



April 11, 2008

Bill Herrle, Executive Director  
NFIB/Florida  
110 East Jefferson Street  
Tallahassee, FL 32301

Dear Bill,

Thank you for your interest in how state governments can take steps to minimize mandates on small business while meeting the underlying goals of regulations.

My office oversees the federal government's responsibility to minimize the impact of federal regulation on small entities.<sup>1</sup> Our primary tool to advocate for small business in the regulatory process is the Regulatory Flexibility Act (RFA). The RFA, enacted in 1980<sup>2</sup>, requires that agencies publish a small business impact statement when proposing new rules and regulations. Additionally, the RFA requires that agencies consider alternatives that will accomplish the underlying regulatory purpose while minimizing the burden on small entities.

Many states have adopted measures similar to the RFA. My office has worked with leaders in state government for several years to encourage consideration of regulatory flexibility. In fact, 37 state legislatures have considered small business regulatory

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<sup>1</sup> Small entities include small government jurisdictions, small organizations (not-for-profits), and small businesses.

<sup>2</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a) and strengthened by Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking (2002)).

Executive Director Bill Herrle  
April 11, 2008  
Page 2

flexibility legislation and over 22 states have enacted regulatory flexibility by law or executive order in the past 6 years.

I wrote Representative Attkisson, Chairman of the Government Efficiency & Accountability Council, last month to commend the Council's consideration of a Small Business Regulatory Relief bill which would have strengthened Florida's existing regulatory flexibility law.

Unfortunately, the latest version of [legislative text](#) contains a provision that would harm Florida's ability to help small business with a fully functional regulatory flexibility system. Requiring that the Small Business Advocate office be run by an organization outside of government, such as the Florida Small Business Development Center Network, would not help the state's regulatory flexibility process.

In order for regulatory flexibility to work, its primary oversight should rest with a government official who has the independence to adequately represent small business and the respect and stature to work constructively with regulatory agencies. The "small business advocate" or "director of regulatory flexibility," or "director of the Office of Small Business Advocate," or "chief counsel's" job is to ensure that government officials are sufficiently sensitive to how regulations promulgated by their agencies and departments impact small business. In that capacity, the small business advocacy office must negotiate with regulatory agencies and convince them to alter regulatory proposals in a way that meets regulatory goals such as worker safety, border security, and environmental protection, while minimizing the burden on small business.

It is understandable that Florida would turn to the Small Business Development Center Network for help. As you know from your close work with the Florida Small Business

Executive Director Bill Herrle  
April 11, 2008  
Page 3

Development Center Network, the centers have a well-deserved reputation for providing resources for small business owners and aspiring entrepreneurs. However, the success of regulatory flexibility depends largely on the small business advocate office's function within government. I fear that by placing the directorship of the small business advocate office outside of government, Florida will create an adversarial relationship between the employer community and regulatory agencies. Regulatory flexibility works better when the small business advocate office can work constructively with state agencies. Many times those sensitive negotiations happen before regulatory proposals are formalized into public proposals. For those reasons, I believe that changing the legislation to require that the Florida Small Business Development Center Network direct the small business advocate's office would be a mistake.

In addition to the small business advocate's position, the regulatory flexibility system can benefit from a board or group of advisors, made up from representatives of the small business community, who can serve to ensure that the small business advocate is doing its job and strengthening the advocate's ability to effect change. Small business development centers provide a good sounding board for government officials who desire to adopt small business friendly laws and policies. Obviously, they could prove instrumental in Florida's implementation of a new regulatory flexibility system in an advisory capacity that could be part of Florida's new regulatory flexibility law.

I continue to applaud Florida's efforts to improve how its government impacts small business because it demonstrates an understanding of how important small business is to Florida communities and the entire state's economy. I hope that my input on this legislation is helpful to ensure that Florida learns from my office's 28 years of experience in overseeing the federal regulatory flexibility law and our experience in helping other states meet challenges similar to yours.

Executive Director Bill Herrle  
April 11, 2008  
Page 4

Please do not hesitate to contact me if you have any questions about this letter. Also, thank you for relying on my office's web-portal that contains extensive information about state small business regulatory flexibility legislation [http://www.sba.gov/ADVO/laws/law\\_modeleg.html](http://www.sba.gov/ADVO/laws/law_modeleg.html).

With Respect and Appreciation,

/s/

Thomas M. Sullivan  
Chief Counsel for Advocacy

Cc: The Honorable Frank Attkisson, Chairman  
Government Efficiency & Accountability Council