

107TH CONGRESS
1ST SESSION

S. 395

AN ACT

To ensure the independence and nonpartisan operation of the Office of Advocacy of the Small Business Administration.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Independent Office of
5 Advocacy Act of 2001”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) excessive regulations continue to burden
4 United States small business concerns;

5 (2) Federal agencies are reluctant to comply
6 with the requirements of chapter 6 of title 5, United
7 States Code, and continue to propose regulations
8 that impose disproportionate burdens on small busi-
9 ness concerns;

10 (3) the Office of Advocacy of the Small Busi-
11 ness Administration (referred to in this Act as the
12 “Office”) is an effective advocate for small business
13 concerns that can help to ensure that agencies are
14 responsive to small business concerns and that agen-
15 cies comply with their statutory obligations under
16 chapter 6 of title 5, United States Code, and under
17 the Small Business Regulatory Enforcement Fair-
18 ness Act of 1996 (Public Law 104–121; 106 Stat.
19 4249 et seq.);

20 (4) the independence of the Office is essential
21 to ensure that it can serve as an effective advocate
22 for small business concerns without being restricted
23 by the views or policies of the Small Business Ad-
24 ministration or any other executive branch agency;

25 (5) the Office needs sufficient resources to con-
26 duct the research required to assess effectively the

1 impact of regulations on small business concerns;
2 and

3 (6) the research, information, and expertise of
4 the Office make it a valuable adviser to Congress as
5 well as the executive branch agencies with which the
6 Office works on behalf of small business concerns.

7 **SEC. 3. PURPOSES.**

8 The purposes of this Act are—

9 (1) to ensure that the Office has the statutory
10 independence and adequate financial resources to
11 advocate for and on behalf of small business con-
12 cerns;

13 (2) to require that the Office report to the
14 Chairmen and Ranking Members of the Committees
15 on Small Business of the Senate and the House of
16 Representatives and the Administrator of the Small
17 Business Administration in order to keep them fully
18 and currently informed about issues and regulations
19 affecting small business concerns and the necessity
20 for corrective action by the regulatory agency or the
21 Congress;

22 (3) to provide a separate authorization for ap-
23 propriations for the Office;

24 (4) to authorize the Office to report to the
25 President and to the Congress regarding agency

1 compliance with chapter 6 of title 5, United States
2 Code; and

3 (5) to enhance the role of the Office pursuant
4 to chapter 6 of title 5, United States Code.

5 **SEC. 4. OFFICE OF ADVOCACY.**

6 (a) IN GENERAL.—Title II of Public Law 94–305 (15
7 U.S.C. 634a et seq.) is amended by striking sections 201
8 through 203 and inserting the following:

9 **“SEC. 201. SHORT TITLE.**

10 “This title may be cited as the ‘Office of Advocacy
11 Act’.

12 **“SEC. 202. DEFINITIONS.**

13 “In this title—

14 “(1) the term ‘Administration’ means the Small
15 Business Administration;

16 “(2) the term ‘Administrator’ means the Ad-
17 ministrator of the Small Business Administration;

18 “(3) the term ‘Chief Counsel’ means the Chief
19 Counsel for Advocacy appointed under section 203;

20 “(4) the term ‘Office’ means the Office of Ad-
21 vocacy established under section 203; and

22 “(5) the term ‘small business concern’ has the
23 same meaning as in section 3 of the Small Business
24 Act.

1 **“SEC. 203. ESTABLISHMENT OF OFFICE OF ADVOCACY.**

2 “(a) ESTABLISHMENT.—

3 “(1) IN GENERAL.—There is established in the
4 Administration an Office of Advocacy.

5 “(2) APPROPRIATION REQUESTS.—Each appro-
6 priation request prepared and submitted by the Ad-
7 ministration under section 1108 of title 31, United
8 States Code, shall include a separate request relat-
9 ing to the Office.

10 “(b) CHIEF COUNSEL FOR ADVOCACY.—

11 “(1) IN GENERAL.—The management of the
12 Office shall be vested in a Chief Counsel for Advo-
13 cacy, who shall be appointed from civilian life by the
14 President, by and with the advice and consent of the
15 Senate, without regard to political affiliation and
16 solely on the ground of fitness to perform the duties
17 of the office.

