

REGION VI

SOUTHERN STATES

REGULATORY FAIRNESS BOARD HEARING

HOUSTON, TEXAS

APRIL 17, 2000

MS. McDONALD: Good afternoon and welcome to all of you. I'm Gail McDonald. I'm the National Ombudsman. I was recently appointed by SBA Administrator, Aida Alvarez. Administrator Alvarez sends you her greetings as well today. She's in China working on trade. And hopefully we will all benefit from that.

These hearings are held every year throughout the country. And today we're privileged to be in Region VI. And with me are the Regulatory Fairness Board Members, who are also appointed by the Administrator. Our host is Massey Villarreal, who I'd like to have say a few words. Massey.

MR. VILLARREAL: Thank you very much. And by being host I get to take the calls for you guys, and the faxes, and arrange lunches. But glad to do it for all our friends. We are up here my colleagues are your colleagues is well we're entrepreneurs and business people. And we're here to take the input that you have on how the Federal Government's affected your business or how business affected by Federal regulations.

We welcome your input. We going to try to ask you to limit your remarks in five to eight minutes. If you have to go further you're welcome to. If you see us snoring up here that means you went too long. So with that, I'd like to invite the Chairman of the Region, from Oklahoma, Larry Mocha.

MR. MOCHA: I too would like to welcome you today. I'm from Tulsa, Oklahoma. I have a small manufacturing company there. You'll be finding out a little bit more about each one of us. I'm a business guy, just like you. I have twenty-five employees. We've been manufacturing since 1964. It's a company my father started.

And I'm the son, handed down and finally took over in 1984 when I lost my father. There's a lot of family-owned businesses in

small business. And small business is important, not only to Texas, not only to Oklahoma, but to the United States. That's why we're here.

Let me give you just a couple of details about small business. Some of my statistics will be related to Oklahoma but you can bet not only are they closely aligned with Texas but also percentage-wise with the United States.

Did you know that ninety-five percent of all businesses are small business? Kind of hard to believe. The SBA or the Federal Government classifies small business as any business with less than five hundred employees. But did you know seventy-five percent of all businesses in the United States have ten or less employees?

Small business is, in fact, big business for Texas, for the United States and for Oklahoma. And that's why we're here. The Federal Government and all the different agencies try to do the right thing with small business. Congress tries to do the right thing when they create laws. Congress, the legislature, creates the laws. The agencies interpret them.

Somewhere after interpretation and passing down to small business sometimes things get lost. And the small business becomes the victim. It's important that small business has a voice in the regulatory process. In 1996 Congress passed a law called SBREFA, Small Business Regulatory Enforcement Act. Out of that law, out of that Act, was created the Regulatory Fairness Boards of which we are a part.

And this Regulatory Fairness Board gives small business that opportunity to intervene in the regulatory process. If you, Mister or Missus Small Businessperson, has a problem with a regulatory agency and how they are dealing with you, we are the

place for you to come.

Every year, after listening to testimonies throughout the United States, the National Ombudsman makes a report to Congress with our input. That report talks about the different agencies. And are they, in fact, abiding that 1996 SBREFA Act? Are they working for and in behalf of small business?

That report carries a lot of weight. We like to think that we, as Regulatory Fairness Board Members, carry weight as well. The most important thing, the most important fact about all of this is that small business people are celebrities. To us, to the United States and to Texas. We're here for Mister and Missus small business person. Thank you for allowing us to be here today.

MS. McDONALD: Well, Larry is one of our founding Board Members, as is Wallace Caradine. Wally, would you like to say a few words?

MR. CARADINE: Sure. I'd just like to say hello to everybody. I was told before I left (coughing directly into microphone) to be very careful here in Houston because we won the Cotton Bowl this time around and I may never be forgiven for that.

But I just want to let you know that we, as a small business, same as you, and one of those businesses that have got exactly ten employees. So many of you have the same and we know that. And we're here today to hear your concerns and we want to warn everybody to just, you know, come in and say what their concerns are.

And we can be very helpful in terms of being the ear that you've always wanted to have but somehow never knew where to reach out there to pull from. So hopefully today we'll get a lot of good hearings and that information will be useful, both from this hearing as well as other hearings around the country.

Again, I'm glad to be here in Houston. For those of you who may be in the same profession I am, I'll just mention it, I'm an architect and construction consultant. And I've been doing that for about twenty-two years now. And it's kind of a different business than the average small business but believe me there are a lot of issues that affect what architects and construction professionals do.

So let's share those issues and have a good hearing. Thank you.

MS. McDONALD: Then I would like to introduce Elise McCullough. Elise is a new Board Member and she's come from New Orleans, Louisiana.

MS. McCULLOUGH: Hi. This is my first REGFAIR meeting and so I didn't know what to expect and I'm really excited about this. I got into this about 1994. I ran as a White House Delegate on the Small Business. Because I opened my company in 1993 and went through a lot of trials and tribulations of getting my business started.

And I wanted to be a voice for small business. It was there that I realized I wanted to get involved and make a difference for small businesses. And as a REGFAIR Board Member I'd like to do that. And in New Orleans, and Louisiana, we are now getting the word out that a REGFAIR person is there.

And it's amazing how many people don't realize there is a voice there for small business. So I'm excited to be here today. Thank you.

MS. McDONALD: Well then I want to recognize our SBA host. Our program is quasi-independent. We're part SBA and yet in some ways we're independent. As Larry mentioned, we do an annual report to the Congress. And I'd be happy to send it to whomever would like

it if you'll just give me your card.

But we're really proud of our SBA family. And a large number of them are here today. I wanted to recognize Milton Wilson, our local District Director. He's outside? All right. Jim Johnson, the Regional Advocate is here. There he is waving at us. Neil Blanton made a lot of these arrangements and I thank you, Neil, for that.

And I'd like for our Regional Director, Ruben Guerrero, to say a few words.

MR. GUERRERO: Thank you. I think a lot of you know me. I'm a former District Court Judge from here in Houston. And came to the SBA kind of in a roundabout way as Massey and the people from Houston know. But I'm pleased to be here and I'm pleased to welcome you to this Fairness Board Hearing.

The fact is that the independence of our Ombudsman is guaranteed through an Act of Congress. And that independence means that she reports, not to the SBA, not to me, not to anybody, except to Congress. And that's important because what she says and what she reports may be critical to almost any agency.

And we've got to remember that we have to have some sort of check and balance system, if you will. Now I as a Judge remember the check and balance system we used to have when I was a Judge and of course things went up to the Court of Appeals and things went everywhere and the fact is that sometimes when people make rulings and people are called upon, as this Board will be called upon, to report their findings to Congress, through this Ombudsman.

And sometimes we find them reporting individually as well as through the Ombudsman. So; but that is a right that we have and that they have. And sometimes, you know, when you talk about

fairness what's fair to one person may not be fair to another.

I remember when I became a Judge somebody said if I ever come before you you'd probably throw me in prison for a lot of time. And I said yes but I'd be fair about it. And that I was. I have told the story many times about the elderly gentleman that came before me who was accused of a heinous crime and he had pled guilty in hopes that I would give him probation.

I sentenced him to fifty years, it was a rather heinous crime. And this man was about, a little bit over fifty-five, he must have been about fifty-six, fifty-seven. He says, Judge I can't do fifty years. I'm just flat too old. I'll die in prison. And I said well sir you just go down there and do the best you can.

And that's a charge I have to almost anybody is that they do the best they can with what they've got. Now, we have quite a few friends here who are from out of our great state of Texas. And I have to remind them about a few idiosyncrasies about our State.

When you're driving down the highway and you see that there is a sign that says slower traffic, keep right, that means if you're not going ninety miles an hour you have to move over. So that's kind of a Texas thing. The SBA started with a bunch of Texans.

Many people don't know this but the President at that point was born in Texas. By the way, we've only had two native born Texans become President of the United States. And one of them was LBJ and the other one was Dwight D. Eisenhower, who was born in Dennison, Texas and then later on moved up to some other state. I don't know where he moved to but that was his family that did that.

He didn't do it out of choice.

As did our Chairman here, who is originally from Fort Worth,

Texas. And I'm proud to see that the National Ombudsman for the Regulatory Fairness Board is a native-born Texan. And then SBA started with a Congressman named Wright Patman, who proposed the legislation. And people don't know this.

And the Speaker of the House was Sam Rayburn. So that is how the SBA started. And you know, there's a lot of things that have changed with the SBA. And the fact is that now our President has called upon us to do more with less. And he also gave us an initiative to start new markets. And that means that we want to be inclusive, not exclusive.

In other words, the people who were not partaking of the benefits of SBA, the women-owned businesses, the minority-owned businesses, we're trying to bring them in. And we're trying to do it in a way that we don't exclude anybody. In other words, we wanted to be inclusive.

When I first started with the SBA a couple of years ago I noticed that our loans and our services through SBA were like about five percent, well less than five percent were going to women-owned businesses and Hispanic-owned businesses. And African American owned business. They're what we call new markets now.

Now I'm proud to say we're up to about twenty-three percent. And we did it not to the exclusion of anybody, but to the inclusion of everybody. And that's what I want you to remember. And I'm here and I'm headed back to New Orleans tonight. I'll be in Baton Rouge tomorrow and then I'm going up to Dallas and I'll be coming back to Houston. Hopefully I can spend the holidays with my wife and kids. And then I'll be back up to New Mexico.

But I do all these things because I believe in what I'm doing. And the fact is that we want you to be open but we want you to give everybody a chance to participate and to say what's on their

mind. And this is the place you do it. And we have members from different areas of Government here.

I know we've got somebody from the Environmental Protection Agency. And from Labor so we're all here. And we're all here to listen to what you have to say. But at this time I have the great honor of introducing an old and dear friend. Somebody that I campaigned with in 1986 all the way up until I became a Judge in 1992; well, I was a Judge before then but I assumed elected position in 1992.

And she and I campaigned together. And every time we get together we compare the ages of our daughters. My youngest daughter, Rebecca, would be out campaigning with me. And her youngster would be out campaigning with her. And we're always amazed when we see each other. She asks me what's Becky up to and I say; oh, she's at the University at Houston. She says, what about Yvonne? Oh, she's a newspaper reporter now and we knew them when they were kids.

But I'm proud of what she's done. She's gone on to become a distinguished member of Congress. And somebody who has been the voice of Harris County in this area for awhile. And somebody who has served ably, not only as a Judge but also as a City Councilwoman from Houston.

And she is now one of our distinguished Members of Congress. So at this time I introduce to you and I present to you; she told me she'd be right at the door. The Honorable Sheila Jackson-Lee, a Congresswoman from Houston.

MALE VOICE: She's on her way.

MR. GUERRERO: Ha, ha, ha. Okay. Now Sheila and I have known each other for a long time and there's kind of a standing joke.

But she has got other places to go and different places to see. But let me tell you what happened to me last Tuesday. I was over in San Antonio at the Radisson Hotel and I went for my usual morning walk.

I don't run because of my rotund body prohibits that these days. But when I came back I went to take a bath and I couldn't get out of the bathroom. The door was broken and I couldn't get out. And there was no way I could get that knob going. So there I am sitting in my towel. I tried everything to get that door.

Pounded on the walls, pounded on the door. I did that for nearly an hour. And finally I was kind of losing my breath and I had tried to run a bath. Couldn't do that. So I grabbed a towel bar and started breaking through the door. And about two hours after I got locked in there I finally made a hole big enough to get my big self out of there.

I ended up getting out of the thing. And I was bloody and all that. I get out and the phone's ringing. I go out there, pick up the phone, it's the manager telling me I'm making too much noise, that I've got to keep it down because the neighbors are complaining.

So I gave him a few choice words and so after I did that he came up. There was some pounding on the door. That was the police. The police come in and they told me to sit down and I told them no, you sit down. And they said well who are you. I said, well I'm Judge Guerrero.

And they said well, we'll sit down. So they sat down and I explained to them and they finally left. And it was a hell of a Wednesday, last Wednesday. And I had a speech to give to about two hundred bankers in the hotel. And I was stuck there in this bathroom. And I finally got out of there.

And the manager sent me a basket of fruit and a bottle of wine. And I went down there to talk to those bankers. And the topic of my discussion was rather apropos. Because I talked to them about not closing any doors and leaving doors open behind them.

Everybody thinks I'm kidding when I tell that story but the truth of the matter is that it actually happened that way. And I ended up having to do that. Ms. Sheila Jackson-Lee, Congresswoman from Texas.

CONGRESSWOMAN JACKSON-LEE: That was an unflattering entrance, but in any event let me thank Ruben for his very kind words. And also for his being able to speak past tense about me. But let me just talk about the things that we have done together. I am delighted that you all are gathered here. And this is an important hearing.

So thank you for having it, Gail McDonald, and we welcome you. And let me welcome all of the members and my own Massey Villarreal, let me thank you very much for your representation, all the other members who are gathered here. Before I say just a few brief words let me find out the kinds of individuals who are here. They say you're all small businesses but maybe there are others that are here. What kind of businesses are in the room? Who's willing to tell me? Yes sir.

MR. COLEMAN: S.E. Coleman & Associates, a civil engineer consultant firm here in Houston.

CONGRESSWOMAN JACKSON-LEE: Great. And that's a good way to do it. We'll just go round the room so I can find out who I'm speaking to. Yes ma'am?

MS. MALLIT: I'm Robin Mallit. I'm the Director of the Department of Labor Wage and Hour Division.

CONGRESSWOMAN JACKSON-LEE: Okay.

MR. O'NEAL: Randy O'Neal with the Department of Labor, Wage and Hour Division in Dallas.

MR. RUDE: I'm Bruce Rude, I'm the Regional Director from the Pension and Welfare Benefits Administration of the U.S. Department of Labor.

MS. ROBINSON: June Robinson, Director of the Office of Small Business Programs at the Department of Labor.

MR. VINCE: Tom Vince, U.S. Department of Labor Office of Small Business Programs.

MR. LAWSON: I'm John Lawson, I'm the Area Director for Houston North Office.

MALE VOICE: Warren of Chase Bank

MALE VOICE: Steve, U.S. Customs Services.

CONGRESSWOMAN JACKSON-LEE: Thank you. We'll go right back down to the front again because you missed getting introduced. Yes sir?

MR. HILL: Jerry Hill from Dallas Home Health Care.

MS. DEXTER: Ramona Dexter, Dallas also

MALE VOICE: Scott, Director of Governmental Affairs, Home Care Association of America. I followed you a few years ago on the Capitol steps talking about home health care. We had a rally. And really appreciate your help.

CONGRESSWOMAN JACKSON-LEE: Thank you for what you do.

MS. FARKENSON: Farkenson, Administrator, Nurses Home Health

FEMALE VOICE: Sandra Home Health Care

MALE VOICE: Chamber of Commerce.

