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PRESIDENT'S FY2012 BUDGET REQUEST FOR THE U.S. SMALL BUSINESS ADMINISTRATION AND THE OFFICE OF ADVOCACY

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MARCH 31, 2011

Printed for the Committee on Small Business and Entrepreneurship

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PRESIDENT'S FY2012 BUDGET REQUEST FOR THE U.S. SMALL BUSINESS ADMINISTRATION AND THE OFFICE OF ADVOCACY

THURSDAY, MARCH 31, 2011

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
Washington, DC.

The Committee met, pursuant to notice, at 10:10 a.m., in Room SR–428A, Russell Senate Office Building, Hon. Mary L. Landrieu, Chair of the Committee, presiding.

Present: Senator Landrieu, Snowe, Brown, and Moran.

OPENING STATEMENT OF HON. MARY L. LANDRIEU, CHAIR, AND A U.S. SENATOR FROM LOUISIANA

Chair LANDRIEU. Good morning, everyone. Let me call our Small Business meeting to order. This is our meeting to discuss the 2012 budget request for the Small Business Administration, and I thank all of you for joining me and for Senator Snowe, particularly for her help, in this effort. I would like to thank Administrator Karen Mills and Dr. Winslow Sergeant, Chief Counsel of the SBA, Office of Advocacy, for coming before our Committee today.

Each day, more than half of America's work force goes to work for a small business. These entrepreneurs pump almost one trillion dollars into our economy, creating 13 times more patents per employee than larger firms, and have traditionally created more than two-thirds of our nation's new jobs. Many of these risk-taking small business owners rely on SBA capital, counseling, and contracting programs to succeed, meet their payrolls, and compete in an increasingly competitive global economy.

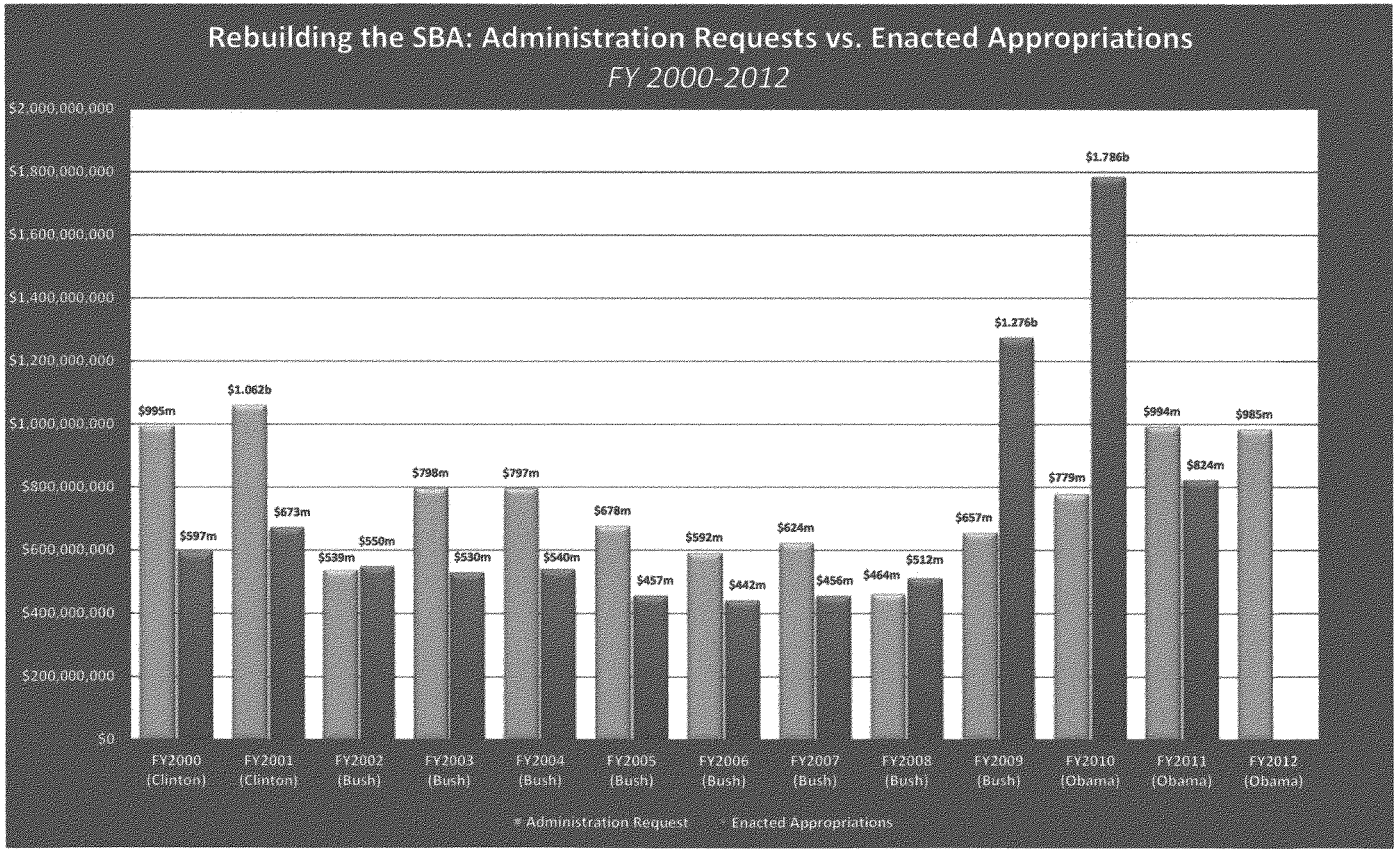
In this fiscal year 2012 request for the SBA, the President has once again signaled his commitment to our nation's nearly 28 million small businesses, submitting a strong and fiscally responsible budget of $985 million. While a decrease from the 2011 request, conscious of our efforts to streamline where we can, this budget is one of the strongest submitted since the Clinton Administration, making investments in SBA programs that will enable the agency to successfully fulfill its core mission.

Most importantly, it will enable the SBA to continue the impressive work it has done in assisting our entrepreneurs and small business owners as they struggle to recover and rebuild in the wake of the worst economic recession since the Great Depression.

Since taking office in 2009, the Administration and this Committee signaled a strong commitment to the small business community, reversing the downward trend in funding for the SBA, and submitting a budget request for fiscal year 2010 that was higher than any previous, in the five years previously.

The Administration's fiscal year 2011 request for the SBA furthered this progress, making necessary investments in the agency's core capital, counseling, and contracting programs. I would like to show the chart here. Of course, in the Stimulus Act, there was a one-time boost of funding which has been very effective. I hope the Administrator will talk a bit about that this morning, but you can see the investments made in the last two years.

[The information folllows:]


Rebuilding the SBA: Administration Requests vs. Enacted Appropriations
FY 2000-2012
$2,000,000,000
$1,800,000,000
$1,600,000,000
$1,400,000,000
$1,200,000,000
$1,000,000,000
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$400,000,000
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$0
$995m
$597m
$1.062b
$673m
$539m
$550m
$798m
$530m
$797m
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$592m
$442m
$624m
$456m
$464m
$512m
$657m
$1.276b
$779m
$1.786b
$994m
$824m
$985m
FY2000 (Clinton)
FY2001 (Clinton)
FY2002 (Bush)
FY2003 (Bush)
FY2004 (Bush)
FY2005 (Bush)
FY2006 (Bush)
FY2007 (Bush)
FY2008 (Bush)
FY2009 (Bush)
FY2010 (Obama)
FY2011 (Obama)
FY2012 (Obama)
Administration Request
Enacted Appropriations

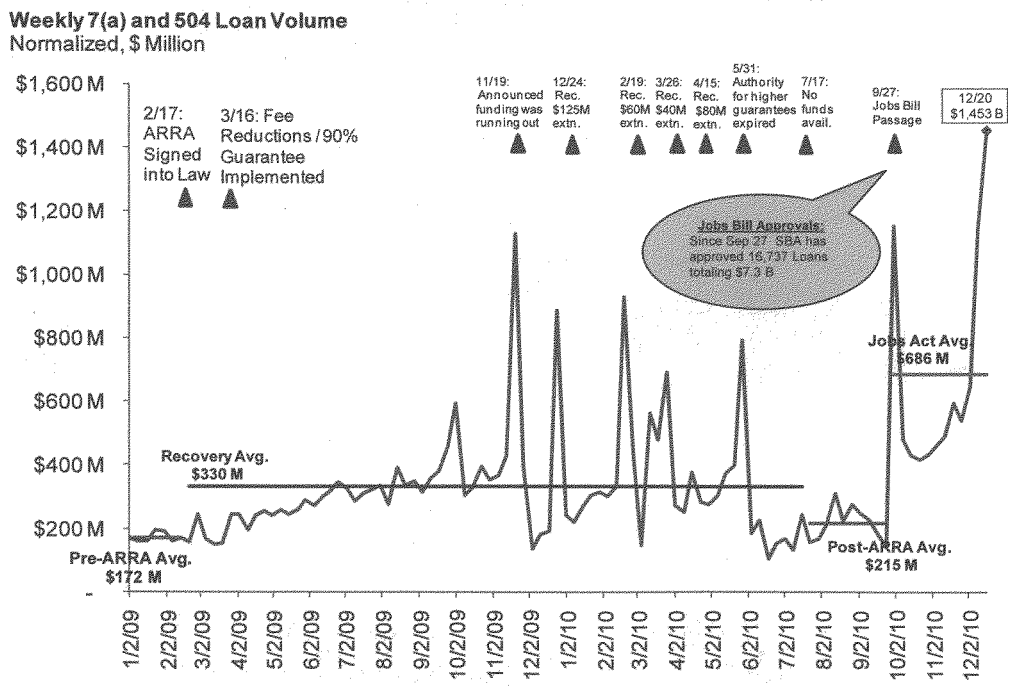
In addition to efforts to strengthen the core programs, the Administration and Congress took bold steps to improve small business access to capital by addressing the financial crisis that hastened the start of the recession. Thanks to the passage of the Recovery Act in 2009, the SBA was able to waive loan fees on both borrowers and lenders, and temporarily raised the maximum guarantee of the 7(a) and 504 programs to 90 percent. These provisions proved remarkably successful, jump-starting lending in all parts of the country.

In fact, since their implementation in 2009, 7(a) and 504 lending increased from $13 billion in 2009 to $16.8 billion in 2010, helping to create thousands of jobs. You can see the charts here.

[The information folllows:]

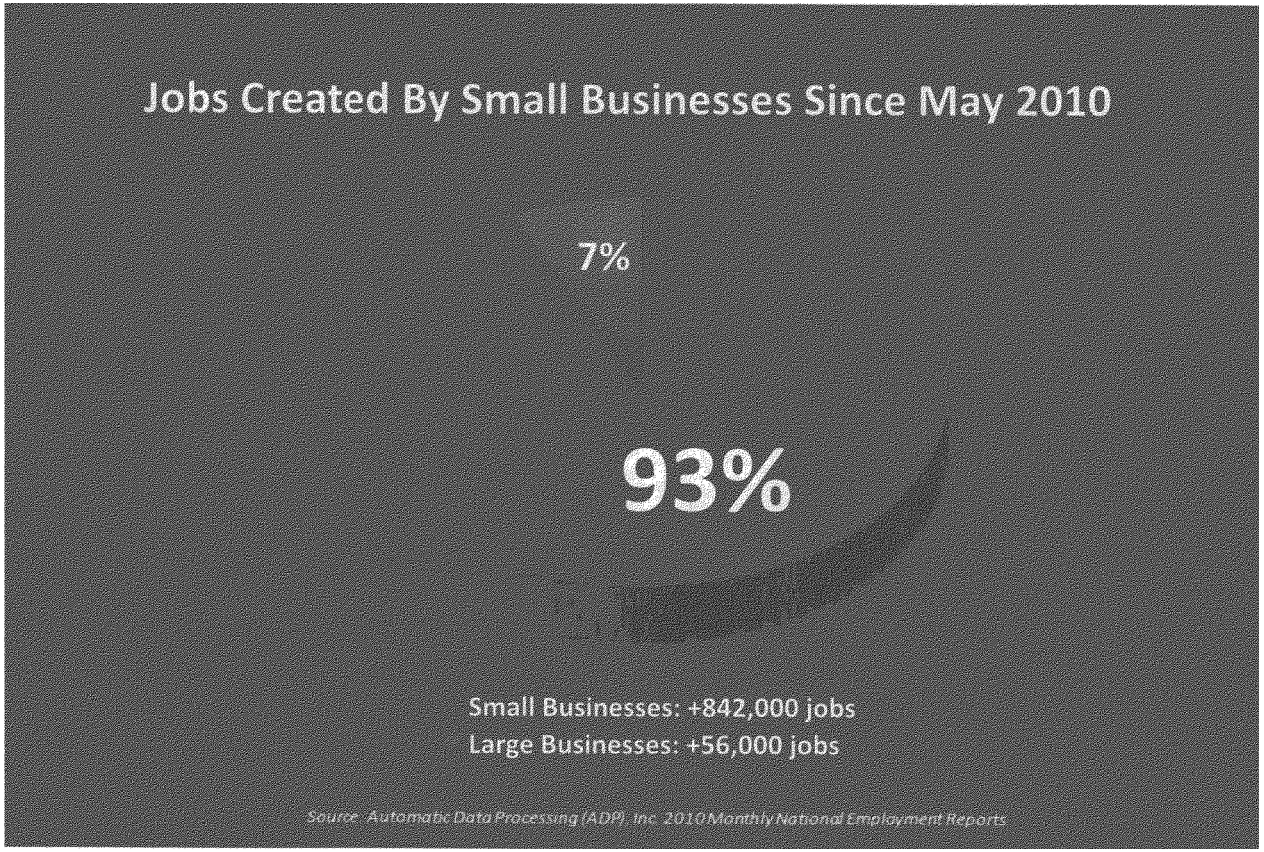
SBA
U.S. Small Business Administration

Grow Businesses and Create Jobs – Capital
Weekly 7(a) and 504 Loan Volume: As of December 17, 2010



NOTE: All loan volumes are gross loan value approved. Typically, due to cancellations and loan size reductions, 15 – 20% of gross approval value does not get disbursed.

Jobs Created By Small Businesses Since May 2010



Small Businesses: +842,000 jobs
Large Businesses: +56,000 jobs

Source: Automatic Data Processing (ADP), Inc. 2010 Monthly National Employment Reports

The Recovery Act, and even more recently the Small Business Jobs Act, which this Committee spearheaded, has had an overwhelmingly positive effect on the small business community. Bank lending and retail sales have risen steadily for the last eight months. The GDP, an important indicator of our nation's economic health, has grown for six consecutive quarters.

There is much more that needs to be done, but there are signals that things are moving in the right direction, and I believe the work of this Committee and some of the efforts that we have made have been a part of that recovery. According to the latest job creation data published by the Automatic Data Processing, Inc., small businesses have been responsible for 93 percent of all jobs created in the last ten months—that is pretty startling—and to help drive the national unemployment rate below 9 percent. Still too high, but moving at least in the right direction.

Let me quickly highlight a few things in this budget and then turn it over to Ranking Member Snowe and acknowledge the Senator from Massachusetts, Senator Brown, who left a meeting to be with us this morning. I appreciate him making that effort.

First, the $210 million to support $16 billion in 7(a) loans and $7.5 billion in 504 lending is a good investment. The $167 million in this budget to administer the SBA's Disaster Loan Program is also important, as we found out in Louisiana only a few years ago when Hurricane Katrina hit and the agency was not prepared to respond and people's pain and suffering was increased, not decreased, by the lack of support from this agency. We have successfully, I think, turned around that program and are proud of the investments we are making in the Disaster Loan Program.

Third, following the enactment of the Small Business Jobs bill last year, for the first time, the Office of Advocacy now has independent budget authority. This is a very special agency supported by both Republicans and Democrats.

Its job is to prevent unnecessary regulations from burdening small business in America, to reduce the current regulatory burden and administrative burdens faced by our nation's small business, and to be a real advocate for them, not an advocate for President Obama or President Bush or President Clinton, not an advocate for the Administrator, but an advocate for the small businesses themselves.

I want to say how pleased I am to pursue independent budget authority for them. This is a solid budget, a strong foundation for the agency, but I have recommended a few additional dollars for investment. One is the expansion of the SCORE program, which is really not a government program. It really is a government partnership with the private sector.

SCORE is a not-for-profit, private sector, private sector driven program that taps into the great brains and expertise and ability of private sector business leaders to help other budding and promising entrepreneurs. I think with a small investment, we can expand that reach, not expanding government programs, but expanding the non-profit and getting a return. By some estimates, for every dollar we invest in SCORE, the Federal taxpayer gets an investment of $107 in return. I think that is a very good investment.

We also hope that our Women's Business Centers and Veteran's Business Centers will continue to receive the funding necessary for them to do the good work that we need to do. So I will end with just saying this Committee will continue to work to trim or eliminate inefficient duplicative programs and to root out fraud where it may exist. We are going to soon have a whole hearing on fraud, inefficiency and duplication.

We have already eliminated two programs. We have identified at least two that were not working and have eliminated them. We will continue to do that, but we want to support those programs that are working. I do believe as Chair this is an important agency of the Federal Government, and I do believe in strengthening partnerships with banks, with credit unions, with any non-profit that wants to step up, or for-profit agency for that matter, for-profit business to step up to counsel and train the future entrepreneurs of America.

It is a great strength of our nation's small business and we want to do everything in this budget to strengthen and to grow this economy and put the recession in our rear-view mirror. Let me turn now to Senator Snowe. I really apologize for my hoarseness. I have been fighting a cold for a week now and it is hopefully on the mend. Senator Snowe.

[The prepared statement of Chair Landrieu follows:]

Chair Mary L. Landrieu
Opening Statement for March 31, 2011
"President's FY2012 Budget Request for the U.S. Small Business Administration and the Office of Advocacy"

INTRODUCTION

Good Morning. Thank you all for joining us today to discuss the Small Business Administration's (SBA) FY2012 budget request. I would like to especially thank SBA Administrator Karen Mills and Dr. Winslow Sargeant, Chief Counsel of the SBA's Office of Advocacy, for coming before the Small Business Committee to testify today.

