

September 1994

SMALL BUSINESS

SBA's Health Care Reform Activities



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**Resources, Community, and
Economic Development Division**

B-256340

September 6, 1994

The Honorable Larry Pressler
Ranking Minority Member
Committee on Small Business
United States Senate

The Honorable Richard K. Arney
The Honorable Cass Ballenger
The Honorable John A. Boehner
The Honorable Mel Hancock
The Honorable J. Dennis Hastert
The Honorable Jon Kyl
The Honorable H. James Saxton
The Honorable Bob Stump
The Honorable Robert S. Walker
House of Representatives

In late September 1993, anticipating strong interest in the administration's health care reform proposal, the Small Business Administration (SBA) and the Department of Commerce jointly produced a brochure entitled The Health Security Act—Benefits for Business. The brochure describes how health insurance would be provided and what role small employers would play in financing insurance for their employees under the administration's proposed Health Security Act. SBA also explored other methods of providing information to small businesses about the health care reform proposal, including a toll-free (800 number) health care hotline.

You asked us to review SBA's efforts to produce and distribute the Health Security Act brochure and establish the toll-free health care hotline. Specifically, you asked us to

- determine whether the publication and distribution of the brochure violated laws concerning lobbying or any laws or regulations on the dissemination of information by SBA;
- review the circumstances surrounding SBA's issuance of the brochure, including who authorized it, how much it cost, and under what circumstances the brochure was distributed to the Democratic National Committee;
- examine whether the brochure accurately portrays the elements of the proposed Health Security Act;
- review the role of SBA's Office of Advocacy in health care reform; and

- determine the status of the health care hotline and review the hotline's costs.

Results in Brief

SBA did not violate the statutory prohibitions on lobbying by preparing and distributing the brochure. The brochure did not unlawfully lobby for the President's plan because it did not exhort businesses to contact Members of Congress to support the plan. Furthermore, SBA had the authority under the Small Business Act to publish and distribute the brochure. The act requires SBA to disseminate information on matters of interest to small businesses. Thus, SBA is entitled to use appropriated funds to prepare and distribute publications like the brochure. In addition, there are no statutory or regulatory provisions prohibiting the White House from working with SBA in the development of the brochure.

The brochure differs from the type of publication SBA usually produces and grew out of the agency's desire to provide small businesses with information about the President's plan and its effect on the health care costs of small businesses. SBA's Chief of Staff authorized and led the development of the brochure, which cost \$92,591 for approximately 202,250 copies. SBA's Office of Advocacy, which is normally responsible for publications on current policy and legislative issues, and other SBA staff offices had a limited role in the development of the brochure. When SBA distributed copies of the brochure to the Democratic National Committee (DNC), one of the many recipients of the brochure, it did not follow customary government procedures for distributing large quantities of agency publications. Government agencies do not usually give large quantities of free publications to private organizations; however, SBA initially gave the DNC 10,000 copies of the brochure free of charge. Later, DNC officials paid SBA \$5,000 for copies of the brochure.

Generally, SBA's brochure accurately describes the key elements of the proposed Health Security Act and the way it would affect small businesses. However, because the brochure was published before the proposed act was finalized, some details about the costs and benefits of the plan are missing or inaccurate.

SBA's Office of Advocacy is involved in health care reform as part of its role as the government's principal advocate of small businesses. The Office's health care activities have centered on monitoring health care reform efforts in the Congress and providing small businesses and others with an

overview (primarily in monthly publications) of the major health care plans. The Office is also sponsoring studies of health care issues.

SBA's health care hotline was never activated for public use. SBA decided that the hotline—at a projected quarterly operating cost of \$759,000 to \$928,344—was too costly to operate. SBA believed it would have needed several hundred operators to answer the phones efficiently. Instead, SBA developed a self-help work sheet that business owners can use to compute their estimated health care costs under the President's plan. The work sheet is distributed to owners of small businesses on request.

Background

Health care reform is one of the leading issues facing the country. With 15 million to 20 million small businesses in existence, the small business community is potentially one of the most heavily affected constituents of the proposed reform. SBA's Health Security Act brochure was one of at least three U.S. government publications available in October 1993 on the President's Health Security Act proposal, before the Health Security Act proposal was introduced in the Congress on November 20, 1993.¹

Under the Health Security Act proposal, the current employer-based health insurance system would be expanded to provide a comprehensive benefits package to all Americans. Consumers would still have a choice of several health plans, and employers and consumers would join together in large purchasing cooperatives, called alliances, to gain bargaining power. Employers and employees would both contribute to health insurance premiums, and these contributions would remain tax deductible for employers and tax exempt for employees. In addition, small employers would no longer face insurance restrictions on preexisting conditions or other discriminatory actions.

The President's plan was one of at least five proposed plans under consideration when SBA's Health Security Act brochure was published in late September and early October 1993. The American Health Security Act of 1993 (H.R. 1200), which was introduced in the Congress on March 3, 1993, proposes Canadian-style (single-payer) insurance. A new version of the Managed Competition Act of 1993 (H.R. 3222) was introduced in the Congress on October 6, 1993.² This bill proposes that employers be required to offer insurance but not be required to finance the insurance.

¹The President transmitted a draft of the Health Security Act to the congressional leadership on October 27, 1993. The final bills (H.R. 3600 and S. 1757) were introduced on November 20, 1993.

²An earlier version of this bill (H.R. 5936) was introduced on September 15, 1992.

The Affordable Health Care Now Act of 1993 (H.R. 3080), which also proposes that employers be required to offer—but not finance—health insurance, was introduced on September 15, 1993. The Health Equity and Access Reform Today Act of 1993 (S. 1770), which would require all individuals to purchase insurance and all employers to offer employees a health plan, was available in summary form in July 1993 and was formally introduced in the Congress as a bill on November 22, 1993.

SBA Did Not Violate Lobbying or Other Statutes

SBA was legally entitled to develop and publish its Health Security Act brochure. In our view, SBA did not violate the laws prohibiting indirect or “grass roots” lobbying because the brochure contains no statement exhorting the public to contact Members of Congress to urge the passage of the proposed Health Security Act.³ Furthermore, SBA was authorized, as part of its overall mission of informing small businesses about relevant issues, to use funds to prepare and distribute the brochure.⁴ (As requested, these legal issues are analyzed in detail in app. I.)

During our review, congressional concerns were raised about the White House’s involvement in preparing the brochure. We confirmed that no statutory or regulatory provision prohibited the White House from working with SBA in the development of the brochure.

Development and Publication of SBA’s Brochure

SBA’s Health Security Act brochure, produced by the Administrator’s Office, was not a typical SBA publication, and SBA’s Office of Advocacy and other staff offices had a limited role in its development. In addition, in initially giving copies of the brochure to the DNC free of charge, SBA did not follow the customary government practice for distributing large quantities of agency documents.

The Brochure Is Not a Typical SBA Publication

The Health Security Act brochure is unlike most SBA publications in that it is issue oriented rather than program oriented. SBA’s program offices primarily produce brochures that explain existing SBA programs and

³“Grass roots” lobbying means that the government agency contacts third parties, either members of special interest groups or the general public, and asks them to contact their legislators to urge them to support or oppose a bill.