MR. JONES: Willie B. Jones Director of Small Business Program Regional.

MR. CLARK: I'm Bob Clark. I'm with EPA Region Six

MALE VOICE: Jeff with the Small Business Development. You were inquiring about how we were doing a couple of months ago. And I have very good news to report.

CONGRESSWOMAN JACKSON-LEE: I will look forward to getting that. Thank you.

MALE VOICE: I'm on vacation from Canada.

CONGRESSWOMAN JACKSON-LEE: Well I hope you'll relocate here if you're not from here. Ha, ha, ha.

MALE VOICE: SBA.

MALE VOICE: with the in Dallas.

CONGRESSWOMAN JACKSON-LEE: Neil, I see you. Okay. Anyone else want to share who they are?

MS. JOHNSON: Deborah Johnson

CONGRESSWOMAN JACKSON-LEE: Okay How are you this afternoon? This is a good mix and the very fact that the agencies are here is good, that's what the Small Business Regulatory Enforcement Act of

1996 is all about. Which was in an omnibus bill which I voted for.

And I want to thank the Small Business Administration's Administrator, Aida Alvarez , for her enthusiasm for really being a national advocate for small businesses. I'm a member of the Science Committee. I'm a member of the Judiciary Committee. In any instance where we deal with regulatory ethics it has always been my defining statement that small business is the business of America.

It is the anchor. And even as we have seen in our stock, in the Dow the last forty-eight to seventy-two hours, take a slight turnaround. We're looking for a triple digit day. We realize that a lot of that impetus was from startup companies. Obviously a lot of the fear is and the high tech and everybody sort of went over the end. But they've started up as startups and they were small businesses.

And so the idea of both this hearing and the regulation was to the law was to make sure that our Government agencies, of which many are here today, which I thank you, really are small business friendly. And so I hope that you will be forthright. That's why you're here. To hear from small businesses as to whether or not we're doing well.

Now I see that the home health care industry is well represented. Let me acknowledge that we met just before we came down to the recess and we realize that there are some issues that must be fixed. And we're in the midst of trying to deal with some of those agencies.

We can see clearly where regulatory entanglement does a disservice to some of the very thriving businesses that we would like to see thrive. There's nothing like having someone who needs health care

to be independent at home and to be able to be self sufficient because they have supporting health services.

I just used that as an example because we're working very hard on their programs. But the Small Business Regulatory Enforcement Act of 1996 requires all Federal agencies to establish a policy for the reduction or waiver of civil penalties for violation of statutory regulatory requirements.

When I'm out and about I am always referring individuals who come up to me to Milton Wilson or Ruben Guerrero. Even though he's out of state, I call his name, not in vain. Because I'm very proud and I believe that this Regional Small Business Office is the very best in the nation.

Texas, being the very best. And I certainly think that what we have here in Houston is the very best. I'm a believer in the can do attitude. And that's why my good friend is here from Boeing. I just got through asking about Lockheed as well.

Because in addition to small businesses I am particularly interested in women- and minority-owned businesses because I do believe that there is a strong element of entrepreneurial spirit in our communities. So Republicans and Democrats alike got together and realized that as good as our Federal agencies are, such as the IRS and OSHA and other Federal Regulatory Agencies, we do realize that sometimes they create a maze and there is no place to go to be able to bring that concern or that disagreement or that entanglement.

And so under this regulatory act we now have the Small Business Regulatory Boards that were established to review the complaints regarding unfair Federal enforcement actions. And to take action. To be able to ensure that we have agencies that often do not accurately estimate the impact of new regulations and action on

small businesses, which in many instances result in unnecessary and unintended business cause and restrictions.

Where do you go when that happens? This is why we have this Act. Agencies can do more to resolve or involve small businesses in agency actions that have enforcement and compliance impact. And there is a significant need to improve the training and supervision of enforcement and compliance staff on the proper use of discretion during enforcement compliance.

I'd like to focus on that because I think that is important. I hope that this afternoon will be an honest afternoon. And I hope that those of you who will speak will speak honestly. You may not want to call names, you have had an encounter. And whether or not it has trickled down this legislation, or this legislative initiative, to the individuals who work so hard for us in the Regional Offices.

And that is when you engage them in a discussion over something that is picking at you, whether or not one, they are aware of this new framework, of which we are to go the extra mile not to do things that are illegal, but the extra mile to work out your problem.

Because what we want is doors open and not doors closed. And so I hope this afternoon, as you have an opportunity to engage this Board, that you will be as forthright as possible about whether you have seen different agencies working out your problems. I am a big supporter of the Small Business Administration that is lodged here and around the community.

But also the U.S. General Store, which started out with a very good purpose. And that was supposed to be a one-stop place for people who wanted to start-up businesses. And we've had our hills and our valleys but we've had some success stories. The idea is

everything we try to do is to make your lives a little bit easier.

As well as I hope you recognize the existence of the Office of the National Ombudsman, which is supposed to reach out to small businesses as well. I hope you will tell us how these particular new legislative initiatives are working. I hope you will tell us whether or not you are enhanced economically.

And Richard, I'm delighted that you're going to be blamed by the Hispanic Chamber of Commerce because you're here for them and they will look to you to give all the input. So I'm going to put all the weight on you in terms of what you have been able to see as to how small businesses have been treated in your arena. And we welcome your input very much.

The fact that we have Massey here is good, we know that he is a listening ear. He goes about the community. And we thank him for that. And we know the Chairperson, or the National Ombudsman, I'm sorry, has a listening ear. And is ready to be of help to us as well.

I hope the hearing will allow constructive dialogue that is needed to ensure that all Americans have input. Andy, it's interesting, many people probably would not think that there are small business owners in apartment owners, but you have a vast; I was just getting ready to say that a vast membership with a vast majority.

But more importantly, I would think that you might raise your hand and say; and you are probably more entangled in a regulatory entanglement than many others because you are layered. You are both local, that's county and state. And then of course there are other issues that you have to; EPA issues, OSHA issues, that are sort of national.

And so I think that is very important. We hope that there is an

honest dialogue here today. And as I close, might I simply say to you that wearing the hat in the United States Congress, let me speak on behalf of Members of Congress.

We may do things differently. But when it comes to small businesses we do try to have an open-minded dialogue. And many times when you advocate for legislative initiatives that you will find that there are different perspectives by Democrats and Republicans.

But yet we hope that we ultimately come down on the side of doing something positive if it relates to the greater good. There have been issues on tort reform that we've had disagreements on but there is certainly no disagreement on ensuring that businesses of all get their fair day in court.

We hope you don't have to get there. We hope that businesses can have their resolutions done by an open-ended and open-minded Federal agencies, if that's how you're regulated. Open-minded banking entities who provide capital and access to capital. And an open-minded public who will secure their services through you. We encourage the utilization of small businesses.

With that, let me thank you for giving me the opportunity to open up this hearing and to thank the Houston Office of the Small Business Administration for their great work and Region VI for their great work. Your housed in the Palm Center, which is a combination of public/private activity. And I think this is a very good place, a very good site. And I hope you take heart that this Office does exist.

And I hope to hear from you as well, not only today when you can contact me personally. With that, thank you very much.

MALE VOICE: We also have two people that have just come in.

Someone just come in from Congressman Nick Lampson's office. Would you please stand up and let us know that you (pause Good to have you here.

MR. VILLARREAL: I want to call up our first people. I guess you can come up here to the podium to speak. And we'll have brief questions for you.

MS. McDONALD: Our Counsel, John Greiner, is here, in case you have technical questions for us. We make a record of all of these hearings. There is a Court Reporter service. And we use your remarks as part of our report to Congress.

MR. VILLARREAL: The first person to come up is Richard Torres, representing the Houston Hispanic Chamber of Commerce.

MR. TORRES: Thank you very much. I asked to be brought up early. Unfortunately I have to go to; leave early to the hospital. My father's having surgery today so I appreciate you making that accommodation. Mr. Chairman, Madam Ombudsman and Members of the Board of Regulatory Fairness Board, I want to thank you all for allowing us to offer this testimony today.

As was mentioned before, my name's Richard Torres. I'm President and CEO of the Houston Hispanic Chamber of Commerce. We're an eleven hundred member business organization whose mission it is to promote business opportunities for Hispanic-owned firms.

We've been in existence for twenty-three years and are members of the United States Hispanic Chamber of Commerce. And the Texas Association of Mexican American Chambers of Commerce. Our current Chairman, Massey Villarreal, is a Past Chairman of the Board of both of these prestigious organizations. I wanted to let you know that he photographs well.

Houston is home to twenty-one of the top five hundred Hispanic-

owned businesses, according to Hispanic Business Magazine. So you can see that we have our fair share of success in the Hispanic business community here in Houston.

Unfortunately, one of the things that I think that we're lacking is seeing growth in that number. And part of that does include doing business in the public sector. So I appreciate the fact that you guys have opened up this hearing for us to be able to offer some testimony.

The purpose of my testimony today is to offer some insight into some of the difficulties that member firms have had in doing business with the Federal Government. It is my belief that while well intentioned some of the Federal programs designed to promote the use of small business in the Federal sector fall short of their intended goal and deserve some review.

The results speak for themselves. Later today you'll be hearing from some business owners who can give you a better idea of what I'm referring to. Traditionally, small businesses, especially minority businesses, have fewer resources at their disposal as compared to more established firms.

Where a larger firm may assign the task of responding to an RFP, or an application to a specific division or individual, small business owners, for the most part, must do the work themselves. I'm sure Worly Barker can testify to that. I mean, we deal with small businesses all the time.

And I'm typically dealing with the accountant, with COO, the CEO all in one when I'm making that phone call. So as small business owners can testify that yes, there is a lot that you have to do. And everybody knows that that's the nature of being in small business.

We're not complaining about that but we are asking for some help.

Unfortunately, as the process in general is designed today responding, qualifying and succeeding and winning a contract to do business with the Federal Government is time consuming, very expensive in terms of lost productivity, as compared to the private sector. Contradictory and very user unfriendly.

I would like to offer some specific examples for your consideration. As is my understanding, in order to receive top secret clearance you, as a business, must have a contract in order to apply. In order to apply you must have already have received a top secret clearance.

If in fact this is true, you can see for yourself that the small business owner is going nowhere very fast. That's what I refer to as being contradictory. Some RFPs specify that in order to be granted a contract you must have a physical office in the Washington, D.C. area.

While that is nice in agencies and companies being able to interact on a pretty regular basis of course it's cost prohibitive for a small company. With the high cost of operating a home office this is a luxury that many small businesses cannot afford. And thus eliminates them from even responding.

In the age of high technology where businesses no longer find their competition down the street, or even within their own borders, is this something that can be reviewed? I believe so. One member told me of the need to hire a consultant to apply to be included in the GSA schedule, an electronic catalogue, because of the difficulty and the complexity of the application process.

This comes at a price of twenty-five thousand dollars, the cost of an additional person that can be generating revenue for his small

business. I understand that the Federal Government is, as in the private sector, consolidating the number of vendors with which it does business.

I applaud the Government's efforts to streamline operations and reduce costs, but question if the negative impact on small business has been considered. It is my understanding that as the mega firms are awarded contracts and they in turn subcontract the work to smaller firms, much of the work that is left to the small business is bottom of the barrel work with low margins and work that is difficult to complete.

This creaming of the taking of the best and easiest to complete a portion of the contract by the contractor has a negative and unwanted effect on small businesses of stifling their growth and opportunities for success. I'd like to offer some suggestions for consideration that may be helpful.

I would suggest that all prime contracts contain a small business component, either an SDB or an 8A, that is mandatory in order for a contractor to respond to an RP. This should encompass all phases of the contract to avoid the creaming effect.

Additionally, I would ask that no change be made in the policy of certifying minority owned firms in terms of minority; percentage of minority ownership to less than fifty-one percent. As we have seen with the National Minority Supplier Development Council.

We feel like that that's something that has an adverse effect on minority firms and makes it harder for them to compete against well-financed larger minority firms. Which in fact would not be minority-owned firms.

The challenges of owning and operating a small business are many. But so too are the rewards. I have witnessed first hand the

success of a small business who literally have gone from revenues of less than a hundred thousand dollars to fifteen million within a very short period of time.

I'm a believer in entrepreneurship and as a component of success in addressing the social ills of today's society and believe that firms who choose to do business with the public sector should be rewarded, not penalized for doing so.

I believe that if we focus on the results and not on the process answers to the many challenges that you face in attempting to improve the system will become apparent and can be implemented effectively with the help of the private sector. We encourage Hispanic owned firms to succeed as quickly as possible and believe that it is your desire to be a part of that success.

Thank you for allowing me to speak today and for presenting this forum in which we can offer input for your consideration. I'd be happy to answer any questions or give any further comments.

MR. CARADINE: Richard, I have one question. You mentioned getting top secret clearance. And what agencies do you apply for? Is that a particular agency or are there several agencies that would issue top secret clearance that you'd have to apply to?

MR. TORRES: Off hand I don't recall.

MR. CARADINE: DOD?

MR. TORRES: It's the Department of Defense. Yes. Yes sir?

MR. MOCHA: You were talking about the complexity of the application process. Could you say more about that?

MR. TORRES: Well I think that it's pretty clear. I've had one or more members tell me that first of all to be able to go through the application process is pretty complex. The applications that

they have to fill out, the time that it would take to fill those out.

When they value their time and look at what they have to do to make those applications it's actually easier for them to get someone else to do it that are already knowledgeable and knows the ropes and knows the system.

And I think that, you know, applications (interposing)

MR. MOCHA: Are there packagers out there to do that?

MR. TORRES: There are, but as I mentioned, you know, for twenty-five thousand dollars, I know from my staff that's a year-round position that could be funded. And what we're saying is that rather than creating a market for that kind of service let's look at the way that the application process has been developed and see if there's a way of streamlining that so that you get the information as a governmental agency that you need to be able to make the right recommendation or decision.

But you limit the number of things that need to be addressed or looked at. In other words, just make it easier. Make it cheaper as far as letting the business owner be the one to help put that application together. And not create a demand for having packagers or application specialists do the work for you.

MR. VILLARREAL: I want to stress the point that Richard said about the contracting. Point in case of the Treasury Department had an eight billion dollar contract with CSC; eight billion's a lot of money. So when they get it they break it down into smaller components. So when it's offered minority contractor or small business content, it's the percentage of what's left after everything's been given away.

It's not a percentage of the eight billion. But a percentage of

twenty-five, thirty million dollars where after all has been split and part of that becomes an issue because of this. Not the representations we've discussed before.

MR. TORRES: Well, if I could, let me use a local example. We had a construction of a fill, which is the home of the Houston Astros. Part of our decision to support the legislation that went into creating a Sports Authority was so they could build that and include a minority participation goal of thirty percent.

