

# Appendixes A-U

Appendix A	Public Law 94-305, Statutory Authority for the Office of Advocacy . . . . .	152
Appendix B	Public Law 96-354, The Regulatory Flexibility Act . . . . .	157
Appendix C	Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking. . . . .	166
Appendix D	Executive Order 12866, Regulatory Planning and Review . . . . .	168
Appendix E	Executive Order 13563, Improving Regulation and Regulatory Review. . . . .	178
Appendix F	Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation . . . . .	181
Appendix G	Presidential Memorandum on Regulatory Compliance . . . . .	184
Appendix H	Executive Order 13579, Regulation and Independent Regulatory Agencies . . . . .	186
Appendix I	Executive Order 13609, Promoting International Regulatory Cooperation. . . . .	188
Appendix J	Executive Order 13610, Identifying and Reducing Regulatory Burdens. . . . .	191
Appendix K	Office of Advocacy’s 2016 Legislative Priorities . . . . .	194
Appendix L	Legislation Leading to Office of Advocacy’s Budgetary Independence . . . . .	197
Appendix M	Advocacy Expenditures, FY 1978–FY2017 . . . . .	200
Appendix N	Comparison Chart: The Small Business Administration and the Office of Advocacy . . . . .	201
Appendix O	Memorandum of Understanding between the Small Business Administration and the Office of Advocacy. . . . .	203
Appendix P	Memorandum of Understanding between the Office of Information and Regulatory Affairs and the Office of Advocacy . . . . .	207
Appendix Q	Memorandum of Understanding between the SBA Office of National Ombudsman and the Office of Advocacy . . . . .	212
Appendix R	The Small Business Advocate newsletter, June 1996, 20th Anniversary of the Office of Advocacy . . . . .	215
Appendix S	The Small Business Advocate newsletter, September 2001, 25th Anniversary of the Office of Advocacy . . . . .	231
Appendix T	The Small Business Advocate newsletter, September 2005, 25th Anniversary of the Regulatory Flexibility Act. . . . .	239
Appendix U	The Small Business Advocate newsletter, July-August 2016, 40th Anniversary of the Office of Advocacy . . . . .	255

# Appendix A

## Public Law 94-305, Statutory Authority for the Office of Advocacy

### Title II, Public Law 94-305, as amended (15 §§ U.S.C. 634a - 634g) Statutory Authority for the Office of Advocacy (current through October 1, 2016)

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#### TITLE 15—COMMERCE AND TRADE CHAPTER 14A—AID TO SMALL BUSINESS

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- Sec. 634a.** Office of Advocacy within Small Business Administration; Chief Counsel for Advocacy
- Sec. 634b.** Primary functions of Office of Advocacy
- Sec. 634c.** Additional duties of Office of Advocacy
- Sec. 634d.** Staff and powers of Office of Advocacy
- Sec. 634e.** Assistance of Government agencies
- Sec. 634f.** Reports
- Sec. 634g.** Authorization of appropriations

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#### **Section 634a. Office of Advocacy within Small Business Administration; Chief Counsel for Advocacy**

There is established within the Small Business Administration an Office of Advocacy. The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

SOURCE: Public Law 94-305, title II, Sec. 201, June 4, 1976, 90 Stat. 668.

#### **Section 634b. Primary functions of Office of Advocacy**

The primary functions of the Office of Advocacy shall be to—

- (1) examine the role of small business in the American economy and the contribution which small business can make in improving competition, encouraging economic and social mobility for all citizens, restraining inflation, spurring production, expanding employment opportunities, increasing productivity, promoting exports, stimulating innovation and entrepreneurship, and providing an avenue through which new and untested products and services can be brought to the marketplace;
- (2) assess the effectiveness of existing Federal subsidy and assistance programs for small business and the desirability of reducing the emphasis on such existing programs and increasing the emphasis on general assistance programs designed to benefit all small businesses;
- (3) measure the direct costs and other effects of government regulation on small businesses; and make legislative and nonlegislative proposals for eliminating excessive or unnecessary

- regulations of small businesses;
- (4) determine the impact of the tax structure on small businesses and make legislative and other proposals for altering the tax structure to enable all small businesses to realize their potential for contributing to the improvement of the Nation's economic well-being;
  - (5) study the ability of financial markets and institutions to meet small business credit needs and determine the impact of government demands for credit on small businesses;
  - (6) determine financial resource availability and to recommend methods for delivery of financial assistance to minority enterprises, including methods for securing equity capital, for generating markets for goods and services, for providing effective business education, more effective management and technical assistance, and training, and for assistance in complying with Federal, State, and local law;
  - (7) evaluate the efforts of Federal agencies, business and industry to assist minority enterprises;
  - (8) make such other recommendations as may be appropriate to assist the development and strengthening of minority and other small business enterprises;
  - (9) recommend specific measures for creating an environment in which all businesses will have the opportunity to complete [\*] effectively and expand to their full potential, and to ascertain the common reasons, if any, for small business successes and failures;

[\* So in original. Probably should be "compete".]

- (10) determine the desirability of developing a set of rational, objective criteria to be used to define small business, and to develop such criteria, if appropriate;
- (11) advise, cooperate with, and consult with, the Chairman of the Administrative Conference of the United States with respect to section 504(e) of title 5; and
- (12) evaluate the efforts of each department and agency of the United States, and of private industry, to assist small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, and small business concerns owned and controlled by serviced-disabled [\*] veterans, as defined in such section 632(q) of this title, and to provide statistical information on the utilization of such programs by such small business concerns, and to make appropriate recommendations to the Administrator of the Small Business Administration and to the Congress in order to promote the establishment and growth of those small business concerns.

[\* So in the original. Probably should be "service-disabled"]

SOURCE: Public Law 94-305, title II, Sec. 202, June 4, 1976, 90 Stat. 668; Public Law 96-481, title II, Sec. 203(b), Oct. 21, 1980, 94 Stat. 2327; Public Law 106-50, title VII, Sec. 702, Aug. 17, 1999, 113 Stat. 250.

#### **Section 634c. Additional duties of Office of Advocacy**

**(a) In general.** The Office of Advocacy shall also perform the following duties on a continuing basis:

- (1) serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other Federal agency which affects small businesses;
- (2) counsel small businesses on how to resolve questions and problems concerning the relationship of the small business to the Federal Government;
- (3) develop proposals for changes in the policies and activities of any agency of the Federal Government which will better fulfill the purposes of this chapter and communicate such proposals to the appropriate Federal agencies;

- (4) represent the views and interests of small businesses before other Federal agencies whose policies and activities may affect small business; and
- (5) enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services, and
- (6) carry out the responsibilities of the Office of Advocacy under chapter 6 of title 5.

**(b) Outreach and input from small businesses on trade promotion authority**

**(1) Definitions.** In this subsection—

- (A) the term “agency” has the meaning given the term in section 551 of title 5;
- (B) the term “Chief Counsel for Advocacy” means the Chief Counsel for Advocacy of the Small Business Administration;
- (C) the term “covered trade agreement” means a trade agreement being negotiated pursuant to section 4202(b) of title 19; and
- (D) the term “Working Group” means the Interagency Working Group convened under paragraph (2)(A).

**(2) Working group**

- (A) **In general.** Not later than 30 days after the date on which the President submits the notification required under section 4204(a) of title 19, the Chief Counsel for Advocacy shall convene an Interagency Working Group, which shall consist of an employee from each of the following agencies, as selected by the head of the agency or an official delegated by the head of the agency:
  - (i) The Office of the United States Trade Representative.
  - (ii) The Department of Commerce.
  - (iii) The Department of Agriculture.
  - (iv) Any other agency that the Chief Counsel for Advocacy, in consultation with the United States Trade Representative, determines to be relevant with respect to the subject of the covered trade agreement.
- (B) **Views of small businesses.** Not later than 30 days after the date on which the Chief Counsel for Advocacy convenes the Working Group under subparagraph (A), the Chief Counsel for Advocacy shall identify a diverse group of small businesses, representatives of small businesses, or a combination thereof, to provide to the Working Group the views of small businesses in the manufacturing, services, and agriculture industries on the potential economic effects of the covered trade agreement.

**(3) Report**

- (A) **In general.** Not later than 180 days after the date on which the Chief Counsel for Advocacy convenes the Working Group under paragraph (2)(A), the Chief Counsel for Advocacy shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Finance of the Senate and the Committee on Small Business and the Committee on Ways and Means of the House of Representatives a report on the economic impacts of the covered trade agreement on small businesses, which shall—

- (i) identify the most important priorities, opportunities, and challenges to various industries from the covered trade agreement;
  - (ii) assess the impact for new small businesses to start exporting, or increase their exports, to markets in countries that are parties to the covered trade agreement;
  - (iii) analyze the competitive position of industries likely to be significantly affected by the covered trade agreement;
  - (iv) identify—
    - (I) any State-owned enterprises in each country participating in negotiations for the covered trade agreement that could pose a threat to small businesses; and
    - (II) any steps to take to create a level playing field for those small businesses;
    - (v) identify any rule of an agency that should be modified to become compliant with the covered trade agreement; and
    - (vi) include an overview of the methodology used to develop the report, including the number of small business participants by industry, how those small businesses were selected, and any other factors that the Chief Counsel for Advocacy may determine appropriate.
- (B) **Delayed submission.** To ensure that negotiations for the covered trade agreement are not disrupted, the President may require that the Chief Counsel for Advocacy delay submission of the report under subparagraph (A) until after the negotiations for the covered trade agreement are concluded, provided that the delay allows the Chief Counsel for Advocacy to submit the report to Congress not later than 45 days before the Senate or the House of Representatives acts to approve or disapprove the covered trade agreement.
- (C) **Avoidance of duplication.** The Chief Counsel for Advocacy shall, to the extent practicable, coordinate the submission of the report under this paragraph with the United States International Trade Commission, the United States Trade Representative, other agencies, and trade advisory committees to avoid unnecessary duplication of reporting requirements.
- SOURCE: Public Law 94–305, title II, Sec. 203, June 4, 1976, 90 Stat. 669; Public Law 111–240, title I, Sec. 1602(a), Sept. 27, 2010, 124 Stat. 2551; Public Law 114–125, title V, Sec. 502, Feb. 24, 2016, 130 Stat. 172.

#### **Section 634d. Staff and powers of Office of Advocacy**

In carrying out the provisions of sections 634a to 634g of this title, the Chief Counsel for Advocacy may—employ and fix the compensation of such additional staff personnel as is deemed necessary, without

- (1) regard to the provisions of title 5, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the lowest rate for GS-15 of the General Schedule: Provided, however, That not more than 14 staff personnel at any one time may be employed and compensated at a rate not in excess of GS-15, step 10, of the General Schedule;
- (2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5;
- (3) consult with experts and authorities in the fields of small business investment, venture capital, investment and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest;
- (4) utilize the services of the National Advisory Council established pursuant to the provisions of section 637(b)(13) of this title and in accordance with the provisions of such statute, also appoint

- such other advisory boards or committees as is reasonably appropriate and necessary to carry out the provisions of sections 634a to 634g of this title; and
- (5) hold hearings and sit and act at such times and places as he may deem advisable.

SOURCE: Public Law 94-305, title II, Sec. 204, June 4, 1976, 90 Stat. 669; Public Law 96-302, title IV, Sec. 402, July 2, 1980, 94 Stat. 850; Public Law 103-403, title VI, Secs. 605(b), 610, Oct. 22, 1994, 108 Stat. 4203, 4204.

#### **Section 634e. Assistance of Government agencies**

Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Chief Counsel for Advocacy such reports and other information as he deems necessary to carry out his functions under sections 634a to 634g of this title.

SOURCE: Public Law 94-305, title II, Sec. 205, June 4, 1976, 90 Stat. 670.

#### **Section 634f. Reports**

The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. Not later than one year after June 4, 1976, he shall transmit to the Congress, the President and the Administration, a full report containing his findings and specific recommendations with respect to each of the functions referred to in section 634b of this title, including specific legislative proposals and recommendations for administration or other action. Not later than 6 months after June 4, 1976, he shall prepare and transmit a preliminary report on his activities. The reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President.

SOURCE: Public Law 94-305, title II, Sec. 206, June 4, 1976, 90 Stat. 670.

#### **Section 634g. Budgetary line item and authorization of appropriations**

- (a) **Appropriation requests.** Each budget of the United States Government submitted by the President under section 1105 of title 31 shall include a separate statement of the amount of appropriations requested for the Office of Advocacy of the Small Business Administration, which shall be designated in a separate account in the General Fund of the Treasury.
- (b) **Administrative operations.** The Administrator of the Small Business Administration shall provide the Office of Advocacy with appropriate and adequate office space at central and field office locations, together with such equipment, operating budget, and communications facilities and services as may be necessary, and shall provide necessary maintenance services for such offices and the equipment and facilities located in such offices.
- (c) **Authorization of appropriations.** There are authorized to be appropriated such sums as are necessary to carry out sections 634a to 634g of this title. Any amount appropriated under this subsection shall remain available, without fiscal year limitation, until expended.

SOURCE: Public Law 94-305, title II, Sec. 207, as added by Public Law 111-240, title I, Sec. 1602(b), Sept. 27, 2010, 124 Stat. 2551.

# Appendix B

## Public Law 96-354, The Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96-354, as amended (5 §§ U.S.C. 601 - 612)  
(current through October 1, 2016)

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### TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

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#### **Congressional Findings and Declaration of Purpose** (§ 2 of Public Law 96-354, 5 U.S.C. § 601 note)

(a) The Congress finds and declares that –

- (1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;
- (2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;
- (3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;
- (4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;
- (5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
- (6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;
- (7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;
- (8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act [enacting this chapter and provisions set out as notes under this section] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations,

and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

SOURCE: Public Law 96-354, Sec. 2, Sept. 19, 1980, 94 Stat. 1164.

- Sec. 601.** Definitions.
- Sec. 602.** Regulatory agenda.
- Sec. 603.** Initial regulatory flexibility analysis.
- Sec. 604.** Final regulatory flexibility analysis.
- Sec. 605.** Avoidance of duplicative or unnecessary analyses.
- Sec. 606.** Effect on other law.
- Sec. 607.** Preparation of analyses.
- Sec. 608.** Procedure for waiver or delay of completion.
- Sec. 609.** Procedures for gathering comments.
- Sec. 610.** Periodic review of rules.
- Sec. 611.** Judicial review.
- Sec. 612.** Reports and intervention rights.

### **Section 601. Definitions.**

For purposes of this chapter—

- (1) the term “agency” means an agency as defined in section 551(1) of this title;
- (2) the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term “rule” does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;
- (3) the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
- (4) the term “small organization” means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
- (5) the term “small governmental jurisdiction” means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;
- (6) the term “small entity” shall have the same meaning as the terms “small business”, “small organization” and “small governmental jurisdiction” defined in paragraphs (3), (4) and (5) of this section; and

- (7) the term “collection of information” —
- (A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—
- (i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or
- (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and
- (B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.
- (8) Recordkeeping requirement.--The term “recordkeeping requirement” means a requirement imposed by an agency on persons to maintain specified records.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1165; amended by Public Law 104-121, title II, Sec. 241(a)(2), Mar. 29, 1996, 110 Stat. 864.

### **Section 602. Regulatory agenda**

- (a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—
- (1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;
- (2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and
- (3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).
- (b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.
- (c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.
- (d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1166.

### **Section 603. Initial regulatory flexibility analysis**

- (a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the

case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

- (b) Each initial regulatory flexibility analysis required under this section shall contain—
- (1) a description of the reasons why action by the agency is being considered;
  - (2) a succinct statement of the objectives of, and legal basis for, the proposed rule;
  - (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
  - (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
  - (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.
- (c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—
- (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  - (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
  - (3) the use of performance rather than design standards; and
  - (4) an exemption from coverage of the rule, or any part thereof, for such small entities.
- (d)
- (1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—
    - (A) any projected increase in the cost of credit for small entities;
    - (B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and
    - (C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).
  - (2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—
    - (A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and
    - (B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1166; amended by Public Law 104-121, title II, Sec. 241(a)(1), Mar. 29, 1996, 110 Stat. 864; Public Law 111-203, title X, Sec. 1100G(b), July 21, 2010, 124 Stat. 2112.

## Section 604. Final regulatory flexibility analysis

- (a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain –
- (1) a statement of the need for, and objectives of, the rule;
  - (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
  - (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
  - (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
  - (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
  - (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; and
  - (6)\* for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.
- (b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

\* So in the original. Two paragraph (6)s were enacted.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1167; amended by Public Law 104-121, title II, Sec. 241(b), Mar. 29, 1996, 110 Stat. 864; Public Law 111-203, title X, § 1100G(c), July 21, 2010, 124 Stat. 2113; Public Law. 111-240, title I, § 1601, Sept. 27, 2010, 124 Stat. 2551.

## Section 605. Avoidance of duplicative or unnecessary analyses

- (a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.
- (b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.
- (c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one

rule for the purposes of sections 602, 603, 604 and 610 of this title.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1167; amended by Public Law 104-121, title II, Sec. 243(a), Mar. 29, 1996, 110 Stat. 866.

### **Section 606. Effect on other law**

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1168.

### **Section 607. Preparation of analyses**

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1168.

### **Section 608. Procedure for waiver or delay of completion**

- (a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.
- (b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1168.

### **Section 609. Procedures for gathering comments**

- (a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—
  - (1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

- (2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;
  - (3) the direct notification of interested small entities;
  - (4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and
  - (5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.
- (b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—
- (1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;
  - (2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;
  - (3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;
  - (4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);
  - (5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and
  - (6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.
- (c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.
- (d) For purposes of this section, the term “covered agency” means –
- (1) the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor;
  - (2) the Consumer Financial Protection Bureau of the Federal Reserve System; and
  - (3) the Occupational Safety and Health Administration of the Department of Labor.
- (e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:
- (1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.
  - (2) Special circumstances requiring prompt issuance of the rule.
  - (3) Whether the requirements of subsection (b) would provide the individuals identified in

subsection (b)(2) with a competitive advantage relative to other small entities.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1168; amended by Public Law 104-121, title II, Sec. 244(a), Mar. 29, 1996, 110 Stat. 867; Public Law 111-203, title X, § 1100G(a), July 21, 2010, 124 Stat. 2112.

### **Section 610. Periodic review of rules**

- (a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.
- (b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors--
  - (1) the continued need for the rule;
  - (2) the nature of complaints or comments received concerning the rule from the public;
  - (3) the complexity of the rule;
  - (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
  - (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.
- (c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1169.

### **Section 611. Judicial review**

- (a) (1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.
- (2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.
- (3) (A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action

challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

- (B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—
  - (i) one year after the date the analysis is made available to the public, or
  - (ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.
- (4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to--
  - (A) remanding the rule to the agency, and
  - (B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.
- (5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.
- (b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.
- (c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.
- (d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1169; amended by Public Law 104-121, title II, Sec. 242, Mar. 29, 1996, 110 Stat. 865.

## **Section 612. Reports and intervention rights**

- (a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.
- (b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.
- (c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

SOURCE: Public Law 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1170; amended by Public Law 104-121, title II, Sec. 243(b), Mar. 29, 1996, 110 Stat. 866.

# Appendix C

## Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking

Executive Order 13272 of August 13, 2002

### Proper Consideration of Small Entities in Agency Rulemaking

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. *General Requirements.*** Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) (the “Act”). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

**Sec. 2. *Responsibilities of Advocacy.*** Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended, Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;

(b) shall provide training to agencies on compliance with the Act; and

(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

**Sec. 3. *Responsibilities of Federal Agencies.*** Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies’ draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies’ procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the **Federal Register** of a final rule, the agency’s response to any written comments submitted by Advocacy on the proposed rule that preceded the

final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

**Sec. 4. Definitions.** Terms defined in section 601 of title 5, United States Code, including the term “agency,” shall have the same meaning in this order.

**Sec. 5. Preservation of Authority.** Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Public Law 85–09536 (15 U.S.C. 633(b)(1)).

**Sec. 6. Reporting.** For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

**Sec. 7. Confidentiality.** Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

**Sec. 8. Judicial Review.** This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

A handwritten signature in black ink, appearing to read "George W. Bush", is centered on the page.

THE WHITE HOUSE,  
August 13, 2002.

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Text version available at: 38 WCPD 1351 Executive Order 13272 – Proper Consideration of Small Entities in Agency Rulemaking, U.S. GOV'T PUBL'G OFFICE (Aug. 13, 2002), <https://www.gpo.gov/fdsys/pkg/WCPD-2002-08-19/html/WCPD-2002-08-19-Pg1351.htm>.

# Appendix D

## Executive Order 12866, Regulatory Planning and Review

Executive Order 12866 of September 30, 1993

### Regulatory Planning and Review

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

#### **Section 1.** *Statement of Regulatory Philosophy and Principles.*

(a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

- (1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.
- (2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is

intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

**Sec. 2. Organization.** An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

**Sec. 3. Definitions.** For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices

of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

**Sec. 4. *Planning Mechanism.*** In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President’s priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law:

(a) *Agencies’ Policy Meeting.* Early in each year’s planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda.* For purposes of this subsection, the term “agency” or “agencies” shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan.* For purposes of this subsection, the term “agency” or “agencies” shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

- (A) A statement of the agency’s regulatory objectives and priorities and how they relate to the President’s priorities;
- (B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;
- (C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;
- (D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;
- (E) The agency’s schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) *Conferences.* The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

**Sec. 5. Existing Regulations.** In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not

duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

**Sec. 6. Centralized Review of Regulations.** The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt

of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

- (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and
- (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

- (i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- (ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and
- (iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rule-making proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, the agency shall:

- (i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);
- (ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) *OIRA Responsibilities.* The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rule-making, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and (iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

**Sec. 7. Resolution of Conflicts.** To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

**Sec. 8. Publication.** Except to the extent required by law, an agency shall not publish in the **Federal Register** or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a

regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

**Sec. 9. Agency Authority.** Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

**Sec. 10. Judicial Review.** Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

**Sec. 11. Revocations.** Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.



THE WHITE HOUSE,  
September 30, 1993.

[FR citation 58 FR 51735]

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Text version available at: 29 WCPD 1925 Executive Order 12866—Regulatory Planning and Review, U.S. GOV'T PUBL'G OFFICE (Sept. 30, 1993), <https://www.gpo.gov/fdsys/pkg/WCPD-1993-10-04/html/WCPD-1993-10-04-Pg1925.htm>.

# Appendix E

## Executive Order 13563, Improving Regulation and Regulatory Review

Executive Order 13563 of January 18, 2011

### Improving Regulation and Regulatory Review

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

**Section 1. *General Principles of Regulation.*** (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

**Sec. 2. *Public Participation.*** (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally

be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

**Sec. 3. *Integration and Innovation.*** Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

**Sec. 4. *Flexible Approaches.*** Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

**Sec. 5. *Science.*** Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

**Sec. 6. *Retrospective Analyses of Existing Rules.*** (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

**Sec. 7. *General Provisions.*** (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,  
*January 18, 2011.*

[FR Doc. 2011-1385  
Filed 1-20-11; 8:45 am]  
Billing code 3195-W1-P

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Text version available at: DCPD-201100031 – Executive Order 13563-Improving Regulation and Regulatory Review, U.S. GOV'T PUBL'G OFFICE (Jan. 18, 2011), <https://www.gpo.gov/fdsys/pkg/DCPD-201100031/html/DCPD-201100031.htm>.

# Appendix F

## Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation

Memorandum of January 18, 2011

### Regulatory Flexibility, Small Business, and Job Creation

#### Memorandum for the Heads of Executive Departments and Agencies

Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. More than half of all Americans working in the private sector either are employed by a small business or own one. During a recent 15-year period, small businesses created more than 60 percent of all new jobs in the Nation.

Although small businesses and new companies provide the foundations for economic growth and job creation, they have faced severe challenges as a result of the recession. One consequence has been the loss of significant numbers of jobs.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public. The RFA emphasizes the importance of recognizing “differences in the scale and resources of regulated entities” and of considering “alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions.” 5 U.S.C. 601 note.

To promote its central goals, the RFA imposes a series of requirements designed to ensure that agencies produce regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses. Among other things, the RFA requires that when an agency proposing a rule with such impact is required to provide notice of the proposed rule, it must also produce an initial regulatory flexibility analysis that includes discussion of significant alternatives. Significant alternatives include the use of performance rather than design standards; simplification of compliance and reporting requirements for small businesses; establishment of different timetables that take into account the resources of small businesses; and exemption from coverage for small businesses.

Consistent with the goal of open government, the RFA also encourages public participation in and transparency about the rulemaking process. Among other things, the statute requires agencies proposing rules with a significant economic impact on small businesses to provide an opportunity for public comment on any required initial regulatory flexibility analysis, and generally requires agencies promulgating final rules with such significant economic impact to respond, in a final regulatory flexibility analysis, to comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

My Administration is firmly committed to eliminating excessive and unjustified burdens on small businesses, and to ensuring that regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses. Executive Order 12866 of September 30, 1993, as amended, states, “Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account,

among other things, and to the extent practicable, the costs of cumulative regulations.”

In the current economic environment, it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation.

Accordingly, I hereby direct executive departments and agencies and request independent agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. As the RFA recognizes, such flexibility may take many forms, including:

- extended compliance dates that take into account the resources available to small entities;
- performance standards rather than design standards;
- simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
- different requirements for large and small firms; and
- partial or total exemptions.

I further direct that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule.

Adherence to these requirements is designed to ensure that regulatory actions do not place unjustified economic burdens on small business owners and other small entities. If regulations are preceded by careful analysis, and subjected to public comment, they are less likely to be based on intuition and guesswork and more likely to be justified in light of a clear understanding of the likely consequences of alternative courses of action. With that understanding, agencies will be in a better position to protect the public while avoiding excessive costs and paperwork.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,  
Washington, January 18, 2011

[FR Doc. 2011-1387  
Filed 1-20-11; 8:45 am]  
Billing code 3110-01-P

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Text version available at: [DCPD-201100033 – Memorandum on Regulatory Flexibility, Small Business and Job Creation, U.S. GOV'T PUBL'G OFFICE \(Jan. 18, 2011\), https://www.gpo.gov/fdsys/pkg/DCPD-201100033/html/DCPD-201100033.htm.](https://www.gpo.gov/fdsys/pkg/DCPD-201100033/html/DCPD-201100033.htm)

# Appendix G

## Presidential Memorandum on Regulatory Compliance

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### Presidential Documents

Memorandum of January 18, 2011

#### Regulatory Compliance

##### Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to enhancing effectiveness and efficiency in Government. Pursuant to the Memorandum on Transparency and Open Government, issued on January 21, 2009, executive departments and agencies (agencies) have been working steadily to promote accountability, encourage collaboration, and provide information to Americans about their Government's activities.

To that end, much progress has been made toward strengthening our democracy and improving how Government operates. In the regulatory area, several agencies, such as the Department of Labor and the Environmental Protection Agency, have begun to post online (at [ogesdw.dol.gov](http://ogesdw.dol.gov) and [www.epa-echo.gov](http://www.epa-echo.gov)), and to make readily accessible to the public, information concerning their regulatory compliance and enforcement activities, such as information with respect to administrative inspections, examinations, reviews, warnings, citations, and revocations (but excluding law enforcement or otherwise sensitive information about ongoing enforcement actions).

Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.

Accordingly, I direct the following:

*First*, agencies with broad regulatory compliance and administrative enforcement responsibilities, within 120 days of this memorandum, to the extent feasible and permitted by law, shall develop plans to make public information concerning their regulatory compliance and enforcement activities accessible, downloadable, and searchable online. In so doing, agencies should prioritize making accessible information that is most useful to the general public and should consider the use of new technologies to allow the public to have access to real-time data. The independent agencies are encouraged to comply with this directive.

*Second*, the Federal Chief Information Officer and the Chief Technology Officer shall work with appropriate counterparts in each agency to make such data available online in searchable form, including on centralized platforms such as data.gov, in a manner that facilitates easy access, encourages cross-agency comparisons, and engages the public in new and creative ways of using the information.