⁴Similarly, the Department of Commerce was entitled to use appropriated funds to prepare and distribute the brochure. The brochure, by describing the costs and benefits of the proposed Health Security Act, furthers Commerce’s mandate to promote the development of business. (See app. I for additional information.)

services. The topics are relevant to people who are in business or who are entering business.

SBA produces very few publications that provide information on policy-related matters or on enacted or proposed legislation. Those it has published have been issued by the Office of Advocacy.⁵ The Office of Advocacy, which has a significant role in keeping small businesses informed on issues that affect them, is the SBA office normally responsible for distributing information on issues or legislation that concern small businesses. According to the then-Acting Chief Counsel of the Office of Advocacy, the Health Security Act brochure is the type of document that the Office of Advocacy would normally publish. However, the Office was not asked to produce the brochure.

Production and Cost of the Brochure

SBA's brochure was produced in late September 1993 at the direction of SBA's Chief of Staff. She produced the brochure in conjunction with the Assistant Deputy Secretary of Commerce and his Confidential Assistant, and with assistance from two advisers from the White House's health care reform task force. The publishing branch of the Executive Office of the President designed the brochure at the request of SBA's Chief of Staff. (App. II contains information on this assistance.)

Approximately 202,250 copies of the brochure were printed at a cost of \$92,591; this cost includes a 9-percent surcharge for rush printing. SBA used funds from its fiscal year 1993 administrative account to pay the printing costs. About 123,300 copies were sent to SBA's field offices, Service Corps of Retired Executives, and Small Business Development Centers to be distributed to small businesses; 10,000 went to the DNC; 25,000 went to the Department of Commerce; and about 33,000 went to other SBA offices, the White House, congressional offices, other federal agencies, private associations, and individuals. (App. III contains additional information on the brochure's distribution.)

SBA's Chief of Staff said that she produced the brochure because she thought it would be a good way to educate and inform small business owners about the proposed Health Security Act and its costs and benefits to individual businesses. She and the Administrator had seen a brochure produced by the White House on the North American Free Trade

⁵In the past, the Office of Advocacy has published documents on legislation such as the federal prompt payment legislation and the Davis-Bacon Act, which covers wages paid in connection with government construction contracts.

Agreement,⁶ and they thought such a brochure would be a good way of informing the public about health care reform. According to the Chief of Staff, to develop the brochure's contents, she, the Assistant Deputy Secretary of Commerce, and an adviser to the White House's health care reform task force reviewed all the available information on the President's plan, including documents prepared by the White House's task force. Even though the proposed Health Security Act had not been formally presented to the Congress at the time, much information was available about the plan, including a draft summary of the plan dated September 7, 1993, prepared by the task force's working group.

In discussing with us congressional concerns that SBA's brochure was limited to information about only one health care reform proposal, SBA's Chief of Staff said that she decided to limit the brochure to information about the proposed Health Security Act because she did not think enough details were available about the other health care reform proposals and because most questions from small businesses concerned the President's proposed plan. She also said that SBA does not plan to issue any other brochures dealing with the President's health care reform proposal or any other proposals.

Our work has shown that information was available about the other health care reform proposals. At the time SBA produced its brochure, at least two bills on other proposed health care plans had been introduced in the Congress and a third bill had been reintroduced.⁷ In early April 1993, SBA's Office of Advocacy was already reporting information on the different proposed health care reform bills in its Small Business Health Update, which is sent to SBA's regional advocates.

Involvement of SBA's Office of Advocacy and Other SBA Staff Offices in Brochure's Development

SBA's Office of Advocacy and other staff offices had a limited role in the development of the brochure. As part of its duties, the Office of Advocacy disseminates information about federal programs and services that are of benefit to small businesses. In keeping with its duties, the Office of Advocacy has been providing small businesses with information about the different health care reform proposals. However, the Office was not asked to take the lead in producing the brochure. The Office of Advocacy did review a draft of the brochure. According to the then-Assistant Advocate

⁶The NAFTA: Expanding U.S. Exports, Jobs and Growth. Clinton Administration Statement on the North American Free Trade Agreement, Office of the U.S. Trade Representative, July 1993.

⁷The American Health Security Act of 1993 (H.R. 1200) and the Affordable Health Care Now Act of 1993 (H.R. 3080) had already been introduced. A new version of the Managed Competition Act of 1993 (H.R. 3222) was introduced on October 6, 1993.

for Health Policy, she was not aware the brochure was being prepared until she was asked to review it. She was given about 30 minutes to review the brochure, together with the then-Acting Chief Counsel for Advocacy. She said that she had several comments about the brochure's substance and design but that she did not know to whom these comments were given. She did not know whether her comments about the draft brochure were addressed before its publication, although she said that the final version of the brochure is different from the draft she reviewed. She became aware that the brochure had been published only when she started receiving requests for copies generated by an article in The Los Angeles Times that referred to it and included the Office of Advocacy's address for people who wanted to write to request copies.

Other SBA departments, including those that would normally be involved in the development and distribution of publications, were not involved in decisions about the brochure. For example, the Director of SBA's Office of Publications and Graphics was not notified that the brochure was being developed, although an editor in the Office was consulted. SBA's publications are managed and budgeted centrally by the Office of Publications and Graphics, which is part of the Office of Business Initiatives, Education, and Training. SBA's policy requires SBA program offices to coordinate any publications with the Director of the Office, but the Director said that this coordination does not always occur.

According to the SBA staff we interviewed, they were included in the work only when the Chief of Staff needed them to perform specific tasks. For example, SBA's Office of Congressional and Legislative Affairs was informed about the brochure and the pending distribution late in the process. According to the Assistant Administrator for Congressional and Legislative Affairs, this Office is usually advised of publications that the program offices are developing and, depending on its workload, gets more or less involved in the publication process. The Office usually gives advice to SBA program offices on distributing their products to the appropriate people. The Office was not told about the Health Security Act brochure until it had already been drafted and was close to being published. The Office was told about the brochure because the Chief of Staff wanted the Office to be ready to distribute it to Members of Congress. However, the Office was not told that SBA planned to give copies of the brochure to the DNC; it learned about this distribution after it occurred.

Distribution of the Brochure to the DNC

Private organizations normally obtain large quantities of a U.S. government publication in two ways: (1) by purchasing the publication

from the Superintendent of Documents at the Government Printing Office (GPO) or (2) by getting the negatives or page proofs of the document from the originating agency or GPO and having the document printed themselves. SBA did not follow either of these practices. Rather, SBA initially gave the DNC 10,000 copies of the Health Security Act brochure free of charge. After questions were raised in the Congress about the appropriateness of SBA's giving the DNC copies of the brochure, DNC officials agreed to pay SBA for the copies. On January 25, 1994, the DNC paid SBA \$5,000.

During our work, officials at GPO and the Publishing Branch of the Executive Office of the President questioned SBA's distribution of the brochure free of charge to the DNC in light of Joint Committee on Printing regulations. These regulations, specifically section 39-1, prohibit a government agency from distributing more than 50 free copies of a document to a private organization without the Committee's prior approval. SBA was not aware of this regulation when it gave copies of its brochure to the DNC. When we brought the regulation to SBA's attention, SBA invoked an exception in the regulations to support its contention that it had not been required to follow section 39-1 of the regulations. The relevant part of the exception, section 39-3, reads as follows:

This restriction [i.e., obtaining the Committee's prior approval] includes the free distribution in bulk of any material to private individuals or organizations for redistribution to any names on their mailing lists. Committee approval is not required when the initiative for distribution through nongovernmental facilities is taken by departments.