18 “(2) EMPLOYMENT RESTRICTION.—The indi-
19 vidual appointed to the office of Chief Counsel may
20 not serve as an officer or employee of the Adminis-
21 tration during the 5-year period preceding the date
22 of appointment.

23 “(3) REMOVAL.—The Chief Counsel may be re-
24 moved from office by the President, and the Presi-
25 dent shall notify the Congress of any such removal
26 not later than 30 days before the date of the re-

1 moval, except that 30-day prior notice shall not be
2 required in the case of misconduct, neglect of duty,
3 malfeasance, or if there is reasonable cause to be-
4 lieve that the Chief Counsel has committed a crime
5 for which a sentence of imprisonment can be im-
6 posed.

7 “(c) PRIMARY FUNCTIONS.—The Office shall—

8 “(1) examine the role of small business con-
9 cerns in the economy of the United States and the
10 contribution that small business concerns can make
11 in improving competition, encouraging economic and
12 social mobility for all citizens, restraining inflation,
13 spurring production, expanding employment oppor-
14 tunities, increasing productivity, promoting exports,
15 stimulating innovation and entrepreneurship, and
16 providing the means by which new and untested
17 products and services can be brought to the market-
18 place;

19 “(2) assess the effectiveness of Federal subsidy
20 and assistance programs for small business concerns
21 and the desirability of reducing the emphasis on
22 those programs and increasing the emphasis on gen-
23 eral assistance programs designed to benefit all
24 small business concerns;

1 “(3) measure the direct costs and other effects
2 of government regulation of small business concerns,
3 and make legislative, regulatory, and nonlegislative
4 proposals for eliminating the excessive or unneces-
5 sary regulation of small business concerns;

6 “(4) determine the impact of the tax structure
7 on small business concerns and make legislative, reg-
8 ulatory, and other proposals for altering the tax
9 structure to enable all small business concerns to re-
10 alize their potential for contributing to the improve-
11 ment of the Nation’s economic well-being;

12 “(5) study the ability of financial markets and
13 institutions to meet the credit needs of small busi-
14 ness concerns, and determine the impact of govern-
15 ment demands on credit for small business concerns;

16 “(6) determine financial resource availability
17 and recommend, with respect to small business con-
18 cerns, methods for—

19 “(A) delivery of financial assistance to mi-
20 nority and women-owned enterprises, including
21 methods for securing equity capital;

22 “(B) generating markets for goods and
23 services;

1 “(C) providing effective business education,
2 more effective management and technical assist-
3 ance, and training; and

4 “(D) assistance in complying with Federal,
5 State, and local laws;

6 “(7) evaluate the efforts of Federal agencies
7 and the private sector to assist minority and women-
8 owned small business concerns;

9 “(8) make such recommendations as may be
10 appropriate to assist the development and strength-
11 ening of minority, women-owned, and other small
12 business concerns;

13 “(9) recommend specific measures for creating
14 an environment in which all small business concerns
15 will have the opportunity—

16 “(A) to compete effectively and expand to
17 their full potential; and

18 “(B) to ascertain any common reasons for
19 the successes and failures of small business con-
20 cerns;

21 “(10) determine the desirability of developing a
22 set of rational, objective criteria to be used to define
23 the term ‘small business concern’, and develop such
24 criteria, if appropriate;

1 “(11) make recommendations and submit re-
2 ports to the Chairmen and Ranking Members of the
3 Committees on Small Business of the Senate and
4 the House of Representatives and the Administrator
5 with respect to issues and regulations affecting small
6 business concerns and the necessity for corrective
7 action by the Administrator, any Federal depart-
8 ment or agency, or the Congress; and

9 “(12) evaluate the efforts of each department
10 and agency of the United States, and of private in-
11 dustry, to assist small business concerns owned and
12 controlled by veterans, as defined in section 3(q) of
13 the Small Business Act (15 U.S.C. 632(q)), and
14 small business concerns owned and controlled by
15 serviced-disabled veterans, as defined in such section
16 3(q), and to provide statistical information on the
17 utilization of such programs by such small business
18 concerns, and to make appropriate recommendations
19 to the Administrator and to the Congress in order
20 to promote the establishment and growth of those
21 small business concerns.