More than half America's workforce goes to work for a small business every day and these entrepreneurs pump almost $1 trillion dollars into the economy, create 13 times more patents per employee than large firms, and have traditionally created more than two-thirds of our nation's new jobs. Many of these hardworking small business owners rely on the SBA's capital, counseling, and contracting programs to keep their doors open, meet their payrolls and compete in an increasingly competitive global marketplace.

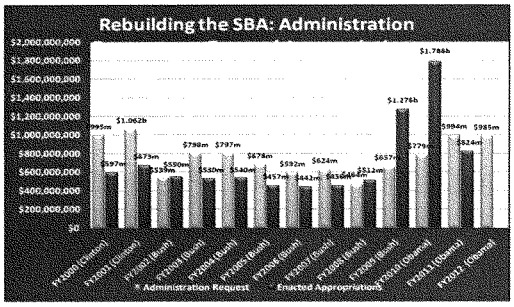
In his Fiscal Year 2012 request for the SBA, the President has once again signaled his commitment to our nation's nearly 28 million small businesses, submitting a strong and fiscally responsible budget of $985 million in funding for the Agency. While a decrease from his Fiscal Year 2011 request, this budget is of the strongest submitted since the Clinton Administration, making investments in key SBA programs that will enable the Agency to successfully fulfill its core mission. Most importantly, it will enable the SBA to continue the great work it has done in assisting our entrepreneurs and small businesses owners as they continue to recover and rebuild in the wake of the worst economic recession since the Great Depression.

PRESENT: ECONOMIC RECOVERY & REBUILDING THE SBA

Since taking office in 2009, the Administration and this Committee signaled a strong commitment to the small business community, reversing the downward trend in funding for the SBA and submitting a budget request for Fiscal Year 2010 that was higher than any submitted

during the previous five years. The Administration's Fiscal Year 2011 request for the SBA furthered this progress, making necessary investments in the Agency's core capital, counseling and contracting programs. Working with the Democratic Congress, the Administration was able to secure the highest level of funding for the Agency in at least 10 years, restoring the SBA's valuable role as both a partner to and a source of stability for our small businesses during a troubled economy.

[CHART I: REBUILDING THE SBA]



In addition to efforts to strengthen the Agency's core programs, the Administration and the Democratic Congress also took bold steps to improve small business access to capital by addressing the financial crisis that hastened the start of the recession. Thanks to the passage of

the *Recovery Act* in February of 2009, the SBA was able to waive the loan fees on both borrowers and lenders and temporarily raise the maximum guarantee percentage of 7(a) and 504 loans to 90 percent. These provisions proved remarkably successful, jump starting lending to the small business community. In fact, since their implementation in 2009, 7(a) and 504 lending increased from $13 billion in 2009 to $16.8 billion in 2010, helping to create or save thousands of jobs. **[CHART II: SBA LENDING VOLUME AFTER RECOVERY ACT]**

The Recovery Act and, even more recently, the Small Business Jobs Act, which this Committee spearheaded, has had an overwhelmingly positive effect on the small business community. Bank lending and retail sales have risen steadily for the last 8 months. **The GDP—an important indicator of our nation's economic health—has grown for 6 consecutive quarters**. But perhaps more importantly, small businesses have begun to expand and create jobs once again. **According to the latest job creation data published by the firm**

Automatic Data Processing Inc. (ADP), small businesses have been responsible for 93 percent of all jobs created in the last 10 months, helping to drive the national unemployment rate below 9 percent for the first time in almost two years.

BUDGET HIGHLIGHTS

Let me quickly talk about a few of the many good things in this budget:

- First, the $210 million to support $16.5 billion in 7(a) loans and $7.5 billion in 504 lending. Both of these programs have proved enormously successful over the course of their lifetimes and are key to the Agency's ability to serve the small business community by providing access to capital that would be otherwise unavailable. Second, the $167 million to administer the SBA's disaster loan program. This funding is critical to ensuring that we have sufficient staff to process disaster loans quickly as well as an adequate amount of loan money to get into the hands of the families and businesses that need it. As Louisianans know all too

well, when a disaster hits, the last thing anyone needs is more frustration and delay preventing businesses from reopening and families from returning to their homes.

- Third, following the enactment of the Small Business Jobs Bill last year, for the first time the Office of Advocacy now has independent budget authority. This office plays a critical role in reducing the regulatory and administrative burdens faced by our nation's small businesses.

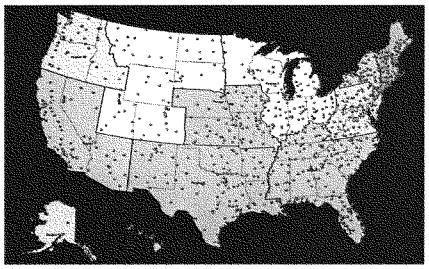
GOOD BUDGET, BUT MORE SUPPORT IS NEEDED

This is a good budget, a strong foundation for the agency. However, after hearing from small business owners, SBA resource partners and small business advocates, I have recommended an additional funding for the SBA in the 'Views and Estimates' letter I submitted to the Budget Committee. If we provided solid funding when

the economy was good, it should serve as our baseline when the economy is down and we have an unemployment crisis.

This additional funding would support programs that have remained in high demand but have been underfunded for years. For example, it would help successful public-private partnerships like SCORE, to expand and increase its reach within the small business community.

[CHART III: MAP OF SBA NATIONWIDE NETWORK]



As we can see from the map behind me, the SBA has an impressive infrastructure–over 1,350 counseling and outreach centers including Small Business Development Center, Women's Business Centers and Veterans Business Centers, as well as 350 SCORE

Chapters–that must be adequately funded. These centers have a proven track record–creating or saving hundreds of thousands of jobs annually.

FISCAL RESPONSIBILITY

The President's request also acknowledges the current fiscal climate, with an emphasis on the real concerns over the mounting U.S. deficit. I too believe that the ever-increasing deficit is a significant and dangerous problem and one that, if not dealt with, could undermine the tremendous progress made over the past two years. For our part, during the 112th Congress the Committee will continue to closely monitor and evaluate programs operated by the SBA to ensure they are performing as intended. **This Committee will continue its work to trim or eliminate inefficient, duplicative programs and to root out fraud where it may exist**. But in doing so, we must never fail to adequately support those programs that have a demonstrated track record of success and encourage our businesses to innovate, grow and create new jobs.

CLOSING

Looking at this request, I am glad to see that the Administration has once again made small business a top priority, not just with words, but with actions. By adequately funding the SBA's programs, we can mitigate the economic damage caused by the recession and help our entrepreneurs to not only recover, but to innovate, create jobs and strengthen the U.S. economy. I look forward to hearing from both Administrator Mills and Dr. Sargeant regarding the SBA's priorities for the next fiscal year. With that, I now turn to Ranking Member Snowe and any other members present for opening statements.

Senator SNOWE. Thank you, Chair Landrieu, and I am going to yield to Senator Brown because he has to return to the Senate Armed Services Committee.

OPENING STATEMENT OF HON. SCOTT P. BROWN, A U.S. SENATOR FROM MASSACHUSETTS

Senator BROWN. Thank you, Ranking Member Snowe. I appreciate it and hope the Chair feels better.

Chair LANDRIEU. Thank you.

Senator BROWN. You are a trooper. I want to thank our witnesses, Administrator Mills and Chief Counsel Sergeant for participating. I am going to go back and forth, as I seem to do every single day. But I just wanted to say two things, one of which is, I am concerned about making every agency lean and mean, and I know the President has a budget, obviously you have submitted a budget.

I am hopeful that you will look at every aspect of the Administration's budget and eliminate any duplication, streamline, consolidate, and really weed out every last dollar, because as we are cutting $100 billion in the military and we are cutting here and cutting there, I am hopeful that you will address those issues as well.

I know we are meeting anyway, so I did not want to take the rest of the panels' time, so we can speak privately about a lot of my concerns. But I do have some questions for the record and I may hold them or submit them, but I will be speaking one-on-one anyway. So thank you for allowing me to go out of order.

Chair LANDRIEU. Thank you, Senator.

OPENING STATEMENT OF HON. OLYMPIA J. SNOWE, RANKING MEMBER, AND A U.S. SENATOR FROM MAINE

Senator SNOWE. Thank you, Senator Brown. Thank you, Chair Landrieu as well, for calling this hearing today—I know it has been difficult with time constraints because of being on the floor for the last two weeks on the SBIR and the STTR program—to discuss the fiscal year 2012 budget, and I echo the Chair's remark in welcoming the SBA Administrator, Karen Mills, to our first panel.

For the past two years, Administrator Mills has been at the helm of the SBA through what can be only described as an extremely turbulent economy. During her tenure, the agency has been bolstered by her dedication, her steadfast leadership to the small business community, and certainly on that score, when it comes to job creation, her understanding of the challenges in creating jobs, and how it needs to get done and what are the policies that drive it.

I am also pleased to have the SBA Chief Counsel for Advocacy, Dr. Winslow Sergeant, here with us today to testify on our second panel. For the first time in SBA's history, the Office of Advocacy has a budget independent from the agency's total fiscal request, and I hope this new autonomous budget sends a clear signal that regardless of the Administration, Advocacy will remain independent and fully equipped to handle the myriad of challenges that lie ahead.

So I want to thank both of you for being here this morning, for suggesting what kinds of approaches we can take to streamline the SBA's budget as we weather this fiscal crisis, and also your views on the state of the small business economy.

When we met to discuss the SBA's budget last year, access to capital was a pressing concern for entrepreneurs in America which was in the midst of a jobless recovery. Small business owners felt an overwhelming sense of uncertainty. The unemployment rate was a staggering 9.9 percent. At that time, Chair Landrieu and I were well-aware that the Federal Government does not put people to work. Entrepreneurs put people to work.

So we worked to achieve programs through a determined pace of hearings and mark-ups that encouraged an environment more conducive for our nation's true job generators. And while I am proud of many of the bipartisan small business provisions that I advanced with the Chair and the members of this Committee on a bipartisan basis, which sometimes is unique in the political process, I am still concerned about the lack of job creation in America, particularly among our small businesses.

So all that we have done, certainly, has bolstered us to where we are today, but we realize we have far to go. So as we examine the SBA's budget for 2012, we cannot fail to pay deference to the larger economic landscape this budget fits into. January marked the 21st consecutive month of 9 percent or greater unemployment; February came close at 8.9 percent. We will see what the numbers are tomorrow as well, if they hold fast, or if it could be reduced at all. It is likely to reflect fewer new jobs that were created in February, bringing us to two years of close to 9 percent unemployment.

The bottom line is, we have lost 7.3 million jobs in this recession and have experienced a net gain of 70,000 jobs between June 2009 and December 2010, which is less than 4,500 new jobs per month for 18 months, according to the Congressional Budget Office. Our debt is $14.3 trillion. A vote on raising the debt ceiling looms in our near future.

Our national debt will be 100 percent of the GDP by the end of 2011. The Government currently spends $3.8 trillion; yet we only collect $2.2 trillion. So clearly, the bottom line is our nation's revenues and spending are vastly misaligned. It is under these circumstances that we must strike the difficult balance of preserving the SBA's job creation potential while simultaneously working to rein in costs, cut duplication and bureaucracy, and postpone the inadvertent growth programs, some of which lack detailed performance metrics.

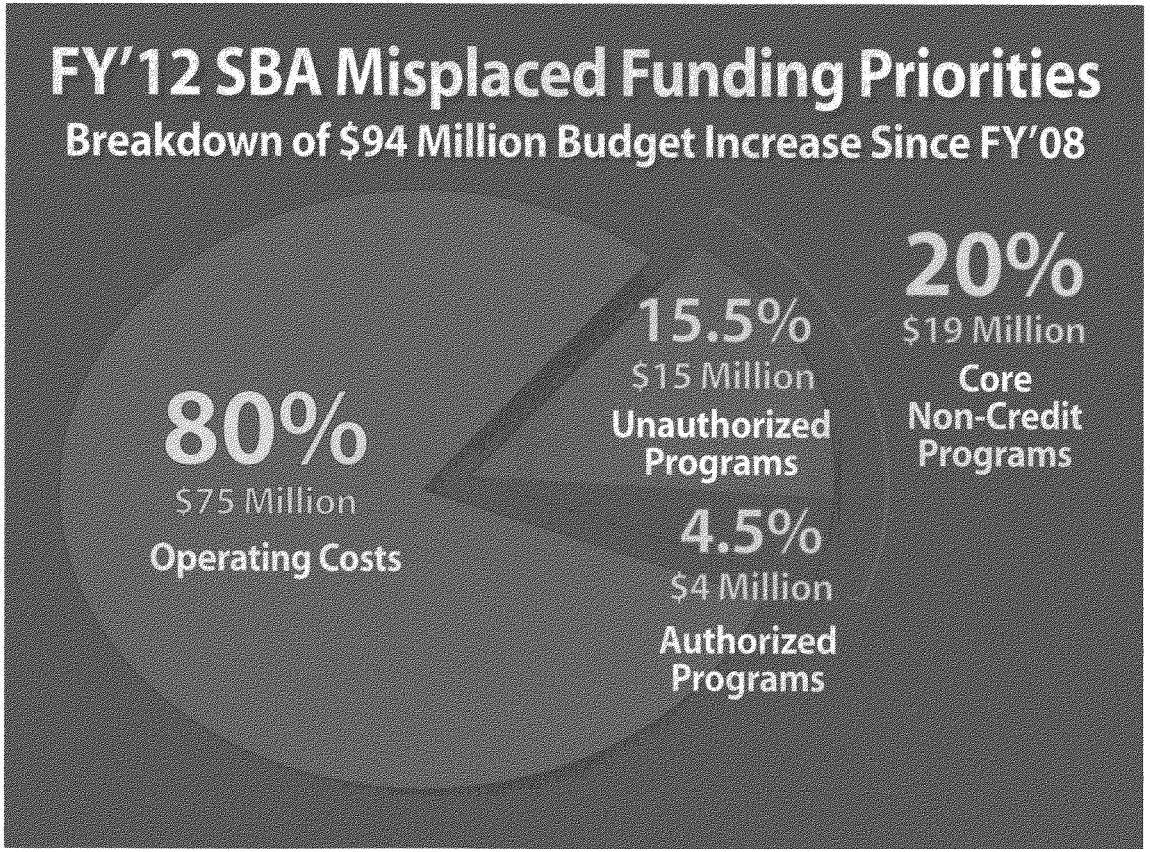
After subtracting the Administration's request for loan subsidies, in addition to earmarks and disaster funding, the SBA's 2012 budget request is still 18 percent above the level provided in fiscal year 2008. This fails to account for the tremendous surge of funding, including the $1.2 billion for fee reductions on the SBA's loan portfolio, an additional $240 million for its operation and core programs provided under the stimulus, supplemental appropriations, and the Small Business Jobs Act.

This funding has bolstered the agency's capabilities and will continue to have an impact long after it expires at the end of this year; for one, it resulted in the recruitment of over 1,300 new lenders to participate in the SBA's loan programs. I want to congratulate the Administrator on that score because I think that is truly important for access and outreach to the small business community in having access to capital—as well as making necessary investments in tech-

nology that will continue to improve the SBA's efficiency and effectiveness for years to come.

I have a chart here to display the concerns that I have and to underscore the SBA's 2012 budget compared to the fiscal year 2008. The fact is, of the $94 million, or 18 percent increase in the core SBA funding, 80 percent can be attributed to higher administrative and operating costs in the agency, as opposed to benefitting the SBA's flagship non-credit programs such as micro-loans, small business development centers, women's business centers, veteran's programs, and SCORE.

[The information follows:]


FY'12 SBA Misplaced Funding Priorities
Breakdown of $94 Million Budget Increase Since FY'08
80%
$75 Million
Operating Costs
15.5%
$15 Million
Unauthorized Programs
4.5%
$4 Million
Authorized Programs
20%
$19 Million
Core Non-Credit Programs

Further, only 4.5 percent of the increase in funding since 2008 has been dedicated to these vital programs, when also subtracting the Administration's new unauthorized initiatives. Going forward, the SBA can and must reduce its operating costs and find savings in the administrative expenses while eliminating or reducing funding to programs that are inefficient, repetitive, and ineffective.

That is why I am inclined to agree with a number of the cuts in the SBA's fiscal year 2012 budget request, including the elimination of the Prime Technical Assistance Program, the Drug-Free Workplace Program, and a number of the special purpose counseling grants for the small business development centers. I have also identified the 7(j) technical assistance programs. Cumulatively, they would save $18.1 million. It is possible to cut even further. But that is a start.

It is critical that we identify other areas to cut and we have to do so wisely. I think we understand that, given the atmosphere of the economy and also the struggle of small businesses, the Office of Advocacy is the regulatory watchdog for small business guarding against over-regulation. So not only do I support full funding for this office, I strongly recommend reinforced appropriations for additional staffing. I do so because of the potential this independent voice for small businesses possesses to cut down the torrent of regulations stifling job creation.

Between the months of September 2009 and September 2010 alone, the Office of Advocacy achieved $14.9 billion—that is a billion with a B—in the first year of cost savings and $5.5 billion in annually reoccurring savings for small businesses and foregone regulatory costs. Operating with a $9.3 million budget, that means for every dollar the American taxpayer spends to run this office, small businesses reap nearly $1,600 in regulatory cost savings. I further believe that with additional resources, Advocacy could achieve even greater results.

Finally, I would like to call your attention to a letter that the SBA Inspector General, Peggy Gustafson, sent to Chair Landrieu and me dated March 15th, 2011. This letter was in response to our request that the Inspector General provide input regarding the reduction or elimination of wasteful, duplicative, or ineffective operations at the SBA without undermining the agency's ability to serve the needs of small business owners.

The Inspector General made a number of strategic recommendations that I encourage everyone here to consider, and I look forward to working with the Chair to vet these thoughtful proposals for savings in the coming months.

So again, I reiterate that we have some very difficult choices that have to be made at SBA, here in the United States Senate, and throughout the Federal Government, as we work to extricate ourselves from this fiscal quagmire. At the same time, we know we have to build the small business community, but we are going to have to have a very lean and efficient operation for the programs that we underwrite given the current fiscal constraints. Thank you, Chair Landrieu.

Chair LANDRIEU. Thank you, Senator Snowe. Senator Moran, thank you for joining us. Do you want to give a short opening and then we will get right to our testimony?