According to the staff of the Joint Committee on Printing, SBA could rightfully invoke the exception. The staff stated that the purpose of section 39 is to prevent a private, for-profit organization from getting free copies of a government publication and then selling them. The staff pointed out that those circumstances did not apply to the DNC's receipt of copies of SBA's brochure. SBA gave copies to the DNC, a noncommercial entity, which in turn distributed them at no charge to small businesses.

SBA's acceptance of \$5,000 from the DNC for copies of the brochure was also contrary to the agency's normal practice of distributing its publications free of charge. SBA does not usually sell its publications, according to the Director of SBA's Office of Publications and Graphics. Under SBA's publications program, the Business Assistance Trust Fund,⁸

⁸The Fund is managed by the Comptroller's office. In fiscal year 1993, the Fund collected and spent approximately \$330,000, according to information from SBA's Chief of Staff.

donations are requested but not mandatory. SBA had planned to deposit the DNC's payment in the SBA account used to fund the brochure. Instead, SBA gave the money to the Department of the Treasury. According to SBA, it determined that it was not entitled to keep the money.

The DNC's acquisition and distribution of SBA's brochure was different from the way the DNC normally produces and distributes information. A DNC official told us that disseminating SBA's brochures was very unusual for the DNC. Rather than purchasing negatives or proofs and reprinting a government document itself, the DNC develops and prints its own publications, containing the information it wants to disseminate. When the DNC publishes its own material, it tries to reduce costs by using inexpensive layouts and producing short publications. For example, the DNC recently produced its own fold-out pamphlet on health care reform and small businesses. However, by obtaining copies of SBA's brochure, the DNC was able to disseminate information more quickly than it could have if it had produced its own publication, according to the DNC official.

According to the GPO contractor that printed SBA's brochure, if it had used SBA's negatives to print the brochure for the DNC at private rates, the cost would have been about \$7,325. The contractor said that certain fixed costs are associated with each printing and that the DNC would have had to pay the full amount of these costs rather than only a portion, as it did when it reimbursed SBA. The DNC stated that it could have had its own contractor print the brochure for less than the \$5,000 it paid SBA. The DNC provided us with a price quotation from its printing contractor estimating a charge of \$4,600 to print 10,000 copies of SBA's brochure. We did not verify the accuracy or the appropriateness of these two price quotations.

Continued Availability of Brochure

On November 12, 1993, SBA reported to the Senate Small Business Committee that it was no longer distributing the brochure. However, SBA never asked its field offices, GPO, or other agencies to stop distributing copies of the brochure. For example:

- The GPO bookstores in both Washington, D.C., and Los Angeles continued to sell the brochure. As of March 28, 1994, there were 8 copies on the shelf in the Washington, D.C., bookstore and 12,000 copies in GPO's warehouse. As of May 1994, the brochure was available at the GPO bookstore in Los Angeles.
- As of April 7, 1994, the brochure was available on the White House's electronic bulletin board through FedWorld, an on-line bulletin board.

- At one of the five SBA district offices we visited in April 1994, the brochure was available from SBA counselors.

Brochure Accurately Describes Elements of the Health Security Act, but Some Information Was Quickly Outdated

Generally, SBA's brochure accurately describes the key elements of the proposed Health Security Act and the way it would affect small businesses. The brochure describes how health insurance would be provided and what role small employers would play in financing insurance for their employees. However, some information in the brochure became outdated almost immediately.

Information became outdated because the brochure was published over a month before the proposed act was introduced in the Congress. The brochure is written to portray key elements of the proposed act. The brochure does not indicate that the information it contains was based on draft versions of the act or that the act's provisions were subject to change.

Two significant inaccuracies stemming from differences between the draft and final versions of the proposed act involve the discounts that small employers would receive through caps on required premium contributions. The first inaccuracy concerns the ceiling on the number of employees that small businesses can have and still be eligible for discounts. This ceiling was raised from 50 employees to 75 employees between the time the brochure was issued and the time the proposed act was introduced in the Congress. The new ceiling is more favorable to small businesses than the ceiling reported in the brochure.

The second inaccuracy concerns the caps on maximum premium contributions for firms of different sizes and with different wage structures. (See table 1.) The brochure lists caps on premium contributions for small employers with fewer than 50 employees, but the caps shown in the brochure are lower for firms with between 25 and 49 employees than the caps offered under the proposed act. Furthermore, under the President's proposal, firms with between 50 and 75 employees are eligible for some graduated caps on premiums, but these are not reflected in SBA's brochure.

Table 1: Small Employers' Maximum Contribution as a Percentage of Payroll, Based on Average Wages and Number of Employees

Average wage (in thousands of dollars)	Contribution according to SBA's brochure	Contribution according to Health Security Act (H.R. 3600)		
	Firms with fewer than 50 employees	Firms with fewer than 25 employees	Firms with 25-49 employees	Firms with 50-75 employees
0-12	3.5%	3.5%	4.4%	5.3%
12-15	4.4	4.4	5.3	6.2
15-18	5.3	5.3	6.2	7.1
18-21	6.2	6.2	7.1	7.9
21-24	7.1	7.1	7.9	7.9
Over 24	7.9	7.9	7.9	7.9

SBA has made few efforts to notify recipients of the brochure that portions of the brochure have become outdated. After a draft of the act was transmitted to the Congress on October 27, 1993, SBA's Chief of Staff sent SBA regional administrators, district directors, and branch managers a fax alerting them to two significant differences between the brochure and the draft legislative proposal. These differences were (1) the change in the ceiling up to which small businesses are eligible for discounts and (2) the staggering of employers' caps on premium contributions according to the firms' size and wage structure. She included an updated table on maximum premium contributions. The field offices were asked to explain the revisions when they distributed the brochure and were told that they might also want to include the table in the brochure as an insert. By the time SBA's Chief of Staff sent her fax, most of the brochures had been distributed. Only 22,040 out of 202,250 copies of the brochure remained undistributed at SBA headquarters as of October 22, 1993.

We have not been able to confirm that any recipients of the brochure were given a copy of the insert or were made aware that portions of the brochure were outdated when the proposed act was finalized. We found that the DNC, SBA's Office of Advocacy, and SBA's Office of Administration were not aware of an insert. SBA's Director of Administrative Services, who was responsible for getting the brochure printed and distributed, told us that he never included an insert with the copies his office distributed. GPO's copies of the brochure do not include an insert, and a copy of the brochure we got from SBA's Chicago district office did not contain an insert.

The brochure also emphasizes features of the proposed act that are favorable for small businesses. For example, the brochure does not mention that many small employers do not currently finance insurance for their employees but would be required to do so under the proposed act.⁹ At a minimum, small employers would be required to contribute 3.5 percent of their payroll costs towards health premiums. This premium cap would be beneficial for many small firms that offer insurance; however, a contribution of 3.5 percent of payroll could erode the profit margins of those firms that do not offer insurance, particularly firms that are labor-intensive.

Furthermore, the brochure does not mention that small employers could be subject to an additional assessment to fund the difference between the revenues owed to and collected by the regional alliances. This assessment would be in excess of any capped premium payments made by the employers as shown in table 1.

