

**REAUTHORIZATION OF THE SBA OFFICE
OF ADVOCACY**

JOINT HEARING
BEFORE THE
**COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP
UNITED STATES SENATE**
AND THE
**SUBCOMMITTEE ON REGULATORY AFFAIRS
AND FEDERAL MANAGEMENT**
OF THE
**COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

MAY 22, 2019

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REAUTHORIZATION OF THE SBA OFFICE OF ADVOCACY

WEDNESDAY, MAY 22, 2019

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
UNITED STATES SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
SUBCOMMITTEE ON REGULATORY AFFAIRS
AND FEDERAL MANAGEMENT,
Washington, DC.

The Committees met, pursuant to notice, at 2:31 p.m., in Room 106, Dirksen Senate Office Building, Hon. Marco Rubio, Chairman of the Committee, and Hon. James Lankford, Chairman of the Subcommittee, presiding.

Present: Senators Rubio, Ernst, Hawley, Lankford, Cardin, Cantwell, Rosen, and Sinema.

OPENING STATEMENT OF HON. JAMES LANKFORD, A U.S. SENATOR FROM OKLAHOMA, AND CHAIRMAN, SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Chairman LANKFORD [presiding]. Good afternoon, everyone. I am pleased the Homeland Security and Governmental Affairs Subcommittee on Regulatory Affairs and Federal Management can partner with the Senate Small Business and Entrepreneurship Committee and dig into the disproportionate impact of Federal regulations on small businesses and what we in Congress can do about this to be able to help our small businesses in our communities.

We have quite a few members that have multiple hearings that are going on this afternoon. So we will have different folks that are coming in and out pretty frequently. I wish we could have had a larger room to be able to meet in, to be able to fit everyone in, but we will try to squeeze in. Sorry for the folks that have to stand.

I want to remind everyone. Do not draft rules to limit the growth of small businesses. I have never met anyone in any agency that is intentionally trying to hurt small businesses, but unfortunately, that is an ancillary result. That does happen.

Research by the American Action Forum found that every 10 percent increase in cumulative regulatory cost results in the loss of 400 small businesses. As regulatory cost and complexities rise, small businesses disappear. Unnecessary burdens can be avoided if

agencies have meaningful consultation with stakeholders before they decide how they will regulate, how they will take on a more complete measurement of the economic impact to their regulations, and understand that the rule has both direct and indirect effects.

When entrepreneurs open their own businesses, their goal is to provide for their family and serve their community by offering a product or a service. Each moment a small business spins trying to understand and comply with the new burdensome Federal regulation, that is time they are not spending on actually growing their business and providing resources to their community. Regulations should be created when it is essential, not when it is just preferred. Running a business is hard and stressful. Government should not make it worse.

When a regulatory environment is stable and businesses can plan for the future, they can hire more people, and the pay for existing employees rises.

Last month's survey on Small Business Optimism, conducted by the National Federation of Independent Business, found that 20 percent of businesses planned to hire new employees in the next 3 months, and 34 percent of businesses reported higher worker compensation. The monthly survey showed as concerns over regulations fall, hiring and wages rise.

Small businesses cannot weather dramatic swings in policy the same way large businesses do. So I look forward to discussing the ways Congress can help stabilize the regulatory environment for small businesses so they can thrive.

With that, I would recognize the Ranking Member of our Subcommittee, Senator Sinema.

**OPENING STATEMENT OF HON. KYRSTEN SINEMA, A U.S.
SENATOR FROM ARIZONA**

Senator SINEMA. Well, thank you, Chairman Lankford, and thank you to all of our witnesses who have joined us today.

I am glad we have this opportunity to join the Small Business Committee to discuss the reauthorization of the Small Business Administration Office of Advocacy.

Small businesses are the backbone of Arizona's economy. There are approximately 550,000 small businesses in Arizona, which is over 99 percent of all businesses in my State. These businesses employ 1 million people, which, of course, is 44 percent of Arizona's workforce.

The Office of Advocacy can play a critical role by giving these small businesses a voice and making sure that their concerns are heard by other Federal agencies when rules are being developed.

Unfortunately, the Office of Advocacy is not immune to controversy. In 2010, the Office of Advocacy published a report on small business regulatory costs. GAO, CRS, and OIRA, Administrator Cass Sunstein, all quickly highlighted the report's flaws, and consequently, the Office of Advocacy added a disclaimer to the report stating, quote, "The findings of the report have been taken out of context, and certain theoretical estimates of cost have been presented publicly as verifiable facts," end quote.

In 2013, the Center for Effective Government published a report finding that the Office of Advocacy commented on government

studies examining chemical toxicity that did not relate to an ongoing rulemaking and did not raise specific small business concerns.

In 2017, the Office of Advocacy again partnered with the authors of a discredited 2010 report earlier for a similar report. Advocacy abandoned this new study, but the focus and credibility took another hit.

So all of these missteps point to an office that needs to find another way. So it is our responsibility to help advocacy do a better job because its mission is so important to economic growth in Arizona and to our country. By recognizing past mistakes and preventing future missteps, we can help Advocacy regain the trust it needs to be an effective voice for small businesses.

I hope that as we examine the reauthorization of the Office of Advocacy, we can work together to enhance its standing and ensure that it is a trusted voice for small businesses that the community needs and deserves.

Thank you, Mr. Chairman. I yield back.

Chairman LANKFORD. Thank you.

At this time, we will proceed with testimony from our witnesses. Major Clark is the Acting Chief Counsel for the Office of Advocacy at the United States Small Business Administration, a position that he has held since January of 2017. He has worked at the Office of Advocacy since 1998, previously serving as Assistant Chief Counsel for Procurement Policy.

Mr. Clark, we are very grateful that you are here today, and, from an Oklahoma perspective, I have friends at home that own an auto repair shop, restaurants, dry cleaners, small energy companies, construction companies, design and engineer companies, a friend of mine that owns a physical therapy. They are great at what they do, but they do not wake up every day to read the Federal Register. They just do not. They know their stuff, and they do it really well. And they are counting on the Office of Small Business Advocacy to be able to help them, and we are grateful that you take on that responsibility and that you are here to be able to share your story today with us.

So we are pleased to be able to receive your testimony now.

**STATEMENT OF MAJOR CLARK III, ACTING CHIEF COUNSEL,
OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION,
WASHINGTON, DC**

Mr. CLARK. Thank you, Mr. Chairman. I am looking at this box here just for a moment. When I was on the Hill, we did not have this type of sophistication. So, hopefully, I will be able to work it correctly.

But good afternoon, Chairman Lankford and Ranking Member Sinema and members of the Committee. I am honored to be here today on behalf of the Office of Advocacy. We are an independent office that speaks on behalf of the small business community before Federal agencies, Congress, and the White House.

This testimony does not reflect the views of the Administration, and this statement has not been circulated to the Office of Management and Budget for clearance.

As Acting Chief Counsel of the Office of Advocacy and on behalf of the entire Advocacy family, I would like to thank both Committees for the tremendous support you have shown us over the years.

The importance of small businesses as generators of innovation, employment, economic growth, and competition in the U.S. economy has been recognized for decades. The need for policies that support the development, growth, and health of small businesses led to the creation in 1976 of the Office of Advocacy. Our core mission to represent small business interests before government agencies was amplified by the 1980 Regulatory Flexibility Act and subsequent amendments and executive orders.

The 2010 Small Business Job Act provided advocacy with additional independence. However, advocacy still encounters challenges with maintaining its independence. The fact that the words “Small Business Administration” remain a part of Advocacy’s name continues to confuse the public and even some Federal agencies, but, despite this, Advocacy still works very closely with SBA, including working with the SBA National Ombudsman’s Office.

Independently, Advocacy represents small interests in many ways. Our regional advocates provide direct contact with small business stakeholders. Advocacy’s economic research team conducts important research on the needs of small businesses and their role in the economy and works with our legal team to assist the agency’s Regulatory Flexibility Analysis.

The RFA requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives, and minimize small entity impacts and make their analysis available for public comments. The specific requirements of the RFA are discussed in my written testimony.

Advocacy reports to Congress every year on agency compliance with the RFA. The report for Fiscal Year 2018 was published and sent to these Committees last month.

In recent years, the most frequent concerns Advocacy has cited in public comment letters to agencies were deficiencies in the RFA analysis. These include, but are not limited to, inadequate analysis of small entity impacts and lack of consideration of significant alternatives.

Advocacy has been concerned with agencies’ inconsistent compliance with 610 of the RFA. We welcome executive order 13771 and executive order 13777, which align with the objectives of Section 610’s retrospective reviews and requirements.

Advocacy is working to ensure that small businesses are included in the regulatory reform effort by conducting small business regional regulatory reform roundtables, and since June of 2017, Advocacy has conducted 36 of these roundtables in 25 States, and over 1,500 small businesses have participated.

In December 2018, Advocacy published a progress report which covers the first 16 months of these roundtables and follow-up efforts with Federal agencies.

Finally, Mr. Chairman, allow me to turn briefly to our legislative priorities because, as you know, Advocacy currently does not have a Senate-confirmed Chief Counsel. Advocacy has not updated its legislative priority since 2016, but allow me to explain some of

those priorities which are in our annual report. Advocacy believes some of these priorities are still very much important today.

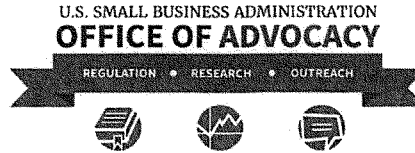
First, indirect effects should be part of the RFA analysis. Second, the definition of a rule under the RFA needs to be expanded to include interim final rulemaking, and finally, a clear definition of a factual basis for a certification should be established.

Mr. Chairman, this concludes my oral testimony, and I request that Advocacy Regional Annual Report and the Regulatory Reform Roundtable Project Report be included in the hearing record.

Chairman LANKFORD. Without objection.

Mr. CLARK. Thank you very much for this opportunity to testify today, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Clark follows:]



Testimony of

**Major L. Clark, III
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration**

***United States Senate
Committee on Small Business and Entrepreneurship
and
Committee on Homeland Security and Government Affairs,
Subcommittee on Regulatory Affairs and Federal Management***

Date: May 22, 2019
Time: 2:30 p.m.
Location: 106 Dirksen Senate Office Building
Washington, DC
Topic: Reauthorization of the SBA Office of Advocacy



U.S. Small Business
Administration

409 3rd Street SW / MC 3110 / Washington, DC 20416 /
Ph 202-205-6533 / advocacy.sba.gov

The Office of Advocacy of the U.S. Small Business Administration was created by Congress in 1976 to be an independent voice for small business within the federal government. The office is led by the Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate. 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. The office relies on economic research, policy analysis, and small business outreach to identify issues of small business concern. Twelve regional and national advocates around the country and an independent office in Washington, D.C., support the Chief Counsel's efforts.

For more information about the Office of Advocacy, visit advocacy.sba.gov, or call (202) 205-6533.

**Major L. Clark, III
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration**

Chairman Rubio, Ranking Member Cardin, Members of the Committee on Small Business and Entrepreneurship, as well as Chairman Lankford, Ranking Member Sinema, and Members of the Homeland Security and Government Affairs Subcommittee on Regulatory Affairs and Federal Management, I am honored to be here today on behalf of the Office of Advocacy (Advocacy) to present testimony to you about our office and the federal rulemaking process. Advocacy is an independent office that speaks on behalf of the small business community before federal agencies, Congress, and the White House. The views in my testimony do not necessarily reflect the views of the Administration or the Small Business Administration (SBA), and this statement has not been circulated to the Office of Management and Budget for clearance.

I. The Independent Office of Advocacy

First, as the Acting Chief Counsel for Advocacy, and on behalf of the entire Advocacy team, we would like to thank both committees for the tremendous support you have shown the office over the years.

There was early recognition by Congress of the importance of small businesses to our nation's economy. The Office of Advocacy was created by Congress in 1976 to be an independent voice for small business within the federal government. Title II of Public Law 94-305 and the Regulatory Flexibility Act confer responsibilities and authorities on Advocacy. Both laws are standing, non-expiring legislation and have been amended over the years.

An important theme leading to Public Law 94-305 was the need for an independent voice within the federal government to represent the interests of small business. The law provides that the Chief Counsel is to be appointed from civilian life by the President with the advice and consent of the Senate, and Advocacy employees serve at the pleasure of the Chief Counsel. Further, the law authorized the Chief Counsel to prepare and publish reports as deemed appropriate and the reports "shall not be submitted to the Office of Management and Budget (OMB) or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President."¹ For this reason, Advocacy does not circulate its work product for clearance with the SBA Administrator, OMB, or any other federal

¹ § 206, Public L. No. 94-305, 15 U.S.C. § 634f.

agency prior to publication. Since 2010, Advocacy has also had independent budget authority.²

However, Advocacy still encounters challenges with maintaining its independence from SBA. The fact that the words “Small Business Administration” remain a part of Advocacy’s name continues to confuse the public and even some federal agencies. To avoid this confusion, the committees might consider changing Advocacy’s name to clarify that Advocacy is not a program within the Small Business Administration, but rather a separate, independent office representing small businesses.

That said, Advocacy is a relatively small operation and continues to rely on SBA for a variety of administrative support services, ranging from office space, equipment, IT, communications support, human resources support, and acquisitions, which are outlined in a Memorandum of Understanding between SBA and Advocacy. Advocacy’s administrative support staff “plug in” to SBA’s systems to keep Advocacy functioning at a high level of productivity.

It is also important to note the other ways in which Advocacy and SBA interact. Of special importance is the work of Advocacy’s economic research team that is widely used by SBA offices. For example, the number of small businesses in the United States is a common statistic used by SBA and other agencies, but is calculated by Advocacy’s research team.³ Advocacy also works closely with the SBA Ombudsman and prides itself on the level of cooperation and assistance that its professionals provide to all SBA program and policy staff.

II. Small Business Research

Public Law 94-305 made economic research a core mission of the Office of Advocacy. This mission includes the documentation of the role of small businesses and entrepreneurship in the economy and the examination of various issues of relevance to small business owners. These elements of Advocacy’s mission are the primary responsibility of the Office of Economic Research (OER). OER specializes in the following areas: small business

² The Small Business Jobs Act of 2010 established a separate appropriations account for Advocacy, in addition to a requirement that SBA provide operating support for Advocacy. Advocacy’s funds are to remain available until expended. Pub. L. No. 111-240, title I, § 1601(b) (Sept. 27, 2010), 124 Stat. 2551, 15 U.S.C. § 634g. These provisions became operational with Advocacy’s budget request for Fiscal Year 2012. Since then, Advocacy’s annual Congressional Budget Justification and its accompanying Annual Performance Report have appeared in a separate budget appendix following the main SBA budget request.

³ There are 30.7 million small businesses in the United States. U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, 2019 SMALL BUSINESS PROFILE: UNITED STATES, 1 (2019), available at <https://advocacy.sba.gov/wp-content/uploads/2019/04/2019-Small-Business-Profiles-US.pdf>. Advocacy calculates small business statistics using the most recent data available from government sources.

economy, small firm dynamics, small business finance, regulatory policy, international small business issues, barriers to entrepreneurship, and ownership of businesses by demographic groups such as veterans, women, and minorities. OER economists work with federal statistical agencies to acquire and analyze data on small businesses, conduct in-house research, and manage contract research projects. OER economists and work closely with the legal team in Advocacy's Office of Interagency Affairs to assess the economic impacts of proposed federal rules on small businesses and alternative regulatory approaches that would reduce economic burden. The economists and attorneys collaborate to train federal agency staff on analyzing regulatory impacts on small businesses in accordance with the Regulatory Flexibility Act and Executive Order 13272.

Advocacy uses its economic research funds for two primary purposes: 1) to sponsor the development and continuation of small business data series and special data tabulations on specific small business topics from federal statistical agencies; and 2) to fund contract research on specialized small business issues through the federal procurement process. Advocacy publishes issue-specific research as well as periodic reports. OER publications take many forms, including traditional publications such as reports, bulletins, frequently asked questions, and state economic profiles, along with newer products such as issue briefs, fact sheets, topic-linked research series, and infographics. Additionally, OER economists give presentations on small business research and statistics at various conferences, forums, events, roundtables, and meetings.

Advocacy sponsors issue-specific research on a wide variety of topics of interest to Advocacy stakeholders within Advocacy's research mandate. Advocacy welcomes suggestions for small business research topics from many sources in order to identify and validate important topics, including input from congressional offices, other federal agencies, small business organizations, advocacy groups, and small businesses themselves. Advocacy staff and leadership also seek to identify areas where new research is needed and feasible given the state of existing data. Subject to the availability of resources, Advocacy periodically solicits research proposals on topics of interest according to the federal procurement process administered by SBA's Acquisition Division. Each awarded contract research project is monitored by an Advocacy staff member serving as the Contracting Officer's Representative for the project. In 2015, Advocacy improved controls over its research process, including strengthening its peer review process. OER continuously assesses and refines its research process in order to best carry out the special responsibility of being the only federal office tasked with producing small business research and statistics.

OER publishes an annual report detailing its research activity for the year, including a listing of publications, small business economic research forums held, and an overview and update of the most widely used publicly available data series on small businesses. In FY 2018,

OER released 20 publications. OER's annual report for FY 2018 is still in development, and the FY 2017 report can be accessed on our website.⁴

III. The Regulatory Flexibility Act and Advocacy's Role in the Federal Rulemaking Process

Federal regulations can have a disproportionate impact on small businesses. Because of this, the Regulatory Flexibility Act (RFA),⁵ enacted in September 1980, requires federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The RFA applies to a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Advocacy continues to emphasize that the RFA "does not seek preferential treatment for small entities, nor does it require agencies to adopt regulations that impose the least burden on them, or mandate exemptions for them. Rather, it requires agencies to examine public policy issues using an analytical process that identifies barriers to small business competitiveness and seeks a level playing field for small entities, not an unfair advantage."⁶

Under the RFA, when an agency proposes a regulation that would have a "significant economic impact on a substantial number of small entities," the regulation must be accompanied by an impact analysis known as an initial regulatory flexibility analysis (IRFA), when the rule is published for public comment.⁷ When the final rule is published, it must be accompanied by a final regulatory flexibility analysis (FRFA).⁸ These analyses must describe, among other things, 1) the reasons why the regulatory action is being considered; 2) the small entities to which the proposed rule will apply and, where feasible, an estimate of their number; 3) the projected reporting, recordkeeping, and other compliance requirements; and 4) any significant alternatives to the rule that would accomplish the statutory objectives while minimizing the impact on small entities. The consideration of significant alternatives is the key to the RFA.

⁴ U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, ANNUAL REPORT OF THE OFFICE OF ECONOMIC RESEARCH: FY 2017, *available at* https://www.sba.gov/sites/default/files/OER_2017_Annual_Report.pdf.

⁵ 5 U.S.C. § 601, et seq. The Regulatory Flexibility Act was originally passed in 1980 (Pub. L. No. 96-354). The Act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121), the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203), and the Small Business Jobs Act of 2010 (Pub. L. No. 111-240).

⁶ U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, A GUIDE FOR GOVERNMENT AGENCIES: HOW TO COMPLY WITH THE REGULATORY FLEXIBILITY ACT, 1 (Aug. 2017), *available at* <https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf> [hereinafter RFA COMPLIANCE GUIDE].

⁷ 5 U.S.C. § 603.

⁸ 5 U.S.C. § 604.

Alternatively, if a federal agency determines that a proposed rule would not have a significant impact on a substantial number of small entities, the head of that agency may “certify” the rule and bypass the IRFA and FRFA requirements.⁹ This is commonly referred to as a “certification” and requires the agency to provide a factual basis for its determination that the rule will not have a significant economic impact on a substantial number of small entities.

In addition, the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and the Consumer Financial Protection Bureau (CFPB) are required to convene a small business advocacy review panel (also referred to as a SBREFA panel) whenever they are developing a rule that is expected to have a significant economic impact on a substantial number of small entities.¹⁰ These agencies must notify Advocacy prior to the publication of an IRFA and provide information on the potential impacts of the proposed rule. The SBREFA panels consist of representatives of the Chief Counsel for Advocacy, the Administrator of OMB’s Office of Information and Regulatory Affairs (OIRA), and the agency proposing the rule.¹¹ The panel reviews materials related to the proposal, and, importantly, the advice and recommendation of small entity representatives (SERs) on the rule’s potential effects and possible mitigation strategies. The panel then issues a report on the comments of the SERs and on its own findings related to RFA issues. The agency is then required to consider the panel report findings and, where appropriate, modify the proposed rule and/or its IRFA.¹²

Section 610 of the RFA also requires agencies to review their existing rules that have or will have a significant impact on a substantial number of small entities within ten years of their promulgation.¹³ The purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities.

The elements of the RFA are the primary responsibility of Advocacy’s Office of Interagency Affairs. Interagency is Advocacy’s largest operational division in terms of staff, and the team of attorneys monitor federal regulatory and other activity with potential small entities impacts. They also work with agencies to help them develop less burdensome rules,

⁹ 5 U.S.C. § 605(b).

¹⁰ A list of all SBREFA panels that have been convened can be found in our annual report to Congress, and in Appendix A of this testimony.

¹¹ In limited circumstances, the Chief Counsel may waive the requirement for a SBREFA panel.

¹² 5 U.S.C. § 609.

¹³ 5 U.S.C. § 610.

both by providing small entity input early in the regulatory process, while still achieving the agencies' regulatory goals. The team utilizes numerous methods of communication to present the concerns of small entities to federal officials promulgating new regulations. For example, Advocacy holds meetings with officials, participates in OIRA-led review of upcoming rules, writes comment letters to agency directors, conducts outreach to small entities through roundtables and other methods, and holds training sessions on RFA compliance to help facilitate meaningful participation by all interested parties.

One of the important functions of this team is confidential interagency communications. Advocacy's goal is to participate in the regulatory development process as early as possible, both to counsel agencies on potential effects of their actions on small business and to provide RFA compliance expertise as needed. Advocacy believes it is essential that agency policymakers and regulatory development staff have confidence that they can share pre-proposal information with Advocacy staff. Such disclosure could have a variety of adverse consequences, and, depending on what is disclosed to whom, could in some cases violate law. Fortunately, Advocacy's track record in this regard has been exemplary, and the trust that Interagency has built with regulatory agencies is evident, as these agencies are increasingly asking for Advocacy guidance early in the pre-proposal phase of the rule development process. Because of the confidential nature of most such communications, it is difficult for Advocacy to document the precise regulatory cost savings to small businesses that flow from this important work.

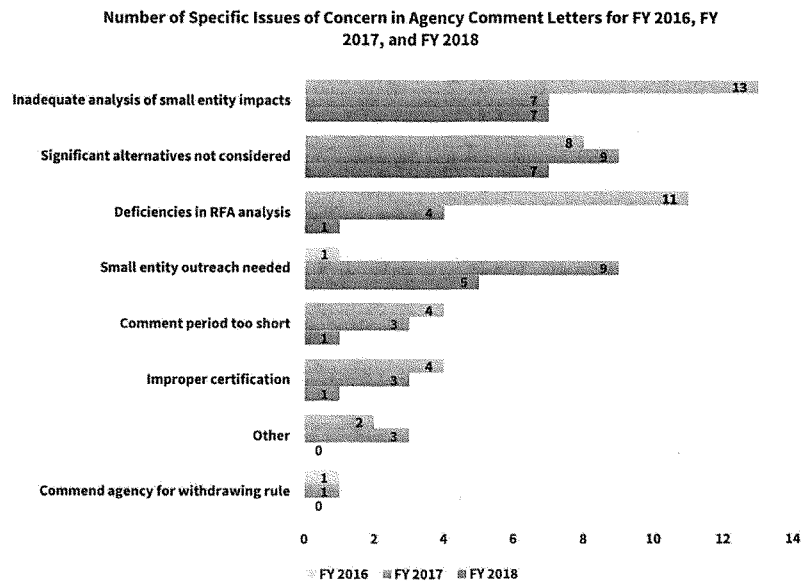
IV. Agency Compliance with the Regulatory Flexibility Act

In addition to the RFA's requirements that agencies consider how their regulations will impact small businesses and consider less burdensome alternatives, the RFA also requires the Office of Advocacy to monitor and report on how well federal agencies are complying with the law. In addition, Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," which was signed by President George W. Bush in 2002, requires Advocacy to educate federal agency officials on compliance with the RFA, to provide resources to facilitate continued compliance, and to report to OMB on agency compliance with it.¹⁴ Every year, Advocacy reports to Congress and OMB on agencies' compliance with the RFA and E.O. 13272. Advocacy's report for FY 2018¹⁵ was published in April 2019 and was sent to these Committees, and I would like to highlight some important items.

¹⁴ Exec. Order No. 13,272, 67 Fed. Reg. 53,461 (Aug. 13, 2002).

¹⁵ U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, REPORT ON THE REGULATORY FLEXIBILITY ACT, FY 2018 (Apr. 2019), available at <https://s3.amazonaws.com/advocacy-prod.sba.fun/wp-content/uploads/2019/04/02160024/RFA-Annual-Report-FY-2018.pdf> [hereinafter RFA FY 2018 REPORT].

From FY 2016 through FY 2018, Advocacy has submitted 61 formal comment letters to regulatory agencies. The most frequent concerns were that agencies had an inadequate analysis of small entity impacts (27 letters); significant alternatives were not considered (24 letters); and deficiencies in the RFA analysis (16 letters). The figure below summarizes Advocacy's issues of concern from comment letters during FYs 2016 to 2018.