*Third*, the Federal Chief Information Officer and the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and their counterparts in each agency, shall work to explore how

best to generate and share enforcement and compliance information across the Government, consistent with law. Such data sharing can assist with agencies' risk-based approaches to enforcement: A lack of compliance in one area by a regulated entity may indicate a need for examination and closer attention by another agency. Efforts to share data across agencies, where appropriate and permitted by law, may help to promote flexible and coordinated enforcement regimes.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of OMB is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,  
*Washington, January 18, 2011*

[FR Doc. 2011-1386  
Filed 1-20-11; 8:45 am]  
Billing code 3110-01-P

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Text version available at: DCPD-201100032 – Memorandum on Regulatory Compliance, U.S. GOV'T PUBL'G OFFICE (Jan. 18, 2011), <https://www.gpo.gov/fdsys/pkg/DCPD-201100032/html/DCPD-201100032.htm>.

# Appendix H

## Executive Order 13579, Regulation and Independent Regulatory Agencies

41587

Federal Register

Vol. 76, No. 135

Thursday, July 14, 2011

### Presidential Documents

Title 3—

Executive Order 13579 of July 11, 2011

The President

Regulation and Independent Regulatory Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

**Section 1. Policy.** (a) Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative).

(b) Executive Order 13563 of January 18, 2011, “Improving Regulation and Regulatory Review,” directed to executive agencies, was meant to produce a regulatory system that protects “public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” Independent regulatory agencies, no less than executive agencies, should promote that goal.

(c) Executive Order 13563 set out general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science. To the extent permitted by law, independent regulatory agencies should comply with these provisions as well.

**Sec. 2. Retrospective Analyses of Existing Rules.** (a) To facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data and evaluations, should be released online whenever possible.

(b) Within 120 days of the date of this order, each independent regulatory agency should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.

**Sec. 3. General Provisions.** (a) For purposes of this order, “executive agency” shall have the meaning set forth for the term “agency” in section 3(b) of Executive Order 12866 of September 30, 1993, and “independent regulatory agency” shall have the meaning set forth in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
July 11, 2011.

[FR Doc. 2011-17953  
Filed 7-13-11; 11:15 am]  
Billing code 3195-W1-P

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Text version available at: DCPD-201100499 – Executive Order 13579-Regulation and Independent Regulatory Agencies, U.S. GOV'T PUBL'G OFFICE (July 11, 2011), <https://www.gpo.gov/fdsys/pkg/DCPD-201100499/html/DCPD-201100499.htm>.

# Appendix I

## Executive Order 13609, Promoting International Regulatory Cooperation

26413

Federal Register

Vol. 77, No. 87

Friday, May 4, 2012

### Presidential Documents

Title 3—

Executive Order 13609 of May 1, 2012

The President

### Promoting International Regulatory Cooperation

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote international regulatory cooperation, it is hereby ordered as follows:

**Section 1. Policy.** Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. In an increasingly global economy, international regulatory cooperation, consistent with domestic law and prerogatives and U.S. trade policy, can be an important means of promoting the goals of Executive Order 13563.

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

**Sec. 2. Coordination of International Regulatory Cooperation.** (a) The Regulatory Working Group (Working Group) established by Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), which was reaffirmed by Executive Order 13563, shall, as appropriate:

(i) serve as a forum to discuss, coordinate, and develop a common understanding among agencies of U.S. Government positions and priorities with respect to:

(A) international regulatory cooperation activities that are reasonably anticipated to lead to significant regulatory actions;

(B) efforts across the Federal Government to support significant, cross-cutting international regulatory cooperation activities, such as the work of regulatory cooperation councils; and

(C) the promotion of good regulatory practices internationally, as well as the promotion of U.S. regulatory approaches, as appropriate; and

(ii) examine, among other things:

(A) appropriate strategies for engaging in the development of regulatory approaches through international regulatory cooperation, particularly in emerging technology areas, when consistent with section 1 of this order;

(B) best practices for international regulatory cooperation with respect to regulatory development, and, where appropriate, information exchange and other regulatory tools; and

(C) factors that agencies should take into account when determining whether and how to consider other regulatory approaches under section 3(d) of this order.

(b) As Chair of the Working Group, the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management

and Budget (OMB) shall convene the Working Group as necessary to discuss international regulatory cooperation issues as described above, and the Working Group shall include a representative from the Office of the United States Trade Representative and, as appropriate, representatives from other agencies and offices.

(c) The activities of the Working Group, consistent with law, shall not duplicate the efforts of existing interagency bodies and coordination mechanisms. The Working Group shall consult with existing interagency bodies when appropriate.

(d) To inform its discussions, and pursuant to section 4 of Executive Order 12866, the Working Group may commission analytical reports and studies by OIRA, the Administrative Conference of the United States, or any other relevant agency, and the Administrator of OIRA may solicit input, from time to time, from representatives of business, nongovernmental organizations, and the public.

(e) The Working Group shall develop and issue guidelines on the applicability and implementation of sections 2 through 4 of this order.

(f) For purposes of this order, the Working Group shall operate by consensus.

**Sec. 3. Responsibilities of Federal Agencies.** To the extent permitted by law, and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each agency shall:

(a) if required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;

(c) in selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:

(i) reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) such reforms in other circumstances as the agency deems appropriate; and

(d) for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

**Sec. 4. Definitions.** For purposes of this order:

(a) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent

regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) “International impact” is a direct effect that a proposed or final regulation is expected to have on international trade and investment, or that otherwise may be of significant interest to the trading partners of the United States.

(c) “International regulatory cooperation” refers to a bilateral, regional, or multilateral process, other than processes that are covered by section 6(a)(ii), (iii), and (v) of this order, in which national governments engage in various forms of collaboration and communication with respect to regulations, in particular a process that is reasonably anticipated to lead to the development of significant regulations.

(d) “Regulation” shall have the same meaning as “regulation” or “rule” in section 3(d) of Executive Order 12866.

(e) “Significant regulation” is a proposed or final regulation that constitutes a significant regulatory action.

(f) “Significant regulatory action” shall have the same meaning as in section 3(f) of Executive Order 12866.

**Sec. 5. *Independent Agencies.*** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**Sec. 6. *General Provisions.*** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof;

(ii) the coordination and development of international trade policy and negotiations pursuant to section 411 of the Trade Agreements Act of 1979 (19 U.S.C. 2451) and section 141 of the Trade Act of 1974 (19 U.S.C. 2171);

(iii) international trade activities undertaken pursuant to section 3 of the Act of February 14, 1903 (15 U.S.C. 1512), subtitle C of the Export Enhancement Act of 1988, as amended (15 U.S.C. 4721 *et seq.*), and Reorganization Plan No. 3 of 1979 (19 U.S.C. 2171 note);

(iv) the authorization process for the negotiation and conclusion of international agreements pursuant to 1 U.S.C. 112b(c) and its implementing regulations (22 C.F.R. 181.4) and implementing procedures (11 FAM 720);

(v) activities in connection with subchapter II of chapter 53 of title 31 of the United States Code, title 26 of the United States Code, or Public Law 111–203 and other laws relating to financial regulation; or (vi) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



# Appendix J

## Executive Order 13610, Identifying and Reducing Regulatory Burdens

28469

Federal Register

Vol. 77, No. 93

Monday, May 14, 2012

### Presidential Documents

Title 3—

Executive Order 13610 of May 10, 2012

The President

#### Identifying and Reducing Regulatory Burdens

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to modernize our regulatory system and to reduce unjustified regulatory burdens and costs, it is hereby ordered as follows:

**Section 1. Policy.** Regulations play an indispensable role in protecting public health, welfare, safety, and our environment, but they can also impose significant burdens and costs. During challenging economic times, we should be especially careful not to impose unjustified regulatory requirements. For this reason, it is particularly important for agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system “must measure, and seek to improve, the actual results of regulatory requirements.” To promote this goal, that Executive Order requires agencies not merely to conduct a single exercise, but to engage in “periodic review of existing significant regulations.” Pursuant to section 6(b) of that Executive Order, agencies are required to develop retrospective review plans to review existing significant regulations in order to “determine whether any such regulations should be modified, streamlined, expanded, or repealed.” The purpose of this requirement is to “make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”

In response to Executive Order 13563, agencies have developed and made available for public comment retrospective review plans that identify over five hundred initiatives. A small fraction of those initiatives, already finalized or formally proposed to the public, are anticipated to eliminate billions of dollars in regulatory costs and tens of millions of hours in annual paperwork burdens. Significantly larger savings are anticipated as the plans are implemented and as action is taken on additional initiatives.

As a matter of longstanding practice and to satisfy statutory obligations, many agencies engaged in periodic review of existing regulations prior to the issuance of Executive Order 13563. But further steps should be taken, consistent with law, agency resources, and regulatory priorities, to promote public participation in retrospective review, to modernize our regulatory system, and to institutionalize regular assessment of significant regulations.

**Sec. 2. *Public Participation in Retrospective Review.*** Members of the public, including those directly and indirectly affected by regulations, as well as State, local, and tribal governments, have important information about the actual effects of existing regulations. For this reason, and consistent with Executive Order 13563, agencies shall invite, on a regular basis (to be determined by the agency head in consultation with the Office of Information and Regulatory Affairs (OIRA)), public suggestions about regulations in need of retrospective review and about appropriate modifications to such regulations. To promote an open exchange of information, retrospective analyses of regulations, including supporting data, shall be released to the public online wherever practicable.

**Sec. 3. *Setting Priorities.*** In implementing and improving their retrospective review plans, and in considering retrospective review suggestions from the

public, agencies shall give priority, consistent with law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment. To the extent practicable and permitted by law, agencies shall also give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.

**Sec. 4. *Accountability.*** Agencies shall regularly report on the status of their retrospective review efforts to OIRA. Agency reports should describe progress, anticipated accomplishments, and proposed timelines for relevant actions, with an emphasis on the priorities described in section 3 of this order. Agencies shall submit draft reports to OIRA on September 10, 2012, and on the second Monday of January and July for each year thereafter, unless directed otherwise through subsequent guidance from OIRA. Agencies shall make final reports available to the public within a reasonable period (not to exceed three weeks from the date of submission of draft reports to OIRA).

**Sec. 5. *General Provisions.*** (a) For purposes of this order, “agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:  
(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,  
*May 10, 2012.*

[FR Doc. 2012-11798  
Filed 5-11-12; 11:15 am]  
Billing code 3295-F2-P

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Text version available at: *DCPD-201200354 – Executive Order 13610-Identifying and Reducing Regulatory Burdens*, U.S. GOV'T PUBL'G OFFICE (May 10, 2012), <https://www.gpo.gov/fdsys/pkg/DCPD-201200354/html/DCPD-201200354.htm>.

# Appendix K

## Office of Advocacy's 2016 Legislative Priorities

### Office of Advocacy Legislative Priorities for Chief Counsel Darryl L. DePriest

#### Indirect Effects

Under the RFA, agencies are not currently required to consider the impact of a proposed rule on small businesses that are not directly regulated by the rule, even when the impacts are foreseeable and often significant. Advocacy believes that indirect effects should be part of the RFA analysis, but that the definition of indirect effects should be specific and limited so that the analytical requirements of the RFA remain reasonable.

- Amend section 601 of the RFA to define "impact" as including the reasonably foreseeable effects on small entities that purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule; are directly regulated by other governmental entities as a result of the rule; or are not directly regulated by the agency as a result of the rule but are otherwise subject to other agency regulations as a result of the rule.

#### Scope of the RFA

Currently, the requirements of the RFA are limited to those rulemakings that are subject to notice and comment. Section 553 of the Administrative Procedure Act (APA), which sets out the general requirements for rulemaking, does not require notice and comment for interim final rulemakings, so agencies may impose a significant economic burden on small entities through these rulemakings without conducting an Initial Regulatory Flexibility Analysis (IRFA) or Final Regulatory Flexibility Analysis (FRFA). Advocacy believes the definition of a rule needs to be expanded to include interim final rulemakings that have the potential to impose economic burden on small entities.

Further, the IRS regularly promulgates rules that are costly and complicated for small businesses. However, the IRS contends that it has no discretion in implementing legislation and that the agency has little authority to consider less costly alternatives under the RFA. Therefore, the IRS often does not analyze the cost of its rules to small business under the RFA. In the absence of the IRS considering the impact of its rules under the RFA, Congress should require the Congressional Budget Office (CBO) to provide small business cost and paperwork burden estimates for pending tax legislation. This would help ensure that tax writers and the public are aware of the compliance burden in addition to the fiscal consequences.

Finally, the RFA has its own definition of information collection. However, this definition is identical to the Paperwork Reduction Act (PRA) (35 USC 3501, et. seq.). A cross-reference to the PRA would allow Advocacy to rely on OMB's existing implementing regulations (5 CFR 1320) and guidance.

- Require RFA analysis for all interim final rulemakings with a significant economic impact on a substantial number of small entities.

- Require CBO to score proposed tax legislation for the estimated costs and paperwork burden to small business.
- Amend the conditions for IRS rulemakings to require an IRFA/FRFA to reference the PRA.

### **Quality of Analysis**

The Office of Advocacy is concerned that some agencies are not providing the information required in the IRFA and FRFA in a transparent and easy-to-access manner. This hinders the ability of small entities and the public to comment meaningfully on the impacts on small entities and possible regulatory alternatives. Agencies should be required to include an estimate of the cost savings to small entities in the FRFA. In addition, agencies should have a single section in the preamble of the notice of proposed rulemaking and notice of final rulemaking that lays out clearly the substantive contents of the IRFA or FRFA, including a specific narrative for each of the required elements.

- Require agencies to develop cost savings estimates.
- Require a clearly delineated statement of the contents of the IRFA and FRFA in the preamble of the proposed and final rule.

### **Quality of Certification**

Some agencies' improper certifications under the RFA have been based on a lack of information in the record about small entities, rather than data showing that there would not be a significant impact on a substantial number of small entities. A clear requirement for threshold analysis would be a stronger guarantee of the quality of certifications.

- Require agencies to publish a threshold analysis, supported by data in the record, as part of the factual basis for the certification.

### **SBREFA Panels**

The Department of Interior's Fish and Wildlife Service consistently promulgates regulations without proper economic analyses. Advocacy believes the rules promulgated by this agency would benefit from being added as a covered agency subject to Small Business Advocacy Review Panels.

Advocacy also believes that some recent SBREFA panels have been convened prematurely. SBREFA panels work best when small entity representatives have sufficient information to understand the purpose of the potential rule, likely impacts, and preliminary assessments of the costs and benefits of various alternatives. With this information small entities are better able to provide meaningful input on the ways in which an agency can minimize impacts on small entities consistent with the agency mission. Therefore the RFA should be amended to require that prior to convening a panel, agencies should be required to provide, at a minimum, a clear description of the goals of the rulemaking, the type and number of affected small entities, a preferred alternative, a series of viable alternatives, and projected costs and benefits of compliance for each alternative.

- Require SBREFA panels under RFA Section 609(b) for the Department of the Interior’s Fish and Wildlife Service.
- Require better disclosure of information including at a minimum, a clear description of the goals of the rulemaking, the type and number of affected small entities, a preferred alternative, a series of viable alternatives, and projected costs and benefits of compliance for each alternative to the small entity representatives.

## **Retrospective Review**

In addition to the existing required periodic review, agencies should accept and prioritize petitions for review of final rules. They should be required to provide a timely and effective response in which they demonstrate that they have considered alternative means of achieving the regulatory objective while reducing the regulatory impact on small businesses. This demonstration should take the form of an analysis similar to a FRFA.

- Strengthen section 610 retrospective review to prioritize petitions for review that seek to reduce the regulatory burden on small business and provide for more thorough consideration of alternatives.

*The Office of Advocacy was established by Public Law 94-305 to represent the views of small businesses before federal agencies and the U.S. Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.*

# Appendix L

## Legislation Leading to Office of Advocacy's Budgetary Independence

The Small Business Jobs Act of 2010 amended Advocacy's statutory authority to require that each budget submitted by the President shall include a separate statement of the amount of appropriations requested for Advocacy, and that these funds be designated in a separate Treasury account. The Act also requires SBA to provide Advocacy with office space, equipment, an operating budget, and communications support, including the maintenance of such equipment and facilities.<sup>1</sup>

The Jobs Act budgetary amendment to Advocacy's charter also provided that funds appropriated to Advocacy would remain available until expended. This has proven an extremely valuable feature of the legislation due to uncertainties that can arise in the obligation of funds for economic research contracts due to contracting procedures and other reasons.

Before FY 2012, Advocacy was fully integrated within SBA's Executive Direction budget. In recognition of the office's independent status and newly separate appropriations account, Advocacy's FY 2013 Congressional Budget Justification and FY 2011 Annual Performance Report were for the first time presented in a separate appendix to SBA's submission. This new format is analogous to that employed by the Office of the Inspector General, which also has a separate appropriations account. It is intended to improve the transparency of Advocacy operations and costs, more clearly identify the resources available to Advocacy, and provide a basis for performance measurement.

It is important to note that Advocacy's budgetary independence from SBA had been under consideration for some time before the Job Act's eventual enactment in 2010. The Jobs Act budgetary provisions were a top legislative priority for Advocacy before they were enacted, and the office's 2008 background paper discussed this subject at length in its Chapter 7, including various plans that had been under consideration by Congress in the years preceding its publication.<sup>2</sup>

Although both the Senate and the House of Representatives had previously approved in their own bills several versions of budgetary independence for Advocacy, enactment of a final plan proved elusive because of disagreements over other provisions in the legislation that included the budget provisions. This history is difficult to research, and the purpose of this appendix is to record in one place the various legislative efforts of both houses of Congress before the Jobs Act of 2010 made Advocacy budget independence a reality. This legislation is described below chronologically.

**107<sup>th</sup> Congress (2001 – 2002).** During the 107<sup>th</sup> Congress, both the Senate and the House of Representatives approved bills that included a variety of provisions intended to strengthen Advocacy and its independence. In the Senate, Sen. Christopher Bond, Chairman of the Committee on Small Business, introduced S. 395, the Independent Office of Advocacy Act of 2001, which was approved with amendments by unanimous consent in the Senate on March 26, 2001. This legislation included a statement of findings and purposes; provisions relating to Advocacy functions, personnel, and reports;

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1 Public Law 111–240, title I, § 1601(b) (Sept. 27, 2010), 124 Stat. 2551, 15 U.S.C. § 634g.

2 *Background Paper on the Office of Advocacy: 2001–2008* (October 24, 2008), pp. 119–122. See: <http://webarchive.loc.gov/all/20100616132855/http://www.sba.gov/advo/backgr08.pdf>.

requirements for administrative support from SBA; authorization of appropriations; and, importantly, the establishment of a separate budget request for Advocacy as part of the uniform annual budget submitted to Congress by the President.<sup>3</sup>

Also during the 107<sup>th</sup> Congress, Rep. Donald Manzullo, Chairman of the House Committee on Small Business, introduced H.R. 4231, the Small Business Advocacy Improvement Act of 2002, which was approved with amendments by a voice vote in the House on May 21, 2002. This bill was similar to the Senate legislation. It included a statement of findings and purposes; provisions relating to Advocacy functions, personnel, and reports; requirements for administrative support from SBA; authorization of appropriations; and, again, the establishment of a separate line-item for Advocacy in the annual unified budget of the President.<sup>4</sup>

There were, however, a variety of technical differences between the House and Senate bills, and these differences were not resolved before the end of the 107<sup>th</sup> Congress, when both bills died without further action.

**108<sup>th</sup> Congress (2003 – 2004).** Early in the 108<sup>th</sup> Congress, new Advocacy legislation was introduced in both the House and the Senate that closely resembled the bills considered in each respective body during the previous Congress. In the House of Representatives, Reps. Todd Akin and Ed Schrock, both subcommittee chairmen in the Committee on Small Business, introduced a new bill, H.R. 1772, the Small Business Advocacy Improvement Act of 2003, which was similar in most respects to H.R. 4231 in the 107<sup>th</sup> Congress. The new legislation was approved by a voice vote in the House on June 24, 2003, and it again called for a separate statement on Advocacy in the unified annual budget request.<sup>5</sup>

In the Senate, Sen. Olympia Snowe introduced S. 818, the Independent Office of Advocacy Act of 2003. As S. 395 had provided in 2001, the new bill called for a separate line-item statement for Advocacy in the President’s unified budget, but it also went further and provided for a separate account for Advocacy funds, similar to the Office of the Inspector General’s account. No further action was taken in the Senate on this legislation.<sup>6</sup>

Again, both the House and Senate versions of Advocacy legislation died at the end of the 108<sup>th</sup> Congress.

**110<sup>th</sup> Congress (2007 – 2008).** During the 110<sup>th</sup> Congress, Senators Olympia Snowe and Mark Pryor introduced S. 2902, the Independent Office of Advocacy and Small Business Regulatory Reform Act of 2008. This bill was a departure from the prior Advocacy independence legislation outlined above in that it retained from the earlier bills only basic provisions relating to Advocacy authorizations, administrative support from SBA, and most importantly, a separate line-item budget request statement and account for Advocacy. The bill also clarified in Advocacy’s basic charter, Public Law 94-

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3 For additional information, see Senate Report 107-5 to accompany S. 395 and Congressional Record, Vol. 147, pp. S2913 – S2918; March 26, 2001.

4 For additional information, see House Report 107-433 to accompany H.R. 4231 and Congressional Record, Vol. 148, pp. H2784 – H2787; May 21, 2002.

5 For additional information, see House Report 108-162 to accompany H.R. 1772 and the Congressional Record, Vol. 149, pp. H5720 – H5724; June 24, 2003.

6 For additional information, see S. 818 and Congressional Record, Vol. 149, pp. S4964 – S4965; April 8, 2003.

305, its duty to carry out responsibilities relating to the RFA, and it would have codified important elements of Executive Order 13272, a legislative priority for Advocacy.<sup>7</sup>

Chief Counsel for Advocacy Tom Sullivan expressed Advocacy's strong support for S. 2902. In a letter to Senators Snowe and Pryor upon the introduction of the bill, he commented that:

The Office of Advocacy's ability to impact the regulatory process for the benefit of small entities depends greatly on the office's independence. Congress, the President, and policy leaders throughout the country value comments, opinions, and research from the Office of Advocacy because they know those views represent an unfiltered perspective. I was sworn in as Chief Counsel in February of 2002, and my ability to advocate for small business honestly and independently has never been compromised. However, as long as the Office of Advocacy remains merged within SBA's overall budget, the temptation remains for SBA leadership to influence the views of the Office of Advocacy by controlling its budget.<sup>8</sup>

No action was taken in the Senate on S. 2902, and it died at the end of the 110<sup>th</sup> Congress.

**Conclusion.** The key feature that is present in each of the five "Advocacy independence" bills just described is a separate line-item statement for Advocacy in the President's unified budget request. Both the House and Senate had approved this in the past (twice in the House), and Advocacy leadership strongly endorsed it.

Advocacy made budgetary independence a top legislative priority, and as noted above a strong provision was eventually enacted when President Obama signed the Small Business Jobs Act of 2010.

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7 For additional information, see S. 2902 and Congressional Record, Vol. 154, pp. S3307 – S3308; April 23, 2008.

8 Letter from Chief Counsel Sullivan to Senators Olympia Snowe and Mark Pryor; April 24, 2008.

# Appendix M

## Advocacy Expenditures, FY 1978–FY2017

Chart 13.  
Advocacy Actual Obligations, FY 1978–FY 2017 (Thousands of Dollars)<sup>A</sup>

Fiscal Year	Advocacy Actuals	Fiscal Year	Advocacy Actuals
FY 1978	1,930	FY 1998	4,869
FY 1979	2,836	FY 1999	5,134
FY 1980	6,050 <sup>B</sup>	FY 2000	5,620
FY 1981	7,264 <sup>B</sup>	FY 2001	5,443
FY 1982	5,755	FY 2002	5,019
FY 1983	6,281	FY 2003	8,680 <sup>E</sup>
FY 1984	5,654	FY 2004	9,360 <sup>E</sup>
FY 1985	5,701	FY 2005	9,439 <sup>E</sup>
FY 1986	5,546	FY 2006	9,364 <sup>E</sup>
FY 1987	6,018	FY 2007	9,858 <sup>E</sup>
FY 1988	6,043	FY 2008	9,133 <sup>E</sup>
FY 1989	5,769	FY 2009	10,660 <sup>E</sup>
FY 1990	5,645	FY 2010	9,318 <sup>E</sup>
FY 1991	5,647	FY 2011	8,309
FY 1992	5,764	FY 2012	8,440
FY 1993	5,362	FY 2013	8,811
FY 1994	6,090 <sup>C</sup>	FY 2014	8,628
FY 1995	7,956 <sup>D</sup>	FY 2015	9,264
FY 1996	4,617	FY 2016	9,157
FY 1997	4,762	FY 2017	9,320 <sup>F</sup>

**A Source:** Expenses are derived from "salary and expense" (S&E) data from the appendices of OMB's annual congressional budget submissions. From the 1997 submission forward, SBA's own more detailed congressional budget submission documents were used to refine the OMB budget numbers, which were rounded to millions beginning in that year. Advocacy totals include economic research.

**B** During 1980 and 1981, Advocacy provided extensive staff support to the 1980 White House Conference on Small Business. Also, Congress provided unusually high funding for directed economic research during this period.

**C** \$1,507,000 of this amount was expended for the 1995 White House Conference on Small Business.

**D** \$2,157,000 of this amount was expended for the 1995 White House Conference on Small Business.

**E** Dollars include an agency overhead charge representing Advocacy's share of services and facilities shared in common with all SBA offices and programs. An analogous charge is not included in years prior to FY 2003. Advocacy's direct costs, analogous to those prior years, are again reflected in totals for years from FY 2011 forward.

**F** Amount requested for Advocacy in Advocacy's congressional budget submission.

# Appendix N

## Comparison Chart: The Small Business Administration and the Office of Advocacy



### SBA VS. OFFICE OF ADVOCACY COMPARISON CHART

#### U.S. Small Business Administration



<b>MISSION</b>	<p>The U.S. Small Business Administration (SBA) is one of the federal government agencies under the Executive Branch.</p> <p>- SBA assists small businesses through financial assistance, disaster assistance and counseling to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation.</p>	<p>Advocacy is an independent office in the federal government housed within SBA.</p> <p>- The office advocates on behalf of small business by ensuring their concerns with proposed regulations are heard and considered by the White House, Congress, and Federal agencies.</p> <p>- In addition, the office provides the public and lawmakers with sound economic research to facilitate small business growth.</p>
<b>BUDGET</b>	<p>Responsible for its own budget while also providing Advocacy with the necessary tools for standard operations.</p>	<p>Responsible for its own budget which underscores its independence and indicates that Congress intends to clearly identify the resources available to Advocacy. SBA provides office space and equipment.</p>
<b>OUTREACH</b>	<p>10 Regional Administrators, 50+ Regional Offices, and 4 Disaster Assistance Offices further the mission of the SBA by providing development services and training along with counseling and financial help and guidance.</p>	<p>10 Regional Advocates gain first-hand knowledge about the regulatory barriers impeding small business success and bring back to Washington, D.C. the best practices of America’s small businesses. Advocacy staff hosts roundtables and visits small businesses to hear feedback on proposed rules.</p>
<b>ASSISTANCE WITH REGULATORY PROCESS</b>	<p>- <b>SBA Ombudsman</b> - Post Regulation· Assist small businesses with complaints about final federal practices and actions.</p>	<p>- <b>Advocacy Interagency</b> - Pre-Regulation· Find and suggest alternatives to proposed federal rules.</p>
<b>FEDERAL REGULATIONS</b>	<p>Establish SBA regulations and participate in the Office of Management and Budget approval process.</p>	<p>Works directly with all federal agencies to suggest solutions or alternatives that achieve the agency’s goals while easing the burden on small business.</p>

# Appendix N, Continued



## SBA VS. OFFICE OF ADVOCACY COMPARISON CHART

U.S. Small Business Administration



<b>LEGAL</b>	Office of the General Counsel assists SBA in legal matters.	Advocacy’s Chief Counsel, the head of the Office of Advocacy, is not involved in SBA litigation.
<b>RESEARCH</b>	Report on SBA program data.	Advocacy’s Office of Economic Research is the only unit of the federal government to develop and maintain data exclusively on small business and to study the impact of federal policy on small businesses. The research provides policymakers with the knowledge to write sound legislation that will build a strong US economy.
<b>LOANS</b>	Provide various small business loans. (7(a) loans, 504 loans, SBIR grants)	N/A

# Appendix O

## Memorandum of Understanding between the Small Business Administration and the Office of Advocacy

### Memorandum of Understanding between the

### Small Business Administration and the

### Small Business Administration's Office of Advocacy

#### I. PURPOSE

The purpose of the Memorandum of Understanding ("MOU" or "Agreement") is to document the relationship and sharing of administrative support services between the Small Business Administration's Office of Advocacy ("Advocacy") and the Small Business Administration ("SBA"). This MOU outlines the budget and expenses and services that will be managed and paid for by SBA and those that will be managed and paid for by Advocacy.