We've proven with that fill that minority participation is good, not only for the bottom line of that project, it's also good for helping small business, minority businesses, to succeed. We were fortunate enough to have one of our member companies be one of the larger recipients of a contract.

And as a result of all of the minority participation that we found in that project it came in under budget and within the scheduled time. So what we're saying is by opening up the pool, by having small business and minority businesses actually be able to participate you're helping to bring the cost down.

Because you are increasing the number of potential contractors that can do the work and can be competitive. What we're saying is that because you're a minority firm or a small firm and there's a minority participation goal in the contract, that doesn't mean that there's an automatic guarantee that you're going to get the work.

But it does mean that there's an opportunity for you to do it. I'll say it the way that our former Mayor had put it. That it was difficult for us to understand why twenty percent of the population here in Houston was not satisfied with eighty percent of the work. And there is a lot of sense to that.

And what we're saying is let's create opportunities for doing business with minority businesses as a public sector as well as in the private sector. And we have already proven here in Houston that minority; contracting minority participation contracts is good for the overall cost of the budget of the contract.

One thing that I; one of our members had told me before I was coming over here. He was saying that, you know, we believe in getting information out to; Hispanic Business publishes a Federal resource guide. How to do business with the Federal Government, that's great.

It has a whole bunch of names, contacts, phone numbers, fax numbers and all that. This one thing to have the contact, it's another thing to have the contract. And that's what we're looking for is contracts in hand and how is it that you can help us to help our members out.

And we're here to offer ourselves as a resource to help give you feedback and also for you to maybe look at us as being a way of answering some questions. And maybe talking directly to our members. I know that some of our members will be speaking later on. To see how we can improve this process.

Because we truly do believe that what you're trying to do is commendable. And we believe that you're trying to do the right thing. And we'd like to help to be a part of the solution rather than a problem.

MR. GREINER: Thank you. Just real quickly, it's that basically, by testifying here today we encourage you to fill out this form. This allows us to go to the agency and really get these specifics addressed. We look at it as a case study approach.

What can we learn from your experiences? And we want to take it,

your testimony today, and the Board's questions to try to pinpoint the actual problems. In this case, for instance with a top secret clearance, if you have a member firm who went through this process they could fill out our form, which is just one side of the page, there's some instructions on the back.

But you're free to write at the top and to do what you want. And then we can go to the DOD and say this is an impossibility for a minority firm because you're saying you have to have more or less top secret clearance to get top secret clearance. You have to have had a contract doing top secret work.

So it's very important that the people fill out the form and we process these to try to identify those enforcement issues. And then we put it to the agencies and hold them accountable ...

CONGRESSWOMAN JACKSON-LEE: But because of the largess of their contracts, because of the onerous burdens that they sometime put on small businesses, and also because of the limited help that they give to small businesses when they get a contract and they make determinations that the compliance is not adequate or you didn't meet your mark.

A lot of small businesses in their initial contracts, would be assisted by having sort of someone who is an ombudsman that is there to make the contract work as opposed have the small business fail. And I think DOD is particularly notorious for the difficulty in those arenas.

MR. TORRES: I'd also like to just real quickly thank Milton Wilson and his staff, Congresswoman Lee. They have really been a strong advocates for small business. Milton doesn't let the system get in the way of the results that he's looking for. And

so we just wanted to mention that and appreciate Tino for his support in being a liaison with the Hispanic Chamber. And again, Milton Wilson and Ruben. Thank you.

MR. CARADINE: Good, Richard. I'd like to call Mr. E. Coleman with S.E. Coleman and Associates.

MR. COLEMAN: Well thank you mostly for accommodating me. I think I still have a few minutes after my presentation. So I'd like to listen to a few of my colleagues after that. My name is E. Coleman and I'm with S.E. Coleman & Associates, a civil engineering consulting firm here in Houston.

And I extend a good afternoon to you Board Members. And I'm delighted to be here for a couple of reasons. It is my first appearance

Sure, as Board Members, it might interest you to know what I wrote about SBREFA. I particularly wanted to present a copy to each of you Board Members. And I'll also make it a point to tell my professor that I participated in this process. I'll pass this on to you later.

Another reason for my excitement before this hearing stems from the fact that about a year ago I became a citizen of this great country after living here for almost twenty years. And operating a small business for the last eight years. The City of Houston Metro and the Houston Minority Business Council certify my company, S.E.Coleman & Associates, as a minority business firm.

What is more exciting is our recent acceptance into the 8(a) certification program. I'm happy to announce that the Houston Office of the SBA assisted us in our preparation for the application and when it appeared. But there was a problem in Washington, D.C. regarding our final approval.

The Houston Office expedited action on it and on March 15th, year 2000, we were accepted into the program. We completed our orientation for the program about a week ago. And I must compliment the Houston Office for the excellent work in carefully pointing out the benefits and the results in the becoming accepted into the program.

Much as I would critique an unworkable system, and even mention names if deemed appropriate, I would in much the same way commend a system that is working well and make mention of Mr. Cleveland Baker, the Assistant District Director, and Ms. Baye Spears-Madison, staff member of the Houston SBA Office.

Having just started in a eight year program I would like to meet with you at your future hearings and hopefully give you success stories about our company and the Government program to assist small businesses in general. Thank you for allowing me to make this representation before you and I wish you all the best in your effort to build a strong small minority base in our country. Thank you.

MR. VILLARREAL: Good luck with the 8A program. Next on the list you have Scott Lara with the Home Care Association of America.

MR. LARA: (unintelligible) Ombudsman McDonald and esteemed members of the Region VI Fairness Board. My name is Scott Lara and I am the Director of Governmental Affairs of the Health Care Association of America. HCAA represents over two hundred and fifty locally operated and many more operated home health agency owners across the United States.

The majority of our membership is comprised of home health agency owners in Texas, Louisiana and Oklahoma. It's an honor to be able to testify before you today regarding the abuses of a Federal agency even more feared than the Internal Revenue Service. And

that agency is the Health Care Financing Administration, or HCFA.

HCFA is the Federal Agency under the Department of Health and Human Services that runs the Medicare Program. One of the programs under HHS is the Medicare Home Health Benefit. Congress designed the Home Health Benefit to provide care that is related to the treatment of a specific illness or injury in the course of responding to an acute episode.

To receive Home Health a beneficiary must be under the care of a physician who has certified that medical care in the home is necessary. And who has established a plan of care. Furthermore, the beneficiary must be confined to the home and must need intermediate skilled nursing care or physical therapy or speech language pathology services, or have a continuing need for occupation therapy.

If these requirements are met Medicare will pay for skilled nursing care on a part-time or intermediate basis. Physical and occupational therapy, speech language pathology services, medical social services, home health aid services for personal care related to the treatment of the beneficiary's illness or injury on a part-time or intermittent basis. And medical supplies and durable medical equipment.

Medicare's home health benefit is crucial to the four million beneficiaries who receive care at home. Compared to the rest of the Medicare population, home health patients are more likely to be female and to live alone. These patients also tend to be poor. Forty-three percent have incomes below ten thousand dollars.

In addition, home health users are more likely to have two or more activities of daily living impairments that rate their health status as poor. Home health beneficiaries receive services that greatly improve their quality of life. The benefit helps these

patients recuperate in their own homes. Sophisticated medical treatments that were once only possible in a hospital are now available to patients at home.

Beneficiaries are receiving these services from the nation's ten thousand, five hundred home health agencies. Many owners of home health agencies are female and minorities. These agency owners hire nurses and home health aides, many of them single mothers, to provide nursing and home health aide services to the sickest, poorest and frailest members of our community.

Now you would think that the Federal Government would reward small businessmen and women for providing jobs in the community. And at the same time treating Medicare beneficiaries in their homes which is less expensive than nursing home care. But no.

HCFA has been relentless in their attack against honorable home health agency owners who seek to provide doctor certified medical services in the home. Over the past several years HCFA has forced over three thousand home health agencies out of business by imposing burdensome regulations.

One of those regulations is having nurses complete the home health care assessment information set, also know as OASIS. I've included the OASIS information set with this testimony. You will see that seventeen pages that nurses are required to ask the patients is quite burdensome.

Certainly some amount of paperwork is required in the medical field. But if you ask a nurse why he or she entered the nursing profession that nurse would tell you it was to take care of sick patients. Not to be a slave to paperwork. When it takes longer to fill out paperwork than it does to treat a patient something is seriously wrong.

Though I have the OASIS data set right here; I was going to show this to you. And it goes longer than that. There are two parts to this. There are seventeen pages which have questions when a home health nurse or a home health agency owner goes out to admit a person. And then there are nine additional pages that after sixty days they have to go back and ask these questions.

And you'll see in the testimony at the back how many questions, and they're really personal questions, that are asked. In 1997 Congress passed the Balanced Budget Act of 1997. One of the components of this law included a surety bond. HCFA took that law and then proceeded to intentionally thwart the intent of Congress on the law and promulgated a regulation that would have forced more health agencies out of business.

Only with the help of Senator Kit Bond of Missouri was HCFA forced to withdraw the regulation and now is in a process of rewriting it to mirror Congressional intent. Besides the OASIS data set and the surety bond issue HCFA has hired program safeguard contractors to review payments made to home health agencies.

I have called these contractors bounty hunters. I believe these bounty hunters will do everything to recoup Medicare dollars so that HCFA will then renew their contracts. It's the same principle as with IRS agents. The public perception is that if an IRS agent is able to recover funds chances are that agent will be promoted.

However, if an IRS agent is seen as not recovering funds the agent may be viewed as not effective and their raises and promotions may be hindered. You may recall that Congress held hearings on the IRS two years ago. And exposed this problem to the American public. Legislation was then developed and a Taxpayer Bill of Rights was established to protect honest taxpaying Americans.

It is clear that HCFA and the contractors they hire to survey home health agencies do not treat home health agency owners with respect. The surveyors; and let me just comment on that. Surveyors are folks who are hired by the intermediaries, the home health intermediaries, to go out and audit home health agencies.

These surveyors rarely conduct exit conferences to inform agency owners about discrepancies they find during a survey. Which would give the agency owner an opportunity to correct the discrepancy on the spot. Let me stop there for a moment. Let's say if an OSHA person came out to inspect your office. And let's say you had a frayed electrical cord. Wouldn't you like to say okay here I have an extra electrical cord. I'll plug it in. Now we're good to go, right? And the OSHA person should mark it off because you fixed the problem.

That's what I'm talking about regarding these exit conferences. Which would give the agency owner an opportunity to correct the discrepancy on the spot. It's also clear that when HCFA issues a proposed regulation pertaining to home health care that HCFA ignores industry input on those proposed regulations.

If HCFA used the comments of the home health industry regarding the surety bond issue Congress would not have been forced to tell HCFA to withdraw those regulations. The final issue I wanted to discuss is home health referrals from hospitals to their hospital owned agencies. The Balanced Budget Act of 1997 included a provision that hospitals were to allow the patient his or her choice of home health agency when the patient was discharged from the hospital.

Now before the BBA of 1997 some hospitals were found to be steering their patients into their hospital owned home health agency in an effort to cost shift, or as I call it, double dip in the Medicare system. We have found that while some hospitals are

complying with the BBA of 1997 some hospitals are not informing their patients of what home health agency their doctor has prescribed for their patients.

Without all the information patients are continuing to be steered in some cases to the hospital-owned home health agency, effectively denying the patient choice. In addition, hospitals in most cases cost the Medicare system more than locally-owned and -operated home health agencies in the community. And because some hospitals double dip the Medicare Program this is an additional cost to taxpayers as well.

So in conclusion, what am I asking you do to? Please take a few moments to look at the news articles and also the OASIS data set that are included with this testimony. These news articles support my concern that HCFA has forced many home health agencies out of business. In addition, HCFA continues to unrelentlessly attack honest hard working and ethical small businessmen and women who own home health agencies. Many, ninety percent, are small businesses.

Secondly, why I'm asking my members to fill out the Federal Agency Appraisal forms to document problems with HCFA I'm requesting that this Board recommend to Congress that HCFA work more closely with representatives of the National Home Health Care Associations. Only by working together will my members be able to continue providing doctor certified home health care services to our nation's Medicare beneficiaries.

Third, I'm asking that this Board write a letter to Senator Kit Bond, asking him to hold hearings about the abuse of practices of HCFA. Only with Congressional intervention will HCFA be held accountable to the American people. I am certain that Senator Bond would appreciate this request if you would act upon it.

I know this may fall under your mandate or protocol, however I would hope you would consider this request. Fourth, I'm requesting that when the final document is being drafted for the Annual Report to Congress that language is included to reflect this Board's concern over HCFA's abusive practices towards honorable home health small businessmen and women. Many of them who are minorities and also females.

Efforts to tone down language reflecting your concern should be rejected. The abuses of HCFA regarding the OASIS data collection, the home health surety bond, and HCFA's unwarranted attacks on small businessmen and women must be addressed.

And lastly I'm requesting that this Board ask HCFA to work with my organization, the Home Care Association of America, about developing a clear and specific policy regarding home health referrals from hospitals. HCAA will be honored to work with HCFA to craft a one page letter to ensure that patients wishes are honored when it comes to patients choosing their home health agency.

I do appreciate the opportunity to come here today. I flew in this morning from Jacksonville, Florida to be here. I've asked many of my members from across the country to attend these hearings because this gives an excellent opportunity for small businessmen and women to voice their concerns. And I deeply appreciate each one of you being here. Have you any questions?

MS. McDONALD: Scott, I'm familiar with home health care just through stroke patients. Who answers the questions in this case? The spouse perhaps?

MR. LARA: Oh, regarding the OASIS data set?

MS. McDONALD: Right.

MR. LARA: Well when a nurse goes out to perform the OASIS, all these questions (interposing)

MS. McDONALD: Which data she can obtain independently?

MR. LARA: Well, a nurse can go out there and legally, has to ask all these questions. And regarding stroke victims, I had two relatives who passed away who received home health care and they preferred to be in their home, they preferred not to go into a nursing home. And nursing homes are a part of what we call the continuum of care.

Well you just don't see people raising their hands begging to go into nursing homes. Home health care is less expensive than hospital or nursing home care. And they prefer it. So this, what we're fighting for and Jerry has been working with us very closely.

MR. MOCHA: HCFA has been doing this for a couple of years. This isn't the first time we've heard this. Has it gotten any better over the last year?

MR. LARA: No sir, actually it's gotten worse.

MR. MOCHA: Really?

MR. LARA: Yes sir. BBA of 1997; the best way I can put it is imagine you own a business like Domino's Pizza and let's say Domino's pays you to do what you do and portion gets paid by your customers. But let's say Domino's pays you for doing pizzas. Imagine this is the year 2000. And you're paying your people at 2000 salaries.