Senator MORAN. That is not necessary, Madam Chairman. I am pleased to join you and the ranking member, and I am here with great anticipation to hear what the Administrator has to say. So thank you very much.

Chair LANDRIEU. Thank you so much. We will turn it over to you, Ms. Mills.

STATEMENT OF HON. KAREN GORDON MILLS, ADMINISTRATOR, U.S. SMALL BUSINESS ADMINISTRATION

Ms. MILLS. Thank you very much, Chair Landrieu, Ranking Member Snowe, members of the Committee, Senators. I am very pleased to be testifying here before you. Small businesses are the backbone of our economy. They create nearly two out of every three new jobs, and more than half of working Americans own or work for a small business.

The SBA is a small agency, but we have a big mission. We put the maximum amount of possible resources directly into the hands of small businesses, focusing on the three C's of capital, contracts, and counseling. Last year we helped over 50,000 small businesses get the capital to grow and hire, we helped put about $100 billion in Federal contracts in the hands of small business, and we counseled more than a million small businesses across your districts and throughout the country.

We put these resources in their hands while providing taxpayers a big bang for their buck. For example, after credit froze in 2008, the Recovery Act and the Small Business Jobs Act supported more than $42 billion in SBA loans at a subsidy cost of $1.2 billion. Many small businesses suffered greatly from the recession. Our job is to support them as they grow and create jobs, and this job, as the Senator said, the Ranking Member said, this job is not done.

The President's proposed 2012 budget for the SBA of $985 million will support up to $27 billion in loan guarantees, as well as many other tools and resources to help our country's small businesses. At the same time, this budget reflects a commitment to tighten our belts, streamline our processes, and eliminate duplication.

These include ideas from Congress. For example, we looked hard at our technical assistance programs. As a result, we propose eliminating the PRIME Program. With the work of our Microlenders and new efforts to recruit community-based lenders, we can continue to provide technical assistance in a more cost efficient way.

In addition, due to process re-engineering, our disaster loan operations are now much more efficient. We can preserve our level of preparedness with a steady state core staff of 850, instead of 1,000, along with our 2,000 reservists. The largest increase in this budget reflects the fact that we have reached the statutory limit for fees that we can assess.

This budget reflects the need for additional subsidy because losses, including those from loans approved on collateral such as real estate that was inflated, have pushed up subsidy costs. We will also request a legislative fix to return to near zero subsidy. The budget also builds on our strong efforts over the past two years to remove fraud, waste, and abuse in Federal contracting, and it

supports the new Women's Contracting Program. I know that both of these issues are a high priority for this Committee.

Finally, I want to be clear about our Executive Direction request. This budget does not reflect an increase in bureaucratic overhead or salaries. Instead, it reflects three things. First, it reflects a transfer of procurement operations from the Management and Administration Office to our chief financial officer, which falls under executive direction. One line went up and the other line went down.

Second, it reflects Phase 1 spending for the new loan computer system. I should note that this project has been redesigned to actually be $20 million lower in 2012 than initially projected. Third, it reflects the transfer of our redesigned Web site development and maintenance from our chief information officer to the Office of Communications, which falls under executive direction. This has been a priority of this Committee and the new site has been very well received by small businesses.

Overall, our priorities are twofold. We have placed a focus on SBA programs that put money and support directly into the hands of small business owners, and we will continue to invest in oversight to preserve the integrity of these programs and to protect the interest of taxpayers. I look forward to working with all of you to ensure that small businesses can continue to grow, create jobs, and lead us to a full recovery. Thank you very much and I am pleased to take your questions.

[The statement of Ms. Mills follows:]

U.S SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

TESTIMONY OF KAREN G. MILLS
ADMINISTRATOR
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP
THE PRESIDENT'S FY 2012 BUDGET REQUEST
MARCH 31, 2011

Chair Landrieu, Ranking Member Snowe, and members of the Committee. It's an honor to testify before you today. I look forward to working with each of you to ensure that America's small businesses can continue to grow and create jobs.

The Small Business Administration (SBA) is a small agency but we have a big mission. We focus on providing access and opportunity through the three "Cs" of capital, contracts and counseling.

Last fiscal year, we helped over 50,000 small businesses get the capital they need to grow and hire.

We helped put about $100 billion in Federal contracts in the hands of small businesses.
And we counseled more than a million entrepreneurs and small business owners in your states and throughout the country.

Over the past two years, we provided taxpayers with a big bang for their buck. One example: Since credit markets froze in 2008, we supported more than $42 billion in small business lending.[1] We still have work to do to help small businesses create the jobs we need, and the President's proposed FY12 budget for SBA is $985 million.

Our top priority remains to support programs that put resources directly in the hands of small business owners.

At the same time, we will tighten our belts, streamline our processes, and eliminate duplication. This budget reflects some of your ideas to help us do just that. For example, we looked hard at our technical assistance programs.

As a result, we propose eliminating the PRIME Program. With the work of our Microlenders and new efforts to recruit community-based lenders into our Community Advantage initiative, we can continue to provide technical assistance in a cost-effective way.

Also as part of our look at technical assistance programs, we reduced the request to support Small Business Development Centers by $10 million. This was a tough choice, but we believe it is reasonable due to additional SBDC funding in the Small Business Jobs Act.

[1] For more information about SBA's credit programs, see the 2012 Budget's Credit Supplement.

In addition, we request a reduction in the core staffing level for our disaster program from 1,000 to 850. We currently have an additional 2,000 reservists as well as a very efficient and effective disaster operation that will preserve our level of readiness.

The two largest increases requested in this budget focus on programs that deliver direct help to small businesses.

First, we have reached the statutory limit for fees we can assess to borrowers and lenders for our business loans. We request $132 million in additional subsidy above our FY 2010 enacted levels and carryover balances because the estimated losses are higher than proposed fee collections.

Second, unlike previous years, carryover funds to support administrative costs of the disaster loan program no longer substantially exist. An additional $91 million above our FY 2010 enacted level is the funding necessary to sustain our core disaster operations.

In addition, we request support for important efforts such as implementing the women-owned business contracting rule and for continued oversight and enforcement efforts to reduce waste, fraud and abuse in contracting programs.

Overall, this Administration is making it a priority to strengthen and fund SBA programs that put these budget resources directly into the hands of small business so they can grow and create jobs. And, we will continue to invest in oversight to preserve the integrity of these programs and to protect the interest of taxpayers.

I look forward to working with all of you to continue to ensure that the strongest engine of our economy–small businesses–are succeeding. Because as the President has said, when they succeed, America succeeds.

Chair LANDRIEU. Thank you very much, Administrator. Let me begin by asking you for an update, if you will, on the Small Business Jobs Act of 2010 signed into law by the President this last September. Many claim that this is a landmark law, a very significant piece of legislation, some say the most significant piece in the last ten years. Due to the timing of the enactment of the law, the additional funding allocated to the SBA is not reflected in the 2012 budget request.

I know you have been working closely with the Administration to implement the various provisions of this Jobs Act, particularly the new lending program. Can you give us a brief update on the implementation of this law, and are you seeing any specific benefits from some portions of it?

Ms. MILLS. Well, I want to thank this Committee very much. The Small Business Jobs Act is the single most important piece of small business legislation over the last ten years, and it provided highly valuable tools for small business. We have aggressively been implementing this program.

For example, all of the funding that helped us increase the 90 percent guarantee and reduce the fees was put out into the hands of small business in the first quarter of this fiscal year. That was $11 billion in one quarter. It was the highest quarter for SBA lending in history. And so, we know that that money—I was just at a business, actually, yesterday in Warwick, Rhode Island, which got one of those loans and bought new equipment. So we know that that money is helping the economy and helping those small businesses already create jobs.

There were other important pieces of that. As we speak, the implementation of the procurement rule changes that were put in that statute have been written up, put into rule-making, and are in the process of public comment. We have people in the field today and this week and in the next month taking public comment on the new rule-making, which is designed to close loopholes; reduce fraud, waste, and abuse; make sure that small businesses get the benefits of the Government contracts, not big businesses masquerading as small businesses or partnering with them and taking too much of the contract. So that is all well into implementation.

Another piece of it that we are very pleased about that was created in this Committee are the STEP grants, the export grants which support small business exports. Those are grants to state agencies to make sure they are reaching out to help our small businesses work to export more product.

Right now, small businesses are only 30 percent of total exports. If we are going to reach the President's export objective, which is to double exports over the next five years, small businesses have to lead the way, and we do have those opportunities. So those grants are competitive and the request for the competition has gone out and states are preparing their proposals.

Finally, $50 million for the Small Business Development Centers is being allocated, and once again, we have asked each of those Small Business Development Centers, rather than to just take the money, to describe exactly what incremental benefit, particularly in terms of job creation and small business activity, they are going to

deliver with that money, and those requests have come in and that money has substantially started to roll out.

Chair LANDRIEU. Now, another portion of this Act that was more controversial—I was supportive of it, but there were some that were not, but we managed to move through this new lending provision. But that is really under Treasury, not under SBA, and I am going to call the Treasury officials to come and testify because it is a new effort and hopefully it will work. We are not 100 percent sure, but I felt like we should try to do everything we possibly could to get capital to small business and Main Street, and this is a new initiative.

Do you have any information, though, that you would like to share about it—I know you are working with Treasury on that program—just to add something to the record about how it is being implemented? Are you generally pleased with what you are seeing or do we have to expedite that program?

Ms. MILLS. We are working with Treasury on the Small Business Lending Fund, and also on the state programs which were funded in this Act which were also extremely valuable. In both cases, we have evidence that banks are coming back to lending because there is an incentive, a carrot, in the Small Business Lending Fund for them to take in more capital and then push it out. So we know that there is bank interest. It is in its early stages and we are encouraging banks, through our network, to know about this program and to apply for those activities as it fits their profile.

The second piece, the state funds, have also begun to roll out, and those are programs that we work very much in conjunction with state-by-state, because very often SBA guarantees are given in conjunction to a company that has also received benefit from some of these state lending programs.

Chair LANDRIEU. One more question and then I will turn it over to Senator Snowe. Could you just repeat for the record how many new—two questions—how many new banks have come into the SBA, Administrator Mills, since you took over in our regular 504 and 7(a) programs? We have substantially increased the number of banks, have we not?

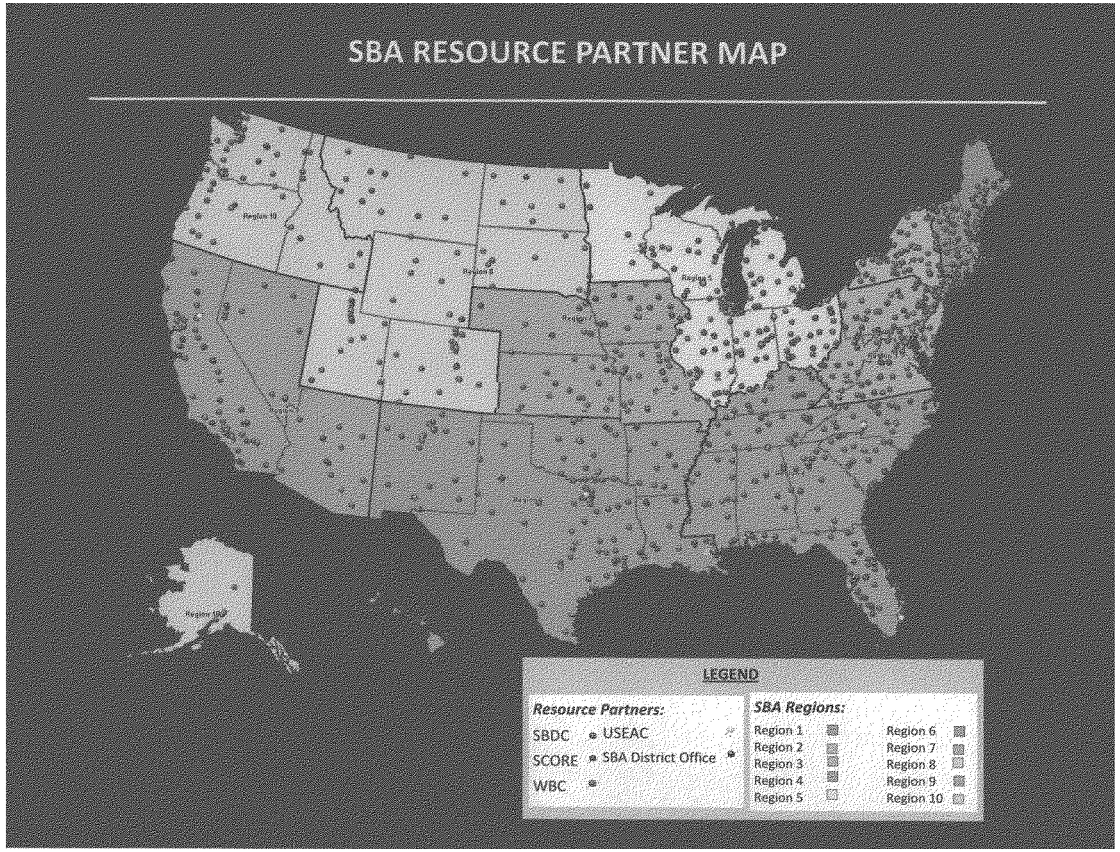
Ms. MILLS. Yes, we have. We have increased the number of banks, particularly community banks and credit unions, that have come into the SBA lending programs through, particularly, our Recovery Act 90 percent guarantees and fee reductions, and an effective outreach through our district offices to train new lenders, streamline our own processes, and have quick turn-around. The number in that first period of time in the Recovery Act was over 1,200 new lenders.

Chair LANDRIEU. That is very impressive. And let me ask you this one last question and then I will turn it over to Senator Snowe. I know that I sound like a broken record on this SCORE Initiative, but this program was started some years ago—and I am getting my staff to get me the details now—but to me, it makes so much sense, instead of the Federal Government creating another layer of Federal bureaucracy or government bureaucracy, to simply leverage a relatively small amount of money into a national nonprofit that is effective.

We had a hearing on SCORE chapters around the country. Now, some are better than others, but it is fairly impressive how widespread—if we can put up the chart? These are not only the SCORE chapters, but I want you to put up this chart. Senator, this is what encourages me and our members.

I had the staff put up this resource partner map because what I want to show is, this is not just the offices of the SBA. I mean, that would be pretty impressive if that was how much we were able to do with a small amount of money. But this is for resource partners. This is our women's business centers that take the money that we give them and leverage it up substantially.

[The information follows:]


SBA RESOURCE PARTNER MAP
LEGEND
Resource Partners:
SBDC
USEAC
SCORE
SBA District Office
WBC
SBA Regions:
Region 1
Region 2
Region 3
Region 4
Region 5
Region 6
Region 7
Region 8
Region 9
Region 10

These have the SCORE chapters, which are 350 chapters, where any small business can walk into a SCORE office for free and get counseling and support. We had a woman sitting right here at our last round table that said literally, she would not be in business today if it had not been for the counseling and advice, free, that she got from the SCORE chapter, and she was a very powerful witness.

So I want the Committee to really consider the advantage of increasing a small amount of money to SCORE, and if there is another organization out there that I am not aware of, I am open to that as well, but to work in partnership, have the SBA work in partnership with these 350 SCORE chapters. We do not have the chart of the SCORE chapters only, do we, where they are?

You know, to work with SCORE because I think free is good. I mean, I think free is great. I think when people go in to get help, they go because they do not have a whole lot of money to start with and they can get good support from this non-profit organization. I think it would be worth our investment to help strengthen that organization and be a partner with them.

So let me turn it over to Senator Snowe. I have a few more questions. Well, let me ask you, what is your feeling about SCORE and have you visited some of their chapters?

Ms. MILLS. I have traveled all around the country, and I think I have been to 31 states as of yesterday, and each time we go we have a round table with SCORE, and I have also met with all of their 350 chapter heads. It is absolutely clear that the counseling that is provided adds value to our small businesses. We know that our counseling network, because we track it, creates businesses with better outcomes, more longevity, more profit.

We track our extended client visits and our Small Business Development Centers, and it is not enough just to give money and loans to small businesses. You have to give them help and advice, work with them on business plans. We rely on SCORE for an enormous amount of our reach.

Most of our activity is in some kind of partnership: public/private partnership, partnerships with community colleges and other universities, and our SBDCs, and that is how we can leverage our small budget and activity to have a counselor within 45 minutes of most small businesses across this country.

This is of enormous value and, like you, when I sit with somebody and they say, This person—and they will put their arm around this person—this person saved my business, I would not be here today if I did not have this relationship. We are making a difference with those entrepreneurs.

Chair LANDRIEU. Thank you. Let me just submit for the record that there has been—I have this chart—a 24 percent increase in the number of banks participating in the SBA programs in the last two years. So I want to submit that to the record. Senator Snowe.

Senator SNOWE. Thank you, Madam Chair. Administrator Mills. I would like to get to the heart of these administrative costs. I know you made reference to the Executive Direction account, but what I was referring to is that and every other account where there has been a notable increase over time.

Obviously, I am comparing between 2008, which was not your budget, or 2009, but we are talking about 2010 and 2011, and obviously the proposed request for 2012. The differences that exist, percentage-wise, in virtually every account, concerns me. When you compare it to the CORE Non-Credit Programs where it is basically a split between 80/20 in terms of where the increases are going, it is basically for overhead and administrative costs.

So I guess the question is, where is there the possibility for reductions? What is the justification for the increases in nearly every single category as far as operating costs are concerned? You should take out the Executive Directions you had mentioned as a transfer to the CFO. Even if that were taken out in nearly every other category, as this chart illustrates, there are significant increases. So if we are looking to streamline programs, obviously we are going to be looking at administrative costs as well.

