

Office of Advocacy

Testimony

of

**MARY K. RYAN
DEPUTY CHIEF COUNSEL OF ADVOCACY
U. S. SMALL BUSINESS ADMINISTRATION
before**

**COMMITTEE ON SMALL BUSINESS
U. S. SENATE**

June 5, 1996

Good morning Mr. Chairman and members of the committee. The Office of Advocacy is pleased to participate in a discussion on the "Implementation of the Small Business Agenda" and the Administration's record in adopting and implementing legislation and policy initiatives sought by the small business community.

Before getting into specifics, it would be helpful to review how the Office of Advocacy selects issues on which to devote resources. Our primary objectives are threefold: 1) to contribute something new and different to the public debate on any policy or legislative matter where we believe we can make a difference; 2) to provide information not otherwise available, such as the number of small businesses affected or the severity of the impact of legislative/regulatory proposals; and 3) to respond to proposals in a timely manner with information on small business concerns when small businesses or their representatives are not in a position to do so but where the small business interest is significant. Knowing that we cannot do everything, we have adopted these three criteria for establishing priorities.

The principal sources of information on which we rely to determine issues of concern to small business are:

- * Small business trade associations;
- * Research on small business issues;
- * Direct dialogue with small businesses; and,
- * The 1995 White House Conference on Small Business, which has been one of the more significant sources for issue priorities this past year.

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

As you know, about 2,000 small businesspeople attended the Conference last June and adopted 60 recommendations for administrative and legislative action. It is worth noting that the delegates debated and rejected a proposal to prioritize the recommendations, thus giving equal weight to each recommendation. While the vote tallies on the individual recommendations indicate some differing level of significance, the delegates refused to establish priorities.

The President addressed the conference, as did the Vice President on two occasions. Since then, the President has taken a direct interest on the progress made to implement the recommendations. On several occasions, for example, he has asked the Administrator of the Small Business Administration, who has cabinet status, for an update on agency actions on the recommendations. He has referred to the Small Business Conference in several press conferences and in his State of the Union address, which is, to the best of my recollection, a first. The President's interest has had a direct impact on agencies, which has led to some of the executive branch initiatives I will discuss later in this testimony.

Taking our lead from the Conference, we established a network of delegates to work on implementation of the recommendations. Ten Regional Implementation Chairs were elected by each of the 10 regions to monitor implementation and to communicate with state chairs and delegates. The kick-off meeting with the chairs was attended by congressional and White House staff.

Another network was established of 10 regional Issues Chairs for each of the 10 issue categories addressed by the conference. Advocacy staff participates in conference calls with the Issues Chairs on a bi-monthly or monthly basis, depending on the level of administrative or legislative activity providing background materials and keeping the information flowing. House and Senate staff from both sides of the aisle have participated in some of these calls to discuss congressional progress on legislation dealing with conference recommendations. Congressman Christensen (R., NEB) participated in one call to explain a legislative proposal and to seek feedback. (See Appendix for additional information on monthly activities.)

This entire network has been very valuable in keeping us in tune with issues of concern to small business and provides a direct link to the business community. It provides a window into the economic environments in which small businesses function where changes are occurring. The communications that take place keep the delegates involved in the public decision-making processes -- something with which they are not normally concerned in their everyday business dealings. We understand how busy they are running their businesses. But we also know how valuable their input can be, since only they can provide policymakers with hands-on experiences living with the impact of public policy decisions.

To foster linkages with Congress, a directory of delegates interested in appearing at congressional hearings was developed and forwarded to each member of

Congress. Some of the delegates have indeed testified -- on three occasions, I believe, before this Committee. In fact, the Tax Issue Chairs, some of whom have accompanied me today to this hearing, testified this week before the House Ways and Means Committee on the independent contractor legislation.

Six months after the conference, the Office of Advocacy, in conjunction with the Administrator and the National Economic Council, developed a progress report to the President on the status of the recommendations. A copy of that report was sent to every Member of Congress and to every delegate to the 1995 White House Conference on Small Business. We are currently finalizing a first-year progress report to the President which will also be sent to Congress and the delegates. Another report will be sent to Congress in September as required by the enabling legislation that authorized the 1995 Conference.

