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Report to Wayne G. Granquist, Associate Director for Management and Regulatory Policy, Office of Management and Budget; by John Landicho, Associate Director, Community and Economic Development Div.

Contact: Community and Economic Development Div.
Organization Concerned: Small Business Administration; Office of Minority Business Enterprise; Interagency Council for Minority Enterprise.

A review of selected activities of the Office of Minority Business Enterprise (OMBE) and the Small Business Administration (SBA) focused on: (1) OMBE's coordinating responsibilities, specifically the Interagency Council for Minority Enterprise (IAC); and (2) the management assistance program of both SBA and OMBE. The IAC's mission appears to be broad enough to allow it to develop a program designed to increase the effectiveness of Federal minority enterprise programs. One problem IAC faces is the lack of information about program effectiveness; current knowledge of program impact is not adequate to permit the most effective management of the minority enterprise program. However, the IAC has certain advantages that should enable it to make constructive contributions: the IAC is made up of upper echelon Federal agency officials who might be capable of influencing policy direction, and representatives from the White House and the Office of Management and Budget (OMB) are IAC members. The role of the coordinating committee should be changed by devoting some of its efforts to identifying specific ways that Federal programs can be more effective. The problem of overlap between OMBE and the SBA should not exist, and even though they both provide management and technical assistance to minority businesses, the function of each agency should be mutually exclusive. (RRS)

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

MAR 2 8 1978

Mr. Wayne G. Granquist
Associate Director for Management
and Regulatory Policy
Office of Management and Budget

Dear Mr. Granquist:

We have completed a review of selected activities of the Department of Commerce's Office of Minority Business Enterprise (OMBE) and the Small Business Administration (SBA). Our review focused on (1) OMBE's coordinating responsibilities, specifically the Interagency Council for Minority Enterprise (IAC) and the Minority Business Opportunity Committees (MBOC), and (2) the management assistance program of both SBA and OMBE.

We examined records and spoke with officials at the Interagency Council and at eight minority business opportunity committees located in Baltimore, Boston, Buffalo, New York, Los Angeles, Newark, Philadelphia and San Francisco. We also reviewed records and interviewed officials at OMBE and SBA headquarters and regional officials located in Washington, D.C.; New York, and San Francisco.

As a result of our review, we issued a report to the Congress titled "The Office of Minority Business Enterprise Could Do More To Start and Maintain Minority Business," CED-77-136, on November 10, 1977. The report contained a series of recommendations to the Secretary of Commerce to strengthen the program. We also sent a letter to the Chairman Senate Select Committee on Small Business, on February 24, 1978 presenting our comments on S. 2296, 95th Congress. This bill proposes to establish within SBA a Bureau of Minority Business and Economic Development and authorize transfer to the Bureau responsibility for coordinating and administering Federal activities affecting the development of minority small business concerns.

We have some observations about the role of Federal coordinating committees. The operation of dual management assistance programs by OMBE and SBA also continues to be of concern to us. These issues are discussed in the following sections of this report.

COORDINATING COMMITTEES

As you know, the Interagency Council for Minority Enterprise spends most of its efforts on increasing the level of Federal agency minority business enterprise assistance. In our opinion this is an important function. However, we believe that increasing the effectiveness of the Federal minority enterprise programs is an equally important function. The Interagency Council's (IAC's) mission appears to be broad enough to allow it to develop a program designed to improve effectiveness.

Our review did not analyze the effectiveness of the 28 Federal agencies' minority enterprise assistance programs. However, we have discussed the effectiveness of some of the more significant Federal minority assistance programs in prior reports to the Congress.

These audits confirm that several of these programs providing assistance to minority businesses are not as effective as they could be. The Office of Management and Budget (OMB) in its March 1976 Federal Minority Business Development Programs report, had similar findings.

One problem the IAC would face in its new role would be a lack of information about program effectiveness. OMB, discussing this problem in its report, reported that current knowledge of program impact is not adequate to permit the most effective management of the minority enterprise program. OMB recommended, among other matters, that the Department of Commerce and SBA jointly establish a comprehensive system for evaluating the impact of Federal assistance. Then OMBE could provide the IAC with the information the IAC would need for such a project.

We believe that the IAC has advantages that would enable it to make constructive contributions in such a role; For example:

--The IAC is made up of upper echelon Federal agency officials who might be capable of influencing policy direction in their respective agencies.

--Representatives from the White House and from OMB are IAC members. Therefore, information about ineffective Federal programs can quickly get to the top executive branch levels.

Accordingly, we observe that enhancements can be made in minority enterprise development if the role of the coordinating committees was changed by having them devote some of their efforts to identifying specific ways that Federal programs can be more effective.