#### II. BACKGROUND AND AUTHORITY

SBA's Office of Advocacy was created in 1976 (see 15 U.S.C. 634a *et seq.*) in order to protect the interests of small businesses across federal programs and services. Advocacy advances the views and concerns of small business before Congress, the White House, the federal agencies, the federal courts and state policymakers. This includes examining the challenges and contributions of small business in the U.S. economy. Economic research, policy analyses, and small business outreach help identify issues of concern. Additional duties and powers were conferred upon the Chief Counsel for Advocacy of the SBA by the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended, and Executive Order 13272, including the monitoring of federal agency compliance with the RFA, assisting regulatory agencies in all stages of the rule development process to mitigate the potential impact of rules on small entities while still achieving regulatory objectives, and providing RFA compliance training to regulatory officials.

The Small Business Jobs Act of 2010 (Pub. L. 111-240) recently amended the Office of Advocacy's statutory authority to require that each budget submitted by the President shall include a separate statement of the amount of appropriations requested for Advocacy, designated in a separate Treasury account. The Small Business Jobs Act also requires SBA to provide Advocacy with office space, equipment, operating budget, communications facilities as necessary, including maintenance for such equipment and facilities (15 U.S.C. 634g(b)). SBA and Advocacy executed the Memorandum of Understanding regarding their respective responsibilities in March of 2011.

This MOU will outline what expenses and services SBA will provide specifically to Advocacy and which expenses and services Advocacy will be responsible for within its own line-item budget.

For purposes of this Agreement, operating budget includes all overhead expenses such as utilities and rent, equipment (including copiers and fax machines) and administrative support services including but not limited to human resources, legal counsel, security and safety preparation, computer support services, web services and access to the health unit.

### **III. ROLES AND RESPONSIBILITIES**

SBA's Office of the Chief Financial Officer (OCFO) established for Advocacy a separate account within the General Fund of the Treasury to make funds available to Advocacy through appropriate allotments. The Advocacy appropriation account funds all Advocacy expenses as outlined in this Agreement.

#### **A. Expenses**

1. Advocacy, through its line-item budget, will be responsible for paying all costs associated with:
  - a) Compensation and benefits of all Advocacy employees (contracted, detailed or otherwise), including overtime and awards,
  - b) All contracts supporting Advocacy research and other projects,
  - c) Training for Advocacy employees,
  - d) Travel for Advocacy employees,
  - e) Office supplies, and
  - f) Office furniture.
2. Pursuant to the Small Business Act and this Agreement, SBA will continue to pay for the following which are used to support the Advocacy function:
  - a) Rent for office space within SBA headquarters in Washington DC and 10 regional office locations (so long as the Agency maintains regional office locations), including office "remodeling" build out,
  - b) Utilities for such office space including electric, water, heat, and telecommunications,
  - c) Equipment, including copiers, fax machines, standard computer hardware for employees, mobile phones and the associated maintenance costs, and
  - d) Administrative support services for which SBA has centralized functions including: human resources management/payroll services, legal counsel, facilities management, procurement, security and emergency planning, health unit, employee assistance/counseling programs, computer technical support, web services and use of mail room and delivery services.

#### **B. Annual Budget Process**

SBA will include Advocacy as part of its annual budgeting process with Advocacy being represented as a separate line-item within SBA's overall budget request. Advocacy will appear in SBA's annual Congressional Budget Justification document, including as an appendix to such document.. Advocacy will be responsible for preparing its budget estimates and supporting justification/narrative and providing them to the OCFO within the proper timeframe designated by the OCFO. The OCFO will provide Advocacy with the relevant documents relating to budget preparation and appropriate technical assistance upon request.

Advocacy will be responsible for managing its activities and resources within the appropriation provided by Congress. If a need arises for additional funds, Advocacy will coordinate with OCFO to initiate appropriate administrative or legislative actions.

### **C. Expenditure of Funds and Account Reconciliation**

The OCFO will continue to process all purchase orders and contracts and pay all invoices and travel vouchers submitted. Advocacy will continue to have access to Oracle to process all other documents. The OCFO will continue to provide information on a regular basis concerning the amount charged to the Advocacy appropriation. The OCFO will continue to provide staff support and technical assistance regarding budget execution.

Upon request, the OCFO will provide Advocacy with financial reports pertaining to Advocacy activities, including a quarterly report on obligations by budget object code. Should either the OCFO or Advocacy notice any discrepancies in the accounting records, the other party will be promptly notified and assist with finding a resolution.

### **D. Other Reports and Government-wide Initiatives**

SBA will continue to include Advocacy in any required reports such as the strategic and performance plans, building security and continuity of operations plans, and other statutorily required or OMB mandated reports.

### **E. SBA Administration and Support Functions**

SBA will continue to provide support to Advocacy, at no cost, for the functions as outlined in A(2)(d) above through the Office of the Chief Financial Officer and Performance Management, the Office of Administrative Services, the Office of Executive Secretariat, the Office of Human Resources Solutions, the Office of Communications and Public Liaison, and the Office of the General Counsel.

### **F. SBA Policies and Procedures**

Advocacy employees will continue to remain bound by all SBA SOPs and other policy directives, including those relating to the administrative support services listed above. Additionally, Advocacy shall be subject to SBA's Office of Inspector General inquiries and audits.

## **IV. POINTS OF CONTACT**

The following positions will serve as the primary points of contact for implementing this Agreement and will meet at least every five years to review this Agreement and determine whether any changes should be made.

**For Advocacy**

Name Luckie Wren  
 Title Director, Administrative Support Branch  
 Phone 202-205-7749  
 Email [Luciette.wren@sba.gov](mailto:Luciette.wren@sba.gov)

**For SBA**

Name Emily J. Knickerbocker  
 Title Director of Planning and Budget  
 Phone 202-205-6975  
 Email [Emily.Knickerbocker@sba.gov](mailto:Emily.Knickerbocker@sba.gov)

**V. TERM, TERMINATION AND AMENDMENT**

This Agreement will take effect when signed by both parties and remain in effect for five (5) years, unless otherwise terminated. The Agreement will be reviewed by the points of contact identified in section IV at least every five (5) years and considered to be automatically renewed for another five (5) years unless otherwise amended or terminated. Either party may terminate this Agreement with at least thirty (30) calendar days written notice to the other party. This Agreement may be amended upon mutual written consent of both parties.

**VI. GENERAL TERMS**

As required by the Antideficiency Act, 31 U.S.C. 1341, 1342, and 1514(a), all commitments made by any party to this Agreement are subject to the availability of appropriated funds and budget restrictions. Nothing in this Agreement, in and of itself, obligates any party to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations without the necessary funds or authority.

**VII. SIGNATURE**

The following individuals are authorized to sign this Agreement on behalf of their respective parties.

Office of Advocacy

Small Business Administration

Darryl L. DePriest 7/8/16 Maria Contreras-Sweet 7/5/16

Darryl L. DePriest  
 Chief Counsel for Advocacy

Date

Maria Contreras-Sweet  
 Administrator

Date

Or

Douglas J. Kramer  
 Deputy Administrator

# Appendix P

## Memorandum of Understanding between the Office of Information and Regulatory Affairs and the Office of Advocacy

### MEMORANDUM OF UNDERSTANDING

#### BETWEEN

THE OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

#### AND

THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS,  
OFFICE OF MANAGEMENT AND BUDGET

### I. BACKGROUND

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA) recognize that small entities (including small businesses, non-profit organizations and small governmental jurisdictions), as defined in 5 U.S.C. § 601, often face a disproportionate share of the Federal regulatory burden compared with their larger counterparts. Advocacy and OIRA further recognize that the best way to prevent unnecessary regulatory burden is to participate in the rulemaking process at the earliest stage possible and to coordinate both offices to identify draft regulations that likely will impact small entities.

Inasmuch as Advocacy and OIRA share similar goals, the two agencies intend to enhance their working relationship by establishing certain protocols for sharing information and providing training for regulatory agencies on compliance with the Regulatory Flexibility Act (RFA) and various other statutes and Executive orders that require an economic analysis of proposed regulations.

### II. PURPOSE

The purpose of this Memorandum of Understanding (MOU) between Advocacy and OIRA is to achieve a reduction in unnecessary regulatory burden for small entities. This initiative also is intended to generate better agency compliance with the RFA and other statutes and Executive orders requiring an economic analysis of proposed regulations.

### III. AUTHORITY

This agreement is under the authority of 15 U.S.C. § 634(a) et seq., 5 U.S.C. § 601 et seq., Executive Order 12866, as amended, and other relevant provisions of law.

### IV. OBJECTIVES

To the extent consistent with Advocacy and OIRA authority, Advocacy and OIRA agree to accomplish the following objectives:

- a. Establish an information sharing process between Advocacy and OIRA when a draft rulemaking is likely to impact small entities.
- b. Establish Advocacy guidance for Federal agencies on the requirements of the RFA.
- c. Establish training for Federal agencies on compliance with the RFA.

## V. SCOPE

Nothing in this MOU shall be construed to limit or otherwise affect the authority of the Office of Advocacy as established in 15 U.S.C. § 634a et seq. or the authority, management or policies of OIRA.

## VI. RESPONSIBILITIES

### a. Advocacy

1. During OIRA's review of an agency's rule under Executive Order 12866, OIRA may consult with Advocacy regarding whether an agency should have prepared a regulatory flexibility analysis. Advocacy will designate staff by issue and/or agency to facilitate such discussions. If OIRA is uncertain as to small business impact or RFA compliance, OIRA may send a copy of the draft rule to Advocacy for evaluation.
2. If Advocacy's discussions with an issuing agency do not result in an acceptable accommodation, Advocacy may seek the assistance of OIRA during the regulatory review process under Executive Order 12866 and may recommend that OIRA return the rule to the agency for further consideration.
3. Advocacy will monitor agency compliance with the RFA by reviewing the semi-annual regulatory agenda and the analyses that agencies publish in the *Federal Register*. Similarly, Advocacy will review the regulatory flexibility analyses that agencies provide directly to Advocacy. If Advocacy finds that a rule does not comply with the RFA, Advocacy will raise these concerns with OIRA.
4. Advocacy shall provide OIRA with a copy of any correspondence or formal comments that Advocacy files with an agency concerning RFA compliance.

5. Advocacy will develop guidance for agencies to follow on how to comply with the RFA.
6. Advocacy will organize training sessions for Federal agencies on how to comply with the analytical requirements of the RFA.

b. **OIRA**

Consistent with OIRA's responsibility to ensure adequate interagency coordination, OIRA shall endeavor to do the following:

1. During OIRA's prepublication review of an agency's rule pursuant to Executive Order 12866, OIRA will consider whether the agency should have prepared a regulatory flexibility analysis. If Advocacy has a concern in this regard, OIRA will provide a copy of the draft rule to Advocacy. In addition, upon request, OIRA may, as appropriate, provide Advocacy with draft proposals and accompanying regulatory analyses.
2. If, in the judgment of Advocacy or OIRA, an agency provides an inadequate regulatory flexibility analysis, or if an agency provides a rule with an inadequate certification pursuant to section 605 of the RFA, OIRA may discuss and resolve the matter with the agency in the context of the regulatory review process under Executive Order 12866. Where OIRA deems it appropriate, OIRA may return a rule to the agency for further consideration.
3. If Advocacy or OIRA are concerned about an information collection requirement contained in a rule which OIRA is reviewing under the Paperwork Reduction Act, OIRA may discuss and resolve the matter with the agency.
4. OIRA will endeavor to provide assistance, as appropriate, at the request of Advocacy in support of its development of guidance for agencies to follow in complying with the RFA and its training sessions on the analytical requirements of the RFA.

c. **Joint Advocacy-OIRA Responsibilities**

For rulemakings and information collection requests related to urgent health, safety, environmental, and homeland security matters, Advocacy and OIRA shall endeavor to cooperate and discuss their concerns in an expeditious manner.

## **VII. TERM**

This MOU shall take effect on the date of signature of both parties, and will remain in effect for three years, at which time it may be renewed by mutual agreement of Advocacy and OIRA.

## **VIII. AMENDMENT**

This MOU may be amended in writing and at any time by mutual agreement of Advocacy's Chief Counsel or his/her designee and the Administrator of OIRA or his/her designee.

## **XI. TERMINATION**

Either Advocacy or OIRA may terminate this MOU upon 90 days advance written notice.

## **X. POINTS OF CONTACT**

Points of contact for this MOU are as follows:

### **For Advocacy:**

Thomas M. Sullivan  
Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration  
409 Third Street, SW  
Suite 7800  
Washington, DC 20416  
(202) 205-6533  
(202) 205-6928 (fax)

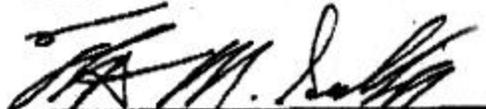
### **For OIRA:**

Dr. John D. Graham  
Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
262 Old Executive Office Building  
Washington, DC 20503  
(202) 395-4852  
(202) 395-3047 (fax)

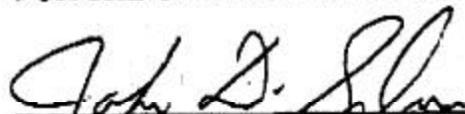
**XI. ACCEPTANCE**

The undersigned parties hereby accept the terms of this MOU:

FOR THE OFFICE OF ADVOCACY:

 3/19/02  
Thomas M. Sullivan, Chief Counsel

FOR THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS:

 3/19/02  
John D. Graham, Administrator

# Appendix Q

## Memorandum of Understanding between the SBA Office of National Ombudsman and the Office of Advocacy

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION  
AND  
THE OFFICE OF THE NATIONAL OMBUDSMAN, U.S. SMALL BUSINESS  
ADMINISTRATION

### I. PURPOSE

The purpose of this Memorandum of Understanding (“MOU”) between the Office of Advocacy of the U.S. Small Business Administration (“Advocacy”) and the Office of the Small Business and Agriculture Regulatory Enforcement Ombudsman of the U.S. Small Business Administration (“ONO”) is to foster increased cooperation between the offices as they both work to provide a more small business friendly regulatory environment.

This MOU is consistent with Advocacy’s statutory independence under 15 U.S.C. § 634a et seq. and Executive Order 13272 and ONO’s duties pursuant to 15 U.S.C. § 657.

### II. BACKGROUND

Advocacy and ONO recognize that small business concerns face a disproportionately higher share of Federal regulatory burden than their larger counterparts. Advocacy and ONO further recognize that regulatory burden can result both during the rulemaking process and in the enforcement of existing regulations. Inasmuch as Advocacy and ONO share similar goals, the two offices intend to enhance their working relationship by establishing certain protocols for sharing information in support of the mission of each office and to avoid conflicts of interest and duplicative efforts.

### III. AUTHORITY

This agreement is under the authority of 15 U.S.C. § 634a et seq.; 5 U.S.C. § 601 et seq.; 15 U.S.C. § 657 and Executive Order 13272.

### IV. OBJECTIVES

To the extent consistent with the statutory authority granting powers to the two offices, Advocacy and ONO agree to pursue the following objectives together.

- a. Establish an information sharing process to ensure that small business complaints, comments or concerns are handled by the appropriate office.
- b. Establish guidance for dissemination of information to small businesses and Federal agencies explaining the statutory responsibilities of both offices.

## V. RESPONSIBILITIES

### a. ONO

1. ONO, through its National presence, the SBA field offices and Regional Small Business Regulatory Fairness Boards, will receive comments and concerns regarding the impact of regulations on small business and the burden of regulatory compliance and federal regulatory enforcement.
2. Where appropriate ONO shall forward such comments to Advocacy and will provide information and materials generated through ONO that are more appropriately within Advocacy's jurisdiction.
3. ONO will promote the SBA's programs and services, including the regulatory and research role of Advocacy, through its RegFair Hearings and Roundtables and will include the Office of Advocacy Regional Advocates in the planning and implementation of those activities as appropriate.

### b. Advocacy

1. Advocacy will use its regional presence to assist ONO in the implementation of its Regulatory Fairness Program. Regional Advocates serve as the primary communications link between the Chief Counsel for Advocacy and local small business owners, trade and business associations, and state and local governments. Part of their responsibility is to enroll small business owners for participation in roundtables and rulemaking panels. To assist ONO, Advocacy will:
  - a. Provide material from Advocacy that may be distributed to participants in the Regulatory Fairness Program.
  - b. Provide ONO with regulatory complaints and other information generated by small business interests that are more appropriately within ONO's jurisdiction.

## VI. TERM

This MOU shall take effect on the date of signature of both parties, and will remain in effect for three years, at which time it may be renewed by mutual agreement of Advocacy and ONO.

## VII. AMENDMENT

This MOU may be amended in writing at any time by written mutual agreement of the Chief Counsel for Advocacy or his/her designee and the National Ombudsman or his/her designee.

## VIII. TERMINATION

Either Advocacy or ONO may terminate this MOU upon 90 calendar days advance written notice.

IX. SCOPE

Nothing in this MOU shall be construed to limit or otherwise affect the independent powers of Advocacy and ONO as established in 15 U.S.C. § 634a et seq. or 15 U.S.C. § 657.

X. POINTS OF CONTACT

Points of contact for this MOU are as follows:

For Advocacy:

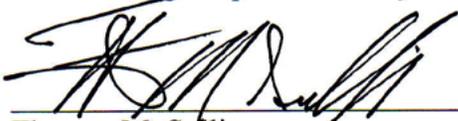
Thomas M. Sullivan  
Chief Counsel for Advocacy  
Office of Advocacy  
U.S. Small Business Administration  
409 Third Street, SW  
Suite 7800  
Washington, D.C. 20416  
(202) 205-6533  
(202) 205-6928 (fax)

For ONO:

Nicholas N. Owens  
National Ombudsman  
Office of the National Ombudsman  
U.S. Small Business Administration  
409 Third Street, SW  
Suite 7000  
Washington, D.C. 20416  
(202) 205-6657  
(202) 481-5719 (fax)

XI. SIGNATURE

The undersigned parties hereby accept the terms of this MOU:



Thomas M. Sullivan  
Chief Counsel for Advocacy  
Office of Advocacy

11.17.06  
Date



Nicholas N. Owens  
National Ombudsman  
Office of the Small Business and Agriculture Regulatory Enforcement Ombudsman

11/17/06  
Date



Carol I. Littell  
(A) Associate Administrator  
Office of Strategic Alliances

11-17-06  
Date

# Appendix R

## The Small Business Advocate newsletter, June 1996, 20th Anniversary of the Office of Advocacy

### 20<sup>TH</sup> ANNIVERSARY

United States  
Small Business  
Administration  
  
Office of Advocacy

# SPECIAL EDITION

June 1996

Special Issue

### 20 Years of Speaking Out for Small Business: The SBA's Office of Advocacy Celebrates an Anniversary

Once upon a time—some 20 years ago—there was no Office of Advocacy in the U.S. Small Business Administration. There were almost no small business advocates anywhere, in fact, and little or no consideration of small business in the legislative or regulatory process, few small business statistics or small business columnists, and no *Inc.* magazine. Almost no one talked very much about small business, in spite of the fact that some 14 million small business tax returns were filed annually.

Twenty years later, there are reporters and columnists who specialize in small business issues, small business training and assistance programs at all levels of government, a whole body of research and much talk on the airwaves about the contributions and concerns of small business, hundreds of books and how-to guides and even whole magazines devoted to small business and entrepreneurship. More than 22 million business tax returns are filed annually, and new legislation and regulations are often judged for their effects on small firms. Small business people have voiced their concerns to Congress and the Administration at three White House Conferences on Small Business. Everyone from the President of the United States to the 7-year-old lemonade stand entrepreneur down the street takes it as an article of faith that when the small business community sneezes, the economy catches a cold.

And, coincidentally, the SBA's Office of Advocacy is celebrating its 20th official birthday. What follows in this special section of *The*



September 19, 1980: President Jimmy Carter signs the Regulatory Flexibility Act (P.L. 96-354), which gave the Office of Advocacy vastly expanded powers to act on behalf of small business before federal regulatory agencies.

*Small Business Advocate* is a narrative of the history of the Office of Advocacy and a look at some of the changes that have come about in the small business world since 1976.

#### Inside this special supplement to *The Small Business Advocate*:

**The Past:** A Look at the Office of Advocacy's History ..... A-3

**The Present:** What the Office of Advocacy Is Doing Today ..... A-8

**The Future:** Advocating for Small Business in the 21st Century ..... A-10

## The Future: Advocating in the 21st Century

### Riding the Crest of the Wave: Will Small Business' Clout Continue into the 21st Century?

The Office of Advocacy's former chief counsels have on several occasions looked to the future of small business advocacy. Frank Swain, in a 1986 interview with *Business Age* magazine, noted that there have been many changes in the small business environment since the mid-1970s. For one thing, even in 1986, there were many, many more women going into business, evidenced by the surge in the number of women at the 1986 White House Conference. And researchers and the media were paying much more attention to the small business phenomenon. "I think the small business community is really riding the crest of a wave and has been for five or six years. It's all of a sudden the darling of the public media," said Swain.

He left the reporter with a hint of his vision for small business and the advocacy role. "After the limelight is dimmed, where is that going to leave the small business community? We have to firm up the proper role between the federal government and business, which I think is quite good right now. However, I would hate to see it go back to where it was."

In 1994, in preparation for the 1995 White House Conference on Small Business, Jere Glover organized a series of focus groups to talk about the future of small business, including a focus group of former SBA administrators and chief counsels for advocacy. For the first time, all four chief counsels were together in a public forum. Frank Swain again spoke about small business' strengthened voice:

I think the small business community right now, today, has more power and clout in Washington than it's ever had. . . . And I also think it's worth noting that as you look at the Wall Street Journal . . . speculating as to who's going to absorb the bud-

#### Shape of Things to Come

Self-employment, 1963–2005  
(millions)



Source: SBA, Office of Advocacy, from U.S. Department of Labor data.

Sole proprietorship income, 1988–2005  
(billions of dollars)



Source: SBA, Office of Advocacy; projection for 2005 from Bureau of Labor Statistics.

get cuts, I predict that although there might be proposals from time to time to cut various SBA programs, there will be no proposals to cut the SBA, because small business has a lot of clout and both the Administration and Republicans up here know that.

Milt Stewart agreed that small businesses are stronger than they were in the late 1970s:

However, I think you have to make a balanced statement about it. We've got 14,000 companies with more than 500 employees. We've got more than 5 million with fewer than 500 employees. Now if you try to relate clout to that, I don't think small business is anywhere near where it ought to be in terms of influence on a wide range of issues that contribute to the climate for small business.

Tom Kerester took the discussion back to the original reasons for establishing small business advoca-

cacy programs—the nation's productive, but often overburdened small business community:

It's the grass roots business person that doesn't have time to attend meetings, doesn't have time to attend seminars, doesn't have time to go to lectures—that has to hold his or her member of Congress accountable. And to the extent to which they can hold their members of Congress accountable, small businesses will be successful in the year 2005 and beyond.

Jere Glover and the Office of Advocacy prepared a report on the future visions of not only the chief counsels for advocacy, but all the focus groups, which included, among others, business organization representatives, women and minority business owners, young entrepreneurs, and experts in innovation and technology, and family-owned and microbusiness is-

sues. The report, *The Third Millennium: Small Business and Entrepreneurship in the 21st Century*, is available from both the Superintendent of Documents and the National Technical Information Service.

## Taking the Pulse: Advocacy's Regional Advocates

The Office of Advocacy's 11 regional advocates enhance communication between the small business community and the chief counsel for advocacy.

Covering the 10 federal regions (with a special regional advocate for rural development located in Region VI), these advocates are the chief counsel's direct link to local business owners, state and local government agencies, state legislatures, and small business organizations. They help identify emerging issues and problems of small business by monitoring the effects of federal and state regulations and policies on the local business communities within their respective regions.

Turn to page A-16 to find a chart that lists the names, addresses, and telephone numbers of these regional advocates.

## A Sampling of Regulatory Achievements

Here is a small sampling of recent Advocacy initiatives and achievements with respect to regulatory proposals.

- **Hydroelectric Fees:** The Federal Energy Regulatory Commission proposed fees for hydroelectric projects. Advocacy's position that the agency allow bonds instead of cash payments saved small hydroelectric developers about \$2.6 million.
- **Small Quantity Generator Hazardous Waste Tanks:** EPA proposed stringent hazardous waste tank regulations for small quantity generators of hazardous wastes (predominantly small businesses) in 1986. After Advocacy showed that existing regulations were adequate to cover the hazard, EPA abandoned this rulemaking, saving small quantity generators tens of millions of dollars annually.
- **Underground Storage Tanks:** A major EPA rulemaking affecting small businesses involved an initiative that imposed requirements on over 400,000 facilities. EPA adopted Advocacy's position that less expensive tanks were acceptable to meet tank technical standards. A more reasonable leak detection scheme was also promulgated. Savings are estimated at about \$1 billion annually.
- **Abatement Verification:** In 1995, Advocacy directly influenced OSHA's abatement verification standard requiring paperwork and other forms of material proof of workplace hazard corrections. OSHA's adoption of Advocacy's suggested changes to the proposal will save small businesses millions of dollars and burden hours.
- **Termination of Volume Control Regulations for Navel Oranges Grown in California and Arizona:** Advocacy's drive to deregulate markets for navel oranges led to the termination of the navel orange program in late 1992, resulting in sales increases to small businesses of more than \$50 million.
- **Regulatory Fees for Cable Systems:** Advocacy's proposed change—adopted by the FCC in 1994—to the method for calculating fees to be paid by cable operators will save small cable operators approximately \$3.5 million dollars per year.
- **Subscriber Line Charges Imposed by the FCC:** After the breakup of AT&T, subscriber line chargers imposed by the FCC were originally scheduled to cost small businesses \$6 per line per month. That was reduced to \$2 per line per month in 1985 after intervention by the Office of Advocacy, resulting in savings of roughly \$300 million dollars per year, for a total savings of nearly \$3 billion since the inception of the subscriber line charge.
- **Enhanced Poultry Inspection:** USDA withdrew this proposed rule consistent with the comments filed by Advocacy last year. According to industry estimates, this withdrawal saved the poultry processing industry—composed overwhelmingly of small businesses—at least \$60 million in up-front costs and at least \$185 million in annual recurring costs.
- **SEC Simplified Registration Requirements:** The Office of Advocacy has played a critical role in helping the SEC develop simplified registration requirements for small companies. The SEC changed the requirements for small companies. It is estimated that between 3,000 and 3,500 companies are eligible to register under the less costly and less burdensome SB system.

## The Funny Papers

In 1995, Blondie started her own business, and ran into some problems that many small business owners can relate to.



