with the Administrator in an electronic format. The Committee expects the Administrator to promulgate regulations which will provide for a consistent format of the report. The Committee believes that such consistency is necessary for the accurate compilation of data and proper assessment of the effectiveness of the pilot program.

Section 36(c)(2) also permits, but does not require, participating small business development centers to make interim reports if such reports are necessary or useful. For example, a participating small business development center may receive inconsistent compliance information from a federal agency. By alerting the Administrator prior to the issuance of the quarterly report, the federal agency may be able to issue a clarification that may eliminate confusion, save compliance costs, and improve small business compliance.

One of the critical concerns to small businesses is that discussions of compliance assistance could be revealed to federal agencies which would lead to fines and penalties. Furthermore, the Com-

mittee is concerned that small business development centers have been revealing the names of businesses which seek their advice to the Administrator for functions unrelated to the financial auditing of small business development centers. The Committee believes that such behavior is simply intolerable. Without any assurances of privacy, small businesses will be less likely to use small business development centers. And this would be especially true for regulatory compliance assistance efforts. The Committee recognizes the concern about revealing the names of businesses that utilize the resources of small business development centers. Therefore, § 36(c)(1)(D) prohibits the disclosure of the names or addresses of any concern receiving compliance assistance under this pilot program unless the Administrator is ordered to make such disclosure pursuant to a court order or civil or criminal enforcement action commenced by a federal or state agency. The committee expects that participating small business development centers will only respond to formal agency requests such as civil investigative demands, subpoenas, requests from Administrator's Associate Administrator for Small Business Development Centers when performing a financial audit of the small business development center, or requests from the Inspector General of the Small Business Administration. The committee expects the small business development centers will not provide information concerning the identity of businesses simply upon the verbal request of a federal or state agency.

Section 36(d) requires the Administrator to act as repository of data and information submitted by the participating small business development centers. Given the oversight role and importance of the Associate Administrator for Small Business Development Centers, section 36(d) requires that the functions of maintaining the database be housed with the Associate Administrator. The Committee believes that a central repository is necessary in order to determine whether federal agencies are providing consistent compliance information on a national basis. However, the Committee expects that the information received under this subsection be made available to other offices within the Small Business Administration, particularly the Chief Counsel for Advocacy and the Small Business and Agriculture Regulatory Ombudsman so those offices can more effectively carry out their mission of representing the interests of small businesses before federal agencies.

Section 36(d) also requires that the Administrator submit an annual report to the President and the Committees on Small Business of the Senate and the House Representatives. The report will contain: (a) data on the types of information provided by the participating small business development centers; (b) the number of small businesses that contacted the participating small business development centers; (c) the number of small businesses assisted by participating small business development centers; (d) information on the outreach activities of the participating small business development centers; (e) information regarding each case known to the Administrator in which participating small business development centers provided conflicting advice regarding compliance with federal regulation to one or more small businesses; (f) and any recommendations for improving the regulatory environment of small businesses. The Committee believes that this information is necessary to properly evaluate the utility of the pilot program. More

importantly, the report will reveal whether similarly situated small businesses are receiving consistent regulatory compliance assistance. In preparing the report, the Committee recognizes that the Administrator may wish to consult with the Chief Counsel for Advocacy and the Small Business and Agriculture Regulatory Ombudsman. The Committee supports such consultative efforts but notes that the Administrator may not delegate the responsibility of preparing the report required by this subsection to any office within the Small Business Administration except the Associate Administrator for Small Business Development Centers.

Section 36(e) limits participation in the pilot program only to those small business development centers certified under §21(k)(2) of the Small Business Act. The Committee is limiting participation in the pilot program so those small business centers selected are of the highest quality. Some small business development centers have not completed their certification programs. Nevertheless, some of these centers may be developing or already have exceptional regulatory compliance assistance programs. The Committee does not believe that such centers should be prohibited from participating in the pilot program. Therefore, §36(e)(2) authorizes the Administrator to waive the requirement for certification if the center is making a good faith effort to obtain such certification.

Section 36(f) requires the Administrator to select two participating state programs from each of the Small Business Administration's ten federal regions as those regions exist on the date of enactment of this Act. The Administrator shall consult with the Association and give the Association's recommendations substantial weight. The Administrator is required to complete the selection of the participating centers within 60 days after the regulations to implement the pilot program have been promulgated.