MAJOR LEGISLATIVE ACCOMPLISHMENTS

Before discussing what has been accomplished administratively to implement the recommendations of the White House Conference on Small Business, it is important to take particular note of two major legislative achievements:

- * [Amendments to the Paperwork Reduction Act signed on May 22, 1995](#)[PDF FRile]; and
- * [The Small Business Regulatory Fairness Act signed on March 29, 1996.](#)

Paperwork Reduction Act.

The 1995 amendments clarify congressional intent that the law does apply to third party recordkeeping requirements and disclosures. This is a major benefit to small business.

And so are the new recordkeeping reduction goals established by the amendments. Paperwork is a major source of frustration to small businesses and to the extent these goals are achievable, this frustration should abate.

Small Business Regulatory Fairness Act.

Ever since enactment of the Regulatory Flexibility Act, small business has sought to have regulatory flexibility analyses subjected to judicial review. The original legislation, as you know, exempted agency analyses from review. This Congress, with the active leadership of the Chair of this Committee and the support of the Administration, enacted amendments that significantly strengthened the [Regulatory Flexibility Act](#) and the Equal Access to Justice Act.

The issue of judicial review was a major issue for the 1995 White House Conference on Small Business. As soon as the bill was passed and signed by the

President, we notified the Regional Implementation Chairs and have been discussing the bill's provisions with the Issue Chairs during our conference calls.

This legislation was a major victory for small business and Congress' efforts are being applauded throughout the small business community.

And there has been a marked change in agency attitudes toward regulatory flexibility requirements since passage of the amendments. The Office of Advocacy has met with small business trade associations to discuss the law and distributed information outlining the law's major provisions. We have also met with OMB, EPA, OSHA, IRS, SEC and FCC to discuss the impact of the new legislation on agency processes and regulatory analyses content. In addition, we have had discussions with both EPA and OSHA on the Small Business Advocacy Review Panels required by the law.

We have printed a new publication on the Regulatory Flexibility Act as amended for distribution to agencies and other entities affected by the law. I have copies with me. Finally, we are in the process of developing materials for use in training sessions with regulatory agencies.

It is clear that the law is having an impact throughout all regulatory agencies -- a most welcome development for small business. Historically, some agencies have been very conscientious in their analyses but others, as outlined in our annual reports to Congress, have spotty records complying with the Regulatory Flexibility Act. We expect marked improvement overall in both the quantity and quality of regulatory flexibility analyses.

ADMINISTRATION'S RECORD IMPLEMENTING THE SMALL BUSINESS AGENDA

As you know many of the White House Conference recommendations have both an administrative and legislative component. Our six-month report to the President focused on actions taken administratively, with brief "action" or "no-action" comments on pending legislation. Since that report, there has been some additional action and I would like to focus on a few items.

TAXES

Independent Contractor. The IRS has recognized the difficulty the 20-step common law test creates for a small businessperson. The IRS has taken significant steps to alleviate some of the burden and uncertainty. They have developed a new comprehensive training manual for their field staff and have centralized the appeal process on independent contractor classifications. A program has also been established to settle cases quickly and give the local agent authority to reduce the back taxes and penalties drastically. This is as far as the

IRS can go administratively. Commissioner Margaret Richardson has stated that further clarification will require legislation.

Simplified Tax Reporting. Some progress has been made to introduce simplified tax reporting for small business. IRS has had a program underway to study form simplification that would enable small businesses to file the same form with both Federal and state tax authorities. More work needs to be done and legislation may be needed.

Reduced Recording Keeping for Expenses. IRS has raised the amount from \$25 to \$75 for which business must retain receipts to justify deductions for meals and entertainment.

Pension Reform. At the White House Conference, the President announced his proposal for a simplified pension plan called NEST. The NEST plan is very similar to the "Simple" proposal recently sent to the Senate. The Administration and Congress may be close to agreement on this issue.

The President also proposed reforms in the 401(k) tax provisions. These proposals were included in the Administration's 1997 Budget plan.

Increased Expensing. The President has proposed an increase in the amount spent on capital investments that can be deducted as expenses (rather than capitalizing the costs) from \$17,500 to \$25,000 and continues to support that level.