Office of Advocacy's Health Care Reform Activities

In its role as the government's principal advocate of small businesses, SBA's Office of Advocacy is involved in health care reform. As part of its duties, the Office of Advocacy is supposed to measure the direct costs and other effects of government regulations on small businesses, disseminate information about the federal programs and services that benefit small businesses, and represent the views and interests of small businesses before other federal agencies.

The Office of Advocacy's health care activities have centered on providing small businesses with information about the different health care reform proposals, including the President's plan. The Office produces two monthly publications that include information on health care reform. Its *Small Business Advocate*, which provides small businesses with information on various issues that affect them, has included articles describing and comparing the health care plans that have been introduced. The *Small Business Health Update* provides SBA's regional advocates with the latest information on the various health care plans and issues, including forthcoming congressional hearings. The Office of Advocacy also monitors developments in health care reform in the Congress.

⁹Thirty-three percent of firms with fewer than 10 employees offer health insurance, and 72 percent of firms with between 10 and 24 employees offer insurance. About 50 percent of the working uninsured are employed by firms with fewer than 25 employees. See *Rising Health Care Costs: Causes, Implications, and Strategies*, Congressional Budget Office, Apr. 1991.

In addition, the Office of Advocacy is sponsoring health care studies to develop objective information on health care issues. A recently completed study by the University of Kentucky developed information on the number of uninsured people who are employed by or dependents of employees of small businesses in the United States. The study analyzed data from the Bureau of the Census's annual household census to develop the information. The university is to provide SBA with a computer program so that the Office of Advocacy can review and analyze census data annually for this information.

A second study, which is being performed by a company called Lewin-VHI, will follow up on a 1987 study that assessed the types of health care benefits that small businesses provide. The study will develop a wide variety of information on the businesses' operations and ownership history and the nature and type of health benefits provided by the businesses. As part of this study, a questionnaire will be sent to 3,700 small and large businesses. The study is currently in the pilot stage.

The Office of Advocacy has not issued any policy-related publications on the possible effects of health care reform on small businesses. The Office did not have a permanent Chief Counsel until May 1994, and the Acting Chief Counsel did not feel that, as Acting Counsel, she should set the agenda for the Office of Advocacy.

Health Care Hotline Was Never Activated

SBA's health care hotline and computer program were never activated for public use because of the high cost of operating the service. According to SBA's Special Assistant for Finance and Investment, there was initially no thought of an 800 number. Rather, a health care policy adviser at the White House approached SBA with the idea of creating a series of formulas that could be used to provide business owners with estimates of their health care costs under the President's plan. SBA and the White House adviser began developing a computer program that could perform the calculations. The computer program consisted of a series of questions that a business owner needed to answer about the firm's type and number of employees, current payroll, and current health insurance so that the costs could be calculated. Up to 17 pieces of information could be needed to calculate a business owner's health care costs under the proposed act.

According to SBA's Special Assistant for Finance and Investment, while developing the computer program, SBA decided to explore the feasibility of operating an 800 number that small businesses could call to receive

answers to their questions about health care and estimates of their health care costs under the President's plan. Initially, SBA considered using its 800 answer desk—the number the public uses to obtain general information on SBA's programs—but the agency soon realized that the operators could not handle all the calls that would be generated. Instead, SBA decided to try setting up an 800 number that would be dedicated to answering questions about the President's proposal.

Proposed Hotline Tested

SBA conducted a test of the proposed hotline to uncover potential problems and determine (1) how many calls the operators could handle versus how many calls SBA expected to receive, (2) how much it would cost to operate the system, (3) how long it would take to train the telephone operators to answer questions correctly, and (4) how long it would take to provide small businesses with estimates of their health care costs. The testing took place over 2 weeks; SBA did not test every day.

Equipment used in the test came from existing stock or was bought through the General Services Administration under an existing communications contract. To pay for the equipment, SBA used money remaining in its budget for telecommunications for fiscal year 1993 that it had no plans to spend. SBA's Office of Communications Technology Services bought the equipment for the test instead of borrowing it because the Office was told to be prepared to activate the hotline at the time of the test. SBA spent approximately \$42,500 for the telecommunications equipment and computers it used to test the hotline.

During the test, staff from SBA's 68 district offices contacted small businesses to obtain information about their operations. SBA's district office staff, using the information they had obtained from the small businesses, called the test hotline as small businesses would and asked for information about health care costs. At SBA headquarters, 10 to 15 staff members from the offices of Advocacy, Congressional and Legislative Affairs, and Public Communications answered the calls from the district offices. The operators had received some training from the advisers to the White House's health care reform task force—one of whom became the health care adviser to SBA's Administrator—about how to use the computer program and how to answer the questions. SBA estimates that about 1,500 calls were made to SBA headquarters during the test.

Hotline Project Canceled; Work Sheet Developed Instead

In October 1993, SBA canceled the hotline project because it decided that it did not have the personnel resources or funds to operate the hotline. SBA's Special Assistant for Finance and Investment told us that SBA would have needed several hundred operators to answer the phones efficiently. SBA was very concerned about underestimating the volume of calls the hotline could expect. In SBA's view, it would be worse to underestimate the demand for the service and be flooded with more calls than the agency could take care of than not to operate the hotline at all. SBA estimated that the quarterly cost of operating a hotline with 25 operators would be between \$759,000 and \$928,344, depending on whether the hotline had features that allowed callers to be placed on hold or gave out information outside of normal operating hours. Personnel costs were a significant component of the projected costs of operating the hotline—\$633,000 per quarter.

From inception to cancellation, the computer program/hotline project lasted less than 2 months. When the hotline project was canceled, most of the telephone and computer equipment was distributed to other offices within SBA, either to replace broken equipment or to supply offices that were being relocated. According to several SBA officials, including SBA's Chief of Staff and the Acting Deputy to the Deputy Associate Administrator for Management and Administration, no final report was prepared on the results or costs of the test.

To replace the hotline, SBA officials, in conjunction with the Assistant Deputy Secretary of Commerce and the adviser to the White House's health care reform task force, developed a work sheet that small businesses can use to compute their health care costs themselves. According to SBA's Chief of Staff, the work sheet contains basically the same questions that were used to develop the computer program for the hotline. SBA is distributing the work sheet on request only.

Scope and Methodology

We conducted our review from January through June 1994 in accordance with generally accepted auditing standards.

To determine the legality of SBA's publishing and distributing the brochure, we examined SBA documents and reviewed applicable laws and regulations concerning lobbying, SBA's authority, the Office of Advocacy's authority, and government printing. To obtain information on the circumstances surrounding the publication and dissemination of the brochure and the proposed health care hotline and computer program, we interviewed

officials at SBA, the Department of Commerce, the GPO, the DNC, and the Executive Office of the President. Our review of the computer program and hotline was limited because SBA's Special Assistant for Finance and Investment, who led the development of the computer program, was unable to provide us with any documentation. He told us that all his papers were disposed of when he changed offices after the computer program and hotline were canceled. (App. IV contains additional information on our scope and methodology.)

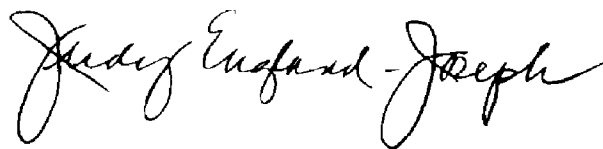
Agency Comments

We discussed this report with SBA's Chief of Staff, who stated that it accurately portrays the facts. She also told us that she and the SBA Administrator think the report treats the agency fairly.