Section 36(g) ensures that no matching funds currently allocated to the operation of the Small Business Development Centers will be utilized to fund the pilot program. In order to ensure proper funding, the Committee is authorizing a separate funding authorization for the program.

Section 36(h) establishes the procedures for distributing grants among the selected state programs. The formula is based on the principle that a state which has a smaller population also will have, in absolute terms, fewer small businesses than a larger state. The formula therefore allocates funds according to the relative size of each state. The Committee believes that the minimum funds needed to initiate a state program will be \$200,000. Because the Committee has authorized \$5,000,000, it is making extra resources available to the larger states who will require more resources to initiate the pilot project.

Section 36(i) requires the Comptroller General of the United States to provide a report three years after the establishment of the pilot program evaluating the effectiveness of the program. The report also should contain any suggested modifications to the pilot program. Finally, the Comptroller General should provide its opinion concerning whether the program should be continued and expanded to include more small business development centers. The report shall be transmitted to the Committees on Small Business of the Senate and House of Representatives. The Committee ex-

pects that the pilot program will be sufficiently successful to expand the program to other small business development centers.

Section 36(j) limits the operation of the pilot program only to the funds appropriated in advance for the program. Section 36(j) provides an authorization of appropriations of \$5,000,000 for fiscal year 2002 and each year thereafter. Section 36(j) also prohibits the Administrator from using other funds, including other funds made available for the operation of Small Business Development Centers, to operate this pilot project. The Committee authorized the additional appropriations because it determined that funding of the regulatory compliance program should not detract from the available funding for the delivery of other Small Business Development Center programs.

Section 5. Promulgation of regulations

Section 5 authorizes the Administrator to promulgate regulations to implement this pilot program no later than 180 days after the enactment of the Act. Such regulations only shall be promulgated after the public has been given an opportunity for notice and comment. The Committee believes that the Administrator can and should accomplish the issuance of regulations within the deadline set by statute. The Committee considers this Act to be some other law for purposes of section 603 of Title 5 of the United States Code.

The regulations shall include the priorities for the type of assistance to be provided, standards relating to the educational, technical, and support services to be provided by the Association to the participating centers, and standards for work plans that the participating centers will provide to the Administrator. The Committee believes that given the potential interest in the program by Small Business Development Centers, it is appropriate for the Administrator to have a set of standards by which it can determine which state programs shall be chosen. More importantly, the standards will provide an appropriate baseline for the Comptroller General's evaluation of the pilot project.

Section 5 also requires the Administrator to develop appropriate standards for ensuring the technical qualifications of experts to whom small businesses will be referred. The Committee does not intend that someone must have a college or advance degree to qualify. For example, a contractor licensed in a state with 20 years experience (who is a high-school graduate) may be as well-equipped to provide advice on compliance with OSHA construction standards as a professor of civil engineering. On the other hand, that same contractor might not be an appropriate individual to provide tax compliance advice. The Committee does not expect that this aspect of the Administrator's regulations shall be all encompassing, i.e., delineate every profession and the appropriate qualifications. However, the Committee does expect that the Administrator will recognize, as qualified, those individuals certified by nationally-recognized accrediting bodies (whose members must demonstrate substantial educational and practical experience), meet educational and work standards established by a federal agency, or are licensed to practice a particular profession or job pursuant to state law. The Committee expects that the regulations will provide participating centers with enough information that the centers can determine

whether the person providing the advice is competent in the field of regulation.

Section 6 amends section 21 of the Small Business Act. The Committee has been contacted on a number of occasions by small business development centers that employees of the Small Business Administration have attempted to obtain the names and addresses of businesses that sought the services of the small business development centers. The Committee believes that any attempts by the Administrator or the employees of the Small Business Administration to obtain the names and addresses of persons seeking small business development center assistance is inappropriate because it would act as a disincentive for small businesses to utilize the centers.

Section 6 prohibits the Administrator, any other employee of the Small Business Administration, or any agent of the Administrator (including contractors) from obtaining the names and addresses of businesses that sought assistance. The Committee's bill provides for two exceptions: (1) if the Administrator is ordered by a court in any civil or criminal action initiated by federal or state agency; or (2) the Administrator requires the information while undertaking a financial audit of the Small Business Development Center.