Advocacy also engages with small business stakeholders through a variety of other mechanisms, ensuring that the lines of communication remain open and that small business concerns are heard by the appropriate contacts within the federal agencies. Part of this engagement is through issue roundtables, which focus on small business regulatory topics. Advocacy holds issue roundtables across the country and often provides opportunities for small business stakeholders to participate remotely by phone. In addition to our daily engagement with small entities, in FY 2018, Advocacy hosted 12 issue roundtables on a variety of regulatory issues.¹⁶

¹⁶ The list and descriptions of the roundtables can be found in Chapter 3 of our RFA FY 2018 Report.

V. Advocacy's Regulatory Reform Efforts

In response to Executive Orders 13771 and 13777, which commit this administration to regulatory reform and burden reduction, on March 30, 2017, Advocacy sent a memorandum to federal agencies recommending that they consider small entity interests in implementing E.O. 13771 and in subsequent deregulatory actions.¹⁷ Advocacy works to ensure that small businesses are included in the regulatory reform effort by conducting small business outreach at roundtables to gather small business regulatory reform priorities to channel back to federal agencies.

Advocacy's Regional Regulatory Reform Roundtables have been a means of gathering practical input on small business burdens around the country. These roundtables are open to the public, and small businesses from a wide area are invited. Advocacy also invites federal agency officials to attend, so they can hear feedback and suggestions firsthand, and provide agency perspectives, if they so choose. Congressional representatives have also attended these roundtables to hear their constituents' regulatory issues.

The roundtables have two goals:

1. To identify small business regulatory issues to assist agencies with their regulatory reform plans (as directed by Executive Orders 13771 and 13777). This entails gathering firsthand information on small business regulatory burdens across the nation and identifying specific recommendations for regulatory change to submit to agencies.
2. To educate small businesses and stakeholders on the ways that Advocacy can help them meet their goals.

Since June 2017, Advocacy has conducted 36 Regional Regulatory Reform Roundtables in 25 states, and over 1,500 small businesses have participated. While traveling to these events, Advocacy staff also made at least 84 site visits in 22 states through September 2018. In addition, the office's regional and national advocates held small business forums in 244 cities, and small business owners submitted hundreds of comments through an online portal. Locations span rural and urban areas, geographic regions, and a range of industries. The geographical diversity provides an up-close perspective of how a single federal rule can have varying economic impacts on different types of small businesses.

¹⁷ The memorandum can be found in Appendix B of this testimony.

In December 2018, Advocacy published a progress report which covers the first 16 months of the office's Regional Regulatory Reform Roundtables.¹⁸ The report provides details about small businesses' regulatory challenges through our firsthand accounts of roundtables and site visits across the country through September 2018. It also outlines the first steps toward progress in alleviating some of these burdens, which includes follow-up efforts with federal agencies. Advocacy looks forward to continuing progress toward regulatory reform for small businesses.

VI. Legislative Proposals to Amend the RFA

Advocacy's broad experience with the RFA since its original enactment in 1980, together with a growing body of case law, give Advocacy a unique perspective on the RFA's implementation. Over the years, previous Chief Counsels have identified areas they believed needed legislative attention if the RFA is to provide small entities with the full consideration that Congress originally intended.

Because Advocacy currently does not have a Senate-confirmed Chief Counsel that can lobby before Congress for legislative solutions, the office has not updated its legislative priorities since 2016. Advocacy acknowledges that these proposals will require more carefully crafted legislative language and analysis to ensure they are appropriately implemented, and our staff is happy to provide technical assistance on legislative proposals concerning the RFA. The 2016 legislative priorities can be found in Appendix C of this testimony, and are briefly explained below:

a. Indirect effects

Under the RFA, agencies are not currently required to consider the impact of a proposed rule on small businesses that are not directly regulated by the rule, even when the impacts are foreseeable and often significant. Advocacy believes that indirect effects should be part of the RFA analysis, but that the definition of indirect effects should be specific and limited so that the analytical requirements of the RFA remain reasonable.¹⁹

¹⁸ U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, WHAT SMALL BUSINESSES ARE SAYING AND WHAT ADVOCACY IS DOING ABOUT IT: PROGRESS REPORT ON THE OFFICE OF ADVOCACY'S REGIONAL REGULATORY REFORM ROUNDTABLES, JUNE 2017 – SEPTEMBER 2018 (Dec. 2018), available at <https://s3.amazonaws.com/advocacy-prod.sba.fun/wp-content/uploads/2018/12/20091536/What-Small-Businesses-Are-Saying-What-Advocacy-Is-Doing.pdf>.

¹⁹ Advocacy's RFA Compliance Guide states that agencies "should examine 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." RFA COMPLIANCE GUIDE, *supra* note 6, at 23.

b. Scope of the RFA

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

In the past, the IRS has regularly promulgated rules that were costly and complicated for small businesses. Generally, the IRS contended that it had no discretion in implementing legislation and that the agency had little authority to consider less costly alternatives under the RFA. Therefore, the IRS often did not analyze the cost of its rules to small businesses under the RFA.²⁰

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

c. Quality of Analysis

The Office of Advocacy has been concerned that some agencies are not providing the information required in the IRFA and FRFA in a transparent and easy-to-access manner.²¹ This hinders the ability of small entities and the public to comment meaningfully on the impacts on small entities and possible regulatory alternatives. Agencies should be required to include an estimate of the cost savings to small entities in the FRFA. In addition, agencies should have a single section in the preamble of the notice of proposed rulemaking and notice of final rulemaking that lays out clearly the substantive contents of the IRFA or FRFA, including a specific narrative for each of the required elements.

²⁰ On April 11, 2018, the Department of the Treasury and OMB signed a Memorandum of Agreement outlining the general terms for OIRA within OMB to review tax regulatory actions under Executive Order 12866. The MOA went into immediate effect with the exception of the additional information required under section 6(a)(3)(C) of E.O. 12866 pertaining to tax regulatory actions that would have an annual non-revenue effect on the economy of \$100 million or more, measured against a no-action baseline, which went into effect in April 2019.

²¹ Advocacy believes the information should be at the level of detail necessary to understand the rule's impact on all affected entities, such as identifying all of the different types of affected small businesses by industry and accessing the rule's impact on each type of affected small business.

d. Quality of Certification

Some agencies' improper certifications under the RFA have been based on a lack of information in the record about small entities, rather than data showing that there would not be a significant impact on a substantial number of small entities. A clear requirement for threshold analysis would be a stronger guarantee of the quality of the certifications.²²

e. SBREFA Panels

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

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

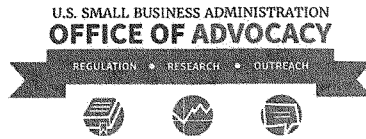
f. Retrospective Review

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

Conclusion

Thank you for the opportunity to testify today. Advocacy looks forward to continuing to work with you and other Members of Congress to be the voice for small businesses in the federal government and work with agencies to reduce small businesses' regulatory burdens during the rulemaking process. I would be happy to answer any questions you may have.

²² Advocacy's RFA Compliance Guide walks through the certification in detail and the items that should be included in any certification, including the requirements of a factual basis for the certification. RFA COMPLIANCE GUIDE, *supra* note 6, at 11-30.



Appendix A

SBREFA Panels Convened Through FY 2018

SBREFA Panels Convened Through FY 2018

Table D.1 SBREFA Panels Convened Through FY 2018

Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Consumer Financial Protection Bureau				
Debt Collection	08/25/16	10/19/16		
Arbitration Clauses	10/20/15	12/11/15	05/24/16	Rule published 07/19/17. Repealed under Congressional Review Act, 10/24/17
Limit Certain Practices for Payday, Vehicle Title, and Similar Loans	04/27/15	06/25/15	07/22/16	11/17/17
Home Mortgage Disclosure Act	02/27/14	04/24/14	08/29/14	10/15/15
Loan Originator Compensation Requirements under Regulation Z	05/09/12	07/12/12	09/07/12	02/15/13
Mortgage Servicing under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	04/09/12	06/11/12	09/17/12	02/14/13
Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	02/21/12	04/23/12	08/23/12	12/31/13
Department of Labor, Occupational Safety and Health Administration				
Telecommunications Towers	08/15/18	10/11/18		
Process Safety Management Standard	06/02/16	08/01/16		
Occupational Exposure to Infectious Diseases in Healthcare and Other Related Work Settings	10/14/14	12/22/14		
Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl	05/05/09	07/02/09		
Occupational Exposure to Beryllium	09/17/07	01/15/08	08/07/15	
Cranes and Derricks in Construction	08/18/06	10/17/06	10/09/08	08/09/10
Occupational Exposure to Hexavalent Chromium	01/30/04	04/20/04	10/04/04	02/28/06
Occupational Exposure to Crystalline Silica	10/20/03	12/19/03	09/12/13	03/25/16
Confined Spaces in Construction	09/26/03	11/24/03	11/28/07	
Electric Power Generation, Transmission, and Distribution	04/01/03	06/30/03	06/15/05	04/11/14
Ergonomics Program Standard	03/02/99	04/30/99	11/23/99	11/14/00

Table D.1 SBREFA Panels Convened Through FY 2018

Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Safety and Health Program Rule	10/20/98	12/19/98		
Tuberculosis	09/10/96	11/12/96	10/17/97	Withdrawn 12/31/03
Environmental Protection Agency				
Financial Responsibility Requirements for Hard Rock Mining	08/24/16	12/01/16	12/01/16	Withdrawn December 2017
Regulation of Trichloroethylene for Vapor Degreasers under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	
Regulation of N-Methylpyrrolidone and Methylene Chloride in Paint and Coating Removal under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	
Risk Management Program Modernization	11/04/15	02/19/16	03/14/16	01/13/17
Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector	06/16/15	08/13/15	09/18/15	06/3/16
Federal Plan for Regulating Greenhouse Gas Emissions from Electric Generating Units	04/30/15	07/28/15	10/23/15	Withdrawn 04/03/17
Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Vehicles	10/22/14	01/15/15	07/13/15	10/25/2016
PCB (Polychlorinated Biphenyls) Use Authorizations Update Rule	02/07/14	04/07/14		
Review of New Source Performance Standards and Amendments to Emission Guidelines for Municipal Solid Waste Landfills	12/05/13	07/21/15	07/17/14 08/27/15	08/29/16
National Emissions Standards for Hazardous Air Pollutants (NESHAP): Brick and Structural Clay Products and Clay Products	06/12/13	01/16/14	12/18/14	10/26/15
Long Term Revisions to the Lead and Copper Rule	08/14/12	08/16/13	-	-
Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards	08/04/11	Rule proposed rule w/o completion of SBREFA panel report	06/30/14	12/01/15
Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards	08/04/11	10/14/11	05/21/13	04/28/14
Greenhouse Gas Emissions from Electric Utility Steam Generating Units	06/09/11	Rule proposed rule w/o completion of SBREFA panel report	04/14/13	04/13/12 01/08/14 06/02/14

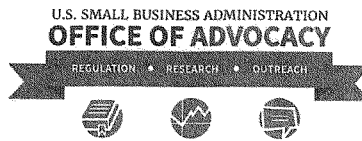
Table D.1 SBREFA Panels Convened Through FY 2018

Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
National Emission Standards for Hazardous Air Pollutants (NESHAP) Risk and Technology Review for the Mineral Wool and Wool Fiberglass Industries	06/02/11	10/26/11	11/12/11	07/29/15
Formaldehyde Emissions from Pressed Wood Products	02/03/11	04/04/11	06/10/13	07/27/16
Stormwater Regulations Revision to Address Discharges from Developed Sites	12/06/10	10/04/11	-	Withdrawn 07/06/17
National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units	10/27/10	03/02/11	05/03/11	02/16/12
Revision of New Source Performance Standards for New Residential Wood Heaters	08/04/10	10/26/11	02/03/14	03/16/15
Pesticides; Reconsideration of Exemptions for Insect Repellents	11/16/09	01/15/10		
National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers: Major and Area Sources	01/22/09	03/23/09	06/04/10	03/21/11
Pesticides; Certification of Pesticide Applicators (Revisions)	09/04/08	11/03/08	08/24/15	01/04/17
Pesticides; Agricultural Worker Protection Standard Revisions	09/04/08	11/03/08	03/19/14	09/28/15
Renewable Fuel Standards 2	07/09/08	09/05/08	05/26/09	03/26/10
Total Coliform Monitoring	01/31/08	01/31/08	07/14/10	
Non-Road Spark-Ignition Engines/Equipment	08/17/06	10/17/06	05/18/07	10/08/08
Mobile Source Air Toxics	09/07/05	11/08/05	03/29/06	02/26/07
Federal Action Plan for Regional Nitrogen Oxide/Sulfur Dioxide (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Section 126 Petition (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Cooling Water Intake Structures Phase III Facilities	02/27/04	04/27/04	11/24/04	06/15/06
Nonroad Diesel Engines – Tier IV	10/24/02	12/23/02	05/23/03	06/29/04
Lime Industry – Air Pollution	01/22/02	03/25/02	12/20/02	01/05/04
Aquatic Animal Production Industry	01/22/02	06/19/02	09/12/02	08/23/04
Construction and Development Effluent Limitations Guidelines	07/16/01	10/12/01	06/24/02	Withdrawn 04/26/04
Nonroad Large Spark Ignition Engines, Recreation Land Engines, Recreation Marine Gas Tanks and Highway Motorcycles	05/03/01	07/17/01	10/05/01 08/14/02	11/08/02

Table D.1 SBREFA Panels Convened Through FY 2018

Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Stage 2 Disinfectant Byproducts; Long Term 2 Enhanced Surface Water Treatment	04/25/00	06/23/00	08/11/03 08/18/03	01/04/06 01/05/06
Reinforced Plastics Composites	04/06/00	06/02/00	08/02/01	04/21/03
Concentrated Animal Feedlots	12/16/99	04/07/00	01/12/01	02/12/03
Metals Products and Machinery	12/09/99	03/03/00	01/03/01	05/13/03
Lead Renovation and Remodeling Rule	11/23/99	03/03/00	01/10/06	04/22/08
Diesel Fuel Sulfur Control Requirements	11/12/99	03/24/00	06/02/00	01/18/01
Recreational Marine Engines	06/07/99	08/25/99	10/05/01 08/14/02	11/08/02
Arsenic in Drinking Water	03/30/99	06/04/99	06/22/00	01/22/01
Light Duty Vehicles/Light Duty Trucks Emissions and Sulfur in Gas	08/27/98	10/26/98	05/13/99	02/10/00
Filter Backwash Recycling	08/21/98	10/19/98	04/10/00	06/08/01
Long Term 1 Enhanced Surface Water Treatment	08/21/98	10/19/98	04/10/00	01/14/02
Radon in Drinking Water	07/09/98	09/18/98	11/02/99	
Section 126 Petitions	06/23/98	08/21/98	09/30/98	05/25/99
Federal Action Plan for Regional Nitrogen Oxide Reductions	06/23/98	08/21/98	10/21/98	04/28/06
Ground Water	04/10/98	06/09/98	05/10/00	11/08/06
Underground Injection Control (UIC) Class V Wells	02/17/98	04/17/98	07/29/98	12/07/99
Centralized Waste Treatment Effluent Guideline	11/06/97	01/23/98	09/10/03 01/13/99	12/22/00
Transportation Equipment Cleaning Effluent Guidelines	07/16/97	09/23/97	06/25/98	08/14/00
Stormwater Phase II	06/19/97	08/07/97	01/09/98	12/08/99
Industrial Laundries Effluent Guidelines	06/06/97	08/09/97	12/17/97	Withdrawn 08/18/99
Nonroad Diesel Engines	03/25/97	05/23/97	09/24/97	10/23/98

See Appendix G for abbreviations.



Appendix B

Memorandum from Major L. Clark, III, Acting Chief
Counsel for Advocacy, U.S. Small Business
Administration, to Heads of Agencies re Implementation
of Executive Orders 13771, "Reducing Regulation and
Controlling Regulatory Costs," and 13777, "Enforcing
the Regulatory Reform Agenda" (March 30, 2017)

U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
 REGULATION • RESEARCH • OUTREACH

MEMORANDUM

TO: Heads of Agencies

FROM: *MZC*
 Major L. Clark, III Acting Chief Counsel for Advocacy, U.S. Small Business Administration

DATE: March 30, 2017

SUBJECT: Implementation of Executive Orders 13771, "Reducing Regulation and Controlling Regulatory Costs," and 13777, "Enforcing the Regulatory Reform Agenda"

As required by Executive Order (EO) 13272¹, I am writing to advise you of the activities of the Office of Advocacy (Advocacy) related to recent Executive Orders on the reduction of regulatory burdens and offer additional assistance related to these new policies. Advocacy strongly endorses the principles and policies of these Executive Orders and urges that they be implemented consistent with the Regulatory Flexibility Act (RFA)² in order to reduce the regulatory burdens and the disproportionate impacts of regulations on small entities.

Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small entities before federal agencies and Congress. Because Advocacy is an independent office within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.³ The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), gives small entities (businesses, organizations, and local governments) a voice in the federal rulemaking process and requires agencies to consider the impacts of their rulemakings on small entities. Under EO 13272, Advocacy provides training to agencies on the RFA.

Over the coming months, Advocacy will be making available additional assistance and tools to implement Executive Orders 13771 and 13777 and engaging in outreach to small entities to identify opportunities to reduce burdens on small entities. Advocacy will also be seeking additional opportunities to train policy officials and regulatory staff on the RFA and its importance in the implementation of these EOs.

¹ Executive Order 13272, signed August 13, 2002 (67 Fed. Reg. 53,461 (August 16, 2002)). Section 2(a) requires the Chief Counsel for Advocacy to "notify agency heads from time to time of the requirements of the [Regulatory Flexibility] Act."

² 5 U.S.C. § 601, *et. seq.*

³ 15 U.S.C. § 634a, *et. seq.*



409 3rd Street, SW / MC 3114 / Washington, DC 20416 / 202-205-6533 ph / 202-205-6928 fax
www.sba.gov/advocacy

To initiate Advocacy assistance to your agency in the implementation of EO 13771, EO 13777, and the Regulatory Flexibility Act, please provide me with the names of the officials you have designated as the Regulatory Policy Officer, named under EO 12866, section 6(a)(2), and the Regulatory Reform Officer, named under EO 13777, section 2(a).

This information should be sent to Charles Maresca, Director of Interagency Affairs, SBA Office of Advocacy, Charles.Maresca@sba.gov, as it is available. Please also contact me or Mr. Maresca if you have any questions about this memorandum or your agency's compliance with the RFA.

Thank you for your consideration of these requests. I look forward to a productive effort to reduce the regulatory burdens on small entities.

cc: Dominic Mancini, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget





Appendix C

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



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

Indirect Effects

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

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

Scope of the RFA

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

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

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

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

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

Quality of Analysis

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

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

Quality of Certification

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

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

SBREFA Panels

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

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

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

Retrospective Review

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

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

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

Chairman LANKFORD. Mr. Clark, thank you very much. I am going to defer my questions to the end of this panel and recognize the Ranking Member of the Subcommittee, Senator Sinema.

Senator SINEMA. Thank you so much, Chairman.

Major Clark, thank you so much for being here.

Small businesses, of course, as I mentioned in my opening remarks, are the backbone of the Arizona economy, with over 99 percent of all businesses in Arizona being small businesses. What sort of outreach and interaction has the Office of Advocacy had with Arizona small businesses over the last year?

Mr. CLARK. Thank you very much, Senator, for your question.

The Small Business Office of Advocacy actually was in your great State on May 1. We had a regional regulatory roundtable. We had a tremendous amount of participation from businesses from a cross-sector of the Arizona economy, and we were able to walk away with some very good insight into some of the issues that are impacting those businesses.

In addition to that, we have a regional advocate who is a full-time Advocacy employee, who was assigned to your great State, and she is housed in Phoenix. And she is, on a daily basis, reaching out to small businesses across the State.

Senator SINEMA. Thank you so much.

As we have noted earlier, in the last decade, Advocacy has had a few stumbles and invited some controversy. I am not interested at all in going back to the past to assign blame, but those situations do have an impact on the bearing of the Office of Advocacy.

I believe that your mission is incredibly important, and what you say should be respected and not disregarded. So what kinds of activities do you think the Senate could do to restore faith in the work that Advocacy does?

Mr. CLARK. Thank you very much for your question.

The Senate, as we move through this process, we interact very closely with staff, and we are available to hold roundtables. We are available to talk on an individual basis with small businesses that may have various problems.

So part of what we suggest that could happen is to increase that process so that we are more available to the small business community and to your constituents with problems that they may have.

Senator SINEMA. Thank you.

Outdoor tourism is an important piece of the Arizona economy. It is actually my favorite, and as we will hear later from Mr. Baumann during the next panel, regulations are important for businesses that depend on a diverse ecosystem and a healthy environment.

So I have heard criticisms, as I am sure you have, that the Office of Advocacy tends to favor traditional businesses when interacting with Federal agencies.

So how does the Office of Advocacy determine a position when small business interests are perhaps at odds with each other within one community?

Mr. CLARK. Thank you, Senator.

One of the things we do in that process is not to make a judgment as to which industry is more important than the other indus-

try. We gather the information, and we submit that information to the agencies. That information is either submitted in the form of a formal comment letter, or that information is submitted to the agency as part of an interagency communication. But we place responsibility on the agency to ultimately make the decision regarding those competing interests.

Senator SINEMA. Thank you.

Those are the only questions I have at the given moment. So thank you so much, Mr. Chairman, I yield back.

Chairman LANKFORD. Senator Rosen.

Senator ROSEN. Thank you. Thank you so much for being here. We really appreciate your time and your work.

In Nevada, we have over 250,000 small businesses. Our State is barely 3 million people, so it is quite a lot, and we have over 70,000 minority-owned businesses and 80,000 women-owned businesses in Nevada.

So when you are going and doing your outreach, are you including minority- and women-owned businesses? What are you finding are some of the obstacles that maybe they are subject to from your office?

Mr. CLARK. Thank you very much, Senator.

Yes, we do—we include anyone who wants to come to our roundtables and to provide information to us. We send out information through the various small business trade organizations. We publicize the roundtables. We used SBA to send information out to their stakeholders.

So the roundtables are open to the public. We make a special effort to reach out to small business, the minority business groups, trying to get them—

Senator ROSEN. Do you have a list of action items after and then follow up with the folks on the roundtable?

Mr. CLARK. Yes.

Senator ROSEN. So are we able to see some of those for Nevada?

Mr. CLARK. Sure. You are able to see those.

After each roundtable, we come back to the office, and we provide the action items for each individual advocate in terms of the area of concern.

My specialty is in procurement and acquisition. I can honestly share with you that I have a tremendous number of questions from small business and minority businesses regarding the Federal Government's procurement process. What I attempt to do with each of those is to go back to the small business, talk with them more specifically about what their concerns are and, where appropriate, refer that information to the appropriate agency.

Senator ROSEN. Do you see any trends as you have gone around the country having these? Are you seeing common threads of obstacles or opportunities for small businesses, especially minority- and women-owned?

Mr. CLARK. Well, the trends that we see as we have gone so far clearly are trends related to some of the burdensome parts of the regulation.

As I said, we were in Arizona on May 1st, and one of the things that came out of that was some small businesses very much concerned with the duplicity of requirements. That they are actually

bidding on work with the Federal Government, and they have to provide the same information to each Federal agency as opposed to having a centralized one-stop shop where that information can actually be downloaded.

Senator ROSEN. So we might benefit from doing something like the common application, like they do for college, maybe?

Mr. CLARK. Well, at one point in time, the Office of Advocacy did propose what we called a one-stop-shop type of form, type of process, where this information would be catalogued and collected and then disseminated to the appropriate agencies as needed.

But with resources and changes in time and everything, that issue kind of died on the vine. But that is one of the things that small businesses are telling us. They just have to continue to fill out these same forms, provide the same—

Senator ROSEN. It seems like it would be more economical to spend the time to put it together.

Mr. CLARK. Yes.

Senator ROSEN. But I have another quick question before my time runs out. In Nevada, we have legalized marijuana, so we have so many small businesses and entrepreneurs coming to our State who are selling about \$50 million worth of medical marijuana each month, and so our marijuana businesses have lack of access to capital.

So I know that you have to research and advocate for small businesses against regulations that undercut growth opportunities. Do you believe that the growth of legally operating cannabis businesses is stifled because of existing laws, regulations, and appropriations riders?

Mr. CLARK. Senator, that is a difficult question.

We have not actually studied the issue of marijuana in that regard, and we have not because the Federal Government has not yet legalized it. So we do, in conversations with a lot of businesses, get inquiries as to what they can do and how they can do it, but to actually do an analysis of it, we have not yet done that.

I am sure that as soon as the Federal Government decides to legalize this substance, we will begin to study its impact and the ability to use it in a more economical context within the State.

Senator ROSEN. Do you believe that cannabis entrepreneurs would benefit from just small business, some of the templates and frameworks and those things that you provide? They are operating legally within many of our States. Just an opinion.

Mr. CLARK. These types of businesses can benefit from some of these types of things, but, again, because this issue is an issue that has not reached the surface of being legalized, we have actually stayed away from trying to advise these businesses on these particular aspects.

Senator ROSEN. Thank you.

I went over my time. Sorry.

Chairman LANKFORD. You are fine. It is a unique challenge dealing with a Schedule I drug on the Federal side and then also know that some States have said, including my own—that have said they will not allow it, and the Federal Government and the FDA continues to study it and say there is no medicinal gain from this product. It is a Schedule I drug. So I get it.

The science and whether it is SBA or whoever it is continues to be able to deal with that.

Senator ROSEN. It is a juggling act.

Chairman LANKFORD. It is. Thank you.

Recognize Senator Ernst.

Senator ERNST. Thank you, Mr. Chairman, and thank you also for our witnesses for being here today.

The SBA Office of Advocacy plays a critical role as an independent voice for small businesses within the Federal Government, and I look forward to our discussion on a number of the issues that are really important to Iowans and all Americans engaged in small business.