We are sending copies of this report to the Administrator of SBA, the Secretary of Commerce, the DNC, and other interested parties. We will also make copies available to others on request.

If you have any questions, please contact me at (202) 512-7631. Major contributors to this report are listed in appendix V.

Sincerely yours,



Judy A. England-Joseph
Director, Housing and Community
Development Issues

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Abbreviations

DNC	Democratic National Committee
GAO	General Accounting Office
GPO	Government Printing Office
NAFTA	North American Free Trade Agreement
SBA	Small Business Administration

Legality of Use of Appropriated Funds to Issue and Disseminate Brochure on Administration's Health Care Proposal

This analysis addresses the legality, under laws prohibiting "grass roots" lobbying and "self-aggrandizement," of actions taken by the Small Business Administration (SBA) and the Department of Commerce in using appropriated funds to issue and distribute to the public a brochure on the administration's proposed Health Security Act.

For the reasons explained below, we have concluded that the issuance and dissemination of the brochure do not violate the laws prohibiting grass roots lobbying and self-aggrandizement.

Background

The Health Security Act¹ is a proposal by the administration to deal with problems in this nation's system of health care.² SBA and Commerce produced a brochure outlining the problems in the nation's health care system and the ways in which the proposed Health Security Act would address them. The brochure is aimed at employers, particularly small business employers, and is introduced by a cover letter from President Clinton.

The brochure has a section entitled "Benefits for Business"³ and another section entitled "Additional Benefits for Small Business."⁴ A series of questions and answers are also presented, designed to allay employers' concerns about the impact the proposed Health Security Act might have on their businesses. Readers of the brochure who want more information are advised to contact SBA or Commerce and are given addresses to write to. SBA published approximately 202,250 brochures at a cost of \$92,591. Commerce's contribution was \$10,500.

¹The administration's proposed Health Security Act was introduced in the Congress in late November 1993 and assigned bill numbers H.R. 3600 and S. 1757.

²Inadequate health insurance coverage (or no coverage at all) for millions of Americans, escalating health care costs, the decreasing quality of health care, and burgeoning administrative costs are some of the problems the proposed Health Security Act identifies as crippling the nation's health care system and purports to address.

³According to the brochure, the proposed Health Security Act, if enacted, would reduce employers' direct out-of-pocket costs because it, among other things, "[g]uarantees that no employer in a regional alliance will pay more than 7.9 percent of payroll . . . [o]ffers greater discounts (30% to 80%) to the smallest businesses and to low wage employees . . . [e]nds insurance abuse: no more occupational red-lining, restrictions on pre-existing conditions, or discrimination against small businesses."

⁴Among the additional benefits cited by the brochure are that "[t]he plan is phased in over a period of years as the cost of health care is brought down[,] . . . [t]he plan provides caps and discounts to hold down the cost of health insurance so that small businesses can afford to provide their employees with comprehensive, real insurance coverage[,] . . . [t]he plan enables the self-employed to deduct 100 percent of the cost of health care coverage from their taxes."

Discussion

There are generally two broad categories of government agency lobbying: direct lobbying and grass roots lobbying. Direct lobbying, as the term implies, means direct contact by the agency with legislators, either in person or by various means of written or oral communication. In indirect or grass roots lobbying, the agency contacts third parties, either members of special interest groups or the general public, and asks them to contact their legislators to urge them to support or oppose a bill.

Restrictions on lobbying by government officials derive from two sources: criminal statutes and provisions in appropriation acts. We first discuss the relevant criminal statute.

Section 1913 of Title 18

Section 1913 of title 18, United States Code, provides as follows:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress . . . ; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

The statute provides criminal penalties for violations: a \$500 fine or a year in jail, or both, plus removal from federal employment.

Representative Good, who introduced the measure, explained the rationale behind the statute:

The bill also contains a provision which . . . will prohibit a practice that has been indulged in so often, without regard to what administration is in power—the practice of a bureau chief or the head of a department writing letters throughout the country, sending telegrams throughout the country, for this organization, for this man, for that company to write his Congressman, to wire his Congressman, on behalf of this or that legislation. . . . Now, it was never the intention of Congress to appropriate money for this purpose, and [§ 1913] will absolutely put a stop to that sort of thing.

58 Cong. Rec. 403 (1919).

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Consistent with this purpose, the Department of Justice, which is responsible for enforcing federal criminal statutes, construes section 1913 as not applying to direct communication between officials of the executive branch and the Congress, but only to indirect or grass roots lobbying, in which an attempt is made to induce members of the public to contact their representatives in the Congress to persuade them to either support or oppose legislation.⁵ 13 Op. Off. Legal Counsel 361 (1989); 5 Op. Off. Legal Counsel 180 (1981); 2 Op. Off. Legal Counsel 160 (1978); 2 Op. Off. Legal Counsel 30 (1978).

We share the Department's view of the statute. Section 1913 does not prohibit executive branch agencies from expressing their views to the Congress or the public on the merits or deficiencies of legislation. B-217896, July 25, 1985; 63 Comp. Gen. 624, 626 (1984). The objective of expressing those views may even be to persuade the public to support the agency's position, provided the public is not urged to contact Members of Congress. See B-216239, Jan. 22, 1985.⁶

In our view, therefore, the actions of SBA and Commerce plainly do not constitute grass roots lobbying as prohibited by 18 U.S.C. § 1913 because there is no statement in the brochure exhorting the public to contact Members of Congress to urge the passage of the proposed Health Security Act.

Appropriation Act
Restrictions

The relevant appropriations for fiscal years 1993 and 1994 (Pub. L. No. 102-395 and Pub. L. No. 103-121), covering salaries and expenses at SBA and Commerce, provide for the two agencies' necessary expenses. In view

⁵Enforcement of section 1913 is the responsibility of the Department of Justice and the courts, and GAO has no decision-making authority to determine that a given action constitutes a violation. However, GAO does determine whether appropriated funds were used in a given instance and refers matters to the Justice Department in appropriate cases. See, for example, B-192658, Sept. 1, 1978; B-164497(5), Mar. 10, 1977. In addition, since a violation of section 1913 is by definition an improper use of appropriated funds, such a violation could form the basis of a GAO exception or disallowance. GAO can take no action unless the Justice Department or the courts first determine that there has been a violation. B-164497(5), Mar. 10, 1977. To our knowledge, there has never been a prosecution under section 1913.

⁶See also B-223098/B-223098.2, Oct. 10, 1986. Written materials prepared and disseminated by SBA in support of a proposal by the administration to transfer the SBA to Commerce did not, in our opinion, violate section 1913. None of the material urged members of the public to contact Members of Congress to support the administration's proposal. Consequently, we did not refer the case to the Justice Department. B-229257, June 10, 1988. No exhortation to members of the public to contact their legislators was found in speeches and written materials by the Chairman of the Federal Trade Commission expressing opposition to the Postal Service's "monopoly" status for letter class mail. Hence, we concluded that section 1913 had not been violated and that referral of the case to the Justice Department was not appropriate.

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of SBA's and Commerce's statutory authority, discussed below, we believe that the expenses involved in issuing and disseminating the brochure are consistent with the appropriation acts.⁷

The appropriation act for 1993 for SBA and Commerce (Pub. L. No. 102-395, 106 Stat. 1828, 1872 (1992)) contains the following prohibition:

SEC. 601. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.⁸

In our view, section 601 prohibits both indirect or grass roots lobbying and activities that constitute self-aggrandizement or "puffery." We discuss each of these separately below.