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## Quotable Quotes

### 28 Years Ago: Did We Really Think That Way?

From *The Small Business Administration*, by Addison W. Parris, published in 1968:

Within government small business circles, there is a faint uncomfortable awareness that many small businessmen have a very strong distaste for the government and very little understanding of it. . . . One bureaucrat, shortly after joining the SBA, encountered a small businessman by chance at a social gathering. For quite a while the SBA man listened with mounting impatience to the small businessman's complaints about the great Leviathan in Washington. "The government," the small businessman snorted. "The government doesn't give a damn about me!" The SBA official blurted: "I'm the government and I care about you." A sudden horrified shock of recognition was evident on the face of the small businessman as he realized that he had met one of the "Feds" face to face.

. . . [The small businessman's] kind of general negativism toward modern society does not provide very useful guidance to those attempting to formulate programs and policies in the small business area. As a result, attempts by rank-and-file small businessmen to influence SBA are of

minimal effectiveness unless they concern a very specific problem.

### 26 Years Ago: A Meeting with the President

From Lew Shattuck's account in the October 1970 edition of *New England Business* of a meeting on September 10, 1970, between President Nixon and representatives of five business groups:

Mr. Nixon responded favorably in support of the advocacy role for the SBA, stating that one of the reasons past Cabinet officers had sometimes historically received public criticism was that they were not responsive to the interest groups for which they were the spokesmen. He cited examples such as in the Department of Agriculture, where the Secretary has often been a spokesman for the White House. The President stated he had made it very clear to the Secretary of Agriculture that he was to be a spokesman *to* the White House *from* the farmer, not from the White House to the farmer.

He said he had already made it clear to the Secretary of Commerce, Maurice Stans, that small business is as much a part of his job as big business.

President Nixon feels that one of the

disadvantages of small business is that it is so fragmented and heterogeneous. Whereas if he wanted to feel the pulse of the auto industry, three men could provide the input and in the airlines, five . . . small business is so diffused it is difficult to get timely information.

He asked the associations present at the meeting to take a lead in collecting data and serving as a constant lobby for small business. He re-emphasized that he wanted to hear frequently from the group present.

### 20 Years Ago: The Little Engine That Could

Testimony of John Lewis, Executive Vice President, National Small Business Association, from hearings before the Select Committee on Small Business, *Oversight of the Small Business Administration: The Office of the Chief Counsel for Advocacy and How it Can Be Strengthened*, March 29, 1976:

. . . We have nothing against the farmers of the United States, but there are only 2 3/4 million farms, contrasted with 10 1/2 million small business units.

The farmers have 3,900,000 workers, where there are 50 million employees of small business firms in

the United States.

Despite the overwhelming bulk of numbers on the small business side, the Department of Agriculture has a budget of \$2.9 billion, with 80,000 employees, and the congressional appropriation for them amounts to \$1,000 for every farm in the country.

Contrast that with the SBA. SBA only has \$110 million for administration, only 4,200 employees, and this is calculated out to be \$12 for each unit.

Compared with the resources that Mr. Stasio has had as Chief Counsel for Advocacy, he has done one heck of a job.

### 20 Years Ago: “Zip to Let it Rip”

From the testimony of James D. “Mike” McKeivitt, Washington Counsel, National Federation of Independent Business, at the March 29, 1976, hearing:

On the regulations, I cannot say enough how SBA has to grow up and has to get some guts and strength and somebody has to give us some zip to let it really rip.

## Some Recent Legislative Successes

The Office of Advocacy has also been available to help in shaping more small-business-friendly legislation. Here are some examples.

- **The Small Business Regulatory Enforcement Fairness Act (SBREFA):** The Office of Advocacy has long supported better vehicles for enforcement of the Regulatory Flexibility Act of 1980 (RFA). The SBREFA, signed into law March 29, 1996, allows for judicial review of agency decisions under the RFA and subjects additional regulations to RFA review.
- **The 1990 Clean Air Act Amendments:** In 1987, the Office of Advocacy objected to requiring more than one half million farmers to perform “hazard assessments” for ammonia fertilizers. The 1990 Clean Air Act Amendments exempted farmers from this provision, for a savings in excess of \$1 billion.
- **Americans with Disabilities Act:** In 1988 and 1989, Advocacy provided data on the number of businesses affected by employment provisions of the Americans with Disabilities Act at varying threshold levels. These data and suggested changes resulted in small firms being exempted from certain requirements and in the inclusion of limits on employer obligations based in part on the size of the business.
- **Fair Labor Standards Act:** In 1988, Advocacy provided data on the number of small businesses affected by increases in the minimum wage to various wage levels and the number of business affected by increasing the dollar volume test for enterprise coverage. Resulting changes created significant savings for covered small businesses.
- **Paperwork Reduction Act:** Advocacy took positions on the need to strengthen the Paperwork Reduction Act’s protections for small businesses.
- **Subchapter 11 for Small Business Reorganization:** The Office of Advocacy championed the creation of a separate section in the Bankruptcy Code for small business reorganizations. Advocacy’s perseverance helped lead to passage of the Bankruptcy Reform Act of 1994, which established a subchapter 11 for the reorganization of small businesses with less than \$2 million in debt.
- **Small Business Lending Data from Call Reports:** The Office of Advocacy played a significant role in the inclusion of a requirement that banks report small business lending data as part of the Federal Deposit Insurance Corporation Improvement Act of 1991.
- **Secondary Market for Small Business Loans:** The Office of Advocacy played a pivotal role in the establishment of a secondary market for small business loans. Advocacy recommended to the administration the adoption of the secondary market bill that Congress passed in 1994.
- **Procurement Reform:** More than half of the recommendations advanced by Advocacy, including procurement goals for women, the preservation of subcontracting plans for subcontracts and the extension of the DOD minority enterprise development (sec. 1207) program were incorporated in the Federal Acquisition Streamlining Act of 1994.

## Walking a Fine Line: The Independence of the Office of Advocacy

At various times in the Office of Advocacy's history, the chief counsel for advocacy has had to walk a fine line to fairly represent the views of small business without treading on the toes of the administration. Over the years, there has been considerable discussion about just how much "independence" was called for by the framers of Advocacy's role.

Twenty years ago, Senator Thomas J. McIntyre (D-N.H.) and John Lewis, Executive Vice President, National Small Business Association (NSBA), discussed the need for an "independent" small business advocate within the government in the hearings before the Select Committee on Small Business on March 29, 1976:

*Senator McIntyre:* . . . Does [the Commerce Department] have any dampening effect on how the SBA Administrator speaks out? If he gets too strong, talks too big, does that not get him into difficulty with Commerce?

*Mr. Lewis:* No, not with Commerce, but with the White House. Inherently, he must be a team player. His agency is not independent, does not have the independence of a Federal Reserve Board that can tell the Administration to go fly a kite.

Herb Liebenson, of NSBA testified at the same hearing:

Because of OMB, SBA can not take stands on all issues. But at the least it can warn Congress persuasively of the impact on small business, even if it is necessary to file a disclaimer that the SBA's views do not necessarily reflect the views of the Administration.

While the word "independent" appears nowhere in Advocacy's 1976 authorizing legislation (Public Law 94-305), there is an implied independence in Section 206:

The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. . . . The reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or

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**Ombudsman,  
cheerleader,  
or thorn in  
the side:  
the idea of  
"independence"  
for the  
Office of Advocacy  
has often proven  
problematical.**

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executive department for any purpose prior to transmittal to the Congress and the President.

This provision caught the attention of President Ford, who was not entirely pleased with it, as he noted in his signing ceremony: "I question the provision of S. 2498 which requires Presidential appointment with Senate confirmation of the Chief Counsel for Advocacy . . . and requires the Counsel to transmit reports to the President and Congress without prior review by any other Federal agencies." But he signed the bill anyway.

In 1978, Milt Stewart began testing the waters as Advocacy's first confirmed chief counsel. Asked at a 1995 focus group of former SBA administrators and chief counsels about his ability to speak independently on behalf of small business, he recalled:

I had no problems, really, because I was fortunate to have been [the SBA administrator's] candidate for the post. . . . I do think it helps if the administrator and the chief counsel are known to the President as a team. If the chief counsel is pushed on an issue where he has to depart from the administration in his own right, obviously, he's got to let [the administrator] know and let him know why. . . . The once or twice that I

went off the reservation, I think, aside from a couple of catcalls and raised eyebrows, nobody made any trouble for us.

Vernon Weaver, the SBA administrator at the time, joked:

Of course, we were in the position of not ever having had a chief counsel for advocacy when I got there, and some of the old political hands in the White House called me up and said, "Don't fill the post." But it's a human relationship—it's up to the administrator to pick somebody he can get along with and vice versa.

Gradually, in practice if not in law, the chief counsel's independence began to be clarified. The legislative history of the Small Business Economic Policy Act of 1980 (Public Law 94-305), which set the chief counsel's executive level classification, made brief reference to the chief counsel's separate role:

His mandate is to represent the views of small business. . . . the advocate may not necessarily represent the administration's position or that of SBA; however, SBA . . . [is] required to cooperate fully with him.

The small business community also weighed in on the question. Among "The 15 Top-Priority Recommendations" of the 1980 White House Conference on Small Business was priority no. 10, which received almost 600 votes: \*

The legislative mission of Advocacy must be considered the number one priority of SBA and the Office of Advocacy. The independence of that function of the Office of Advocacy must be protected so that it may continue to have the confidence of the small business community.

At the second White House Conference in 1986, priorities 13 and 45 talked about the "independence" of both the SBA and the Office of Advocacy:

13. (1,051 votes) Resolved that the SBA should be maintained as an agency independent of any other federal department. . . .

45. (484 votes) The SBA should be

retained and elevated to a Cabinet-level position whose mission should be to assist the small business community, with the private sector having a stronger partnership role.

a. The independent role of the Office of Advocacy must be maintained and strengthened. . . .

During the 1989-1992 period, following the tenure of Frank Swain, the Office of Advocacy was led by four acting chief counsels. By mid-1991, the effects of the constant transitions and the lack of a presidential appointment were becoming very clear to almost everyone involved, including the Office of Advocacy staff. According to an October 1991 SBA review of the office, morale was at a low, largely because of the lack of a permanent chief counsel:

Most of the staff members interviewed said that without a permanent head, the Office has lost most of its influence with other Government agencies, the small business community and Congress. In their view, the Acting Chief Counsels were not appointed by the President and, consequently, have lacked the independence to take public positions that differ from those of the SBA. Thus, they believe, the Office is not perceived by the small business community as an effective and independent advocate for small business.

When Tom Kerester was confirmed as Advocacy's third chief counsel in 1992, he brought with him a clear sense of the office's role. Kerester recalled:

Former Administrator Pat Saiki . . . encouraged me to be independent. She said, "that's your role and that's the role you should carry out." I did, as a courtesy matter, try to keep her advised ahead of time so that she wasn't blindsided by some questions—she knew exactly where I was coming from.

President Clinton's appointee as chief counsel, Jere Glover, strongly reaffirmed Advocacy's mandate to speak loudly—even to be a "junkyard dog" scrapping for small business. At his confirmation hearings

*Continued on page A-16*

## Disagreeing Agreeably: Frank Swain on Speaking Out

*In 1981, with the arrival of a new administration in Washington, Frank Swain took over as chief counsel for advocacy. A 1984 article about the new chief counsel in The New York Times described him as "going hammer and tongs for small business." Swain later recalled about the chief counsel's role:*

Jim Sanders came to be administrator just three or four months after I had become chief counsel, so he was pretty new at it and I was pretty new at it. I had learned early on that if I was not going to toe the party line, I should just tell the people at OMB . . . that I would give them a courtesy copy of the statement and say that it was not to be construed as administration policy.

The first time I did that after Jim came in, Jim called me the next morning and said, "Well, I got a call from Joe Wright"—who at the time was Stockman's deputy over at OMB—"and he's pretty hot and bothered about whatever you said yesterday." I explained to him the basis of the job and the statute and said my M.O. is to disagree agreeably. We weren't going to try to surprise the administration or make them look silly, but my responsibility was to try to reflect the views of small business. That happened two or three times and every time it happened, Jim would call Joe Wright back and say, "He's just doing the job that the President gave him to do." Pretty soon we stopped getting those calls and within a few years they were calling me up.

At one point I actually did an analysis of our statements. . . . Well over half started out with a disclaimer, which meant that they weren't in keeping with administration policy. We made it work, but it is a real dilemma.

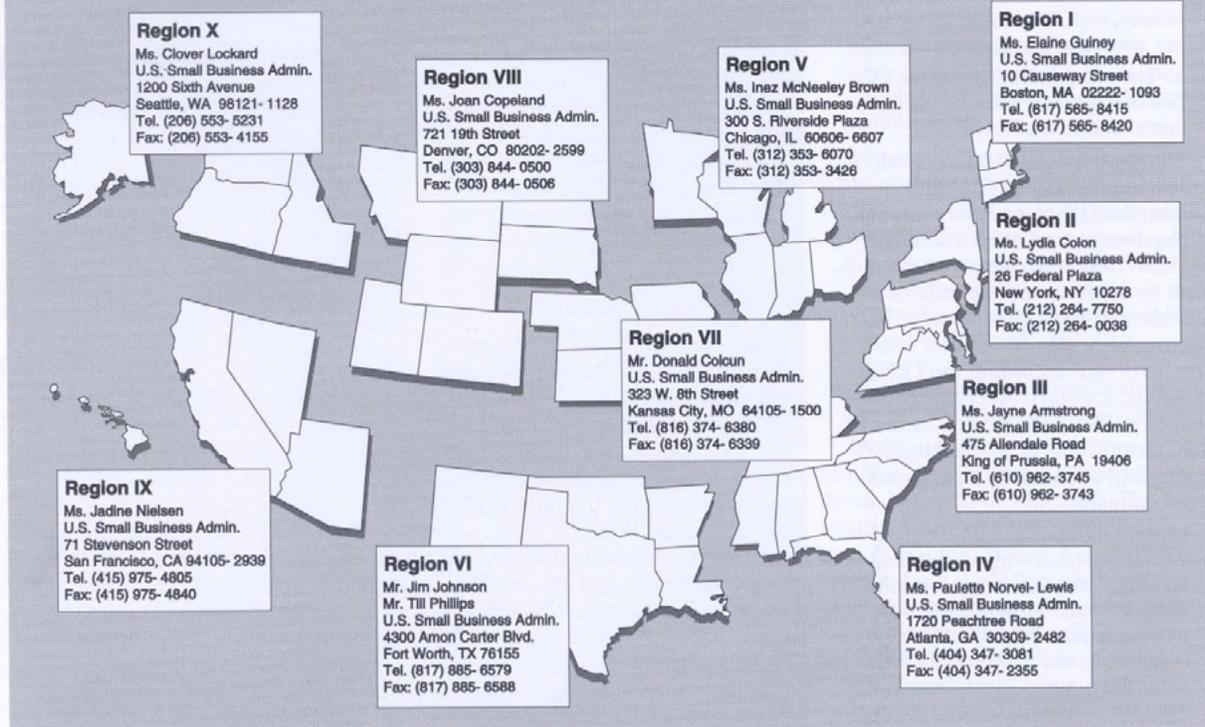
I once said to somebody, if the

Congress really wanted someone just to throw bombs, they really should have set up the Office of Advocacy as a branch of the General Accounting Office, responsible to and appointed by the Congress, not by the Executive.

On the other hand, if it were a branch of the GAO, it might be a bigger bomb thrower, but it wouldn't cut any mustard with the administration at all. We wouldn't be able to call up assistant secretaries and commissioners and say "We want you to do this, we want you to do that." The one thing that made them take my calls was the fact that they knew that I was nominated by the same president that nominated them, that I was of equivalent Cabinet rank, that whatever political muster it took to be nominated, we were, in the broadest sense, on the same team.

So it's a conflicted assignment to be a bomb thrower within the administration team and I think every occupant of the office has to work it out for themselves.

## On the Front Line: Advocacy's Regional Advocates



**Independence**, from page A-15 before the Senate Judiciary Committee, Glover said:

As the small business community and Congress expect, and the law requires, if confirmed, I intend to be a strong independent voice for small business. Because of the President's strong commitment to small business, I believe I can be a strong and effective advocate for small business within the administration.

During Glover's tenure, the Office of Advocacy has provided an independent small business perspective in testimony before the Congress on a number of issues, including federal government procurement from small businesses, patent reform, product liability, and the health care deduction for the self-employed.

At the 1995 White House Conference on Small Business, the small business delegates again called for maintaining Advocacy's independence in priority no 19:

NCRA #286 (1,249 votes) Future of the Small Business Administration. The U.S. Small Business Administration is vital to the growth of small business in America. Efforts to make the SBA's programs more cost-effective and efficient should be continued and encouraged. The SBA's "independent" agency role as the primary supporter of small business within the federal government should be enhanced by: . . . Permanent maintenance of the "independent role" of the SBA's Office of Advocacy.

And during the debate in the House of Representatives on the continuation of the Office of Advocacy in July 1995, Rep. Roscoe G. Bartlett (R-Md.) was among many members of Congress who testified to the importance of the Office of Advocacy's independent role:

The Chief Counsel for Advocacy plays an important role by presenting and fighting for the views of the small business community. The

Chief Counsel has a very different role from other administrators in the SBA: he is the independent voice within the agency that represents the interests of small business. The advocate may not necessarily represent the President's Administration position or that of the SBA; however, the SBA and other Federal agencies are required to fully cooperate with the Chief Counsel.

While I personally may not agree with some of the positions taken by the Chief Counsel, I believe it is important to maintain the office which is the watchdog for small businesses.

## A Message from the Chief Counsel for Advocacy

Dear Friends of Small Business,

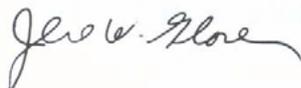
As I look back on the history of the Office of Advocacy over the past 20 years, I'm tempted to paraphrase Winston Churchill: seldom has so much been hoped for by so many from so few.

As technology changes, as the economy grows, the nation's problems change—and so do the needs of small business. The political dynamics also change, and there is an ongoing need to remind public policymakers that the "multitude of small undertakings"—small businesses—continue to be the source of America's unique vitality, as de Tocqueville observed 150 years ago. They need to be nurtured—not guaranteed success, but rather guaranteed the right to succeed or fail depending on their own decisions.

Small businesses create most of the new jobs, are more innovative per employee, train most of the new workers, empower minorities and women, and make important contributions to community life. Perhaps most important, they are flexible enough to create whole new industries built on real markets—not markets engineered or subsidized by governments, but markets for innovative products and services generated by the ingenuity of people. They are key in creating the high standard of living that we enjoy.

And our society has rightly instituted laws and regulations to strengthen that high standard—to ensure that we have safe homes and workplaces, clean air, fair employment standards, and so on. The problems occur when the laws and regulations become too cumbersome or outdated.

So I think we will continue to see a need for an Office of Advocacy to act as a kind of watchdog—okay, a junkyard dog—for small business within the government—to make sure that small businesses remain free to be America's economic powerhouses.



Jere W. Glover  
Chief Counsel for Advocacy  
U.S. Small Business Administration

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*The Small Business Advocate* (ISSN 1045-7658) is published monthly by the U.S. Small Business Administration's Office of Advocacy and is distributed to Small Business Administration field staff and members of the U.S. Congress. *The Small Business Advocate* is available without charge from the Office of Advocacy, U.S. Small Business Administration, Mail Code 3114, Washington, DC 20416. Back issues are available on microfiche from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Send address changes to The Small Business Advocate, Mail Code 3114, U.S. Small Business Administration, Washington, DC 20416. Include your current address label.

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## From the Editor:

A sincere "thank you" to all who contributed to this 20th anniversary special edition of *The Small Business Advocate*—former and current Advocacy employees, past chief counsels, legislators, and many other old friends.

A note of special appreciation is due Kathryn Tobias, an Office of Advocacy employee for 14 years, whose writing talent—and heart—made this Advocacy feature possible. Also, many thanks to John Ward, whose dedication and graphic-design skills make every issue of *The Small Business Advocate* so special.

## The Past: The History of the Office of Advocacy

### A Bit of Prehistory: In the 1960s and 1970s, the Advocacy Idea Is Born

The Office of Advocacy did not spring full-blown from the head of Zeus or materialize Topsy-like one fine day in 1976.

A dozen years before its creation, in 1964, *The Businessman's Guide to Washington* had this to say about the role of small businessmen (most business owners were men back then) in the legislative process:

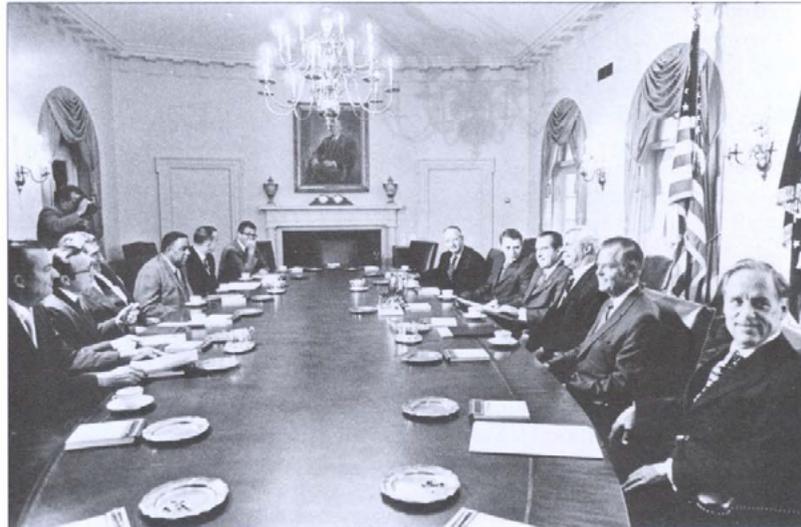
Often, businessmen come down to Washington when they are almost purple with apoplexy. A particular piece of legislation or an administrative ruling has been either passed or under consideration for weeks, months or perhaps a year. When it is about to be finalized—or even after it has been passed—the businessman shows up in Washington for a “last-ditch effort.”

The only advice the 250-page guide had for the businessman in that situation was to make himself known to people in the government in advance of trouble. The practicality—or impracticality—of every business owner getting to know every agency of the government was scarcely acknowledged. The guide did caution that, while “great powers are wielded” by some parts of the government, “there will be few occasions for the businessman to deal with them.”

The underlying problem was this: small business' vital interests were being profoundly affected by—but almost never represented in—the legislative, regulatory and administrative processes of government. The extent of the problem became more widely recognized in the ensuing years, as new laws and regulations governed more and more aspects of American life.

#### Business Organizations Take Up the Advocacy Banner

By the late 1960s, a number of business organizations and trade associ-



September 10, 1970: President Richard Nixon meets with small business representatives in the Cabinet Room of the White House. Six months earlier, Nixon had issued Executive Order 11518, which directed federal agencies to cooperate with the SBA in its advocacy efforts on behalf of small businesses. (Photo courtesy of the National Archives.)

ations had begun paying attention to the problems small businesses faced with government, especially in comparison with their larger counterparts who could afford to keep representatives in Washington. And the growing concern for small business caught the attention of President Richard Nixon.

In March 1970, President Nixon issued Executive Order 11518, “providing for the increased representation of the interests of small business concerns before departments and agencies of the United States Government.” The executive order described the U.S. Small Business Administration as having “an established program of advocacy in matters relating to small business.” And it called on the SBA, “as the spokesman for and advocate of the small business community, [to] advise and counsel

small business concerns in their dealings with the departments and agencies of the United States Government to the end that the views of small business concerns will be fully heard, their rights fully protected, and their valid interests fully advanced.”

The executive order further authorized the SBA to become an activist on behalf of small business in “investigations, hearings or other procedures pending anywhere in the government” and it directed agencies, without waiting for SBA’s initiative, to consult with the SBA on a wide range of “matters which reasonably can be construed as materially affecting” small business.

In September 1970, recalls Lew Shattuck, then of the Smaller Business Association of New England

*Continued on page A-4*

## A Garbage Strike and An Ugly Red Sofa: Ah, the Good Old Days!

by David Voight

My first encounter with the concept of an Office of Advocacy occurred more than 20 years ago when the legislation was first before Congress. At the time I was the chief Senate-side lobbyist for the National Federation of Independent Business (NFIB). Since this was one of our priorities, I worked closely with the Senate Small Business Committee—then chaired by Sen. Gaylord Nelson (D-Wisc.)—and staff, notably Allen Neece and Tom Cator.

An event that is much more strongly embossed in my memory occurred about two years later when President Carter submitted the name of one Milton D. Stewart to be the first nominee as chief counsel for advocacy confirmed by the U.S. Senate. (There had been previous chief counsels, but Milt was the first to go before the Senate.) Since NFIB remained strongly in support of the office, I got involved in the confirmation process. I spent many nights working overtime with the same Senate Small Business Committee staff in a building that no longer exists on a site across from the Hart Senate Office Building, which did not exist at the time.

It is not surprising that I, like so many others, fell under the spell of Milt's driving energy, commitment to small business, and general charisma. It was surprising, however, that he apparently thought that I might not be such a bad sort and asked me to join the staff of the new Office of Advocacy. Initially, I was his executive assistant and toward the end of his tenure became deputy chief counsel for advocacy.

Our first tasks were to simply staff up and organize the office. There was a rudimentary structure in place from the time the law was signed under President Ford through the time the new Carter Administration made this particu-

lar appointment. I do remember that one of the particularly difficult tasks was finding a way to get rid of an exceptionally ugly red velvet sofa that the previous acting chief counsel for advocacy had chosen as part of the official furniture.

Finding issues to work on was never a problem with Milt around. I can remember the occasion that he came into the office with a small two-inch newspaper story about a garbage strike in Los Angeles. He gathered his staff around him and said, "There is an important issue here for small business. I just don't know what it is yet." For two days you could see his mind working away and when he gathered us again he stated what the issue was—and as usual he was right.

The problem, however, was that every day every newspaper had countless numbers of two-inch stories that were important for small business. My job seemed increasingly to be that of a juggler who had to keep dozens of apples, oranges, knives, and flaming torches in the air at the same time—and whenever I saw Milt reading a newspaper, I just knew that he was going to throw an anvil into the mix.

An alternative view of my job was that of the man who came along at the end of the parade with a broom and a dustpan to pick up the pieces of the grand and glorious show that went on ahead. In either case it was the greatest show on earth. The Office of Advocacy at that time did not find itself dragged down with a lot of precedent or bureaucratic hurdles. We had the sense of being on the cutting edge of a new and exciting opportunity for small business.

*David Voight is director of the U.S. Chamber of Commerce's Small Business Center.*

### Prehistory, from page A-3

(SBANE), President Nixon invited representatives of five business groups—SBANE, the National Federation of Independent Business (NFIB), the National Small Business Association (NSBA), the National Association of Small Business Investment Companies (NASBIC), and the National Business League (NBL) to the White House. He told the business leaders that if he wanted to know what was going on in the automotive industry, he had only to call one or two of the big automotive companies, but he had trouble finding the pulse of small business. The President asked the business leaders to be his eyes and ears on the small business community and then he asked them what they would like to do. "We said we'd like to meet with the Cabinet," Shattuck recalls, and so they found themselves for the first time meeting with the people with "real clout."

Three years later, in 1973, several business organizations including SBANE began to recommend in their Washington presentations that the SBA's advocacy role be strengthened and assigned to a particular office. It was Rep. Margaret Heckler (R-Mass.) who, with the endorsement of former Congressman and then-SBA Administrator Thomas S. Kleppe, drew up the first piece of legislation mentioning an Office of Advocacy. The support of Administrator Kleppe, who was a friend of Rep. Heckler from their Capitol Hill days together, was crucial in the passage of the initial law, Rep. Heckler recalls.

On August 23, 1974, among his first presidential acts, President Gerald Ford signed Public Law 93-386, amending the Small Business Act to further spell out an advocacy role within the SBA. But aside from an advocate and a few staff members, little provision was made for staffing the advocacy office. By 1976, it was clear that the role of the "chief counsel for advocacy" needed to be clearly laid out and strengthened.