And let's say Domino's Pizza says I'm sorry, we're going to put you back to 1995. You know, costs. Now gas is what, a buck fifty, a buck sixty? You still have people delivering pizzas.

It's the same way.

They forced us back to 1994 reimbursement levels in 1997. So how can you pay your people and pay for things years before those costs?

MR. MOCHA: What about the surety bond?

MR. LARA: Surety bond is coming back to haunt us again. This coming Fall they're coming back with a surety bond. And God bless Kit Bond, because Kit stood up and said this has got to stop. And HCFA went back and looked at it. But it's coming back.

We're now moving to what's called a prospective payment system, which will also really put a cap on how much care we're able to provide. And HCFA is very concerned that when we move to this new system of payment that the level of care is going to go down because contractors paid us less. So. It hasn't go better.

MR. CARADINE: Scott, you might be familiar that back in 1998 we had a meeting in Tulsa which Larry chaired. And most of the presentations on that day were concerned with HCFA. And a lot of what came from that hearing went forward to Congress. Certainly I think that there was some impact that helped then.

I'm a little bit disappointed to hear that we possibly have gone back to some of those issues that came up then. Especially the surety bond issue, which was pretty hard. And if it was eliminated then and now it's coming back I'm curious to know whether or not your organization and other organizations had any input into whether or not the surety bond issue should be brought back or should be changed or (interposing)

MR. LARA: Well the surety bond is part of the BBA of 1997. So for that to change Congress would have to do something. HCFA had invited several of the trade associations to sit down, and so did

the General Accounting Office, to give input on the surety bond. And we were very clear on what we thought would be fair.

And so HCFA is looking at those comments and this Fall they will probably be another; hopefully a proposed regulation, not a final regulation, so we can comment on that. But the arrogance of HCFA is very troubling. To a certain degree they have opened up to the trade associations where we have been meeting with them.

This program safeguard issue, which I mentioned, the bounty hunters, we talked with HCFA about that. But when you talk with HCFA it's a one-sided street. They'll let you say anything you want to say. You can talk until you're blue in the face. But when you ask HCFA what about this? Well, we can't say. There's a lawyer in the room. We're not allowed to talk about PPS, perspective pay or the surety bond. We can't say anything. So it's not a two-way street.

MR. MOCHA: John, we've been after, we've contacted HCFA. Can you give us any report.

MR. GREINER: Well, I'll try not to contradict what Scott's been testifying, but I think one of the things that the Board and the National Ombudsman have been working on is to try to get HCFA to start communicating. And I think you're saying if there is some improvement, obviously if it's a one-way communication, it's not the total roundabout communication. You need that back and forth.

One of the things that the National Ombudsman's working on is to try to come up with some forums where there's real dialogue. You know, folks can get together, the associations, the business owners, the HCFA folks, maybe get rid of all the lawyers and just have a real sort of review of what's taken place in the past.

Because we're always sort of studying what's happened to try to

improve the future activities. And also the PPS. They're looking at November to have the prospective payment system in place.

And that, as we understood it from some of the home health care providers is due in great part to your efforts. And we really appreciate that, by the way. I mean, that's a little bit more reasonable than the IPS because it's not a one-size fits all. Maybe there are not enough sizes in there. But there's at least some size.

You know, is your patient really really sick or are they recovering and are they going to be able to get back to their old job or whatever. But I think we're working with them. It is I think to some extent there's probably that issue with the lawyers in the room.

MR. MOCHA: What about the surety bond thing? MR. GREINER: The surety bond; first of all, and again thanks to the association and the members, they voiced their concerns with the Boards and with others, that the technical requirements were so prohibitive that they couldn't possibly get the surety bond. So HCFA changed that, which was good.

And then there were some other issues because BBA 1997 said there is a minimum of fifty thousand in the bond requirement but it could go up. Or you could set any higher amount and HCFA set a very high amount. And that went back. And there was; I guess there was some discussion. Although again if what we're hearing today is that they didn't provide their feedback to you guys and then that's something we didn't hear about and we're glad to hear that today because we can go back to them on that very issue.

But then they reissued that surety because again it was BBA 1997, there has to be a surety bond in place. To the extent that they need to take the law and implement it in the least destructive

way, that's, you know, that's sort of part of what we're trying to help with. And what the associations are trying to help with.

MR. LARA: I appreciate your office and the Ombudsman working together. Maybe we can put that together. We can sit in one room. But the one thing I don't want you to forget is the arrogance of HCFA. Kit Bond held a hearing two years ago and asked the HCFA Administrator to come before his Committee and to testify on these issues I'm bringing up.

And in the Reagan Administration it was okay if the Administration didn't go first. That folks like these out here in the audience could go first. The Administration could listen to the comments and then come up and offer testimony. But the Administrator literally thumbed her nose at Senator Kit Bond. And she said if the Administration can't go first then we're not even coming to the meeting.

And it was Kit Bond and all the other members of the Small Business Committee all talking about the arrogance of HCFA not showing up. So that's why I asked in my recommendations to do this. But I deeply appreciate everything you're doing to help us. And we do want to work closely, more closely with HCFA.

MR. GREINER: At the administrator level, I mean what we're trying to do is work with the folks that work on the nuts and bolts. I think there's more potential for communication once we set up these forums. And certainly I think your association's going to be one of the key partners in those forums.

MR. LARA: Well this forum has been excellent for our members. And for the trade associations. And we appreciate the opportunity.

MR. MOCHA: I'm sorry just to have to keep going on. I was hoping

there'd be more improvement (interposing)

MR. LARA: Like I did.

MR. MOCHA: Yeah.

MS. McDONALD: But Scott, also I'm State President for the Women Business Owners Association of Louisiana. And we have a lot of health care, home health owners in Louisiana that are women and minority owned. Would you mind if I gave this information to them to also help support them to (interposing)

MR. LARA: I'd be happy to.

MS. McDONALD: Help make some changes?

MR. LARA: I'd be happy to. Whatever you need I'd be happy to (interposing)

MS. McDONALD: Wonderful. Wonderful.

MR. LARA: But you bet I'm right. Most of these small businesses are, and you'll see from some of the folks testifying today, women and minorities. And we understand we're in the Medicare field. We understand we're working for the Government. And it's an honor to work for the Government to take care of these patients.

But it's not a fair playing field when, you know, with the surety bond and with the perspective payment system and especially when they don't even take our comments. That's very difficult. And we're treating the poorest, sickest patients. And they don't have a voice. So we're their representatives.

MR. VILLARREAL: Scott, is there any further impact from at least State regulations or local regulations or local regulations that even add injury to insult on these issues.

MR. LARA: No, I'd say in New Jersey they are holding, or they are

conducting criminal background checks, which I think protects the patients and it protects the agency as well. But that wouldn't classify as states piling on. It's the Health Care Finance Administration who runs the home health benefit that just hasn't been dealing responsibly with the providers (unintelligible)

MR. MOCHA: Thanks very much.

MR. GREINER: You testified about the intermediaries and the contractors hired by the intermediaries' intermediary?

MR. LARA: Correct.

MR. GREINER: HCFA, actually that was one of the things that we've put on the agenda, the forum. Because they clearly are in terms of the audits inspections and we've had some comments again from some of your members who were audited and there was actually nothing wrong. And then we had some arrogance of some inspectors saying well we would have done it differently.

It's maybe not that frequent but when it happens it is, it's just unacceptable.

MR. LARA: Well, just for the record HCFA and the intermediaries hold home health agency owners to perfection. Zero tolerance. No mistakes. But when an intermediary or a survey man makes a mistake, and it's in the favor of the home health agency, there is nothing there. There's no Bill of Rights for the providers to say if someone messes, like when the OSHA inspector or the IRS person messes up or makes a wrong judgment, there is nothing going back that way.

But if a home health agency owner doesn't cross a T or dot an I then it's fraud, it's jail, it's abuse. And that's just not right. It's got to be a two-way relationship. And we look forward to that.

MR. GREINER: John, I thought you fixed that. The other thing I want to say to everyone is what happens with a lot of the testimony, the comments, we evaluate and rate agencies. That's one of the key functions of the National Ombudsman and the Fairness Boards. Is that they put together recommendations to Congress and the Administration.

And each of your packets again includes a list of the ten recommendations for each of the past three years that we've been in existence. And that a lot of the issues raised in the HCFA comments have become national recommendations. I mean, they're occurring with HCFA but usually occur with HCFA and with other agencies. We see trends.

And then we take these recommendations and develop evaluation criteria so we can really hold agencies accountable to carrying out these recommendations. So that's the suggestions that Scott offered, I encourage everybody, think of what you would do differently. Or what the agency should do differently.

Because that's the key. We need to hold agencies accountable. But we need specific suggestions on how to do that.

MR. TORRES: Let me echo that too because hearings are very important but without the documentation of those forums, that's crucial to be able to go to Congress to say here's documentation, and be specific as possible. As I mentioned in my testimony I'm encouraging my members to do that. Thank you very much.

MR. VILLARREAL: Thank you very much.

MR. HOWARD: Madam Chair and distinguished members of the panel and of the Board, I truly appreciate being here to be able to speak with you. I'm speaking on behalf of Boeing. When we initially decided that we wanted to come up and speak we had some

issues and concerns we felt it appropriate to air, since our primary concern down here is NASA, working with the Johnson Space Center.

We thought it appropriate that we go through NASA in regards to issuing our concerns. And we feel it appropriate that NASA speaks on the part of Boeing and the aerospace community in this; in regards to the aerospace perspective on things.

So we would respectfully decline to offer a public comment in regards to the Regulatory Fairness Board as of today. What I'd like to do, since we do have the podium in regards to testimony, is speak in regards to Sheila Jackson-Lee and her comment in regards to placing more women and minority businesses within the Houston area.

The Honorable Jackson-Lee posed us with a question in regards to what are we doing in regards to putting more business into the area. And I want to testify in regards to how we think some of the organizations in the Houston community in regards to business, in particular small business works.

When she gave us that challenge immediately what we did is we contacted the Houston Minority Business Council, the Houston Business Council, Johnson Space Center and the SBA. And working with those organizations the Boeing Company decided that we were going to farm out approximately eight to twelve million dollars worth of work into the local community.

In specific, we were looking for software engineering, engineering and technical services. We thought it appropriate to conduct a series of symposiums, small business symposiums. The connection between all the organizations we found organizations to invite the brightest and the best down to Boeing for this.

We gave out real time requirements which is these were requirements that were actually going out the door within the next three months. Of that we were able to qualify approximately twenty-two businesses in the local area to do that work.

I'm proud to stand up here and say that the bids went out yesterday. And I'm also proud to say that what started out eight to twelve million is now sixteen million dollars. And I'm proud to say that is a women and minority only list.

And so we know that we will have winners. And we know that we will be doing very good in regards to placing dollars into the local community. As a matter of public record I want to stress any comment in regards to that.

Secondly, we as the Boeing Company are doing something that we feel is very important to share with everyone. And that's in regards to we are in looking in junction with Prairie View University. And what we've done is we're working in Boeing with very specific software that is used on the international space station. What we did is we took one of our engineers and placed him into Prairie View University to teach that specific course to Prairie View students for the core.

We were able to get ten students to actually take the course. What we've also acknowledged that at the end of that course; at the end of that semester, which comes up in the middle of May, all ten students that took the class will receive a job either with NASA or with Boeing; and do a Summer internship.

The reason I say that because I put the challenge to us all. Our future is the students. And we want to do everything that we can to promote that. I notice that there are other large businesses and Government agencies represented in this hearing.

And I put the challenge to you all that we can do more with the historically black colleges. And we can give them a chance to integrate into the small and women and minority businesses. So we will let NASA do the talking for us in regards to the questions that we want to pose to the hearing board here.

But I also want to make your point to ensure that everyone knows that the organizations that are here in Houston work extremely well. And we have to; we understand that everyone has issues and concerns. But it's also very important when things are going right that those are announced also. So thank you very much for your time.

MR. VILLARREAL: Okay, I have a question for you. Have you guys established a work program at Boeing?

MR. HOWARD: Very good question. The Johnson Space Center holds a roundtable of prime contractors. And our next discussion is in regards to application of mentor/protégé in the job at the Johnson Space Center area. And we in the Boeing Company have stepped up and have committed to placing a mentor/protégé relationship within the Johnson Space Center with that scenario. Yes.

MALE VOICE: I want to applaud you because I went to this symposium roundtable and I will tell you it was a room bigger than this, wall-to-wall entrepreneurs and questions and it is actually the first time that I've heard people give up their phone numbers, you can call them directly, you should be applauded for that, Kevin. But keep it up.

MR. HOWARD: Yes. Thank you.

MS. McDONALD: I'm wondering if you've built in any evaluation process so you can follow up with these first contracts?

MR. HOWARD: That was extremely important. Matter-of-fact we saw

that as being one of the prime drivers. Because the distinction that we're trying to make is we've had contractors that have been trying for five or six years to get in with the large major ones. We realize how difficult that is and we realize the importance of having an ombudsman there to help them through that process.

What we found is by putting out a criterion that is not necessarily the distinction of a prime contractor but is more user friendly to a smaller business in regards to; we realize that small business does not have the assets in regards to administration to apply to this. So we tried to take away some of the administrating process.

But also what we've done is we've tried to make the criteria ensure that these small business that will be getting this work will be successful. One of the things that we've done to that and we think is most important is we've taken these large contracts and instead of consolidating them to make them bigger so only we prime contractors can bid on them, we've broken them down to the point where it becomes very palatable for a small business that's say only making a million dollars, only making a half a million dollars, that they also have the chance to get in there and on the step program come up and be a viable supplier for us.

And that's where we're trying to work in conjunction with the mentor/progeny program. We think that's the proper vehicle to get a small or medium sized small or minority business up to step and working in conjunction in the aerospace industry.

MR. CARADINE: Kevin, I have a couple of questions. Not being from this area and not being familiar with what; I'm familiar with Boeing as far as what they're doing with NASA. It appears that the eight to twelve million was a goal that Boeing had set, is that correct? Or if it was in this area, and I guess where I want to go with the question is what percentage of work with small

business does the sixteen million represent with local contracts.

MR. HOWARD: Very good question. I wouldn't phrase it as a goal. I'm going to phrase it as a target. And the reason I'm phrasing it as a target is because I know I have two or three more of these packages that are going to be let out to the public even more. So of the targeted sixteen million dollars I feel that two months down the line I'm going to have another two or three million dollar package coming.

So whilst I'm not quite sure what this will eventually mean but I feel that it will mean; I feel that the baseline is sixteen million. I have; I feel that it has the capacity to move up to probably about forty million. And I'm talking this year. This year.

MR. CARADINE: It sounds like y'all are doing a real good job. And Mr. Coleman there might want to know if there are any civil engineering packages.

MR. COLEMAN: That's always true.