Mr. Clark, a few years ago, while the EPA's Waters of the U.S., or WOTUS rule, was being developed, Advocacy found that the EPA and the Army Corps improperly certified the rule, meaning the agencies claimed it would not have a significant economic impact on a substantial number of small entities, while Advocacy believed it would.

Along with Senator Sinema, I have introduced legislation that would give small businesses a stronger voice in the regulatory process. It is called the Prove It Act, and in the event that there is a difference of opinion between an agency and the Office of Advocacy on the economic impact of a rule on small businesses, like we saw with the WOTUS rule and several others, the Prove It Act would give Advocacy the opportunity to request that an agency take a second look at its analysis.

As Acting Chief Counsel for Advocacy, would this be helpful to have at your disposal?

Mr. CLARK. Thank you, Senator.

Any assistance that we can get to improve the process, as we have been doing over the years, would be very helpful.

We have worked over the years very closely with OIRA to actually get more involvement, more direct involvement with agencies in part of their rulemaking, and so the Prove It Act becomes just another piece of that, which strengthens that whole process.

In addition to having the agency look at this, as you may know, if the rule goes final, as a final rule, small businesses and small business trade organizations do have an opportunity to challenge the rulemaking in court in terms of the certification being improper.

So there are some tools out there, and the Prove It Act adds to that tool base.

Senator ERNST. Thank you.

And I do believe it is a very important tool for Advocacy to have in their toolbox because, certainly, it is much harder to undo something, especially through the court system, than to have an agency go back and relook its analysis with certainly some important information from our stakeholders and those small businesses. Once it is put into place, it is just so hard to go back and undo.

So we would like to make changes, as necessary, before our rule becomes finalized. So I appreciate that perspective.

And then, Mr. Clark, as well, unlike large companies with legal teams, most of our small businesses do not have the resources available to ensure that they are actually in compliance with a

number of our Federal regulations. So what steps can we take to ensure that small businesses are aware of new guidance and regulations that are coming from the Federal Government, and how do they know what is required of them? So how can we help them along?

Mr. CLARK. Yes, Senator. One of the things that agencies in rule-making as it relates to small business, they are supposed to publish a small business guide, which further explains what that rule is about and how compliance should occur within that rule.

So, in addition to that, one of the things that we do in the Office of Advocacy is to publish and put out and send out to our stakeholders, new rules that have come out and request and ask for any questions that may come from small businesses regarding compliance.

Part of our responsibility is to continue to make information available to our stakeholders and make sure that they understand what the terms and conditions of those rules are, and we have that through roundtables. And we send out various other communication to stakeholders.

Senator ERNST. Very good.

Do they sign up for maybe an email, newsletter, or what are some of those other means of reaching that?

Mr. CLARK. Yes. We have a very extensive listserv where it does not cost anyone to sign up. It is free, and we periodically, usually on a weekly basis, send out information to those who are on that listserv.

Senator ERNST. Very good.

My time has expired, but again, I want to thank you very much for the great work you do on behalf of our small businesses. Thank you.

Mr. CLARK. Thank you.

Senator ERNST. Thank you, Mr. Chair.

Chairman LANKFORD. Mr. Clark, thank you again for having a roundtable in Oklahoma and getting a chance to hear from businesses in my State as well as all over the country. Thanks for continuing to do that.

Let me drill down on a couple of things. The Small Business Regulatory Enforcement Fairness Act, commonly only internally known as SBREFA—no one else in the world would know SBREFA, but the SBREFA panels that are out there probably could use some scrubbing and some improvement. Give us some ideas. What would improve the process for SBREFA panels getting more input from small businesses in a more efficient way?

Mr. CLARK. Thank you, Mr. Chairman.

I think one of the things that can improve that whole process is to be more selective in terms of the small businesses that are actually participating, but also keeping in mind that the SBREFA panel is time consuming for businesses that have to come in and take time from their work schedule, from their business of trying to keep their economy going and so forth. So we have to be aware of that and try to make sure that this panel is very adaptive to the needs of the small businesses, but making sure also that the panels reach out to those businesses that can provide the best information in terms of the proposed rule.

Chairman LANKFORD. So we have tens of thousands of small businesses across the country. Do you find that these same businesses or types of businesses get tapped to be able to come back over and over again, or is that being spread out so more voices are coming to the table?

Mr. CLARK. I do not have a direct answer for you at this time. I will be happy to provide that answer to you in written form.

But in talking with the attorneys in our office that handle the SBREFA panels, it would appear—and this is anecdotal, but it would appear that there are different small businesses being tapped for different issues for the panels.

Chairman LANKFORD. So EPA, OSHA, and CFPB are the only agencies required to do SBREFA panels; is that correct?

Mr. CLARK. That is correct.

Chairman LANKFORD. Does that need to be broadened? Would it help more agencies to be able to actually have more intentional focus on the effect in small business?

Senator ERNST. Well, Chairman Lankford, in one of our legislative priorities, we had actually recommended that IRS be included in that panel process, and subsequent to that recommendation, we have worked with OIRA and with IRS to have a memorandum of understanding where IRS now has been much more aggressive in doing the analysis that is necessary for regulatory compliance, and we think at this particular point in time, we need to see how that new involvement with IRS and with OIRA somewhat watching that process evolve.

Our attorney for IRS basically has told me that he is very pleased with the information and the data he is now receiving from IRS.

We did mention Fish and Wildlife as another component or another agency that needed to perhaps be subjected to the panel process, but it would just be those two and again would kind of recommend that IRS be removed from that consideration until we get a better feel for how they are complying with this memorandum of understanding.

Chairman LANKFORD. You probably know that this Committee is the Committee that met with IRS frequently and had a lot of mail back and forth and phone calls and meetings back and forth to be able to move IRS and OIRA to form that memorandum of understanding. There is no reason they should have been excluded from that process decades ago. I am pleased that they are actually engaged with it now.

I visited with the Secretary of Treasury multiple times to find out how that is going, and at this point, he said, "We are working through the process, but it seems to be going well." So it is good to be able to hear on your side of it as well that you are getting the information.

I would suggest—

Mr. CLARK. Chairman Lankford, I did not mean to cut you off. I just want to thank you and the Committee for that effort because we have labored for a long time trying to get IRS into the regulatory fold, so we appreciate all the effort that was led by you and your staff and the Committee.

Chairman LANKFORD. Well, we have a ways to go to be able to handle multiple other things.

You also have a recommendation about indirect costs. Help me understand a little bit more what you are saying on the direct is already taken into account but the indirect cost as well.

Mr. CLARK. Yes. The indirect costs—the direct costs are taken into account. What we are saying with indirect costs is that there is an impact on businesses beyond the basic level, the direct level. We are not sure how far down there should be an accounting of that impact, but clearly, at the second level or the next level down, there should be some consideration by the agency of the impact of their rule on those levels of businesses.

Chairman LANKFORD. I would assume small businesses do not spend all their time charting out what is a direct cost and what is an indirect cost. They just know the impact on their business. So I do think that is a wise thing to do.

There has also been some conversation about defining significant rule for agencies to be able to look at their impact on small businesses. Do you think there is a need to update the definition or to clarify the definition for significant rule?

Mr. CLARK. One of the things that we have talked about at the staff level is to try to keep that definition as flexible as possible.

One of the things that we would like to do is to give agencies as much flexibility in its rulemaking to actually put the parameters around what is significant within their mission and within what they are actually doing.

So, at this time, we would, again, at the staff level, suggest that we not try to put a more definitive context into what constitutes a significant rule.

Chairman LANKFORD. Well, let us have some dialogue on that because it is not always the clearest of definitions when you allow each agency to kind of define it on their own, and for someone to say I do not really think this is all that significant to small businesses when small businesses start calling you from all over the country and call our offices from all over our States saying, “We are about to have a rule come down to us that is significant to us that the agency says is not,” and so trying to be able to provide some assistance to agencies to be able to know if you have an effect on small businesses, you need to at least engage with small businesses early on to know how to mitigate this, or if there is an easier way to handle this without having to impose it.

Mr. CLARK. Yeah. One of the ways we have handled that—and it is true that we get those calls as well, and one of the things that we try to do with that agency regardless of how they define that rule as significant is to provide them with data and ask that they also do outreach to these businesses so they can better understand the impact of what they are proposing.

So better data, more outreach, I think bring the agency closer in to understanding the impact of their proposed regulation on small business.

Chairman LANKFORD. How do you measure your success when you reach out to agencies when a small business or group of businesses contacts you and says this is a problem? You start contacting agencies. You do not have the ability to reach in the agency

and say thou shall or thou shalt not. You are bringing advice to them. How do you measure your success for the sake of those small businesses that you are advocating for?

Mr. CLARK. Well, Chairman Lankford, you mentioned earlier in your statement, I believe, that most agencies do not necessarily want to harm small business, and over the years, I found that to be true as well, that there is a genuine desire to try to be as positive as they can with small businesses.

I found, again, in the areas that I work in that these agencies welcome the opportunity to ensure that they have minimized the impact as much as they can on small businesses.

So the measure of success is a measure, to some extent, how those agencies do in fact change their regulations based on our recommendations, how those agencies use the data that we suggest or we urge them to use to measure alternatives for that particular rule.

Chairman LANKFORD. Would there be a benefit to a greater use of advanced notice of proposed rulemaking to get more small businesses involved in the process earlier and to have the option for them to be able to just contribute ideas without it having to be a combative process of trying to be able to work through final text?

Mr. CLARK. Yes, Chairman. I think the advanced notice of proposed rulemaking continues to be a useful tool and should be expanded so that agencies can, at an early stage, get input from small businesses.

Chairman LANKFORD. Since most small businesses do not have a counsel on staff sitting next to them each day and they are not reading the Federal Register every day, is there a benefit to getting a plain language text to explain a regulation? So when a regulation comes out and they do see it come out, that there is a simple, clear way to be able to say this is what this regulation is all about? If they want to get more detail on it, they can see it, but at least there is a simple way, whether it is posted on social media or whether it is emailed out. But it is a simple, plain English way to be able to see what a regulation is.

Mr. CLARK. I think the agency in its advanced notice of proposed rulemaking should be able to do that.

But in addition to that, we in the Office of Advocacy, as we publish what we call—we have something called a “reg alert,” and in that reg alert, we basically attempt to put plain language in as to what this rule is about and give them information as to who to contact and actually contact us as well if they have additional concerns or additional inputs into that process.

Chairman LANKFORD. Is that something the agency should just do on their own, though, as well?

Mr. CLARK. I think—

Chairman LANKFORD. I mean, I am talking not the advanced notice, but at the end. Here is the new regulation. Here is simply what it is. It would be helpful with the advanced notice as well, but—

Mr. CLARK. Well, the agencies are required on a final rule, if the final rule is impacting small business, they are supposed to develop a small business guide, which is published separate from that.

But, as you said earlier, many times small businesses are just not waiting in their living room for this guy to come forward.

So what we try to do in our regulatory alert is to actually send this out, a much shorter form, but in words that these businesses can read as they are at the stoplight or wherever they may be moving about.

Chairman LANKFORD. One last question for me, and I will ask Senator Sinema if she has any other final wrap-up questions for you as well.

Does the Office of Advocacy get requests from businesses on issues of First Amendment, speech, religious liberty, any of those things? Do you get small businesses contacting you saying I have an issue on a regulatory side or an issue dealing with, for instance, religious liberty?

Mr. CLARK. I have not seen that type of inquiry from small businesses, and I would be happy to poll and to talk with our other advocates. But that issue or those issues have not actually come to my attention, and I have been there since 1998. I cannot remember how long, but I have been there for a while.

Chairman LANKFORD. Long enough to say that you have been there a while.

Mr. CLARK. Yeah.

Chairman LANKFORD. Twenty-one years is a pretty good run.

Mr. CLARK. Thank you, Senator.

Chairman LANKFORD. Senator Sinema, any final questions?

Mr. Clark, thank you for being here, and thanks for your continuing work for 21 years to continue to be able to help us as we go through this journey and help small businesses.

Mr. CLARK. Thank you very much.

Chairman LANKFORD. And we will call up our second panel and give a short break to be able to transition the table.

[Pause.]

At this time, we will proceed to the testimony from our witnesses on the second panel. Thank all of you for being here. You have all given up time to be able to come away to be able to be a part of this dialogue, and we appreciate very much you being here.

Dr. Winslow Sargeant is the Senior Vice President for Partnerships at the International Council for Small Business. He is also a managing director with S&T, an early stage investment firm for small and innovative companies; 2010 to 2015, Dr. Sargeant served as Chief Counsel at the SBA Office of Advocacy, so you may know a little bit about this topic today. Thanks for coming back and helping us.

John Arensmeyer is the founder and CEO of Small Business Majority, an organization that addresses policy concerns facing its entrepreneurial members. Thank you as well for being here.

And Jeanette Hernandez Prenger is the founder, CEO, and President of ECCO Select, a talent acquisition and advisory consulting company. She is also a member of the Latino Coalition Women Impacting Public Policy, the Greater Kansas City Chamber of Commerce, and several other community groups. Thank you as well for being here.

Rick Baumann is the founder and owner of Murrells Inlet Seafood in Murrells Inlet, South Carolina.

We do not have a lot of those companies in Oklahoma, just by the way, just to let you know.

He is also a board member of the South Carolina Small Business Chamber of Commerce, a partner in the American Sustainable Business Council.

All of you, we very much appreciate for you taking the time to be able to be here today.

We are using a timing system that you will see in front of you. You will also see a wonderful talk button that is probably not lit up, but if you will push that button, it will light up, and that will turn your microphone on. I would suggest you only have it on when you are speaking because they are exceptionally sensitive and will pick up everything in our conversation.

Dr. Sargeant, you are up first. We are pleased to be able to receive your testimony.

STATEMENT OF WINSLOW SARGENT, Ph.D., SENIOR VICE PRESIDENT FOR PARTNERSHIPS, INTERNATIONAL COUNCIL FOR SMALL BUSINESS, GREAT FALLS, VA

Dr. SARGEANT. Chairman Lankford, Ranking Member Sinema, and members of the Homeland Security and Governmental Affairs Subcommittee on Regulatory Affairs and Federal Management, I am honored to be here today to present testimony to you as a former Chief Counsel for the Office of Advocacy of the U.S. Small Business Administration.

As I look back upon my time at the Office of Advocacy, I reflect on the importance of this institution. To truly be the advocate for small business, it takes all three pillars: outreach, regulatory oversight, and research. By monitoring Federal regulations, advocating on behalf of small business, conducting research to help facilitate small business growth, and reaching out to small businesses across the country to hear concerns and learn about the best practices, the office proves it is not only a necessity, but also invaluable.

By supporting the SBA Office of Advocacy, you are standing behind government's most important office for the American small business owner.

Congress created Advocacy in 1976 to give a voice to small businesses that were not being considered during the rulemaking process. As small businesses advance into the Fourth Industrial Revolution, so too must the laws that come from Congress.

While I know that there are numerous pieces of legislation from many of the members sitting here today, Congress must not only craft legislation that provides flexibility for small business and consider the impacts, but also, it must pass these important building blocks for the Office of Advocacy.

There are a number of legislative changes that would strengthen the support that small businesses receive in the regulatory process as well as Advocacy's ability to represent them.

I would encourage lawmakers to modify Section 609 of the RFA to require more detailed notification in advance of a SBREFA panel and also to allow for judicial review when a panel is not convened.

In addition, I support adding a section to the RFA analysis to include indirect effects by broadening the definition of impact in Section 601.

And, finally, I would recommend that agencies do a mandatory follow-up on Section 610 to ensure that post-review necessary changes are made in a timely manner.

Hindsight is 20/20 and waiting 10 years to look at a rule could be 5 years too late.

During my time at Advocacy, we began to look at the role of small businesses in the international economy, representing the views and interests of small businesses before foreign governments and international entities. I believe Advocacy's representation of small business in trade initiatives should be codified.

Rule-writing authority for the Office of Advocacy has been a topic that has been often discussed, and, on the surface of it, the proposal has merit. The authority would offer the ability for qualified Advocacy staff to use their expertise to help facilitate better rules.

Rule writing does require additional resources, extra personnel—attorneys, economists, and other staff—and a re-tweaking of the relationship Advocacy would have with OMB.

As a rule writer, Advocacy would be subject to the annual publishing of the regulatory agenda.

Let me be clear. Advocacy would have to follow the same rules that it currently oversees. The watchdog would no longer be an honest broker but the initiator of rules with no independent party, besides Congress, to oversee it.

This monumental change must be vetted by experts and explored if this powerful new tool is to be properly implemented.

As I continue to follow the regulatory landscape of our country, it is imperative that we continue to promulgate rules that are clear, transparent, and predictable, and so should the Office of Advocacy be a clear voice for small business, transparent in receiving and delivering the small business point of view, and predictable, knowing precisely the action the office should take on behalf of small business.

So while I sit here before you today supporting ways to strengthen the Office of Advocacy, I would caution you to not take this opportunity lightly. To put it bluntly, I and many other experts have been talking about these same concerns: changes to the RFA, expansion into international matters, and rule-writing authority for close to a decade.

On behalf of small business, we must take action.

Thank you, and I look forward to your questions.

[The prepared statement of Dr. Sargeant follows:]

Dr. Winslow Sargeant
Former Chief Counsel SBA Office of Advocacy

Testimony of Dr. Winslow Sargeant

6th Chief Counsel, SBA Office of Advocacy

Before the

**U.S. Senate Committee on Small Business and
Entrepreneurship**

in conjunction with the

**Senate Homeland Security and Governmental Affairs
Subcommittee on Regulatory Affairs and Federal
Management**

Hearing titled “Reauthorization of the SBA Office of
Advocacy”

Wednesday, May 22, 2019 at 2:30 p.m.
Dirksen Senate Office Building 106

Dr. Winslow Sargeant
Former Chief Counsel SBA Office of Advocacy

Chairman Rubio, Ranking Member Cardin, Members of the Small Business Committee as well as Chairman Lankford and Ranking Member Sinema and Members of the Homeland Security and Government Affairs Subcommittee on Regulatory Affairs and Federal Management, I am honored to be here today to present testimony to you as a former Chief Counsel for the Office of Advocacy of the U. S. Small Business Administration.

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By reauthorizing the SBA Office of Advocacy, you are standing behind government's most important office for the American small business owner. Congress created Advocacy in 1976 to give a voice to small businesses that were not being considered during the rule-making process. As small businesses advance into the 4th Industrial Revolution, so too must the laws that come from Congress. While I know there are numerous pieces of legislation from many of the members sitting here today, Congress must not only craft legislation that provides flexibility for small business and considers the impacts, but also, it must pass these important building blocks of the Office of Advocacy.

There are a number of legislative changes that would strengthen the support that small businesses receive in the regulatory process as well as Advocacy's ability to represent them. I would encourage lawmakers to modify section 609 of the RFA to require more detailed notification in advance of a SBREFA panel and also allow for judicial review when a panel is not convened. In addition, I support adding a section to the RFA analysis to include indirect effects by broadening the definition of "impact" in Section 601. And finally, I would recommend that agencies

Dr. Winslow Sargeant
Former Chief Counsel SBA Office of Advocacy

do a mandatory follow up on section 610 to ensure that post-review necessary changes are made in a timely manner. Hindsight is 20/20 and waiting ten years to look at a rule could be five years too late.

During my time at Advocacy, we began to look at the role of small businesses in the international economy, representing the views and interests of small businesses before foreign governments and international entities. I believe Advocacy's representation of small business in trade initiatives should be codified.

Rule writing authority for the Office of Advocacy has been a topic that has been often discussed, and on the surface of it, the proposal has merit. This authority would offer the ability for qualified Advocacy staff to use their expertise to help facilitate better rules. Rule writing does require additional resources, extra personnel (attorneys, economists, and other staff) and a re-tweaking of the relationship Advocacy would have with OMB. As a rule writer, Advocacy would be subject to the annual publishing of its regulatory agenda.

Let me be clear—Advocacy would have to follow the same rules that it currently oversees. The watchdog would no-longer be an honest broker but the initiator of rules with no independent party, besides Congress, to oversee it. This monumental change must be vetted by experts and explored if this powerful new tool is to be properly implemented.

As I continue to follow the regulatory landscape of our country, it is imperative that we continue to promulgate rules that are clear, transparent, and predictable, and so should the Office of Advocacy be: a clear voice for small business, transparent in receiving and delivering the small business point of view, and predictable, knowing precisely the action the office should take on behalf of small business.

So, while I sit here before you today supporting the Reauthorization of the Office of Advocacy, I would caution you to not take this opportunity lightly. To put it bluntly, I and many other experts have been talking about these same concerns: changes to the RFA, expansion into

Dr. Winslow Sargeant
Former Chief Counsel SBA Office of Advocacy

international matters, and rule-writing authority, for close to a decade.
On behalf of small business, we must take action.

Thank you and I look forward to your questions.

Chairman LANKFORD. And we look forward to getting a chance to drill down on that more. Thank you for that.

Mr. ARENSMEYER.

**STATEMENT OF JOHN ARENSMEYER, CEO AND FOUNDER,
SMALL BUSINESS MAJORITY, WASHINGTON, DC**

Mr. ARENSMEYER. Thank you. Chairmen Rubio and Lankford, Ranking Members Cardin and Sinema, and members of the Committee, thank you for inviting me here to speak today to you about the reauthorization of the U.S. Small Business Administration's Office of Advocacy and its role examining the impact of regulations in our small business community.

At Small Business Majority, we empower America's small business owners and independent entrepreneurs to ensure they are a key part of a thriving and inclusive economy.

We have a network of 58,000 small business owners across the country, with six regional offices. We also work closely with more than 1,000 local business groups to create a strong small business voice in Washington and in State capitals and to deliver critical education and resources to America's job-creating entrepreneurs.

Before I founded Small Business Majority 13 years ago, I was a small business owner myself. So I know firsthand how entrepreneurship can create lasting impact for both an individual and his or her community. This is why we strongly urge you to reauthorize the SBA's Office of Advocacy. The office plays a necessary role for our Nation's entrepreneurs, independently representing the concerns of small businesses across the Federal Government. It ensures that Federal regulations support robust entrepreneurial activity without placing undue burdens on America's small businesses. The office also plays a key role in guaranteeing policymakers have access to updated data on the small business community and to inform and support the legislative process.

Additionally, we are glad the Senate Small Business Committee unanimously approved the nomination of David Tryon as Chief Counsel for the Office of Advocacy. With all due respect to interim Chief Counsel Clark and the great work he has done, we urge the full Senate to move forward with his nomination, as strong leadership is fundamental to ensuring the office operates effectively. We have had the pleasure of working with Winslow Sargeant and other Chief Counsels when they held this position, and we look forward to working closely with Mr. Tryon.

However, while we fully support the reauthorization of the Office of Advocacy, it is important to remember that regulations per se are not the enemy of small businesses. Business regulations are neither all good nor all bad but are essential elements of a robust economy and, therefore, must be evaluated on a case-by-case basis.

As such, the Office of Advocacy must exercise its authority in a fact-based non-ideological manner, evaluating each regulation on a cost-benefit basis, and the Office of Advocacy must ensure that a broad range of small business voices is solicited.

Federal regulations are too often claimed to be one of the biggest issues hindering small business growth. However, according to our scientific polling, four in five small business owners agree that regulation of business is needed in a modern economy, and 82 percent

agree that business can live with regulation if it is fair, manageable, and reasonable.

It should be noted that our extensive polling shows that many issues are viewed by small business owners as more important than regulation: a healthy economy, the ability to compete on a level playing field, access to credit and capital, access to affordable health care, a quality trained workforce, and a fair tax system.

Moreover, small businesses are often used as pawns by big businesses to argue for reduced regulation when the regulations in question either have a minimal impact on small businesses or in fact would actually benefit small businesses.

In short, to blindly subscribe to the idea that all regulations are inherently harmful has no basis in fact and does not serve the needs of a truly entrepreneurial innovative economy.

Moreover, to have an actual policy that any new regulation must be offset by the removal of two other regulations is arbitrary and merely elevates form over substance.

My written testimony contains two examples that illustrate how regulations are a necessary component of entrepreneurial innovation—the area of predatory lending and the area of a clean energy economy.

In the former case, regulation of the burgeoning online lending industry is essential to ensure small businesses are not taken advantage of, and in the latter case, regulations designed to drive us toward a modern clean energy-based economy actually benefit small business innovation and competitiveness.

In both cases, our polling shows that small business owners support a robust regulatory structure. My written testimony has much more detail on both of these examples.

In summary, we support a robust Office of Advocacy, one that looks at regulations as an essential function of government and examines regulations on a cost-benefit basis, not through a one-size-fits-all ideological lens.

Thank you for the opportunity to comment on these important issues. I look forward to answering your questions.

[The prepared statement of Mr. Arensmeyer follows:]



WRITTEN STATEMENT
BEFORE
THE U.S. SENATE COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
IN CONJUNCTION WITH
THE U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT
HEARING ON
“REAUTHORIZATION OF THE SBA OFFICE OF ADVOCACY”

May 22, 2019

John Arensmeyer

Founder & CEO

Small Business Majority

Chairmen Rubio and Lankford, Ranking Members Cardin and Sinema, and fellow members of the Committees,

Thank you for inviting me to speak with you today about the reauthorization of the U.S. Small Business Administration (SBA) Office of Advocacy and its role examining the impact of regulations on our small business community.

At Small Business Majority, we empower America’s small business owners and independent entrepreneurs to ensure they are a key part of a thriving and inclusive economy.

We have a network of 58,000 small business owners across the country, with six regional offices. We also work closely with more than 1,000 local business groups to create a strong small business voice in Washington and in state capitals, and to deliver critical education and resources to America’s job-creating entrepreneurs. Through our Entrepreneurship Program, we offer free education, tools and events to small business owners and aspiring entrepreneurs about access to responsible lending options, retirement, healthcare, wealth-building tactics and more.