OMBE AND SBA COORDINATION

We noted instances where clients were both OMBE clients and SBA clients (mutual clients) and, in some cases, they were given management assistance by both agencies. This occurred because OMBE and SBA could not agree which agency was responsible for the mutual clients. For example, OMBE's contractors would not relinquish responsibility to SBA for clients that obtain SBA loans; at the same time, SBA considered recipients of its loans to be clients of its management assistance programs.

After our review was completed, OMBE and SBA entered into a formal interagency agreement on May 4, 1976. The agreement provided that OMBE and SBA would cooperate in using their resources, talents, and facilities, and in general, implement OMB's recommendations. A series of formal field agreements had been negotiated and executed by OMBE and SBA as of October 7, 1976.

On November 18, 1977, SBA told us it believed that the problem of overlap between OMBE and itself should not exist and that although they both provide management and technical assistance to minority businesses, the function of each agency should be mutually exclusive, and to the benefit of its minority clients. SBA emphasized that:

> "***the type of management and technical assistance that OMBE essentially offers appears to be in the pre-business or planning stage. OMBE, through its Business Development Organizations (BDOs), offers assistance in identifying sources of capital, market opportunities and loan-packaging to prospective minority business owners or existing business owners who are interested in business expansion.
>
> SBA, however, through its management assistance program, seeks to provide assistance that addresses the individual's ability to manage a business concern on a day-to-day basis. This is accomplished by evaluating the prospective owner's management ability in order to identify existing or potential deficiencies that should be corrected, and to offer means of improvement. Management problems may also be identified during visits to the borrower or through a review of financial statements submitted by the borrower.
>
> Thus, if each organization concentrates on its area of specialization, duplication of services can be eliminated."

SBA indicated that a joint OMBE-SBA evaluation was taking place in the State of Georgia of their management and technical assistance efforts at several field office locations. It believed the results of this project will be very helpful in enabling both agencies to perform this kind of analysis in all regions so that any wasteful duplication can be eliminated by OMBE and SBA working together on the problem if it exists anywhere in the future.

SBA did not indicate the action it would take should cooperative efforts not correct the problem. Accordingly, if the evaluation shows that overlap persists between the programs, the Office of Management and Budget may find it desirable to consolidate the duplicative activities under the responsibility of a single agency.

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We would appreciate your comments on the matters discussed herein. Also, please contact us if you desire any further information on the matters discussed in this report.

Sincerely yours,

John Landicho

John Landicho
Associate Director

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Bur of Management and Organization
Room 6033

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-163628

MAR 30 1978

The Honorable Abraham Ribicoff
Chairman
Governmental Affairs Committee
United States Senate

Dear Mr. Chairman:

This letter is in response to your request for our comments on S. 2490, the Regulatory Procedures Reform Act. Since GAO is not a regulatory agency, the procedures proposed in the bill are not directly relevant to our functions. We do, however, have comments to offer on Titles I, II, and III.

Title I of the proposed legislation requires agencies with regulatory functions to:

-- establish deadlines and assure compliance with such deadlines;

-- monitor agency actions to assure prompt action on regulatory matters;

-- establish and monitor compliance with priorities;

-- monitor regulatory activities to assure the agency proceeds in the most efficient manner possible; and

-- periodically review rules and regulations, and compile an annual report.

These functions would be carried out by an Office of Planning and Management.

These functions are important and necessary regulatory reforms for those agencies that have not already undertaken them. We are concerned, however, about possible ambiguity as to who is responsible for controlling the operations of the regulatory agency as a result of the wording of Section 101. Even though Section 101(a) states that the Office of Planning and Management will operate "under the direct guidance and supervision of the head of the agency," the

language may not be sufficiently clear, for example, as to who has final control over the establishment and monitoring of deadlines. We believe it should be made explicit that responsibility for the effective operations of the agency rests squarely with the head of the agency. If Congress determines that schedules, priorities and deadlines are necessary, they should be the responsibility of the head of the agency, not a subordinate official. Similarly, compliance should be the responsibility of the agency head.

An Office of Planning and Management could provide critically important staff support and advice in this connection but should have operational control responsibilities for the agency as a whole only to the extent that these are delegated by the head of the agency. To have such operational control responsibilities vested in the subordinate official by law could seriously diminish the authority and responsibility of the head of the agency, possibly to the point of defeating the objectives of the bill.

Additionally, we note that Section 101(a) provides that the office shall be headed by an individual "compensated at the rate of GS-18 or above." Stating the salary level in this manner is too indefinite since there is no ceiling, and the only salaries above the rate of GS-18 are at the executive levels. We suggest that the bill state that the office be headed by an individual compensated at a rate not to exceed a specified general schedule level.

We also caution against completely consolidating the management and planning functions into a single staff unit. As the Senate Governmental Affairs Committee's report on "Delay in the Regulatory Process" points out, lack of planning has long been a major source delay in agency proceedings. The Committee's report as well as earlier studies have called for specialized planning staffs that would have the responsibility to recommend agency priorities and plans.