MR. HOWARD: I've always made it; I have an innovative thing that I implement in the Boeing Company. And that is I return everyone's phone call.

MS. McCULLOUGH: I have one question. You're recruiting efforts, you mentioned working with the ten students. What also do you do as far as your recruiting efforts for hiring employees?

MR. HOWARD: That's a very good question. When we started this push right here our requirements in regards to human resources was to hire two hundred and twenty-five engineers. I thought it was very appropriate that we not hire that many. I thought it was so appropriate to say why should we hire when they're existing in regards to small businesses.

So I was able to take that number from two hundred and twenty-five, which we were going to hire into the Boeing Company, and break out a minimum of eighty of those jobs that we've packaged up and this is part of the procurement that is going out. So what we're trying to do is not maybe inflate our Boeing capacity down here.

But to give the small and women businesses the opportunity to look at our work also.

MS. McDONALD: Okay.

MR. CARADINE: Thank you, Kevin.

MR. HOWARD: Thank you very much.

MR. VILLARREAL: Nancy Lentis and Rosalyn Rose for the Nurses Home Station. Okay, have Rose Schmitz, the Progressive Health Care Systems. I don't see in the room. David Jones, Accord Home Care? Susie Matthews with the Norstar Home care? Ellen Subinsky with Arcon Management?

MS. SUBINSKY: Good afternoon, Madam Chairman, Madam Ombudsman, and Member of the Board. I appreciate the opportunity to be here this afternoon to talk to you about something that I think everyone in the room is going to be very familiar with.

I think probably at some time in everyone's life they've spent some time living in an apartment. And the general impression of most people when they think of apartments they think of large conglomerates, real estate investment tracts, people in a position of money and power that control the housing destiny of America.

That is probably as far to one extreme as reality of our industry is top the other. Approximately eighty-five percent of the rental housing across the United States is owned and operated by small

businesses, mom and pop. And the people who can relate to people to people as opposed to people to a nameless faceless corporation.

For the last ten years the Texas Apartment Association has been representing these individuals in trying to provide a solution where small business owners with a small number of apartments could accommodate so many of the people within, in this particular case, Texas, that are going homeless. That are unable to provide to find decent housing to accommodate their needs.

One of the major problems and one of the greatest obstacles to putting those two factions together is unfortunately the Department of Housing and Urban Development. The Texas Apartment Association, and I am representing them today, urges the Regulatory Fairness Board to recommend the overhaul of the United States Department of Housing and Urban Development, Section 8 Housing Assistance Program.

It is time to remove the roadblocks that increase administrative costs that could be better used to serve people in need and that also inhibit private property owners from participating in this program. The Section 8 Program was created in the early 1970s. As part of this program participants receiving housing assistance administered through local housing authorities.

Program participants must then find properties to live at that accept the Section 8 vouchers. So basically indigent people go to their local housing authority, they meet all the criteria. They then are presented with this housing voucher. And then they go out into the market and they try and find a housing provider who will accept the housing voucher.

And unfortunately run into are people, small business owners, who don't understand the program, can't understand the program and are in a position where they can't afford to give housing to people

with vouchers because of the delay in their payments, plus the additional paperwork that they're required to fill out, which places an unfair and unjust burden on them.

So that they would just as soon rent to a conventional renter as opposed to someone who really needs housing and can only get it with a housing voucher. What this does is it limits the amount of housing that is available to the people who are in the most need.

The people who have to look at perhaps finding housing on public transportation lines so that they can take their children to the doctors when needed. So that they can get around the city, to their shopping and the other things. They perhaps can't go out to the suburbs where other conventional people who are looking for conventional housing can afford to do because they have cars and they have other means of getting out there.

And what it does is it penalizes people who own properties in areas where the economically disadvantaged want to live and it penalizes the economically disadvantaged. Unlike the Social Security and Food Stamp Programs that have few, if any, restrictions on businesses that accept them, Section 8 programs carry many additional duties for property owners.

Among other regulations require owners who accept Section 8 to use hard promulgated forms, face delays in receiving payments, have mandatory property inspections, even if the property is located in a municipality, for example, like Houston, that has a very high level requirement for city inspections.

And many other duties that go far beyond generally accepted business practices. If a grocery store had to meet the same criteria to accept Food Stamps that a property owner has to abide by to accept a Section 8 voucher, there would be a lot of hungry people as well as those that are going homeless. It's really an

unfortunate situation.

Our parties continually rejected this. They said no, no, no we have to use the Government paperwork. We have met with many representatives from HUD over the years and what we have found is that we're dealing with typical Government bureaucrats. That's the way it was done fifteen years ago, that's the way it was done ten years ago and that's the way it's done today. Whether it's practical makes absolutely no difference. Whether it makes sense makes absolutely no difference. It's the Government way.

I'm here today to ask you to assist us. Thank you, Gail. Thank you very much.

MS. McCULLOUGH: You say you'd like to reduce the paperwork to one page. How cumbersome is it now? I mean are you talking (pause)

MS. SUBINSKY: I believe one of the gentlemen who was up there throughout, it's about that length that is very typical. And someone who was used to dealing with the Texas Apartment Association form does not want to have to go through, not only the cumbersomeness of the forms, but you then have to educate every one who works for you on what the form says, how you have to explain it to someone coming in to lease an apartment.

You have to be proficient totally in that Government form as well as the forms you use every single day in your conventional business. And again, that places an undue burden on a property owner to have to go through that. And they are, of course, more and more reticent to deal with a Section 8 voucher.

Simply because they don't want to go through all of that aggravation and time and additional expense training their

personnel.

MR. CARADINE: Ms. Subinsky, when a person qualifies for the Section 8 Program, does that not have a database of that particular person to where when it comes to renting an apartment that information could be available. I would suppose that would help suffice in submitting this form that you're speaking of? And this is just to educate us to let us know and understand exactly what you're going through.

It seems like there's almost a duplication here that could be cleared up if that process was such that it could; if you got information to be in the program to being with and some of the same information is needed when you apply for an apartment. Is that not the case?

MS. SUBINSKY: I guess perhaps I'm not understanding your question.

MR. CARADINE: Well it appears that in the Section 8 Program when a person wants to rent an apartment, there's this application process that they go through with, let's say you're an apartment owner. And so this information that you're filling out at that point sounds like it's some of the same information that they were qualified; they would have to submit to in order to qualify for the Program to begin with.

MS. SUBINSKY: Yes, it's not so much the application, it's the fact that you have a very cumbersome lease document that then has to be initiated and signed by the prospective person coming in to lease an apartment. Even if they meet all of the qualifications you still have to deal with this additional lease format (interposing)

MS. McCULLOUGH: I think what he's saying is that doesn't the HUD

office of the applicant that came in that qualified for HUD then get all this information from the applicant coming in saying they qualify. Couldn't that information that they've just put into their database be sent over to the homeowner or the rental owner so it's already filled out?

MS. SUBINSKY: No, it is already filled out. But you then have a lease. Okay? You have an application that you fill out to determine whether or not you're qualified. Then you have a lease agreement under which you hold occupancy of the premises. Well that lease agreement is, I want to say eighteen pages long.

Which means the landlord has to learn all of the details of that eighteen page document in order to administer it during the term that the resident is living in their apartment.

MS. McCULLOUGH: So there is no incentive for the person that's renting the apartment to lease it to someone really in need.

MS. SUBINSKY: None whatsoever because in addition to all of the cumbersome paperwork you also go through the inspection process and a conventional resident comes in and they sign their lease, they pay their rent today, they receive their keys and they move in. A recipient of the Section 8 Program comes in, goes through this voluminous paperwork, gets their keys, moves into the apartment and thirty, forty-five, sixty, seventy-five days later the property owner may get a check for the rent.

MS. McCULLOUGH: All right.

MR. CARADINE: And that's part of the point I'm trying to make. Why couldn't they may come in, and if this lease is standard and its use is accepted by HUD, why couldn't they come in with that lease?

MS. SUBINSKY: They can but it's a lease that the landlord doesn't understand. That's the problem.

MR. GREINER: If I may, I mean I'm somewhat familiar with the Section 8 Program having represented individuals against the housing authorities where there is a problem that they're not paying their rent. The exact problem your landlords are having with tenants is because sometimes they get evicted because the landlord doesn't get paid for months.

MS. SUBINSKY: Exactly.

MR. GREINER: It sounds like to some extent that there's some midpoint that you're willing to agree would be sort of addenda to the standard Texas Association lease is that they're all these sort of different requirements. And the housing Section 8 Program is not just about housing in a way.

I mean, there have been so many amendments in Congress and certainly at HUD try to address drugs, gangs, you know, all sorts of violence. Additional programs to help folks get back on the career track. And become more self-sufficient. And so these lease documents are really, it's beyond what you would expect in a lease, a lot of the material on, I'm sure you would agree.

MS. SUBINSKY: I agree wholeheartedly.

MR. GREINER: I think one of the things that we could look at in terms of working with HUD, and they certainly have been an Agency that's been interested in working with SBREFA, with the Boards and the National Ombudsman, is to try to come up with some way to reduce that burden.

Certainly for the smallest landlord who may have only one apartment to rent. You know, that's owner-occupied. You know, the cost of getting up to speed and dealing with the inspections

and everything would be so hard that it favors the large landlords over small landlords because they can get the economy of scale.

So maybe that could be something if you get your members to file individual comments about their experience. And that they went through it but it cost them five thousand dollars for their time. Or the whole process just wasn't professional. That they have to wait three months for their payment.

So those types of particulars really sort of jump start that conversation and the dialogue to try to see what we can do to help your members. And certainly help folks across the country.

MS. SUBINSKY: Okay. I will bring that news back and I thank you for your questions.

MR. CARADINE: One final question, if I may. Has the Association suggested things like a lease that would help to make this process transparent?

MS. SUBINSKY: Yes, we have.

MR. CARADINE: I think that would be helpful for everybody to see and understand (interposing) MS.

SUBINSKY: Okay. We have submitted, on several occasions, a copy of the amendment to HUD. And in fact throughout the State of Texas we have met with many of the local housing boards. And they have reviewed the document. They like it. They say it would help them to better administer the program. It's the Washington Office of HUD that we keep running into blocks and stonewalling on.

MR. VILLARREAL: (unintelligible) Parkinson and S. Majors with Nurses Night & Day.

MS. PARKINSON/MAJORS: Good afternoon Ms. McDonald and Members of the Board. On behalf of the home health care agencies, and

especially the ones in Houston, a great deal of home health care agencies have gone out of business because of overpayment by HCFA. Some agencies have not collected a dime from Medicare in over two years because of overpayment.

However, we're living with it because we're here to provide care. The remaining agencies are now losing staff because of low reimbursement. And the agencies can no longer afford to pay premium staff. We all have to deal with OASIS. As a nurse, it takes one and a half hours to do an OASIS form on admission of the patient.

And care can take from ten minutes to do a wound care to an hour to perform an IV therapy. We cannot afford the nurses because nurses want forty-five dollars a visit. And some agencies lost their reimbursement rates to as low as eighteen dollars per visit.

The OASIS form cost three dollars to purchase. It takes an hour and a half to fill the form in. Then you have to take it to the office to give your clerical staff to input into the computer. And this has to be done within seven days.

If this form is not input in seven days and the State auditors come in we are out of compliance. It is then transmitted to HCFA or to the Department of Health who then transmits it to HCFA. We don't understand the purpose of this because on all admission packets these questions are asked. And now it's an intrusion on the patient's privacy.

Some of these patients are so confused they cannot answer these questions. Some don't want to answer because they feel they're going to lose benefits because you have to ask what is the income level, can they afford this, can they afford that. And the majority of them cannot afford except what Medicare or Medicaid pays for them.

We can't find nurses and these forms have to be filled out by registered nurses, speech pathologists, occupational therapists or physical therapists. Small home care agencies cannot afford these category of people to go out and fill out these forms.

We also have to do these forms every sixty days. And a lot of agencies have long term care clients that fall under Medicaid and all they're receiving at home is assistance with activities of daily living. But we have to do these forms every sixty days.

And I can't find nurses so I'm working seven days a week trying to get these forms filled out so that I'll be in compliance. And we're asking for HCFA to really look at this. It is not necessary. I can see doing this form on admission, but not every sixty days.

And a lot of the home health care agencies were struggling to get business. And now we have to compete with the hospitals. All hospitals have their own home health care agencies. The minute your patient is admitted into the hospital you lose that patient. Not unless you have someone on your staff calling around to hospitals and saying Mrs. X is my patient. She went in yesterday. Please let me know when she comes out.

And still you're not even guaranteed whether that person is going to come back to you. So we're really asking for HCFA to take a look at this. We all want the paperwork to be reduced. But right now it's an added burden.

MR. GREINER: One of the things we heard initially about OASIS, and maybe you can help illuminate our knowledge of this. We heard that certainly the cost of getting transferred over to this computer data entry system was a lot higher than what HCFA originally allowed in terms of reimbursement costs.

MS. PARKINSON/MAJORS: They have not reimbursed us for anything.

MR. GREINER: Okay, well that's certainly something we can go to HCFA, if you sign the form and got your testimony actually with the particulars. So all you need to do is sign the form and that's it. But, with the leases, the other thing they were saying is that the data that they are collecting through OASIS was basically just replacing old data that was required.

This is what they're telling us, and that's one of the reasons we have these hearings is to hear back. They expected that the total cost to the agency would actually go down slightly with OASIS because it would standardize the data collection and instead of having lots of different data that they would have to gather over time. That this would sort of replace pretty much all the patient data gathering. Is that what you (interposing)

MS. PARKINSON/MAJORS: I don't see it that way, no. On admission you have the data. And once you have it it's locked in. Why do it every sixty days? You have short stay patients that you see for two weeks, three weeks. But our long term patients we've seen for five years, three years, two years. And every sixty days you have to do it.

We're unfortunate because we're accredited. We have to start this in January. But all other agencies have to start in the Fall.

MR. GREINER: Every sixty days this is something in addition. So prior to OASIS your agency did not have this frequent periodic reporting (interposing)

MS. PARKINSON/MAJORS: Well, no. You still see them every sixty days. But you could get a lesser staff member to do these assessments. You could use an LPN. Now you cannot utilize an LPN, you have to use a registered nurse. And the therapists, the

speech therapists and the physical therapists, their visits cost you sixty-five dollars. So how can you afford to get them out to go to an OASIS visit for you? It's impossible.

MR. GREINER: So you're saying the cost of each of these reassessments is higher because of the personnel that are required to do them, the specialists. And this; am I hearing you correctly, that the amount of data during the reassessment is greater? You actually are collecting more (interposing)

MS. PARKINSON/MAJORS: No, it's not. On admission I think it's twelve pages. It depends on what forms you use. And then every sixty days it's being decreased to nine pages. But if there's not a changing condition there's no need to be doing these because you're doing your care under the physician's guidance anyway. So you don't need to be collecting this information, which is repetitive. And you have to do it every sixty days.