Grass Roots Lobbying

Section 601 is patterned after an appropriation act restriction that was enacted every year from the 1950s to fiscal year 1984 as part of the annual Treasury, Postal Service, and General Government Appropriations Act. See, e.g., Treasury, Postal Service, and General Government Appropriations Act, 1980, Pub. L. No. 96-74, § 607(a), 93 Stat. 559, 575 (1979). The restriction prohibited the spending of appropriated funds

⁷SBA gave to the Democratic National Committee (DNC), free of charge, 10,000 copies of the brochure. (After questions were raised about SBA's free distribution of the brochures to the DNC, SBA and the DNC agreed that the DNC would pay a pro rata share of the costs incurred to print the brochure. However, when SBA gave the DNC the brochures, it did not, nor did it have any plans to, charge for them.) The DNC, in turn, distributed the brochures to interested small business owners. According to the SBA and the DNC, the DNC volunteered to distribute the brochures for informational and educational purposes. The fact that SBA gave the DNC more than 50 free copies raised the possibility that SBA had violated section 39-1 of the Government Printing and Binding Regulations. Section 39-1 prohibits government agencies from distributing more than 50 copies of any publication free of charge to private organizations without the prior approval of the Joint Committee on Printing.

SBA did not obtain approval from the Joint Committee on Printing before giving the 10,000 brochures to the DNC. Citing section 39-3 of the regulations, SBA maintains that it was not required to obtain the Committee's approval. Section 39-3 allows the distribution of agency publications without the Committee's approval "when the initiative for distribution through nongovernmental facilities is taken by departments." SBA contacted the staff of the Joint Committee after it had distributed the brochures, and the staff of the Joint Committee agreed with the agency that the exception contained in section 39-3 to the general rule in section 39-1 applied to the distribution of the brochures to the DNC. The staff of the Joint Committee confirmed to us that the exception was applicable and that the Committee's approval was not required in this case. According to the staff, the purpose of section 39 is to prevent a private, for-profit organization from getting a substantial number of free copies of a government publication and then selling them. The staff pointed out that those circumstances did not apply to the DNC's receipt of the brochures. SBA gave the brochures to the DNC, a noncommercial entity, which, in turn, distributed them at no charge to small businesses, the constituency of the SBA.

⁸This provision is also contained in the appropriations act for 1994 for SBA and Commerce. Pub. L. No. 103-121, § 601, 107 Stat. 1153, 1194 (1993).

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“contained in this or any other Act,” for publicity or propaganda purposes “designed to support or defeat legislation pending before Congress.”⁹

Section 601 does not explicitly prohibit, as did the governmentwide provision formerly in effect, the spending of appropriated funds for publicity or propaganda “designed to support or defeat legislation pending before Congress.” Nevertheless, section 601 necessarily prohibits the use of appropriated funds for that purpose—grass roots lobbying—since, by its terms, it prohibits the spending of appropriated funds for publicity or propaganda of any sort unless authorized by the Congress. The Congress has not authorized grass roots lobbying by federal officials. Indeed, through enactment of 18 U.S.C. § 1913, the Congress made it a crime for federal officials to engage in such activity.

Like section 1913, antilobbying restrictions such as the one contained in section 601 prohibit appeals to members of the public suggesting that they contact their elected representatives to support or oppose pending legislation, thereby expressly or implicitly urging the legislators to vote in a particular manner. See 60 Comp. Gen. 423 (1981); 56 Comp. Gen. 889 (1977). By the same token, an agency has a legitimate interest in communicating with the public and with legislators about its policies and activities. If any policy or activity of an agency is affected by pending or proposed legislation, discussion by officials of that policy or activity will necessarily, either explicitly or by implication, refer to such legislation and will arguably either support or oppose that legislation. An interpretation that strictly prohibited expenditures of public funds for the dissemination of views on programs proposed or affected by pending legislation would preclude virtually any comment by officials on administration or agency policies or activities, a result we do not believe was intended. 56 Comp. Gen. 889 (1977); B-212235(1), Nov. 17, 1983.

These general considerations have formed the basis for our determination in any given instance of whether the antilobbying restrictions contained in appropriation acts have been violated. For example, in one case, the Department of Transportation set up displays on the U.S. Capitol grounds of passenger cars equipped with passive restraint systems (airbags). Department of Transportation employees at the displays distributed brochures, explained the devices, and answered questions from Members of Congress and the public. All this was done while legislation was pending to prohibit mandatory enforcement of the airbag standard. Since

⁹As long as this provision was in effect, it applied—by virtue of the language “this or any other Act”—to all government agencies, regardless of which appropriation act provided their funds.

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there was no evidence that the Department of Transportation urged members of the public to contact their elected representatives, we concluded that there was no violation of the antilobbying restriction. B-139052, Apr. 29, 1980.

In another case, we examined 1,462 news releases prerecorded and disseminated to radio stations by 18 federal executive departments and agencies. We concluded that all but 10 of the news releases did not violate the relevant antilobbying restriction, either because they were clearly expositions of the administration's policy or because, although they discussed pending legislation, they did not do so in terms that were clearly designed to suggest that the public contact Members of Congress to influence their vote on pending legislation. B-178648, Sept. 21, 1973.

In the current case, the brochure contains no suggestion that members of the public contact their representatives to urge them to support the proposed Health Security Act. Hence, the spending of appropriated funds by SBA and Commerce to publish and distribute the brochure did not violate the restriction in section 601 against lobbying.¹⁰

On numerous occasions, we have interpreted language substantively identical to the language in section 601. The purpose of such language is generally to prohibit "publicity of a nature tending to emphasize the importance of the agency or activity in question." 31 Comp. Gen. 311, 313 (1952). The restriction is directed toward activities whose obvious purpose is self-aggrandizement or puffery. B-212069, Oct. 6, 1983. See, e.g., B-161686, June 30, 1967 (anti-puffery restriction not violated by State Department publications about the Vietnam War).

Under our decisions, section 601 and other statutes using substantively identical language do not prohibit an agency's legitimate activities to provide information. B-223098, B-223098.2, Oct. 10, 1986; B-212069, Oct. 6, 1983. Under this restriction, public officials may report on and justify government policies to the public. See B-114823, Dec. 23, 1974. The executive branch has a duty to inform the public about government

¹⁰SBA was aware of the prohibitions against grass roots lobbying:

... we have been very careful not to engage in impermissible lobbying or propagandizing. None of our efforts have been directed at influencing any member of Congress to favor or approve the President's plan. We set out to explain the plan, and the benefits the President believes would follow if the plan were adopted. We specifically did not ask anyone to contact their elected representatives to urge them to vote one way or another on the proposed legislation.

Letter to the Honorable William Zelf, Jr., House of Representatives, from Erskine B. Bowles, Administrator, SBA, dated Nov. 4, 1993.

Restriction on
Self-Aggrandizement

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policies, and policy-making officials have traditionally used government resources to explain and defend their policies. B-194776, June 4, 1979.

The brochure explaining the administration's health care proposal does not, in our view, constitute puffery or self-aggrandizement as prohibited by section 601. Rather, as SBA contends, the publication and dissemination of the brochure fulfill the agency's mission under the Small Business Act as authorized by the Congress.