We believe small businesses are essential to the economic and social health and wellbeing of their communities, offering a pathway toward economic independence, upward mobility for people of all ages, ethnicities and genders. This is demonstrated by the fact that more American jobs are created by small businesses and among the self-employed than any other method.

Before I founded Small Business Majority thirteen years ago, I was a small business owner myself. So, I know first-hand how entrepreneurship can create lasting impact for both an individual and his or her community.

Thus, we know how critical the U.S. Small Business Administration is to helping our nation's entrepreneurs launch their businesses and meet their potential. SBA supports entrepreneurs by guaranteeing safe and responsible loan options, providing support and funding for technical assistance and education for small business owners and offering regional and local support to connect small business owners with resources in their communities.

The SBA's Office of Advocacy in particular plays a necessary role for our nation's entrepreneurs, independently representing the concerns of small businesses across the federal government. The Office of Advocacy plays an essential role in ensuring federal regulations support robust entrepreneurial activity without placing undue burdens on America's small businesses, and in guaranteeing policymakers have access to updated data on the small business community to inform and support the legislative process. Moreover, data from the Office of Advocacy is an invaluable resource for many small business organizations like ours, allowing us to better understand the communities we serve.

According to a 2016 report from the Office of Advocacy, the agency annually reviews 1,200 to 1,500 public regulatory notices, analyzes roughly 600 notifications of regulatory activity from other federal agencies, holds dozens of roundtables to invite feedback from public stakeholders, trains federal officials on compliance with the Regulatory Flexibility Act and publishes numerous research and data reports.¹ It is because of these critical functions that we strongly urge you to reauthorize the SBA's Office of Advocacy. An efficient, well-equipped Office of Advocacy is essential to ensuring small businesses have a strong advocate within the federal government, and that any new regulations serve the best interests of America's small businesses. Additionally, we're glad the Senate Committee on Small Business & Entrepreneurship unanimously approved the nomination of David C. Tryon as Chief Counsel for the Office of Advocacy, and we urge the full Senate to move forward with his nomination, as strong leadership is fundamental to ensuring the Office operates effectively.

However, while we fully support the reauthorization of the Office of Advocacy, it's important to note that regulations *per se* are not the enemy of small businesses. Business regulations are neither all good nor all bad, but instead must be evaluated on a case-by-case basis depending on their potential impact on entrepreneurial activity.

My testimony today will expand on these points by focusing on small businesses' views on the role of regulation in a modern economy and by providing summaries of two areas in which we know small business owners support additional regulation: predatory lending and the clean energy economy.

A majority of small businesses believe regulation is needed in a modern economy

Federal regulations are commonly claimed to be one of the biggest issues hindering small business growth. However, according to our scientific polling, 4 out of 5 small business owners agree that regulation of business is needed in a modern economy.² While small business owners are always interested in reducing their administrative burden, most Americans believe some regulation is needed to promote fairness and competition. Smart regulation can ensure a level playing field, promote transparency and encourage innovation through fair competition.

¹ U.S. Small Business Administration's Office of Advocacy, "Background Paper on the Office of Advocacy, 2009-2016," October 2016. <https://www.sba.gov/sites/default/files/advocacy/Report-only-Advocacy-Background-Paper-2009-2016FINAL.pdf>

² Small Business Majority, "Opinion Poll: Small Business Owners Say Commonsense Regulations Needed to Ensure a Modern, Competitive Economy," May 22, 2018, <https://smallbusinessmajority.org/sites/default/files/research-reports/052218-Small-Business-Regulations-Poll.pdf>

That's why, according to the same poll, more than three-quarters of small business owners disagree that we should get rid of all regulations on businesses. A similar percentage say some regulations are important to protect small businesses from unfair competition and to allow them to compete with big businesses. What's more, an overwhelming majority of 82% agree that their business can live with regulation if it is fair, manageable and reasonable.³ These findings debunk the myth that regulations are significantly hindering small business growth, and underscore that responsible regulations are needed to increase the competitiveness of our nation's entrepreneurs.

It should be noted that the following issues are often viewed by small business owners as more important than regulation: a healthy economy that promotes robust customer demand, the ability to compete on a level playing field with larger companies, access to and affordability of healthcare, a quality trained workforce, the rate of taxation and lack of access to credit or capital to invest in their business.

Moreover, small businesses are often used as pawns by big businesses to argue for reduced regulation when the regulations in question either have a minimal impact of small businesses or, in fact, would benefit small businesses. Indeed, our polling found 7 in 10 small business owners feel they are at a disadvantage compared to large corporations due to their size and market power, and these entrepreneurs want the federal government to do more to level the playing field.⁴ What's more, 78% of small business owners agree that some regulations are important to protect small businesses from unfair competition and to level the playing field with big business and an almost equal percentage (77%) feel the government should do more to rein in monopolies and enforce anti-trust laws.

Finally, to start off with the proposition that all regulations are inherently harmful has no basis in fact and does not serve the needs of a truly entrepreneurial, innovative economy. Moreover, to blindly assert that any new regulation must be offset by the removal of two other regulations is arbitrary and merely elevates form over substance.

The following discussion includes two examples that illustrate how regulations can be a necessary component of a small business-centric economy: 1) predatory lending and 2) a clean energy economy.

Small businesses need protection from predatory lending practices

One of the greatest imbalances between small businesses and larger corporations is unequal access to capital and other resources used to fund growth. Quite simply, in order to start, grow and expand their businesses, entrepreneurs need capital. While medium- and larger-sized businesses are able to access capital at relatively high rates, small businesses struggle to find capital to start and grow their businesses.

New alternative and online lending opportunities have sprung up to fill this market need, which is a potentially positive development for small businesses. Innovators are providing faster and easier ways to borrow and increasing access to credit in communities that have historically been underserved. Indeed, research data confirms small business owners are increasingly turning to online lenders to fulfill their credit needs. The 2019 Federal Reserve Small Business Credit Survey found applications to online lenders continue to rise, with 32% of applicants seeking financing from an online lender in 2018, compared to 24% in 2017 and 19% in 2016.⁵

The way small businesses borrow money is undergoing historic transformation, but this transformation will achieve its potential only if it is built on transparency and fairness and by putting the rights of borrowers at the center of the lending process. This is necessary because alternative

³ Ibid.

⁴ Ibid.

⁵ The Federal Reserve Banks of the United States, "Report on Employer Firms 2019: Small Business Credit Survey," April 2019, <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf>

sources of financing operate in an almost entirely unregulated market—making many small business owners vulnerable to predatory practices. While some financing institutions are doing their part to disclose their terms and rates, not all lenders are playing by these rules and are offering desperate entrepreneurs loans with predatory terms. Often loan characteristics are not disclosed at the time a loan offer is made and borrowers learn only after the loan was disbursed that there are hidden fees or unfavorable loan terms, leaving them on the hook for much more than expected.

It's clear that small business borrowers face risks from this lack of regulation. Indeed, a May 2016 report from the U.S. Department of the Treasury found an uneven regulatory and supervisory regime creates risks for small business borrowers and that more robust small business borrower protections are needed.⁶ These findings are supported by Small Business Majority polling, which revealed 78% of small business owners agree that high interest, high-fee products offered to small businesses are a problem.⁷ Additionally, 3 in 4 small business owners felt that while online small business lending opened up new sources of capital and credit for small business owners, it should be regulated to ensure small business borrowers are protected from predatory practices. What's more, an overwhelming majority of 8 in 10 small business owners reported they were in favor of regulating online lenders to ensure interest rates and fees are clearly disclosed to borrowers.

This is why it's critical that the Office of Advocacy continue to review regulations with the perspective that some regulations can actually promote responsible small business innovation.

Clean energy regulations serve the need of a modern entrepreneurial economy

Additional national opinion polling conducted by Small Business Majority found a 56% majority of small business owners believe government can play an important regulatory role that creates financial incentives that help small businesses take energy efficiency measures, promotes renewable technologies and generally supports a competitive 21st century clean energy-based economy.⁸ For example, 65% of respondents support previously introduced rules by the EPA to reduce mercury and other toxic emissions that get into the air from power plants and 52% supported the EPA regulating carbon emissions from existing power plants that cause climate change.

Small business owners don't simply believe that regulating energy and emissions is good for the environment; they also feel that such regulations would be a boon to the small business economy. Indeed, a vast 87% of small business owners believe that improving innovation and energy efficiency are good ways to increase prosperity for small businesses.⁹

America's entrepreneurs are steadfastly committed to innovation and efficiency as pragmatic long-term economic solutions for small business, and they believe regulations like higher fuel efficiency standards and efforts to improve federal regulatory oversight will help spark this economic innovation. The Office of Advocacy has a key role to play in ensuring any such regulations boost America's small businesses, and should work to ensure our nation's entrepreneurs views on such policies are heard rather than outright rejecting new regulations.

Conclusion

⁶ U.S. Department of the Treasury, "Opportunities and Challenges in Online Marketplace Lending," May 10, 2016, https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf

⁷ Small Business Majority, "Opinion Poll: Small Business Owners Concerned with Predatory Lending, Support More Regulation of Alternative Lenders," December 12, 2017, <https://smallbusinessmajority.org/sites/default/files/research-reports/121217-Small-Business-Access-To-Capital-Poll.pdf>

⁸ Small Business Majority, "Small businesses support clean energy standards and want congressional action on EPA nominee," May 8, 2013, <https://smallbusinessmajority.org/our-research/clean-energy-economy/small-businesses-support-clean-energy-standards-and-want-congressional-action-epa-nominee>

⁹ Small Business Majority, "Small business owners believe national standards supporting energy innovation will increase prosperity for small firms," September 20, 2011, <https://smallbusinessmajority.org/small-business-owners-believe-national-standards-supporting-energy-innovation-will-increase-prosperity-small-firms>

In summary, we support a robust Office of Advocacy, but an office that (1) looks at regulations as an essential function of government; and (2) examines regulations on a cost-benefit basis, not through a one-size-fits-all ideological lens. Indeed, we know from our polling that small business owners do not view regulations as a top issue hindering their business and often see a positive role for federal regulation in increasing the ability of small businesses to compete with their larger counterparts. Public policy, including federal regulation, should empower America's entrepreneurs to unleash their potential and boost prosperity for all; we believe the Office of Advocacy's role is to ensure just that.

Thank you for the opportunity to comment on these important issues. I am happy to answer any questions.

Chairman LANKFORD. Thank you.
Ms. Hernandez Prenger.

**STATEMENT OF JEANETTE HERNANDEZ PRENGER, CEO AND
PRESIDENT, ECCO SELECT, KANSAS CITY, MO**

Ms. HERNANDEZ PRENGER. Chairman Rubio, Chairman Lankford, Ranking Members Cardin and Sinema, and members of the Committee, I would like to thank you for the opportunity to testify before you today.

My name is Jeanette Hernandez Prenger, and I am the president and CEO of ECCO Select, a technology talent and acquisition consulting firm that I founded 24 years ago. We do both public sector and commercial work nationwide, and we are based in Kansas City, Missouri.

I also sit on the board of directors of Women Impacting Public Policy also known as WIPP. WIPP is a national nonpartisan policy organization that advocates on behalf of women-owned businesses nationwide. There are nearly 10 million women-owned businesses in the United States, generating \$1.4 trillion in receipts and employing nearly 9 million Americans.

Complying with regulations is a never-ending concern for small business owners like myself. I am testifying today because I saw firsthand issues small business owners experience with Federal regulations when I served on the Office of the National Ombudsman Regulatory Fairness Board and SBA's Region 7.

Small businesses are the backbone of our Nation's economy, making up over 99 percent of U.S. employer firms; however, they bear a disproportionate amount of the regulatory burden, with costs at nearly \$12,000 per employee per year, 30 percent higher than the costs for larger businesses.

At ECCO Select, I have less than 300 employees, and yet we have three full-time employees dedicated to regulatory compliance at the Federal, State, and local levels. At least 50 percent of all my human resource department labor costs are associated with compliance and reporting requirements.

Beyond the burden of employee time and money, excessive regulation creates substantial frustration and impacts the ability to expand, reinvest back into the business, and hire additional associates.

A pain point for my company is compliance with employment laws and regulations. For example, if we terminate an employee, every State has a different rule on when to pay the last paycheck to that employee. We must seek legal advice to document the company's interpretation of the law. The cost burden associated with navigating rules and reporting requirements is substantial. Approximately 75 percent of our legal bills are spent on employment law. That does not include the cost of employee time spent on compliance issues, which are also extensive. These same types of issues apply with labor categories. When determining exempt versus not exempt, hourly versus salaries, and other classifications, we must spend hours reviewing and analyzing Federal, State, and local wage determinations, and then we have to have it reviewed by legal counsel so that if we are challenged, we have proof of our due diligence. It is difficult enough to stay on top of all this if you are

in one city and one State, but multiple States present even greater challenges.

Early engagement in the regulatory process is not easily accessible to small business owners. Therefore, small businesses do rely on the SBA Office of Advocacy to ensure Federal agencies do not impose expensive new mandates on small businesses when viable and less expensive alternatives to achieve regulatory objectives exist.

Although the Office of Advocacy is working to advance the views of small business in the regulatory process, we offer the following recommendations to strengthen its voice, and we have six: the first, expansion of Advocacy's rulemaking authority; two, inclusion of indirect impacts on small businesses and regulatory proposals; three, expansion of SBREFA panels to include all agencies as proposed in S. 1120, introduced by Senator Lankford; four, passage of the Prove It Act and SMART Act, both introduced by members of this Committee; retrospective review of existing regulations; and the sixth, continuity in the Office of Advocacy's leadership during times of political transition.

In closing, although small businesses contribute mightily to our Nation's economy, we are often saddled with the long-lasting effect of overburdensome regulations. Given additional authority and an expanded role, the Office of Advocacy could accomplish even more for the small business community.

Information is power. Additional input from small businesses will result in shaping better regulations or prevention of moving harmful regulations forward.

We support the Administration's effort to limit new regulations and believe an additional layer of scrutiny provided by the Office of Advocacy is needed.

Thank you for inviting me to testify at this important hearing, and I look forward to answering any questions.

[The prepared statement of Ms. Hernandez Prenger follows:]



Written Testimony of
Jeanette Hernandez Prenger
CEO and President
ECCO Select
and Women Impacting Public Policy (WIPP)

Before the Senate Committee on Small Business and Entrepreneurship
in Conjunction with the Senate Homeland Security and Governmental
Affairs Subcommittee on Regulatory Affairs and Federal Management
“Reauthorization of the SBA Office of Advocacy”

May 22, 2019

Chairman Rubio, Chairman Lankford, Ranking Members Cardin and Sinema, Members of the Committee and Subcommittee, I would like to thank you for the opportunity to testify before you today. My name is Jeanette Hernandez Prenger and I am the President and CEO of ECCO Select, a technology talent and acquisition consulting firm that I founded 24 years ago, based in Kansas City, Missouri. I also sit on the board of directors of Women Impacting Public Policy (WIPP). WIPP is a national nonpartisan policy organization that advocates on behalf of women-owned businesses nationwide.

Complying with regulations is a never-ending concern for small business owners. Small businesses bear a disproportionate amount of the regulatory burden, with costs at nearly \$12,000 per employee per year, which is 30 percent higher than the costs for larger businesses.¹ At ECCO, I have less than 300 employees and yet have three full time employees dedicated to regulatory compliance for federal, state and local. At least 50 percent of all my human resource department labor costs are associated with compliance and reporting requirements. Beyond the burden of employee time and money, excessive regulation can create substantial frustration and stress for small business owners and impact the ability to expand and hire workers. The uncertainty associated with new burdensome regulations also significantly hampers the ability to plan for future growth and expansion.

¹ Crain, Nicole V. and W. Mark, The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business, September 10, 2014. Available at <https://www.nam.org/data-and-reports/cost-of-federal-regulations/federal-regulation-full-study.pdf>.

Small businesses are the backbone of our nation's economy, making up 99.9% of U.S. employer firms.² Further, there are nearly 10 million women-owned businesses in the United States, generating \$1.4 trillion in receipts and employing nearly 9 million Americans.³ Early engagement in the regulatory process is not easily accessible for small business owners. Therefore, small businesses rely on protections in the Regulatory Flexibility Act (RFA) and internal checks from the Small Business Administration (SBA) Office of Advocacy to ensure federal agencies do not impose expensive new mandates on small businesses when viable and less expensive alternatives to achieve regulatory objectives exist.

I. Regulatory Flexibility Act (RFA)

Under the Regulatory Flexibility Act, agencies are required to thoughtfully consider small businesses and other small entities when developing regulations. If an agency determines that a regulation is likely to have a "significant economic impact on a substantial number of small entities," the agency must engage in additional analysis and seek less burdensome regulatory alternatives. When the RFA was originally signed into law nearly 40 years ago, it sought to improve small business participation in rulemaking by requiring agencies to publish an agenda semiannually listing expected rulemakings that impact small business, as well as conduct "lookback" reviews. Over time, issues have surfaced with these processes and we applaud the Committee and Subcommittee for its attention to reform. One prevalent issue is that agencies can determine when a regulatory flexibility analysis is triggered – the RFA does not define

² SBA Office of Advocacy, 2018 Small Business Profile of the United States, available at <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf>.

³ SBA Office of Advocacy, Survey of Women-Owned Businesses, available at https://www.sba.gov/sites/default/files/SBO_Facts_WOB.pdf.

“significant economic impact” or “substantial number of small entities.” Additionally, when the RFA does apply, it only requires basic analytical requirements, which are easily ignored by federal agencies. The Office of Advocacy’s authority, however, is limited on enforcing the RFA because it does not have the power to promulgate regulations. Over the past twenty years, the Government Accountability Office (GAO) has recommended four times that Congress delegate rulemaking authority to the Office of Advocacy in order to strengthen implementation of the RFA.⁴ WIPP supports this recommendation. Expansion of Advocacy’s rulemaking authority would result in increased enforcement of the RFA that agencies often avoid.

A problematic component of the RFA is that agencies disclose the impact only on businesses that are directly regulated, and do not disclose publicly the foreseen ripple effects on the small business community. Advocacy Chief Counsels under the past three Administrations have argued that agencies do not adequately evaluate impact on small businesses because of this glitch. For instance, when EPA issues rules on blending gasoline with ethanol or other emission reduction additives, the RFA only requires that EPA consider the cost of its rules on petroleum producers and blenders. This means that it solely looks at the businesses that must comply directly with EPA’s rules for gasoline blending. The RFA does not require that EPA publicly consider what impact its rules will have on the cost of gas or other transportation fuels on which small businesses rely. WIPP recommends that public, transparent consideration of indirect impact be considered for small businesses under regulatory proposals.

⁴ Office of Advocacy Needs to Improve Controls Over Research, Regulatory, and Workforce Planning Activities, GAO-14-525 (July 2014); Regulatory Reform: Implementation of the Small Business Advocacy Review Panel Requirements, GAO-98-36 (March 1998).

In 1996, Congress amended the RFA with passage of the Small Business Regulatory Enforcement Fairness Act (SBREFA) with the goal of improving agency compliance with the RFA. SBREFA requires the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Consumer Financial Protection Bureau (CFPB) to create a Small Business Advocacy Review Panel (SBAR), comprised of a group of small business representatives to assist in assessing impact before the rule is proposed.⁵

While these panels have proven to be effective in improving compliance, they only exist at the EPA, OSHA and CFPB. Given that 99.9% of the businesses in the U.S. are considered small, it seems outdated that regulatory impact is only taken into consideration at three federal agencies. Therefore, WIPP supports expanding SBREFA panels to include all agencies, as proposed in S. 1120, the “Small Business Regulatory Flexibility Improvements Act,” introduced by Senator Lankford. Expanding the panels to all agencies would put the federal government in a better position to understand how small businesses operate and are impacted by regulations.

While SBREFA review panels would strengthen the small business voice in agencies, there are two additional ways that the SBA Office of Advocacy’s role in rulemaking could be strengthened. The first is by empowering the SBA Office of Advocacy when it disagrees with an agency on the small business impact of a regulation. The “Prove It Act,” introduced by Senators Ernst and Sinema, would give the Office of Advocacy an opportunity to submit a request for an agency to relook and reconsider the impact on small businesses. Although panels created by SBREFA add a small business voice into the rulemaking process, currently agencies have

⁵ The law was expanded to include the CFPB when the 111th Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act.

discretion over whether to adopt the panel's recommendations. WIPP supports legislation that would provide an additional layer of protection on the latter end of the rulemaking process.

My company spends a lot of time and money complying with employment laws and regulations. For example, if we are terminating an employee, every state has different rules of when to pay the last paycheck to that employee. If we are terminating someone in a state where we have no prior experience and want to validate the timetable or get legal advice on our interpretation, we must pay experts to document the company's interpretation of the law. The cost burden associated with navigating the many rules and reporting requirements is substantial for ECCO Select—75 percent of my company's legal bills are for employment law clarification. However, my company goes through this exercise to ensure compliance since potential damages can come at a much greater cost than seeking legal advice. Additionally, my company encounters many conflicting requirements driven by the various agencies and authorities imposing the regulations and compliance. State and federal regulations can be contradictory, such as when a contract requires paid time off and the agency issuing the contract has different regulations from the local jurisdiction mandating sick time. While legal fees are costly, the lost hours of productivity that employees spend focused on compliance issues also come at a substantial cost.

The second recommendation is to allow a retrospective review of existing regulations. Agencies often layer new rules on top of old rules, as well as additional rules on top of those promulgated by other agencies. It creates confusion for federal agencies issuing new rules, as well as frustration for small businesses. WIPP supports the Setting Manageable Analysis Requirements in Text (SMART) Act, which would direct agencies to issue advanced notices for rules costing more than \$100 million annually, as well as require agencies to set metrics for how

a rule will be measured for success in the future. The SMART Act also directs the promulgating agency to review the rule with the stated metrics within 10 years, which will begin to address some of the ongoing regulatory issues faced by small businesses.

II. Statistics and Research

One role that is especially valued by the small business community is the relevant statistics and research published by the SBA Office of Advocacy. This research continues to bolster small businesses' ability to impact federal policy. For example, the recently released 2019 Small Business Profiles give an annual picture of each state's small businesses, with metrics such as job creation and overall economic health. This information gives lawmakers and businesses insight into the health of small businesses situated in diverse economic and geographical areas. Additionally, Advocacy recently completed a call for new research topics from the community. This solicitation gave small businesses and the organizations that represent them the ability to identify necessary research. We applaud Advocacy's continued effort to provide meaningful, reliable data on small businesses.

III. Strengthening the SBA Office of Advocacy

Although the Office of Advocacy is already a strong voice for small businesses within the federal government, we believe two fixes will further assist the office in achieving its mission. First, the office has operated without a Senate-confirmed Chief Counsel for lengthy periods of time, which limits its ability to advocate across the government. Congress should explore options that would minimize any decreased influence afforded to the Office of Advocacy during times of political transition. Options for consideration could include either a multi-person, staggered term commission with a Senate confirmed chairperson; or, a specific-term appointment, with

succession upon the Senate confirmation of a new appointment. Second, we recommend Congress should consider a name change for the Office of Advocacy. Federal agencies confuse the Small Business Administration (SBA) with the Office of Advocacy— failing to include Advocacy in meetings where it could add its regulatory expertise. Even within the Small Business Administration there is confusion on Advocacy's role, seeing it as an internal office to do its regulatory analyses, even though that is not Advocacy's primary responsibility. This change would provide clarity and make the office more impactful.

In closing, while small businesses and women entrepreneurs are the driving force of our nation's economy, we are often saddled with the long-lasting effect of overburdensome regulations. We support the Administration's efforts to limit new regulations and believe an additional layer of scrutiny provided by the Office of Advocacy is important. While I am out running my business, it gives me comfort that the Office of Advocacy is looking out for me. Given additional authority and an expanded role, Advocacy could accomplish even more for the small business community. Information is power—additional input from small businesses will result in shaping better regulations or prevention of moving harmful regulations forward.

Thank you for inviting me to testify at this important hearing and I look forward to answering any questions.

Chairman LANKFORD. Thank you.
Mr. Baumann.

**STATEMENT OF RICK BAUMANN, OWNER, MURRELLS INLET
SEAFOOD, MURRELLS INLET, SC**

Mr. BAUMANN. Good afternoon. Thank you very much for inviting me. Distinguished members of the Committee, my name is Rick Baumann, founder of Murrells Inlet Seafood, a 52-year-old small business located in the fishing village and Seafood Capital of South Carolina, Murrells Inlet.

Over these many years, my company has been involved in catching, processing, and distributing fresh seafood to the public, regional restaurants, and seafood companies in Boston, Montreal, New York, and Toronto.

I am here today to testify to the importance of Federal regulations for my industry and want to focus specifically on the failure of the Small Business Administration's Office of Advocacy to ensure that Federal regulations do not encourage irresponsible behavior by big polluting corporations whose activities are detrimental to companies like mine.

I am not alone. I am testifying today on behalf of the American Sustainable Business Council, representing over 250,000 small businesses in all industries across the country, and for the South Carolina Small Business Chamber on whose board that I serve.

Today I will focus on water and water-based businesses like mine. I have worked on the water or relied on the water all my adult life. As a teenager, I dove for shellfish in the bays of Long Island and a few years later began working the water of Murrells Inlet, South Carolina, while stationed at nearby Myrtle Beach Air Force Base. I also worked for 14 years on Maryland's Eastern Shore as a waterfowl guide and waterman. In each of these endeavors, I learned specifically that water quality is a requirement of sustainability.

My experience as a veteran reinforced my belief that our government must be fair and honorable in the rules that it sets and how they are enforced. Unfortunately, regarding the Office of Advocacy, our government is falling far short of fair and honorable.