MR. GREINER: Thank you.

MS. McDONALD: How much notice do they give you to institute a new requirement like this? Or if they change the fee schedule how much notice do you get?

MS. PARKINSON/MAJORS: We have enough time, at least ninety days. But we all know since last year that come the Fall every agency, and regardless of your per source, regardless of your discipline, you have to do the OASIS form. You're seeing somebody for one day you have to do an OASIS. I go to give a chemotherapy, I have to do the twelve page when I start and then the nine pages at the end of the chemotherapy. And I'm only there for three hours.

And also with the added addition paperwork that has to be done you also have to add another staff member to complete it. So that adds more outgoing. So it puts a strain on the company because

then you're sitting there, you've got to get somebody that's computer literate.

So of course they're going to want a little more money than hiring somebody new. So that puts the company in another fix right there. So then that means we have to look at the budget that's come in. Then we're not getting paid by Medicare. So then you're using Medicare, the revenue from Medicare that you're not giving to pay someone to do the job. So that causes some stress on the company.

And someone had asked a question about stroke patients. If they're not able to talk then what you have to do is you have to speculate. So you have to do the best that you can do.

MR. CARADINE: I have one question. The OASIS form which I've tried to look at and go through here just as I'm sitting here, is there not some information on the form that as a patient improves that it would have to be updated or it would change the type of service that been provided? Or even maybe change the reimbursement I guess.

MS. PARKINSON/MAJORS: You don't need this OASIS to do that because when you're there you're there to do whatever discipline the doctor has ordered, whether it's skilled care or custodial care. Well, I should not say custodial. Whether it's skilled care or home health aide or physical therapy. And you go for a period of time.

And with the reimbursement rate that we have right now everything is adjusted and you may only have six visits to do. So at the end of the sixth visit you have to refer the patient to some community organization so that it could get outpatient services. Because under Medicare the clients have to be homebound.

MR. CARADINE: So in trying to understand exactly what you're suggesting you shouldn't be doing the OASIS form at all?

MS. PARKINSON/MAJORS: Well, no, no, I'm not saying that. They (interposing)

MR. CARADINE: Well, I mean a a registered nurse or (interposing)

MS. PARKINSON/MAJORS: No, no; from my standpoint I think a registered nurse you can pick up, you can treat the patient the better. But it does not have to be done every sixty days.

MR. CARADINE: And you're not reimbursed for doing the OASIS form?

MS. PARKINSON/MAJORS: Definitely not.

MR. CARADINE: And you're not reimbursed the three dollars for the form itself?

MS. PARKINSON/MAJORS: No, definitely. Not yet.

MR. VILLARREAL: Is this all the people have signed up? Is there any other testimony to be had today for this body? Ms. Chairman, I suggest we have a small break for ten minutes.

MS. McDONALD: Good.

MR. VILLARREAL: Ten minute break and we'll reconvene with the rest of the testimony.

(Whereupon a ten minute break was taken.)

MR. VILLARREAL: We have a couple more testimonies we're going to hear briefly. And we have Mr. Sean Bavar with the Guardian Care Home Health. If you would, Mr. Bavar.

MR. BAVAR: Members of the Board, my name is Sean Bavar and before me people came and talked about home health industry. My position

here is where do we go from here? The rules and regulations is in the place. We have PPS accounting. We have OASIS intact. What's going to happen to the small agencies?

A few months ago we faced a situation. We needed money. Because of HCFA's new payment system we are getting paid per patient in line-item. In other words, we serve a patient, we have to have all the documentation in, including HCFA form 485, 487, 486, and all the doctor's orders, intact, in the office.

And audited progress notes from nurses, home health aides and therapists. Physical therapy and so forth and so on. Now after we did all this documentation we go out and bill. I don't know how to. They're not going to sign in two days. You take them in; because they're not getting paid for it.

Naturally when you notice that the least things they're going to be doing is checking out, you know, home health services. Of course you know majority of physicians have been very good and helpful toward the patient and, you know, complication with home health agencies.

Now but this time of the payment it would take about, your guess, forty days? From the day of service you get paid. And you get paid in line item basis. Now the HCFA has right to go out and question it. For some you have billed for ten visits. They can go out and say, okay provide me documentation.

Now they call this one audit test. Basically it is five to ten percent of your total billing would be audited. If they find any problem it would increase to higher percentages. Now along the way we were fortunate enough to have less than three percent audited. So we haven't interrupted cash flow.

But the situation comes that it's payroll. And you have forty

thousand dollars to pay. And you have ten thousand dollars in bank. What you going to do? You go to the local bank. They say state the issue. Go out and put your house, whatever you belong as escrow, they give you ten, ten, twenty thousand dollars. What are you going to do with it?

Now since this home health industry is reducing to the level which is so dangerous regarding the number of providers and every year we are increasing the number of the recipients. People are getting old. Now the reason this one's up is that not all the agencies are subject for overpayment, OIG, you know, FBI situation.

The decent agencies they try to work hard. Then the bank doesn't give you a loan. What you going to do? And we have, for example, a hundred patients to serve. Abandon them? Now, I would recommend to this Board to bring to the Small Business Administration or whoever in the Federal Government, or Civic Government, that can open and sort of line up business credit for agencies that in their state of emergency they can withdraw temporary and return it back when they can put it back.

In other words, for example, tomorrow's my payroll. I have fifteen thousand dollars in my account. In seven days I have to pay my employee tax. Now I'm facing lack of money to pay for payroll. I cannot pay the IRS portion. And I have so many patients to care for. What you would do?

FEMALE VOICE: I have a suggestion. I have a temporary service so I have payroll too on my temporaries. And as I've grown my company in the beginning I wasn't bankable. So I went into a line of credit on my receivables. Can you do the same thing within the nursing care where you got your (interposing)

MR. BAVAR: Absolutely you can. But that is without respect.

Today you're add them up the percentage you're going to be paying as the collateral in your bill it is; first of all, it's not legal to do it in the home health setting. The way I understand, it may be different.

Sometimes your receivable is forty thousand dollars. If you include the establishments they come and advance you money. But then you add them up, you are paying off the thirty percent of your receivable as a fee. And, you know, I don't see it, you know, business-wise it is what we (interposing)

FEMALE VOICE: Well there's two of us. There's the companies that do lending on your receivables which, you're right, is thirty to forty percent. But the banks now are giving lines of credit on your receivables; because I used to use one of those (interposing)

MR. BAVAR: If you know of one of them, just one, let me know. Because as far as I (interposing)

FEMALE VOICE: They don't have it here.

MR. BAVAR: No. No.

FEMALE VOICE: Because I'm from Louisiana and they have it there where it's just a regular line of credit. They front you seventy-five percent off of your invoices immediately. And when those receivables are collected they take that and it's like a regular loan where you're paying, you know, whatever the going rate is. Eight percent, seven percent.

MR. BAVAR: Well it's a lot happening the home health. As you know, the publicity we have received in the general public by media especially it is picturing our industry like groups that have come up from the jail. Just to come and rip off, to make another attempt to scam someone.

Ninety-nine percent of people in this industry are decent people. But we are all human beings. We can make a mistake. Our mistakes shouldn't be punished based on politics and also; I'm talking in behalf of everybody.

Our agency in particular hasn't had any problems. In receivables, in patient care or anything because we try to do as conservatively as we could. But there's a lot of places that are just patient floors with disclosure of agencies. They do the hard to handle so that it would come the situation that people cannot do anything.

MR. MOCHA: You said I may have misunderstood. I thought you said you went to a bank and they told you health care is dead.

MR. BAVAR: Yes.

MR. MOCHA: and then they asked what are you going to do with the money. They gave you twenty thousand but what are you going to do with the money. Is that right. Did I get that right?

MR. BAVAR: Yes. I maybe should rephrase myself in a better way. There is no bank in this community that would lend any money to a home health agency. Especially when it stands alone. Now, if you're a hospital-based agency, and refer their patients to themselves, of course you're going to have tons of lines-of-credit.

I mean, they are not comparable to small mom and pop type organizations. The way I understand. Maybe I'm wrong.

MR. VILLARREAL: Have you gone to the SBA for a pre-qualification? For a loan?

MR. BAVAR: No, I have not.

MR. VILLARREAL: You should go to the SBA and apply for a low doc loan. And can we talk to the volunteers but I'll suggest that you

do that. And once SBA has pre-qualified you then you've got them in your hands. You can go to the bank, say by the way, I've been qualified by the SBA. And (pause)

MR. BAVAR: Yeah, in fact in our industry nobody is being recommended. And I don't know the practicality, how do you do that? Who do you contact? What do you do?

MR. VILLARREAL: Well who's the low doc specialist of the SBA Office here?

MR. VILLARREAL: Speak to that gentleman right there.

MR. BAVAR: Yeah, I will. And regarding to the OASIS, the lady there forgot two points. OASIS is not just admitting and discharging and sixty days. If the patient goes to hospital and stays in the hospital for forty-eight hours you have to discharge the patient back again.

In other words, if in the sixty days period the patient has gone to the hospital three times. You have to discharge patient three times, you have to admit the patient three times back. And (interposing)

MALE VOICE: And that's not uncommon. Our patients go to the hospital (interposing)

MR. BAVAR: Exactly. I mean we have an eight year old individual as a patient. A patient goes to hospital. If it is beyond forty-eight hours you've got to discharge patient. In other words, you would make it questionable if you go then to resumption of the care.

And they said okay, you are billing for this period to this period. If you don't discharge them and you bill and that two

days is off you are not billing for that two days. But in that two days the hospital is right there doing the billing the Medicare. So it's going to be a conflict of the billing.

Why it is in home health setting in the meantime, the patient goes to rehab center for three days. So it is like two hmc's are taking care of the patient the same time. So to regarding to OASIS, what I really feel about OASIS, OASIS is not going to help anybody to conclude any viable statistics.

It is just intruding in the people's privacy and getting the information that old folks don't want to give it to you. How you can ask the old lady about very personal matters? Some people are sort of defensive. If it is me you come, you want to inject something, you want to take my blood pressure. And you are sitting and two hours yakking to me and getting all this, you know, information. Would you be happy with it?

You're going to have fifteen, twenty minutes of service cut. And hour just goes and did your father die from this or that. I mean there's no such question. I'm getting silly on the questions. HCFA form, the 485, contains, you know, it contains all the information needed in order to have medical necessity established and homebound status of the patient be taken.

In other words, the 485 contains everything your need by the bill payer. Or as statistically, if you want to draw on the status it's wrong. Of course the subject is sort of so much that we can sit and talk for hours about the report. If there is any question I would be more than happy to answer.

MR. VILLARREAL: Thank you sir, we appreciate your testimony. I'd like to allow a brief remarks made with the five minutes, David Wright, who is with the Health Care Financing Administration.

MR. MOCHA: I understand you're the reason all these problems exist. Is that (pause)

MR. WRIGHT: That's why I'm here. Thank you very much to the Board for this brief, and I will keep it brief, I understand the Board's wanting to wrap up here, opportunity just to speak very briefly about why I'm here from the Health Care Financing Administration. I'm from the Dallas Regional Office. I'm the Special Assistant to our Regional Administrator.

And I would like to note first that our Regional Administrator in Dallas, Dr. Raney Ferris, is a former small business owner. He was a physician in private practice for four years in Dallas.

And he distinctly and uniquely understands the burdens and some of the obstacles and challenges that we place on our providers through our regulations and our other activities in terms of trying to ensure that the trust money of the Medicare Program is distributed in the most efficient way.

I believe that this has been a productive session even though I'm from the Health Care Financing Administration, which is a very popular topic today. I think it helps all of us to share the information. I believe the role of the Regional Office specifically is to get this very sort of information and be able to go to our central office as they go about the machinations of making regulation and policy nationwide.

That they understand some of the unique problems and perspectives that we have here in the Region. So with that in mind, I was in the back taking very copious notes. I've set up a meeting with Scott Lara as well to further discuss with him some of the concerns that he raised.

In our reporting tomorrow morning directly to our Regional

Administrator we will then mention the content of this meeting and some of the subjects that came up to the next meeting of the Executive Council of HCFA, which is composed of the Regional Administrators and the top leadership in the Health Care Financing Administration.

Again, so that they understand what it is that we've heard and learned today. Again, I think that opportunities like this for us to share in what's going on for us to gain a better understanding or a realization of the impact that our programs have on those who are trying to provide the care to the beneficiaries.

It's useful, I think, and I hope that we can continue to work better to achieve the goal that I think we all share. And that's improved quality of care for our Medicare beneficiaries. And just for the record I'd like to go ahead and give my direct phone number if anybody else would like it. It's (214) 767-5346.

My name is David Wright and we're more than happy in the Regional Office to meet with anyone who has concerns about our program. So thank you very much to the Board.

MR. VILLARREAL: Thank you David. Appreciate you being here.

(CROSS TALKING)

MR. GREINER: Well actually one of the things I'd just like to say thanks to the Region. We initially had some very serious communication problems. We're going to try to do what we can to help facilitate funds and better communication manner that HCFA did indicate a real interest in reaching out to the Boards and the National Ombudsman.

And we appreciate having the Regional Office participate in many of the Regional hearings. Our last hearing of our previous year was in Region II. We had the Deputy Regional Administrator

present testimony on behalf of HCFA which the Region II Board received very well. They thought it was well done.

And certainly there was work to be done. But I think one of the things that the Boards across the country have been concerned about certainly is how do we move forward and what we talked about when Scott was testifying about earlier. We talked about putting these forms together and that is one of the key things that we really want to work on.

Some concrete solutions. And certainly that would be one thing that you could bring back to your folks. And we may be different folks in D.C., but that these forms, and we've had there for task forces, call them whatever you want. We think of concrete ways to start building a better communication and solution.

MR. WRIGHT: Yeah, we are more than happy to come out and testify and give any information that we can for events like this.

MR. MOCHA: Why didn't we have him on?

MR. WRIGHT: Yeah, I didn't know that either. But we just knew about it and I was just asked to come and take notes. But we would have been happy to have somebody here to actually participate.

MR. MOCHA: That's not the first comment I've had about agencies not knowing we were going to be here. Did we drop the ball somewhere?

MR. GREINER: Well, we sent out a notice to each agency about the hearings as they're scheduled. And usually, like this year, we had about eight scheduled about the same time. We sent out notices. Those are the hearings. That goes to D.C. It doesn't go out to our Regional Offices. And then when they're invited to testify HCFA will probably be invited more than once to testify.

But yeah, I think we have quite a few of the hearings where we have agency folks. It's basically our representative within that agency letting the Regional folks know about the hearings, you know, at this point where we contact them directly.