SBA cites section 8(b)(15) of the Small Business Act as constituting authority for the agency to publish the brochure explaining the administration's health care initiative. That section provides:

(b) It shall also be the duty of the [Small Business] Administration and it is empowered, whenever it determines such action is necessary—

(15) to disseminate . . . data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public.

15 U.S.C. § 637(b)(15).

Referring to section 8(b)(15), SBA states:

It seems clear that this provision imposes an obligation on the part of the SBA to produce and distribute written materials which will inform the small business community about relevant issues, including Administration proposals.

Memorandum entitled "Printing and Distribution of Publication "The Health Security Act: Benefits for Business," dated Mar. 4, 1994, from General Counsel, SBA, to Administrator, SBA.¹¹

The Small Business Act does grant the SBA wide discretion to carry out the purposes of the act. See Duke City Lumber Co. v. Butz, 382 F. Supp. 362, 370 (D.D.C. 1974), aff'd in relevant part, 539 F.2d 220 (D.C. Cir. 1976), cert. denied, 429 U.S. 1039 (1977). We believe that SBA had the authority under 15 U.S.C. § 637(b)(15) to issue and disseminate the brochure. An initiative

¹¹See also Letter to the Honorable William Zeliff, Jr., House of Representatives, from Erskine B. Bowles, dated Nov. 4, 1993, in which Mr. Bowles states:

The Small Business Act expresses the declared policy of the Congress that the SBA aid, counsel, assist and protect the interests of small business concerns. It authorizes the SBA to make studies of matters materially affecting the competitive strength of small businesses; and to disseminate data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public. We believe that the Small Business Act clearly authorizes the SBA to publish a brochure explaining the President's health care initiative.

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for a national health care plan, such as the administration's initiative, necessarily concerns matters of interest to small businesses and is properly the subject of an SBA analysis. The brochure lays out for small businesses the costs and benefits to them of the President's health care initiative from SBA's perspective. We conclude that the issuance and dissemination of the brochure is a legitimate informational activity on SBA's part and does not constitute puffery or self-aggrandizement as restricted by section 601.¹²

Conclusion

We do not believe that the contents of the brochure violated the prohibition against grass roots lobbying contained in 18 U.S.C. § 1913. Therefore, we will not refer the matter to the Justice Department for possible prosecution of the responsible agency officials under that criminal statute. Nor do we find any violation of the prohibitions against grass roots lobbying or self-aggrandizement contained in section 601 of SBA and Commerce's fiscal year 1993 and 1994 appropriation acts.

¹²Neither does the brochure constitute puffery or self-aggrandizement by the Department of Commerce. As with SBA, publication and dissemination of the brochure by Commerce fulfill the Department's responsibility under its authorizing legislation. That responsibility is stated under 15 U.S.C § 1512: "It shall be the province and duty of [the] Department to foster, promote, and develop the foreign and domestic commerce. . . ." This broad mandate plainly encompasses the authority to issue and distribute a brochure outlining for businesses the costs and benefits to them of the administration's health care initiative.

Assistance in the Development of SBA's Brochure

Two advisers from the White House's health care reform task force participated in developing SBA's brochure, and the publishing branch of the Executive Office of the President designed the brochure. One of the task force advisers, who is an executive from the private sector, was instrumental in developing the contents of the brochure, along with SBA's Chief of Staff and the Assistant Deputy Secretary of Commerce.

The other person from the White House's health care reform task force who played a role in the development of the brochure was a special government employee on the task force from February 1993 through May 1993 and September 1993 to October 1993.¹ On October 4, 1993, she became a temporary employee of SBA as the health care adviser to SBA's Administrator. She was hired by the Office of Advocacy but works in the Administrator's office and reports to the Administrator on a day-to-day basis.² She is the only staff person from the Office of Advocacy who reports to the Administrator. According to the former Acting Chief Counsel, the authority to hire temporary employees was given to the Office of Advocacy so that it would have the flexibility to hire people with experience and knowledge of current issues. The Office of Advocacy currently has about 20 temporary appointees. It is not unusual for a temporary employee to work at SBA for several years.

The publishing manager of the publishing branch of the Executive Office of the President designed the brochure. The office had produced a brochure on the North American Free Trade Agreement. SBA's Chief of Staff said she asked the White House publishing branch to design SBA's brochure because she was impressed with the publishing branch's work on the other brochure. SBA could not do the design layout for the brochure quickly enough to meet the deadline for the job, so the White House's publishing manager wrote the specifications the Government Printing Office's (GPO) contractor used in printing the brochure.

¹Special government employees are employed by an agency or the Executive Office of the President for no more than 130 days in a 365-day period, either with or without compensation.

²SBA's Office of Advocacy has the statutory authority to procure the temporary services of experts and consultants. The Chief Counsel for the Office of Advocacy, after consultation with and subject to the approval of the Administrator, may temporarily employ experts and consultants without regard to certain limitations concerning appointments in the competitive service or compensation.

Distribution of SBA's Brochure

SBA distributed the Health Security Act brochure to its field and district offices and to a variety of congressional offices, federal agencies, and private associations. The recipients that received the largest number of brochures were SBA offices, the Department of Commerce, and the Democratic National Committee (DNC). SBA's records show that as of June 1994, SBA's shipping and distribution section still had 10,800 copies out of the approximately 202,250 brochures that were printed.

SBA sent 123,300 copies of the brochure to its field offices, Service Corps of Retired Executives, and Small Business Development Centers. These offices were expected to distribute the copies of the brochure to small businesses. However, SBA has no record of who received the brochures from SBA or the DNC or how many remain at SBA's various offices. SBA also put the brochure on the agency's computerized bulletin board, which is available to small businesses and others. Shortly thereafter, SBA decided to take the brochure off the bulletin board because the numbers associated with the plan were changing, and SBA did not want to have to update the figures each time a change occurred.

The Department of Commerce received 25,000 copies of the brochure and reimbursed SBA \$10,500 under an interagency agreement. It distributed about 20,000 copies to the 535 Members of Congress—between 30 and 40 copies to each member. Commerce sent a letter and a copy of the brochure to each of the Fortune 1000 firms and about 130 trade associations in the Washington, D.C., area. About 450 copies of the brochure were distributed during town meetings that Commerce held in Texas and California. Other copies were distributed at meetings attended by the Secretary of Commerce. As of January 25, 1994, Commerce still had about 1,000 copies of the brochure on hand.

The DNC received 10,000 copies of the brochure and distributed them to its 20 field offices, where they were given to small businesses. The DNC paid SBA \$5,000 for its copies of the brochure after questions arose about the fact that it received copies free of charge.

The GPO printed 15,000 copies of the brochure to be sold in GPO bookstores. As of December 15, 1993, 2,364 copies had been sold. In addition, GPO printed 908 copies for depository libraries and 15 copies for the Library of Congress.

Table III.1 details how the brochure was distributed.

