

***Testimony of
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***U.S. House of Representatives
Committee on Government Reform***

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on

H.R. 2432, the "Paperwork and Regulatory Improvements Act of 2003

Chairman Davis and Members of the Committee, good afternoon and thank you for giving me the opportunity to appear before you today. My name is Thomas M. Sullivan and I am the Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA). Congress established the Office of Advocacy to represent the views of small entities before Federal agencies and Congress. The Office of Advocacy is an independent office within the SBA, and therefore the comments expressed in this statement do not necessarily reflect the position of the Administration or the SBA.

The Committee asked that I testify regarding the Office of Advocacy's opinion on H.R. 2432, the "Paperwork and Regulatory Improvements Act of 2003." We support the bill and believe that it would improve agency accountability in ways that would benefit small business.

Before addressing Advocacy's specific comments on H.R. 2432, I must give credit to our colleagues in the Office of Information and Regulatory Affairs (OIRA) of

the Office of Management and Budget (OMB). My office works with Dr. Graham and the desk officers at OIRA every day, and I believe that small business has a great friend in Dr. Graham. Despite a small staff, OIRA manages to do a difficult job very well. As their responsibilities grow, I would hope that they receive the tools that they need to get the job done.

Paperwork and Regulatory Burdens on Small Entities.

Based on frequent comments from small businesses, the Office of Advocacy is concerned about the large – and growing – Federal paperwork burden on small businesses. Despite the passage of laws designed to relieve the paperwork burdens imposed by the Federal government on such entities – such as the Paperwork Reduction Act, and, most recently, the Small Business Paperwork Relief Act of 2002 – the Federal paperwork burden continues to be cited by small businesses as one of their most significant problems. Most recently, this was communicated to Advocacy during a March 4, 2003 meeting we held with small business representatives to discuss implementation of the Small Business Paperwork Relief Act.(1)

In addition to paperwork, small businesses tell us that they often encounter regulations written with no apparent awareness of the costs that must be borne by the affected businesses. This happens despite laws requiring agencies to account for the costs and benefits of new rules. Section 624 of the FY 2001 Treasury and General Government Appropriations Act, which was enacted as part of Pub. L.106-554, for example, directs OMB to quantify annually the costs and benefits of Federal regulations. Likewise, the Regulatory Flexibility Act, as amended, Pub. L. 104-121, Executive Order

12866, and Executive Order 13272, further require agencies to consider the costs and benefits of rules before they can take effect. Unfortunately, Advocacy's and OMB's efforts have too often been hampered by incomplete agency estimates of the costs and benefits of regulations. While Advocacy and OMB work to improve agency rulemakings, small businesses are obliged to comply with rules that may have significant costs and negligible societal benefits. As well-documented by Advocacy's Crain-Hopkins report, small business continues to pay a *disproportionately large* share of the total Federal regulatory burden, which was estimated to total \$843 billion in 2000.(2) For firms employing fewer than 20 employees, the annual regulatory burden in 2000 was estimated to be \$6,975 per employees – nearly 60% higher than the \$4,463 estimated for firms with more than 500 employees.(3)

How Would the “Paperwork and Regulatory Improvements Act of 2003” Benefit Small Business?

We believe that the proposed legislation would help to alleviate the burdens imposed on small businesses, small nonprofit enterprises, and small state and local entities in several ways.

Reduction of Tax Paperwork. Section 3 of the legislation requires OMB to assign a minimum of two full-time staff to review the Federal information collection burden on the public imposed by the Internal Revenue Service (IRS). As this Committee knows, the IRS generates the vast majority of the Federal paperwork burden on businesses. It is no wonder that small businesses consistently report that tax requirements are the most challenging regulatory requirements.(4) Advocacy agrees that additional

attention must be given to tax paperwork burden relief; small businesses would benefit enormously from tax paperwork relief. If dedicated OMB personnel can conduct a more thorough evaluation of IRS Information Collection Requests (ICRs), opportunities may be identified for paperwork simplification and the elimination of redundant information collections.

I would urge this Committee to work with Appropriators to ensure that this staffing requirement translates into two **additional** staff, and does not merely reassign existing OIRA team members who are stretched thin ensuring that agencies do not impose unfair regulatory mandates.

Repeal of Exemptions from the Paperwork Reduction Act and Other Requirements. Section 4 of the bill repeals certain exemptions from the Paperwork Reduction Act and notice and comment rulemaking procedures that are currently contained within the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171. The Office of Advocacy strongly opposes any blanket exemptions from notice and comment rulemaking. Besides diminishing the transparency of the agency decision process, these exemptions also deprive small entities of the protections afforded by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. In Advocacy's view, the exemptions currently available to agencies under the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.* are sufficient. Likewise, we believe that blanket exemptions from the Paperwork Reduction Act are unwise, and may needlessly add to the paperwork burdens borne by small entities.

Permanent Provision for Regulatory Analyses in the Truth in Regulating Act of 2000. Section 5 of this bill makes permanent the authority for regulatory analyses under

the Truth in Regulating Act of 2000, Pub. L. 106-312. The Office of Advocacy supports such regulatory analyses as a means to yield better agency decision making, as discussed in greater detail below.