Because the pressure of daily management tends to crowd out longer-term planning, those responsible for the planning function should be a step removed from the day-to-day operations of the agencies. At the same time, policy planning responsibilities should not be so removed from management that the planning becomes irrelevant. One way to reconcile this problem would be to amend Title I subsections (b)(4) and (b)(8) to specify that the tasks of recommending priorities and reviewing existing rules and regulations be conducted by a separate staff within the designated Office of Planning and Management. A legislative emphasis on the importance and specialized nature of tasks would indicate to the agencies the

importance of not subordinating planning to the daily pressures of management.

Title II amends the Administrative Procedure Act to make formal, trial-type proceedings, more closely resemble informal rulemakings. Agencies would be given greater flexibility in conducting such proceedings. Our comment on Title II concerns Section 204(c) which provides that, "Each agency may establish by rule one or more employee boards to review decisions of presiding employees..." We suggest this be changed to read, "Each agency may establish by rule one or more employee boards at one level to review decisions of presiding employees..."

In our study of Administrative Law Judges(ALJ), which will soon be completed and sent to you, we found that there were multiple levels of agency review of ALJ decisions for the cases we reviewed at the Department of Labor (DOL), Interstate Commerce Commission (ICC), and Occupational Safety and Health Review Commission (OSHRC). These situations illustrate the problems inherent in the current review process. For example, before the Assistant Secretary for Labor-Management Relations at DOL makes a final decision in a Federal Labor-Management Relations case an ALJ decided, that decision will have been reviewed by:

-- the Director, Division of Operations, Office of Federal Labor-Management Relations;

-- a GS-15 Supervisor in the Division of Operations;

-- a staff member in the Division;

-- the Agenda Committee consisting of the Director and Deputy Director of the Office Federal Labor-Management Relations, the Director, Division of Operations, and his three supervisors and the Director, Division of Regulations and Appeals; and

-- the Case Committee consisting of an Associate Solicitor or Deputy Associate Solicitor, Director or Deputy Director of the Office of Federal Labor-Management Relations, Director of the Division of Operations, and Director of the Division of Regulations and Appeals and sometimes a representative of the Assistant Secretary's Office.

An internal study at the ICC points out that Section 17 of the Interstate Commerce Act "mandates a cumbersome appellate process resulting in repetitious reviews."

With the exception of railroad cases, current procedures at the agency provide as many as four administrative appeals before an ALJ's decision becomes administratively final. The ICC has been unsuccessful in having Congress amend the legislation to generally allow only one administrative appeal of the ALJ's initial decision and a further appeal only if the Commission finds the case involves an issue of general transportation importance, new evidence, or changed circumstances.

Both DOL and OSHRC have indicated they are changing their processes to cut down on review time. However if the proposed S.2490 permits "One or more employee board," agencies may continue to have multi-layer or duplication in their review process. Thus we recommend S.2490 limit the review to only one level.

Title III of S. 2490 amends the provisions of Section 3105 of Title V of the United States Code governing the appointment of administrative law judges. Section 301(b) provides that "Subject to the provisions of subsection (c), each agency is authorized without regard to any provisions of this title governing appointments or promotions in the competitive service, to appoint as administrative law judges, or to promote to any position as administrative law judge, any individual listed on a register of qualified candidates prepared by the Civil Service Commission." We suggest that some safeguards be established, such as requiring the agency to consider a certain number of individuals or requiring the Commission to provide the names of the top 10 individuals on the register to the agencies.

The rationale for allowing agencies to appoint or promote from anywhere on the register is to eliminate the rule of three and increase the range of candidates from which all agencies may choose an administrative law judge. Currently agencies are using selective certification procedures to avoid the rule of three and select individuals on the list of qualified candidates even if they are not at the top of the list. Another reason is to avoid selecting an individual who made the top of the list through veterans preference points. This practice, however, results in the agency selecting individuals who already work at the agency as attorneys, because they are most apt to possess the special expertise needed to be considered under the selective certification procedures. While this process provides the agencies with a method to hire Administrative Law Judges with special talents and specifications and who can be immediately productive, it can also lead to doubts about the impartiality of the administrative adjudication process.

The proposal to open the register also can lead to these same doubts because the agencies are not prevented from still selecting their own attorneys. While these attorneys may be qualified, they may not be the best qualified. Since administrative law judges receive immediate, virtual life-time appointments, and tenure to an important position some safeguards should be provided that ensure the agencies select the best qualified to fill these positions. Thus we suggest the agencies should be required to consider a certain number of individuals or the Commission be required to provide no less than 5 and no more than 10 names to the agencies.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

COMMENT RECIPIENT LIST

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The Honorable Abraham Ribicoff
Chairman
Governmental Affairs Committee
United States Senate

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Others:

None

AMendelowitz:alc 3/10/78