[The information follows:]

Rising Operating Costs at the SBA FY'08 - FY'12

Operating Costs	FY 2008	FY'12 Request	% Difference
Salaries and Expenses Budget			
Office Operating Budgets	$81,441	$111,336	37%
Agency-wide Costs	$44,980	$56,294	25%
Compensation and Benefits	$233,016	$270,311	16%
Subtotal	$359,438	$437,942	22%
Office Operation Budget Details			
Executive Direction	$10,212	$29,585	190%
Capital Access	$21,471	$23,000	7%
Govt. Contracting/ Business Development	$1,114	$9,653	767%
Entrepreneurial Development	$1,607	$1,958	22%
Management and Administration	$14,344	$9,214	36%
Chief Information Officer	$28,417	$29,201	3%
Regional and District Offices	$4,276	$5,210	22%
Office of Investment	N/A	$3,515	100%
Subtotal	$81,441	$111,336	37%
Agency-wide Costs			
Express Mail	$379	$498	31%
Judgment Fund	$65	$777	1095%
Office Security	$2,159	$3,078	43%
Performance Awards	$2,162	$2,439	13%
Postage	$675	$732	8%
Reasonable Accommodations	$14	$102	629%
Relocation	$367	$377	3%
Rent	$32,054	$38,979	22%
Telecommunications	$3,886	$4,924	27%
Transit Subsidy	$970	$2,066	113%
Unemployment Compensation	$778	$726	-7%
Workers Compensation	$1,470	$1,596	9%
Subtotal	$44,980	$56,294	25%
Business Loans			
Admin. Expenses New Budget Authority	$135,414	$147,958	9%

Ms. MILLS. I would not like this Committee to be left with the impression, as I think I have mentioned to you before, that the SBA has added bureaucratic overhead. The costs that you described there we have looked at very closely according to two principles. The first is, does it get money down into the hands of small businesses?

And I just want to point out that it is not just our Non-Credit Program that drives operating activity with small businesses. They happen to be broken out as line items. But it is not the only place in the agency where things are happening that drive activity into the hands of small business. So the first criteria is, is it getting value to a small business?

And the second criteria is, is it helping in our oversight activities? Is it reducing fraud, waste, and abuse? Is it protecting taxpayer interests? So those are our two principles by which we have gone through our budget and viewed these expenses.

I do note that you are looking at the 2008 budget. I just wanted to make a comment about the comparison between 2008 and 2012. When the 2008 budget was created, this agency was in a very different economic environment. The robust levels of lending in 2007 and early 2008 made credit very accessible in the general marketplace to small businesses.

But as you know, in October 2008, the credit markets froze and our activities in the agency became extremely relevant to fill this market gap. Therefore, we were able to take the Recovery Act dollars and drive a tremendous amount of value, $42 billion, into the hands of small business. And as I said, it was at a cost, but it was a subsidy cost of $1.2 billion.

That does not take into account the efforts made by our team, who went out and recruited the additional 1,200 lenders, and also our team partnered with our partners who were counseling a much higher number of small businesses who, of course, in that period of time were experiencing difficulty.

All of those loans that we put on the books, all of that bump-back in loans remain on the books. So when we do a loan activity, that cost to us for monitoring and oversight does not go away. So we actually have, in this period of time that you describe, taken on not only the implementation, but now the continued monitoring of a substantial set of activities which were included in supplemental budgets.

And that activity has been very effective and we are very pleased with it. It has put money in the hands of small businesses directly. It has been very successful, but it requires us to continue to make great efforts to monitor those loans because they stay on our books.

Senator SNOWE. Well, can you tell me how many new employees have been added as a result of this? I guess that is the question. I can understand how running government contracting—and the agency proposes for next year to add 24 new employees to help with fraud within the contracting program. So that is an example.

Do you have a list that we could have to see where these increases are occurring in terms of the number of employees supervising fraud, abuse, oversight of these programs? Obviously the SBA, over time, has gotten significant increases, if you think about the disaster loans, the stimulus program.

So there have been an awful lot of programs that have been bumped up significantly over the last few years. So those were one time events. Certainly that is the case with stimulus. So where is it that you would identify in these categories that would suggest that you would require additional employees? I mean, did you hire new people?

Ms. MILLS. So once again, I think the point is the stimulus activity and when we do disasters, for us they are actually not one-time events. They are an ongoing stream of costs. We put something on our books in the stimulus, we have to continue to monitor it. We add a new program in the stimulus or in contracting, we continue to oversee it. They have very, very long lives, each of these new loans, for example.

We have a request in for 24 new people. Those are the only new people we are requesting in the 2012 budget request, for fraud, waste, and abuse oversight. That is because we have taken the fraud, waste, and abuse issue head-on. In 2008, this was not an area that was robustly attended to, and we have, I think, joined with this Committee in seeing that we cannot have a program that delivers $100 billion into the hands of small business, creates that much value, that does not have integrity.

And we had a lot of work to do. Luckily, we got some help from this Committee, from the Small Business Jobs Act, and followed a template that I think you saw in the GAO report, and created a structure, a three-pronged structure to go after fraud, waste, and abuse. We look at up-front criteria.

We have focused on ongoing monitoring, and we have begun a robust effort to punish the bad actors, to bring up our enforcement efforts. Those are the areas where you will see our request for incremental people. We have already put substantial resources in the past few years as we realigned our priorities to focus on this.

Senator SNOWE. Well, would it be travel? What would justify the costs? Is it overtime, travel? What is it if it is not additional employees, other than, as I mentioned, the government contracting arena. So where is it——

Ms. MILLS. In each of these places——

Senator SNOWE [continuing]. That these increases are occurring?

Ms. MILLS [continuing]. There is—and these do not include employees, I believe, in the operating costs that you have up there. But as you look at those, there are structural things, for instance, in information technology systems, in tracking systems that we have invested in, and particularly in government contracting so that we have done analytics now to understand, to be able to track our businesses. We know.

We have broken down silos so that if there is a fraud in the Hub Zone Program, that information can be transferred over to the 8(a) program because that person may be in both programs. So we have invested both in structural, and now we have a request for some incremental personnel on the fraud, waste, and abuse side.

Senator SNOWE. Okay, thank you.

Chair LANDRIEU. Thank you. Senator Moran.

Senator MORAN. Thank you, Madam Chairman. Administrator Mills, thank you very much for reaching out to me in the conversation that we had by phone last week. I am grateful for that con-

versation. One of the things I wanted to explore with you, it was indicated that the number of partnering financial institutions, banks and credit unions, has increased.

One of the things that I see, and certainly one of the things that I continually hear by small business and entrepreneurs who are interested in expanding their business or starting a business is the lack of access to credit. As we look at where we are in job creation, the recession that we are in, in my view, there are a number of reasons that we are slow to recover, but one of the them is the inability for small business to access capital.

I am interested in knowing whether you have a sense of why the businesses are—I am sorry—why the banks are entering into the partnership with the SBA at these new levels. In my view, we have a regulatory scheme that is being increased on community banks across the country that make it much more difficult for them to lend money, even to credit-worthy borrowers. One of the responses, my guess is, by bankers is to then figure out how do we partner with the SBA in order to be able to make these loans.

So in your—one, my question is—several questions—is my sense correct, that a reason that there is a greater partnership is because banks are having to come to you in order to better satisfy the regulators?

Do you have a sense that our community banks, financial institutions, are—the regulatory environment, the scheme, is increasing and there is a consequence to the ability to borrow money by those who are credit-worthy and want to expand their business?

And three, does the SBA have an advocacy role within the Federal Government to try to rein in this ever-expanding regulatory scheme that again, in my view, is reducing the chances that a worthy borrower can find money at their hometown bank?

Ms. MILLS. Well, thank you very much. I did enjoy our conversation as well, and I know that you are quite knowledgeable about the small business and banking environment, particularly in Kansas, and in a broader perspective. So I appreciate your bringing this up.

We have seen, in this credit crunch, more banks turn to the SBA because they had credit-worthy borrowers, but they did not have the capital on their books, perhaps because they had extended in real estate, and in the crunch their capital stock had gone down. If they went to the SBA and used one of our guarantees for a credit-worthy borrower, they might be able to help a client that they want to help, that they know very well, but that at that moment did not match the bank's credit criteria.

When the guarantee was at 90 percent, they only had to put up capital for the unguaranteed portion. So once again, that allowed them to do ten loans where before they might have only been able to do one. We were very happy with that partnership because our job was to get money out into this credit-starved market and help those small businesses who went back to their bank and said, We have been banking together a long time, why can you not help me?

To your second question, in that time period and continuing today, we work very closely with the regulators to make sure that the regulatory guidance is clear on some of these small business loans down in the field. We were also getting the feedback from

banks which said they were concerned that there was not clarity about whether they could make certain loans.

I was very happy to work with the Fed and with the FDIC and Ms. Sheila Bair in a number of circumstances where we worked together, we spoke together, and we helped send clarity and directives down that helped open those doors of the bank to some of this small business lending by providing more clarity on the guidance of what was acceptable and what the regulatory criteria was for different loans. And then that would help them both work with the SBA and also make loans on their own.

Senator MORAN. My time expires in 13 seconds and this is my first Committee hearing that I have been to as a member of the Small Business Committee so I am not certain how strict the Chairperson is.

Chair LANDRIEU. Not very strict.

Senator MORAN. Madam Chairman, I chaired a committee in the House of Representatives and one of my colleagues was always yielding back his time after he had gone on more than 10 or 15 minutes beyond the time allotted him. It struck me as odd.

[Laughter.]

Chair LANDRIEU. We are very friendly in this Committee.

Senator MORAN. Thank you so much. I just would reiterate and kind of strengthen the case I am trying to make with you. The SBA has a great network of contacts with small business and with lenders, and I believe there is a real problem for community lenders in being able to make loans that they firmly believe are credit worthy. And that comes from the regulatory environment that they are finding themselves in from the FDIC, as you mentioned, the OCC, the Fed, and we need the SBA, in my view, to be an advocate for common sense regulations that allow our banks to continue to make loans, with or without the SBA guarantee.

I also would say that in that same environment that you operate in, which you are dealing with small business, the regulatory environment that we find ourselves in just generally needs an advocate within the Administration, and to us in Congress as well, to come tell us the regulatory environment in which small business is trying to succeed is so onerous that their ability to do so is greatly limited.

And so, while you advocate for small business, I would ask you to advocate for small business within the Administration, here in Congress, by giving us the examples with the circumstances that you see and hear and view about, here are the things that are impeding the opportunity for a small business person or an entrepreneur to either begin a business or to expand that business.

In my view, a lot of the fault lies here in Washington, D.C. You ought to be the advocate for expressing those things you see out in the field. I thank the Chairman.

Chair LANDRIEU. And Senator, let me follow up because that will transition beautifully into my next and last question to the Administrator and then ask each of you if you want an additional question. Then we are going to move to our second panel.

But I want to support what the Senator is saying. We are hearing horror stories, actually, from the field, from community banks that are having a great deal of difficulty navigating through these

uncertain waters of regulation from a variety of different Federal agencies, most of it coming from Treasury and sort of out of the banking oversight sector.

The Small Business Administration is here for a purpose, and it is to advocate on behalf of small business, and not just for our own programs, but generally advocating for them. In fact, we feel so strongly about this, Senator, that an advocacy position was created and we are going to hear from that advocate in just a moment.

On that subject, let me ask you, one of the concerns that I have in reviewing the specifics of the budget, Senator Snowe mentioned a few, but it is the Office of Advocacy itself has asked for $9 million, which is a reasonable amount of money, for their small staff, their ten regional directors. But in addition, there is an additional $10 million for administrative costs on top of that.

And so, it is a total of—they have only asked for $9.1 million, but I understand the total line item is $19 million. Could you please explain that, Administrator, because it does not really make any sense to me? And how can an administrative cost of $10 million on top of the $9 million that is really required to run their office?

Ms. MILLS. Well, thanks for the question, Senator, and it is a question actually that we asked as well. You are referring to Table 9, which has a $19 million cost for the Advocacy, versus Table 1, which has a $9 million cost. What is the extra $10 million? The answer is that Table 9 is a table which reflects cost allocations, and that means that it is an apportionment. There is not an additional $10 million to cover their overhead. It is an apportionment of jointly used costs like real estate.

The methodology for doing that has rules. There are cost accounting rules. I happen to be—have an interest in cost accounting, but this is a complicated subject. The cost accounting rules change depending on various things. When the Office of Advocacy was broken out to be a separate line item in our budget through the Small Business Jobs Act, the rules that apply to the cost accounting changed.

So things that were not allocated when it was not a separate line item are now required to be allocated. That said, $10 million seems like a lot of allocation, so I have asked my team to go back and look at the methodology. It was the first time it was used and we are happy to come back to you and——

Chair LANDRIEU. Well, I would appreciate a more detailed explanation because it is a little concerning to me. Both Senator Snowe and I have an interest in making sure this office is well-staffed, well-led, well-directed, because we think there is a great need out there right now in this regulatory climate, both of us believe, and this is just a little disconcerting that we have jumped from 9 to 19. So if you could provide that in writing in very specific terms to us, or to me and I will share it with the members of the Committee, I would appreciate it.

Ms. MILLS. I do want to make sure it is clear that the extra $10 million is not additional money.

Chair LANDRIEU. Well, it looks that way on paper. So let me turn it over to Senator Snowe for a final question and then Senator Moran.

Senator SNOWE. One question that I had was about recovery costs and debt collection. Under current law, many agencies are assigned by the Treasury Department the ability to go out and collect debt on defaults and so on, failure to repay loans. The SBA, obviously, does that through the Treasury Department but at an additional cost.

Have you ever considered doing this recovery within the agency? Because right now, the SBA gives more than $28 million back to Treasury, whereas it could be utilized within SBA for additional savings, and to offset additional costs. Is that something that the SBA has considered or you have considered during your tenure?

Ms. MILLS. Well, I have some notes on this because I know that you asked the question, but I will say that it is not something that has come up before. We have a relationship with Treasury and we are happy to look into it further.

Senator SNOWE. Well, that would be great because it is another way. They recovered an estimated $100 million for SBA for the 7(a) and the 504 and Disaster Loan Programs in 2010. So $28 million of that went to Treasury, in addition to, I guess, the $17 for administrative costs per transaction. So that is something that could be done in SBA. I know some of the other departments do it in-house rather than assigning that responsibility to Treasury. So that may be something that we should look at. Thank you.

Chair LANDRIEU. Senator.

Senator MORAN. Thank you.

Chair LANDRIEU. Thank you, Administrator. We appreciate your time before the Committee.

Ms. MILLS. Thank you.

Chair LANDRIEU. At this time, if Mr. Winslow Sergeant will come forward?

Good morning. Thank you, Dr. Sergeant, for joining us this morning and we look forward to your testimony. I also want to make sure the Committee members know that just by coincidence, we happen to have all of the regional administrators for Advocacy in town for a training seminar, I understand, today. When I found out they were here, I asked them specifically if they would sit in on this meeting. I am going to meet with them for a few minutes afterwards because this is a very important office. I understand, Dr. Sergeant, you have the directors of each of your regions here with you.

Dr. SERGEANT. Yes.

Chair LANDRIEU. Would you all please stand? So we have all the regions represented?

Dr. SERGEANT. They are all represented, yes, Senator.

Chair LANDRIEU. Ten?

Dr. SERGEANT. All ten.

Chair LANDRIEU. All ten, okay. And these are the regions on the map. Thank you. You can be seated. These are the regions of the Small Business, and as you open your testimony on your budget and your office, it is good to have your leadership team here and, of course, we will have questions for you after your five-minute testimony. But please begin.

TESTIMONY OF HON. WINSLOW SERGEANT, PH.D., CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Dr. SERGEANT. Chair Landrieu, Ranking Member Snowe, Senator Moran, good morning. Members of the Committee, good morning and thank you for the opportunity to appear before you today to discuss the Office of Advocacy's budget request for fiscal year 2012. In the interest of time, I will summarize my prepared testimony and ask that my full statement be included in the record.

Because Advocacy was established to provide independent counsel to policy makers, my testimony has not been circulated for comment through the Office of Management and Budget or other Federal agencies. Therefore, my views do not necessarily reflect the position of the Administration or of the SBA.

Before I turn to the budget, I would like to briefly bring you up to date on our activity. I am pleased to report that we have been extremely busy working on behalf of small businesses. Since my appointment as Chief Counsel for Advocacy last August, I have signed 32 public comment letters to 19 different agencies on a wide variety of regulatory issues, and we have held more than 20 small business roundtables.

We are currently participating in seven SBREFA panels on EPA rules. Additional panels are expected in the near future on regulations from OSHA and a new Consumer Financial Protection Bureau, CFPB. Earlier this month, my office provided you with our annual report on the implementation of the Regulatory Flexibility Act, Executive Order 13272.

All of us here know how important it is for agencies to take their RFA responsibilities seriously, and I am proud to report that in fiscal year 2010, Advocacy's involvement in rulemaking on behalf of small business resulted in regulatory cost savings of nearly $15 billion. But today, we are here to focus on the budget.

Through this Committee's leadership, the Small Business Jobs Act of 2010 included a provision of enormous importance to Advocacy, its independence and its budget. This provision established in the Treasury a new separate account for our office and the requirement that the SBA continue to provide operational support. This new provision gives Advocacy, for the first time, statutory line item funding similar to that of the SBA Inspector General.

The President's recent budget request for fiscal year 2012 reflects the establishment of this new account. The request for Advocacy in fiscal year 2012 is $9.12 million. This amount is sufficient for us to function effectively in fiscal year 2012. It includes $7.4 million to return us to staffing levels seen in fiscal years 2008 and 2009.

Since coming before this Committee last November, we have now brought on board all ten of our regional advocates, giving a much stronger voice to businesses in every region of the country. Advocacy's professional staff is our most valued asset, allowing us to effectively work for small business.

The fiscal year 2012 budget request will also support an economic research program of $1.3 million. This level of funding allows us to produce, on average, 25 new reports or data products each year. The remaining $420,000 in Advocacy's budget request for fiscal year 2012 will cover all expenses for travel, training, of-

fice supplies, printing of publications, and other expenses that are directly attributed to Advocacy.

In addition to a separate account for Advocacy, the Jobs Act also included a provision that SBA provide my office with operational support such as office space, rent and utilities, and telecommunications. Accordingly, we have a new agreement with SBA in which the agency will provide all of these items discussed in the new law without charge to our new appropriation.

This support package includes a variety of services such as human resources, payroll services, and IT support. This agreement has been formalized in a Memorandum of Understanding signed by SBA Deputy Administrator Marie Johns and myself.

In conclusion, I am pleased that the President's fiscal year 2012 budget request will allow Advocacy to fulfill its important mission of helping small business. Let me again thank the Committee and its staff for the tremendous support you have given Advocacy for so many years. It helps us immeasurably in our work to know that we have the support. I look forward to continuing to work with you on important issues to small business. I would be happy to answer any questions you might have.