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**In 1973,  
Rep. Margaret Heckler  
(left), along with  
former Congressman  
(and then-SBA  
Administrator)  
Thomas S. Kleppe,  
drew up the first piece  
of legislation mentioning  
an Office of Advocacy.**

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### **Building a Solid Foundation**

It was then that the Senate Select Committee on Small Business, chaired by Sen. Gaylord Nelson (D-Wisc.), took the rudimentary advocacy office and built on it a solid foundation for the present-day Office of Advocacy. At the committee's hearings on March 29, 1976, small business owners like Herman Williams, president of Williams Steel and Supply Company in Milwaukee, Wisconsin, spoke with passion about the need for a strong voice for small business within the government.

There are laws on ecology, laws to preserve nature, birds, natural lands, landmarks, scenic views; but where are the laws to preserve the human resources created by the small businessman? Small business needs a constant representative on the President's cabinet and before Congress at all times. There should be a Small Business Advocate on every federal commission, agency, department, panel, advisory committee and task force. . . . The Advocate should also be responsible for gathering in one place the necessary statistics and data relating to . . . small business.

But why should the small business advocate be a public servant? John Lewis, executive vice president of the National Small Business Association, addressed the question:

The question will occur, why do not

the National Small Business Association or other small business associations do the job [of small business advocacy]? Why look for a Government agency? The National Small Business Association does effectively represent the interests of small business, but neither it nor any other small business organization can get behind the closed doors of Government before decisions are made. . . . Even if the small business organizations of the country were organized into one cohesive and powerful force, advocacy within Government and by Government would still be essential to do the infighting for the small business.

Herb Liebenson of the National Small Business Association spoke

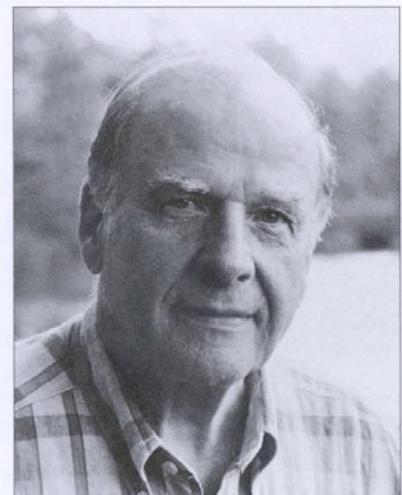
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**In 1976,  
Sen. Gaylord Nelson  
(right) held hearings on  
legislation that created  
the present-day Office  
of Advocacy.**

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about the effects that paperwork burdens, mushrooming product liability claims and laws like the Occupational Safety and Health Act were having on small firms. He noted that Senator Nelson had introduced a bill to ensure fair and equitable representation for smaller and medium-sized businesses on federal advisory committees. Liebenson pushed for a strong advocacy office in the SBA. "Advocacy begins within government," he said.

On June 4, 1976, President Gerald Ford signed Public Law 94-305, establishing "within the Small Business Administration an Office of Advocacy. The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate."



## An Advocacy Chronology

Some milestones in the history of the Office of Advocacy

- 1953** The Small Business Act establishes the Small Business Administration.
- 1970** President Nixon issues Executive Order 11518.
- 1974** Congress passes P.L. 93-386, further spelling out an advocacy role in the SBA. Anthony Stasio acts as SBA's small business advocate.
- 1976** President Ford signs P.L. 94-305, establishing the Office of Advocacy.
- 1978** Milton Stewart becomes the first chief counsel for advocacy.
- 1979** Advocacy holds its first national legislative conference to encourage small business initiatives at the state and local levels of government.
- 1980** The Office of Advocacy spearheads efforts for the first White House Conference on Small Business.
- 1981** Frank Swain is confirmed by the Senate as the second chief counsel for advocacy.
- 1986** Advocacy covers the issues for the second National White House Conference on Small Business.
- 1992** Thomas P. Kerester sworn in as Advocacy's third chief counsel.
- 1994** Jere W. Glover is confirmed as fourth chief counsel for advocacy.
- 1995** The third White House Conference on Small Business convenes in Washington, D.C.
- 1996** The Office of Advocacy celebrates its 20th birthday.

## Advocacy Speaks Out for Small Business: A Thumbnail History

In July 1978, Milton D. Stewart was the first to be confirmed by the U.S. Senate as chief counsel for advocacy in the U.S. Small Business Administration. His visibility as an appointee of President Jimmy Carter, combined with his forthright personal style, gave Stewart a high profile as SBA's new small business advocate.

Shortly after assuming his new role, the chief counsel began testifying before various congressional committees—the Joint Economic Committee, the House and Senate Small Business Committees, and many others—on issues ranging from the nation's energy crisis and its effects on small firms to economic concerns and the overall climate for small business. In 1979, Stewart instituted the first national conference for state and local officials concerned about the future of small business.

Milt Stewart and the Office of Advocacy had a strong hand in the 1980 White House Conference on Small Business, the first in recent history. Attended by 1,682 small business delegates and 3,600 other participants, the national conference convened Jan. 13, 1980. The final report of the conference quoted the 19th-century French philosopher Alexis de Tocqueville, who ascribed the unique vitality of American life to its "multitude of small undertakings." The report continued:

... small companies are aggrieved by a policy of neglect that has inadvertently imposed obstacles and inequities that seem to thwart efficient business operations at every turn. The single most important message of the Conference is that government must eliminate those obstacles and inequities. . . .

Several key small-business-friendly laws were enacted as a direct result of the conference recommendations, including the Regulatory Flexibility Act of 1980, the Equal Access to Justice Act of

1980, the Prompt Payment Act of 1982 and the Small Business Innovation Development Act of 1982 (SBIDA). The Small Business Innovation Research program, created by SBIDA, continues today as a highly successful program, producing many useful small business innovations.

With the 1980 election of President Ronald Reagan, Frank S. Swain, a former general counsel to the National Federation of Independent Business, took over the reins of the Office of Advocacy. Whereas Stewart had approached small business problems in a head-on, take-the-bull-by-the-horns manner, Swain's style was to negotiate forcefully, but quietly, often behind the scenes, obtaining important concessions for small business. His style translated effectively to Advocacy staff members and from them to their counterparts in other branches of government, who were able to make changes on behalf of small business.

Frank Swain's eight-year tenure (1981–1989) was the longest of any chief counsel before or since. Chas Cadwell, Swain's deputy, recently recalled some of the Office of Advocacy's key achievements during this period, including accomplishments of individual staff members:

- Patricia Powers launching research and a conference . . . [that opened] doors into the health policy debate for all small business;
- Kevin Bromberg singlehandedly convincing EPA to alter proposed rules for air and water effluents, saving small firms literally billions of dollars in regulatory costs;
- Barry Pineles taking on the government-protected California citrus cartel on behalf of small independent growers and processors;
- Daryl Jackson using the Advocacy tax model to convince Treasury to maintain graduated corporate rates in the 1986 tax reform;
- Frank Swain successfully

going nose-to-nose at a Cabinet Council meeting with the Department of Justice on proposed changes in antitrust laws. . . .

In 1986, the second White House Conference on Small Business was held in the midst of a storm of controversy over a proposal to abolish the Small Business Administration. Despite some diversion over that issue, the conference focused energy on moving the small business agenda ahead and making improvements to many of the initiatives already taken following the 1980 conference. At the top of the list of 1986 recommendations was a recommendation to reform the liability insurance system. Other high-priority recommendations included eliminating government-mandated employee benefits, prohibiting unfair nonprofit and government competition with for-profit firms, balancing the federal budget, and creating a Cabinet-level department of trade.

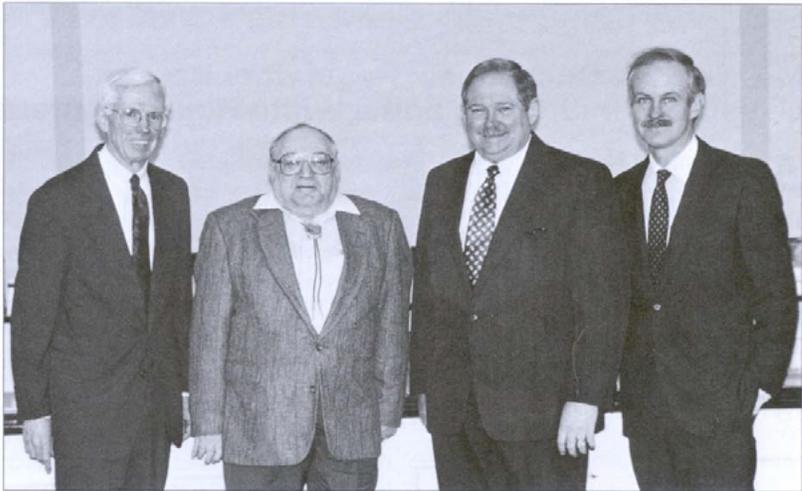
The results of the 1986 White House Conference were widely regarded by the small business community as less earth-shaking than those of the 1980 conference. Perhaps it was because small business had already come a long way since 1980, or perhaps the delegates had grown more sophisticated—and the issues more complicated.

With the arrival of the Bush administration in 1989, a succession of four acting chief counsels led the Office of Advocacy. The vision of Advocacy's mission—and the office's effectiveness—clearly waned, at least in the eyes of the small business community, during this three-year period.

On May 11, 1992, the Senate confirmed Thomas P. Kerester, a tax attorney, former small business person and former publisher of *Coopers and Lybrand's Emerging Business*, as chief counsel for advocacy. Kerester expressed his vision with respect to his new mission in an interview for *The Small Business Advocate*:

The White House was not looking for a "yes person." Where appropriate I will go to the president to de-

### Not the Three Tenors . . .



In December 1994, past and present chief counsels for advocacy met in Washington. From left to right: Thomas Kerester, Milton Stewart, Jere Glover, and Frank Swain.

fend small business, to the administrator to seek help and support for them, and to Congress to be a vocal, up-front, and strong voice in their behalf.

Kerester had scant opportunity to carry out his vision; he was in of-

fice only eight months. But in that period he talked with many small business owners about their concerns, and spoke out about issues ranging from product liability to the new Americans with Disabilities Act.

### 20 Years Ago: The More Things Change . . .

*From Herb Liebenson's testimony at the March 29, 1976, Senate hearings on the Office of Advocacy:*

Illustrative of the important governmental affairs issues now pending that can affect the profitability or survival of every small business enterprise in this country are:

1. Oil company divestiture of distribution function.
2. Job creation credit.
3. Small business tax reform and capital formation.
4. Minimum wage increases.
5. Unemployment compensation and workers' compensation reform.
6. Retention and enforcement of the Robinson-Patman Act.
7. Reform of pension, profit-sharing, and welfare fund rules and regulations (ERISA).
8. Reform of occupational safety and health regulations.
9. Product testing.
10. Product liability insurance.
11. National health insurance.
12. Consumer Product Safety Commission—controlling excesses.
13. Protection of the equities of franchisees.
14. Jurisdiction of government agencies to obtain data (affecting small business) from larger companies (line of business, corporate patterns, etc.).
15. Federal charters for giant corporations.

## The Present: The Office of Advocacy Today

### Meeting the Challenges: Regulatory Reform, Legislative Initiatives, and a White House Conference

A new administration arrived in Washington on Jan. 20, 1993, and a White House Conference on Small Business Commission would soon be appointed by the administration of Bill Clinton. Doris Freedman, an experienced and dedicated Advocacy staffer, was named SBA's acting chief counsel for advocacy while the SBA awaited appointment and confirmation of a permanent chief counsel.

SBA's new administrator, Erskine B. Bowles, also took an active interest in small business advocacy, raising the visibility of the role by appearing before the media with the president and vice president and discussing "the concerns and ideas of small business." Small business jargon had even entered the administration's lexicon: government was going to be more "entrepreneurial" by cutting red tape, putting customers first, empowering employees to get results, and producing better government for less.

On May 5, 1994—appropriately, during National Small Business Week—Jere W. Glover was sworn in as the Office of Advocacy's fourth presidentially appointed chief counsel. Glover had served under Milt Stewart, the first chief counsel for advocacy, and he was ready to hit the ground running. As he testified in his confirmation hearings, he was keenly aware of Advocacy's mission:

It is important to remember why the Office of Advocacy was originally created in 1976. The Congress felt that small business views were not adequately represented before the agencies and Congress. Furthermore, Congress and the agencies did not have adequate information to make proper decisions about small business . . .

The wisdom of Congress in creating the Office of Advocacy 18 years ago is more obvious than ever. The need

for the office is more urgent than ever.

In broad strokes, Glover outlined his new mission: to reduce the regulatory burden on small business; serve, with the administrator, as the president's eyes and ears on the small business community; help eliminate the credit crunch for small business; strengthen the Small Business Innovation Development Act and help new innovative companies grow; work to restore a sound antitrust policy with respect to small business; and work with federal agencies to develop

significant opportunities for small business.

But the first order of business was to prepare final issue information in time for the first state White House Conference on Small Business in Wilmington, Delaware, the month after Glover's confirmation. The next year's activity, in fact, centered around the state, regional, and national White House Conferences, as the Office of Advocacy provided a steady stream of background research on new issues and on the small business community in each state.

#### That Was Then . . . This Is Now

The small business sector as reflected in the statistics of 20 years ago and today.

	20 Years Ago	Today
■ Business tax returns	14.5 million	22.1 million
■ Incorporations	375,766	741,657
■ Bankruptcies	34,529	52,256
■ Small firm share of net new jobs	65%	virtually all
■ Small firm employment share	51%	53%
■ Small firm sales share	39%	47%
■ Federal prime contracts from small firms	\$14.8 billion	\$39.2 billion
■ Federal subcontracts from small firms	\$13.3 billion	\$20.8 billion

Note: Figures for 20 years ago represent 1976 or 1977 data, as available, except for procurement figures, which are for fiscal year 1980. Figures for "today" represent the latest data available.

At the same time, the new chief counsel, supported by SBA's new administrator, Phil Lader, began reaching out to small business organizations, testifying before Congress on small business issues, and looking for new and effective ways to carry out the Office of Advocacy's mission. By the end of Glover's first year, the Office of Advocacy had also, among other things:

- Organized and prepared a report for the White House Conference on a series of focus groups on the future of small business.
- Prepared a nationwide review of banks' "friendliness" to small business.
- Reviewed several thousand proposed regulations, commenting on and helping to change several of those most likely to disproportionately affect small firms (see, for example, the box on page A-11).
- Testified on significant new legislation, including bills affecting procurement and judicial review of regulatory flexibility actions.
- Reached out to the small business community through roundtables and working groups on concerns such as procurement, the environment, and small business innovation.
- Prepared data on small business for the president's annual report on *The State of Small Business* and for profiles of each of the states.
- Organized the SBA's annual observance of small business contributions during Small Business Week.

Despite its contributions, the Office of Advocacy has never been able to rest on its laurels. In July 1995, the office came under fire in the House of Representatives during the debate on appropriations (see box at right).

A proposal that "zeroed out" the Office of Advocacy from the SBA appropriations bill reached the House floor for a vote. Rep. Jan Meyers (R-Kans.), chair of the House Small Business Committee, and Rep. John LaFalce (D-N.Y.), ranking minority member, led a fight to restore funding.

## The Office of Advocacy in 1995: "Going Toe to Toe with All Other Agencies"

*From House Small Business Committee Chair Jan Meyers' (R-Kans.) July 26, 1995, testimony in support of restoring funding for the Office of Advocacy:*

When I first became chairman, a number of the small business groups said to me, the two most important things in the SBA were the loan program and the Office of Advocacy. . . .

This was stated on behalf of NFIB, the U.S. Chamber of Commerce, National Small Business United, the National Association for the Self-Employed, and the Small Business Council of America. They all strongly support the Office of Advocacy and they support this amendment [to restore Advocacy's funding.]

Some Members may not be familiar, Mr. Chairman, with what the Office of Advocacy does, but it is the advocate among other agencies of Government on behalf of small business, and it has performed extremely well. It is an independent office, appointed by the President, confirmed by the Senate so that it has the clout to go

toe to toe with all other agencies.

It has testified before Congress approximately 200 times and about 25 percent of that time it was either in opposition to administration policy or in the absence of administration policy on an issue.

It is also the linchpin, it is absolutely the central position for enforcing the Regulatory Flexibility Act. This is an act which we just strengthened in the Contract with America. . . .

I want to state strongly that this is a key vote for the NFIB, that all the small business groups supported it; that if Members voted for the Regulatory Flexibility Act in the Contract with America, it is absolutely counter to that if Members do not support the Office of Advocacy.

In a testimony to the Office of Advocacy's contributions—and the continuing belief in the need for such a small business voice within government—all the major national business organizations and the delegates to the 1995 White House Conference on Small Business took a strong stand in support of the office. On July 26, 1995, the full House of Representatives voted 368–57 to restore the Office of Advocacy's funding.

After the National White House Conference on Small Business in June 1995, the Office of Advocacy refocused its efforts toward implementing the conference recommendations, while continuing to carry out its other mandates. The office organized the 13th National

Legislative Conference on Small Business Issues—a decade and a half after the first such conference in 1979.

Advocacy has recently celebrated a number of successes, including passage of the Small Business Regulatory Enforcement Fairness Act, which strengthens enforcement of the Regulatory Flexibility Act and was signed by President Clinton on March 29, 1996 (see box on page A-13). By June 1996, on its 20th official birthday, the Office of Advocacy is well poised to speak out for small business for another score of years—and more.

# Appendix S

The Small Business Advocate newsletter, September 2001,  
25th Anniversary of the Office of Advocacy

## 25<sup>TH</sup> ANNIVERSARY SPECIAL EDITION

United States  
Small Business  
Administration  
Office of Advocacy

October 2001  
V.12 | No. 7

### In This Issue

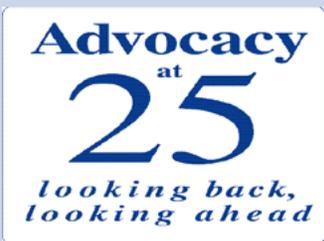
Four Chief Counsels Reflect on 25 Years Fighting for Small Business . . . . .	1
Advocacy and the White House Conferences on Small Business . . . . .	2
Regulation in an Age of Entrepreneurship . . . . .	6
Nominees Sought for 2002 Small Business Awards . . . . .	8

### Message from the Acting Chief Counsel

Twenty-five Great Years . . . and Counting . . . . .	3
------------------------------------------------------	---

### Economic News

New Earnings, Minority Business Studies Released . . .	7
--------------------------------------------------------	---

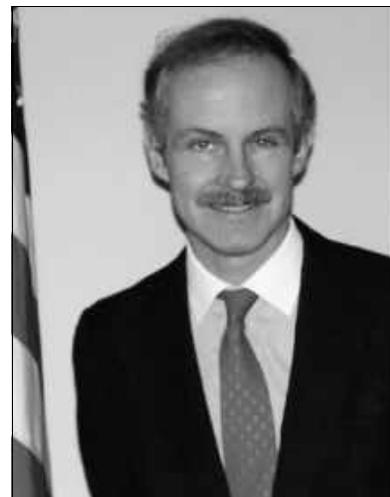


### Four Chief Counsels Reflect on 25 Years Fighting for Small Business

*In its first quarter-century, Advocacy has been led by four Senate-confirmed chief counsels: Milton D. Stewart (1978-1981); Frank S. Swain (1981-1989); Thomas Kerester (1992-1993); and Jere W. Glover (1994-2001). In recent interviews, the four shared their thoughts on Advocacy's past, present, and future.*

***You were an active small business advocate even before you were tapped for the chief counsel job. What's special about small business that led to your career choice?***

***Milt Stewart:*** I spent my youth in a family-owned small business begun and managed by my father



Chief Counsel Frank Swain served Advocacy from 1981 to 1989.



The man in the white hat: Advocacy's first chief counsel, Milt Stewart.

and mother. Most of our friends, relatives and neighbors were small business people. I acquired great respect for the skill and courage of small business entrepreneurs. As a result, it seemed to me that Thomas Jefferson's affection for rural agricultural people was misplaced: Urban small business people had replaced them as the bearers of economic virtue.

***Frank Swain:*** My belief is that small business was underrepresented, so there was a need. And the small business position—in contrast to the government, labor, or large business view—was usually the right one in my opinion.

***Tom Kerester:*** The basic reason that small business is special is that

*Continued on page 4*

## Advocacy and the White House Conferences on Small Business

The first White House Conference on Small Business was held in January 1980 and became the model for those that followed in 1986 and 1995. The idea for a national conference at which small business people could air their grievances and, more importantly, offer their constructive proposals for improving the small business climate, was the joint creation of both House and Senate Small Business Committees and President Jimmy Carter.

This was a great opportunity for the fledgling Office of Advocacy. Advocacy and the conference were gearing up at exactly the same time. This gave Advocacy the chance for much significant nationwide outreach and visibility. The conference created regular state meetings that became forums where Advocacy staff could find out what small business's real concerns were and start to think about solutions that would work.

The state and regional meetings culminated in the national conference at which a small business agenda was drawn up, and Advocacy was an integral part of all that went on. The small business community learned that Advocacy was a part of government whose unique mission was to help make the federal government work for it, and Advocacy learned the importance of listening to small businesses first. That first conference ended with a standing ovation for Milt Stewart in recognition of his hard work in making the conference a success.

And what a success it was! Not only were many of the 60 top recommendations adopted, but the small business community also learned the value of coming together and speaking out loudly in the policy-making process. The desire to make sure that the 1980 conference was not a flash in the pan led to the second conference held in August

1986. Again, a similar process was followed: management by a White House-appointed commission; state and regional meetings; and a final national conference making 60 important recommendations.

And, again, Advocacy was a vital part of that process.

Eight years later, Advocacy was again called on to help with the start-up of the third White House Conference on Small Business, which ultimately took place in June 1995. Advocacy functioned as the research and issue arm for the conference staff. Research began even before the first state meetings. Advocacy developed a series of task force meetings and issue focus groups to develop a comprehensive issue resource book for use by state meeting attendees. The regional staff of the Office of Advocacy also assisted the process with outreach and media support.

Post-conference, the chief counsel for advocacy convened implementation meetings to help the delegates establish a network to follow up on their recommendations. Advocacy also monitored and reported to the delegates on recommendations from the conference and on other important small business issues.

There have now been three conferences in the past 21 years. Each of them helped bring the small business community closer together and to articulate more clearly an agenda for a prosperous and successful small

### The Small Business Advocate

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*The Small Business Advocate* (ISSN 1045-7658) is published monthly by the U.S. Small Business Administration's Office of Advocacy and is distributed to Small Business Administration field staff and members of the U.S. Congress. *The Small Business Advocate* is available without charge from the Office of Advocacy, U.S. Small Business Administration, Mail Code 3114, Washington, DC 20416. Back issues are available on microfiche from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Send address changes to: *The Small Business Advocate*, Mail Code 3114, U.S. Small Business Administration, Washington, DC 20416. Include your current address label.

*The Small Business Advocate* Online: [www.sba.gov/advo/news/](http://www.sba.gov/advo/news/)

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business economy in our great nation. Advocacy was fortunate to be in a position where it could be a vital part of all three conferences.

### Key Accomplishments of the White House Conferences

- 1980:** Regulatory Flexibility Act; Equal Access to Justice Act
- 1986:** Reauthorization of the Small Business Innovation Research program; SBA maintained as a separate agency
- 1995:** Small Business Regulatory Enforcement Fairness Act  
Health Insurance Portability and Accountability Act  
Taxpayer Relief Act

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## Message from the Acting Chief Counsel

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### Twenty-five Great Years . . . and Counting

by Susan M. Walthall, Acting Chief Counsel, Office of Advocacy

I love Advocacy. I've grown up with it, and I love it.

Twenty-five years ago, I was just out of school and interviewing around Washington. One of the first places I interviewed was here at the SBA. Advocacy was new then and the first chief counsel, the legendary Milt Stewart, was two years away from Senate confirmation. I was hired to work in the then-new Women's Business Ownership Office, which at that time fell under Advocacy.

Twenty-five years later and I am the acting chief counsel. I didn't know it then, but I know it now: This is the best job in the federal government. It is truly an honor to have been asked by President Bush to be the acting chief counsel.

The Office of Advocacy is one of the few federal offices that exist to encourage and support the hard working small business owners who are the backbone of America and drive our economic growth and job creation. And, it has a well-qualified, strong professional staff whose only goal is to support and defend small businesses. It's no wonder that I truly love this job, this place, and these people.

**Lessons Learned.** I have learned a lot along the way about small business, about politics and policy, and about leadership. I think one of the important lessons I've learned is that open communication, both to and from the small business community, is what makes Advocacy so effective and so special.

When I was first hired at the SBA, my father, who was a successful air conditioning contractor, asked, "The SBA? What has the SBA ever done for me?" But after I was hired, and after I had the chance to explain what the SBA, and espe-



Susan Walthall, acting chief counsel for Advocacy, 2001.

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**The chief counsel needs to really listen to the entire small business community: associations, academics, government officials, and most importantly, to small business owners and their employees.**

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cially Advocacy, does, he became quite proud of my work here.

I think of him a lot as I do this job. Because I realize that if the small business community doesn't know what we are doing for them, it's almost as if our efforts don't exist. And, if we don't know the needs and concerns of the community, we won't be effective advocates on their behalf. So, two-way communication has been, is, and will be, the key to our success.

I've also learned that no one person, and no one group, can do it all.

There is a cadre of strong leadership in the small business community, and relying on that leadership is the best way to influence public policy and public opinion.

This lesson is one of the many things I learned from Milt Stewart. He set the bar high, gave people the responsibility to meet the challenge, and set them loose to achieve the goal. We accomplished a lot that way, and I try to work the same way now with my staff.

People perform better when they are given the chance to take on real responsibility, and I think that is why the Advocacy staff has always been so effective.

**Advice for the Next Chief Counsel.** My 25 years at SBA have given me some perspective. I've seen our successes, and I've seen our failures. There is a lot to be learned from all of that, but three things stand out.

First, the chief counsel needs to really listen to the entire small business community: associations, academics, government officials, and most importantly, to small business owners and their employees. The next chief counsel must make it a point to visit small businesses across America.

Second, the chief counsel should rely on the Advocacy staff. It is the best there is: motivated, qualified, and professional.

Third, the chief counsel should believe in the job and believe in small business.

A final word of advice: Enjoy!

## Four Chief Counsels Reflect on 25 Years Fighting for Small Business

### Chief Counsels, from page 1

you're in complete control of your goals and objectives. Being in small business gives you a feeling of independence, pride, and achievement. It really makes you feel like you're part of that engine that drives the economy.

**Jere Glover:** Small business is special because it's what makes America work. In good times and in bad, small business is what makes things happen. In every economic downturn, small business is what's pulled us out, and quite frankly, small business has softened the impact of past economic downturns. Job creation, innovation, productivity, and efficiency—all of these things tend to flow from a vibrant small business community.

*It's probably safe to assume that, as a former chief counsel for advocacy, you believe the Office of Advocacy has an important mission. What do you see as the top reason for its existence?*

**Milt Stewart:** The top reason is to set out the unmet needs of small business. We made three specific efforts to spell out Advocacy's policy-related missions.

- The chief counsel named a National Task Force on Small Business and Innovation to spell out the advocacy mission requirements of small business as seen by 35 experienced venture capitalists and entrepreneurs. The task force's final report (July 1979) represented a helpful initial statement.

- We convened a national conference of state officials with economic development experience to express their views of priority needs.

- The first White House Conference on Small Business authorized by President Carter

brought together 2,000 small business delegates to review alternative policy recommendations.

These three efforts set out the priority policy concerns of the Office of Advocacy.

**Frank Swain:** The central reason is the same now as it was 25 years ago: small business is extremely important to the economic, political, and social fabric of the country. It is too often underrepresented in the corridors of government decision-making, and it's very appropri-

the adverse impact of proposed legislation and regulation in these two areas. The Office of Advocacy helps ease the burdens on small business and present their views.

**Jere Glover:** The top reason for the office's existence is to provide accurate and reliable information, data, and research. Decision-makers may differ about the conclusions, but the Office of Advocacy's critical function is to let them have the right information so they can make informed decisions.