Deductions for Health Insurance for the Self-Employed. In the context of health care reform, the President indicated his support for allowing the self-employed to deduct 100% of their health insurance premiums. In the interim he supported legislation passed last year that increased the deduction to 30% and has announced his support for a 50% deduction level.

Estate Tax Reform. The President understands the dilemma facing small businesses on the death of an owner. In his 1997 budget has proposed deferral and repayment tax schedules to alleviate in part the tax burden on the surviving operators of the business. We would hope that the President and Congress could arrive at consensus on this issue.

PAPERWORK REDUCTION

In March 1995, the President directed agencies to reduce their reporting requirements by half. Shortly thereafter, the Environmental Protection Agency (EPA) completed a line-by-line review of all regulations with an agency goal of eliminating 20 million reporting burden hours. EPA has reached the halfway point, having eliminated 10 million burden hours.

The FTC adopted rules to exempt certain mergers and acquisitions from the premerger notification and waiting regulations.

And closer to home, in January of this year, the Small Business Administration completed its revision of 100 percent of its regulations and eliminated more than half the pages of its section in the Code of Federal Regulations.

At the Occupational Safety and Health Administration (OSHA), a new directive has been issued outlining the agency's revised policy for minor paperwork and written program violations. The agency is also conducting a page-by-page review of existing regulations with a view toward eliminating a significant number.

Computer technology is taking hold throughout the government, further reducing paperwork. EPA allows firms to file certain reports electronically.

In February, 1996, Vice President Gore announced the implementation of the U. S. Business Advisor -- a service to provide businesses with on-line information about government programs. It is a one-stop electronic clearing house on the Internet for information on all U. S. Government agencies.

The Office of Federal Procurement Policy (OFPP) has issued a policy memorandum encouraging the posting of acquisition information on the Internet and link the information uniformly on the government-sponsored acquisition reform network home page.

COMPLIANCE - PROBLEM-SOLVING vs. PUNISHMENT

The Small Business Regulatory Enforcement Fairness Act of 1996, signed into law by the President, includes several regulatory reform provisions that, in addition to judicial review, requires federal agencies to develop policies that emphasize regulatory compliance rather than punishment, establishes a small business and agriculture enforcement Ombudsman and ten regional Small Business Regulatory Fairness Boards to monitor enforcement of federal rules. These are major and very welcome innovations.

Prior to this, in March 1995, the President announced a new approach to lessening the regulatory burden on small firms. Agencies were directed, if allowed by law, to waive up to 100 percent of a fine imposed on a small business if the same sum were used to correct the violations leading to the fine. In June 1995, EPA announced an interim policy to provide incentives for environmental compliance by small businesses. Under the policy, the EPA waives civil penalties that do not cause serious harm to public health or the environment. The interim policy is currently was revised last week to comport with the Small Business Regulatory Fairness Act of 1996.

OSHA is currently working on a comprehensive overhaul of the agency's penalty system and is developing incentive programs to encourage employers to reduce job-related injuries, illnesses, and deaths by implementing effective safety and health programs. The agency has also instituted a small business mentoring program and, additionally, a consultation service in all 50 states for small employers.

CAPITAL FORMATION

Access to capital remains a problem for small business and several administrative and legislative initiatives have been implemented.

The Small Business Lending Enhancement Act of 1995 gives the Small Business Administration, the flexibility to guarantee loans for more small businesses. This has resulted in a dramatic increase in the number of loans, up 52 percent from fiscal year 1994 to fiscal year 1995.

The Community Development Regulatory Improvement Act of 1994 amended the banking and securities laws to promote the growth of a secondary market for small business loans. The Securities and Exchange Commission (SEC) has proposed regulations that would reduce small business filing and disclosure burdens.

Because there is a need for new public markets for small high technology and innovative firm securities, the Office of Advocacy has led an effort to develop an "angel capital network" envisioned as a national Internet listing of small firm securities available for review by "angel" investors.

OFFICE OF ADVOCACY RESEARCH

As I indicated at the outset of this testimony, the Office of Advocacy finances research, the findings of which are valuable in determining what course public policy should pursue.