To ensure that the Administrator does not unduly abuse the second exception for disclosure, section 6 requires the Administrator to promulgate regulations specifying when such disclosures in an audit shall be made. The Committee expects that the regulations will strictly limit disclosure during the audit process and severely circumscribe those individuals who will have access to the audit information during the audit. The Committee recognizes that the information collected during the audit may have to be retained for a variety of purposes, such as management reviews by the Inspector General or Congressional oversight. The Committee expects the Administrator's regulations to cover who, if anyone, shall have access to the raw data, including the names and addresses of the small business development center's users, after the audit is complete. The Committee does not intend that information obtained during the audit concerning identifiable individuals or businesses that is retained by the Administrator shall be releasable pursuant to the Freedom of Information Act.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 13, 2001.

Hon. DONALD MANZULLO,
*Chairman, Committee on Small Business,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 203, the National Small Business Regulatory Assistance Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson.

Sincerely,

DAN L. CRIPPEN,
Director.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 203—National Small Business Regulatory Assistance Act of 2001

Summary: H.R. 203 would require the Small Business Administration (SBA) to establish a pilot program for small business development centers (SBDCs) to counsel small business owners on compliance with federal and state regulations. SBDCs are cooperative efforts of the private sector, schools, and federal, state, and local governments to provide management assistance to current and prospective small business owners.

H.R. 203 would authorize the appropriation of \$5 million a year to fund the new program. Based on the SBA's historical spending patterns, CBO estimates that implementing the bill would cost \$23 million over the 2002–2006 period, assuming the appropriation of the necessary amounts. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 203 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 203 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	5	5	5	5	5
Estimated Outlays	3	5	5	5	5

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 203 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no significant costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Ken Johnson. Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins. Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMMITTEE ESTIMATE OF COSTS

Pursuant to the Congressional Budget Act of 1974, the Committee estimates that the amendments to the Small Business Act contained in H.R. 4946 will not significantly increase discretionary spending over the next fiscal years. The Committee also estimates that H.R. 203 will not affect direct spending. These estimates concur with Congressional Budget Office (CBO) estimates.

Furthermore, pursuant to clause 3(d)(2)(A) of rule XIII of the Rules of the House of Representatives, the Committee estimates that implementation of H.R. 203 will not significantly increase other administrative costs.

OVERSIGHT FINDINGS

In accordance with clause 4(c)(2) of rule X of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been made by the Committee on Government Reform with respect to the subject matter contained in H.R. 203.

In accordance with clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 203 are incorporated into the descriptive portions of this report.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 18, of the Constitution of the United States.

COMPLIANCE WITH P.L. 104-4

H.R. 203 contains no unfunded mandates.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 203 does not relate to the terms and conditions of employment or access to public services or accommodations with the meaning of section 102(b)(3) of P.L. 104-1.

FEDERAL ADVISORY COMMITTEE STATEMENT

This legislation does not establish or authorize the establishment of any new advisory committees.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

	*	*	*	*	*	*
SEC. 21. (a)	*	*	*			
	*	*	*	*	*	*
(c)(1)	*	*	*			
	*	*	*	*	*	*

(9) PRIVACY REQUIREMENTS.—

(A) IN GENERAL.—No Small Business Development Center, consortium of Small Business Development Centers, or contractor or agent of a Small Business Development Center shall disclose the name or address of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, except that—

(i) the Administrator shall require such disclosure if ordered to do so by a court in any civil or criminal enforcement action commenced by a Federal or State agency; and

(ii) if the Administrator considers it necessary while undertaking a financial audit of a Small Business Development Center, the Administrator shall require such disclosure for the sole purpose of undertaking such audit.

(B) REGULATIONS.—The Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under subparagraph (A)(ii).

* * * * *

SEC. 36. SMALL BUSINESS REGULATORY ASSISTANCE PILOT PROGRAM.

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Small Business Administration, acting through the Associate Administrator for Small Business Development Centers.

(2) ASSOCIATION.—The term “Association” means the association, established pursuant to section 21(a)(3)(A), representing a majority of Small Business Development Centers.

(3) PARTICIPATING SMALL BUSINESS DEVELOPMENT CENTER.—The term “participating Small Business Development Center” means a Small Business Development Center participating in the pilot program.

(4) PILOT PROGRAM.—The term “pilot program” means the pilot program established under this section.