I believe that regulations for small business can be good and even necessary in order to achieve goals and sustainability. These rules should create fair competition and respect for the resources that all businesses, small and large, should abide by.

For example, in the seafood industry, we have an ever-growing list of regulations to keep our harvests sustainable while also protecting threatened and endangered species. These rules are quite burdensome for small businesses, but they do have a long-term vision of a sustainable ocean fishery.

Today too often needed regulations like these are slowed, watered down, terminated, or not even considered by Advocacy due to the lobbying of big-business interests who seek to maximize profits with no regard to sustainability or the natural resources.

For example, the Administration has an ongoing campaign to weaken or throw out most necessary regulations of the accident-prone offshore oil business. These moves again favor more profits

for Big Oil but threaten the sustainable ocean fisheries that businesses like mine try to maintain by following regulations.

Another example are the mercury standards for coal-burning power plants. They are already so woefully inadequate that several species of fish have government warnings about mercury levels, which encourages the public not to eat them, harming my industry while cutting costs and bolstering profits for the big power companies. This is not fair and honorable. It is a blatant example of how big polluting businesses are influencing the regulatory process at our expense and that of the general public health.

A third example is Advocacy's letter to the Department of Interior strongly supporting expanding offshore drilling for oil drilling in the Atlantic, despite tens of thousands of coastal small businesses on record in unanimous opposition.

The Office of Advocacy is supposed to be making our voices heard on these issues, but they are not. This problem does not apply only to this Administration. During the Obama administration, the Office of Advocacy took a negative stance on the efforts to strengthen the Clean Water Act and even denied the American Sustainable Business Council and small business leaders the opportunity to provide input. Thus, the voices for maintaining and expanding the Clean Water Act to protect businesses like mine were not heard.

In closing, I would like to say it is the Office of Advocacy's mission to represent all small businesses impacted by regulations. However, the Office has demonstrated a litany of allegiance to big business, through policies and recommendations, which are contradictory to the mission, ignoring the needs of many of the small businesses they are supposed to represent.

In summary, the voices of all small businesses in helping shape good and timely regulations and government actions are not being adequately heard.

For us to survive and thrive, we need our voices heard and advocated for.

Thank you very much for your kind attention.

[The prepared statement of Mr. Baumann follows:]

Testimony of Rick Baumann
Founder, Murrells Inlet Seafood
Board of Directors, South Carolina Small Business Chamber of Commerce
Senate Committee on Small Business and Entrepreneurship
"Reauthorization of the Office of Advocacy"
May 22, 2019
2:30 p.m. EST

Chairman Rubio and distinguished members of the committee,

My name is Rick Baumann, Founder of Murrells Inlet Seafood, a 52-year old small business located in the fishing village and Seafood Capital of South Carolina, Murrells Inlet. Over these many years my company has been involved in catching, processing and distributing fresh seafood to the public, regional restaurants and seafood companies in Boston, Montreal, New York and Toronto.

I am here today to testify to the importance of federal regulations for my industry and want to focus specifically on the failure of the Small Business Administration's Office of Advocacy to ensure that federal regulations do not encourage irresponsible behavior by big polluting corporations whose activities are detrimental to companies like mine. And I am not alone. I am testifying today on behalf of the American Sustainable Business Council, representing over 250,000 businesses in all industries across the country and for the South Carolina Small Business Chamber of Commerce on whose Board I serve.

Today I will focus on water – and water-based businesses like mine. I have worked on or relied on the water all my adult life. As a teenager I dove for shellfish in the bays of Long Island. A few years later, I began working the water of Murrells Inlet, South Carolina, while stationed at nearby Myrtle Beach Air Force Base. I also worked for 14 winters on Maryland's Eastern Shore as a waterfowl guide and waterman. In each of these endeavors, I learned specifically, that water quality is a requirement of sustainability.

My experience as a veteran reinforced my belief that our government must be fair and honorable in the rules that it sets and how they are enforced. Unfortunately, regarding the Office of Advocacy, our government is falling far short of fair and honorable.

I believe that regulations for small businesses can be good – and even necessary, in order to achieve intended goals and sustainability. These rules should create fair competition and respect for the resources that all businesses, small and large, should abide by.

For example, in the seafood industry, we have an ever-growing list of regulations to keep our harvests sustainable while also protecting threatened and endangered species. These rules are quite burdensome for small businesses – but they do have a long-term vision of a sustainable ocean fishery.

But, too often needed regulations like these are slowed, watered down, terminated or not even considered by Advocacy due to the lobbying of big business interests who seek to maximize their profits with no regard to sustainability or the resources.

For example, the Administration has an ongoing campaign to weaken or throw out most necessary regulations of the accident-prone offshore oil industry. These moves again favor more profits for Big Oil but threaten the sustainable ocean fisheries that businesses like mine try to maintain by following regulations. But we had no input.

Another example are the mercury standards for coal burning power plants. They are already so woefully inadequate that several species of fish have government warnings about mercury levels, which encourages the public not to eat them – harming my industry while cutting costs and bolstering profits for the power companies. This is not fair and honorable. It is a blatant example of how big polluting businesses are influencing the regulatory process at our expense – and that of the general public health.

A third example is Advocacy's 2018 letter to the Department of Interior strongly supporting expanding offshore drilling for oil in the Atlantic despite tens of thousands of coastal small businesses on record opposing such an action.

The Office of Advocacy is supposed to be making our voices heard on issues like these – but they are not.

This problem does not only apply to the current Administration. During the Obama Administration, the Office of Advocacy took a negative stance on the efforts to strengthen the Clean Water Act and even denied the American Sustainable Business Council and small business leaders the opportunity to provide input. Thus, the voices for maintaining and expanding the Clean Water Act to protect businesses like mine were not heard.

It is the Office of Advocacy's mission to represent all small businesses impacted by regulations. However, the Office has demonstrated a litany of allegiance to big business, through policies and recommendations, which are contradictory to its mission, ignoring the needs of many of the small businesses, especially those not represented by national trade associations, which it is supposed to represent.

In summary, the voices of all small businesses in helping shape good, timely regulations and government actions are not being adequately heard.

For us to survive and thrive, WE NEED OUR VOICES HEARD – and advocated for!

Thank you very much for your kind attention to my remarks.

Chairman LANKFORD. Mr. Baumann, thank you. Thanks for your testimony as well.

I want to recognize the Chairman of the full Committee for Small Business and Entrepreneurship, Chairman Rubio, for an opening statement.

OPENING STATEMENT OF HON. MARCO RUBIO, A U.S. SENATOR FROM FLORIDA, AND CHAIRMAN, COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Chairman RUBIO [presiding]. Thank you.

And I apologize. Both the Ranking Member and myself are also members of the Foreign Relations Committee. We just had a business meeting and probably the longest business meeting we have had in 3 years.

Senator CARDIN. A couple of Congresses.

Chairman RUBIO. But we are here. We thank you.

I am going to be very brief. I want to thank all of you for being here. I apologize to the first panel.

I cannot think of an area of the SBA that has more impact on small businesses, whether they are aware of it or not, than the independent regulatory watchdog, the Office of Advocacy. Regardless if a business has one employee or 500, that business is going to be subject to regulations, both Federal and at the local level, particularly Federal is the ones we are focused on.

The small businesses that I hear from across Florida that come up here to testify and those that are represented here today, they want clean water, and they want a clean environment and safe workplaces. They want to achieve this through smart, reasonable regulations, which are necessary to achieve these goals.

Mr. Baumann was talking a moment ago about the water. One of the things I like to do with my family is go fishing, and so I can just tell you on a personal level, I have a personal commitment in addition to a policy one to protecting the waterways of Florida. And I think this is true across the country. We want to continue to enjoy those resources.

Part of that has to be the equation of how do we protect small businesses by crafting regulations that will protect the water and protect the air and yet allow small businesses to survive.

One of the best ways we can ensure that is to have certainty by enacting meaningful regulatory reform that advocates for small business within Federal agencies, and one of the best things we can do for that is strengthen the Office of Advocacy. And so I am glad we were able to have this hearing today to discuss that.

We know that if we do not give Advocacy the authority to enforce the Regulatory Flexibility Act, then the agencies are going to continue to intentionally or unintentionally—I think in many cases, unintentionally obviously, but harm small businesses that are struggling, who share all the same goals we do, but obviously have the added impediment of compliance costs.

So the Ranking Member.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM MARYLAND, AND RANKING MEMBER, COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Senator CARDIN. Well, let me thank our witnesses, and again, our apologies. It is not true that we did not want to hear Mr. Clark. We did not want to avoid his panel, but it is good that we got to hear from the public panel. So we are glad that all four of you are here.

Mr. Chairman, I am going to ask to put my entire statement in the record, and let me just summarize, if I might, very quickly, because I want to get into the question period here.

It is very true that Federal regulations are a challenge for small business. Small businesses do not have the resources. They do not have the staff of large companies. We recognize that. That is one of the reasons why we developed rules for small businesses. As we pass legislation, we try to be mindful of small businesses. That is why we have the RFA. That is why we have the Small Business Office of Advocacy to deal with the challenges of small businesses.

But, as has been pointed out, well-thought-out regulations are critically important to all businesses and small business. Mr. Arensmeyer's comments, I thought were very appropriate in that regard from the Small Business Majority. It keeps bad actors out, which is critically important to small businesses. It provides stability, which is very important to small businesses. It provides parameters of health care, clean water, clean air, all that which is critically important. Small businesses depend upon, in many cases, a clean environment, and, Mr. Baumann, you made that point very clearly.

I assume you got your training on the Eastern Shore of Maryland. I am glad that you are helping out other States today.

But the point that you raise is very much a valid point.

So here is the challenge, as you point out. How do we deal with the big businesses who have an anti-regulatory agenda, hiding behind small businesses in order to achieve their objectives of anti-regulation? I say that, Mr. Chairman, because small businesses do not hire high-paid lobbyists. It is the big businesses that hire the high-paid lobbyists that come in here and use a small business example to try to kill regulation, when in many cases the small businesses can benefit from that.

I will give you just two examples, if I might, on areas that are of particular interest to me. One is offshore drilling. There are a lot of issues in regards to energy, et cetera. We need to talk about offshore drilling, but as I look at the shoreline of Maryland—and I am sure the shorelines of the Carolinas are very similar—that there are small business operators who are going to be the ones put out of business if there is an environmental disaster, and the large oil companies do not really care that much about that particular aspect. Who is there fighting for the interest of small business as we regulate what we do on offshore drilling?

We have a debate going on right now on net neutrality. Who is looking after small business in the debate on the regulatory issues concerning net neutrality? There is a big difference between big companies and small companies when it comes to net neutrality.

So the Small Business Office of Advocacy is there to help small businesses to address the specific challenges that are unique to small companies.

Senator Rubio and I have worked out within the Small Business Committee that we are using the first part of this Congress to review the existing law for the Small Business Administration.

I thank the Chairman for devoting so much of the Committee's resources to this. This has been our fourth or fifth hearing on reauthorization.

So, as we look at the Office of Advocacy, how can we improve it? You gave some specific suggestions, and I appreciate that very much.

We welcome your specific suggestions as to how we can improve the Office of Advocacy. We also look at whether we can do a better job on the Ombudsman and the role that the Ombudsman plays.

So I hope that, as a result of this hearing, we will have suggestions in order to strengthen the tools that are currently available to help small businesses deal with regulatory challenges. Yes, we should take a look at RFA and see whether it is properly targeted. There is a lot of soft language in RFA, significant economic impacts, substantial number of small businesses. Then you have a review process after 10 years. All that can be mischievous or it could be helpful, and I think it is important for us to try to zero in what can work to really help small businesses deal with the challenges of regulation.

[The prepared statement of Senator Cardin follows:]

**Opening Statement of Ranking Member Benjamin L. Cardin
“Reauthorization of the SBA’s Office of Advocacy”
Senate Committee on Small Business and Entrepreneurship
May 22, 2019**

Good afternoon and thank you, Mr. Chairman, for convening this hearing to assess the state of the SBA’s Office of Advocacy and to learn more about how it can help ensure that federal regulations meet the needs of small businesses.

Complying with federal, state and local regulations is among the top concerns of America’s 30 million small businesses. Poorly crafted or unclear regulations, particularly at the federal level, can create considerable financial burdens and technical challenges for small entrepreneurs, hurting their ability to grow and create jobs. Unlike large companies, small firms often do not have the time and resources to devote to complying with new rules.

Although regulations can be harmful if they do not take the needs of small businesses into account, it would be incredibly narrow-minded to conclude that most regulations are bad for small businesses. The small proprietors I talk with tell me that rules that are well-thought out are essential for keeping bad actors out of the marketplace and for providing business stability. Moreover, many regulations have the power to help small businesses compete on an even playing field against their larger counterparts. Net neutrality is an example that comes to mind, although it remains to be seen whether this important protection will survive.

To ensure that small business concerns are heard as agencies develop regulations, Congress created the SBA’s Office of Advocacy. The office serves an important role by

educating agencies about the effect their rules may have on small firms and entities and pushing for thoughtful, targeted solutions that make regulations more manageable for small businesses.

Unfortunately, too often big businesses seek to gain cover for their anti-regulatory agenda by hiding behind small businesses. During the last hearing we held on this topic in 2017, the President of the South Carolina Small Business Chamber of Commerce observed that big business representatives use Advocacy to “clog up the regulatory process through heavy lobbying [and] litigation, creating public anxiety by quoting huge, bogus costs.”

It is concerning that corporate interests appear to be harnessing the Office of Advocacy to try to kill regulations. Congress did not create the Office of Advocacy to serve as a roadblock to agency action; it created it to ensure that agencies address the *specific* challenges that are *unique* to small businesses. When we eliminate or water down rules in the name of small businesses rather than enact narrowly tailored changes that help them remain competitive, we are doing a disservice to the very people the Office of Advocacy was meant to help.

Most small businesses want to do the right thing and avoid harms like pollution and unfair labor practices. They understand the need to comply with regulations, so long as the playing field is even for everyone and that agencies are clear about what they expect small businesses to do. We have no reason to believe that these very reasonable expectations cannot be reconciled with the idea that the government should issue worthwhile regulations like the ones that keep our air and water clean and our food safe to eat.

As we will hear from our witnesses, American small businesses are extremely diverse, and so are their needs and challenges. It is vital that the entrepreneurs who cannot afford highly paid lobbyists and trade association representatives in Washington still have an opportunity to convey their concerns as regulations are developed.

We will hear from John Arensmeyer [AH-RENZ-MY-ERR], the CEO and founder of Small Business Majority, which is an organization that has successfully attracted a network representing a broad cross section of America's entrepreneurial community. Because Small Business Majority does not charge membership dues, it is able to pull in businesses with fewer resources and ones that often come from underrepresented communities. For this reason, they tend to publicize issues that do not always get attention from the larger business groups, such as the importance of affordable healthcare and a sustainable retirement system.

I am particularly excited to hear from Rick Baumann, the owner of Murrells Inlet Seafood, a wholesale distributor located in Murrells Inlet, South Carolina. Mr. Baumann is a successful entrepreneur who built his company from the ground up. He is also an accomplished outdoorsman who, I should point out, spent fourteen winters as a waterfowl guide on Maryland's Eastern Shore. But what I am so impressed by is how much time and energy he spends fiercely advocating for clean water in his community and his region. He understands that the viability of his business depends on having strong protections that keep our bays and estuaries clean. He sees polluted storm water and offshore drilling not just as threats to our health, which they certainly are, but also as threats to his livelihood and to the livelihood of the people he works with every

day. It is voices like his that I fear get lost when corporate interests dominate the discussions taking place around regulations and small businesses.

While it is important to make sure agencies consider small businesses as they develop rules, it is just as essential for the federal government to provide transparent compliance guidance to help these businesses adapt once rules go into effect. That is why Congress created the Office of the Ombudsman, and I believe we should empower this office to the greatest extent possible.

I hope that during today's hearing we can learn what we need to do to ensure that the voices of small businesses are heard during the federal rulemaking process. We must also identify ways we can prevent wealthy corporations from using the legitimate concerns of small businesses to undermine the regulations that are there to protect us all.

Thank you, Mr. Chairman.

Chairman RUBIO. Thank you, Ranking Member.

With the Ranking Member's indulgence, I am going to recognize Senator Lankford because he has carried the weight here today in case he has any questions.

Chairman LANKFORD. Thank you.

I would say to Senator Cardin as well, I completely agree on what you were just saying about the real small businesses. It has been interesting. A lot of big businesses at times will fight off regulations to be able to prevent regulations, and then they will flip it on a different regulation and try to get as much regulation as possible, knowing that small businesses cannot keep up. They do not have the army of attorneys to be able to manage it, and they drive people out with that as well, so it goes both ways.

Dr. Sargeant, let me try to drill down on several things that you had said. You brought some very specific recommendations. Your insight is much needed on this because you have been in that chair and then left that chair, and what I found most effective with most folks that have served in a Federal agency is that they smile and nod when they come in front of us when they are in the chair, and then once they have left that position, they have got a lot of good insight.

So we need your insight on this. You have been in that Chief Counsel position with the Office of Advocacy. You brought several specific ideas. One is more advanced notification. Tell me what you mean by that.

Dr. SARGEANT. Well, with the SBREFA panel, for example, typically when an agency wants to convene a panel, they may only get 30 to 40 days in advanced notice, and it is very difficult to reach out to small businesses, what we call SERs, the small entity reps, to have them come to Washington—

Chairman LANKFORD. Right.

Dr. SARGEANT [continuing]. For them to be available.

So it would be helpful to give some more time so that the Office of Advocacy could use their regional advocates and really to reach out to make sure—

Chairman LANKFORD. Does the office tend to find people who are connected to organizations? Are they reaching down to individuals who may or may not be connected?

The reason I say that is there are some folks who would say, "I have never been asked, never have insight," and obviously, there are tens of thousands of small businesses. Not everyone is going to get tapped.

But how are they getting new voices into those SBREFA panels?

Dr. SARGEANT. Well, during my tenure, what we did is that we tapped into the regional—the advocates who were out in the region, and so what that did is that that was able to bring new voices to the table because many times, unless you are in the Beltway, inside the Beltway, you do not know what is going on—

Chairman LANKFORD. You do not even know what is happening.

Dr. SARGEANT [continuing]. But once you can tap into some of the regional advocates, then that is a way to bring more people to the table.

Chairman LANKFORD. I asked Mr. Clark about advanced notice or proposed rulemaking. I said, "Is that helpful to be able to get

that to a lot more small businesses to be able to engage in a more informal setting, so formal informal setting?" You are not fighting against language. It is an idea. Is that helpful to have a greater use of advanced notice of proposed rulemaking?

Dr. SARGEANT. Yes.

Chairman LANKFORD. Let me ask you about your statement on indirect costs. This has been an ongoing dialogue to say whether you track direct or indirect cost. My belief is that small business does not have a chart to say, "These are indirect costs so they do not apply to me." They just know them as costs. How would you recommend we manage that?

Dr. SARGEANT. Well, once again, during my tenure—this has been a problem for a long time.

Chairman LANKFORD. Right.

Dr. SARGEANT. So what we said is that let us tweak the language so it would be near foreseeable indirect cost. So it is not indirect because that is too broad.

Chairman LANKFORD. It is broad.

Dr. SARGEANT. That is broad. But if it is close enough, if there is a nexus, then that is where we say that there is a significant impact on the substantial number of small entities.

Chairman LANKFORD. If we had a definition like "near foreseeable," would we end up in the same conversation we are going to have today with you about significant economic impact on a substantial number of small entities?

Dr. SARGEANT. Well, we try to tackle one thing at a time, but yes.

Chairman LANKFORD. Does that need greater clarification?

Dr. SARGEANT. Oh, yes, yes. Or share some examples because I think that when you give an example, I think that that helps in terms of to say what is significant, because what is significant to someone like me might be different than to someone else.

Chairman LANKFORD. You have an ongoing dialogue with agencies. When small businesses start contacting and say this is significant, you go back to agencies, and they say, "No, it is not significant. We thought about it. We talked about it, and we said this does not have a significant impact." What happens at that point in the Advocacy?

Again, as I mentioned to Mr. Clark, you do not have a thou shall or thou shalt not ability to any agency to go to them and control it. It is a relational dialogue to be able to work through this process. Tell us the mechanics of how you get this resolved.

Dr. SARGEANT. Well, it helps to come with data. That is where you go with outreach and you use your regional advocates to find out if this rule is going to be a problem. So you do not stay within the Beltway. You go—

Chairman LANKFORD. Challenge it with data.

Dr. SARGEANT [continuing]. To the country to say, "This is a problem. Tell us in your region. Is this a problem?" Then you bring that back to the agency and share that.

Chairman LANKFORD. One last question that I had for you, and that is on retrospective review. You would encourage greater use of retrospective review. Does that also include setting a date?

There has been some dialogue among us to say when a rule is put out, we should have a date certain to say we are going to review this point, and here are the metrics that will evaluate its effectiveness of this regulation. Is it working, not working? Basically, you create a reg to be able to accomplish something. You should know if that is going to actually be accomplished, whether it needs to be reviewed. Would that be helpful?

Dr. SARGEANT. That would be very, very helpful. Once again, in my testimony, I say that hindsight is 20/20. So if a rule has promulgated and all these assumptions went into the rule in terms of what would be the impact, now one can look back 3 or 4 or 5 years to see whether or not those impacts were there, and so I think that the agency should be able to get the data to say whether or not this rule was effective.

Chairman LANKFORD. Great. Thank you.

Thank you, Mr. Chairman.

Chairman RUBIO. Senator Cardin.

Senator CARDIN. Well, let me thank all four of our witnesses. I think the testimony has been extremely helpful.

Mr. Arensmeyer, let me start with you, if I might. Clearly, when we pass statutes, it is good if we give clear direction, and that can help small businesses. And we have done that. We did that in the Affordable Care Act. We did it in other acts.

Absent that, we have the RFA and the review process of regulations on the impacts that it has on small businesses, and we have the Office of Advocacy. My question to you is: Is the RFA Act adequate as currently drafted, or should we be looking at strengthening it? When we look at the Office of Advocacy, do you have any suggestions for specific changes, statutory changes as it relates to that agency?

Mr. ARENSMEYER. Well, as to the RFA, Senator, certainly, as it was already mentioned, that there is maybe some loose language in there. So we have no problem with tightening the language. The more clear the direction is to the Office of Advocacy, the better.

I think that that should be accompanied by a requirement that real data be used. Data is critical to this research.

So I would agree with Dr. Sargeant that perhaps more advanced notice. That would be fine.

So we are all for making sure that the office can do its job, but do its job based upon real data, a real analysis.

And the other thing I would recommend is some language that would require the Office of Advocacy to have a wide range of businesses. Sometimes it is just a bandwidth issue. There are all sorts of businesses, different sizes, different shapes. We represent primarily businesses that are smaller or even a lot of independent entrepreneurs, and we want to make sure their voice is in the process.

Eighty percent of all businesses have fewer than 10 employees. So we would recommend that we would be a little nervous about this indirect issue, and I get it conceptually. But trying to apply data, any kind of rigorous analysis when you are talking about indirect, I think is a challenge.

So I think the goal would be to make sure the office is adequately funded, the office is using as much real data as possible,

perhaps giving more notice. Perhaps some of the language can be tightened up, but kind of leave it at that.

Senator CARDIN. I share your concern about the indirect because that could be used as an agenda item to deal with anti-regulation. I also am concerned about the 10-year review, that that could also be used for nefarious reasons rather than dealing with the challenges of small business.

Let me get to the other arm, which is the Ombudsman. I know that is not the subject of today's hearing, but is there a way of strengthening the Ombudsman in order to help in regards to these issues?

Mr. ARENSMEYER. Yes. The Office of Ombudsman has a very important role, but I want to distinguish. The Office of Advocacy really plays a role at the front end, working with the agencies, doing the analysis, helping them understand, helping them really understand the small business impact.

The Office of Ombudsman, I believe, as the statute is written—and we see its role as helping small business owners comply with regulations, helping them cut through the thicket, and in that sense, we think that they should be well funded.

Again, the roles are very different. I mean, I am not saying they cannot obviously communicate, but we would not want to see the Office of Ombudsman become kind of a second Office of Advocacy on the front end.

I know Senator Shaheen has put forth legislation that would increase the outreach, the funding for outreach, expand the capability to render assistance, and then actually help smaller businesses with the procurement process sort of cut through all of that.

So, yes, the Office of—I mean, we do this ourselves when we are out across the country, providing education and resources to small businesses. So the fact that there is an office, a Federal office, that does that, we fully support that, but we do not think they should sort of merge into the actual up-front review process. We should—better to make sure the Office of Advocacy is adequately supported to do that.

Senator CARDIN. That is helpful.

Mr. Baumann, I want to ask you a question as to your input. In the last decade, there have been numerous major environmental regulations that have gone through lengthy procedures and controversial procedures. I have been engaged in some of those regulations as far as communicating views and listening. I am just wondering how effective do you think your voice is being heard in the hearing process on these regulations?

You are very much affected, as you pointed out in your testimony, as to the importance of a sustainable environment. I thought your quote about sustainable environment is critical to your stability, but how effective do you think the agencies are in getting the input of a company like yours on these major environmental regulatory issues?

Mr. BAUMANN. That is a pretty broad-based question, and I have been involved in quite a few issues like that, whether you are talking about the Clean Water Act or any number of things.

But I think in respect to the Clean Water Act, I was on a committee. We tried to advise the county on how to comply to NPDES

II back in 2004. A lot of these environmental regulations are like the Clean Water Act in that they are well intended. My fishing buddy promulgated that and negotiated it into law, Ian Marceau. He is no longer with us, but he promulgated and negotiated the Clean Water Act into law. And we went fishing in early 2000s, and he lamented to me about the stuff that was written in the 1970s was still not being done because of so much friction, resistance from big business, big industry, and things of that nature. And I see it happening again today.