[The prepared statement of Dr. Sergeant follows:]

Advocacy: the voice of small business in government

Testimony of

The Honorable Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy
U.S. Small Business Administration

United States Senate
Committee on Small Business and Entrepreneurship

Date:	March 31, 2011
Time:	10:00 a.m.
Location:	Room 428 Russell Senate Office Building Washington, D.C.
Topic:	Office of Advocacy Fiscal Year 2012 Budget

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates. For more information about the Office of Advocacy, visit ***http://www.sba.gov/advo****, or call (202) 205-6533.*

Chair Landrieu, Ranking Member Snowe, and Members of the Committee, good morning. As Chief Counsel for Advocacy, I thank you for the opportunity to appear before the Committee today to discuss the Office of Advocacy's budget request for Fiscal Year 2012. That submission is part of the President's request for SBA and the government as a whole, and it accordingly has the full support of the administration. However, because Advocacy was established to provide independent counsel to policymakers, and its testimony is not circulated for comment through the Office of Management and Budget (OMB) or other federal offices, my views on matters other than the official budget request do not necessarily reflect the position of the administration or of SBA.

Advocacy activity update

Before I turn to the budget, I would like to bring you up to date on Advocacy activity generally. I am pleased to report that Advocacy has been extremely busy since my last appearance before you in November. As Chief Counsel, my top priority is and will continue to be ensuring that the voice of small business is heard in the regulatory process. We continue to work with agencies across government to help them mitigate the potential costs of regulation for small entities. Since my appointment last August, I have signed 32 public comment letters to 19 different agencies on a wide variety of issues (Appendix A). We are currently participating in seven separate Small Business Advocacy Review Panels now in various stages of progress on EPA rules. Additional panels are expected in the near future on regulations from OSHA and the new Bureau of Consumer Financial Protection.

All of us here know how important it is for agencies to take their Regulatory Flexibility Act (RFA) responsibilities seriously, and Advocacy continues to provide RFA compliance training to regulatory agencies, pursuant to Executive Order 13272. Also in furtherance of that order and the RFA, we continue to work closely with our colleagues in OMB's Office of Information and Regulatory Affairs to ensure that small business concerns are heard early in the regulatory development process. To help us understand those concerns, we have had more than 20 small business roundtables since my appointment. They have explored issues as diverse as

taxes and pensions, government contracting, work visas, telecommunications, OSHA and EPA rules, financial regulations, aviation and transportation rules, and veteran entrepreneurship.

Since the beginning of the current fiscal year, our economic research team has published twelve research or data products, including new editions of three of our most popular annual reports: *The Small Business Economy,* our state economic profiles, and our annual small business bank lending study. In addition, we have underway a variety of contract research projects on specialized issues, and these will be released as they become available.

When I testified before you in November, I was strongly encouraged by members of this Committee to travel outside of Washington to hear directly from small businesses around the country. Since then, I have had the pleasure to do just that in Rhode Island, Massachusetts, Georgia, Alabama and Louisiana; and I have scheduled trips to Wisconsin, Minnesota and Maine in the weeks to come. Additionally, we have now brought all ten of our regional advocates on board, giving a much stronger voice to businesses in every region in the country. They are out there talking to state and local elected officials about the importance of regulatory flexibility and listening to small business owners about the regulatory burdens they face.

Our information team reports that hard copies of Advocacy's monthly newsletter now go to more than 8,000, and almost 30,000 more subscribers receive it electronically. Advocacy's research listserv reaches nearly 16,000 subscribers, and our regulatory news goes to nearly 14,000 subscribers.

To conclude this brief overview, Advocacy recently released its annual report on implementation of the RFA and Executive Order 13272. I am proud to report to you today that in FY 2010 Advocacy's work with regulatory agencies to help them design smarter rules resulted in one-time regulatory cost savings for small entities of nearly **$15 billion**. In addition, recurring annual savings of $5.5 billion resulted from these efforts. These cost savings estimates are conservative and based in most cases on data from the rule-writing agencies themselves. (A listing of the rules and savings achieved is attached as Appendix B to this testimony.) Our FY 2010 savings were led by more than $9.1 billion in savings from a single EPA rule which defers

greenhouse gas requirements for many small businesses by up to six years. Although our annual regulatory cost savings numbers can vary considerably from year to year, our five-year average for one-time cost savings remains an impressive $8.5 billion.

Executive Order 13563

Since I last appeared before the Committee, President Obama signed on January 18th Executive Order 13563, *Improving Regulation and Regulatory Review*, and two related memoranda to the heads of executive branch departments and agencies: one titled *Regulatory Compliance*, and the other *Regulatory Flexibility, Small Business, and Job Creation*. (These documents are attached as Appendices C, D and E.) These directives supplement existing regulatory review processes, particularly the Executive Order 12866 process that has been in place since 1993. However, the new directives also reiterate key provisions of the RFA, as well as emphasize the administration's commitment to:

- public participation in the rulemaking process;
- the coordination, simplification and harmonization of regulations that are redundant, inconsistent or overlapping across agencies;
- the identification of means to achieve regulatory goals designed to promote innovation;
- consideration of regulatory flexibility whenever possible;
- the review of existing significant regulations and the consideration of how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient or excessively burdensome; and
- the modification, simplification, expansion or repeal of rules based on these analyses.

These objectives and the new directives are very much in keeping with Advocacy's mission, the RFA and Executive Order 13272. In fact, both Advocacy and the RFA are mentioned by name in the memorandum *Regulatory Flexibility, Small Business, and Job Creation*. In it, the President emphasized the importance of compliance with the RFA and its purposes. The President also expanded the existing requirement for an agency to document its decision to reject an alternative that may reduce regulatory burdens on small entities. The RFA currently requires agencies to explain in the Final Regulatory Flexibility Analysis accompanying final rules why significant alternatives were not selected. The President has directed that a similar explanation be provided for proposed rules as well.

In FY 2012, Advocacy will be assisting regulatory agencies in meeting the requirements of the President's regulatory initiative. We are already working with White House officials and OMB's Office of Information and Regulatory Affairs to implement Executive Order 13563. On February 1st, I sent a memorandum to the heads of executive branch departments and agencies concerning new RFA developments, including provisions in the President's regulatory initiative. I also reminded them of RFA amendments made by the Small Business Jobs Act of 2010, Public Law 111-240 (September 27, 2010). Through this Committee's leadership, the Jobs Act also included additional provisions of enormous importance to Advocacy, and it is to those provisions and our Fiscal Year 2012 budget request that I now turn.

Advocacy's independence and new separate account legislation

First, on behalf of the entire Advocacy team, let me thank the Committee for the tremendous support you have shown for our office over the years, through many changes in leadership in both the legislative and executive branches. This support was again underscored by inclusion in Public Law 111-240, last year's Small Business Jobs Act, a provision establishing in the Treasury a new separate account for Advocacy and a requirement that SBA provide an operating budget for our office. These provisions will enhance our independence and increase transparency for our many stakeholders on our costs and operations.

There is a long legislative history supporting the Congressional intent that Advocacy is an independent office housed within SBA, and that its mission and activities, and the discretion exercised by the Chief Counsel in their implementation, are independent of the SBA and its management and normal chain of command. As you know, Advocacy has its own statutory charter, Public Law 94-305, which is not part of the Small Business Act. The RFA also conveyed additional duties and powers on the Chief Counsel, as did Executive Order 13272. We also have special personnel authorities and a variety of other tools to help us represent the interests of small business within government.

Advocacy's independence allows us to take strong positions in our comment letters, publications, testimony and other work, without going through clearance within the executive branch. While such review and coordination is certainly appropriate for most agencies, in our case it is not. That is because it is the job of each Chief Counsel to transmit directly to policymakers the unfiltered views of our small entity stakeholders.

I would like to make clear that, since my appointment by the President, Administrator Mills and her staff have respected Advocacy's independence, and we have a good working relationship. When I speak of independence, I want to emphasize that Advocacy only makes decisions based on what we believe is best for small business. When I send a comment letter on a proposed regulation, it is not cleared by the Administrator, the White House or any other office or official in the administration. Neither are our research findings, testimony or other work products reviewed for clearance by the administration. We work independently as the Congress intended, and the SBA Administrator has been respectful of this independence.

Administrator Mills and other senior members of the administration understand that Advocacy's ability to provide the best information possible helps all of us to do our jobs better, whether this information consists of economic research or data products, the articulation of the views and concerns of small entities on policy issues affecting them, assistance to regulatory agencies in RFA compliance issues, or the professional judgment of our highly qualified team of attorneys and economists. I know from my conversations with past Chief Counsels that Advocacy's independence has been a constant through the years, and it remains the bedrock of Advocacy's ability to be effective.

Despite Advocacy's independence, our office has in the past been fully integrated within SBA's internal budgetary process. We have competed, as it were, with all SBA program offices for our share of resources within SBA's total budget. There are many stages in this process, including coordination with OMB as SBA's budget request is integrated into the administration's government-wide request. Throughout the process, difficult decisions are made about the allocation of scarce resources, many of them by the SBA Administrator and his or her senior staff. I am pleased to report that Administrator Mills has been very supportive of Advocacy, but

through the years the office has had its budgetary ups and downs, and we have borne our share of reductions in staffing and other resources.

Because of Advocacy's complete integration into SBA's budget in the past, the office has been vulnerable to the changing priorities of new administrations and within the SBA itself. There has not been much transparency at the individual SBA office level where Advocacy has resided in the budget process, and changes in accounting methods have made it even more difficult to compare Advocacy costs and needs from one year to another.

The Small Business Jobs Act of 2010 provides that Advocacy will have for the first time statutory line-item funding, to be segregated in a separate Treasury account similar to that of the SBA Inspector General. This basically means that the Congress will set the amount available for direct Advocacy costs, and these funds will not be commingled with other SBA funding. The enactment of the Advocacy budgetary provisions underscores our independence and indicates that Congress intended to identify clearly the resources available to Advocacy, provide a basis for performance measurement, and promote certainty in Advocacy budgets.

I am pleased to report that the new statutory line-item for Advocacy will be operational in FY 2012, and the President's recent budget request for that year reflects the establishment of a new Treasury account for our office.

Advocacy's FY 2012 budget request

The President's budget request for Advocacy direct costs in FY 2012 is $9.12 million. This amount includes $7.4 million to support 46 positions, the number of staff on board during Fiscal Years 2008 and 2009. We are now at 45, and an additional position will be filled in the next few weeks. Advocacy's professional staff is our most important asset, and it is appropriate that the largest share of our budget goes to human resources.

The FY 2012 budget request will also support an economic research program of $1.3 million. This includes funding for data acquisition, specialized contract research, support of

custom data tabulations at other agencies, and related costs. In recent years, Advocacy has produced an average of 25 new reports or data products each year. However, there remains an increasing need for additional work. A number of older Advocacy studies require updating so that the maximum utility of investments already made can be realized. The recent update of our study on the cost of regulation is a good example of this. The proposed funding level for Advocacy research in FY 2012 will also allow for additional data acquisition from other government agencies and new research projects to meet the changing needs of our stakeholders.

The remaining $420,000 in Advocacy's budget request for FY 2012 will cover all expenses for travel, training, office supplies, subscriptions, printing of publications, and other incidental expenses attributable directly to Advocacy.

Additional support for Advocacy in the FY 2012 budget request

In addition to a separate account for Advocacy, the Jobs Act also included a provision that SBA was to supply Advocacy with operational support such as office space, rent and utilities, telecommunications, equipment and maintenance, etc. I am pleased to announce that we have negotiated an agreement with SBA's Office of the Chief Financial Officer and other SBA support offices in which the agency has agreed to provide all of the items contemplated in the new law without charge to our new appropriation. Included in this support package are a variety of centrally managed services such as human resources/payroll services, legal counsel, facilities management, procurement, security and emergency planning, computer technical support, web services and the use of mail room and delivery services. Our agreement has been formalized in a Memorandum of Understanding (MOU) signed by SBA Deputy Administrator Marie Johns and myself.

Although the support package for Advocacy that SBA will be providing beginning in FY 2012 will not be charged to our new appropriation account, the costs for these services and other indirect overhead will appear elsewhere in SBA's budget. Because these overhead costs do not affect our direct costs, and because they for the most part reflect SBA accounting conventions, Advocacy will not be directly involved in their calculation. As we make the transition to the new

appropriations and accounting system, questions in this area will undoubtedly arise, but I am confident that with the MOU between Advocacy and SBA, we will be able to implement the new legislation as intended by Congress.

Next steps

While the Congress considers the President's FY 2012 budget request, we will soon begin the process of formulating the FY 2013 budget request. When the Jobs Act was enacted, the FY 2012 budget request was already in an advanced state of preparation. I want to thank especially the offices of SBA's Chief Financial Officer and General Counsel for their extra effort in expediting the establishment of our new Treasury account and making the many conforming revisions in budget documents that had already been prepared for FY 2012. There will be additional changes in the FY 2013 documents as we continue the transition process to our new accounting system. Advocacy has been assured that we will have a separate section in the next budget request, similar to that used for the Office of the Inspector General. I am hopeful that this will improve transparency and allow us to present more detail in future budget requests. In the meantime, the key elements we need are in place for FY 2012.

Conclusion

In closing, I would like to draw your attention to an important performance metric that all of us on the Advocacy team are very proud of, the annual calculation of the cost per $1 million in regulatory savings attributable to Advocacy interventions. This number is basically just the total of one-time regulatory cost savings achieved in a given year, divided by the total cost of Advocacy for that year. This metric is always impressive, but it can vary considerably because we do not control what final cost-saving actions agencies take, or when they take them. On average during the last five years, each $1,618 spent on Advocacy has yielded $1 million in regulatory cost savings. Not bad. But in FY 2010, the taxpayers paid only $625 for Advocacy expenses to realize $1 million in new regulatory cost savings, the lowest amount since this metric has been in use. I think that this makes a pretty good case that your investment in Advocacy yields a good return.

In conclusion, let me again thank the Committee and its staff for the tremendous support you have given the Office of Advocacy for so many years. It helps us immeasurably in our work to know that we have this support. I look forward to continuing to work with you on issues of importance to small business. I would be happy to answer any questions that you might have.

Appendix A Regulatory Comment Letters

Regulatory Comment Letters

Regulatory comment letters concerning the Federal Government's compliance with the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act.

- Letter dated 03/17/11 - Department of Labor, Employment and Training Administration

  - Wage Methodology for the Temporary Non-agricultural Employment H-2B Program; Final Rule

- Letter dated 03/04/11 - Department of Transportation, Federal Aviation Administration

  Safety Management Systems for Part 121 Certificate Holders; Proposed Rule; 75 Fed. Reg. 68224, November 5, 2010

- Letter dated 02/25/11 - Department of Transportation

  FMCSA's proposed rule would revise its regulations for hours of service for drivers of property-carrying commercial motor vehicles (CMV) by, among other things, reducing the daily maximum driving limit from 11 hours to 10, reducing the maximum on-duty time within the driving window from 14 hours to 13, requiring the release from duty at the end of the 14-hour driving window, requiring a mandatory break of at least 30 minutes within seven hours of the last off-duty period, and requiring that the current 34-hour restart provision include at least two periods between midnight and 6:00 a.m.

- Letter dated 02/14/11 - Department of Interior, Fish and Wildlife Service

  Designation of Critical Habitat for the Sonoma County Distinct Population Segment of the California Tiger Salamander (Ambystoma californiense); 76 Fed. Reg. 2863, January 18, 2011

- Letter dated 02/01/11 - Federal Reserve System

  Letter dated 02/01/11 - Federal Reserve System - Compliance Guide for Regulation Z; Docket No. R-1366, Truth in Lending

- Letter dated 01/24/11 - Department of Justice

  Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations; 75 Fed. Reg. 43460 (July 26, 2010).

- Letter dated 01/19/11 - Environmental Protection Agency

  Proposed Settlement Agreements for Petroleum Refineries; (75 Fed. Reg. 82,390 (December 30, 2010) and Electric Utility Generating Units (75 Fed. Reg. 82,392 (December 30, 2010)

- Letter Dated 01/13/11 - Federal Reserve Board

  Final rule on Regulation Z; Docket No R-1366, Truth in Lending

- Letter Dated 01/14/11 - Internal Revenue Service

  Notice 2011-6, Implementation of Rules Governing Tax Return Preparers

- Letter dated 01/04/11 – Food and Drug Administration

  Comment Request; Restaurant Menu and Vending Machine Labeling: Recordkeeping and Mandatory Third Party Disclosure Under Section 4205 of the Patient Protection and Affordable Care Act of 2010

- Letter dated 12/23/10 - Board of Governors of the Federal Reserve System

  On December 23, 2010, the U.S. Small Business Administration's Office of Advocacy (Advocacy) submitted comments on the Board of Governors for the Federal Reserve Board's (Board) proposed regulation on Regulation Z; Docket No R-1390 Truth in Lending.

- Letter dated 12/23/10 - Federal Reserve System

  Truth in Lending; Proposed Rule; Docket R-1393 Truth in Lending/Credit Card Act

- Letter dated 12/20/10 - Internal Revenue Service (IRS)

  Specified Tax Return Preparers Required to File Individual Income Tax Returns Using Magnetic Media

- Letter dated 12/13/10 – Centers for Medicare and Medicaid Services and Food and Drug Administration

  Parallel Review of Medical Products

- Letter dated 12/02/10 - Environmental Protection Agency

  Reply to the notification letter regarding a Small Business Advocacy Review Panel for the forthcoming regulatory proposal, "Formaldehyde Emissions from Pressed Wood Products."

- Letter dated 12/01/10 - Department of Health and Human Services

  Concerning the forthcoming listing of styrene as a "reasonably anticipated" carcinogen in the National Toxicology Program (NTP) Report on Carcinogens.