(5) REGULATORY COMPLIANCE ASSISTANCE.—The term “regulatory compliance assistance” means assistance provided by a Small Business Development Center to a small business concern to enable the concern to comply with Federal regulatory requirements.

(6) SMALL BUSINESS DEVELOPMENT CENTER.—The term “Small Business Development Center” means a Small Business Development Center described in section 21.

(7) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(b) AUTHORITY.—In accordance with this section, the Administrator shall establish a pilot program to provide regulatory compliance assistance to small business concerns through participating Small Business Development Centers, the Association, and Federal compliance partnership programs.

(c) SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) IN GENERAL.—In carrying out the pilot program, the Administrator shall enter into arrangements with participating Small Business Development Centers under which such centers will provide—

(A) access to information and resources, including current Federal and State nonpunitive compliance and technical assistance programs similar to those established

under section 507 of the Clean Air Act Amendments of 1990;

(B) training and educational activities;

(C) confidential, free-of-charge, one-on-one, in-depth counseling to the owners and operators of small business concerns regarding compliance with Federal and State regulations, provided that such counseling is not considered to be the practice of law in a State in which a Small Business Development Center is located or in which such counseling is conducted;

(D) technical assistance; and

(E) referrals to experts and other providers of compliance assistance who meet such standards for educational, technical, and professional competency as are established by the Administrator.

(2) **REPORTS.**—

(A) **IN GENERAL.**—Each participating Small Business Development Center shall transmit to the Administrator a quarterly report that includes—

(i) a summary of the regulatory compliance assistance provided by the center under the pilot program; and

(ii) any data and information obtained by the center from a Federal agency regarding regulatory compliance that the agency intends to be disseminated to small business concerns.

(B) **ELECTRONIC FORM.**—Each report referred to in subparagraph (A) shall be transmitted in electronic form.

(C) **INTERIM REPORTS.**—During any time period falling between the transmittal of quarterly reports, a participating Small Business Development Center may transmit to the Administrator any interim report containing data or information considered by the center to be necessary or useful.

(D) **LIMITATION ON DISCLOSURE REQUIREMENTS.**—The Administrator may not require a Small Business Development Center to disclose the name or address of any small business concern that received or is receiving assistance under the pilot program, except that the Administrator shall require such a disclosure if ordered to do so by a court in any civil or criminal enforcement action commenced by a Federal or State agency.

(d) **DATA REPOSITORY AND CLEARINGHOUSE.**—

(1) **IN GENERAL.**—In carrying out the pilot program, the Administrator shall—

(A) act as the repository of and clearinghouse for data and information submitted by Small Business Development Centers; and

(B) transmit to the President and to the Committees on Small Business of the Senate and House of Representatives an annual report that includes—

(i) a description of the types of assistance provided by participating Small Business Development Centers under the pilot program;

(ii) data regarding the number of small business concerns that contacted participating Small Business De-

velopment Centers regarding assistance under the pilot program;

(iii) data regarding the number of small business concerns assisted by participating Small Business Development Centers under the pilot program;

(iv) data and information regarding outreach activities conducted by participating Small Business Development Centers under the pilot program, including any activities conducted in partnership with Federal agencies;

(v) data and information regarding each case known to the Administrator in which one or more Small Business Development Centers offered conflicting advice or information regarding compliance with a Federal or State regulation to one or more small business concerns;

(vi) any recommendations for improvements in the regulation of small business concerns; and

(vii) a list of regulations identified by the Administrator, after consultation with the Small Business and Agriculture Regulatory Enforcement Ombudsman, as being most burdensome to small business concerns, and recommendations to reduce or eliminate the burdens of such regulations.

(e) *ELIGIBILITY.*—

(1) *IN GENERAL.*—A Small Business Development Center shall be eligible to receive assistance under the pilot program only if the center is certified under section 21(k)(2).

(2) *WAIVER.*—With respect to a Small Business Development Center seeking assistance under the pilot program, the Administrator may waive the certification requirement set forth in paragraph (1) if the Administrator determines that the center is making a good faith effort to obtain such certification.

(3) *EFFECTIVE DATE.*—This subsection shall take effect on October 1, 2001.

