



February 25, 2014

Dear Representative:

On behalf of Associated Builders and Contractors (ABC), a national construction industry trade association with 70 chapters representing nearly 22,000 chapter members, I am writing to express our strong support for H.R. 2804, the Achieving Less Excess in Regulation and Requiring Transparency (ALERT) Act. **We urge you to support this effort to improve the federal regulatory process, and will consider this vote a “Key Vote” for our 113th Congressional scorecard.**

For the last five years, the White House has encouraged federal regulatory agencies to assert their power through rulemaking. Many federal agencies operate relatively unchecked and unsupervised—especially during the early stages of the regulatory process—and many rulemakings are accompanied by poor or incomplete economic cost-benefit forecasting and other data analysis that could have helped to create practical, sustainable rules and regulations. At times, even the wills of Congress and the American public have been disregarded in order to issue regulations.

For our industry, excessive regulations translate into higher costs, some of which must be passed along to the consumer. Ultimately, these costs impact our industry’s recovery and our businesses’ ability to expand and hire more workers. It is particularly alarming that small businesses, which comprise the vast majority of the construction industry, are disproportionately affected by the administration’s irresponsible approach to regulation.

H.R. 2804 is a positive step toward reforming the federal regulatory process. Its provisions would improve federal rulemaking, and allow ABC members to devote more time and resources to winning and performing work, and creating jobs. Below, we have highlighted several of those key provisions.

### **Regulatory Accountability**

In order to improve government accountability, transparency and regulatory quality steps must be taken to reform the increasingly outdated federal rulemaking process. The government should only issue regulations that are supported by adequate data and created in the most practical, well-reasoned and sustainable manner possible.

H.R. 2804 enhances public transparency and government accountability when agencies develop regulations. Earlier public outreach and access to information (including supporting data) on upcoming regulatory plans will give stakeholders a vastly improved picture of agencies’ plans before regulations are fully developed. It will also include greater stakeholder input, along with mandatory public hearings on the most costly regulatory proposals.

For the first time, agencies will be required to look at potential *indirect* and *cumulative* economic impacts (including the impact on jobs and the economy). Agencies will be held accountable if the data or analyses used to write regulations are deficient or unsound. Finally, agencies will be required to adopt the least burdensome regulatory option —unless it can provide a strong reason otherwise—to ensure only the most necessary burdens are imposed on businesses and the public.

### **Regulatory Flexibility for Small Businesses**

Small businesses are the backbone of our nation’s economy, and their ability to operate efficiently and free of unnecessary regulatory burdens is critical for our country’s economic recovery. Proposed and existing regulations need to be thoroughly examined from cost standpoints to ensure they do not encumber our country’s primary job creators.

H.R. 2804 requires federal agencies to more closely examine regulatory impacts on small businesses. It gives the Small Business Administration's (SBA) Office of Advocacy additional authority and requires the office to establish more in-depth "regulatory flexibility" analyses during the federal rulemaking process. In addition, the legislation's provisions on periodic review of rules are in line with President Obama's Executive Order 13563, which requires agencies to conduct a retrospective analysis of existing rules to identify and modify rules in need of reform.

### **Regulatory Transparency**

The federal government is supposed to issue a unified agenda of regulatory actions twice a year. These agendas contain important information about agencies' plans and priorities in the months and years ahead. Businesses and other stakeholders rely on this information to properly plan for any new regulations that may affect them. Unfortunately, the Obama administration has regularly failed to release its agenda on time—and on one occasion, failed to publish it at all.

H.R. 2804 compels agencies to provide detailed monthly updates on proposed regulations, and prevent new rulemakings from becoming effective if agencies fail to comply. This legislation will compel agencies to be accountable to regulated stakeholders and the general public, and allow business owners much-needed time to evaluate the possible impact of upcoming rules.

### **Elimination of "Sue and Settle" Rulemaking**

The practice of regulation through litigation (or "sue and settle" as it is sometimes described) is used and often abused by advocacy groups in order to initiate rulemakings when they feel federal agencies are not moving quickly enough to draft and issue these policies. Organizations routinely file lawsuits against federal agencies claiming they have not satisfied particular regulatory requirements, at which point agencies can opt to settle. When settlements are agreed upon, they often mandate that rulemakings go forward and frequently establish arbitrary timeframes for completion—without stakeholder review or public comment. These settlements are agreed to behind closed doors and their details are often kept confidential. Agencies release such rulemaking proposals for public comment only after the settlement has been agreed upon, which is often too late for adequate, meaningful feedback.

H.R. 2804 promotes enhanced openness and transparency in the regulatory process by requiring early disclosure of proposed consent decrees and regulatory settlements. In addition, this bill would require agencies to solicit public comment prior to entering into consent decrees with courts, which would provide affected parties proper notice of proposed regulatory settlements and make it possible for affected industries to participate in the actual settlement negotiations.

We applaud the House for addressing these regulations and the environment of uncertainty they create for America's job builders, and urge support for the ALERRT Act. **ABC will consider a vote on passage of H.R. 2804 a "Key Vote" for our 113th Congressional scorecard.**

Sincerely,



Geoffrey G. Burr  
Vice President, Government Affairs