MR. WRIGHT: But for future reference we're more than happy to come out and give any information.

MR. CARADINE: David, you mentioned the HCFA counsel that's coming. At those meetings do y'all have opportunities for small businesses to make presentations and hear some of their concerns?

MR. WRIGHT: Actually, no. Those are the regular HCFA leadership meetings. They're every Friday. I don't believe we've had any outside participants whatsoever engaged. Because they're usually dealing with HCFA issues. But there are opportunities for the Regional Administrators throughout HCFA to raise issues that they've heard. There's some free time for that to bring issues up to the counsel to discuss.

What I would recommend in terms of trying to get a perspective across or something like that is that at the meeting with our Regional Administrator; and that's easier, you know, here in Dallas or up in Dallas to do that. And if that's done across the country then, you know, those concerns are going to be fed into those very high-level leadership meetings. But they're not open meetings. They're internal HCFA meetings.

MR. GREINER: Just to clear my desk what I'm talking about are the hearings where it's sort of every issue there. I mean, we think it's very important that HCFA participate, again, at the highest levels and actually get the task force to try and address these issues. But I mean we encourage participation at the hearings.

MR. WRIGHT: Right. And again, we're also very eager to hear how

our own Regional Office is performing and if you would appreciate any feedback on experiences working specifically with our Regional Office. Because that's obviously where you get the most control over our operations.

MR. VILLARREAL: I'd like to ask Ms. June Robinson, Director of Small Business Programs, U.S. Department of Labor, to make a report. All the time you need. Hours.

MS. ROBINSON: Thank you very much and good afternoon. We appreciate the opportunity to come and meet with and report to the Regional Fairness Board for the Houston, and actually the Region VI area. I want to thank John Greiner for the work that he has done with us, because we've been working together for some time now.

And just so you know what the procedure is for us in terms of involving Regional staff, I receive a letter from the Ombudsman, from you, Ms. McDonald. We share that with our National Office Agency SBREFA contacts. And ask for any issues. Ask that they notify their staff.

And because we are keyed in on teamwork and results orientation, what we have today is, I think, a very fine representation from the Dallas region of the agencies here. And I just want to briefly introduce them again. Randy O'Neal, who is the Wage and Hour Dallas Office SBREFA contact for the Southwest Regional Office.

Robin Mallit, who is also with Wage and Hour, who is the Acting Director of Enforcement for the Houston District Office. Bruce Rude had to leave. He is head of the Dallas Office of the Pension and Welfare Benefits Administration. And John Lawson, who is the Area Director for OSHA here in Houston. And from my office in Washington with me, Thomas Hicks, who is Small Business Regulatory

Compliance Advisor.

So again, we appreciate the opportunity to be here. And I want to thank the staff because this is optional. They don't have to come. But this is our way of saying to the SBREFA family at the SBA and the small business level that we are interested, we are committed, and we are available.

So that while Mr. Hicks and I will be going back to Washington and are available with our other staff by phone, fax and email, the expertise is right here for you to use. We also have some handouts. And I think you received a longer version of what will hopefully be a shorter presentation from me. You may have received some handouts.

We have a workplace poster. Did you get this? It's also on our website. PWBA has a Form 5500 series of workshops. This is their shorter reporting process. And they are having workshops around the country. I think May 4th will be one in Dallas, in case you want to see that.

On our department website there's a series of E-laws advises that most of the agencies have some questions and answers that are interactive for regarding the various programs. Drug free work place advisor, fair labor standards, family medical leave act, line safety and health, OSHA, small business retirement savings, veterans preference and so forth.

I didn't happen to have an OSHA handout but John was good enough to let me know that just right down the hall is the General Store. So for those who don't know about the General Store here and there's information there. That's the one stop area.

There's the Mine Safety and Health Administration. That agency

does not have representation here today but they're extremely active, and I'll be mentioning that again, in the Dallas Region. Also there is the Office of Federal Contract Compliance Programs, OFCCP. So we have five major enforcement agencies in the department.

Each agency has a compliance assistance program. I've been working with the program since 1996 when my office was designated to handle the Compliance Assistance Clearing House, the central referral point for small businesses with regard to SBREFA. And we are staffed as such. I do want to mention that I have other responsibilities that I think are very relevant.

One of which is the procurement responsibility. I'm the Director for the Small Disadvantaged Business Utilization Program under the Small Business Act for the Department. And we are very proactive and involved. If you know the Secretary of Labor, Alexis Herman, you know that she's very much committed to both procurement assistance for small minority- and women-owned businesses as well as to compliance assistance and interaction with all of the clientele and the stakeholders that relate to the Department of Labor.

We also have responsibility for relating to minority colleges and universities, so I was very happy to hear that the gentleman from Boeing was working with Prairie View. We have been working with them also and with other Hispanic serving institutions, the tribal colleges and universities and historically black colleges and universities.

And we have a few other responsibilities, but those are the ones I wanted to give you some background on. Each of the agencies has a compliance assistance program, and has SBREFA contacts, both in the national offices and in the regional offices.

And last year we've been working with this program since it started in 1996. And I think we've done a pretty good job of both trying to communicate to the small business community and to the enforcement agency internally about the importance of the program. And they share that view.

We also have been working with the Fairness Boards, with Peter Barca, with small business development centers and with many other organizations. In terms of outreach and interaction and trying to get information out one of the initiatives that we are currently involved in is a pilot program of coordinated compliance assistance in which we are working with the Director of the New York State Small Business Development Centers.

With Delaware and with the Agriculture Departments coordinated research extension services to have staff on site in a pilot to interact with small businesses. And to pull together as needed representation from the agencies to give information and technical assistance. Not enforcement, but compliance assistance information.

The issues that you specifically wanted addressed in your letter was; included what we were doing in terms of the ten recommendations. And I just want to use some examples of efforts there. In the longer paper that you have I think you have more examples, but the points are the same.

The first recommendation addressed the need for agencies to test empirically new or significantly modified enforcement compliance policies affecting small businesses through compliance through cooperative pilot projects. I'm sorry, you know I'm really from the South and I tend to speak slowly. I'm trying to speed it up and you hear the struggle that's coming out. So I'll get it in time.

The Mine Safety and Health Administration has established a pilot. And that program is called, ToolBox. And what ToolBox does is to offer engineering and administrative alternatives to resolve account and safety problems that occur in the mining environment. MSHA also has a nationwide pilot program to provide surface and underground coal miners with confidential health screening. This relates particularly to black lung and silicosis. The vulnerabilities.

Within Region VI there has been an eighty-five percent participation rate by miners in this program. Which his significantly higher than it was some years ago under a different approach. PWBA has recently been working with the American Institute of Certified Public Accountants in developing a video aimed at informing small CPA firms of employee benefit plan audits and the uniqueness of those audits.

The second recommendation that you have addresses small business concerns that agencies too often apply the one size fits all approach. And some of the kinds of efforts that we're making to not utilize that approach include the Department's agencies, particularly OSHA and PWBA, instituting programs that focus on small businesses and try to establish responsive frameworks for small entities that are seeking to comply, both with PWBA and with OSHA as suggested in your recommendation.

For instance, after an inspection OSHA's compliance offices will discuss the nature of the violation, possible abatement measures to correct the violation, as well as possible abatement dates. And the compliance also will suggest appropriate abatement methods and dates.

The Wage and Hour Division has developed plain language compliance materials to help employers evaluate the various methods of compensating their employees for hours worked and other labor

standards.

And I will say here, so I don't cover it later, they also, where there are monetary violations, as in back wages or lack of adequate hour payment, work with employers to come up with flexible pay arrangements being sensitive to the employer. Small businesses clearly have cash flow and related problems.

There is; the law does not allow for the waving of wage payment, but the Wage/Hour Administrator and Regional Directors can work with small employers on timing of payments and related approaches.

As far as recommendation four is concerned where you note that small businesses think that Federal agencies do not police their delegation of power to guarantee that State or Local governments provide small businesses with their regulatory fairness rights, including the right to relate to the Ombudsman.

OHSA and MSHA are working closely with State agencies to implement their programs in this regard. And to help to communicate that; and train on SBREFA requirements. I think Wage/Hour does not have State interfaces that allow that same kind of communication. Am I right, Randy?

MR. O'NEAL: That's correct. We don't farm out, so to speak, or redelegate to any State agencies. So it's all in house.

MS. ROBINSON: On recommendation five the; I probably missed one because we had a recommendation three? No, let me back up. Recommendation three addresses the need for agencies to institute programs that give small businesses notice of violations and reasonable opportunities to come into compliance without being penalized.

Providing that a violation does not involve a serious bodily harm. For many years PWBA has had a program in place that provides small

entities and others with notice of violations reasonable opportunity to come into compliance and flexible penalty assessments.

This is the one that I sort of referred to earlier and I've covered the Wage and Hour. But OSHA does not allow for issuance of notice of violation and reasonable opportunity to come into compliance now while they do work on the abatement issues that I mentioned before.

Okay, so now I can go back to five. And agencies; your recommendation that agencies should make full use of Federal laws that prohibit giving false information to the Government or using the Government as a tool of; to unjustly retaliate against small employers.

I know that; as I've been going to the hearings through the years I know that that's an issue for small businesses, as perceived if not real. Many of the agencies in the Department receive information from the general public or from interested parties concerning violations of Federal law by employers.

The agencies evaluate the information that they get before taking action towards investigations. I think the agencies have become increasingly sensitive, in part as a result of SBREFA, but they also were aware before. I think SBREFA has intensified the awareness process to recognize that there can be a chilling effect on small businesses if they feel that they have any kind of retaliation.

And we are also sensitive to the need for balance in enforcement. In not having a heavy hand but having a fair and steady hand in terms of doing what the law requires but doing it within the law and with sensitivity to the circumstances of particular situations.

Recommendation six addresses the need for agencies to carefully evaluate in partnership with affected industries to develop and use a voluntary industry standards before considering or implementing new mandatory regulations. Again, PWBA, in developing rules under ERISA, has taken into account the requirements of ERISA itself, the notice requirements of the Administrative Procedure Act, the provisions of SBREFA and other applicable legislative directives and executive orders. PWBA, as does OSHA, also engages in negotiated rule making. In which all of the parties are involved in the development of standards.

In each instance the concerns and suggestions of all affected persons, entities, industries and other stakeholders, are carefully considered. Including recommendations that any standards at issue might be voluntary rather than mandatory.

On March of this year PWBA published in the Federal Register a notice describing the new Voluntary Fiduciary Correction Program. That's VFC for short. And that is expected to be very helpful to small businesses who are sponsoring employee benefit programs or plans.

Under this program plans officials, employers of all sizes, and planned services providers of all sizes have the opportunity to dedicate their efforts to addressing the making of plans and making participants whole. This is not a fine and violation related process, if the employer reviews the requirements and makes corrections before the Department of Labor fines them.

The idea here is to have employers become aware of the need to look at what they're doing. And to make those discoveries themselves and then to correct those violations. OSHA is required by law to use consensus standards to the extent such standards will affect the purpose of the OSHA Act.

Accordingly, the agency evaluates all relevant consensus remarks

for regulatory appropriateness and usefulness before it starts the rule making process. Some of you might have heard about the proposed ergonomic standards. Is there anyone here who has not? I think John is prepared to talk about that.

But OSHA has paid very close attention to the needs of small businesses as they have been developing the proposal. It exempts businesses that have ten or fewer employees in terms of record keeping requirements. And OSHA, in accord with SBREFA, convened along with OMB and SBA's Office of Advocacy, a panel to review and comment on a working draft of the ergonomics programs.

This panel sought the advice and recommendations from potentially affected small businesses and made changes in both its economics analysis and in the proposed standard based on those. And OSHA is, as we speak, engaged in a series of hearings around the country.

I think they're in Chicago still. And then going to Portland, Oregon next. If you're reading anything that's related to OSHA you're aware both of the controversies and of the efforts that OSHA is making to get input and to consider input on this particular standard.

MSHA has partnerships with affected industries in developing its mine operated training programs. MSHA, in cooperation with the Coalition for Effective Mine Training, Local and State agencies, and other interested parties has published regulations which identify certain training requirements for sand, gravel and other surface non-metal lining entities.

Your seventh recommendation addresses the need for Federal agencies to utilize their internal offices in working with small businesses to inform those businesses about their rights to regulatory fairness, including the dissemination of REGFAIR

Program materials and mailings at offices and outreach sites.

The Wage/Hour Division has the language that was recommended by the Ombudsman in their handy reference guide to fair labor standards. To the Fair Labor Standards Act. And provides full information on the Ombudsman. I think that others have similar information in other materials. We have that information in our fax sheets as well as on the web site.

And we work very closely with the agencies on ensuring that they are consistently information small businesses of their rights to regulatory fairness. We are trying to ensure that this information is included in all newly printed materials.

And we are reviewing all of the materials that come out. Sometimes we are able to be in sync with what the agencies are doing. Sometimes they don't need our advice. They already have done the thing they're supposed to do. Which is quite often the case.

Recommendation eight addresses the need for agencies to conduct objective reviews of their implementation of SBREFA. And of course your report, your recommendations, gives us a tool for doing that. We have just recently met with the agencies SBREFA contacts to again go over the requirements of SBREFA to see what kinds of concerns they have and to ensure that they know we're there to help them in meeting the requirements.

And we collect the information that is used in responding to your recommendations. What I am reporting to you today is a compilation of input that we have gotten from the agencies. And where you have questions if we don't have answers we'll be happy to go back and get those.

I mentioned that we serve as a central point with our

clearinghouse, library, and reading room that contains many of the publications. We have an inventory, a written inventory that is also on the website which allows you to go in and see what the various requirements are.

The public can come to our office, they can look at the materials in hard copy. We also have a computer where they can sit down and go into the website from our office if they want to do that. We have a toll-free telephone line which, not too cutely, the number is 1-888-9SBREFA.

And we have recently developed internal procedures for our own office in terms of how we answer the toll free calls to be sure that we are getting correct information. That we're not overreaching when we ourselves try to answer. And that we are referring appropriately to the agencies.

Also the Wage/Hour Division is developing a technical system called Technology for Excellent Customer Service, or a TEX system. And this will have a toll free number and will eventually be used department-wide.

The Houston District Office; and again relating to how we interact with the public, assists the public with technical assistance with phone calls, walk-ins. Many new small businesses request information beginning their enterprises.

The Houston District Office Wage and Hour has I think answers about a hundred calls a day. Not including questions that come through its automated telephone systems. It sends out an average of five hundred pieces of mail a week. The Office participates in many small business meetings to provide information, including procurement. What; I've forgotten the name. What's the name of that?

FEMALE VOICE: Government Procurement Selection

MS. ROBINSON: Right. They participate in that, as do other agencies. When we're participating in such conferences we also bring in SBREFA. Because not every office is doing SBREFA's responsibilities. And we have been proselytizing both SBREFA and the responsibilities of our agencies.