- Letter dated 12/01/10 - Financial Accounting Standards Board

  Proposed Accounting Standards Update regarding Leases (Topic 840)

- Letter dated 11/22/10 - Department of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement

  Oil and Gas and Sulphur Operations in the Outer Continental Shelf--Increased Safety Measures for Energy Development on the Outer Continental Shelf

- Letter dated 11/19/10 - Environmental Protection Agency

  Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities; Proposed Rule

- Letter dated 11/17/10 - Department of Labor, Office of Workers' Compensation Programs

  Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels

- Letter dated 11/16/10 - Department of Commerce, National Oceanic and Atmospheric Administration

  Listing Endangered and Threatened Wildlife and Plants: 90-Day Finding on a Petition to List Atlantic Bluefin Tuna as Threatened or Endangered under the Endangered Species Act

- Letter dated 11/02/10 - Department of Labor, Occupational Safety and Health Administration

  Consultation Agreements: Proposed Changes to Consultation Procedures Rule

- Letter dated 10/29/10 - Financial Accounting Standards Board

  Proposed Accounting Standards Update regarding Revenue from Contracts with Customers

- Letter dated 10/27/10 - Department of Labor, Employment and Training Administration

  Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program

- Letter dated 10/15/10 - Federal Communications Commission

  Wireline Competition Bureau Seeks Comment on Business Broadband Marketplace

- Letter dated 10/12/10 - Department of Energy

  Test Procedures for Walk-In Coolers and Walk-In Freezers; Proposed Rule

- Letter dated 10/4/10 – Department of Health and Human Services, Centers for Medicare and Medicaid Services

  Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices; Proposed Rule

- Letter dated 09/14/10 – Department of Health and Human Services, Centers for Medicare and Medicaid Services

  Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices; Proposed Rule

- Letter dated 09/09/10 – Department of Health and Human Services, Office for Civil Rights

  Modifications to the HIPAA Privacy, Security, and Enforcement Rules under the Health Information Technology for Economic and Clinical Health Act

- Letter dated 09/08/10 - Department of Education

  Program Integrity: Gainful Employment; Proposed Rule

- Letter dated 09/01/10 - Environmental Protection Agency

  Reply to the notification letter regarding a Small Business Advocacy Review Panel for the forthcoming regulatory proposal, for Stormwater Regulations to Address Discharges from Developed Sites

- Letter dated 08/23/10 - Environmental Protection Agency

  National Emission Standards for Hazardous Air Pollutants for Major and Area Sources: Industrial, Commercial, and Institutional Boilers

Appendix B Summary of Cost Savings, FY 2010

Summary of Cost Savings, FY 2010 (dollars)[1]

Rule / Intervention	First-Year Costs	Annual Cost
Hazardous Air Pollution Rule for Prepared Animal Feed Manufacturing (EPA)[2]	7,000,000	9,000,000
Certification Procedures and Identification Requirements for Aviation Parts and Articles (FAA)[3]	327,100,000	
Construction and Development Final Rule (EPA)[4]	1,957,000,000	1,957,000,000
FAR Case 2008-015, Payments under Fixed-price Architect Engineer Contracts (FAR)[5]	335,000,000	335,000,000
Reciprocating Internal Combustion Engines (EPA)[6]	291,000,000	291,000,000
Clean Air Act Greenhouse Gas Regulations GHG "tailoring" (EPA)[7]	9,143,099,941	
Women-owned Small Business[8]	34,875,000	3,487,500
Sarbanes-Oxley[9]	2,899,500,000	2,899,500,000
TOTAL	**14,994,574,941**	**5,494,987,500**

1. The Office of Advocacy generally bases its cost savings estimates on agency estimates. Cost savings for a given rule are captured in the fiscal year in which the agency agrees to changes in the rule as a result of Advocacy's intervention. Where possible, we limit the savings to those attributable to small business. These are best estimates. First-year cost savings consist of either capital or annual costs that would be incurred in the rule's first year of implementation. Recurring annual cost savings are listed where applicable.

2. Source: EPA.

3. Source: FAA.

4. Source: EPA November 2009 Economic Analysis, Table 2-1.

5. Source: FPDS-NG Data.

6. Source: EPA RIA Feb 2010 Table 4-4.

7. Source: EPA RIA Table 4-7.

8. Source: SBA.

9. Source: FERF Survey.

Appendix C Executive Order 13563, January 18, 2011

Federal Register
Vol. 76, No. 14
Friday, January 21, 2011

Presidential Documents

Title 3—

The President

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.

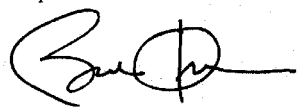
(b) Nothing in this order shall be construed to impair or otherwise affect:

(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.



THE WHITE HOUSE,
January 18, 2011.

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

Appendix D President's Memorandum on Regulatory Compliance, January 18, 2011

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 and 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

Appendix E President's Memorandum on Regulatory Flexibility, Small Business and Job Creation, January 18, 2011

Presidential Documents

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:

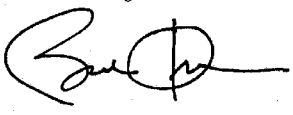
- extended compliance dates that take into account the resources available to small entities;
- performance standards rather than design standards;
- simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
- different requirements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

Chair LANDRIEU. Thank you, Dr. Sergeant. I do. Can you give us two examples, and be as specific as you can, of actions that you or your office have taken to either eliminate or significantly modify regulations that were going to be proposed by any Federal agency—you can pick any Federal agency—and just kind of walk us through for a minute or a minute and a half how your office advocated and stepped up and either got the regulation eliminated or modified? Anything in the last two years.

Dr. SERGEANT. Senator Landrieu, we have been active in being a strong voice for small business. As you know, we do not represent the Administration. We represent small businesses and that is an honor that we have, to make sure that the voice of small business is heard at all levels of government.

There are two examples that come to mind. One most recently involved a proposed ruling by OSHA. This involved the noise rule. A provision was in place to address noise in small manufacturers, and what employees would do to mitigate noise, they would wear earplugs or earmuffs and that worked fine.

What OSHA proposed to mitigate noise was to require small manufacturers to buy all new equipment. Now, we have a solution that was in place, but it was proposed to have small manufacturers buy all new equipment with less noise, with a reduced noise factor. This is a problem for small business. Their focus is to sell products, to grow the employees, to grow their market share, not to spend billions of dollars to buy new equipment.

So what we did, we reached out to OSHA. We heard from small businesses that this was burdensome. And so, we had a roundtable and I invited representatives from OSHA to come to a roundtable with small businesses. I assured OSHA that we run the meeting and so they need not be afraid for life and limb, but we run the meeting.

At the meeting, they heard that this was a problem. This solution was solved already. So what came out of the meeting is that OSHA pulled the rule, they withdrew the rule.

Chair LANDRIEU. That is exactly what your office should be doing. Can you give us another example? Because it is encouraging to hear that something we are doing is working to reduce some of these unnecessary rules and regulations. Is there any other example that you could give?

Dr. SERGEANT. Another example, also, not to pick on OSHA, but it was the MSD Rule, what is called the Multiple Skeletal Disorder Rule. There is a form that is filled out by small businesses which will track some of the injuries that take place in the work environment. So there was another column that was proposed that small businesses would have to fill out.

The problem with this is that this form, it was not clear whether or not this injury that was—was it an injury or an illness? And we were not sure whether it was on the weekend, maybe there is some recreational sports folks who may have hurt themselves and they come into the workplace. So it was not very clear.

And so, this would have created a lot of uncertainty. It would have also put small businesses in the position to make the determination, medical determination of whether something was an illness or an injury.

And so, we reached out once again to OSHA and to share with them that this was a problem. So out of that meeting, they have agreed to postpone the rule and to do further outreach jointly with Advocacy and with OSHA. I met with the head of OSHA and we are going forward to make sure that they include small businesses.

Chair LANDRIEU. That is an excellent example, and I thank you. Do you provide an annual report to this Committee or to Congress about all the actions that your Advocacy group takes, just like the two that you just described, and basically what the outcome is? Is there such a report submitted to Congress?

Dr. SERGEANT. Yes, yes, Senator. Under the RFA, we submit an annual report to Congress on all the actions that we have taken, and in that report, we cite also the cost savings as well, and that is where the $15 billion number came from.

Chair LANDRIEU. That is my second question. Because according to that report, the most recent report, the report claims $15 billion, which is very substantial, in cost savings. I just want to understand a little bit better about the methodology used to basically reach that conclusion. Do you all do those calculations in-house or do you have a third party, independent third party?

Dr. SERGEANT. Well, these cost saving numbers actually come from the agencies themselves.

Chair LANDRIEU. The what themselves?

Dr. SERGEANT. These cost saving numbers come from the agencies themselves. So we do not—we do not create these numbers out of thin air. These are numbers that the agencies cite that because of our involvement within the rulemaking process, we were able to save small businesses these numbers as well. So these numbers actually come from the agencies.

Chair LANDRIEU. All right. My last question is, I understand there is an office in the White House that is particularly focused on rules and regulations elimination, et cetera, et cetera. How do you work or do you work in conjunction with that White House office on regulation—OIRA—the OIRA office? Could you describe that relationship and how you work together or not?

Dr. SERGEANT. Senator Landrieu, we work very closely with OIRA. I work very closely with Cass Sunstein, who is the administrator for OIRA, and it works such that under SBREFA, we have three covered agencies now with CFPB. So there is a covered agency there——

Chair LANDRIEU. And what are those three? Remind us.

Dr. SERGEANT. Well, those three covered agencies are OSHA, EPA, and now CFPB. So under SBREFA, there is a covered agency, and then there is OIRA, and then there is me, Chief Counsel for Advocacy, and we work to make sure that that process is followed as well.

I also work with Cass Sunstein on the Regulatory Working Group under Executive Order 13563 that was recently signed by President Obama. I am now part of this Regulatory Working Group, and this was an Executive Order that mandated that agencies take a look at rules that are currently on their books and to seek alternatives so that those rules are not burdensome for small business.

But there is a close relationship with OIRA. Cass Sunstein was our speaker at our most recent RFA 30. He spoke at our luncheon.

Chair LANDRIEU. This is going to be a high priority for this Committee and I know Senator Snowe shares my passion for this issue of eliminating all regulations that are unnecessary, burdensome, and harmful to small business, while, of course, we want to protect the environment, protect worker safety, acknowledge that there are important objectives to be reached, but to eliminate everything that we can to reduce that regulatory burden. We hear so many complaints as we travel, not only in Louisiana as I travel through my own state, but as I travel around the country. Senator Snowe.

Senator SNOWE. Thank you. I could not agree with the Chair more on this core issue that goes to the heart of the difficulties so many small businesses are confronting in America. I think it has contributed to their hardships, the uncertainties of the regulations, the cost of the regulations, the effects of them.

It truly has, I think, a deleterious effect on their ability to create jobs and make investments for the future. It truly places a stranglehold on their capacity to make future investments with the uncertainty of the widespread costs, the types of regulations that are going to be handed down.

So your role becomes ever more important as we struggle to create jobs in this economy. I mean, it is a very difficult environment to create jobs and we know it is going to take multiple years to get back to a sense of normalcy with respect to the unemployment rate. So your position is pivotal because you are the bulwark against the regulatory hardships that are imposed on so many small businesses across the country.

So one thing that I hear repeatedly from my own constituency when I conduct Main Street tours is the cost of regulations. I am pleased that you cited to the Chair the example about the noise level abatement, because I was the one who was urging a reconsideration by OSHA. So I really appreciate that. It was truly troublesome because it would have required businesses to purchase noise mitigation equipment of some kind. It would have been a very expensive proposition for small businesses. So in any event, I thank you for the role that you played.

But that is a good example of what can go away in the regulatory process. So I appreciate what you are doing in that regard. We want to make sure we can bolster your resources and your efforts. I mean, that is what we are all about, to reinforce that, because what we do here, what we all do is claim to generate job creation. It is going to be a catalyst for that.

If we can put up these barriers so that regulations do not become a hardship to small businesses, we could see a vast turn around in this economy. I think it is between taxes and regulations, frankly, the uncertainly of costs and obviously—in conjunction with that, you get the health care laws.

So they are going to be in some way. Many of them are. So they are all calculating the cost. So you put this all together, it is a confluence of events that really does constrain job creation as we are seeing.

In any event, I want to get to the heart of a couple of questions and how you go about what you are doing. First of all, I think it

is great that you are now in an independent capacity. I think that is so important. When you were here last November, you discussed Section 610 of the Regulatory Flexibility Act for periodic reviews of the rules.

One of the things that is in the bill that I introduced with Senator Coburn on the review process is just to require agencies, if they do not review every ten years, that these rules are sunset, because if they are not important enough to review, then perhaps they are not important enough to be on the books.

I am just wondering, to what degree—do you have an accounting or documentation of the agencies that conduct these periodic reviews so we can have an analysis of what agencies are doing in this respect? Do you have any idea? Do we have any documentation of departments and agencies and when they review the rules that they have on the books?

Dr. SERGEANT. Senator Snowe, thank you for your support of the office and we are pleased that we have an independent budget because now we can speak with a stronger voice, and also, small businesses know that we are truly their voice at the Federal level.

With regard to 610, we fully support periodic review. Under my legislative priorities that I have submitted to the 112th Congress, one of them is to take a look at 610, because under 610, agencies are charged every ten years to look at rules that are on their books.

The challenge with that is that there is not a roadmap or there is not a flow to say, This is what you should do. It is more that it is left up to the discretion of the agency. But under my legislative priorities, one should actually go back and do an IRFA where you involve small businesses.

Small businesses could identify rules that they feel are burdensome or that are no longer needed, and then the agency should respond and do the analysis under 610. But as far as knowing which agencies are actually doing the 610, I do not have a list at my disposal.

Senator SNOWE. Well, I think it would be quite enlightening because I have a feeling that a lot of agencies do not. You make a vital point on where the burden belongs. It is not currently on the agencies, where it is properly placed. The burden is on the small business community, frankly. And it is a disproportionate burden.

Frankly, we have got to reverse this because it creates a perverse incentive within the agencies, which is to say that they do not have to be responsive, and they are totally insulated from transparency and accountability on this question. I am glad you are talking about this very question and changing that, because the burden has to be reversed.

Now, in talking about my provision on sunsetting, it puts the burden on the agency where it belongs. Agencies ought to be able to justify their regulations. We know they can do reinterpretations without going through the rulemaking process.

There are so many hardships imposed on small business, who do not have that kind of wherewithal to do this every day, to monitor agencies and what they are doing with regulations, while they are handed fines. That is what we are dealing with here.

And one person, you, would have the sole responsibility for ensuring agency compliance. Well, exactly. It is just like in a court

of law. The judge has the responsibility for issuing convictions. That is the way it works. And we need to vest that authority in you to make sure you have the resources necessary to make these agencies accountable.

So the law can force these agencies to be accountable. We have to transfer the responsibility where it should be properly placed, and that is within the agency, forcing them to take a proactive role in this regard. I would like to work with you on this issue to make sure you have the resources necessary to do your job.

Second, I think we should have an accounting of agencies, of who is doing what, because I have a feeling they are not doing much of anything. They totally ignore their review requirement. Periodic means what? What is the definition of periodic, frankly?

One other question. You had a goal, I mentioned in my opening statement, about the approximately $15 billion that you saved small businesses with respect to regulations in 2010. But your goal for the next two fiscal years is at $5.5 billion. So that is $9.5 billion less than what you originally achieved in 2010. Is there a reason for lowering the bar?

Dr. SERGEANT. Senator Snowe, that number is a goal and not a ceiling in terms of cost savings. But in fiscal year 2010, there was one rule, what is called the GHG rule. It was a Greenhouse Gas Rule that contributed $9.1 billion in cost savings alone. But these goals were set out under a five-year strategic plan, and I am reviewing that plan and the cost saving goals will be taken into account as well.

Senator SNOWE. Have you identified specifically what resources you need to be a regulatory bulldog?

Dr. SERGEANT. Well, there are a number of areas where we may need support if our mission changes, if Congress decides to add more responsibilities to our office. With the new CFPB coming online in July, we are going to need more attorneys, more staff to really help out with the panels. We also will need a regulatory economist as well to really make sure that we have proper coverage.

Right now, many within my office, especially the attorneys, they staff multiple agencies as well, and it is sometimes hard to keep track of what is going on. And so, if there is a change, we will have to look at some of those areas where we would need more staff, more support.

Senator SNOWE. How many regulatory attorneys do you have? Do you know?

Dr. SERGEANT. Currently we have 13 to cover the entire Federal Government.

Senator SNOWE. Thank you.

Chair LANDRIEU. On that, I would like the staff to prepare for both Senator Snowe and myself how many lawyers do we have in each agency of the Federal Government promulgating rules, and how many lawyers we have on this staff reviewing those rules. I want that documentation presented to this Committee like in the next couple——

[Laughter.]

Chair LANDRIEU [continuing]. In the next couple of weeks because it will give us a clear picture of the battle here that we are

engaged in. And again, not throwing any of our agencies under the bus and everybody, you have to believe they are trying to do the right thing.

But having said that, having this voice be strong for small business in America and working with these agencies to help modify or eliminate some of the wonderful ideas that they are thinking about, when you can present evidence that what they are doing would be so detrimental and actually not accomplishing their stated goals and objectives, whether it is environmental or health or safety, et cetera.

I think this is something that both Senator Snowe and I feel strongly about, and we are going to pursue it. I am going to submit the rest of my questions in writing to you. If there is not anything else that has to come before the Committee, we will adjourn the meeting. Thank you very much.

[Whereupon, at 11:35 a.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

Statement of Senator Carl Levin

President's FY2012 Budget Request for the U.S. Small Business Administration
And the Office of Advocacy

March 31, 2011

I am pleased the President's budget continues to restore funding to some SBA's programs after eight years of Bush Administration cuts. Small businesses employ just over half of all private sector employees and have generated 64 percent of net new jobs over the past 15 years. According to NFIB, 45 percent of small businesses in America say adequate access to capital is their number one problem.

The President's FY 2012 Budget request of $985 million for SBA is higher than any request made during the Bush administration. It is slightly less than the FY 2011 request of $994 million and almost 20% above the FY 2010 regular enacted level of $824 million, not counting Small Business Jobs Act and Recovery Act funding which brought the FY 2011 enacted appropriations level to $1.8 billion. The President's robust FY 2012 budget request recognizes the fact that small businesses are the primary job creators in our economy and that SBA plays a critical role in helping small businesses access affordable capital and create jobs. This is especially important as we emerge from the Great Recession.