22 “(d) ADDITIONAL FUNCTIONS.—The Office shall, on
23 a continuing basis—

24 “(1) serve as a focal point for the receipt of
25 complaints, criticisms, and suggestions concerning

1 the policies and activities of the Administration and
2 any other department or agency of the Federal Gov-
3 ernment that affects small business concerns;

4 “(2) counsel small business concerns on the
5 means by which to resolve questions and problems
6 concerning the relationship between small business
7 and the Federal Government;

8 “(3) develop proposals for changes in the poli-
9 cies and activities of any agency of the Federal Gov-
10 ernment that will better fulfill the purposes of this
11 title and communicate such proposals to the appro-
12 priate Federal agencies;

13 “(4) represent the views and interests of small
14 business concerns before other Federal agencies
15 whose policies and activities may affect small busi-
16 ness;

17 “(5) enlist the cooperation and assistance of
18 public and private agencies, businesses, and other
19 organizations in disseminating information about the
20 programs and services provided by the Federal Gov-
21 ernment that are of benefit to small business con-
22 cerns, and information on the means by which small
23 business concerns can participate in or make use of
24 such programs and services; and

1 “(6) carry out the responsibilities of the Office
2 under chapter 6 of title 5, United States Code.

3 “(e) OVERHEAD AND ADMINISTRATIVE SUPPORT.—
4 The Administrator shall provide the Office with appro-
5 priate and adequate office space at central and field office
6 locations of the Administration, together with such equip-
7 ment, office supplies, and communications facilities and
8 services as may be necessary for the operation of such of-
9 fices, and shall provide necessary maintenance services for
10 such offices and the equipment and facilities located there-
11 in.”.

12 (b) REPORTS TO CONGRESS.—Title II of Public Law
13 94–305 (15 U.S.C. 634a et seq.) is amended by striking
14 section 206 and inserting the following:

15 **“SEC. 206. REPORTS TO CONGRESS.**

16 “(a) ANNUAL REPORTS.—Not less than annually, the
17 Chief Counsel shall submit to the President and to the
18 Committees on Small Business of the Senate and the
19 House of Representatives, the Committee on Govern-
20 mental Affairs of the Senate, the Committee on Govern-
21 ment Reform of the House of Representatives, and the
22 Committees on the Judiciary of the Senate and the House
23 of Representatives, a report on agency compliance with
24 chapter 6 of title 5, United States Code.

1 “(b) **ADDITIONAL REPORTS.**—In addition to the re-
 2 ports required under subsection (a) of this section and sec-
 3 tion 203(c)(11), the Chief Counsel may prepare and pub-
 4 lish such reports as the Chief Counsel determines to be
 5 appropriate.

6 “(c) **PROHIBITION.**—No report under this title shall
 7 be submitted to the Office of Management and Budget
 8 or to any other department or agency of the Federal Gov-
 9 ernment for any purpose before submission of the report
 10 to the President and to the Congress.”.

11 (c) **AUTHORIZATION OF APPROPRIATIONS.**—Title II
 12 of Public Law 94–305 (15 U.S.C. 634a et seq.) is amend-
 13 ed by striking section 207 and inserting the following:

14 **“SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

15 “(a) **IN GENERAL.**—There are authorized to be ap-
 16 propriated to the Office to carry out this title, such sums
 17 as may be necessary for each fiscal year.

18 “(b) **AVAILABILITY.**—Any amount appropriated
 19 under subsection (a) shall remain available, without fiscal
 20 year limitation, until expended.”.

21 (d) **INCUMBENT CHIEF COUNSEL FOR ADVOCACY.**—
 22 The individual serving as the Chief Counsel for Advocacy
 23 of the Small Business Administration on the date of enact-
 24 ment of this Act shall continue to serve in that position

- 1 after such date in accordance with section 203 of the Of-
- 2 fice of Advocacy Act, as amended by this section.

Passed the Senate March 26, 2001.

Attest:

Secretary.

107TH CONGRESS
1ST SESSION

S. 395

AN ACT

To ensure the independence and nonpartisan operation of the Office of Advocacy of the Small Business Administration.