Regional advocates with Chief Counsel Tom Kerester, 1992.

ate for government to have an in-house voice for small business. SBA programs such as the small business lending programs are important, but they require a lot of time and management. So it's smart to have the policy and regulatory issues analyzed in a specific office, such as Advocacy.

**Tom Kerester:** The chief counsel serves as the eyes, ears, and voice of small business in two areas: Congress and the federal departments and agencies. Small businesses have neither the expertise, the time, nor the money to present

*What was the most significant achievement of the Office of Advocacy during your tenure?*

**Milt Stewart:** The Small Business Innovation Development Act, enacted in 1982. Although it was not enacted until after my term of office, it was a direct result of the work done during my term. There were other significant achievements, but this was the most important, by far.

**Frank Swain:** Two general things and one specific thing.

- We really established a very

---

strong presence as small business's voice in government. When I came in, there was a very new law that hadn't been fleshed out—the Regulatory Flexibility Act. Over the eight years I served as chief counsel, we filed about 400 comments, about one per week. So the office really became known for regulatory and legislative activity.

- I'm very proud of the fact that in the 1980s we became very well known as a center of expertise on health care issues and small business. We were the first group to oppose mandated health benefits for small business. We were so active on health care issues that I was named to the President's Commission on Long-Term Care in 1987. This was a recognition that the small business side needed to be included and that we'd established ourselves as the voice for it inside government.

- One specific accomplishment was the initiation of the *President's Report on the State of Small Business* in 1982. We started out small and made it into a very big deal.

**Tom Kerester:** I was only in a short time. My most significant achievement, which was strongly supported by Dale Bumpers, the chair of the Small Business Committee at the time, was to go beyond the Beltway and acquaint small business with the significant, crucial role of the Office of Advocacy. I was on the road five or six days a week. I never had the chance to testify before Congress but I did testify before a joint session of the Utah legislature.

**Jere Glover:** The 1995 White House Conference on Small Business and the Small Business Regulatory Fairness Act (SBREFA).

- The White House conferences

historically provide a new generation of small business leaders. The Office of Advocacy was critical in the White House conference, and even more so in the implementation phase. Over 90 percent of the recommendations had actions taken on them, and the conference sensitized the entire government to small business issues. As a result, every single agency identified things they could do for small business, and we helped make sure they followed through. Many of the recommenda-



Jere Glover, chief counsel for Advocacy from 1994 to 2001.

tions ended up in legislative changes that will forever change the way government deals with small business.

- The proof of SBREFA's effectiveness was \$3 billion in quantified savings for small business from regulatory changes. To quantify the efficiency of the agency in a regulatory manner was a huge undertaking, and to do it in a credible way was a real credit to the employees of the Office of Advocacy. Changing the culture of the government is something that only occurs in the rarest of circumstances. I take a good deal of pride

in that. This doesn't mean we've finished the job though.

### ***Where do you hope to see the Office of Advocacy in 5 to 10 years?***

**Milt Stewart:** The highest priority Advocacy program for the next five to 10 years will be contributing to the nation's response to the September 11, 2001, terrorist attack on the nation. The extreme wing of the Muslim effort must be met with an ideological challenge to terrorism. Small business will have its role to play in achieving the indispensable victory over terrorism and extremism. Before that, small business will still need the Office of Advocacy as the spokesman for small business's public policy needs to foster its unhampered growth.

**Frank Swain:** I'd simply say that Advocacy has more specific responsibilities now, especially with SBREFA. But it's important that Advocacy stay lean and on the cutting edge of issues and developments in small business and that it resist the temptation to become too bureaucratized.

**Tom Kerester:** I think we have to give more authority to the chief counsel to impact the proposed rules and regulations at the federal level. So when the chief counsel speaks, departments will listen. One thing that would help do that is to give more public recognition to the chief counsel, elevating the stature of the office.

**Jere Glover:** Still in existence! And that it will become a significant player in regulatory and economic policy in both the legislative and executive branches.

# Regulation in an Age of Entrepreneurship

by Kathryn J. Tobias, Senior Editor

Why is the U.S. economy the most dynamic in the world? Its dynamism, researchers agree, springs from the organic creativity and rapid growth of American small businesses, rooted in a free society. Nothing seems impossible in a culture that allows for constant experimentation and change. As one business owner told his employees, “Love our customers, love our values, but don’t love our structure, because it’s going to change every year.” (So Thomas Petzinger, Jr., reported in his book, *The New Pioneers*.)

Yet this culture of creativity and flexibility poses a paradox for a free society and for policymakers, namely, how do you encourage organic small business growth while regulating to protect important societal, environmental, and economic assets? The first regulatory agency in the United States was created in an era of top-down corporate management; if the government wanted something done, they told the business community exactly what to do, how and when. And that was that.

Now we live in an era where innovation and change emerge from the bottom up. One-size-fits-all regulations just don’t work anymore. Some regulation of business behavior is needed, but regulations also come down hardest on the smallest entities. When a sole proprietor devotes a morning to filling out paperwork, licenses, and other red tape, the firm’s productivity suffers. And paperwork is just the tip of the iceberg when it comes to regulations’ effects on small business. Too many heavy rules can put the brakes on small business creativity and economic growth.

**Advocacy’s Charge: Cutting Excess Regulation.** In 1976, Congress gave the Office of Advocacy the responsibility to

“measure the direct costs and other effects of federal regulation on small businesses; and make proposals for eliminating excessive or unnecessary regulation of small businesses.”

But trimming unnecessary regulation did not happen easily. By 1980, at the convening of the first White House Conference on Small Business, the need for small business participation in the regulatory process was still pressing. Among the conference’s top five recommendations was the call for economic impact analysis of newly proposed federal regulations.

**The RFA—The First Tool.** The White House Conference recommendation was a catalyst in the passage of the Regulatory Flexibility Act (RFA) in 1980. The RFA directed agencies to analyze the impact of their regulatory actions on small entities.

And the Office of Advocacy was charged to monitor agency compliance with the new law. Over the next 15 years, the office carried out this mandate, reporting annually on agency compliance to the president and the Congress. But Advocacy analysts recognized early on that there was almost nothing in the law’s enforcement provisions to prevent an agency from being sloppy in its compliance, or even outright ignoring the law.

Delegates to the 1986 White House Conference on Small Business thought the RFA should be strengthened by, among other things, requiring recalcitrant agencies to comply with its provisions and subjecting federal agencies’ failure to comply with the RFA to judicial review. But another decade would go by before the delegates’ recommendation bore fruit.

In preparation for the 1995 White House Conference on Small Business, the Office of Advocacy assembled leading thinkers on

small business topics in a series of 15 focus groups. All 15 cited regulatory burdens as a top barrier to entry for small businesses. The 1995 conference asked for specific legal provisions to give small firms a voice in the rulemaking process. The conference aftermath was unique: it included a concerted follow-up process to see to the implementation of its recommendations. As a result, the conference had a phenomenally high success rate: policymakers addressed more than 90 percent of its recommendations!

## **SBREFA—The RFA Gets**

**Teeth.** The regulatory reform recommendation was among the first. President Clinton signed the Small Business Regulatory Enforcement Fairness Act (SBREFA), on March 29, 1996. The new law gave the courts jurisdiction to review agency compliance with the RFA. It also required review panels to include small entities early in the process of drafting certain regulations. And it reaffirmed the chief counsel for advocacy’s authority to file friend of the court briefs in suits brought by small entities in response to an agency final regulatory action.

In 2000, on the 20th anniversary of the RFA, the Office of Advocacy reported that agency compliance was improving and that the RFA and SBREFA had saved small businesses some \$20.6 billion in new regulatory costs over the 1998-2000 period.

**Creative Entrepreneurs Take on Old Rules.** Meanwhile, entrepreneurial businesses are themselves developing creative ways to solve problems that rely less than ever on the top-down models of the past. For example, Petzinger notes, the Voluntary Hospitals of America is using principles called “min specs”—minimum critical specifications—and “self-organization” to

*Continued on page 7*

## Economic News

### Minority Business, Earnings Studies Released in October

Two economic studies will be released on Oct. 23, 2001, when the Office of Advocacy commemorates its 25th anniversary.

*Minorities in Business, 2001*, by Dr. Ying Lowrey, senior economist with Advocacy's Office of Economic Research, utilizes several sources from the U.S. Census Bureau, including the Current Population Survey and the Survey of Minority-Owned Business Enterprises (SMOBE). The study provides a comprehensive portrait of minority-owned businesses in the United States (see Table).

The Census Bureau's classification of firms by owners' demographic group varies between 1982 and 1997, making it difficult to compare data over time, Lowrey's

study makes adjustments to the SMOBE data to enable a comparison. Her study shows that the share of minority-owned firms rose from 6.84 percent in 1982 to 15.12 percent in 1997.

A second study to be released on Oct. 23, *Earnings Growth among Disadvantaged Business Owners*, was conducted by Robert Fairlee of the University of California at Santa Cruz. This study was funded by the Office of Advocacy. Fairlee studies the earnings histories of less educated and minority men and women using the 1979 National Longitudinal Survey of Youth (NLSY). Using annual data spanning 1979 through 1998, Fairlee finds that less-educated self-employed young men and women

tend to make more money than their wage-and-salary sector counterparts, other things being equal. He also finds that earnings growth is initially slower among self-employed men and women, but over time, it surpasses the earnings growth of wage-and-salary earners.

#### For More Information

Advocacy's senior economist, Dr. Ying Lowrey, can be reached at (202) 205-6947, or by e-mail at [ying.lowrey@sba.gov](mailto:ying.lowrey@sba.gov). Both reports are available on the Advocacy website at [www.sba.gov/advo](http://www.sba.gov/advo). Paper and microfiche copies of all Advocacy reports are also available for purchase from the National Technical Information Service at (800) 553-6847 or through the NTIS website at [www.ntis.gov](http://www.ntis.gov).

#### U.S. Firms by Ownership Category, 1997

	All Firms	Firms with Employees	Number of Employees	Total Payroll (\$million)
<b>Number of Firms</b>				
Total U.S. Firms	20,821,934	5,295,151	103,359,815	2,936,493
Non-Minority-Owned	17,782,901	4,679,929	98,845,116	2,840,964
All Minority-Owned	3,039,033	615,222	4,514,699	95,529
Black-Owned	823,499	93,235	718,341	14,322
Hispanic-Owned	1,199,896	211,885	1,388,746	29,830
Native American-Owned	197,300	33,277	298,661	6,624
Asian-Owned	912,959	290,000	2,203,080	46,179
<b>Share of Total U.S. Firms (Percent)*</b>				
Non-Minority-Owned	85.40	88.38	95.63	96.75
Minority-Owned	14.60	11.62	4.37	3.25
<b>Share of Total Minority-Owned Firms (Percent)*</b>				
Black-Owned	27.10	15.15	15.91	14.99
Hispanic-Owned	39.48	34.44	30.76	31.23
Native American-Owned	6.49	5.41	6.62	6.93
Asian-Owned	30.04	47.14	48.40	48.34

\* Percent shares may not total 100 because of duplication of some firms. Hispanics may be of any race, and therefore, may be included in more than one minority group.

Source: U.S. Department of Commerce, Bureau of the Census: Survey of Minority Owned Business Enterprises, 1997.

#### Regulation, from page 6

respond to problems in the health care system. More often than not, Petzinger observes, their solutions entail eradicating rules rather than creating new ones.

What of the future? Studies conducted for the Office of Advocacy find that the cost to business of government regulation continues to rise. Striking a balance between rules that protect such assets as the health of workers and the environment, while minimizing burdens imposed on fragile, often experimental, small businesses—must remain one of government's high priorities for the foreseeable future.

## Nominees Sought for 2002 Small Business Week Awards

National Small Business Week 2002 is tentatively scheduled for May 5-11, 2002. The highlight of the week is the presentation of awards spotlighting the outstanding contributions of small business persons and advocates at the district, state, and national levels. SBA needs your help to obtain a large pool of qualified nominations from which to select the Small Business Award winners. ***Nominations close Nov. 9, 2001.***

The complete nomination guidelines can be found at [www.sba.gov/opc/pubs/nominations2002.pdf](http://www.sba.gov/opc/pubs/nominations2002.pdf).

### To Submit Nominations

Nominations must be submitted to the nearest U.S. Small Business Administration district office in your state or territory. All nominations must be post-marked or hand delivered no later than Nov. 9, 2001.

### Award Categories

#### Small Business Advocate Awards

- Accountant Advocate of the Year
- Entrepreneurial Success
- Financial Services Advocate of the Year
- Home-Based Business Advocate of the Year
- Minority Small Business Advocate of the Year
- Small Business Exporter of the Year
- Small Business Journalist of the Year
- Veteran Small Business Advocate of the Year
- Women in Business Advocate of the Year
- Young Entrepreneur of the Year

#### Small Business Person Awards

- Small Business Person of the Year

#### Phoenix Awards

- Small Business Disaster Recovery
- Outstanding Contributions to Disaster Recovery

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Washington, DC 20416

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# Appendix T

## The Small Business Advocate newsletter, September 2005, 25th Anniversary of the Regulatory Flexibility Act



# The Small Business Advocate

*Advocacy: the voice of small business in government*

September 2005

Vol. 24, No. 9

### Twenty-five Years of the Regulatory Flexibility Act

by Kathryn Tobias, Senior Editor

As soon as President Gerald Ford signed Public Law 94-305 creating the Office of Advocacy in June 1976, the important work of paying attention to regulations' effects on small firms came under the wing of the newly created independent office. Part of Advocacy's mandate was explicitly to "measure the direct costs and other effects of government regulation on small businesses; and make legislative and non-legislative proposals for eliminating excessive or unnecessary regulations of small businesses."

In fall of 1979, President Jimmy Carter added the Small Business Administration to his Regulatory Council and issued a memorandum to the heads of executive departments and agencies. He said, "I want you to make sure that federal regulations will not place unnecessary burdens on small businesses and organizations," and he directed agencies to apply regulations "in a flexible manner, taking into account the size and nature of the regulated businesses." Agencies were to report on their efforts to Advocacy.

Meanwhile, the House and Senate Small Business and Judiciary Committees had been holding hearings on the effects of regulation. Small business people cited evidence that uniform application of regulatory requirements made it difficult for smaller businesses to compete.

By 1980, when delegates assembled for the first of three

White House Conferences on Small Business, the conference report noted that "during the past decade, the growth of government regulation has been explosive, particularly in such areas as affirmative-action hiring, energy conservation, and protection for consumers, workers, and the environment. Small business people recognize that some government regulation is essential for maintaining an orderly society. But there are now 90 agencies issuing thousands of new rules each year."

Moreover, the report said the new Office of Advocacy had estimated that small firms spent \$12.7 billion annually on government paperwork. Among the conference recommendations, the fifth highest vote-getter was a recommendation calling for "sunset review" and economic impact analysis of regulations, as well as a regulatory review board with small business representation. The conference delegates recommended putting the onus of measuring regulatory costs on the regulatory agencies—to "require all federal agencies to analyze the cost and relevance of regulations to small businesses."

**1980: The Regulatory Flexibility Act.** The White House Conference recommendations helped form the impetus for the passage, in 1980, of the Regulatory Flexibility Act (RFA). The intent of the act was clearly stated:

*Continued on page 4*

### In This Issue

#### Message from the Chief Counsel

Listening to Small Business . . . 3

#### The RFA at 25

History . . . . . 1  
Some Reflections . . . . . 2  
Timeline . . . . . 4

#### Success Stories

SBREFA Review Panels at EPA and OSHA . . . . . 7  
Sharks! An RFA Success Story 8

#### Economics of the RFA

Cost Savings and Other Indicators . . . . . 10  
The Importance of Data to Good Policy . . . . . 11

#### State Model Initiative

Regulatory Flexibility Arrives in the State House . . . . . 9

#### E.O. 13272

Teaching Rule Writers about Small Business Impacts . . . . . 12

#### Future Directions

Proposed Legislative Improvements . . . . . 14  
Technology Transforms Small Business Role . . . . . 15

**Special Edition: 25th Anniversary  
of the Regulatory Flexibility Act**

## The RFA at 25: Some Reflections

by James Morrison, President, Small Business Exporters Association of the United States

As a congressional staffer in the 1970s, I had the privilege to be “present at the creation” of the RFA. From the vantage point of 2005, it is hard to visualize the regulatory atmosphere of the mid-1970s. New agencies had been given sweeping grants of authority to address national concerns like the environment, worker safety, and pension security. Older agencies had been handed new mandates. Coordination and guidance on how to regulate were lacking.

It was a regulatory Wild West. Congress was recoiling from thunderous protests by regulated businesses, communities, and nonprofit organizations.

The RFA began as an informal conversation in April 1977 about a major part of this problem—small business regulatory burdens. It ended with a signing ceremony in the East Room of the White House three and a half years later.

The bill was introduced August 1, 1977. The debate was about what the law should require regulatory agencies to do. Change was needed in the regulatory culture. Agencies needed to stop viewing their rulemaking in terms of top-down, one-size-fits-all regulations. So the bill emphasized gathering input from the affected parties, both directly and through the Office of Advocacy, prior to rulemakings. Agencies should strive to “fit” their rules to the “scale” of the entities they were regulating, the law noted.

The bill’s procedures paralleled the then-new environmental law procedures contained in the National Environmental Policy Act (NEPA). Cosponsors Senator Gaylord Nelson of Wisconsin and Senator John Culver of Iowa advocated the consensus view—that NEPA offered a proven approach to sensitizing agencies to a set of external considerations, that it

was an understood quantity by the courts and the administrative law bar, and that it offered a way to successfully integrate legal innovations into the Administrative Procedure Act.

A major reservation was that if the law included a NEPA-type provision that permitted litigants to shut down a rulemaking process in mid-stride, the RFA would be abused. The RFA was always intended to re-orient rulemaking processes, not to pre-ordain particular substantive outcomes.

The effort to obtain the desired cultural changes at the agencies while restricting any potential misuse of the RFA led to some convoluted language on judicial review. The courts later interpreted the language very narrowly, virtually shutting off all judicial review of agency actions under the RFA. Within a few years of these judicial decisions, agency compliance with the RFA declined. Not until the RFA was amended by SBREFA in 1996 was this problem overcome.

The politics of passing the RFA was interesting. Senators and representatives from both parties and all political ideologies—as well as those from urban and rural areas and all geographic regions of the nation—put their shoulders into the bill’s passage. The very hard political work done by them and their staffs, as well as the small business community, led to this rather amazing fact: in three years of congressional actions on the RFA spanning two Congresses, there was never a single negative vote cast against it. House champions included Representatives Andy Ireland of Florida, Bob Kastenmeier of Wisconsin, and Joe McDade of Pennsylvania.

The executive branch was more skeptical. When Congress first solicited reactions to the bill from

federal agencies, the most common response was that while the law might be appropriate for other agencies, the respondent’s own agency should be exempted from it. Later, when passage seemed likely, agency general counsels jointly sought to have all agencies exempted.

An important ally of the bill within the executive branch was the Office of Advocacy and its chief counsel, Milton D. Stewart. Advocacy had the avid backing of the nation’s small business community, which made passage of the RFA a top recommendation of the 1980 White House Conference on Small Business.

By the middle of 1980, President Carter personally intervened, sending a top aide, Stuart Eizenstat, to Capitol Hill to clear the way for the RFA, which passed Congress soon thereafter and was signed into law.

### The Small Business Advocate

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*The Small Business Advocate* (ISSN 1045-7658) is published monthly by the U.S. Small Business Administration’s Office of Advocacy and is distributed to SBA field staff and members of the U.S. Congress. *The Small Business Advocate* is available without charge from the Office of Advocacy, U.S. Small Business Administration, MC 3114, Washington, DC 20416; [advocacy@sba.gov](mailto:advocacy@sba.gov); (202) 205-6533. For delivery changes, send your current address label with your request to the above address. *The Small Business Advocate* is online at [www.sba.gov/advo/newsletter.html](http://www.sba.gov/advo/newsletter.html).

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## Message from the Chief Counsel

### Listening To Small Business

by Thomas M. Sullivan, Chief Counsel for Advocacy

Too often government agencies appear to be a “black box.” What they do and how they do it is obscure at best. Even when agencies try to be open, they sound as if they are speaking a foreign language. That can even be true here at the Office of Advocacy.

I have just gone back and looked at some of our past newsletters. What do I see? “RFA,” “SBREFA,” “IRFA,” and “FRFA.” All of these acronyms actually mean something, and they are integral to Advocacy’s work. Yet they tend to hide the reality of what Advocacy is all about—listening to the voice of small business and making sure its voice is heard inside regulatory agencies, Congress, and the White House.

The Regulatory Flexibility Act (RFA), its amendments, and requirements are, in the end, just tools that allow us to bring that voice into the regulatory process.

But how do we know what that voice is saying? This challenge is met daily in our office.

Our 10 regional advocates are Advocacy’s “eyes and ears” across the country. It is their job to meet regularly with state and local trade organizations and small business owners. The insights they gather form the basis of our understanding of the small business agenda.

We also work quite closely with small business membership and trade organizations. I meet regularly with representatives from the largest organizations in “kitchen cabinet” style meetings where current issues are discussed and new opportunities explored.

Our regulatory attorneys also hold specific issue roundtables to gather information. In these open discussions, the practical details of legislative and regulatory proposals

are dissected and their impact on small business is closely examined. Some, like our environmental and safety roundtables, have regular meetings, while others are issue-driven. Whether ongoing or ad hoc, these roundtables with small

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**“By listening to small businesses, we are able to bring their agenda to the attention of policymakers in regulatory agencies, Congress, and the White House.”**

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business owners and representatives give us clear insights into the effects of regulatory and legislative proposals.

Another way we listen to the voice of small business is through my travels across the country. I am honored to be able to address meetings and conventions in all regions of the country and speak about this Administration’s commitment to tearing down barriers. At each stop

I make sure that I schedule time to speak with small business owners and visit local small businesses. These visits teach me how government policies actually affect real business owners and employees.

Finally, small business owners can comment on the impact of proposed regulations through our Regulatory Alerts webpage, located at [www.sba.gov/advo/laws/law\\_regalerts.html](http://www.sba.gov/advo/laws/law_regalerts.html). It gives anyone the ability to let federal agencies know the real world consequences of their actions.

Through all of these methods we gather the comments and concerns of small business owners. By listening to small businesses, we are able to bring their agenda to the attention of policymakers in regulatory agencies, Congress, and the White House. We do that through the RFA, SBREFA, Executive Order 13272, and other means. Although those tools may be outside of Main Street’s everyday vocabulary, they all aim toward one thing—making sure that America’s entrepreneurs can flourish in an environment that promotes and protects them.



Used with permission.

## 25 Years of RFA, from page 1

“It is the purpose of this act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives... of applicable statutes, to fit regulatory and informational requirements to the scale of businesses... To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.”

The law directed agencies to analyze the impact of their regulatory actions and to review existing rules, planned regulatory actions, and actual proposed rules for their impacts on small entities. Depending on the proposed rule’s expected impact, agencies were required by the RFA to prepare an initial regulatory flexibility analysis, a certification, and/or a final regulatory flexibility analysis. Rules to be included in the agencies’ “regulatory agendas” were those likely to have a “significant economic impact on a substantial number of small entities.”



President Jimmy Carter signed the Regulatory Flexibility Act on September 19, 1980.  
*Courtesy Jimmy Carter Library.*

### Implementing the RFA.

Advocacy was charged to monitor agency compliance with the new law. Over the next decade and a half, the office carried out its mandate, reporting annually on agency compliance to the president and the Congress. But it was soon clear that the law wasn’t strong enough. A briefing paper prepared for the

1986 White House Conference on Small Business noted: “The effectiveness of the RFA largely depends on small business’ awareness of proposed regulations and [their] ability to effectively voice [their] concerns to regulatory agencies. In addition, the courts’ ability to review agency compliance with the law is limited.”

## The RFA Timeline

### June 1976

Congress enacts Public Law 94-305 creating an Office of Advocacy within the Small Business Administration charged, among other things, to “measure the direct costs and other effects of federal regulation on small businesses and make legislative and non-legislative proposals for eliminating excessive or unnecessary regulations of small businesses.”

### April 1980

The first White House Conference on Small Business calls for “sunset review” and economic impact analysis of regulations, and a regulatory review board that includes small business representation.

### September 1980

Congress passes the Regulatory Flexibility Act (RFA), requiring agencies to review the impact of proposed rules and include in published regulatory agendas those likely to have a “significant economic impact on a substantial number of small entities.”

### October 1981

Advocacy reports on the first year of RFA in testimony before the Subcommittee on Export Opportunities and Special Small Business Problems of the House Committee on Small Business.

### February 1993

Advocacy publishes the first annual report on agency RFA compliance.

### November 1986

Delegates to the second White House Conference on Small Business recommend strengthening the RFA by, among other things, subjecting agency compliance to judicial review.

### September 1993

President issues Executive Order 12866, “Regulatory Planning and Review,” requiring each agency to “tailor its regulations to impose the least burden on society, including businesses of different sizes.”

### June 1995

The third White House Conference asks for specific provisions to strengthen the RFA—including the IRS under the law, granting judicial review of agency compliance,

The delegates recommended that the RFA be strengthened by requiring agencies to comply and by providing that agency action or inaction be subject to judicial review. President Ronald Reagan's 1987 report on small business noted: "Regulations and excessive paperwork place small businesses at a disadvantage in an increasingly competitive world marketplace... This Administration supports continued deregulation and other reforms to eliminate regulatory obstacles to open competition." But it would take an act of Congress to make judicial review law—and reaching that consensus needed more time.

Regulations' effects on the economic environment for competition also concerned President George H.W. Bush, whose 1992 message in the annual small business report noted: "My Administration this year instituted a moratorium on new federal regulations to give federal agencies a chance to review and revise their rules. And we are looking at ways to improve our regulatory process over the long term so that regulations will accom-

plish their original purpose without hindering economic growth." The scene was set for the regulatory logjam to move.

In September 1993, President Bill Clinton issued Executive Order 12866, "Regulatory Planning and Review," designed, among other things, to ease the regulatory burden on small firms. The order required federal agencies to analyze their major regulatory undertakings and to ensure that these regulations achieved the desired results with minimal societal burden.

An April 1994 report by the General Accounting Office reviewed Advocacy's annual reports on agency compliance with the RFA and concluded: "The SBA annual reports indicated agencies' compliance with the RFA has varied widely from one agency to another. ... the RFA does not authorize SBA or any other agency to compel rulemaking agencies to comply with the act's provisions."

**The 1995 White House Conference and SBREFA.** In 1995, a third White House Conference on Small Business

examined the RFA's weaknesses. The Administration's National Performance Review had recommended that agency compliance with the RFA be subject to judicial review. Still it had not happened.

Once again, the White House Conference forcefully addressed the problem. One of its recommendations fine-tuned the regulatory policy recommendations of earlier conferences, asking for specific provisions that would include small firms in the rulemaking process.

In October, Advocacy issued a report, based on research by Thomas Hopkins, estimating the total costs of process, environmental, and other social and economic regulations at between \$420 billion and \$670 billion in 1995. The report estimated that the average cost of regulation was \$3,000 per employee for large firms (more than 500 employees) and \$5,500 per employee for small firms (fewer than 20 employees).

In March 1996, President Clinton acted on the 1995 White House Conference recommendation

*Continued on page 6*

and including small businesses in the rulemaking process.

**March 1996**

President signs the Small Business Regulatory Enforcement Fairness Act, giving courts jurisdiction to review agency compliance with the RFA, requiring the Environmental Protection Agency and Occupational Safety and Health Administration to convene small business advocacy review panels, and affirming the chief counsel's authority to file *amicus curiae* briefs in appeals brought by small entities from final agency actions.

**March 2002**

President announces the Small Business Agenda, which promises to "tear down regulatory barriers to job creation for small businesses

and give small business owners a voice in the complex and confusing federal regulatory process."