The voice of the small businessman up against these big lobbying corporations with deep wallets and campaign donations and so forth like that, it is hard to get the attention of the folks who can make a difference from the small business perspective. It really is.

Senator CARDIN. And I am really not getting to the merits of the regulation itself. We can debate the importance of it to its intended mission, and we can have that debate in the agency or in Congress.

What I want to make sure is that small business interests are being heard, and it seems to me that the current line-up, because it is such a difficult process, that it is the sophisticated companies that have the ear of the Congress and the ear of the Administration and agency.

I will just give you one example that is currently pending is net neutrality. Now, we can argue whether the net neutrality rule is right or wrong on a policy point of view, but there is definitely a small business interest in net neutrality. And I do not think that has been well presented during this discussion.

It is our responsibility to make sure the small business community is heard. So that is why I think we are looking. We are not looking to take an edge on the policy issues that may divide us, but I think this Committee is not divided to make sure small businesses get their message and get their input into what is being done.

So that is why I think we are looking at how we can modify the tools that are currently available so that your voices can be heard.

Mr. BAUMANN. In that regard, I would just like to encourage everybody on the panel to look into and support Senator Shaheen's recent endeavors with the Small Business Administration Office of National Ombudsman where they can help out in respect to regulations of small business. As other people have alluded to, it is overwhelming for small businesses with small staffs to try and comply or understand or even get into the meat of the matter of what these regulations are about.

Sometimes people come around from wildlife or people come around from national marine fisheries, and they want to do an inspection. And we find out about something new that has been passed a few months after it has already happened because nobody has told us about it, and it is kind of hard for us to react to that.

Senator CARDIN. Ms. Prenger, I want to give you a chance to respond, but I thought the point that was made by Mr. Arensmeyer is a good point.

The Review Act is to get the regulation done right from the beginning to help small businesses. The Ombudsman is to help comply with the regulatory results.

Our laws that we pass should get things right even before the regulatory process starts. It starts with Congress. We make the laws and policy, so it starts with us. The regulatory review process should have the appropriate input from small business.

So you gave us some specific suggestions, but as you see the process of developing laws, the review of statutes, and then assisting small business and dealing with it, where do you think we should place our priorities?

Ms. HERNANDEZ PRENGER. Well, that is pretty complicated. They are very separate but also overlapping.

As a small business owner, I know that if I were not in associations that help notify small businesses of what is going on and I was content to run a restaurant or do something that is pretty isolated, I may be very unaware of things that are passed into legislation that are new rules and regulations, just as the other panelists have discussed.

Because of involvement with woman-owned organizations, with small business organizations, the Chamber of Commerce, there are places small businesses could go, but there is not a one-stop place. So there are so many different agencies that put out information to us and then trying to figure out what is happening now, what do we have to comply with now, how has that changed how we have been doing business? Are there impacts that we need to mitigate or pivot? So it is a constant exercise of making sure that you are in compliance.

And then having a regulatory fairness board is an opportunity to go ahead and vet situations that are either unfair or should be reviewed, but unless you are familiar that there is even that availability through the Small Business Administration—and I do not think very small businesses know that that even exists—then you feel that you are just basically talking to a wall when you call up an agency or you have to try to figure out how do you try to make something fair.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Chairman RUBIO. Thank you.

Just to follow up on that, Ms. Prenger, the National Small Business Association in their 2017 regulatory survey said the average small business owner spends at least \$12,000 in compliance on regulations, and obviously, every dollar that is spent on one thing is not spent on something like the opportunity for growth and investment.

How has regulation and regulatory compliance cost impacted your ability to compete with a larger business?

Ms. HERNANDEZ PRENGER. Well, larger businesses have an economy of scale, right? So they have already been through a lot of these things. They also have specialists in-house. They have in-house legal counsel.

Earlier in my testimony, I mentioned when we go through and we have to make sure we are in compliance, in order to keep our costs down, instead of going about growing revenue or doing other activities that would enhance our business, we are spending time to keep our legal costs down, making sure that we understand

what we need to be in compliance with before we even bring it to legal counsel, so that our bills are not astronomical.

It is very interesting. Something as simple as an affirmative action plan can—we had a kind of “Hey, we need to do this. We want to make sure it is in compliance.” That was a \$20,000 bill that we did not budget because we did not give a budget to a legal firm to do that.

So, as a small business, we want to do the right thing. We want to do what is right and fair, but in making sure that we do our due diligence and doing it in those manners, we also spend a lot of time trying to do it in a way that is cost-effective for the business that impedes our ability to grow.

Chairman RUBIO. Mr. Baumann, in addition to running the seafood company, I believe you served on a commission that was helping educate others in your area on how to comply with the National Pollutant Discharge Elimination System requirements under the Clean Water Act.

Were there ways that the EPA could have written the regulation that was clearer and easier to comply with, while still achieving the same goal of clean water?

Mr. BAUMANN. Well, my involvement in that, sir, was back in 2004 and 2005. I had two Ph.D.’s advising me on all the intricacies of it. I was just an appointed official to put the information together. So I am not all that up on the technicalities.

But I can tell you that I learned a lot about how big business interests typically are more vocal and more adamant about fighting regulation of any type, just because the regulation. The fact that we were still trying to comply with the Clean Water Act in 2004, when Mr. Marceau and his crew had it written in the early 1970s, speaks volumes about how stuff gets delayed, especially in environmental terms.

Water quality, in my view, is going to be the biggest issue for the coming generations all over this country. The access to clean, usable, fresh water is going to be a real challenge, and we are not addressing it. It is still the old saying: Pay me now or pay me a lot more later. And continually, when it comes to environmental issues like the Clean Water Act, we always kick the can down the road, sweep the stuff under the rug, and we end up paying a lot more for it. And the intent of the regulation, the good intentions of the regulation get watered down.

I really believe that when it comes to climate change, when it comes to offshore drilling, there is so much that we know, but instead of taking formative action, we debate and debate and kick the can down the road. At some point, we got to realize Mother Earth is our home, and we need to take care of her.

Chairman RUBIO. Mr. Arensmeyer, the Small Business Majority, which you are a part of, supports regulations that do not place an undue burden, not that you opposed regulations. You oppose regulations if it can avoid placing an undue burden on a small business.

Could you talk to us about regulations that you as an entrepreneur or as a member of the Small Business Majority have run across that have been unduly burdensome?

Mr. ARENSMEYER. Yes, sir. I will give a couple.

Let me just say that there is clearly a cost to most regulations, and we do not deny that. You know, it is a cost-benefit analysis, and anything that the government can do, that we all can do to relieve that burden, whether that is with services from the Ombudsman or maybe changing the rules a little bit for people that are smaller, that is fine.

I think an example would be when the ACA was passed, and we supported the ACA, but there was a provision that a vast number of transactions had to be reported on 1099, not just payment to contractors. And we immediately realized this was going to be a terrible burden on small business, and we raised it. And we actually led the charge to get that provision changed.

So I think when the overtime rules were presented by the Labor Department during the Obama administration, clearly there needed to be a change in the threshold for white collar work. It had not been changed in a long time, but it was a doubling. It was a huge jump, and our members weighed in very heavily that they supported the concept of raising the threshold, but not overnight, not quickly. Government contractors had issues. They had bids out there where they were going to pay people just time, and all of a sudden, they are going to have to pay time-and-a-half. And that was not in their control. We weighed in on that as well.

So there are definitely times where sometimes an initial version of something misses the mark or impacts small businesses in a way that people have not thought about, and we are happy to—again, it is not an ideological thing. It is a cost benefit. Let us look at the situation. Our only concern is to approach regulation in general as being something negative, I think is not the way we should look at it. We should be doing it on an individual case-by-case basis.

Chairman RUBIO. Dr. Sargeant, when the waters of the U.S. regulation came out, the EPA and Army Corps of Engineers determined that the cost would not have a significant impact on small entities, and that has allowed them to sort of circumvent the requirements of the RFA.

At the time, I believe you had been nominated to be the Chief Counsel of the Office of Advocacy for President Obama. Yet in 2014, you signed a letter to Administrator McCarthy that called out these agencies, specifically, the Army Corps and EPA for not abiding by the RFA and incorrectly certifying that the rule would not have a significant impact. You did not opine on the wisdom, obviously, of the regulation, but rather that they were able to get around the RFA by saying this would not have any impact on small business.

I am just curious, not as a political matter, but sort of in the balancing act that is involved in all of this. Is it hard to maintain the Advocacy's independence the way it is currently structured, and at the same time, speak out on the Administration, any Administration, with regard to legal compliance?

Dr. SARGEANT. Well, Senator, I think that it helps that the Small Business Act of 2010 gave the line item in the Treasury that the Office of Advocacy had its own budget. So that was one step that really showed that the office was independent.

But I also think, too, that the way that the office is structured in terms of outreach, it focuses on data, and so what we were say-

ing is that not that the rule that the EPA and the Army Corps could not go forward with the rule, but they did not follow the RFA. So, as the watchdog, during my time, we wanted them to follow the RFA, and they certified that this would not have a significant economic impact on a substantial number of small entities.

We believe that when the RFA is followed that the agencies had better rules, that the outcome is better rule writing, and those who are impacted, once you include those small entities, they know how to comply, because it is one thing to have a rule and not know how to comply, or then you have to go out and spend a lot of money just to know how to comply. And you still may get it wrong.

So what this letter said is that you did not follow the RFA. You should not certify the rule. Form a panel. That is what the SBREFA panel process was about, and let us go through the process.

Chairman RUBIO. Yeah. It is curious. We keep coming back to the same point here a number of times, and that is the respect that is given to the RFA. The current Administration is considering a new definition of waters of the U.S. Yet, Advocacy has had to write to the agencies again, asking that it reconsider its certification, that the rule would not have a significant impact on small entities.

What is it going to take to get these other agencies to care more or respect more what the Advocacy Office is pointing out?

Dr. SARGEANT. Well, I have seen some legislation where—I guess that it is called the Prove It Act. I think that is one piece of the puzzle that will help. That if an agency moves to certify, then that empowers the Chief Counsel to notify the head of the agency why the Office of Advocacy is in opposition to the certification and then mandate that the agency would reach out to the small business community, to what we call the SERs, to have a comment period, to really go through the process again.

Like you said, just because it is on the books, just because it is the law does not mean that the agency has to follow. So sometimes you have to make the law much clearer, more clear in terms of the steps that must be taken before a rule goes final.

Chairman RUBIO. I have one final question on all this. I know that if a new regulation is put in place, the job is to find examples of where it would unduly burden—

Dr. SARGEANT. Yeah.

Chairman RUBIO. I am curious. There are scenarios in which a rule would place a burden on all businesses, but it could potentially place a catastrophic burden on a small business. A rule would not just cost them money. It would put them at a direct competitive disadvantage with a business of larger scale.

I imagine that is true of all these regulations, but that is not a part of the analysis, or is it?

Dr. SARGEANT. The analysis should be what is the unduly burdensome rule. It is not that the rule will cost, will be costly, but is this rule, is it unduly burdensome, and did the agency take steps to minimize the impact of this rule on small entities? So that is where the Office of Advocacy and the team is always working with agencies to see what type of alternative did they consider because there are some rules—like, for example, some of the banking rules, small banks and small financial institutions did not bring this

country to its knees back during the Recession. It was the big banks, but yet, when they passed these far-reaching laws of Dodd-Frank and what have you, some of the small banks got caught up.

So what we are saying is that through the SBREFA panel process and through the process, look for ways to minimize the impact on those who are bad actors and so that small businesses are not caught up in the rule.

Chairman RUBIO. I guess what I am driving at in some way—and perhaps it is something we need to talk about further at a different time. But you and I know—and we can foresee examples of where a large business that is politically organized can actually use regulations to wipe out competitors.

Dr. SARGEANT. Yes.

Chairman RUBIO. I am not sure that that would register as unduly burdensome in an analysis, or maybe it would, but I could see it being used as a strategic advantage. Again, this may be a terrible analogy, but imagine if Blockbuster Video 20 years ago had figured out that someone was going to try to start streaming video and went out and got a regulation written prohibiting the streaming of video because you could not ID people before they watch these movies. And they would argue it is in the safety of the public. I would argue it is a way to prevent a competitor from entering the marketplace. Blockbuster would still be in business, and Netflix and others would not. A terrible analogy, probably, but nonetheless it is an example of how you could see a regulation, if properly crafted to prevent an innovative competitor from entering the industry space or continuing to be in the space, and I do not know how that is accounted for in this process of analyzing all this.

Dr. SARGEANT. Well, I think that it helps to have more time in the rulemaking process. Part of the regulatory agenda, each agency is supposed to publish the rules that they plan to work on. We have got to make sure that small businesses are aware of what are the rules that are coming down the pike.

Two, I think it is important that the Office of Advocacy contain its outreach. It has these roundtables that go around the country. So it is not just the Beltway. It is making sure that those outside know that these rules are coming and get there, get the feedback in terms of how this rule will impact their business.

Senator CARDIN. Let me again thank the witnesses.

I was impressed that you knew what Blockbusters was. I thought at your age—

[Laughter.]

So I learned something today.

Chairman RUBIO. I remember fax machines and beepers.

[Laughter.]

Senator CARDIN. Okay. Well, let us see how far. Do you know about the—

Chairman RUBIO. Eight-tracks?

Senator CARDIN. Eight-tracks. Okay.

You know what a typewriter is also?

Chairman RUBIO. A what?

[Laughter]

Senator CARDIN. So I think you raised a good point. I would just urge us to get a better understanding from how the act works on

the impact on small businesses versus larger companies, because you could have a same unit cost of compliance between big businesses and small businesses, but the burden on the small business could be substantially higher.

So I think we really do have to have a better understanding as to how that is being interpreted and whether we need to deal with that and understand that.

So I think this exchange has been extremely helpful, and I thank all of our witnesses.

Chairman RUBIO. I do too.

By the way, just now that the statute of limitation has passed, not only do I remember Blockbuster Video, I still have a couple of their cassettes.

[Laughter.]

Chairman RUBIO. But I think it is too late. They cannot do anything about it. Anyway, that is also a joke in case someone is watching C-SPAN at 4:15 or whatever.

But I want to thank all of you for being a part of this. This work we are doing is important. I think it is educational for members as we try to do the reauthorization. It also allows us to learn about the different complexities, and today was unique because you saw two committees, meeting because it overlaps in jurisdiction. So I thank you all.

The hearing record will stay open for 2 weeks, and any statements or questions for the record should be submitted by Wednesday, June 5th, at 5:00 p.m. There is the possibility that some member who had to leave or could not be here might send a question that they will want you to answer if you can do it. We do not want to be unduly burdensome, but if you can, that would be helpful. It is in the record, and we can refer back to it when we pursue legislation.

Again, I want to thank all of you for being here for your patience. Again, we ask for your forgiveness. We had the other hearing today that kept us from here, but, by all accounts, it went very well for the first panel, and, luckily, we are here in time for all of you. So thank you so much.

With that, the meeting is adjourned.

[Whereupon, at 4:18 p.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

**Senate Committee on Small Business and Entrepreneurship Joint Hearing
May 22, 2019
Follow-Up Questions for the Record**

Questions for Mr. Major Clark, III

Questions from:

Chairman Rubio

Office of Advocacy's Enforcement of the RFA and SBREFA panel requirements

The Small Business Regulatory Enforcement Fairness (SBREFA) updated the Regulatory Fairness Act (RFA) by requiring some agencies — including the Environmental Protection Agency (EPA) — to hold panels where small entities would be consulted. However, agencies still avoid following these laws. With the Waters of the United States (WOTUS) regulation, EPA and Army Corps of Engineers determined that the cost would not have a significant impact on small entities, allowing them to circumvent the requirements of the RFA and SBREFA. Advocacy later discovered that the EPA's own estimates placed the costs of compliance at well beyond \$100 million.

QUESTION 1:

When agencies are able to specify that their regulations do not fall under the RFA or SBREFA, how does Advocacy verify this assertion?

Generally, when an agency asserts that a directive is not a rule within the meaning of that term in the RFA,¹ Advocacy will conduct a legal analysis, including a reading of the statute and a review of case law. EPA and the Army Corps of Engineers made a legal determination that the Waters of the United States rule would not have a significant economic impact on a substantial number of small entities, despite the costs, because those costs were considered to be indirect. Under current case law, indirect costs are not required to be included in an RFA analysis. Advocacy disagreed with the agencies on whether the costs of the rule were direct costs, distinguished the agencies' analysis from current RFA case law on direct costs, and provided examples from small businesses that demonstrated how the rule would directly impact them. Advocacy's comment letter discusses the problems with the agencies' RFA analysis in great detail, which can be found at https://www.sba.gov/sites/default/files/Final_WOTUS%20Comment%20Letter.pdf.

¹ For purposes of the Regulatory Flexibility Act, "the term 'rule' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term 'rule' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances." 5 U.S.C. § 601(2).

QUESTION 2:

How frequently are agencies able to avoid requirements from the RFA and SBREFA?

Agencies are not typically able to avoid entirely the requirements of the RFA. However, the RFA does not currently apply to interim final rules or direct final rules.

QUESTION 3:

During your time at Advocacy, have you found that most agencies make an honest attempt at complying with the RFA?

Advocacy believes that the federal agencies recognize their responsibilities under the RFA and strive to meet those responsibilities.

QUESTION 4:

What are Advocacy's limits? What does your office need to ensure that agencies fully comply with the RFA?

Advocacy's limitations include a lack of available data and time constraints imposed by the agencies and the rulemaking process.

As stated in my written testimony, Advocacy's 2016 legislative priorities identify areas for legislative attention if the RFA is to provide small entities with the full consideration that Congress originally intended. These priorities include consideration of indirect effects, clarification on the scope of the RFA, improvements to the quality and transparency of the RFA analysis, clear requirements for certifications, improvements to SBREFA panels, and improvements to retrospective review. For a more detailed discussion of each of these priorities, please see Appendix C of my written testimony.

Government Accountability Office Recommendations for Research Procedures

In July 2014, the Government Accountability Office (GAO) produced a report on the Office of Advocacy. GAO made, and Advocacy agreed with, three recommendations. The first was a recommendation that staff better monitor the quality of information that it disseminated by selecting peer reviewers for research, documenting reviews, and specifically addressing reviewer comments.

QUESTION 5:

Does the Office of Advocacy currently monitor research and information using these processes?

Yes. Advocacy monitors its research and information dissemination using the processes recommended in the GAO report.

QUESTION 6:

Secondly, GAO recommended that Advocacy strengthen its regulatory activities by maintaining better records of interactions with small entities and associations. Since 2014, has Advocacy been documenting interactions with small businesses and other stakeholders?

Yes. Advocacy documents interactions with stakeholders, including small businesses and small business representatives, as recommended in the GAO report.

QUESTION 7:

Finally, GAO recommended that Advocacy do better succession planning since many key staff in the small office would be difficult to replace if they left or retired. Has Advocacy built and implemented a succession plan?

Yes. Advocacy has implemented a succession plan as recommended in the GAO report.

SBA's Compliance with the RFA when Promulgating Rules

Last September, the Small Business Administration (SBA) released a proposed rule that makes significant changes to the rules governing SBA's lending programs and resulted in approximately 4,000 individual comments. I have heard directly from lenders in Florida about the impact of this proposed rule on both the lenders and small business borrowers, and I am troubled that it appears that the SBA did not consider how the rule would affect small businesses. If anything, the SBA should be a model to other agencies of giving small businesses extra consideration when promulgating rules, including advanced notice of its plans. Advocacy wrote an official comment letter on December 18, 2018, asking the SBA to look for a less burdensome way to regulate its loan programs.

QUESTION 8:

What analyses, if any, did SBA perform to determine the impact of this rule on small entities?

SBA prepared a certification for the rule. Section 605 of the RFA allows an agency to prepare a certification in lieu of an initial regulatory flexibility analysis if the proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Prior to preparing a certification, the agency must perform a threshold analysis to determine the impact on the regulated small entities. Based on its threshold analysis of the regulated lenders and agents, SBA certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.

QUESTION 9:

Is it common that the SBA does not abide by the RFA and fails to consider the impact of its rules on small businesses?

SBA complies with the RFA. In general, federal agencies can improve their RFA compliance by conducting outreach to affected small entities early in the regulatory development process in order to identify potential alternative approaches and determine the best way to accomplish their objective without unduly burdening affected small entities.

Agency Compliance with the RFA over Time

You have worked at the Office of Advocacy since 1998 — under four different chief counsels, under two Democratic presidents, and under two Republican presidents.

QUESTION 10:

How has agency compliance with the RFA changed over the years? After years of providing trainings to agencies, are they starting to understand the purpose of the RFA?

Since the signing of Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, Advocacy has had the responsibility of training the agencies in how to comply with the RFA. Since Advocacy began training in 2003, Advocacy has conducted training for 18 cabinet-level departments and agencies, 79 separate component agencies and offices within these departments, and 23 independent agencies. Advocacy believes that agency compliance with the RFA has improved because of this ongoing training effort. Agencies have expressed their intent to improve their performance under the RFA.

QUESTION 11:

What specific statutory changes does Advocacy need to differentiate itself from the SBA and establish itself as a respected government office?

The Congressional Research Service published a 2019 report on the history of the Office of Advocacy and in its summary the report states, “Advocacy, generally recognized as being an independent office, is housed within the much larger SBA which, given their statutorily overlapping missions as advocates for small businesses, makes it more difficult for stakeholders to recognize Advocacy as the definitive voice for small businesses.” It would appear from the numerous inquiries that Advocacy receives, the general public, and even some federal agencies, believe that the Office of Advocacy is a division of the SBA. While Advocacy works very closely with SBA because we have the same stakeholders, the Office of Advocacy’s name should reflect that it is independent of SBA. To avoid this confusion and provide a clearer picture of the Office of Advocacy, the committees might consider changing Advocacy’s name to clarify that Advocacy is not a program within the Small Business Administration, but rather an independent office representing small businesses. Advocacy needs to preserve and maintain its independence while also continuing to receive support from SBA on administrative services and the ability to interact on Advocacy’s economic research work and work closely with the National Ombudsman.

Congressional Intent of the RFA

You worked as the staff director for the House Small Business Committee during the passage of the RFA in 1980.

QUESTION 12:

What were some of the underlying events that led to the creation of the RFA and the Office of Advocacy?

During the 1970s and 1980s, small business communities across the country were eager to participate in the federal budget marketplace. These businesses saw tremendous marketing opportunities to bring their goods and services to the federal government. The premise of the first White House Conference on Small Business in 1980 was that the federal agencies had not given small businesses a fair and level playing field. Regulations simply did not take into consideration the impact on small businesses. Prior to the first White House Conference, Senator Culver of Iowa introduced a bill, S. 299, that would improve the federal rulemaking process for small businesses. His effort received tremendous support from the delegates to the White House Conference, and Congress passed the RFA in 1980. This was perhaps one of the most successful efforts by the federal government to balance social and economic goals. During this period, several significant studies were published that provided a strong economic foundation for how important small businesses were to the economy in terms of job creation and innovation.

Additionally, economist Milton Kafoglis, a member of President Jimmy Carter's Council on Wage and Price Stability, testified before the Senate Committee on the Judiciary in 1978. He said, "There seem to be clear economies of scale imposed by most regulatory endeavors. Uniform application of regulatory requirements thus seems to increase the size [of the] firm that can effectively compete. The cost curve of the firm is shifted upward ... [with] the small firms' cost curve shifting more than that of the dominant firms [thus] the share of the dominant firm will increase while that of small firms will decrease. As a result, industrial concentration will have increased. This ... suggests that the 'small business' [regulatory] problem goes beyond mere sympathy for the small businessman, but strikes at the heart of the established national policy of maintaining competition and mitigating monopoly."

QUESTION 13:

What were some of the opposing arguments to the creation of the Office of Advocacy? What limited you from expanding the authority of the Office of Advocacy?

The large businesses, large federal agencies, and the Administration did not believe that an Office of Advocacy was necessary. The belief was that if a large business could not perform the contract, then it would be silly to think that a small business could outperform a large one. Others took a position that it would cost the government too much money to contract with small businesses and to enact regulations that gave special consideration to small businesses. Much of the opposition to the Office of Advocacy was carried forward until the 1996 Small Business

Regulatory Enforcement Fairness Act (SBREFA) legislation. The most positive change came with SBREFA and the inclusion of federal court jurisdiction to review agency compliance with the RFA. This change in 1996 was followed by several significant executive orders and ultimately legislative changes in the Small Business Jobs Act. During the period that I worked for the House Small Business Committee, while a large number of bills were passed to support small businesses, members of both the House and Senate Small Business Committees spent a large part of their time successfully defending SBA from being eliminated by the White House.

Regulatory Roundtables

The Office of Advocacy collects a lot of information from small businesses through its Regulatory Reform Roundtables. I heard from several people in Florida that they enjoyed getting the opportunity to share their thoughts on some proposed rules when you visited Tampa in April.

QUESTION 14:

What is Advocacy's process for following up with agencies with the feedback you have received from these Regulatory Reform Roundtables?

In 2017, Advocacy sent 15 letters to the heads of regulatory agencies, which included small business concerns and suggested fixes for specific rules that were raised at these roundtables. In 2018, Advocacy sent 11 additional follow-up letters.