To help small businesses retain and create jobs, last Congress we enacted the Small Business Jobs Act which took a number of important steps to provide small businesses with new credit resources. The Recovery Act also provided SBA programs with much needed additional capital when conventional banks were not lending and adjusted SBA's programs to make them more effective to help small businesses survive the recession. Job creation and access to capital still need to be our number one focus and we must continue to provide SBA with adequate resources to assist small businesses boost economic growth during this fragile recovery.

I'm particularly pleased the request provides $3.8 million to fund the Microloan program at a program level of nearly $25 million. However, I'm concerned the budget request only provides enough funding to support $10 million for the important technical assistance component that makes the Microloan program so successful. This is a reduction of $10 million from FY 2010. With Micro lenders seeing increased demand as a result of conventional financial institutions not lending, they now play an even greater role in helping those small businesses that have no other way to access credit. I hope this funding level can be increased in the FY 2012 appropriations process.

Questions:

1. As SBA works to implement the Intermediary Lending Pilot Program, enacted as part of the Small Business Jobs Act of 2010 (P.L. 111-240, I want to clarify the intent of that legislation. The Intermediary Lending Pilot is designed to enhance the efforts of these organizations by allowing up to 40 Intermediaries to apply for $1 million loans from SBA. These SBA loans will be used by the Intermediaries to capitalize revolving loan funds through which loans between $50,000 and $200,000 would be made to small businesses in need of flexible debt financing to sustain and create jobs. While the legislation limits the amount that an Intermediary can borrow under the pilot to $1 million, it placed no overall cap on how much a participating Intermediary can borrow from the SBA.

   I am concerned that SBA may be interpreting the legislation in a way that would place an overall cap of $1 million on how much a participating Intermediary can borrow from SBA under all programs which would make higher volume and experienced Micro lenders ineligible. SBA's interpretation of section (4) (B)is that the $1million loan limitation applies not only to the Intermediary Lending Pilot, but also other direct loan programs, most notably the micro loans. There is nothing in the legislative history to indicate this interpretation. Our intent was to limit an Intermediary Lending Pilot loan to any single Intermediary to $1 million, not to set caps for participation in other SBA programs.

   Question:
   Administrator Mills, will you agree to review the intended purpose of the program so a wide range of non-profit community based lending Intermediaries, including Micro lenders, will be eligible to apply?

2. I recently spent 3 days meeting with Michigan small businesses and was alarmed to learn that they don't seem to know about the State Small Business Credit Initiative that we had included in the Small Business Jobs Act. This program, if effectively utilized will leverage as little as $1.5 billion in federal dollars into more than $15 billion in small business loans. We designed this grant program to help fund state and local programs, such as the Michigan Supplier Diversification Fund and the Capital Access Program, both of which have been extremely successful in spurring small business lending in Michigan. I know the State Small Business Credit Initiative is run by the Treasury Department but SBA is the agency that interacts with small businesses and should be advertising it.

   Question:
   What sort of outreach is SBA doing on behalf of the State Small Business Credit Initiative? Can the SBA coordinate with the Treasury Department to ensure that the program is effectively utilized by the small businesses that it was intended to help?

Post-Hearing Questions for the Record

"President's FY2012 Budget Request for the U.S. Small Business Administration and the Office of Advocacy"

March 31, 2011

Submitted to the Honorable Dr. Winslow L. Sargeant, PhD
Chief Counsel for Advocacy
Office of Advocacy, U.S. Small Business Administration

From Senator Mary L. Landrieu, Chair

1. Is the Administration's FY 2012 budget request for Advocacy sufficient for you to do your job?

   i. Do you have adequate staff to carry out your mission?

Answer:

Yes, the FY 2012 budget request for Advocacy is sufficient for Advocacy to do its job. While the demands on our office our large, I have an excellent staff and we are able to do a tremendous amount of good for small business on a relatively small budget. In the current economic climate, Advocacy recognizes the need for austerity and will do its part, as it always has in the past, to use scarce resources wisely.

Of the total $9.12 million, $7.4 million will support current staffing levels, the same number on board during Fiscal Years 2008 and 2009, and the level authorized for Advocacy in the current fiscal year.

The budget request will also support $1.3 million for economic research activities, including data acquisition and specialized contract research. This allows us to commission special data tabulations using new U.S. Census Bureau data, and to update certain older studies in order to better realize returns on investments that we have already made in the past.

The remaining $420,000 requested covers travel, training, printing, office supplies, and all other incidental expenses directly attributable to Advocacy.

2. The $10 million in overhead that SBA attributes to the cost of your office seems high based on your number of employees; it equates to about $270,000 per employee, per year.

   i. How does the $10 million in overhead costs for the SBA's Office of Advocacy, compare to the overhead costs for the SBA's Office of the Inspector General, which is similar in size?

Answer:

The Office of Advocacy was not involved in the calculation of the overhead request that was included in the FY 2012 budget request for our office. We have expressed our concern about this to SBA's Office of the Chief Financial Officer, and we have been informed that the cost allocation model used by that office to calculate overhead may have been an anomaly related to the fact that FY 2012 will be the first year Advocacy will have its own line-item appropriations account. The SBA Administrator also mentioned this in her testimony and indicated that further review is underway to determine why Advocacy's overhead calculation is so high. The Office of Advocacy has no control over how overhead costs attributed to it are calculated or spent – such funds that are spent on Advocacy overhead will not come from Advocacy's appropriation account, but instead represent the amount SBA is budgeting for in its own Salary & Expense account to support Advocacy.

To compare the overhead costs for SBA's Office of the Inspector General and Advocacy, we have created a chart using data from SBA's current and past congressional budget submissions. The chart compares the percentage of costs attributable to overhead for SBA as a whole, the Inspector General's office, and Advocacy. As can be seen, the Inspector General's overhead percentages are virtually the same as those for SBA as a whole, while Advocacy's are significantly higher. As noted above, this anomaly is under review by SBA's Chief Financial Officer.

Overhead Percentages for SBA, Inspector General and Advocacy, FY 2010 - FY 2012
(dollars in thousands)

	FY 2010 actual	FY 2010 request	FY 2011 request	FY 2012 request
SBA direct costs [A]	603,178	536,875	571,263	542,898
SBA total costs [B]	863,006	803,580	837,096	802,433
Overhead (Total costs less direct costs)	259,828	266,705	265,833	259,535
SBA overhead as % of direct costs	43.1%	49.7%	46.5%	47.8%
SBA overhead as % of total costs	30.1%	33.2%	31.8%	32.3%
Inspector General direct costs [C]	17,300	17,300	19,000	19,420
Inspector General total costs [B]	25,321	23,708	26,054	28,723
Overhead (Total costs less direct costs)	8,021	6,408	7,054	9,303
IG overhead as % of direct costs	46.4%	37.0%	37.1%	47.9%
IG overhead as % of total costs	31.7%	27.0%	27.1%	32.4%
Advocacy direct costs [D]	N/A	N/A	N/A	9,120
Advocacy total costs [B]	9,318	11,165	12,392	19,655
Overhead (Total costs less direct costs)	N/A	N/A	N/A	10,535
Advocacy overhead as % of direct costs	N/A	N/A	N/A	115.5%
Advocacy overhead as % of total costs	N/A	N/A	N/A	53.6%

[A] Includes office operating budgets, compensation & benefits, non-credit programs, congressional initiatives, and reimbursable expenses, but not credit subsidies. (Source: Table 2 in the FY 2012 CBJ, and Table 4 in the FY 2010 and FY 2011 CBJs.) "Agencywide costs" have been excluded to make "SBA direct costs" analogous to those of the IG and Advocacy, in which offices agencywide costs are not counted as direct costs.

[B] Includes all costs, both direct and indirect. (Source: Table 9 in FY 2012 CBJ and Table 8 in the FY 2010 and Fy 2011 CBJs.)

[C] Source: Inspector General requests.

[D] Source: Table 1 in FY 2012 CBJ.

3. I understand from your testimony that Advocacy produces about 25 new reports or other data products every year.

   i. Does the FY 2012 budget request provide sufficient funding for your economic research? (Yes/No)

Answer:

Yes. Advocacy can successfully maintain all aspects of its research mission with the amount requested.

As I mentioned in my testimony, the FY 2012 budget request will support an economic research program of $1.3 million. Funding for this vital part of Advocacy's mission has been limited to approximately $1.1 million since 2000. As a result, we have repeatedly

deferred updating some of our older research. We believe we could derive additional value from the investments we have already made in these studies.

Also, every year we must leave on the table good ideas for specialized contract research that addresses important questions that arise as the economy changes. For instance, we have upcoming studies on small business contracting, a subject on which we frequently get questions, but on which we have not released research for over four years.

The U.S. Census Bureau is currently releasing new data from its most recent Survey of Business Owners, conducted only once every five years. We would like to commission special tabulations using this new data to fill information gaps on small firms and their owners.

4. Please elaborate on the $15 billion in cost savings that the Office of Advocacy estimates it saved for small businesses in 2010.

   i. Does this estimate represent real money savings to small firms?
   ii. How does your office calculate cost savings?
   iii. Do you have a firm goal or a projection for cost savings for this year? (Yes/No)

Answer:

Cost savings represent real money saved. In each case, without a change to the regulation, small businesses would have incurred these costs. These numbers come from the agency's calculations or from affected entities. We do not calculate them.

Advocacy intervenes at different stages of the rulemaking process, as dictated by the RFA, conveying the concerns of small entities that stand to be affected by a rule(s) under consideration. Changes in the costs of the rule between proposed and final, when quantified by the regulating agency, are entered into our report. When no estimate is included in the agency's analysis, an attempt is made to quantify the changes in costs from Advocacy's intervention. We thus rely on third party data when agency estimates are unavailable.

Advocacy has, since about 2001, formally attempted to measure the impact of its interventions in rulemakings, as part of its mission to minimize the impact on small entities. In 2004, the SBA IG audited our costs savings methodology and records, and concluded that they were valid. Note that Advocacy has always produced two numbers for each year's cost savings from rule interventions during that year: one-time savings that would have occurred only in the first year of the rule's implementation; and recurring cost savings that would have continually been incurred by small businesses annually after

rule implementation. Despite calculating recurring cost savings, Advocacy resets its cost savings account each year and therefore only counts the costs arising from new regulations promulgated during the year under examination. Advocacy believes this accounting convention lends greater clarity to its annual cost savings reports because maintaining a running total of recurring cost savings as a baseline each year blurs the relationship between cost savings and Advocacy's intervention that caused the cost savings by including data from previous years.

5. Please describe to the Committee the role of the Regional Advocates.

   i. How are they important to your office and small businesses?
   ii. What objectives does your office hope to achieve in the various regions of the country?
   iii. What public or private partners will these Regional Advocates reach out to in order to best achieve these objectives?

Answer:

Regional Advocates are a critical part of the Office of Advocacy. They act as my eyes and ears on the ground and provide a strong voice for local small businesses in the federal process. As you and others on the Committee know, one size does not fit all when it comes to how small businesses are affected by regulations. Different businesses in different states have very unique concerns and challenges, and it is critical that I understand what is happening region-by-region.

To that end, I am happy to report that by the end of June, my team of regional advocates will have visited 43 states to meet with small business stakeholders.

Outreach to business stakeholders is their top priority. Most of their time is spent discussing the impact of government regulations and actions, and listening to concerns about unfair and unnecessary burdens. Regional Advocates provide small businesses with a local resource on government regulations and a strong ally on efforts to address unfair burdens. Regional advocates help make the federal government more accessible to our small businesses.

While we are hearing specific regional concerns and are working to address those on a case-by-case basis, I am also encouraging the advocates to work as a team in areas of shared concern. To this end, we are planning to hold a series of coordinated roundtables where all 10 Advocates hold a local meeting on a common issue the same week. This

will allow Advocacy both to emphasis key national issues and also understand local concerns.

Regional Advocates reach out to a wide variety of private stakeholders, including regional, state, local, ethnic and minority chambers of commerce, business associations, and, of course, individual small business owners. Advocates also work closely with state and local governments on regulatory reform, providing guidance and expertise on regulatory flexibility.

6. OSHA recently published and then withdrew, a new "Interpretation for Feasible Administrative or Engineering Controls of Occupational Noise" (i.e., OSHA noise standard) that was very controversial.

   i. How was Advocacy involved in this particular rule-making process?

Answer:

The proposed changes to OSHA's noise standard, originally published in the *Federal Register* on October 19, 2010, would have required employers to implement "economically feasible" administrative or engineering controls, such as enclosing or purchasing quieter machinery, in order to reduce workplace noise to permissible levels before employees would be allowed to wear personal protective equipment (PPE) like ear plugs or earmuffs to meet the standard (as they can now).

OSHA's proposed change drew sharp opposition from small business representatives who said the proposal would radically change current safety practices and be unduly expensive. They also objected to OSHA's characterization of the proposed change as an "interpretation" and not a substantive rule.

As a result of these small business concerns, Advocacy invited representatives from OSHA and the Department of Labor's Solicitor's Office to attend and provide a briefing on the proposed "re-interpretation" at Advocacy's regular labor safety roundtable in November of 2010. Following the roundtable, after listening to small business input and at Advocacy's urging, OSHA withdrew the rule and has pledged to conduct additional stakeholder outreach before proceeding.

7. There have been a number of recent bills and amendments filed in Congress that would add the Small Business Regulatory Enforcement Fairness Act (SBREFA) panels to the review process for new federal agencies.

i. Can Advocacy's current budget sustain this change?
ii. If not, what additional resources would be needed in your opinion?

Answer:

First let me say that the panel process has been very effective for small business at EPA and OSHA and I believe it is a good process. I also think it will serve small business well at the CFPB. However, I believe the panel process should be reserved for agencies whose regulations impose a large disproportionate burden on small businesses and that release numerous regulations impacting small business across several industries/sectors.

I do not believe panels are the most cost effective approach for every agency as they require a lot of resources and manpower from the agencies and Advocacy. Additionally, panels are very time consuming for the small business participants, who can be difficult to recruit because of the significant time commitment. Most importantly, the panel process should be reserved for agencies that have a poor track record with regard to conducting initial regulatory flexibility analyses, to such an extent that the review process would be largely enhanced by a panel.

Advocacy would need additional staff if new agencies became subject to the SBREFA panel process. Based on our calculations, we believe that for every new agency that adds the SBREFA panel process, Advocacy would need 2 new regulatory attorneys. Some large departments, like HHS and and DOT, would constitute more than one agency (i.e., FDA, CMS, and CDC at HHS). For every 5 new agencies that are added to the SBREFA panel process, Advocacy would need 2 regulatory economists. As for support staff, Advocacy would need one new administrative/support staffer for every 10 new employees at Advocacy.

8. In your testimony you point out that the Office of Advocacy has been fully integrated within the SBA's internal budgetary process, and we understand that you share office space with them as well.

   i. What challenges has this created for your office, and have you considered moving your location given the high cost of overhead?

Answer:

Advocacy has been fully integrated within the SBA's internal budgetary process since its inception. Although our new line-item will greatly increase the transparency of

Advocacy's budget, and Advocacy's appropriation will be segregated in a separate Treasury account, our office will continue to be linked to SBA in many ways. Importantly, the Small Business Jobs Act provided that SBA will provide us with substantial operational support, the cost of which will not be charged to our appropriation. Advocacy has concluded a Memorandum of Understanding with SBA on the implementation of these provisions, which is attached.

Concerning the more specific issue of office space, this is one of the types of operational support that SBA provides to Advocacy without charge to our appropriation. Our current offices are sufficient to house the staffing level requested for FY 2012. Should workload or staffing demands on our office change in the future, we will work with SBA to ensure that we have appropriate space, in accordance with our agreement. From the standpoint of efficiency and convenience, co-location with SBA currently works well for us. We rely on SBA for many administrative and support services (e.g., printing, payroll and personnel services, IT support, etc.), and we work closely with many SBA program offices on policy issues (e.g., government contracting and lending), so proximity to these program and support offices is useful for everyone involved. We do not believe that the high cost of Advocacy overhead found in the current budget submission has anything to do with our current office space – we are on the same floor of the same building as the Inspector General's office. We are not currently considering relocating our offices, though should that become necessary in the future, we will work with SBA and the Congress to achieve the most cost-effective results possible.

9. Can you identify any projects or research studies that you have identified as being either inefficient or duplicative?

   i. If so, have you taken any steps to restructure these projects to maximize efficiency, or have you considered eliminating them altogether?

Answer:

Advocacy goes to great lengths to ensure that the research in which its staff engages and that for which it contracts with third parties has utility to the small business community and is of high quality. We are careful not to engage in duplicative research efforts and when we decide to revisit a topic covered in the past it is always because we believe that the research needs to be updated with new available data. Because of the uncertainty as to what one will find when doing new research, our products do occasionally produce ambiguous or even disappointing results. However, going in to any project we have always done our due diligence and believe that the end result will be a valuable piece of

research or data that will help demonstrate the importance of small business to the American economy.

10. There have also been efforts here on Capitol Hill to revise the Regulatory Flexibility Act (RFA) in order to account for indirect regulatory impacts on small businesses.

    i. Can you please explain how a change like this could be structured and how this change could potentially impact your budget if at all?

Answer:

One of Advocacy's three major legislative priorities is the inclusion of indirect economic impacts on small businesses within the scope of the RFA. Advocacy believes that inclusion of indirect effects would better enable agencies to understand the broader economic implications of their rulemakings and fully consider ways to mitigate those impacts, even for entities that are not directly regulated.

However, Advocacy is also sensitive to the concern that, without limit, a requirement to consider all indirect economic impacts could tax agency resources without providing a commensurate benefit for small entities. For this reason, Advocacy recommends a limited approach to indirect effects.

Advocacy recommends Congress 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.

At this time, Advocacy believes that it can accommodate expansion of the scope of the RFA in this manner within current resources. However, were such a change to be enacted into law, Advocacy would continuously evaluate the effect of such an amendment on workload and make any appropriate recommendations through development of the President's Budget.