**August 2002**

President issues Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," which requires federal agencies to establish written procedures to measure the impact of their regulatory proposals on small businesses, that they consider Advocacy comments on proposed rules and notify Advocacy when a draft rule may have a significant small business impact, and that Advocacy train agencies about the law.

**December 2002**

Advocacy presents draft state regulatory flexibility model legislation to the American Legislative

Exchange Council for consideration by state legislators, and states begin adopting legislation modeled on the federal law.

**September 2003**

Advocacy presents its first report on agency compliance with E.O. 13272, describing agency compliance and noting the start of Advocacy's agency training.

**2005**

In the 25th anniversary year of the RFA, Advocacy reports agency cost savings of more than \$17 billion in foregone regulatory costs to small business for FY 2004. Legislation is considered in Congress to strengthen the RFA.

## 25 Years of RFA, from page 5

by signing Public Law 104-121, the Small Business Regulatory Enforcement Fairness Act (SBREFA). The new law gave the courts jurisdiction to review agency compliance with the RFA. Second, it mandated that the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) convene small business advocacy review panels to consult with small entities on regulations expected to have a significant impact on them, before the regulations were published for public comment. Third, it broadened the authority of the chief counsel for advocacy to file *amicus curiae* (friend of the court) briefs in appeals brought by small entities from agency final actions.

**Executive Order 13272.** In March 2002, President George W. Bush announced his Small Business Agenda. The President gave a high priority to regulatory concerns, including the goal, “[to] tear down the regulatory barriers to job creation for small businesses and give small business owners a voice in the complex and confusing federal regulatory process.”

One key goal was to strengthen the Office of Advocacy by creating an executive order directing agencies to work closely with Advocacy in considering the impact of their regulations on small business.

In August 2002, President Bush issued Executive Order 13272. It requires federal agencies to establish written procedures and policies on how they would measure the impact of their regulatory proposals on small entities and to vet those policies with Advocacy; to notify Advocacy before publishing draft rules expected to have a significant small business impact; and to consider Advocacy’s written comments on proposed rules and publish a response with the final rule. The E.O. requires Advocacy to provide

notification as well as training to all agencies on how to comply with the RFA. These steps set the stage for agencies to work closely with Advocacy in considering their rules’ impact on small entities.

**Implementing E.O. 13272.** As part of its compliance with E.O. 13272, Advocacy reported to the Office of Management and Budget in September 2003. The report noted that Advocacy had spread the word about E.O. 13272 and instituted an email address (*notify.advocacy@sba.gov*) to make it easier for agencies to comply with notification requirements. Advocacy developed an RFA compliance guide, posted it on its website, prepared training materials, and began training federal agency staff.

Nearly all of the cabinet agencies submitted written plans for RFA compliance to Advocacy and made their RFA procedures publicly available. Independent regulatory agencies were initially less responsive; some argued that they were exempt from executive orders. Nevertheless, Advocacy continues to work to bring all agencies into compliance with the E.O. Advocacy has also developed a Regulatory Alerts webpage at [www.sba.gov/advo/laws/law\\_regalerts.html](http://www.sba.gov/advo/laws/law_regalerts.html) to call attention to important pending regulations.

The final chapter on how much small businesses are benefiting from the RFA as amended by SBREFA and supplemented by E.O. 13272 has yet to be written. Legislation has been introduced to further enhance the RFA. Advocacy believes that as agencies adjust their regulatory development processes to accommodate the RFA and E.O.’s requirements, the benefits will accrue to small firms. And agencies are making strides in that direction. The annual amount of additional regulatory burdens that are not loaded onto the backs of small businesses are counted cumu-

latively in the billions of dollars—over \$17 billion in first-year cost savings in fiscal year 2004 alone.

## RFA Recollections

“I came to Congress from the private sector and had had no prior political experience, so working on the RFA was a learning experience. As a community banker, I had seen how well-meaning regulations developed in the ivory tower had put small businesses at a disadvantage, so I got on the Small Business Committee to do something about it. The RFA passed on the last night of that Congress, near midnight. It came up for a vote and I made my speech and another congressman who opposed the bill jumped to his feet—but the chair banged the gavel to cut off discussion.

“After it passed on the House side, I carried it over to the Senate where, after about 45 minutes, I looked up and said, ‘What happened to my bill?’ and someone said, ‘Sir, they passed it a half hour ago!’ Well, what passed was a good law, but an imperfect one, without the judicial review provision that was added in SBREFA, for instance. But dedicated people nurtured the RFA and later helped fill in the gaps—one was Steve Lynch, a staff person who had a great impact and, sadly, died at age 51. The RFA is a great case study of what can be done legislatively if you don’t care who gets the credit and don’t try to do it all at once.”

*Congressman Andy Ireland  
U.S. Representative, 1977-93*

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## Rulemaking Success Stories

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### SBREFA Review Panels Improve Rulemaking

by Claudia Rayford Rodgers, Senior Counsel; Keith Holman and Kevin Bromberg, Assistant Chief Counsels

In 1996, Congress fortified the Regulatory Flexibility Act (RFA) with the Small Business Regulatory Fairness Act (SBREFA). Among other things, SBREFA directed the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) to convene small business review panels for regulations expected to have a significant small business impact. These panels occur before the rule is published for public comment. Significant rulemaking improvements have resulted from the SBREFA panel process.

SBREFA review panels consist of representatives from the agency, Advocacy, and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The panel reaches out to small entities likely to be affected by the proposal, seeks their input, and prepares a report with recommendations for reducing the potential impact on small businesses. The agency may modify its proposal in response to the panel report.

**OSHA Panels.** OSHA has convened seven panels since 1996. Two of the most significant were on the Safety and Health Program rule and the Ergonomics Program Standard. They demonstrate how small business input early in the regulatory process can help agencies see new ways to solve a problem through regulation—by looking at equally effective alternatives that minimize the harm to small business.

**The Safety and Health Program Rule.** In August 1998, OSHA notified Advocacy of its intent to propose a safety and health program rule. The proposal required employers to establish a workplace safety and health program to ensure compliance with

OSHA standards and the “general duty” clause of the Occupational Safety and Health Act.

Because the proposal covered nearly all employers, a SBREFA panel was convened which included 19 small entity representative advisors. It found that OSHA had underestimated the \$3 billion cost of the proposed rule.

The panel report sent the message loud and clear to OSHA, OMB, and other federal agencies that realistic costs and accurate data must be used when promulgating regulations. As a result, this overly burdensome rule never moved forward, and it was eventually removed from OSHA’s regulatory agenda, saving small businesses billions in regulatory compliance costs.

**The Ergonomics Standard.** In March 1999, OSHA released a draft ergonomics standard and announced its intention to convene a SBREFA panel to discuss the potential impact on small businesses. The draft proposal covered nearly every industry and business in the United States. Twenty small entity representatives (including 13 recommended by Advocacy) advised the panel.

During the panel’s deliberations, the small entities expressed a number of concerns, especially regarding OSHA’s estimates of the time and money required to comply. They provided OSHA with types of costs that they felt were omitted from the calculations and suggested that OSHA provide the public with its assumptions when it proposed the standard in the *Federal Register*. The panel completed the report in April 1999.

Although proposed in November 1999, Congress, under the Congressional Review Act, eventu-

ally repealed the ergonomics rule in March 2001. OSHA’s subsequent decision to issue guidelines instead of creating a new ergonomics rule showed that the SBREFA panel process works. Because of this process and Advocacy’s input throughout the entire progress of the ergonomics issue, the cost to small business has been drastically reduced. Advocacy estimated in 2001 that rescinding the ergonomics standard saved small businesses \$3 billion. Other observers have estimated that the actual cost would have been 15 times higher.

**EPA Panels.** EPA has convened 29 SBREFA panels since 1996. These panels have improved the cost-effectiveness of planned environmental rules and limited the adverse impact on small entities, including small communities. Two recent successes are the panels on Nonroad Diesel Engines and Construction and Development Runoff.

**Nonroad Diesel Engines and Fuel Rule.** In summer 2002, EPA notified Advocacy that it would propose further limits on emissions of nitrogen oxides and particulate matter from diesel-powered nonroad engines. These engines are used extensively in construction, agriculture, and other off-road applications. EPA also planned to dramatically reduce the allowable level of sulfur in diesel fuel used by nonroad engines. The rule was anticipated to have significant economic impacts on small equipment manufacturers who use diesel engines, and on small oil refiners and oil distributors.

EPA convened a SBREFA panel with 20 small entity representative advisors who raised concerns about the technical and cost feasibility of

*Continued on page 8*

### **SBREFA Works**, from page 7

the proposed rule. The panel concluded that equipment manufacturers should be allowed to purchase current engines for several additional years, while redesigning their products to accommodate the newer engines. The panel also advised that expensive aftertreatment devices should not be required on engines with less than 25 horsepower.

The SBREFA panel report recommendations, which were adopted by EPA in the final rule, allowed many small equipment manufacturers to stay in business and gave them valuable time to redesign their products to comply with the new requirements.

**Construction and Development Site Runoff.** In June 2002, EPA proposed a rule to reduce storm water runoff from construction and development sites of one acre or more. The original proposal carried a price tag of almost \$4 billion per year, and its requirements overlapped with existing state and local storm water programs. Fortunately, small business had a voice in the rulemaking process through the SBREFA panel process. Small businesses provided information about the rule's potential impact and offered other options. The panel concluded that the rule's requirements would add substantial complexity and cost to current storm water requirements without a corresponding benefit to water quality. The panel recommended that EPA not impose the requirements, and focus instead on improving public outreach and education about existing storm water rules.

In March 2004, EPA announced that it would not impose new requirements for construction sites. EPA found that a flexible scheme would permit state and local governments to improve water quality without an additional layer of federal requirements and without unduly harming small construction

firms. In addition to the cost savings for small businesses, rescinding the original proposal saved new homebuyers about \$3,500 in additional costs per house.

**SBREFA Panels Work.** These panels illustrate that the SBREFA panel process indeed works to reduce the burdens on small entities. Because agencies are required to convene these panels, small businesses are able to shed light on agencies' underlying assumptions, rationale, and data behind their draft rulemaking. In the absence of SBREFA panels, these rules would have been promulgated in forms costing small businesses millions

in unnecessary regulatory costs. The panel reports allowed EPA and OSHA to examine alternatives and weigh options that accomplished their regulatory objectives while at the same time protecting small businesses, their owners, and employees.

### **SHARKS!!! An RFA Success Story**

On December 20, 1996, the National Marine Fisheries Service (NMFS) of the Department of Commerce published a proposal to reduce the existing shark fishing quota by 50 percent, certifying that the reduction would have no significant impact on a substantial number of small entities. In January 1997, Advocacy questioned NMFS's decision to certify rather than perform an initial regulatory flexibility analysis. In its March 1997 final rule, NMFS upheld its original decision, but prepared a final regulatory flexibility analysis rather than certifying the rule.

In May 1997, the Southern Offshore Fishing Association brought suit against the Secretary of Commerce, challenging the quotas pursuant to judicial review provisions of laws including the RFA. Advocacy filed to intervene as *amicus curiae*, but withdrew after the Department of Justice stipulated that the standard of review for RFA cases should be "arbitrary and capricious," a higher standard than originally requested.

In February 1998, the United States District Court for the Middle District of Florida ruled that NMFS's certification of "no significant economic impact" and the FRFA failed to meet the requirements of the Administrative Procedures Act and the RFA. The court noted Advocacy's role as "watchdog of the RFA," remanded the rule, and instructed the agency to analyze the economic effects and potential alternatives.

After reviewing NMFS's subsequent analysis, Advocacy again concluded it did not comply with the RFA. Further steps culminated in the court issuing an injunction to NMFS from enforcing new regulations until the agency could establish bona fide compliance with the court's earlier orders.

Later, a settlement between the plaintiff and NMFS involved a delay in any decisions on new shark fishing quotas pending a review of current and future shark stocks by a group of independent scientists. In November 2001 that study was released, indicating that NMFS had significantly underestimated the number of sharks in the Atlantic Ocean.

—Jennifer Smith, Assistant Chief Counsel

# The State RFA Model Initiative

## Regulatory Flexibility Arrives in the State House

by Sarah Wickham, Regulatory and Legislative Counsel for Regional Affairs

While there are federal measures in place to reduce regulatory burdens on small businesses, the burden does not stop at the federal level. More than 92 percent of businesses in every state are small businesses and they bear a disproportionate share of regulatory costs and burdens. However, sometimes because of their size, the aggregate importance of small businesses to the economy can be overlooked. Because of this, it is very easy to fail to notice the negative impact of regulatory activities on them. Recognizing that state and local governments can also be a source of onerous regulations on small business, in 2002 Advocacy drafted model regulatory flexibility legislation for the states based on the federal Regulatory Flexibility Act.

Advocacy's model legislation is designed to foster a climate for entrepreneurial success in the states so that small businesses will continue to create jobs, produce innovative new products and services, and bring more Americans into the economic mainstream. Excessive regulation can be reduced and the economy improved without sacrificing important regulatory goals

such as environmental protection, travel safety, safe workplaces, and financial security.

Many states have some form of regulatory flexibility laws on the books. However, many of these laws do not contain all of the five critical elements addressed in Advocacy's model legislation. Recognizing that some laws are missing key components that give regulatory flexibility its effectiveness, legislators continue to introduce legislation to strengthen their current system.

Since 2002, 15 states have signed regulatory flexibility legislation into law, 33 state legislatures have considered legislation, and four governors have signed executive orders implementing regulatory flexibility.

In 2005, 18 states introduced regulatory flexibility legislation (Alabama, Alaska, Hawaii, Indiana, Iowa, Mississippi, Missouri, Montana, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Virginia, and Washington). Alaska Governor Frank Murkowski, Indiana Governor Mitch Daniels, Missouri Governor Matt Blunt,

### Five Points of Law

Effective state regulatory flexibility laws have five elements:

- A small business definition that is consistent with state practices and permitting authorities;
- A requirement that state agencies perform an economic impact analysis on the effect of a proposed rule on small business before they regulate;
- A requirement that state agencies consider less burdensome alternatives for small businesses that still meet the agency's regulatory goals;
- A provision that forces state governments to review all of its regulations periodically; and
- Judicial review to give the law "teeth."

New Mexico Governor Bill Richardson, Oregon Governor Ted Kulongoski, and Virginia Governor Mark Warner signed regulatory flexibility legislation into law. And Arkansas Governor Mike Huckabee implemented regulatory flexibility through an executive order.

A vibrant and growing small business sector is critical to creating jobs in a dynamic economy. Small businesses are 99.7 percent of all businesses, employ half of the work force, produce 52 percent of the private sector output, and provide significant ownership opportunities for women, minorities, and immigrants. Advocacy welcomes the opportunity to work with state leaders on their regulatory issues.

The text of Advocacy's model legislation and the most recent map of state legislative activity can be found at [www.sba.gov/advo/laws/law\\_modeleg.html](http://www.sba.gov/advo/laws/law_modeleg.html).

### State Progress Since 2002

**Regulatory flexibility laws enacted (15):** Alaska; Colorado; Connecticut; Indiana; Kentucky; Missouri (two laws); North Dakota; New Mexico; Oregon; Rhode Island; South Carolina; South Dakota; Virginia; and Wisconsin.

**Regulatory flexibility legislation introduced (33):** Alabama; Alaska; California; Colorado; Connecticut; Georgia; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Mississippi; Missouri; Montana; Nebraska; New Jersey; New Mexico; North Carolina; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Utah; Virginia; Washington and Wisconsin.

**Executive orders signed (4):** Arkansas; Massachusetts; Missouri; and West Virginia.

# The Economics of the RFA

## Office of Advocacy Indicators over the Years

by Chad Moutray, Chief Economist

When the Regulatory Flexibility Act (RFA) was passed in 1980, the cost of regulation was very much on the mind of economists and policymakers. Cost studies from this time period show a general consensus that small firms were being saddled with a disproportionate share of the federal regulatory burden. (Some of these studies were commissioned by the newly created Office of Advocacy.) Then as now, an important tool for redressing the bias against small firms is through implementation of the RFA.

As the Office of Advocacy works with federal agencies during the rulemaking process, it seeks to measure the savings of its actions in terms of the compliance costs that small firms would have had to bear if changes to regulations had not been made. The first year in which cost savings were documented was 1998. Changes to rules in that year were estimated to have saved small businesses \$3.2 billion. In 2004, Advocacy actions saved small businesses over \$17 billion in cost savings. Moving forward, Advocacy will continue to measure its accomplishments through cost savings. Yet, ultimately, if

federal agencies institutionalize consideration of small entities in the rulemaking process, the goals of the regulatory flexibility process and Executive Order 13272 will be realized to a large degree, and the amount of foregone regulatory costs would actually diminish.

Economics has provided a framework for regulatory actions and for other public policy initiatives. What has Advocacy's impact been on influencing public policy and furthering research? One does not have to be an expert in economics to recognize that our research and the research of others over the past couple decades has advanced the recognition that small firms are crucial to the U.S. economy. This has not always been the case.

The economy of 1980 and today differ greatly. Real GDP and the number of nonfarm business tax returns have more than doubled since 1980, the unemployment rate and interest rate are much improved, and prices are higher (although inflation is significantly lower). One constant, though, is the lack of timely, relevant data on small businesses. The Office of Advocacy struggled throughout

much of its early existence to accurately measure the number of small firms. The good news is that the Census Bureau now has credible firm size data beginning in 1988, in part because of funding from the Office of Advocacy.

Despite the data obstacles, Advocacy research shows that more women and minorities have become business owners since 1980. Small businesses are now recognized to be job generators and the source of growth and innovation. Not only are more than 99 percent of all employers small businesses, but small firms are responsible for 60 to 80 percent of all new jobs, and they are more innovative than larger firms, producing 13.5 times as many patents per employee.

Research on small entities has gained more prominence, and entrepreneurs are widely acknowledged as engines of change in their regions and industries. The Office of Advocacy will continue to document the contributions and challenges of small business owners. Armed with these data, policymakers will be able to work to ease their tasks, both through better regulation and other endeavors.

### Then and Now: Small Business Economic Indicators Over 25 Years

	1980	1985	1990	1995	2000	Today
Real gross domestic product (\$trillion)	5.2	6.1	7.1	8.0	9.8	11.1
Unemployment rate (percent)	7.2	7.2	5.6	5.6	4.0	5.2
Consumer price index (1982=100)	82.4	107.6	130.7	152.4	172.2	193.4
Prime bank loan rate (percent)	15.3	9.9	10.0	8.8	9.2	5.8
Employer firms (million)	—	—	5.1	5.4	5.7	5.7 (e)
Nonemployer firms (million)	—	—	—	—	16.5	18.3 (e)
Self-employment, unincorporated (million)	8.6	9.3	10.1	10.5	10.2	10.6
Nonfarm business tax returns (million)	13.0	17.0	20.2	22.6	25.1	29.3

Note: All figures seasonally adjusted. Data for "today" are latest available; 2005 data are year-to-date; e = estimate

Source: Federal Reserve Board; U.S. Department of the Treasury, Internal Revenue Service; U.S. Department of Commerce, Bureau of the Census, Bureau of Economic Analysis; U.S. Department of Labor, Bureau of Labor Statistics

## The Importance of Data to Good Policy

by Joe Johnson, Regulatory Economist

Regulatory policy involves difficult choices about costs and benefits. Accurate data on costs and benefits are essential to a complete understanding of the tradeoffs involved. Even though the Regulatory Flexibility Act (RFA) first required agencies to separately consider small business impacts 25 years ago, dependable cost estimates have often been hard to come by.

While measuring the costs of new regulations is a prerequisite for improving regulatory policy, compliance with the sum of all past regulations also places a heavy burden on small businesses. Over the past 25 years, significant gains have been made in measuring the impact of regulatory compliance on small firms. During that time, the Office of Advocacy has produced a series of research reports on this topic, and the findings have been consistent: compliance costs small firms more than large firms. The most significant series of analyses began in the 1990s when Thomas Hopkins first estimated the costs of regulatory compliance for small firms. This research was refined by

Mark Crain and Thomas Hopkins in 2001, and most recently by Crain in the 2005 study, *The Impact of Regulatory Costs on Small Firms*. Crain's latest estimate shows that federal regulations cost small firms nearly 1.5 times more per employee to comply with than large firms.

Despite much progress since passage of the RFA 25 years ago, significant work remains. These hurdles include determining the total burden of rules on firms in specific industries or imposed by specific federal agencies. Estimates of these costs would help show policymakers the marginal cost of adding new rules or modifying existing ones; they would also help show the effects of repealing rules that are no longer relevant yet still cost small business every year. Such analyses will become crucial as the mountain of federal regulations continues to rise. The future of small business depends upon federal rulemaking that uses the best data available to balance the costs and benefits of regulation, while considering how additional rules will affect small business.

### Impact of Regulatory Costs on Small Firms

Mark Crain's 2005 report, *The Impact of Regulatory Costs on Small Firms*, updates the Advocacy sponsored report issued in 2001. These studies estimate the total burden imposed by federal regulations. The 2005 report distinguishes itself from previous research by adopting a more rigorous methodology for its estimate on economic regulation, and it brings the information in the 2001 study up to date.

The research finds that the total costs of federal regulations have increased from the level established in the 2001 study. Specifically, the cost of federal regulations totals \$1.1 trillion, while the updated cost per employee is now \$7,647 for firms with fewer than 20 employees. The 2001 study showed small business with 60 percent greater regulatory burden than their larger business counterparts. The 2005 report shows that disproportionate burden shrinking to 45 percent.

While the true costs of federal regulation have yet to be calculated, Advocacy research has repeatedly and consistently attempted to uncover an estimate of the burden in general, and how it affects small businesses, in particular. —Radwan Saade, Regulatory Economist

## RFA Recollections

“The most memorable event with respect to the history of the RFA was the enactment of SBREFA. Obtaining Vice President Gore's support for judicial review was critical—and of course SBREFA would never have been enacted into law without Senator Bond's leadership.

“The RFA's biggest benefit to the small business environment is the panel process for EPA and OSHA regulations. The panels force the agencies to think through the problems in a rational way rather than using the RFA to find a rationale to support foregone conclusions. If the RFA is an analytical tool for helping the agencies comply with the reasoned decision-making requirements of the Administrative Procedure Act, then agencies must undertake an internal dialogue on the best approaches to resolving a regulatory problem. The panel process, by providing alternative thinking, moves that process along by having an outside party as a sort of referee.

“Probably the best use of the RFA ever by a federal agency was the Food and Drug Administration's final regulatory flexibility analysis for implementing the Nutrition Labeling Education Act (NLEA). The agency noted the impact on small business and would have adopted less burdensome alternatives but could not because of the strictures in the statute. FDA's analysis helped lead to the enactment of 1993 amendments to the NLEA that provided the agency with greater flexibility in providing small business alternatives.”

Barry Pineles

Regulatory Counsel, House Small Business Committee

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## Implementing Executive Order 13272

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### Federal Rule Writers Learn the Ps and Qs of Small Business Impacts

by Claudia Rodgers, Senior Counsel

One key aspect of Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” is to educate federal rulemakers in the specifics of small business impacts—how to comply with the Regulatory Flexibility Act (RFA). Since President Bush signed E.O. 13272 in August 2002, staff at over 40 agencies have been trained.

Agency staff—attorneys, economists, policymakers, and other

employees involved in the regulation writing process—come to RFA training with varying levels of familiarity with the RFA, even though it has been in existence for 25 years. Some are well versed in the law’s requirements, while others are completely unaware of what it requires an agency to do when promulgating a regulation.

The three-and-a-half hour session consists of discussion, group

assignments (where participants review fictitious regulations for small business impact), and a question and answer session. Agency employees receive a hands-on approach on how to comply with the RFA and are able to see how the law’s many requirements work in a real-life regulatory setting. By the end of the course there are always many revelations and

*Continued on page 13*

### Federal Agencies Participating in RFA Training Since December 2002

*Regulatory staff from the following agencies have participated in Advocacy’s RFA training, as directed by E.O. 13272.*

Department of Agriculture

Animal and Plant Health Inspection Service

Department of Commerce

National Oceanic and Atmospheric Administration

Manufacturing and Services

Patent and Trademark Office

Department of Education

Department of Energy

Department of Health and Human Services

Centers for Medicare and Medicaid Services

Food and Drug Administration

Department of Homeland Security

Bureau of Citizenship and Immigration Services

Bureau of Customs and Border Protection

Transportation Security Administration

United States Coast Guard

Department of Housing and Urban Development

Community Planning and Development

Fair Housing and Equal Opportunity

Manufactured Housing

Public and Indian Housing

Department of the Interior

Bureau of Indian Affairs

Bureau of Land Management

Fish and Wildlife Service

Minerals Management Service

National Park Service

Office of Surface Mining, Reclamation and Enforcement

Department of Justice

Bureau of Alcohol, Tobacco, and Firearms

Department of Labor

Employee Benefits Security Administration

Employment and Training Administration

Employment Standards Administration

Mine Safety and Health Administration

Occupational Safety and Health Administration

Department of Transportation

Federal Aviation Administration

Federal Highway Administration

Federal Motor Carrier Safety Administration

Federal Railroad Administration

National Highway Traffic Safety

Administration

Research and Special Programs Administration

Department of the Treasury

Financial Crime Enforcement Network

Financial Management Service

Internal Revenue Service

Office of the Comptroller of the Currency

Tax and Trade Bureau

Department of Veterans Affairs

Independent Federal Agencies

Access Board

Environmental Protection Agency

Federal Communications Commission

Federal Deposit Insurance Corporation

Federal Election Commission

General Services Administration / FAR Council

Securities and Exchange Commission

Small Business Administration

## RFA Training, from page 12

excited faces as agency staff realize what they have to do to comply with the RFA and that Advocacy is here to help them along the way.

One of the most important themes throughout the course is that the agency should bring Advocacy into the rule development process early in the creation of a regulation. Advocacy encourages agencies to work closely with us to help them determine whether a potential rule will have a significant economic impact on a substantial number of small entities. Making this determination is frequently where agencies make their initial mistakes under the RFA. The training session helps to explain the steps rule writers need to take to make this decision accurately. By considering the impact of their regulations on small business from the beginning, agencies are more likely to promulgate a rule that is less burdensome on small businesses with more effective compliance. By “doing it right on the front end,” agencies avoid legal hassles

and delays for noncompliance with the RFA.

While changing the culture of agency rule writers is a tall order, Advocacy’s RFA training is already having quite an impact on the way agencies approach rule development. Those agencies that have been through training are now calling Advocacy earlier in the process, sending us draft documents, and recognizing that if they don’t have the information they need, Advocacy can help point them in the right direction for small business data.

Advocacy has trained over 40 federal agencies, independent commissions and departments. Training is expected to be enhanced in the near future with a web-based training module for employees who missed the initial sessions. With continued RFA training sessions for all 66 of the agencies and departments on Advocacy’s priority list, the number of regulations written with an eye toward their small entity impact will continue to grow.



Chief Counsel for Advocacy Thomas M. Sullivan kicks off an RFA training session at the Environmental Protection Agency in 2003.

## RFA Recollections

“I remember when the concept of ‘regulatory flexibility’ was just that—a concept. In 1978-1981, the Office of Advocacy tried with limited success to educate agencies to make regulations more flexible for small business in ways that would not compromise public policy objectives.

“Congress intervened in 1980 with the enactment of the Regulatory Flexibility Act and again in 1996 with two major amendments to the act—judicial review of agency RFA compliance and the creation of regulatory review panels for EPA and OSHA regulations. Much was expected of judicial review, but over the past 10 years, court after court refused to enforce the law. This may now change with the decision in *National Telecommunications Cooperative v. FCC*, in which I participated as counsel. The court ordered the FCC to comply with the law—a legal breakthrough for RFA. As for the EPA and OSHA regulatory review panels, they have been a total success in my view. I participated in 20 panels as chief counsel. In almost every instance, the panel process produced regulatory proposals that achieved their regulatory objective while significantly reducing the burden on small business—a win-win for all.

“RFA compliance diligently pursued by a strong Office of Advocacy, I am confident, will continue to enhance our country’s regulatory framework.”