Advocacy's regulatory staff conducts meetings, conference calls, and detailed discussions with federal regulatory officials to present small business feedback from the roundtables and to begin work on potential solutions and burden reduction. Advocacy has already seen developments that have resulted in burden reduction and cost savings for small businesses since Advocacy launched its nationwide regulatory reform effort, as detailed in Chapter 4 of our report, "What Small Businesses Are Saying and What Advocacy Is Doing About It: Progress Report on the Office of Advocacy's Regional Regulatory Reform Roundtables." The report is included in the hearing record and is available on our website at <https://advocacy.sba.gov/regulatory-reform/regulatory-reform-follow-up/>.

QUESTION 15:

How many roundtables do you hold on average each year and how do you select the locations in which you hold these roundtables?

Between June 1, 2017, and June 20, 2019, Advocacy has held 39 Regional Regulatory Reform Roundtables in 27 states. In 2017, Advocacy held 13 roundtables in 9 states (Louisiana, Idaho, Kentucky, Ohio, Missouri, Kansas, Virginia, New Hampshire, and Massachusetts). In 2018, Advocacy held 20 roundtables in 13 states (Michigan, Wisconsin, Texas, Georgia, California, Florida, Iowa, Wisconsin, Wyoming, Colorado, New Jersey, Pennsylvania, and New York. Advocacy has held 6 roundtables in 6 states so far in 2019 (Oklahoma, Arizona, Nevada, Arkansas, Tennessee, and Mississippi), and we plan to hold additional roundtables this year. Advocacy also holds issue roundtables, which focus on specific small business regulatory topics, including international trade. For example, Advocacy recently held roundtables in Colorado and Florida on the Waters of the United States proposed rule, and in Florida and Alabama on the Overtime proposed rule.

The locations of these roundtables span rural and urban areas, geographic regions, and a range of industries. Regulatory impacts can vary by geographic region. For the Regional Regulatory Reform Roundtables, Advocacy made an outreach plan to visit all regions of the country and

multiple industries. Advocacy has made a concerted effort to visit diverse areas that provide varying perspectives. Advocacy's ability to travel for these roundtables can be limited when the office is funded through a continuing resolution rather than full appropriations from Congress.

Advocacy relied on several factors to determine the roundtable schedule, including:

- The experience of Advocacy's regulatory attorneys over the years;
- Assessments of economic data on small business contributions across geographic areas;
- Information provided by small business advocates and trade organizations on what their members were saying and what areas were most affected by burdensome regulations;
- The availability of Advocacy's team of regional advocates and assistance of SBA's district offices; and
- Congressional requests.

Several roundtables were scheduled in conjunction with Advocacy's information-gathering effort on small business impacts of the North American Free Trade Agreement (NAFTA) modernization. Advocacy received this mandate from the Trade Facilitation and Trade Enforcement Act (TFTEA). Events in Wisconsin, Michigan, and Texas were planned in order to hear concerns about NAFTA and international trade.

QUESTION 16:

What are some common concerns that businesses have expressed? Is there a particular regulation or agency that has been repeatedly discussed?

Advocacy has heard about a wide variety of regulations that should be reviewed and reformed. Some general recurring themes we heard include the following:

- Burdensome and confusing paperwork, red tape, reporting, labeling, and fines;
- Costly fees for the services of consultants, lawyers, and accountants;
- Regulations that run to hundreds of pages, and which require advanced legal and technical background to understand;
- Business owners regularly confronting the uncertainty of knowing whether their company is in compliance with all applicable regulations;
- Others who worry whether the business confidential information they must disclose to regulators will be kept private from competitors; and
- Major rules that are enacted to halt the excess of large, industry-controlling firms, yet small firms are caught up in their dragnet.

Table 5 in Chapter 5 of Advocacy's progress report on our Regional Regulatory Reform Roundtables lists the federal regulations complained about most often at roundtables held through September 2018. It includes 42 regulations from over 25 federal agencies.

Office of Advocacy's Role in Trade Issues

Trade is increasingly important for small businesses who want to expand into new markets and diversify, and for all businesses who are confused by ever-changing trade agreements. The United States Mexico Canada (USMCA) trade agreement includes a specific small business title, the first time a trade agreement to which the United States has been a party has included specific provisions addressing compliance, regulations, and assistance for small and medium-sized firms.

QUESTION 17:

What is your current involvement in international trade issues?

Under the Trade Facilitation and Trade Enforcement Act, whenever a trade agreement is being negotiated, Advocacy is tasked with convening an interagency working group and producing a report to Congress evaluating the small business economic impacts of the trade agreement under negotiation, particularly impacts in the services, manufacturing, and agriculture sectors, as well as highlighting small business priorities, opportunities, and challenges. Advocacy's first report under TFTEA, "Section 502 Small Business Report on the Modernization of the North American Free Trade Agreement (NAFTA): Prepared for the Consideration of the United States-Mexico-Canada Agreement (USMCA)" is available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2018/12/20094150/Section-502-Small-Business-Report-on-the-Modernization-of-the-North-American-Free-Trade-Agreement-NAFTA.pdf>.

Advocacy has been invited to provide its expertise on the consideration of small business impacts during the rulemaking process at several international gatherings. In addition, Advocacy has been invited to participate in ongoing discussions between representatives of the United States and a number of other countries for the purpose of concluding regulatory cooperation agreements.

QUESTION 18:

In roundtables, how often do you hear about international trade?

When Advocacy first began its Regional Regulatory Reform Roundtables, international trade was not an issue that small businesses mentioned often. Most recently, however, international trade concerns have been raised by small businesses with increasing frequency, particularly regarding tariffs. To collect feedback from small businesses in the TFTEA process, Advocacy holds international trade outreach meetings.

QUESTION 19:

What do businesses cite as problems, concerns, or opportunities regarding international trade?

Advocacy hears from small businesses that they are concerned about access to international markets, the difficulties of entering into international trade, and the uncertainties created by disparate regulatory schemes and tariffs.

Rule-writing Authority for the Office of Advocacy

The RFA models the National Environmental Protection Act (NEPA), under which Congress delegated rulemaking authority to the Council on Environmental Quality (CEQ) to govern environmental analyses. However, Congress neglected to give Advocacy this same authority to write rules governing small entity analyses under the RFA. GAO, a non-partisan arm of the legislative branch, recommended in four reports from 1991 to 2014 that Congress create this rulemaking authority if it actually intends for agencies to comply with the RFA.

QUESTION 20:

If Advocacy could issue rules governing agency compliance with the RFA, how would this affect the federal rulemaking process?

Advocacy anticipates that any regulation of agency compliance with the RFA would look a lot like the guidance that Advocacy has already issued and uses in its RFA training.

Questions from:

Ranking Member Cardin:

Offshore Drilling Letter to the Department of Interior

In March of last year, you sent a letter to former Secretary of the Interior Ryan Zinke about the Trump Administration's proposal to expand offshore drilling. The letter is four pages long and contains a summary of your outreach efforts to small businesses around the country. In it, you state that you heard two perspectives: oil and gas companies support the proposals to expand drilling, while coastal businesses involved in fishing and recreation are very concerned that it could destroy their industries.

And yet the very first sentence of your letter reads as follows: "The Office of Advocacy applauds the U.S. Department of Interior's Bureau of Ocean Energy Management's efforts to expand the area of the outer continental shelf available for oil and gas leasing, as these efforts have the potential to benefit small businesses by creating new opportunities for small entities to enter and remain competitive in the industry."

From reading this statement of support on the first page, one gets the distinct impression that you only heard from one industry. Yet the letter very clearly establishes that this is not a one-sided issue as far as small businesses are concerned. You heard from many people who make their living from fishing and recreation who do not share your enthusiasm for the proposed offshore drilling expansion.

QUESTION 1:

Does the Office of Advocacy consider the oil and gas industry more important than small businesses in the fishing and recreation industry?

The Office of Advocacy considers all small businesses important and strives to advocate for the interests of all small businesses, including those in the oil and gas industry as well as fishing and recreation.

QUESTION 2:

Doesn't your letter state that you heard about real concerns from small businesses in the fishing and recreation industry.

Yes. Advocacy's letter specifically states our concerns for the potential impact of the rule on these industries.

QUESTION 3:

Please explain how Advocacy, an office that is supposed to be impartial and represent the interests of all small businesses, could conclude that it "applauds" the Trump Administration's regulatory proposal when so many business owners outside the oil and gas industry expressed strong opposition to this rule. It sounds like you have officially taken sides among small businesses, but that is not what we in Congress intended when we created your office.

Advocacy's letter encourages the agency to consider the impact on all small businesses going forward with any proposed program. Our letter also encourages the agency to ensure that small businesses are able to participate in the program, while also considering potential impacts on tourism, coastal recreation, and fisheries, and that it gather data on these impacts before moving forward with a proposed program.

QUESTION 4:

Going forward, can you commit to avoiding one sided conclusions similar to your "applauds" for the offshore drilling proposal in future letters on regulatory matters that affect different small businesses in different ways?

Yes. It is Advocacy's standard practice to ensure that all impacted small businesses are considered. Advocacy will continue to make sure agencies are aware of all the small business impacts their proposed rules may have and be careful not to appear as making one-sided conclusions.

Questions from:

Senator Hirono

Recognizing the importance of the U.S. Small Business Administration's (SBA) Office of Advocacy as an independent voice for local small businesses, and highlighting the need for more outreach to local small businesses and SBA district offices: Mr. Clark, the SBA's Office of Advocacy plays an important rule in promoting the interests of the more than 30.2 million small businesses in the United States—including the 128,000 small businesses in Hawaii—by providing them with an independent voice in the federal government.

QUESTION 1:

Can you elaborate on how Advocacy conducts outreach to small businesses to learn about their concerns, including any individual outreach it conducts to local small businesses?

The Office of Advocacy conducts multiple levels of outreach to local small businesses. First, the Office has twelve Regional Advocates, and each is assigned to a specific area that coincides with the SBA Regional Offices. These individuals are normally selected from the region in which they are assigned and thus have a good grasp of the small business communities. In addition, these individuals are based in either the SBA district or regional office in their region, and they work very closely with the SBA team there. In many situations, the SBA will invite the Regional Advocate to attend meetings or to be on various local outreach programs.

Second, our regulatory attorneys reach out to local small businesses through various small business trade groups for specific input on proposed regulations. Third, the Chief Counsel for Advocacy has a group of small business trade organizations that provide input on various local small business issues, and the Chief Counsel travels to each region to meet local small business owners. Fourth, Advocacy utilizes social media to reach local small businesses and has a web page in which we solicit input from small businesses. Fifth, Advocacy conducts issue roundtables across the country and in Washington, DC, to hear from small businesses and holds Regional Regulatory Reform Roundtables. Finally, Advocacy conducts outreach to Members of Congress to inform them of our services and to respond to many of their small business constituent issues.

QUESTION 2:

What kind of outreach, if any, does Advocacy conduct to SBA's district offices, which often times have close working relationships with local small businesses?

As stated above, our Regional Advocates are assigned to an SBA District Office or Regional Office, and they work very closely with these offices. Many of these offices ask Advocacy to examine small business issues that may be beyond their ability to explore. These local SBA offices provide Advocacy with direct contacts to the local small businesses and to the local small

business organizations. More importantly these offices are critical in providing Advocacy with information on the local economy.

QUESTION 3:

In your opinion should Advocacy be doing more outreach to local small businesses?

Advocacy is always striving to conduct more outreach to local small businesses, as their input is critical to providing Advocacy with the information it needs to accomplish its mission of representing small businesses before the federal government.

Recognizing the importance of federal regulations that support local small businesses that rely on our natural resources, like clean water and clean air, to support themselves: Mr. Clark, as the independent voice for America's small businesses, the Office of Advocacy has an important responsibility to consider the impact of regulations on small businesses—including those that rely on natural resources for their livelihoods. Locally in Hawaii there are many of these businesses that rely on things like our national parks, coastlines, oceans, and coral reefs.

QUESTION 4:

Do you recognize that certain federal regulations, including those related to clean water and clean air, can have a positive impact on businesses that rely on our natural resources?

Yes.

QUESTION 5:

Does Advocacy take into consideration how changes to these regulations would impact those businesses?

Yes. Advocacy works with the federal agencies to ensure that their regulations comply with the Regulatory Flexibility Act, which requires that the agency determine the impact of their rules on small entities subject to the rule and consider alternatives to reduce that impact. Advocacy believes that reasonably foreseeable impacts on small entities not directly regulated by the rule should also be included, but the statute currently does not require it.

QUESTION 6:

In your opinion, should Advocacy be doing more to consider the impact of those changes?

Advocacy continues to seek input from all small businesses, including those who may benefit from a regulation. Advocacy is always looking for opportunities to strengthen its outreach efforts and ability to represent the views of all small businesses before federal agencies.

Recognizing the importance of the Office of Advocacy as a voice for women- and minority-owned businesses: Mr. Clark, in states like Hawaii where we have more than 74,000 minority-owned businesses, and more than 44,000 women-owned businesses, programs that support women, minorities, and other historically underrepresented populations in starting and growing successful businesses are important for the economy in general.

QUESTION 7:

Can you elaborate on how Advocacy conducts outreach to women- and minority-owned small businesses to understand their concerns?

Small businesses – including those owned by minorities, women, service-disabled veterans, Native Americans, and those located in HUBZones – are the economic fabric of this nation. By working with the local SBA district offices, Advocacy is able to identify economically and socially disadvantaged businesses and invite them to our local and regional roundtables. Advocacy has partnered with Women Business Centers in outreach and hosting Regional Regulatory Reform Roundtables. In addition, these businesses are provided with information on how to reach our Regional Advocates at any time on any issue that may be impacting their business. Advocacy has also been a part of the Small Business Innovation and Research Program's effort to reach out to more of these firms to encourage them to participate in Science, Technology Engineering and Math (STEM) programs.

QUESTION 8:

Advocacy plays an important function in researching the role small businesses play in the American economy and the contributions they make to keeping the United States competitive.

Advocacy agrees with this statement.

QUESTION 9:

What kind of research, if any, has Advocacy conducted related to women- and minority-owned businesses?

Advocacy has conducted extensive research on women- and minority-owned businesses. Advocacy's most recent research includes the following:

- Small Business Fact Sheet: Spotlight on Minority-Owned Employer Businesses (May 2019), available at <https://advocacy.sba.gov/2019/05/23/small-business-facts-spotlight-on-minority-owned-employer-businesses/>
- Small Business Fact Sheet: Spotlight on Women-Owned Employer Businesses (March 2019), available at <https://advocacy.sba.gov/2019/03/25/small-business-facts-spotlight-on-women-owned-employer-businesses/>

- Research Report: Financing Patterns and Credit Market Experiences: A Comparison by Race and Ethnicity for U.S. Employer Firms (2018), available at <https://advocacy.sba.gov/2018/02/01/financing-patterns-and-credit-market-experiences-a-comparison-by-race-and-ethnicity-for-u-s-employer-firms/>
- Research Report: Latino Business Ownership: Contributions and Barriers for U.S. Born and Immigrant Latino Entrepreneurs (2018), available at <https://advocacy.sba.gov/2018/01/01/latino-business-ownership-contributions-and-barriers-for-u-s-born-and-immigrant-latino-entrepreneurs/>
- Issue brief: Women's Business Ownership: Data from the 2012 Survey of Business Owners (May 31, 2017), available at <https://advocacy.sba.gov/2017/05/31/womens-business-ownership-data-from-the-2012-survey-of-business-owner/>
- Survey of Business Owners Facts: Minority-Owned Businesses in the United States (May 2016), available at <https://advocacy.sba.gov/2016/05/01/minority-owned-businesses-in-the-united-states/>
- Survey of Business Owners Facts: Women-Owned Businesses in the United States (May 2016), available at <https://advocacy.sba.gov/2016/05/01/women-owned-businesses-in-the-united-states/>
- Issue brief: Minority Business Ownership: Data from the 2012 Survey of Business Owners (September 14, 2016), available at <https://advocacy.sba.gov/2016/09/14/minority-business-ownership-data-from-the-2012-survey-of-business-owners/>
- Issue brief: Access to Capital for Women- and Minority-owned Businesses: Revising Key Variables (January 29, 2014), available at <https://advocacy.sba.gov/2014/01/29/access-to-capital-for-women-and-minority-owned-businesses-revisiting-key-variables/>
- Research Report: Understanding the Gender Gap in STEM Fields Entrepreneurship (2014), available at <https://advocacy.sba.gov/2014/10/01/understanding-the-gender-gap-in-stem-fields-entrepreneurship/>

In addition, each year, Advocacy publishes a small business profile for the United States and each state, which includes the latest statistics on women- and minority-owned businesses. The 2019 small business state profiles can be found on our website at <https://advocacy.sba.gov/2019/04/24/2019-small-business-profiles-for-the-states-and-territories/>.

QUESTION 10:

Do you agree that these businesses play an important role in terms of keeping the United States competitive?

Yes. Minority- and women-owned businesses employ millions of people. According to the Census Bureau, minority-owned businesses employed 8.7 million people in 2016 (the most recent data available), and women-owned businesses employed 9.4 million. In Hawaii, the majority of businesses with employees are owned by minorities (61 percent). States with the highest share of minority-owned businesses were Hawaii with 61 percent, California with 36 percent, Texas with 30 percent, and New Mexico with 27 percent. States with the highest share of businesses owned by women were Alaska with 26 percent, and Missouri and Hawaii each with 25 percent of employer businesses owned by women. These businesses are key players in the U.S. economy, and they make important contributions to innovation, trade, and overall U.S. competitiveness.

Senate Committee on Small Business and Entrepreneurship Joint Hearing

May 22, 2019

Follow-Up Questions for the Record

Questions for Dr. Winslow Sargeant

Questions from:

Chairman Rubio

RFA Compliance under your Tenure at the Office of Advocacy

For the Waters of the United States (WOTUS) rule, the Environmental Protection Agency (EPA) and the Army Corps of Engineers determined that the cost would not have a significant impact on small entities, allowing them to circumvent the requirements of the Regulatory Flexibility Act (RFA). Despite being nominated to be Chief Counsel of the Office of Advocacy by President Obama, you signed a 2014 letter to Administrator McCarthy that called out these agencies for not abiding by the RFA and incorrectly certifying that the rule would not have a significant impact.

QUESTION 1:

During your time as Chief Counsel at Advocacy how did you interact with other agencies when attempting to enforce the RFA? Were you ignored?

Chairman Rubio, during my tenure at the Office of Advocacy, my team and I worked with agency officials to educate them on compliance of the RFA. Under Executive Order (E.O. 13272 and codified in the Small Business Act of 2010), Advocacy was charged to provide training to agency officials on how to comply with the RFA. Each year, as part of the RFA annual report submitted to the White House, Advocacy would list the number of Federal employees trained under E.O. 13272. This training helped to reduce the number of instances where the RFA was ig-

nored or not complied with. E.O. 13272 requires agencies to consider Advocacy's written comments on a proposed rule and to address these comments in the final rule published in the Federal Register.

Advocacy has three duties (two will be listed) under E.O. 13272. First, Advocacy must notify agencies of how to comply with the RFA. This was first accomplished in 2003 through the publication of *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*. A revised version of this guide was provided to agencies in 2009 and 2012. The 2012 revision incorporated the later amendments to the RFA.

Second, Advocacy must report annually to OIRA on agency compliance with the executive order. In FY 2014, most agencies complied with E.O. 13272. However, a few agencies continued to ignore the requirements and failed to provide Advocacy with copies of their draft regulations.

In the RFA Annual report, Advocacy provided a list of agencies that were generally in compliance with the RFA. The report also listed the top reasons why the Chief Counsel would send formal comment letters to agencies officials. In general, agency officials would follow up with Advocacy staffers on why certain actions were taken.

QUESTION 2:

How frequently do you remember agencies incorrectly identifying that their rules were not significant enough to fall under the RFA's requirements?

In FY 2014 for example, Advocacy filed 22 formal comment letters conveying small business concerns on specific regulatory proposals. The two issues identified most often were the inadequate analysis of a rule's small entity impacts and lack of consideration of small business alternatives. These issues were the primary reasons that agencies' initial regulatory flexibility analyses (IRFAs) were judged inadequate.

Improved Enforcement of the RFA

Even after Advocacy asked the EPA to follow the RFA in 2014, the EPA finalized the WOTUS rule without making any significant changes. The EPA under the Trump Administration is considering a new definition of "Waters of the U.S." yet Advocacy has had to write the agency

again, asking that is reconsider its certification that the rule would not have a significant impact on small entities.

QUESTION 3:

What kind of measures are necessary for agencies to give small businesses the consideration required by law under the RFA?

Overseeing federal agencies' compliance with the Regulatory Flexibility Act and E.O. 13272 is the responsibility of the Office of Advocacy.

Section 602 of the RFA requires each agency to publish its regulatory flexibility agenda in April and October in the Federal Register. The agenda must specify the subject of upcoming proposed rules and whether they are likely to have a significant economic impact on a substantial number of small entities. Agencies are also required to provide their agendas to the Chief Counsel of the Office of Advocacy and to small businesses or their representatives. The regulatory agendas alert Advocacy and small entities to forthcoming regulations, and they are frequently discussed at Advocacy roundtables.

Section 609 of the RFA requires three agencies (EPA, CFPB, and OSHA) to convene review panels (abbreviated as SBREFA or SBAR panels) whenever a draft regulation is anticipated to have a significant economic impact on a substantial number of small entities. These panels allow agencies the opportunity to receive input from affected small business before proposed rules are published. Advocacy believed, during my tenure, that a SBREFA panel should have been have convened for the WOTUS rule under EPA.

QUESTION 4:

What limits does Advocacy face in serving as the watchdog of the RFA? What does Advocacy need to best serve the intent of the RFA?

As the watchdog of the RFA, Advocacy is empowered with the following:

- A Senate-confirmed Chief Counsel,

- Independence for the Office of Advocacy as the voice for small business within the Federal government, and
- A line item budget within the Treasury.

The RFA, since 1980, has been improved to empower the Office of Advocacy to be a more effective voice for small businesses. However, it is time to consider additional legislation and improvements to the RFA. I support the reauthorizing SBA's Office of Advocacy, the Prove It Act (S.2014), the Early Participation in Regulations Act (S.1419), and the Small Business Regulatory Flexibility Improvements Act (S.1120). These measures should help strengthen the effectiveness of SBA's Office of Advocacy.



The Honorable Marco Rubio
Chairman, Committee on Small Business & Entrepreneurship
The Honorable Benjamin L. Cardin
Ranking Member, Committee on Small Business & Entrepreneurship
United States Senate
Washington, DC 20510-6350

RE: Responses to Questions for the Record following hearing on "Reauthorization of the SBA Office of Advocacy"

Dear Chairman Rubio, Ranking Member Cardin and other members of the Committee:

Please find below my responses to the follow-up questions submitted following my participation in the May 22, 2019 hearing, "Reauthorization of the SBA Office of Advocacy."

Thank you for the opportunity to continue the conversation on this important topic.

Sincerely,

John Arensmeyer
Founder & CEO

Questions from Chairman Rubio

QUESTION 1:

Which regulations do you think have been mistaken as burdensome regulations?

Many who oppose regulations characterize virtually all of them as burdensome, but the reality is that most federal regulations do not place a direct burden on small businesses. Indeed, our polling found 4 out of 5 small business owners agree that regulation of business is needed in a modern economy. While small business owners are always interested in reducing their administrative burden, most believe smart regulation can ensure a level playing field, promote transparency and encourage innovation through fair competition.

QUESTION 2:

Are there changes that you recommend for Advocacy's process of reviewing regulatory analyses?

We don't believe there should be any changes. Advocacy should review regulations without a preconceived notion that they are bad or good – but, instead, carefully weighing the true cost of any possible burden against the value/benefit of the regulation.

QUESTION 3:

How has Advocacy been helpful to the Small Business Majority?

We are regularly in touch with Advocacy and it has been helpful. We've previously engaged with Advocacy to discuss congressional priorities and ideas for research we'd like to see the Office conduct. Most recently, we contacted the office about regulatory reform initiatives, SBA's Express Loan program and the Obama administration's overtime rule.

QUESTION 4:

Have you participated in any of Advocacy's roundtables or worked with Advocacy in other ways?

Yes. We participated in Dr. Sargeant's regular roundtables and we find the office's data collection and research to be of great help in our work.

QUESTION 5:

Do you support Mr. Tryon's nomination to be Chief Counsel of the Office of Advocacy?

Yes, we support his nomination for this position.

Questions from Senator Hirono

QUESTION 1:

What concerns do you hear from small businesses in the United States?

Small business owners consistently list accessing affordable healthcare, creating a tax system that is fair to all and access to capital as their top three concerns. Most notably, many entrepreneurs struggle to access responsible capital, particularly women and entrepreneurs of color. For example, SBA loans made to women-owned business between 2008 and 2016 accounted for only 18% of the total number of SBA 7(a) and 504 loans approved even though they represent 40% of all small companies.

QUESTION 2:

How can the SBA's Office of Advocacy do more to support these businesses with those concerns?

The office should take a balanced, non-ideological approach to the actual burden to small businesses of regulations and the cost-benefit thereof.

Additionally, we would like the see Advocacy take a greater role in addressing the impact of predatory lending on small business. Our polling shows that 87% of small business owners support a truth-in-lending act for small business lending to ensure loan rates and terms are disclosed transparently and consistently. The Office of Advocacy can represent small business interests by producing more research on the effects of predatory lending on small business owners.

QUESTION 3:

What concerns do you hear from younger entrepreneurs?

In addition to accessing capital, younger entrepreneurs are concerned about student debt and their ability to save for retirement. Our scientific opinion polling found millennial entrepreneurs say their student debt impacted their ability to start and grow businesses. Additionally, 75 percent of millennials who own, plan to own, or would like to own a business said the lack of access to an employer-sponsored retirement plan is a barrier to entrepreneurship.

QUESTION 4:

In your opinion, should SBA be doing more to support younger entrepreneurs?