BANKING STUDY

For two years, the Office has conducted an analysis of the banking regulators' June call reports to rank the nation's 10,000 commercial banks according to their lending to small businesses. The information in the studies helps promote competition in the banking industry as well as help small business locate banks in their areas that are more likely to make loans to small businesses.

Additional analysis of the data shows that banks that make small business loans are as profitable as others. This information undermines some of the conventional wisdom about loans to small businesses being riskier as measured by profitability.

PENSION STUDY

Another study of small business investment by public pension funds showed that less than 1% of the \$1,003 billion available in 1993 were invested directly in small business. Yet, follow-up interviews with managers of funds that invested directly in small businesses, found that the investments were as profitable as other investments using the same risk criteria. Advocacy is disseminating this information to state officials and fund managers to stimulate re-examination of investment criteria relied on by public pension funds. We are of the view that a small business representative on the oversight boards of public pension funds would help increase pension fund investment in small business.

FRANCHISING

Recent research by the Office has indicated that over 75 percent of new franchisors disappeared between 1983 and 1993. This means that small business franchisees were hurt by investing in companies that were not viable in the long run. Another study indicated that noncorporate franchises were less profitable than starting small independent firms from scratch. The implication is that FTC should carefully review its Uniform Franchise Offering Circular to make certain that new franchisors carefully disclose the riskiness of the new ventures.

MEASURING THE COSTS OF REGULATION

Several studies measuring the burden of regulations on small business have already been submitted to this Committee in previous testimonies. As recommended by the White House Conference delegates, we are working with IRS to reduce the paperwork compliance burden of tax regulations. To most small firms, research indicated that payroll recordkeeping is the most onerous aspect of regulatory paperwork.

ELECTRIC UTILITY DEREGULATION

Recently completed research indicates that large power companies may pass "stranded costs" on to small firms when electric transmission and power distribution is completely deregulated. The reason is that many electric companies have excess capacities, and larger firms often have other power alternatives, leaving consumers and small firms to absorb the costs of excess capacity. This is both a federal and state issue. Due diligence is required by both regulatory bodies to make certain that discriminatory pricing is not used by larger utility companies as the deregulation process proceeds. One suggestion, as with pensions and franchising, is to place a small business representative on state regulatory commissions.

FEDERAL RESERVE SURVEY OF SMALL FIRM FINANCES

Co-sponsored by SBA and the Federal Reserve Board, 5,000 firms were intensively surveyed to 1) observe any effects of banking consolidation, 2) study the use of financial services by women-owned and minority-owned firms, and 3) to determine whether the credit needs of these firms were being met. Preliminary findings from the study indicate high usage of personal credit cards for business purposes and limited use of home-equity loans to start firms. Implications are to make new business aware of lower cost regulatory alternatives that drive down the cost of credit. An example of the latter includes finance companies-- which have lower regulatory costs.

CONCLUSION

This is a somewhat brief sketch of what has been happening administratively and legislatively in the Administration to implement a small business agenda. The Office of Advocacy has not prevailed on every issue it has addressed with the White House. We lost on procurement and product liability; we may be losing on patent reform. But on several fronts we have provided information not elsewhere available to the Administration. Because of this, the Administration has developed positions close to if not identical to that of the small business community at large. Our one-year report to the President and our report to Congress in September will provide greater detail on the issues.

APPENDIX

BRIEF SUMMARY OF MONTHLY ADVOCACY ACTIVITIES WHITE HOUSE CONFERENCE ON SMALL BUSINESS JUNE 1995

Assisted WHCSB staff during National Conference.

In conjunction with WHCSB state delegation chairs, organized and elected chairpersons for each region and representatives from ten federal regions for the eleven issue areas.

Published The 1995 White House Conference on Small Business Implementation Network booklet, which provides all delegates with names, addresses and telephone and fax numbers of implementation leaders. Mailed booklet to Congress and all the delegates.

Forwarded the sixty recommendations of the conference to all Members of House and Senate, Cabinet, and all Federal agencies.

Held Regional Issue Chair conference calls in Human Capital, Technology and Information Revolution and Taxation.

JULY 1995

Held meetings with federal agencies to discuss WHCSB issue recommendations.