(f) *SELECTION OF PARTICIPATING STATE PROGRAMS.*—

(1) *IN GENERAL.*—In consultation with the Association and giving substantial weight to the Association's recommendations, the Administrator shall select the Small Business Development Center programs of 2 States from each of the following groups of States to participate in the pilot program established by this section:

(A) Group 1: Maine, Massachusetts, New Hampshire, Connecticut, Vermont, and Rhode Island.

(B) Group 2: New York, New Jersey, Puerto Rico, and the Virgin Islands.

(C) Group 3: Pennsylvania, Maryland, West Virginia, Virginia, the District of Columbia, and Delaware.

(D) Group 4: Georgia, Alabama, North Carolina, South Carolina, Mississippi, Florida, Kentucky, and Tennessee.

(E) Group 5: Illinois, Ohio, Michigan, Indiana, Wisconsin, and Minnesota.

(F) Group 6: Texas, New Mexico, Arkansas, Oklahoma, and Louisiana.

(G) Group 7: Missouri, Iowa, Nebraska, and Kansas.

(H) Group 8: Colorado, Wyoming, North Dakota, South Dakota, Montana, and Utah.

(I) Group 9: California, Guam, Hawaii, Nevada, and Arizona.

(J) Group 10: Washington, Alaska, Idaho, and Oregon.

(2) *DEADLINE FOR SELECTION.*—The Administrator shall make selections under this subsection not later than 60 days after promulgation of regulations under section 5 of the National Small Business Regulatory Assistance Act of 2001.

(g) *MATCHING NOT REQUIRED.*—Subparagraphs (A) and (B) of section 21(a)(4) shall not apply to assistance made available under the pilot program.

(h) *DISTRIBUTION OF GRANTS.*—

(1) *IN GENERAL.*—Each State program selected to receive a grant under subsection (f) in a fiscal year shall be eligible to receive a grant in an amount not to exceed the product obtained by multiplying—

(A) the amount made available for grants under this section for the fiscal year; and

(B) the ratio that—

(i) the population of the State; bears to

(ii) the population of all the States with programs selected to receive grants under subsection (f) for the fiscal year.

(2) *MINIMUM AMOUNT.*—Notwithstanding paragraph (1), the minimum amount that a State program selected to receive a grant under subsection (f) shall be eligible to receive under this section in the fiscal year shall be \$200,000.

(i) *EVALUATION AND REPORT.*—Not later than 3 years after the establishment of the pilot program, the Comptroller General of the United States shall conduct an evaluation of the pilot program and shall transmit to the Administrator and to the Committees on Small Business of the Senate and House of Representatives a report containing the results of the evaluation along with any recommendations as to whether the pilot program, with or without modification, should be extended to include the participation of all Small Business Development Centers.

(j) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—There are authorized to be appropriated to carry out this section \$5,000,000 for fiscal year 2002 and each fiscal year thereafter.

(2) *LIMITATION ON USE OF OTHER FUNDS.*—The Administrator may carry out the pilot program only with amounts appropriated in advance specifically to carry out this section.

SEC. [36.] 37. All laws and parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency.

ADDITIONAL VIEWS

Democrats agree strongly that some targeted, uniform delivery system must exist to make small businesses more aware of their regulatory obligations. If greater assistance is not targeted to small businesses, a divide could develop between large businesses that have the resources to comply with regulatory requirements and small businesses that do not. As a result, we strongly support a regulatory compliance assistance program operated through SBA's Small Business Development Center Program and believe that its overall success will ensure the success of the pilot program established under H.R. 203.

Small businesses have often been overwhelmed by the growing and constantly changing Federal, State and local regulatory requirements. They fear, with the onslaught of federal regulations, that they will inadvertently fail to comply with some obscure rule, their business will be shut down by the government, and they will be driven into bankruptcy because they cannot afford the cost of compliance. On the other hand, small businesses also fear that going to the very agencies that create and enforce the regulations is tantamount to turning themselves in, and will ultimately result in penalties being levied on their businesses. In fact, many believe that the government is more interested in recovering penalties than in promoting compliance with the law.

Although Federal and State regulations and regulatory programs usually provide substantial benefits, they can be confusing, burdensome and incur significant costs that disproportionately fall on small businesses. Small businesses are not only in need of quality regulatory compliance assistance programs, but also programs that are uniformly developed nationwide and targeted to small businesses.