I want to mention also that the Houston Office has a very significant Hispanic community outreach. And it's not unique, but I think it's important to make that point. Because that's an obvious need area. And we're trying to meet that.

I mentioned the poster matrix but we also have on our website a poster page which shows the requirements for posters. And we have a state by state directory which would facilitate finding out what the labor offices are in the various states and how to get to those.

The directory includes a list of not only Federal but State related agencies. And if you would like a copy of that we'll be happy to provide it to you. Each of the agencies is continually reviewing what they're doing with SBREFA. And one reason they're continually doing it is because we're continually talking with them.

But also there is a genuine evolution in the environment within the department which is much more sensitive. And I can say that since I've been with the department for a few weeks. It is much more sensitive to what the small business community's concerns and needs and opportunities are.

And I'll say something about that before I end. Within this Region again I want to mention that MSHA has had about twenty-five meetings with miners, just here in Region VI in the past six

months. Involving over fifteen hundred participants. So if you were not aware of the mining industry here that speaks, I think, to that point.

And they've had training sessions on their occupational noise exposure final reg as well as training for certain non-metal industries.

Your ninth recommendation asked that agencies review their small business data collection and reporting requirements and eliminate duplication of requested information. I actually have more here than I want to go through.

We understand the need to do that. We understand the problems of excessive paperwork and reporting. PWBA has come out, as I mentioned, with its final version of a revised annual report form, which is much simpler than the previous one. And this was to simplify and to streamline the annual reports form, the filing requirements and the processing procedures for small benefit plans as well as eliminating duplication.

OSHA's standards improvement project proposes to revoke certain regulatory requirements that are duplicative. It also has a policy that exempts small businesses of under ten employees from most of the OSHA recordkeeping requirements. And all data collection requirements of any kind governed by the Paperwork Reduction Act.

The Office of Federal Contract Compliance is reviewing its reporting requirements. Contractors with fewer than a hundred and fifty employees, or with contracts that are less than a hundred fifty thousand dollars report and retain records for one year rather than for two years.

And most of the records that employers are required to keep by

Wage and Hour are the same information that employers would be keeping as a matter of course or maintaining the normal operation of business.

Your final recommendation says that we need to provide well-trained staff for inspections or for plants audits. And that staff need to know what the SBREFA requirements are as well as being well versed in the industries that they oversee. There's a lot of training in this regard going on in the department.

For instance, PWBA personnel are involved in compliance enforcement activities with regard to provisions of Title I of all of the new requirements that they have. They regularly conduct training in these areas of enforcement. And their training address the requirements of SBREFA.

Wage/Hour has industry specialists who are also working within particular industries. OSHA has just been appropriated funds to hire compliance assistance specialists who do no enforcement but are strictly to provide assistance in training information to small businesses.

Let me just say, from my perspective in addition to the enforcement agencies the department has major programs that interact with the small business community. Not everything in the department is enforcement. Although here that's the focus. And appropriately so.

But for instance the Employment Training Administration has the job banks, the talent banks. The Job Corps Program. There's Apprenticeship Programs. Summer Jobs, the Youth Opportunities Initiative. And as was said at the very beginning the major employer in this country is the small business community.

The Human Resources Development Agency in the country is the

Employment Training Administration. There's a natural nexus there between the employer community and the workers that they need. And there's an interdependence. The need for cooperation on all working employee fronts is essential and it's very clear. It's clear to Secretary Herman. It's clear to our office. It's clear to the agencies who are working for and with employees. But also with employers. And very seriously so.

I'll be happy to answer any questions you have. Or to refer them.

MR. GREINER: Any questions? Of course I would have to; first of all, you know, we'd like to thank you and Ms. Robinson for, you know, the interest that you've shown over the years in regulatory fairness. And certainly the thoroughness of your responses to a lot of the small business comments that we've shared with your agency.

And certainly the willingness to discuss matters that may not be resolvable so quickly. You know, that is I think some of the issues are pretty straightforward and others require some attention and some delving into possible solutions.

MS. ROBINSON: Thank you. I agree.

MS. McDONALD: Oh, and I was very impressed with thought that you seem to be disseminating information not totally depending on the internet. I think some of us in Government, especially where we're facing cutbacks, have gone totally to the internet. And what we were hearing in our Region IX hearing is that there's a very much a digital divide out there.

And so really to reach people we need to continue to use our ingenuity and our more traditional channels. So I thank you for continuing to use those.

MS. ROBINSON: Thank you. And we see that as a reality in terms

of our working with small businesses. I think our work in the procurement area has helped to sensitize us to the realities of the limitations of the internet for many small businesses at this point in time.

MS. McDONALD: Well I like the idea of having the website available for people to come to the agency. And I think it's just a good thing for all of our agencies to have an open door for basic public information.

MS. ROBINSON: We're trying to do what the law said. And we think it's a good idea. Thank you.

MS. McDONALD: Thank you.

MR. MOCHA: You mentioned in compliance; you didn't say voluntary compliance. I wish you'd said that. I'd like for somehow for y'all to work on the small business voluntary compliance program. I believe you said something like we as small business people ought to be looking at what we do.

And we want to. We want to look at what we do. And we want to look at how our structures are set up. But we need your help. We need for Government and business to work together. I wish you would have said that a little clearer.

MS. ROBINSON: Well I wish I would have too. Because that's there. And I don't know whether John wants to speak to that, or Randy, in terms of that (interposing)

MR. O'NEAL: Well I would say as far as Wage/Hour, we are trying to accent this, what we call the stakeholder. When we have initiatives ongoing, as we do now, in the appropriate industry, forestry and so forth, preceding any kind of enforcement activity.

We try to hold ourselves out to each situation and so forth, as an

agency. Give them the information and counsel with them. Do everything we can to effect compliance short of some kind of enforcement and intervention.

We used to do just the opposite. We used to make the enforcement splash and ride the ripple effect of that out. And I think we've found the wiser course to be to try to partner with an actual stakeholder so that the requirements of the law, whether it be minimum wage, overtime, the General Medical Leave Act, or even later standard provisions like Davis Bacon and the FCA.

We try to get the information out there first and hold ourselves out to the regulated community in an enforcement and outreach capacity. And hide, so to speak, the enforcement aspects of it. To make sure that we deal with it in good faith and so forth.

And then, as Ms. Robinson said, when the complaints do come, and we are by and large a complaint driven organization within limits, to explore those complaints, explore that information, validate it, and verify it. Visit the employer and engage or head down that enforcement road with them.

So whether it's in day care, whether it's meeting with those organizations and going to their meetings and giving speeches and presentations or, as Robby mentioned, the procurement at meetings, that's a role we're trying to accentuate and trying to fulfill. And I think your point is well made.

MR. MOCHA: And I have to admit too from the time we were in Albuquerque where there were some comments about OSHA I hear very few. I mean, I have to agree that we appreciate how you all are trying to work with us.

MS. ROBINSON: If Art Decorsi, who is the small business liaison person for OSHA were here, in addition to John, he would probably

be having quite a few words with you at this point because they have worked very hard.

MR. MOCHA: I'd like to visit with him.

MS. ROBINSON: And I did mention, but it may have gotten caught in my wording conflicts here, the PWBA new Voluntary Fiduciary Correction Program. This initiative is to provide information to employers about what they should be doing, what they need to have in plans. And to correct that without the department coming in and saying you need to correct this.

So they're really, and I don't have a list of them, but I think every agency has some initiatives underway for voluntary compliance. And of course prevention means a lot. Another word for prevention is education. And what we are about in terms of putting the information out on the website, otherwise taking it to procurement conferences, where small businesses are not thinking in terms of the fact that they're dealing with Davis Bacon issues, with other kinds of issues.

But saying look, there's a nexus here and we want to be sure you're getting all of that information. Our trying to be on site in a small business development center is to help new and emerging businesses to understand what the laws, the regulations are.

And that they can get help in setting themselves in line to respond to these before they even reach a point where there is any need for an investigation or a violation. We see that as being very important. And the agencies agree. The Office of Management and Budget agree. And so we see that as being important. Thank you again. John? Yes.

MR. LAWSON: Just one thing to answer your question. OSHA has always, since the very beginning, has had a partnership with all

the States. Where we find consultants in the States, ninety percent of the States provide ten percent funding. And those programs are geared primarily to small business.

Employers with less than two hundred and fifty employees to a site. Less than five hundred employees within a corporation. But in the last year, within our Region, Region VI, that takes in Oklahoma, Arkansas, Louisiana, Texas and New Mexico, in our Dallas Region we've had two workshops for small businesses that have been really well attended.

That have been organized and put on by OSHA to bring in small businessmen and tell them their rights and responsibilities under the law. And give them hints on how to bring up their standards with compliance with the OSHA Act.

We've entered into an agreement with an association where we provide a million dollars in funding to the association to provide outreach to their members. And in addition to that OSHA has trained our compliance officers in the nuances of home building so that when we go out on a job site we're talking the same jargon as the homebuilders that are there.

Within the Houston area we were one of the first participants in the General Store, which we work out of right here. We've also entered into partnerships with a number of small business organizations to try to provide outreach to them to bring the level of safety and health awareness up.

Because we have the same goals that were originally in place when OSHA was instituted some thirty years ago. And that is that when someone goes to work in the morning they come home in the same way that they went to work. And they must have all their fingers and toes. And they don't bring things home to their children and their wives.

We've made some tremendous moves. And let me give you an example. Here in the Houston area about ten years ago we had a situation where the City was giving out a number of contracts for waterwork projects. They were redoing the water lines, the sewer lines. And we had a situation where we had people dying, not on a monthly basis but on a daily basis in these projects.

Going down in the trenches; in fact we had one situation where a major artery in the City was undermined. They tunneled underneath it when a pipe had to replace another pipe. And it fell in because of the way it was done.

What we did is we reached out to the City of Houston and we developed a program whereby the City would let contracts without the safety component included. So safety was an add on. And we almost completely reduced the number of trenching fatalities in the Houston area.

Instead of having fifty to sixty a year we're down to maybe one or two a year. And we're trying to do the same thing in the logging industry and the sheet metal fabrication industry. A lot of the industries that we were talking about today. Nursing homes, hospitals, home care. We try to do some things.

In fact one of the greatest that OSHA has done, at least in my opinion, is change the number of injuries that were occurring in the nursing home environment. Believe it or not, five years ago the major injuries that would occur in nursing homes, occurred from the patients moving around.

And one of the reasons that was occurring was because the people were being manually moved, especially when they were getting in and out of bed or where they were put into a bath or moved from one location to another. And working together in partnership with nursing homes we came up with some mechanical devices that could

be used to move patients along.

Go with them in and out of baths. Go with them in and out of showers. And we reduced a number of the injuries that were occurring in the nursing homes. In fact, awhile ago June was saying something about ergonomics. But that's one of the major areas that we're looking at.

And then the other thing that we're looking at is the Hispanic population we have in Houston and Texas and in the Regional area. We find a lot of instances where people come to our area and they try to do skills that they gained in other areas. And a lot of times they don't read or write English.

We find this in the course of a Russian population here or a Portuguese population or a Spanish population. And we've been trying to adapt our publications so that they're meaningful and understandable to those people that are building new businesses in our area. So that they know what's required of them and they learn how to comply.

And compliance assistance positions. We have one of those in each of the State Regions. We're hiring five new compliance assistant positions right now. We're trying to get them in place.

And their major goal is doing nothing but outreach. And primarily outreach to small and medium sized businesses. We're trying to run our voluntary protection program to a scale where it can reach out to the medium and small businesses.

In our Region we have more voluntary protection program participants than any other Region in the United States. In fact, I read that here in Houston we have more participants than any other Region within OSHA throughout the United States.

In Oklahoma they're a group of them. In Louisiana they're a group

of them. We're even trying to use that as key to grow the programs that we're trying to do. So we use enforcement to bring the bad guys along; to bring the good guys up we're trying to use that. In fact, the Voluntary Protection Association has a mentoring program.

And that's the plan so that they're involved, the organizations have been involved in voluntary protection programs, go out and trying to help people. We had an instance here in Houston about a month ago. One of the larger chemical processing plants where we had two people that were hole blasting. They were using something to blast inside of boiler.

And they received a change over, a breaking area on airlines. And when the airlines were changed over the breathing air that they were given contained three point seven percent oxygen and the rest was hydrogen. And they died instantaneously, it took a couple of hours for people to understand that that is occurring.

We put out two news releases within our Region, to inform people of the hazards that were occurring. In addition, we partnered with Mexican Society of Safety Engineers and they made a nationwide announcement to try to get that information out to everybody. That there was a potential that these things could occur.

We've since found that it's not an isolated thing here in Houston. It's happened all over the United States a lot of different times. What we were primarily looking, though, for was outreaches to small businesses those companies that were buying breathing apparatus to do cleaning operations, diving operations, home care operations. In fact, some of these bottles were delivered to some of the major hospitals here in the Houston area.

So we've been trying to balance out the approach of the agency.

And I know the entire Department of Labor has been trying to do this. We understand that we have to enforce the law. But there's some people that are never going to understand their obligations, both morally and financially for that matter, to comply with things that are right.

And there are others that we want to bring along that we want to help. And that's one reason that; in our case it was so many in the last year, well actually the last six years.

MR. MOCHA: You know, I appreciate what you're saying and you've told us a lot of good stories. But there's some bad stories out there too. There's some people that are very concerned about the Department of Labor. Concerned about OSHA. Concerned about Wage and Hour. Concerned enough that they weren't here today.

That they fear you. Those are the calls I get. That they fear the Department of Labor. That they fear OSHA. What I want is for a small business to be able to contact you without fear. You, as our business partner, to help us solve problems. To help us be in compliance with reasonable regulations.

Do you understand? I mean, that's my goal as a Regulatory Fairness Board (interposing)

MS. ROBINSON: Let me just say something because I'm going to have to catch a plane so I don't want to sound like I'm escaping. But I think if you hear what we're saying and you can take this message back to some of those small businesses that will help. It is a two way street.

MR. MOCHA: Okay, and don't let us down when they contact you.

MS. ROBINSON: Well I don't know what that is. If they contact us we will give them the very best service that we can. But they need to contact us and when progress is being made, on any front,

it should be recognized.

(CROSS TALKING)

MR. MOCHA: I meant what I said about the Department of Labor. You guys have been wonderful. I get a good sense over the past few years in terms of you trying to work with us. And that reality of business and Government working in harmony and in partnership to be something positive. To be real.

I want to thank you all for being here. Being a part of this. But the real heroes here, for me, are the Regulatory Fairness Board Members. Each of them are volunteers. To give your time away from your family and your business to be here on behalf of small business. There's just a few of them but could we thank them please?

(APPLAUSE)