Post-Hearing Questions for the Record
Submitted to Mr. Winslow Sargeant
From Senator Olympia J. Snowe
Ranking Member

1. When you were testifying here last November I noted that there has been a tidal wave of federal regulatory activity as evidenced by the fact that the Obama administration promulgated 43 new, major regulations at a cost the Heritage Foundation estimates at approximately $26.5 billion in fiscal year 2010 alone. And that is on top of the $1.75 trillion in annual compliance costs that your office recently reported. And what is worse, this increase is anticipated to accelerate rather than recede. The U.S. Chamber of Commerce estimates that the health reform law alone mandates 41 separate rulemakings and at least 100 additional regulatory guidance documents.

Last November, I urged you to be a regulatory bulldog for small business – and I reiterate that point again today. It is vital that the Office of Advocacy is fully equipped to ensure American small businesses are not unduly impacted by onerous one-size-fits-all federal regulations.

How many attorneys do you currently have working on regulatory issues at Advocacy? How about economists? Of that number, how many are currently working on the torrent of healthcare regulations given the vast implications and uncertainty they are creating for entrepreneurs?

How many regulatory attorneys do you have assigned to the Consumer Products Safety Commission, OSHA, or Environmental Protection Agency's regulations? Simply put, what resources do you need to be the regulatory watchdog *I have implored you to become*?

Answer:

Advocacy's team of twelve regulatory attorneys are experienced and highly regarded among the small business community. In addition, Advocacy has two regulatory economists who work on a daily basis with the regulatory attorneys to analyze the federal agencies' rulemaking efforts. At this time, three of the twelve are assigned to work on various aspects of regulations issued under the Affordable Care Act and other health care statutes. They have been working very closely with their counterparts in the agencies to ensure that the voice of small business can be heard on issues as they aris

Most, if not all, regulations issued by the Consumer Product Safety Commission are handled by one regulatory attorney. Rules issued by the Occupational Safety and Health Administration are assigned to one attorney. We currently have two attorneys assigned to rules issued by the Environmental Protection Agency. In addition, however, Advocacy's Deputy Chief Counsel and Director of Interagency Affairs are both attorneys and work closely with the assigned attorneys on the regulations coming out of these agencies.

We are satisfied that the current configuration of our interagency staff is sufficient to provide America's small businesses with an effective advocate within the federal government for fiscal year 2012. If additional duties and issues arise which require Advocacy to have an increased workload, these needs will be reassessed.

2. When last we met, Advocacy had failed to staff any of its Regional Advocate posts. In the four months since, you've staffed all of these positions, for which I sincerely congratulate you. As you know, the relationship between this nation's small businesses and your role as Chief Counsel for Advocacy can be reinforced by Regional Advocates who are your eyes and ears on the ground – meeting with small business owners, state and local government, and organizations that support the interests of small entities.

Regional advocates further help to identify regulatory concerns of small business by monitoring the impact of federal and state policies at the local level. Their work is intended to develop programs and policies that encourage fair regulatory treatment of small business, and help ensure their future growth and prosperity. And these efforts can take on many forms, including the State Regulatory Flexibility Model Legislation Initiative which was so effectively championed by former Chief Counsel for Advocacy Tom Sullivan.

Most Regional Advocates have only been in office for a few months – yet I am curious as to what they are telling you, and what progress are they making with states such as Idaho, Wyoming, and North Carolina that have yet to implement Regulatory Flexibility Model Legislation?

What benchmarks have you set for the Regional Advocates, and what directives have you given them in terms of directing their work and outreach?

Answer:

The regional advocates' initial focus has been to become integrated into the small business communities in their states and gain a full understanding of how federal

regulations are affecting their constituencies. In the few months they have been on the job, I have directed them to focus on meeting with key stakeholders and business leaders in their regions, including representatives of local chambers of commerce and business associations like NFIB. I am very focused on ensuring that their efforts cover the full extent of their regions, and am proud to report that by the end of June, the ten regional advocates will have traveled to 43 states. They are holding roundtables on the impact of government regulations and actions, and listening to concerns about unfair and unnecessary burdens. They provide small businesses with a local resource on government regulations and help make the federal government more accessible to our stakeholders.

The State Regulatory Flexibility Model Legislation Initiative at the Office of Advocacy was a great success in helping states understand their role in addressing unfair burdens on small businesses. I commend Tom Sullivan and his team of regional advocates for their work.

My staff is currently reviewing what policies have been most successful in individual states. I am planning to have my office conduct a state by state study on state regulatory flexibility and where it stands to help inform me on the most prudent path moving forward.

In the meantime, regional advocates will continue to work closely with state governments that are actively engaged in implementing or improving RFA legislation at the state level. Recently, our Region I Advocate, Lynn Bromley, testified before the Maine Senate on regulatory flexibility and provided guidance on regulatory look-back. Regional Advocates have written letters in support of regulatory flexibility efforts in Nebraska and Delaware. Other states where we are discussing current efforts include Ohio, Colorado, Wisconsin, Pennsylvania and California. While certain states have not yet implemented any regulatory flexibility legislation, as you point out, there are many others, like the ones we are engaged with, where the existing statutes and executive orders continue to be improved.

3. We all agree that small businesses are vital to the economy. Small businesses stimulate economic growth, create new jobs, generate tax revenue, and develop innovation technologies. Despite this, small businesses are often stifled with onerous federal regulations.

Many agencies, such as the Occupational Safety and Health Administration (OSHA), have repeatedly subverted the rulemaking process through the use of guidance documents or "reinterpretations" so that they don't have to adhere to their RFA obligations. **Would you find it beneficial to explicitly be provided the authority to**

comment on these types of documents – which can often be just as burdensome as formal regulations?

How would this unequivocal authority assist you in aggressively advocating for American small businesses?

Answer:

The Office of Advocacy does not require additional explicit authority to comment on any Federal agency policy. Advocacy does not see its role as limited to the RFA or rulemakings subject to the RFA. Advocacy has broad mandate under our authorizing statute to advise on "policies and activities" that affect small business. For this reason, Advocacy does not believe additional authority is necessary.

4. Under the *Proper Consideration of Small Entities in Agency Rulemaking* (Executive Order 13272), Advocacy's Office of Interagency Affairs is required to train federal regulatory agency personnel on Regulatory Flexibility Act (RFA) compliance. I believe this training has many benefits to small businesses, as it provides *new or heightened* awareness to federal regulatory agencies regarding their role under the RFA and I am pleased that Advocacy has indicated that it expects to exceed the FY 2012 goal of providing RFA compliance training to 100 regulatory officials. *Yet despite this mandate for Advocacy to teach RFA training, Federal agencies are not required to accept it.*

In addition to the fact that Federal agencies are still not required to accept RFA training, what do you perceive as the added challenges to RFA compliance?

Answer:

The Office of Advocacy has been training agencies since 2003. Over the past 8 years, Advocacy has trained over 2000 employees from numerous federal regulatory agencies. The course continues to focus on some of the typical problem areas of RFA compliance: 1) proper analysis of potential impacts of a proposed regulation on small entities and 2) the development of significant alternatives to the regulation that would reduce the burden of those impacts. These intensive training sessions have led to improvements in RFA analysis and an increased willingness of most agencies to work closely with Advocacy on their RFA analysis.

Additional challenges to RFA compliance can be seen in two other areas – compliance with section 610 and the convening of effective SBREFA panels. Few agencies complete their 610 analysis of existing regulations and many agencies see

the effort as a mere exercise that leads to reaffirmation of the need for the existing regulation to remain in its current form. To add to the 610 requirement, Advocacy believes that section 610 should be strengthened to provide for public petitions for review and analysis of burdensome regulations without regard for how long the rules have been in place.

In addition, the SBREFA panel process should be strengthened. In order for these panels to work efficiently and allow maximum input from small businesses, agencies should be required to provide at least two months' notice of an impending panel. Over the years, disagreements have arisen about the amount and quality of information provided to the small entity representatives in the SBREFA panels. Advocacy believes section 609 should be amended to require more detailed notification in advance of convening a panel and to specify information that must be provided to small entity representatives to the panel.

I am curious as to what have you learned from the small business community in the past 8 months since assuming the role of Chief Counsel for Advocacy? From what you have heard, first hand from entrepreneurs, what Federal regulations are of the most concern to America's small businesses (i.e. health care, OSHA, or EPA compliance).

Answer:

Every time I meet with a gathering of small businesses, whether at a trade association meeting, a roundtable, or some other event, those small businesses tell me about their rising costs that are hindering their ability to invest in new equipment, to hire new employees, to grow their businesses. Too many of these costs are tied to federal and state regulations. For many small businesses, the costs of compliance with tax laws is paramount. For others, it is the costs of providing health care for their employees, and questions about how the new health care law will impact their business. Others mention costs associated with new environmental regulations, or new interpretations of workplace safety rules. Others mention the cost of credit. What they uniformly tell me is that this regulatory uncertainty makes it difficult to plan for the future. What they would like to see happen is more regulatory fairness, so that they are not constantly pushing the rock uphill, only to watch it roll down again when an agency issues a new rule.

What conclusions, if any, would you draw on the state of the small business economy from this information?

Answer:

It is difficult to draw conclusions about the broader small business economy merely from trends in federal agency compliance with the Regulatory Flexibility Act. So many factors affect the economy, including access to credit, prices and inflation, the employment situation, and many other factors, that it is difficult to assign causality to any one component unambiguously. However, regulatory costs and impediments remain high on the list of small business concerns, and should be a focus for policymakers trying to increase the ability of small businesses to grow, hire new employees, and invigorate the economy. The uncertainty of the regulatory environment, as well as other factors weighing on the economy, makes it difficult for small businesses to plan for the future, including planning on growing their firm or hiring new employees, or opening a new business. Reducing this level of uncertainty would go a long way toward giving small business owners and entrepreneurs the confidence to invest in growth, which is what in turn will return the economy to growth and create new jobs.

5. According to the SBA's budget report for 2012, the Office of Advocacy produces an average of 25 new reports each year. As someone who has dedicated the majority of their professional career to academia and research, I would like to talk to you about the research that originates at Advocacy.

Part of the Office of Advocacy's mission is to conduct, sponsor, and promote economic research that provides an environment for small business growth. And I know that, in our previous discussions, you expressed great interest in collecting and analyzing data meaningful to small businesses. In fact, the Office of Advocacy's own research has exposed the disproportionate regulatory costs that small businesses pay – those with fewer than 20 employees spend 36 percent more than their larger firms to comply with federal regulations. Ultimately, the small business community – and specifically those who wish to advance its interests – depend upon the Office of Advocacy for relevant information.

What is your research budget for 2012, and how do you intend on spending it? Further, how are research topics proposed and how do you prioritize what projects you will accept? It is my understanding that Advocacy works in partnerships to better leverage resources, can you also describe with whom those collaborations are shared?

Does Advocacy pursue its research with staff members who split their time on regulatory issues and research, or does the Office contract out the majority of these studies at a higher cost?

Answer:

The FY 2012 budget request will support an economic research program of $1.3 million. Funding for this vital part of Advocacy's mission has been limited to approximately $1.1 million since 2000. As a result, we have repeatedly deferred updating some of our older research. We believe we could derive additional value from the investments we have already made in these studies.

Also, every year we must leave on the table good ideas for specialized contract research that addresses important questions that arise as the economy changes. For instance, we have upcoming studies on small business contracting, a subject on which we frequently get questions, but on which we have not released research for over four years.

Advocacy goes to great lengths to get input from the entire small business community on its research priorities. We reach out to actual small businesses, their representatives in trade associations, and members of Congress to see what issues are most important to reflect the economic environment small businesses face and provide necessary data to inform policy.

The U.S. Census Bureau is currently releasing new data from its most recent Survey of Business Owners, conducted only once every five years. We would like to commission special tabulations using this new data to fill information gaps on small firms and their owners. Our request this year is more than 10 percent lower than last year's request of $1.45 million.

Some research topics are central to our mission, like understanding trends in small business finance, employment, regulation, and ownership demographics; and Advocacy has staff economists who work on this research. However, we do not have staff to cover all of these topics, and we therefore contract for research with third party scholars on a regular basis. While the price of research varies considerably by project, contract research does not on average cost more than research done by in-house staff. The mandate of the Office of Advocacy is to cover a very broad range of subjects that affect small business. In order to do so with in-house staff, we would need many times the number of economists we currently have. By contracting with outside researchers, we are able to tap into the expertise of the top scholars working in many of these fields at a fraction of the cost of having them on staff full time.

March 14, 2011

The Honorable Mary L. Landrieu
Chair
Committee on Small Business & Entrepreneurship
United States Senate
Washington, DC 20510

Dear Chair Landrieu,

The Association for Enterprise Opportunity (AEO) would like to take this opportunity to express our views on the President's Proposed FY2012 Budget for the Small Business Administration (SBA). We are writing to request your support for three critical microenterprise programs: Microloan Program, Program for Investment in Micro-Entrepreneurs (PRIME), and Women's Business Centers (WBCs).

AEO is cognizant of the current budget crisis, however, it is our belief that programs designed to encourage and promote job creation – especially those with proven track records including the Microloan programs at SBA – require continued support. The President's proposed SBA budget would eliminate and significantly reduce funding for SBA microloan counseling and technical assistance for entrepreneurs, small and micro businesses, and underserved communities.

During the financial crisis that continues to affect businesses across the country, lending, credit, and access to capital dried up. Lending and technical assistance programs at the SBA provide critical resources to our Nation's entrepreneurs and smallest businesses. AEO is requesting that these important programs continue to be funded at FY2010 levels.

AEO recommends the following FY2012 funding levels to meet the demand for microenterprise services:

- Microloan Program Lending: $25 million budget authority
- Microloan Program Technical Assistance: $22 million
- PRIME Program: $8 million
- WBC Program: $14 million

The President's proposed FY2012 SBA budget would eliminate the PRIME Program, which is the only major program designed to provide funding to intermediaries which are not lenders. One of the reasons micro-businesses tend to have higher than average survival rates, is because lenders and microenterprise development organizations (MDOs) are able to provide the technical assistance and counseling made possible through PRIME.

In its budget submission, the SBA determined that its network of Small Business Development Centers (SDBCs), Women's Business Centers (WBCs) and other programs and affiliates would have the capacity and resources available to provide the same level of assistance to the smallest of businesses. Although AEO recognizes the value of these organizations, we do not believe that they would be able to provide that same level of service that MDOs are able to provide. According to a recent Aspen Institute survey, 80% of businesses that received training and counseling though an MDO were still in business after five years. This compares to an overall five-year business survival rate of approximately 50%. For these reasons, AEO requests that the PRIME Program continue to be funded at the FY2010 level of $8 million for FY2012.

In addition to the elimination of the PRIME Program, the President's proposed FY2012 SBA budget also calls for a reduction in funding for technical assistance under the Microloan Program, from $22 million in FY2010 to just $10 million for FY2012. Not only would technical assistance through PRIME disappear, but the proposed reduction in technical assistance funding through the Microloan Program will doubly affect the underserved population that relies on it the most. AEO requests that the funding levels for technical assistance provided through the Microloan Program remain at the FY2010 level of $22 million and funding for lending under the Microloan Program remain at the FY2010 level of $25 million in budget authority.

Women's Business Centers provide an additional resource for women and minority entrepreneurs and small business owners in low-income areas. Recent surveys of microenterprise programs have found that the majority of microentrepreneurs served are female (59%), and come from traditionally disadvantaged backgrounds (60%). AEO requests that WBCs continue to be funded at the FY2010 level of $14 million for FY2012.

In response to diversifying entrepreneurial needs, MDOs continue to expand their services to meet the needs of entrepreneurs. Today, the types of business development services provided by MDOs include technical assistance, training, mentoring, financial literacy, credit counseling, technological services, tax preparation, and legal assistance. Given today's emphasis on new job creation, supporting our Nation's entrepreneurs and small businesses requires an investment in starting and growing the smallest of businesses. AEO research shows that if just one in three microenterprises were to employ one additional employee, the U.S. economy would return to "full employment" (i.e.

unemployment rate of approximately 4% based on current baseline of 9% unemployment).

AEO is the national member organization and voice of microfinance in the United States. For nearly two decades, AEO and its 450 member organizations of nonprofit lenders and business development practitioners have helped more than two million entrepreneurs to contribute to economic growth as they support themselves, their families and their communities.

Thank you in advance for your consideration of AEO's view. If you have any questions regarding these requests, please contact Ann Sullivan at 202-626-8528 or asullivan@madisonservicesgroup.com.

Sincerely,

Connie E. Evans

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President & CEO

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March 30, 2011

The Honorable Mary L. Landrieu
Chair, Senate Small Business & Entrepreneurship Committee
United States Senate
Washington, DC 20510

Dear Chair Landrieu:

We are writing to express our views on the Small Business Administration's (SBA) proposed budget for FY2012. Important to Women Impacting Public Policy (WIPP) is funding for implementation of the Women-Owned Small Business Federal Contract Program, Women Business Centers (WBCs), Procurement Center Representatives (PCRs), Commercial Marketing Representatives (CMRs), and SBA's Office of Advocacy. WIPP is a national, nonpartisan organization representing 54 organizations and over half-a-million women business owners nationwide.

WIPP supports the proposed funding for the Women Owned Small Business (WOSB) Federal Contract Program of $1 million, included in the President's budget. As you know, this program, which has taken eleven years to enact, is designed to give women-owned businesses greater access to federal contracting. It will allow contracting officers, for the first time, to restrict competition for federal contracts to women-owned businesses. This program will assist federal agencies with reaching the federal goal of awarding 5% of all contracts to women-owned businesses. Central to the success of this program are procurement center representatives (PCRs), and commercial marketing representatives (CMRs).

In addition, we support the proposed $14 million in funding for Women Business Centers (WBCs). WBCs provide essential training, counseling, and mentoring to help women looking to start or grow a successful business. According to SBA's Office of Entrepreneurial Development (ED) 2010 Impact Report, WBC's clients who received three or more hours of counseling reported a 47% increase in sales while clients who received less than three hours of counseling reported only a 36% increase in sales. In addition, businesses that receive assistance from WBCs have significantly higher survival rates that those businesses not receiving similar support.

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Website: www.WIPP.org

Lastly, we support the recommended funding for the Office of Advocacy of $9.1 million. WIPP believes that this office provides a much needed independent voice on behalf of small businesses in the federal regulatory process.

Thank you for consideration of our views. If you have any questions, please feel free to contact Ann Sullivan, WIPP Government Relations, at (202) 626-8528.

Sincerely,

Barbara Kasoff

Barbara Kasoff, President

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