**Appendix III
Distribution of SBA's Brochure**

Table III.1: Distribution of SBA's Brochure

Recipient	Number of copies
SBA's district offices	80,800
Department of Commerce	25,000
SBA's regional offices	20,000
Service Corps of Retired Executives and Small Business Development Centers	16,200
SBA's Office of Congressional and Legislative Affairs	10,500
Democratic National Committee	10,000
National Leadership Coalition on Health Care Reform	7,600
SBA's branch offices	6,300
White House's Office of Public Liaison	4,000
SBA's Office of Public Communication	3,000
SBA's Chief of Staff, other SBA staff, and executive departments and agencies	1,660
Small business trade associations	1,200
White House's Office of Communications	1,000
Retail Druggist Association	800
Women's Business Development Centers	400
Department of the Treasury	400
U.S. Coast Guard	400
SBA's town hall meeting, Denver, Colorado	400
SBA's town hall meeting, Portland, Oregon	350
SBA's town hall meeting, Cleveland, Ohio	350
SBA's town hall meeting, Houston, Texas	350
Trade Representatives, United Nations	300
American Association of Black Women Entrepreneurs	100

Source: SBA.

Scope and Methodology

We performed our work from January through June 1994, primarily at SBA headquarters in Washington, D.C. We interviewed officials at SBA, the Department of Commerce, the Government Printing Office (GPO), the Democratic National Committee (DNC), and the Executive Office of the President. As requested, a list of the people we interviewed is included as part of this appendix.

Lobbying and Other Legal Issues

To determine whether SBA violated laws and regulations on lobbying by issuing the brochure, we reviewed relevant statutory provisions, including appropriation act restrictions, as well as Department of Justice and Comptroller General decisions on those provisions. In addition, we reviewed SBA correspondence and opinions on the brochure. To determine SBA's authority to publish the brochure, we reviewed the Small Business Act, SBA correspondence and opinions, and relevant court decisions. We also reviewed relevant legislation, regulations, and court decisions to determine whether there were any prohibitions against the White House's involvement in executive branch activities.

Circumstances Surrounding the Brochure

To determine the circumstances surrounding the publication and distribution of the health care brochure, we interviewed officials at SBA, GPO, the Department of Commerce, and the Executive Office of the President, and we reviewed supporting documents. We interviewed SBA's Chief of Staff to determine who authorized the brochure, what sources of information were used to develop the brochure, and who was involved in preparing the brochure. We held similar discussions with the Confidential Assistant to the Assistant Deputy Secretary of Commerce, an adviser to the White House's health care reform task force from the Executive Office of the President, the then-Assistant Advocate for Health Policy, and the health care adviser to SBA's Administrator.

To determine how the health care brochure compared with other SBA publications in terms of the issue covered and the SBA offices involved in the publication, we spoke to staff in SBA's offices of International Trade, Publications and Graphics, Advocacy, and Congressional and Legislative Affairs. We also reviewed SBA's policy on the production of SBA publications.

To determine the Office of Advocacy's responsibilities in the publication of information on issues such as health care reform, we reviewed the 1976 amendments to the Small Business Act that established the Office of

Advocacy and defined its duties and responsibilities. We also discussed this issue with the then-Acting Chief Counsel and the then-Assistant Advocate for Health Policy and with the Director of the Office of Publications and Graphics. To get an idea of the types of publications the Office of Advocacy prepares, we also reviewed its recent publications on small businesses' compliance with (1) community and worker right-to-know laws on hazardous materials and (2) federal requirements on prompt payment.

For information on the distribution of the brochure, we interviewed officials at GPO. We also contacted the Publications Branch of the Executive Office of the President to learn about how organizations usually obtain large quantities of government publications.

To assess whether SBA was in compliance with government printing requirements, we reviewed title 44 of the United States Code, "Public Printing and Documents," and Government Printing and Binding Regulations issued by the Joint Committee on Printing. We also spoke with the Committee's General Counsel and a professional staff member as well as printing officers from SBA, the Executive Office of the President, and GPO.

We reviewed correspondence between SBA and the DNC on the distribution of copies of SBA's brochure to the DNC and its payment for these copies. We also examined the Department of the Treasury's financial system records of the DNC's payment to SBA.

To determine whether the DNC may have benefited from being allowed to purchase copies of the brochure, we interviewed officials at GPO. We also obtained a price quotation from GPO's contractor, which printed SBA's brochure, on the cost of printing the brochure at nongovernment rates. We also asked the DNC to obtain a price quotation from the printing contractor it uses. We did not determine whether these quotations were accurate or appropriate.

To determine whether the brochure is still available, we visited five SBA district offices—Los Angeles; Chicago; New York; San Francisco; and Washington, D.C. We also checked two electronic bulletin boards—SBA's on-line information system and FedWorld. In addition, we visited GPO bookstores in Washington, D.C., and Los Angeles, but we did not attempt to determine if other GPO bookstores are still selling the brochure.

Accuracy of the Brochure

To analyze the accuracy of the brochure's description of the proposed Health Security Act, we compared the information in the brochure with three different published versions of the act: (1) a 200-page working group summary of the act dated September 7, 1993, prepared by the working group of the White House health care reform task force; (2) a draft of the proposed act in legislative language, which was transmitted to the Congress on October 27, 1993; and (3) the Health Security Act introduced by Representative Gephardt on November 20, 1993 (H.R. 3600).

**Office of Advocacy's
Health Care Activities**

To obtain information on the Office of Advocacy's involvement in health care reform, we interviewed the Assistant Advocate for Health Policy, the Director of the Applied Policy Branch, and the then-Acting Chief Counsel. In addition, we obtained copies of the Office's publications and reviewed some internal documents. We were unable to obtain a copy of the Office of Advocacy's comments about the draft brochure. Neither the Office of Advocacy's Acting Chief Counsel nor SBA's Chief of Staff had a copy of the comments.

Hotline

To determine the status of the toll-free (800) hotline and computer project, we interviewed SBA officials and an adviser to the White House's health care reform task force. We also gathered information from SBA on the costs and configuration of the telephone systems under consideration. However, we did not analyze the cost information to determine whether the costs were accurate or appropriate.

We did not review SBA's computer program to verify the reliability of the program.

Officials Contacted

As requested, the following lists the people we interviewed by office and job title at the time of our review.

Small Business Administration

Chief of Staff, Office of the Administrator

Special Assistant for Finance and Investment, Office of the Administrator

General Counsel, Office of the General Counsel

Chief Counsel for Administrative Law, Office of the General Counsel

Attorney/Adviser, Office of the General Counsel

Acting Chief Counsel, Office of Advocacy

Assistant Advocate for Health Policy, Office of Advocacy

Director, Applied Policy Branch, Office of Advocacy

Health Care Analyst, Office of Advocacy

Acting Deputy to the Deputy Associate Administrator for Management and Administration, Office of the Associate Administrator for Management and Administration

Assistant Administrator for Administration, Office of Administration

Director, Administrative Services, Office of Administration

Acting Director, Office of Communications Technology Services, Office of Information Technology Services

Telecommunications Specialist, Office of Information Technology Services

Director, Office of Financial Management, Office of the Comptroller

Senior Budget Analyst, Office of Planning and Budget, Office of Comptroller

Director, Office of Planning and Budget

Writer/Editor, Office of Publications and Graphics

Director, Office of Publications and Graphics

Export Development Specialist, Office of International Trade

Assistant Administrator for Congressional and Legislative Affairs, Office of Congressional and Legislative Affairs

Printing Specialist, Office of Administration

Department of Commerce

Confidential Assistant to the Assistant Deputy Secretary of Commerce

**Appendix IV
Scope and Methodology**

Director, Office of Budget Operations

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