AUGUST 1995

Hosted organizational meeting of the Regional Implementation Chairs. During this meeting, the chairs held discussions with the House and Senate Small Business Committee staff and the national small business organizations.

SEPTEMBER 1995

Assisted WHCSB with distribution of WHCSB Final Report and with Commission closing.

The Chief Counsel for Advocacy spoke at the New Mexico State Small Business Conference.

Sent letters to relevant agencies and departments highlighting recommendations which are relevant to them.

Held Regional Implementation Chairs Conference call and Regional Issue Chair calls in Environmental Policy; Human Capital, Regulation and Paperwork, Main Street, Taxation, Technology and Information Revolution, Procurement, Open Forum/Unclassified and Capital Formation.

OCTOBER 1995

SBA Regional Advocates assisted Regional Implementation chairs with planning WHC National Implementation Day. Final 60 recommendations were presented to state officials across the country.

Sent mailing to all delegates with sample press releases for local media support.

Held Regional Implementation Chairs conference call and Regional Issue Chair calls in Community Development, Human Capital, Regulation and Paperwork, Capital Formation, Procurement, Open Forum/Unclassified, Technology and Information Revolution, and Taxation.

NOVEMBER 1995

Worked with all federal agencies to coordinate a six month report to the President on WHCSB Implementation progress.

The Deputy Chief Counsel for Advocacy spoke to the Alaska State Small Business Conference on WHCSB implementation. Held Regional Implementation Chairs conference call and Regional Issue Chair calls in Capital Formation,

Human Capital, Procurement, Technology and Information Revolution, and Taxation.

DECEMBER 1995

Regional Implementation Chairs held meeting in conjunction with the National Legislative Conference on Small Business Issues. Region IX hosted sessions designed to assist delegates in organizing and promoting the sixty issue recommendations.

Regional Tax chairs held strategy session and met with the IRS Commissioner in conjunction with National Legislative Conference.

Presented six-month report on WHCSB implementation progress to the President, sent copies to all members of Congress.

Held Regional Issue Chair calls in Capital Formation, Technology and Information Revolution and Main Street.

JANUARY 1996

Sent Six-month report on WHCSB implementation progress to all delegates.

The Chief Counsel for Advocacy spoke to the Michigan State delegation and the Minority Delegates Caucus.

Held Regional Implementation Chair conference call and Regional Issue conference calls in Environmental Policy, Capital Formation, Technology and Information Revolution, and Taxation.

FEBRUARY 1996

Coordinated meeting at the White House for National Economic Council, Domestic Policy Staff and major federal agencies and departments to examine progress of Administration in implementation of the WHCSB issue recommendations.

The Chief Counsel for Advocacy spoke to the WHCSB NAWBO Economic Summit.

Held Regional Implementation Chair conference call and Regional Issue Chair conference calls in Environmental Policy, Procurement, Capital Formation, Taxation and Technology and Information Revolution.

MARCH 1996

Continued liaison with relevant federal agencies regarding the implementation progress.

The Chief Counsel for Advocacy spoke to the Minnesota WHCSB delegation.

Held Regional Implementation Chair conference call and Regional Issue Chair conference calls in Capital Formation, Environmental Policy, Human Capital, Regulation and Paperwork, Procurement, Taxation, Open Forum/Unclassified and Technology and Information Revolution.

APRIL 1996

Sent quarterly WHCSB issue update to all delegates.

Held Regional Implementation Chair conference call and Regional Issue Chair conference calls in Capital Formation, Procurement, Environmental Policy, Technology and Information Revolution and Taxation.

MAY 1996

The Chief Counsel for Advocacy spoke to the CA WHCSB delegates.

The Chief Counsel for Advocacy addressed the TX Governors Conference on Small Business on WHCSB implementation.

Began the process of coordinating and producing the first annual report on WHCSB implementation.

Held Regional Implementation Chair conference call and Regional Issue Chair conference calls in Capital Formation, Procurement, Open Forum/Unclassified, Human Capital, Taxation and Technology and Information Revolution.

International Trade and Technology delegates met in Washington with the Department of Commerce to discuss WHCSB issues.

* Last Modified: 6/18/01