*Jere W. Glover*  
Chief Counsel for Advocacy  
1994-2001

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## Future Directions for the RFA

### Legislative Solutions to RFA Weaknesses

by Shawne Carter McGibbon, Deputy Chief Counsel

Federal agency compliance with the Regulatory Flexibility Act (RFA) has meant billions of dollars saved for small businesses. It has been a gradual process as some agencies have moved from completely ignoring the requirements of the RFA to realizing that the law is a tool for crafting smarter and less costly rules. It has not been an easy journey and it is worthwhile to take a brief look back and then look forward to where future improvements are needed.

Prior to the Small Business Regulatory Enforcement Act (SBREFA) of 1996 there was no judicial review provision that enabled small businesses to hold agencies' feet to the fire when it came to compliance with the RFA. After SBREFA was enacted, agencies took their obligations a bit more seriously, although compliance was still far from perfect. Executive Order 13272, signed in 2002, encouraged agencies to share more information on draft rules with the Office of Advocacy and acknowledge Advocacy's comments when any final rule is published. This was an important step forward because it meant that small business concerns would be addressed in the early stages of rulemaking, rather than late in the process when most decisions have already been made. Even though SBREFA and the executive order have been successful in boosting agency attention to unique small business issues and reducing unnecessary burden, there is still room for improvement.

Some detractors of the SBREFA amendments believed that judicial review would open a floodgate of lawsuits. In fact, this has not happened—an average of 12.5 lawsuits

per year have been filed, despite 4,000 final rules being published annually. Some detractors of the executive order believed that sharing early drafts of rules with Advocacy would result in leaks of pre-decisional information to the public. Those detractors failed to realize that Advocacy is subject to the same interagency confidentiality rules as any other federal agency. Of course, one basic criticism over the years has been that the RFA is intended to roll back necessary health and safety regulations. To the contrary, the RFA has only caused agencies to assess the impact of their regulations on small entities and analyze less burdensome alternatives where feasible.

Recently, legislation has been introduced to plug some of the remaining loopholes in the RFA. The legislation represents an unprecedented opportunity to realize fully the intentions of the original drafters of the RFA. The Office of Advocacy crafted a legislative agenda for the 109th Congress. The concepts outlined in the agenda include clarifying and strengthening the regulatory look-back provisions in the RFA to ensure that agencies periodically review existing regulations for their impact on small entities. It also includes codifying Executive Order 13272, so that its requirements will be made permanent and so that it is certain to apply to independent agencies. And it includes expanding economic impact analyses to include an assessment of foreseeable indirect effects. Currently, agencies can avoid the analytical requirements of the RFA if a rule has only a direct impact on large businesses or if general standards are promulgated

for states to implement through state-level rulemakings. However, Advocacy's experience has shown that the trickle down (indirect) effects of these types of rules can greatly affect small entities.

Legislation has been introduced in both the House of Representatives and the Senate which would accomplish the goals set out in Advocacy's legislative agenda. As with earlier reform successes, nothing in the proposed legislation would undermine vital health and safety regulations. The reforms are targeted in a way that will only promote a better rulemaking process and smarter, less burdensome rules. Let's hope that RFA reform can become a reality during this Congress.

#### RFA Recollections

“When the RFA was under consideration, some believed the effort required to analyze small business impacts would unduly delay regulatory efforts—a myth that was soon dispelled. In hindsight, I wish we had closed the loophole that allowed many tax-related regulations to escape the scrutiny of the RFA process. As good as the RFA was, not having that arrow in the quiver made the development of reasonable tax regulations all the more difficult.

“I believe the mere existence of the RFA has produced better regulations, even when a specific small business solution was not obvious. Any time options are explored, whether implemented or not, small business wins.”

*John Satagaj  
President, Small Business  
Legislative Council*

# Technology Transforms Small Business Role in Rulemaking

by Bruce Lundegren, Assistant Chief Counsel

Think back 25 years to the time when the Regulatory Flexibility Act (RFA) was passed. The rulemaking process was much less friendly and less accessible to small business. Things are very different, and in many respects, much better today.

Congress passed the RFA in 1980 because “one-size-fits-all” regulations were imposing disproportionate burdens on small business. The RFA ensures that federal agencies consider the impact of regulations on small business. Congress supplemented the RFA in 1996 with the Small Business Regulatory Enforcement Fairness Act (SBREFA), which gave small business a stronger voice in the rulemaking process.

But another important factor has been at work in improving small business access to the rulemaking process: technology. Twenty-five years ago desktop computers were a futurist’s dream. To learn about new regulations, you had to go to the library to search the *Federal Register* for regulations that might affect your business. Regulatory dockets full of paper files were housed in remote government offices—often in distant cities. And does anyone recall having to make 5¢ copies of regulatory documents on those old photocopy machines? It was a costly, difficult, and time-consuming process.

Now, in 2005, the *Federal Register* is available online, and it’s searchable. You can have it delivered to your desktop every morning, and federal agencies have established email lists to deliver timely regulatory announcements. Agencies have also established electronic dockets for their new regulations, where every study, report, or public comment used in the decisionmaking process can be accessed with a click of the mouse.

Technological advancement to enhance the regulatory process can be traced to the Electronic Government (or eGovernment) Initiative. Congress launched this initiative in 2002, and it has been a priority for this Administration. The initiative seeks to use advanced technology and the Internet to deliver better government services to the public at lower costs and to create citizen-focused services that improve government’s value to the public. The trick now is for federal agencies to use these new technologies to create new and dynamic models of government. Small business should benefit from these efforts.

While the eGovernment Initiative consists of 24 separate projects, some of the most important to small business include:

- **E-Rulemaking.** This includes creating electronic dockets at each agency and creating a single site ([www.regulations.gov](http://www.regulations.gov)) for proposed federal regulations. These will help small businesses and the public participate in the regulatory process;
- **The Business Gateway.** This is a single portal ([www.business.gov](http://www.business.gov)) for government regulations, services, and information to help business with their operations; and
- **E-Grants.** This is a single site ([www.grants.gov](http://www.grants.gov)) to find and apply for federal grants online.

These eGovernment projects should improve public access to information and services, reduce paperwork and reporting requirements, and allow small business to more effectively participate in the regulatory process. These advances, combined with new requirements to improve the quality and transparency of scientific information that underlies federal regulations, are a giant step in making government more accountable to small business.

## RFA Recollections

“Small businesses are well understood to be a driving force behind U.S. economic growth and prosperity. It is therefore critical that any unnecessary regulatory burdens on small businesses be identified and removed. Since its passage 25 years ago, the Regulatory Flexibility Act (RFA) has helped federal regulatory agencies conduct the analysis that is essential to understanding the impact proposed regulations have on small firms. The analysis required by the RFA can alert policymakers that a regulation will have a disproportionately costly impact on small entities and help them craft regulatory alternatives that reduce this impact.

“The RFA also requires agencies to conduct periodic reviews of existing regulations, an activity that is as important as assessing the consequences of new proposed regulations. OMB has recently engaged the public and federal agencies in a number of regulatory reform initiatives that seek to reduce unnecessary costs and increase flexibility through the reform of existing regulations, guidance documents, and paperwork requirements. The regulatory reviews required by the RFA are a natural complement to regulatory reform initiatives that take into consideration the regulatory burdens and complexities confronting America’s small businesses.”

John D. Graham  
Administrator  
Office of Information and  
Regulatory Affairs



Advocacy staff at the 25th anniversary of the office in 2001. Many of the staffers who worked on the original Regulatory Flexibility Act still enthusiastically administer it now.

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# Appendix U

The Small Business Advocate newsletter, July-August 2016,  
40th Anniversary of the Office of Advocacy

## THE SMALL BUSINESS ADVOCATE OFFICE OF ADVOCACY

U.S. SMALL BUSINESS ADMINISTRATION

REGULATION • RESEARCH • OUTREACH

July–August 2016

Vol. 35, No. 5

### 40th Anniversary Symposium Edition



The Office of Advocacy held its Anniversary Symposium on June 22, 2016 to mark a number of important milestones for small business. The year 2016 marks the 40th anniversary of the creation of the Office of Advocacy, the 35th anniversary of the signing of the Regulatory Flexibility Act, the 20th anniversary of the Small Business Regulatory Enforcement Fairness Act, and the 15th anniversary of the signing of Executive Order 13272.

To celebrate these significant anniversaries Advocacy hosted an all-day event that brought together congressional leaders, small business trade associations, federal agency regulatory staff, think tanks, universities, attorneys,

economists, policymakers, and small business stakeholders. The historic celebration included panels on regulatory progress for small business, ways to properly assess the costs of regulations on small business, discussions of historical changes to Advocacy and the laws it oversees, ways to improve agency regulatory compliance, and potential changes to these laws which would be best for small business.

The event highlighted various congressional leaders' perspectives on all of these topics and looked for new ways to assist the Office of Advocacy to complete its important mission in the next 40 years.



Advocacy staff at the 40th Anniversary Symposium on June 22, 2016.

#### In This Issue

Chairman Vitter Congratulates Advocacy. . . . .	2
Chairman Chabot Addresses Small Business Concerns. . . . .	2
Capitol Hill Outlook on Regulatory Reform. . . . .	3
A Conversation with Five Former Chief Counsels. . . . .	4
Admiral Gay talks Office Differences. . . . .	5
Estimating Small Business Regulatory Costs: Challenges and Opportunities. . . . .	6
How to Reduce the Small Business Impact . . . . .	7



## Chairman David Vitter Congratulates Advocacy for 40 Years of Serving Small Businesses

By Katie Moore, Legal Intern

Senator David Vitter, chairman of the Senate Small Business and Entrepreneurship Committee (SBC), delivered the keynote speech at the Office of Advocacy's 40th Anniversary Symposium.

Chairman Vitter congratulated Advocacy on 40 years of serving small entities and expressed his own commitment to the important agenda of addressing small businesses' needs. He listed his three top priorities before completing his chairmanship of the SBC. First, he plans to make his bill S.2992, entitled the Small Business Lending Oversight Act of 2016, into law. He stated that this will give needed strength and support to the SBA's 7(a) loan program because, "Access to capital is a small business' lifeline, and as that business grows, so do jobs and the economy."

Second, he plans to reauthorize the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer

(STTR) programs this year. Chairman Vitter said this "will help ensure long-term stability and foster an environment of innovative entrepreneurship by directing more than \$2 billion annually in already-existing federal R&D funding to the nation's small firms that are most likely to innovate and help create jobs in this way."

Third, he wants the SBC's central focus to continue to be regulatory reform. Chairman Vitter stressed that small businesses have been hit by "this Administration's regulatory onslaught," causing owners to spend a "staggering" number of hours in order to comply. Chairman Vitter contrasted the resources of larger entities to the "far heavier compliance costs for small businesses." Therefore, Chairman Vitter stressed that "the Office of Advocacy and the Regulatory Flexibility Act (RFA) are so vital in holding agencies accountable in the rulemaking process." Chairman Vitter emphasized



Chairman David Vitter speaking to the crowd at Advocacy's Anniversary Symposium.

the valuable role the Office of Advocacy serves as "the independent voice for small businesses" and stated agency compliance with Advocacy's comments is essential.

He concluded his speech by once again congratulating the Office of Advocacy on its 40th Anniversary, and said that he looks forward to continuing to work together to "continue to implement common-sense reforms."

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## Chairman Steve Chabot: Small, But Mighty Job Creators

By Elle Patout, Congressional Affairs and Public Relations Manager



Chairman Steve Chabot delivering remarks on fighting for small business.

Congressman Steve Chabot, chairman of the House Small Business Committee, took time out of his busy schedule to address the audience during Advocacy's Anniversary Symposium, a day that recognized pivotal events in the office's history. However, the event was a day of celebration not only for the Office of Advocacy, but also, for the Chairman himself. Wednesday, June 22, 2016, marked 43 years of marriage for Chairman Chabot and his wife Donna. Instead of

spending the day in his hometown of Cincinnati, Ohio, the Chairman came to the conference to speak with small businesses.

His remarks focused on the continued fight on behalf of small businesses—the small, but mighty job creators. Chairman Chabot outlined his belief that, "The devastating impact of new regulations on small businesses continues to grow even though small businesses are more engaged and better represented in the rule-making

*Continued on page 4*

# The Great Compromise: The Capitol Hill Outlook on Regulatory Reform

By Elle Patout, Congressional Affairs and Public Relations Manager

The first panel of the day, “Congressional Perspectives: Views from the Hill on the Importance of Small Business,” focused on a multitude of ways to productively reform the Regulatory Flexibility Act. President of the National Small Business Association Todd McCracken moderated the discussion.

The four panelists were:

- Eric Bursch, Minority Staff Director, Senate Regulatory Affairs and Federal Management Subcommittee, Homeland Security and Governmental Affairs Committee;
- Susan Eckerly, Director of Regulatory Review, Senate Budget Committee;
- Ami Sanchez, General Counsel, Senate Small Business and Entrepreneurship Committee;
- Viktoria Seale, Counsel, House Small Business Committee.

A couple topics on the forefront of the day’s discussion included retrospective review and indirect effects. Panelists on both sides of the aisle agreed that with the ever-changing nature of today’s world many rules are becoming counterproductive and reviewing old regulations is no longer important, it is imperative for America to remain a vibrant economy. In addition, participants stated that

legislation where retrospective review is ingrained would be beneficial. Similar to the Office of Advocacy’s legislative priorities, it seems there is common belief that agencies should prepare periodic reviews demonstrating that they have considered alternative means of achieving the regulatory objective while reducing the regulatory impact on small businesses. In addition to making some executive orders part of the statute, panelist Viktoria Seale expressed the belief that RFA reforms should better clarify the law as opposed to only making changes to the law.

One topic that got all the Congressional staff involved and the dialogue flowing was the indirect effect of regulation. There was consensus among the panelists that indirect effects would not be the easiest to define and compute. Susan Eckerly addressed how there is widespread disagreement among economists, academics, and policymakers on how to calculate indirect effects. Fellow panelist Eric Bursch made a sports’ comparison to drive the point home. Bursch explained how Congress does not make many 50-yard touchdown passes, instead they gain three yards here and there before they cross the goal line. However, Ami Sanchez and Viktoria Seale agreed there

are reasonable and tangible ways to address this goal. In the end, Eckerly recommended that Advocacy work together with the Office of Information and Regulatory Affairs to put together some agreed upon language that would move the ball forward in this arena.

Beyond certain niche topics, the overall message that participants underscored was the need for policymakers to frame the discussion correctly. Most importantly, if lawmakers want to make changes to improve the regulatory environment, they cannot take political sides forcing people to choose between two different ends of the spectrum. Panelist Ami Sanchez phrased it well by saying, “On one hand, it really can’t be about ‘all regulations are burdensome and therefore bad.’ And on the other, it can’t be ‘any attempt to evaluate or reform the system is going to undermine public health and safety.’” As Advocacy continues to be the independent voice for small business, our efforts and conversations with policymakers will continue, and we hope to improve legislation to help advance regulatory consideration for our nation’s small businesses in the 40 years to come.



The Congressional panel discussing reforming the Regulatory Flexibility Act.

## Leading the Charge: A Conversation with Former Chief Counsels

By Daniel Kane, Law Clerk

To celebrate 40 years of service and reflect on many watershed moments, the Office of Advocacy invited five former chief counsels for advocacy to describe how the office navigated the ebbs and flows of federal regulation under their leadership. Former Chief Counsels Frank Swain, Thomas Kerester, Jere Glover, Thomas Sullivan, and Winslow Sargeant each recounted their time at the helm of Advocacy and some of the successes they—and Advocacy’s staff—achieved for small businesses.

However, before any stories could be shared, Director of Regional Affairs Michael Landweber reminded all in attendance that Advocacy’s anniversary

celebration would not be complete without remembering the late Milton “Milt” Stewart, the first chief counsel for Advocacy. Reading from Advocacy’s tribute to the late leader, Landweber said “Many of [Advocacy’s] accomplishments are the fruit of seed planted by Milt and the team he assembled to form the Office of Advocacy.” Many of the chief counsels present for the 40th anniversary recalled their interactions with Milt, his unwavering passion for small businesses, and his lasting impact on both Advocacy and the small business advocates he inspired.

Landweber then turned the discussion over to Frank Swain, who served as chief counsel

from 1981 to 1989. Swain, currently a partner at Faegre Baker Daniels in Washington, D.C., began advocating for small businesses at the National Federation of Independent Business and came to Advocacy during the “golden era” of government agencies, which, he explained, was “when there weren’t so many.” Swain recalled the first time he testified before Congress as chief counsel and how his actions emphasized Advocacy’s independence from the Reagan Administration. Hours before Swain was to testify to the Senate Small Business Committee on the impact of the Davis-Bacon threshold, he received a call from the White House asking him not to testify as they had not yet issued an opinion on the matter. Swain, recognizing the importance of Advocacy’s role as an independent voice, told the White House that he was still going to testify, but would stress that his testimony represented the views of the chief counsel and not the White House or the Small Business Administration.

Thomas Kerester, who served as chief counsel from 1992-1993, echoed Swain’s regard for

*Continued on page 5*



Former Chief Counsels discussing their time in Advocacy.

### Chabot,

*from page 2*

process than ever before.” For this reason, he discussed the committee’s extensive oversight of agency compliance with the RFA. Moreover, he explained how the committee has been identifying weaknesses and loopholes in the law and working on legislative solutions to strengthen the RFA and the Office of Advocacy. He underscored this effort by sharing details of his recent legislation that focused on modernizing

and strengthening the RFA. Some specific topics he chose to highlight were reasonably foreseeable indirect effects, new opportunities through SBREFA panels, and giving Advocacy more authority in the rule writing process. He also addressed regulations that he believed were impeding small business success such as the Environmental Protection Agency’s Waters of the United States and the Department of

Labor’s Overtime rule.

In the end, the Chairman re-emphasized the importance of fighting on behalf of the small, but mighty job creators. His remarks charmed the audience through his various anecdotes of working on behalf of small business and his 20 years of tireless work on the House Small Business Committee.

## Former Chief Counsels

*from page 4*

Advocacy's independence in government. According to Kerester, during his confirmation as chief counsel, the chairman of the Senate Small Business Committee said "when you get approved, take [Advocacy's] message outside the Beltway." As requested, Kerester recounted zigzagging across the country, enjoying his time meeting small businesses—"the backbone of the economy."

Jere Glover, chief counsel from 1994-2001, began by recalling his earlier tenure at Advocacy under the late Milt Stewart. Glover described Milt's knack for working with the White House and people, including government officials. Glover said that Milt's "tricks" included getting permission from President Jimmy Carter to compile a list of accomplishments on behalf of small businesses, a task that allowed Stewart and Glover to gain access to the regulatory process with each agency and advocate for small businesses within the government. "I learned a lot from Milt," Glover said, and he used this knowledge

later as chief counsel working for the passage of the Small Business Regulatory Enforcement and Fairness Act (SBREFA) in 1996. According to Glover, Advocacy works best when working with an agency who wants to help the small businesses understand the regulation. The key is getting both sides to work together.

Tom Sullivan, chief counsel from 2001-2008, recounted Advocacy's successes with implementing Executive Order 13272 and advancing state-level regulatory reform with the regional advocates. Sullivan also expressed his immense gratitude to the office's staff for their work and support during his tenure. When asked, "What worked the best when you were serving as chief counsel," Sullivan replied, "the staff worked the best." Sullivan, who was the named author of the aforementioned tribute to Milt Stewart, said "I didn't write that. Jody [former director of information] or someone else wrote it and I believed it. The same is true for many comment letters and testimony."

Winslow Sargeant, who served as chief counsel from 2010-2015, echoed Sullivan's gratitude to Advocacy's staff, especially when referring to the "bump in the road," referencing his tumultuous 2009 confirmation process. Sargeant then described his "introduction" to Advocacy, which included a congressional request for legislative priorities, a letter from Congress questioning Advocacy's independence from the White House regarding the Affordable Care Act (ACA), and testimony on the Form 1099 provisions of the ACA on which he broke from the Obama Administration. Despite these difficulties "I had good staff and support from our stakeholders," Sargeant said.

Advocacy became what it is today under the leadership of these individuals and has accomplished a lot on behalf of small business. As Sullivan suggested, "If you get to step back, you'll see you make a positive impact for small businesses—you're making an incredible difference."

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## Admiral Gay speaks to Advocacy Symposium about Office Differences

*By Jennifer Smith, Assistant Chief Counsel*

SBA's National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness Earl L. Gay, a U.S. Navy Rear Admiral (Retired), joined SBA following a distinguished career as a naval officer and aviator. Admiral Gay matriculated at the U.S. Naval Academy in 1976—the same year that the country celebrated the Bicentennial, US military service academies admitted women and Congress created the Office of Advocacy.

Admiral Gay spoke about the collaboration that the Ombudsman has had with Advocacy and the

difference between the two offices. Whereas Advocacy listens to small businesses, submits comments and works with the agencies before the final rules have been promulgated, the Ombudsman's office comes into play after the rules and regulations have been enacted. The Ombudsman receives comments from small business owners regarding any kind of federal burden or regulation that impedes a small business owner's ability to operate their business. This includes leveling of fines or penalties, excessive audits or any kind of compliance issues that the

business owner might have. The Ombudsman reviews the issue and refers the issue to the particular agency and expects a high-level response within 30 days. Advocacy has a strong relationship with the Ombudsman's office and the regional advocates are very active in the Ombudsman's regulatory fairness board meetings across the country. Admiral Gay thanked the regionals for all of their hard work and for helping his office be successful by helping small businesses find them.

## Estimating Small Business Burdens: Challenges and Opportunities

By Michael McManus, Regulatory Economist

The Symposium's third panel commenced in a surprisingly light hearted fashion; with panelists' favorite economist jokes. The panel focused on how agencies measure regulatory costs to small businesses, the difficulties surrounding these analyses, and the importance of SBREFA panels. Moderated by the Office of Advocacy's Chief Economist, Christine Kymn, the panel contained four individuals with expertise in regulatory economic analysis. Adam Finkel, currently a senior fellow at the University of Pennsylvania Law School and previously the director of Occupational Safety and Health Administration's health standards programs, and Alexei Alexandrov, senior economist at the Consumer Financial Protection Bureau, provided insight from within rule writing agencies and academia. Joining them were Mary Fitzpatrick and Jim Laity from the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) who review federal agencies' economic analysis of significant regulations.

To begin, the panel noted the importance of analyzing the costs and benefits of regulations to specific groups like small businesses. Performing this analysis, called distributional analysis, for small businesses can help lower costs and is a key aspect of the Regulatory Flexibility Act. Finkel stressed that the distributional analysis should not be "secondary" to a main economic analysis, but be part of the same process and given equal weight. The other panelists agreed that small business distribution analyses improve policy decisions and should not be considered merely ancillary.



Economists on the cost of regulation panel all spoke on understanding how the cost of regulations can affect small businesses.

The panel also discussed the issues agencies face when estimating the costs of regulations on small businesses. Understanding the uncertainties around cost and benefit estimates was a key aspect that Finkel felt agencies and government economists could improve. Fitzpatrick noted that agencies sometimes miss or are unable to estimate some types of effect, such as the possibility of business closings, employment changes, and the loss of product variety. Laity commented that regulatory costs should be compared against businesses' profits to understand their true burden. However, all of these deeper analyses would require better data which is often unavailable. For example, Alexandrov agreed that comparing costs to profit may be the best practice, but said he rarely sees representative data on business profits.

Every panelist spoke about data availability issues. Alexandrov noted that agencies often want to gather more data from businesses, but must weigh that desire against the added costs on businesses of additional forms or surveys. Further, he said that small

businesses tend to be exempt from some paperwork requirements, which adds to the difficulty in estimating small business regulatory costs. Many panelists talked about the SBREFA process as an important tool that can alleviate this issue. While they usually do not provide a large amount of hard data, the small business representatives (SERs) often call attention to the regulatory provisions that will be the most burdensome to small business. Further, as Laity mentioned, the SERs know how their business practices will interact with an agency's regulatory proposals and often suggest more efficient alternatives.

The panel's discussion was far reaching and underscored the importance of economic analysis in the regulatory process. Regulatory economic analyses are a critical tool to ensure governmental agencies are not only hearing from small business, but also accounting for them in their policy. While this panel highlighted the improvements still to be made, it also showed the amazing progress that has occurred since the passage of the RFA and SBREFA.

# How to Reduce the Small Business Impact: a Panel of Government and Private Sector Professionals

By Rebecca Krafft, Senior Editor

The fourth panel, Reducing the Burdens: Making Better Policies for Small Business, consisted of experts with background in government and the private sector discussing regulations in the financial, transportation, environmental, and telecommunications sectors. The panelists were:

- Jane Luxton, a partner at Clark Hill, PLC, and former general counsel for the National Oceanic and Atmospheric Administration (NOAA);
- Jonathan Moss, assistant general counsel for regulation at the Department of Transportation (DOT);
- Bill Wehrum, partner at Hunton & Williams, and former acting assistant administrator and chief counselor in the Environmental Protection Agency’s Office of Air and Radiation; and
- S. Jenell Trigg, a member of Lerman Senter, PLLC, former assistant chief counsel at the Office of Advocacy and also former staff at the Federal Communications Commission (FCC).

The moderator, Office of Advocacy Assistant Chief Counsel David Rostker, asked them to consider whether the RFA has lived up to its purpose—requiring federal agencies to consider the impact of their regulations on small entities. Each speaker brought their own significant experiences to the question.

Luxton discussed the SBREFA panel process as applied to the Consumer Finance Protection Bureau. “The CFPB considers itself an agency designed to protect consumers. . . . Some of those small businesses are the people who consumers say aren’t treating them right. . . . the SBREFA

panels are the only recourse some small businesses may have to make their views known.” For that reason, she stated that SBREFA panels at CFPB “might be more important than ever.”

Moss discussed DOT’s experience with the RFA, stating that “The RFA has lived up to its purpose. It has had and will continue to have a significant impact on

way of doing what it is that they do. And when they’re required to do what they do in a somewhat different way, then it’s a catalyst for bringing in new ideas and new energy, and new creativity into the process.” Fourth, the RFA brings a different group of people into the discussion, from small businesses themselves to the Office of Advocacy.



The final panel discussed the RFA and SBREFA panels in depth.

rulemaking at DOT.” Moss stated that “Small entities are at the core of each of the business sectors that we regulate. And we are sensitive of the impact the regulations have on their viability, as well as on the U.S. economy. Consideration for small business impacts is embedded throughout our rulemaking process. We strive to ensure that small businesses are aware of, and know how to engage in our rule-making process.”

Wehrum identified a number of important benefits of the RFA. First, the RFA forces agencies to consider small business impacts through “analyses that might not otherwise be done.” Second, the RFA tends to make agencies seriously consider the regulatory approach with the least impact on small entities. Third, the RFA creates a venue for exploration of new ideas. He explained this by saying, “In my experience the regulators get into a particular

Trigg discussed the importance of the RFA and expressed concerns about FCC’s compliance with the RFA in some recent high-profile rulings, noting its lack of economic analysis. She discussed some specific RFA cases that she has litigated, expressing hope that the courts would take FCC to task for its lack of analysis. However, she also noted a recent case that served to undermine the RFA by allowing the FCC to make major changes in policy without rule-making.

The panelists agreed that the RFA works by getting agencies to consider small business impacts in their rulemakings. Although each of the panelists named examples in which small business concerns weren’t fully resolved, they generally agreed that the RFA process works and that federal rules are better thanks to agencies RFA compliance.



Assistant Chief Counsel Major Clark (left) and Director of Regional Affairs Michael Landweber (right) posing for a photo with Small Business and Entrepreneurship Council President Karen Kerrigan (middle).



Chief Counsel for Advocacy Darryl L. DePriest (right) welcoming Admiral Earl L. Gay (Ret.) (left) to the stage to speak.



Former Chief Counsels Winslow Sargeant (left) and Thomas Sullivan (right) enjoying their panel discussion.



Advocacy employees taking advantage of a good photo opportunity.

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