An important aspect raised during the Committee's most recent hearing is the technical expertise one must have to understand each individual regulatory requirement. Providing that knowledge to small businesses is as important, if not more important, as providing advanced notice of any regulatory requirement they must comply with. Therefore, we believe that the purpose of this new pilot program is to establish an initial contact that results in a referral to the appropriate program or experts. It is our belief that the new pilot program is required to utilize existing Federal or State compliance assistance programs and avoid competing with them. Some of these existing compliance assistance programs, such as those created under Section 507 of the Clean Air Act Amendments (e.g. EPA's State Small Business Assistance Program), have established a level of expertise in compliance assistance and provide invaluable technical assistance targeted to small businesses. In addition, SBDCs must be careful in the type of counseling they provide and the liability that can result from such counseling.

During the Committee mark-up session, there was some confusion on who would be receiving the grant awards. We concur with the report language that directs the Administrator to select two State SBDC programs from each of the ten SBA regions across the nation. The State SBDC program, not an individual center or sub-center, will receive the grant money to implement the assistance statewide.

As introduced, H.R. 203, required assistance with only Federal regulations. However, Congress often defers the authority to promulgate and enforce Federal regulatory requirements to the States. Therefore, small businesses must also comply with regulations on the State level and many times, these regulations either conflict or are even more stringent and complicated than Federal regulations. A prime example is EPA's TMDL regulations, where EPA promulgates the regulations but States are given the authority to enforce those regulations. Thus, States can also, and often do, promulgate their own regulations to enforce the requirements under the TMDL regulation. The Committee Democrats proposed and supported an en bloc amendment to H.R. 203 in committee, containing language that included assistance with State regulations within the pilot program.

Democrats are also concerned with privacy protections. During this day and age of new information technologies, privacy protection is one of the most critical issues facing all individuals, including small businesses. Although confidentiality provisions were included in H.R. 203 as introduced, these provisions applied only to participants of the pilot program. Therefore, Democrats sought strong privacy protections throughout the existing SBDC program.

Since its inception, privacy protections have been an inviolate principle of the SBDC program. However, in recent years, SBA began seeking the names and addresses of SBDC clients. At first, the agency assured the SBDCs that the information would be kept confidential, but later informed them that the agency could not ensure the confidentiality of their client information. This puts the SBDCs in a precarious position for two important reasons.

First, each SBDC client signs a liability waiver when it seeks SBDC assistance. As part of that waiver agreement, the SBDC agrees to never disclose the identity of the client. Therefore, this can create liability problems for the program that could result in expensive litigation, not to mention the possibility of large court imposed penalties and fines. Second, and possibly the most important, is the loss of trust from clients. SBDC assistance includes assisting small business who struggle against Federal and State regulations that could lead to possible investigations or penalties against the small business owner. If the SBDC clients believe that their identities will not be held in confidence, they will no longer seek the assistance. This could potentially threaten the success of the program and quite possibly terminate its existence.

As a result, the en bloc amendment to H.R. 203, proposed and supported by the Democrats, included language prohibiting the SBDCs, or an agent of an SBDC, from disclosing the name or address of any SBDC client. However, to ensure the integrity of the program, these privacy protection provisions will not pertain to financial auditors who must review each State SBDC program.

In addition, we believe that fees must not be charged in conjunction with this pilot project. Although the SBDCs are permitted to charge fees under limited circumstances, one-on-one counseling is provided free of charge. Current and past Administrations have attempted to implement a fee-for-service structure for SBDC services that are, and have been, historically free. However, implementing such a structure would not only be detrimental to the pilot program, but to the overall SBDC program. Democrats have consistently opposed such a move and will continue to oppose future attempts.

The proposal also establishes a repository and clearinghouse for the information obtained by the SBDCs, primarily to provide unbiased feedback to agencies and to detect inconsistencies in information regarding compliance with a regulation. This will also work to identify government-wide trends in regulatory rulemaking and enforcement. This will facilitate the ability of the agencies and Congress to improve, not only compliance, but compliance assistance, on a government-wide level.

This pilot program will be able to offer small businesses a voluntary, confidential, and nonpunitive means in which to obtain assistance in complying with the numerous regulations that could determine the success or failure of their businesses. By utilizing SBDCs as a delivery network, small businesses will be able to obtain counseling, training, and education, in an environment that is not perceived as intimidating or threatening.

NYDIA M. VELÁZQUEZ.