Improved Regulatory Accounting. Section 6 of the legislation amends Section 624 of the Treasury and General Government Appropriations Act of 2001 (sometimes referred to as the “Regulatory Right-to-Know Act”), which was enacted as part of Public Law 106-554. The bill would require agencies to submit annual estimates to OMB of the costs and benefits of their regulations and paperwork requirements, for OMB in turn to develop regulatory accounting statements, and for five agencies to undertake pilot projects to conduct regulatory budgeting. Advocacy recommends that the bill also require agency submissions to OMB (and OMB’s corresponding accounting statements) to identify and analyze regulatory impacts on small entities, consistent with the impact analysis required under the current regulatory accounting law.

The Office of Advocacy welcomes more robust regulatory accounting by Federal agencies. We note that, since 1997, OMB has done its best to quantify the costs and benefits of Federal regulations. Regrettably, OMB’s efforts have been hampered by its dependence on agency estimates of regulatory costs and benefits that are incomplete or insufficiently detailed. Despite the challenges facing OMB, Advocacy has found each Report to Congress to include useful information. Specifically, the “recommendations for reform,” including OMB’s Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements, could produce better consideration of small entity impacts if followed by the agencies. In addition, OMB’s Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulation (OMB Draft Report) re-affirms

Advocacy's own experience that too often agencies publish a rulemaking without a firm knowledge of costs and benefits of the proposed regulation.

To address this shortcoming, Advocacy recommends that rules without identified and substantiated costs and benefits and a breakdown of impacts on small entities should be returned by OMB. Agencies should determine whether there is sufficient information to pursue a regulation. The agency may choose to delay the rulemaking until it has performed sufficient outreach to the potentially regulated community and gathered the data it needs to perform the appropriate analyses. The agency should also be certain that it has the necessary resources to develop a well-conceived, well-supported regulation. Stated in other words, the agency needs to consider the complexity of a rule and the magnitude of the costs and benefits of the rule when allocating its analytic resources for rulemakings.

Regulatory Accounting Focusing on the Impacts on Small Entities.

Current regulatory accounting requirements direct OMB to include an "analysis of impacts of Federal regulations on . . . small business" in its Report to Congress. To date, OMB's reports have only addressed the impact of Federal regulations on small businesses in concept. The lack of agencies' analysis of their rules' impacts on small business impacts has prevented OMB from providing the more quantitative and meaningful analysis required by the law. Unless agencies are required to break out and analyze regulatory impacts on small entities, OMB's Report to Congress (and the agencies' analyses the Report is based upon) will remain deficient.

Advocacy therefore recommends that H.R. 2432 and OMB's directives on cost-benefit analysis and regulatory accounting instruct Federal agencies to analyze the impacts of their regulations on small businesses and state and local governments. This would help identify whether the costs imposed on small firms by the rule and whether the benefits of regulating small firms justify those costs. Regulatory requirements are often extended to small businesses that impose large compliance costs with little or no corresponding benefit.

For example, the Environmental Protection Agency (EPA) recently started requiring small businesses that handle small amounts of lead to report their yearly discharges of the metal under EPA's Toxic Release Inventory (TRI) program. EPA estimated that this requirement could take first-time TRI filers up to **110 hours** to comply with; the average first-year filer could expect to spend **50 hours** complying with the reporting requirement.⁽⁵⁾ Many of the first-year filers were small businesses, so EPA essentially directed these businesses to spend more than *a week* of their precious time to prepare the report or, alternatively, to pay for a consultant to prepare the report. In return for this substantial investment of small business resources, EPA learned that 41% of the first-time filers had ***no discharges*** of lead to the environment. The majority of the remaining filers reported very low discharges. EPA forced small businesses to spend several millions of dollars of time and effort, which they can hardly afford, to comply with a regulatory requirement that conferred little or no benefit to society.

Generally, this sort of outcome happens because the agency failed to isolate the small and large firm impacts in its regulatory analysis, or failed to identify regulatory alternatives that vary the scope of the rule's coverage. We believe that focusing on the

composition of the impacted classes, and regulating accordingly, yields an outcome that is more efficient than uniform regulations. When the cost and benefit estimates are required for small entities on the accounting statements, small business considerations will figure more prominently in agencies' regulatory calculus.

OMB Return Letters.

Advocacy further recommends that OMB issue return letters on a rule-by-rule basis to enforce agency compliance with the OMB Circular and Bulletins. We note that OMB Director Mitch Daniels advised this Committee on March 24, 2001 that OMB would issue return letters to enforce agency compliance with the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. We look forward to the continuation of that policy under OMB's current leadership and for return letters to be issued to agencies that do not follow OMB's Circular and Bulletin(s) on accounting for regulatory impacts imposed on small entities.

Conclusion.

Advocacy believes that improved regulatory accounting will benefit small business by making the agency rulemaking process more considered, rational, and transparent. Such accounting will enable better review of rules by the public and the Congress.

Thank you for allowing me to present these views. I would be happy to answer any questions.

ENDNOTES

1. For additional information about the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198 go to www.sba.gov/advo.
2. See *The Impact of Regulatory Costs on Small Firms*, an Advocacy-funded study by W. Mark Crain and Thomas D. Hopkins (October 2001).
3. *Id.*
4. See, e.g., National Federation of Independent Business National Small Business Poll, *Coping with Regulation* (2001), 64 (largest percentage of small businesses stating that tax-related regulations “create the greatest difficulty”).
5. See 66 Fed. Reg. 4500, 4538 (January 17, 2001).