Yes. SBA should offer educational programs geared toward younger people who want to start businesses. This should include helping them develop financial plans so they can pay off their student loan debt while also growing their businesses.

QUESTION 5:

Do things like excessive student debt limit these individuals?

Absolutely. Our most recent polling on this issue found 43% of millennials who are still paying off student loans, and who owned or had plans to own a business, said their student debt affects their ability to invest in an organization or hire new employees. Considering our polling found the majority of millennials are or would like to become entrepreneurs, it's important to address this issue.

Questions for Mr. Rick Baumann

Questions from:

Senator Hirono

Recognizing the importance of federal regulations that support local small businesses that rely on our natural resources, like clean water and clean air, to support themselves: Mr. Baumann, as a small business owner and a seafood wholesaler and distributor, you have highlighted the importance of federal regulations that support local small businesses that rely on our natural resources—including regulations that support businesses which depend on clean water.

QUESTION 1:

Can you elaborate on how your business depends on regulations that manage our natural resources?

QUESTION 2:

What kind of impact would it have on your business if these regulations were rolled back?

ANSWER

Much of the recent discussion about regulations has been centered on them being intrusive, overbearing or counterproductive to profitability. From my perspective as a small businessman who relies on environmental quality for the sustainability of my livelihood, that mindset is grossly misguided.

When you take into account that the general public health also is absolutely known to rely on the same level of environmental quality to sustain healthy human life, it is absurd not to have regulations which safeguard both.

Yet there are currently policy changes being considered which would eliminate common sense and science based safeguards for air and water quality. This would benefit only big polluting industries at the expense of small businesses and the general public health.

My industry relies on clean estuaries to provide nursery grounds for the commercial species we feed the world with to begin their life cycles. Many of these estuaries are fed by small creeks and streams which flow from isolated wetlands.

All of these creeks and streams flow to larger bodies of water. But the administration has taken steps to eliminate protections for these isolated wetlands, creeks and streams while continuing protections for the larger bodies of water. So, in other words, the administration believes in protecting the larger bodies of water after the smaller and unprotected waters are allowed to flow polluted water into them. This is a greatly flawed application of public policy.

In my industry, we do have some necessary regulations that make sense. These are typically based on the best available science, or the Precautionary Principle. For example, we have regulations which close various fisheries during spawning season. We have size limits on species of fish and quotas governing how many can be caught. Shrimpers must have Turtle Excluder Devices on their shrimping nets to allow threatened and endangered turtles to pass through them. At times when the endangered Northern Right Whale is present, thousands of square miles of ocean are closed to all commercial fishing activities to protect them.

All of these regulations are in place with the goal of managing a sustainable ocean and its fisheries. Then along comes the government with policies that fly in the face of logic.

For example, a recent NOAA Environmental Impact Statement predicted “disorientation, deafening and death” to hundreds of thousands of marine mammals if seismic blasting was allowed to occur in the Atlantic Ocean. The same document predicted similar circumstances for millions of other ocean creatures – the very same creatures that regulations on the fishing industry are designed to protect.

So, logic, science and precaution would seem to indicate that seismic blasting should not be allowed to proceed. I have personally sat down with the Board at BOEM and made this clear to them – along with the fact that there is unanimous opposition to seismic going forward in the Atlantic from Maine to Miami.

It would seem that the seismic permits which BOEM is considering would have been rejected long ago, with all the facts considered. But they are actually STILL seriously considering approving permits for five different companies that would redundantly blast the ocean, every

few seconds, for many months on end, crisscrossing each other over the same areas and extrapolating the predicted negative effects of the EIS by five.

This is pure lunacy! It seems that a “sustainable ocean” and the Endangered Species Act are both the responsibilities of only the small businesses in the fishing industry – while the filthy and accident prone business of Big Oil gets a free pass on all of it. It is a very large contradiction of reason and logic designed to benefit Big Oil at the expense of all the sacrifice that the fishing industry has demonstrated.

When you add this lack of logic to the aforementioned air and water quality rollbacks, it is clear that big polluting industries, which could and should be retrofitting to green technology, are getting blatant and misguided special treatment by government, while small fishing and seafood businesses (and the general public health) are suffering greatly in their conscientious efforts to both survive – and feed the world with uncontaminated protein.

So it is my opinion that there should be a level playing field concerning regulations. Science based solutions should be promulgated to both eliminate harmful industrial pollutants from our air and water and the sustainability of our oceans should be enforced with an even hand. If small businesses are to work toward sustainability, it is unfair to allow big polluting businesses to disregard that goal – and our efforts in that regard.

What Small Businesses Are Saying and What Advocacy Is Doing About It

Progress Report on the Office of Advocacy's Regional Regulatory Reform Roundtables

June 2017 - September 2018



The Office of Advocacy of the U.S. Small Business Administration was created by Congress in 1976 to be an independent voice for small business within the federal government. The office is led by the Chief Counsel for Advocacy who is appointed by the President and confirmed by the U.S. Senate. The chief counsel advances the views, concerns, and interests of small business before the White House, Congress, federal agencies, federal courts, and state policymakers. The office relies on economic research, policy analyses, and small business outreach to identify issues of small business concern. Regional and national advocates around the country and an office in Washington, D.C., support the chief counsel's efforts.

This report covers the first 16 months of the office's Regional Regulatory Reform Roundtables, from June 2017 through September 2018. To learn more visit the Regulatory Reform webpage at <https://advocacy.sba.gov/regulatory-reform>.

Information about Advocacy's initiatives on behalf of small businesses is accessible via the website; three Listservs (regulatory communications, news, and research); and social media including LinkedIn, Twitter, and Facebook.



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What Small Businesses Are Saying and What Advocacy Is Doing About It

**Progress Report on the Office of Advocacy's Regional
Regulatory Reform Roundtables
June 2017–September 2018**

Office of Advocacy
U.S. Small Business Administration

December 2018



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Foreword

The Office of Advocacy was created by Congress in 1976 to be an independent voice for small business within the federal government. As the federal office responsible for examining the contributions and challenges of small businesses in the U.S. economy, we are constantly looking for answers to small business questions. In 1980, Advocacy's analysis and responsibilities grew to include the potential impact of federal regulations on small business when the Regulatory Flexibility Act (RFA) was passed, requiring federal agencies to consider these impacts. Over the past 46 years Advocacy attorneys have worked within the government—educating regulators, assisting agencies with small business analysis, and recommending alternative ways to reduce the burden of regulation on small business. The office has helped small businesses save billions in regulatory costs and has given small firm owners opportunities to make their voices heard about rules that affect their interests.

In 2017 the new administration brought an increased commitment to regulatory reform and burden reduction. The cornerstone of these efforts are President Trump's Executive Orders 13771 and 13777, which address the private sector's regulatory burden. Advocacy responded by creating the Regional Regulatory Reform Roundtables. This outreach initiative is intended to seek out and listen to small businesses across the country. The roundtable initiative began in June 2017 and is ongoing. This report covers the first part of the initiative through September 2018.

The Regional Regulatory Reform Roundtables are a way of gathering practical input on the success and failure of regulatory compliance requirements. They have two goals:

- To identify regional small business regulatory issues to bring to the attention of rulemaking agencies. This entails gathering firsthand information on small business regulatory burdens across the nation, and identifying specific recommendations for regulatory change to submit to responsible agencies.
- To educate small businesses and stakeholders on the ways that Advocacy can help them meet their goals.

Between June 1, 2017, and September 30, 2018, Advocacy held 33 Regional Regulatory Reform Roundtables in 21 states. While traveling to these events, Advocacy staff also made at least 84 site visits in 22 states. In addition, the office's regional and national advocates held small business forums in 244 cities, and small business owners submitted hundreds of comments through an online portal.

The recurring themes we heard include the following:

- Burdensome and confusing paperwork, red tape, reporting, labeling, and fines;
- Costly fees for the services of consultants, lawyers, and accountants;
- Regulations that run to hundreds of pages, and which require advanced legal and technical background to understand;

- Business owners regularly confronting the uncertainty of knowing whether their company is in compliance with all applicable regulations;
- Others who worry whether the business confidential information they must disclose to regulators will be kept private from competitors; and
- Major rules that are enacted to halt the excesses of large, industry-controlling firms, yet small firms are caught up in their dragnet.

Section 4 of the report outlines the progress that is being made toward reform. Here are a few examples.

- In March 2018, a legislative change allowed for the fishing industry's Onboard Monitoring Program to be fully funded by the National Oceanic and Atmospheric Administration. Previously, small fishing boats were required to pay out of their own pockets to have an onboard observer present on their vessels while at sea.
- The Centers for Medicare and Medicaid Services simplified their reimbursement rules for small rehabilitation facilities and removed a 25 percent penalty after Advocacy communicated stakeholders' concerns to the agency.
- Small businesses expressed frustration because the Environmental Protection Agency's rules use a different definition of "small business" than other federal agencies. In September, EPA published a final rule on fees for chemical businesses; in it, the agency aligned its small business definition with the one used by the Small Business Administration, and the new definition allows more small firms to pay reduced fees for reporting.
- In August 2018, the Federal Communications Commission approved "one touch-make ready" pole attachment policies. This approach simplifies the process for small competitive local carriers to string aerial fiber on existing utility poles. Advocacy had shared its support for these policies with the FCC after hearing from competitive carriers.

This report provides detail about small businesses' regulatory challenges through our firsthand accounts of roundtables and site visits around the country. It outlines the first steps made toward progress in alleviating some of these burdens. The Office of Advocacy looks forward to continuing progress towards regulatory reform for small businesses.

Major L. Clark III
Acting Chief Counsel for Advocacy
December 2018

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Representing Small Business Interests in the Era of Deregulation



The Office of Advocacy is an independent voice for small business within the federal government. The office is the watchdog of the Regulatory Flexibility Act (a statute that requires small entities to be considered in the rulemaking process) and the source of small business statistics. Advocacy speaks on behalf of small businesses to the White House, Congress, federal agencies and courts, and state policymakers. Advocacy's efforts include:

- Representing small entities' interests when federal agencies plan and draft regulations;
- Gathering the views and concerns of small businesses through public meetings and roundtables, conference calls, small meetings, online input, and a network of regional and national advocates;
- Applying its legal and economic expertise to help agencies evaluate their proposed rules' impacts on small entities and to consider alternatives that minimize adverse and disproportionate impacts on them;
- Training federal agency staff, Congressional staff, and private sector thought-leaders on the Regulatory Flexibility Act and on the unique ways that regulations affect small entities compared to their larger competitors; and
- Conducting and sponsoring economic research on small businesses' role in the economy, as well as the effects of government regulation on small businesses.

The Era of Regulatory Reform

In 2017 the Trump administration brought a new commitment to regulatory reform and burden reduction. The cornerstone of this effort are President Trump's

two executive orders addressing the private sector's regulatory burden. Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," was signed on January 30, 2017, with the goal of reducing costs associated with complying with federal regulations. This order bars federal regulatory agencies from issuing a new rule unless they identify two or more rules to be repealed.

Executive Order 13777, "Enforcing the Regulatory Reform Agenda," signed on February 24, 2017, directs agencies to make long-term reform plans. It requires each agency to designate a Regulatory Reform Officer (RRO) to oversee the implementation of regulatory reform at the agency. It also establishes Regulatory Reform Task Forces within each agency. These groups are directed to evaluate existing regulations and make recommendations to the agency head on rules that should be repealed, replaced, or changed, especially those that inhibit job creation or eliminate jobs; are outdated, unnecessary or ineffective; or whose costs exceed their benefits.

Immediately after these executive orders were issued, the Office of Advocacy developed an action plan to

ensure that small businesses are included in regulatory reform. A first step was meeting with local small business trade associations to get their input on Advocacy's most effective mode of involvement. Next, Advocacy sent a memorandum to federal agencies emphasizing the importance of considering small business impacts during regulatory reduction efforts, reiterating the goals of the RFA including section 610,¹ and reminding them of Advocacy's ability to help in this process. This memo was well received, and some agencies directly informed the office of their regulatory reform plans and efforts. Advocacy's memo is reproduced in Appendix C.

Advocacy's next step, and the reason for this report, was the creation of the Regional Regulatory Reform Roundtables. This outreach initiative is intended to seek out and listen to small businesses across the country. The roundtables began in June 2017, and they continue to the present. This report covers the first part of the initiative, from June 2017 to September 2018.

To support the regulatory reform effort, Advocacy dedicated a section of its website to regulatory reform, <https://advocacy.sba.gov/regulatory-reform>. Here, small businesses can register complaints about regulations, track reform progress, and find the schedule of future roundtables.

How Regulations Affect Small Businesses

Regulations affect small businesses differently than their larger counterparts. Evidence indicates that regulatory requirements tend to create disproportionately heavier burdens for small businesses, putting them at a disadvantage relative to their larger competitors. Here are a few of the reasons for this:

- **The cost of regulations is higher relative to available resources.** Federal agencies' analyses consistently reveal that the cost of regulations per employee is higher for businesses with fewer employees. The cost per employee at the smallest businesses is typically one or more times greater than the equivalent cost at the largest businesses.
- **Small businesses have fewer resources for regulatory compliance.** Regulatory compliance often requires new and sizable investments in equipment and upgrades. Small businesses routinely report higher borrowing costs or limited access to the capital needed for such outlays.
- **Regulations designed for large businesses may impose greater costs relative to benefits if applied without change to small businesses.** Small businesses, particularly those with very few employees, operate differently from large businesses. A compliance process, a technological mandate, or regulatory mechanism designed for a 5,000-person company will be more disruptive for a 25-person company and may not achieve the regulatory goals to the same extent. In many cases, the benefits of applying the rule to the small business may not justify the costs imposed on it. In these circumstances, an exemption from the rule or a modification of it is appropriate.
- **Small businesses are very concerned about the cost of red tape.** The relative burden of paperwork and recordkeeping requirements has been shown to be higher for small businesses in other countries, and is likely to be in United States as well.

When devising their regulatory reform plans, it is important that federal agencies consider how small entities are affected. Regulatory reform focused solely on the overall impacts to the economy without considering how those impacts are distributed could disadvantage different groups such as small businesses. Agencies will need to be vigilant that regulatory changes do

¹ Section 610 of the U.S. Code requires federal agencies to review their regulations at the 10-year mark to assess their current impact on small entities [5 U.S.C. Section 610].

"I don't think the people who write regulations actually understand the tremendous difficulties of running a business. We are competing with China and Mexico who don't have these costly regulations. We just can't compete."

—The owner of a small metal plating company.

not impose costs on small businesses, create barriers to startups, or interfere with small businesses' ability to compete in the marketplace.

Advocacy's Plan of Action for Regulatory Reform

The Office of Advocacy has a unique and important role in agencies' regulatory reform efforts. The Regulatory Flexibility Act requires Advocacy to make sure that agencies consider small businesses when they create regulations; and it also requires the office to do so when agencies remove or revise regulations. Advocacy's action plan was developed to help federal agencies accomplish their deregulatory goals, consider the economic impact on small businesses, and reduce these burdens.

Assisting Federal Agencies' Deregulation Efforts. EO 13771 created an opportunity for Advocacy to offer its expertise to the federal agencies to reduce regulatory burdens on small entities. On March 30, 2017, Advocacy sent a memorandum to federal agencies recommending that agencies consider small entity interests in implementing EO 13771 and in subsequent deregulatory actions. (See Appendix C.) The memo also reminded agencies of their obligations under the RFA and of the assistance Advocacy could offer to conduct small entity outreach.

In the past, Advocacy has made regulatory reform recommendations directly to agencies based on a review of rules subject to the requirements of section 610 of the RFA and based on outreach to small entity representatives. In addition, once agencies designated Regulatory Reform Officers and established Regulatory Reform Task Forces under EO 13777, Advocacy offered these recommendations and other assistance and views to agencies, as suggested by EO 13777, section 3(e). Since then, Advocacy has engaged in a longer term effort to make specific recommendations to agencies and the Office of Management and Budget about regulations

or regulatory programs that could be streamlined to lower small entities' compliance costs. In addition to writing public comment letters to voice small business concerns, Advocacy is also working directly with agencies to assist in developing and recommending regulatory changes.

Outreach to Small Entities. Advocacy's Regional Regulatory Reform Roundtables have allowed small businesses around the country to discuss the challenges they face with regulatory implementation and compliance. These meetings explore small entities' suggestions for regulatory streamlining and savings, and participants discuss ways to improve small business participation in agencies' rulemakings. These discussions inform Advocacy's ongoing and future recommendations to the federal agencies tasked with reducing the number of regulations.

"New technologies are transforming our industry and regulations aren't keeping pace. The federal government will mandate things but can't keep up with the regulations and make them clear, plus be able to allow small businesses to grow new technologies."

—The owner of a small information technology company in San Antonio, Texas

2

Listening to Small Businesses: Regional Regulatory Reform Roundtables and Site Visits



Advocacy's Regional Regulatory Reform Roundtables are a means of gathering practical input on small business burdens around the country. The roundtables have two goals:

1. To identify regional small business regulatory issues to assist agencies with their regulatory reform plans (as directed by EOs 13771 and 13777). This entails gathering firsthand information on small business regulatory burdens across the nation, and identifying specific recommendations for regulatory change to submit to agencies.
2. To educate small businesses and stakeholders on the ways that Advocacy can help them meet their goals.

In order to gather information about the unique regulatory problems small entities face across the country and potential solutions, Regional Regulatory Reform Roundtables bring together local small businesses, trade associations, congressional leaders, and federal regulatory agencies to identify regulatory barriers and challenges in each region.

Small businesses located in various states face distinct challenges to development and growth. At roundtables they can discuss their concerns and educate Advocacy on how best to address them. Roundtables allow Advocacy to focus on individual small businesses to identify regulatory barriers to growth and help federal agencies comply with the President's directive to eliminate burdensome regulations.

As a result of the roundtables, Advocacy staff is learning firsthand of the current and most pressing challenges these small entities are facing and what government can do to assist them. While in the area, Advocacy also has been visiting small businesses to discuss logistics, operations, and compliance problems in the places they exist.

What Happens at a Roundtable?

Roundtables are open to the public, and small businesses from a wide area are invited. Members of the press are free to attend and hear small business concerns directly. Advocacy invites federal agency officials from Washington, D.C., and the local area to hear complaints and suggestions firsthand, as well as provide agency perspectives, if they so choose. Congressional represen-

tatives have attended roundtables to hear their constituents' regulatory issues.

Meetings are usually a half day and are organized by industry sector. The most frequently discussed sectors have been:

- Agriculture, aquaculture, and fisheries;
- Construction, manufacturing, and transportation;
- Education and workforce development;
- Energy and chemical;
- Financial services and real estate;
- Food, hospitality, and retail;
- Medical services;
- Procurement; and
- Timber, logging, and mining.

The agendas are arranged by industry category, but small businesses are welcome to speak up whenever they wish, since business owners may not be able to attend an entire meeting. Once a small business identifies a specific federal regulation as a source of trouble, Advocacy staff members ask for suggestions to revise it, as well as for specific economic cost data to document the extent of the burden.

Advocacy's attorneys work on hundreds of regulations, and they have often already worked on the rules that small businesses bring up. In such cases, Advocacy staff can provide status updates and tell participants how they can be most helpful to the regulatory reform process. On the other hand, there are regulations and economic impacts that are new to Advocacy, especially ones concerning specific regions or industries. These are the type of novel and useful stories that help Advocacy inform agencies of effects they may be unaware of.

In rare instances some small businesses do not feel comfortable speaking up during the meeting. In these cases, they either pull Advocacy staff aside during one

of the breaks to tell them of their concerns or they fill out the comment forms that are placed at each seat and can be left at the registration desk upon exit. Either way, Advocacy captures their input on regulations to convey it to federal agencies.

Advocacy has published dozens of articles and blog posts reporting the regulatory compliance issues raised during the roundtables. Advocacy also conveys small business input in meetings with rulemaking officials, letters to federal agency heads and regulatory reform officers, and letters to members Congress. (See Table 6 and Appendix D.)

Where We've Been

Between June 1, 2017, and September 30, 2018, Advocacy held 33 Regional Regulatory Reform Roundtables in 21 states. Locations span rural and urban areas, geographic regions, and a range of industries. The geographical diversity provides an up-close perspective of how a single federal rule can have varying economic impacts on different types of small businesses based upon the practices, economic conditions, and other factors specific to their region.

Figure 1 shows the map of states that have hosted Regional Regulatory Reform Roundtables. Table 1 shows the roundtable dates and locations.

"These regulations are an excessive burden that have no positive impact on safety, and small businesses just can't afford them. These regs just don't make sense for the little guys. It seems as if the small businesses are left away from the table when these decisions are made. Our voice was not being heard."

—A Kansas representative from the Independent Drivers Association discussing the Electronic Logging Device rule

Figure 1. Map of Regional Regulatory Reform Roundtables, June 2017-September 2018



Table 1. Regional Regulatory Reform Roundtables, June 2017-September 2018

Date	Location	Date	Location
6/7/17	Baton Rouge, Louisiana	4/10/18	Atlanta, Georgia
6/8/17	New Orleans, Louisiana	4/30/18	Modesto, California
7/11/17	Boise, Idaho	5/2/18	Sacramento, California
7/13/17	Coeur d'Alene, Idaho	5/3/18	Santa Clarita, California
7/31/17	Lexington, Kentucky	6/5/17	Tampa/Brandon, Florida
8/1/17	Cincinnati, Ohio	6/6/18	Oviedo, Florida
8/2/17	Cadiz, Ohio	6/7/18	Jacksonville, Florida
8/3/17	Cleveland, Ohio	7/18/18	West Des Moines, Iowa
9/12/17	St. Louis, Missouri	7/19/18	Dubuque, Iowa
9/14/17	Kansas City, Kansas	7/19/18	Platteville, Wisconsin
10/16/17	Glen Allen, Virginia	8/7/18	Casper, Wyoming
11/28/17	Manchester, New Hampshire	8/8/18	Fort Collins, Colorado
11/29/17	Boston, Massachusetts	8/9/18	Colorado Springs, Colorado
3/13/18	Detroit, Michigan	9/11/18	Princeton, New Jersey
3/16/18	Milwaukee, Wisconsin	9/12/18	Scranton, Pennsylvania
3/19/18	San Antonio, Texas	9/13/18	Poughkeepsie, New York
3/20/18	Houston, Texas		

Characteristics of Roundtable Locations

Advocacy has long known that regulatory impacts vary by geographic region. Consequently, Advocacy made an outreach plan to focus on all regions of the country and multiple industries. Advocacy has made a concerted effort to visit diverse areas that provide varying perspectives.

The office's attorneys and regulatory economists have worked on thousands of regulations affecting small business over the years. In the process, they have heard directly from small businesses and their representatives about the locations where the small businesses have been hardest hit. To determine Advocacy's roundtable schedule, Advocacy drew from this experience and assessed economic data on small business contributions across geographic areas.

In addition, small business advocates and trade organizations provided valuable input on what their members were saying and what areas were most affected by burdensome regulations.

The availability of Advocacy's team of regional advocates was also important. The regional advocates work out of SBA's district offices, and they assist with meeting setup, local small business input, and publicity. Members of Congress invited Advocacy to hear specifically from small business constituents. (See Appendix E.)

Several roundtables were scheduled in conjunction with Advocacy's information-gathering effort on small business impacts of the North American Free Trade Agreement (NAFTA) modernization. Advocacy received this mandate from the Trade Facilitation and Trade Enforcement Act (TFTEA). The events in Wisconsin, Michigan, and Texas were planned in order to hear concerns about regulatory reform, NAFTA, and international trade.

Small Business Site Visits

To maximize Advocacy's resources, each roundtable trip includes site visits to nearby small businesses to discuss their specific regulatory concerns. These are valuable and informative experiences for Advocacy staff, many of whom have never had the opportunity to visit with those whom they serve. Small business

owners greatly appreciate Advocacy's site visits. They are grateful for the chance to show Advocacy staff how their business functions, as well as the rare opportunity to meet one-on-one and talk through their concerns. Advocacy staff made at least 84 site visits in 22 states between June 2017 and September 2018. The list of businesses and locations appears in Table 2.

Advocacy encourages the small business hosting the site visit to invite their peers, and staff learns from others facing similar regulatory burdens. These small personal meetings are an important way to collect more detailed information to help in the regulatory reform effort.

Locally Organized Regulatory Input Sessions

In conjunction with the Regional Regulatory Reform Roundtables, Advocacy's regulatory reform team often traveled to other cities and states near the roundtables to attend locally organized regulatory input sessions. These input sessions were organized by local chambers of commerce, trade associations, and small businesses. Dozens of small businesses who were unable to make it to the roundtables would attend these sessions and provide additional input to Advocacy's regulatory reform team on their experiences as small businesses with federal regulations.

The input Advocacy received at these roundtables was valuable and allowed the Regulatory Reform team to hear from small businesses, states, and industries that would not have been able to voice their concerns to Advocacy.

Advocacy's attorneys, economists, and regional advocates included these sessions on their itineraries while traveling to roundtable locations. These locally organized events took place in Spokane, Washington; Omaha, Nebraska; Galena, Illinois; Council Bluffs, Iowa; Atlanta, Georgia; and other locales.

Table 2. Advocacy's Small Business Site Visits, June 2017-September 2018

State	City	Business Visited	State	City	Business Visited
California	Berkeley	Lawrence Berkeley National Lab	Kentucky	Lexington	Barrel House Distillery
	Clovis	Valley Chrome Plating Inc.		Lexington	Salters Alliance Farm
	Goleta	Seek Thermal		Newport	BB Riverboats
	Lodi	Valley Iron Works	Louisiana	Baton Rouge	Tin Roof Brewing Company
	Los Angeles	Los Angeles Cleantech Incubator		New Orleans	Blaine Kern's Mardi Gras World
	Modesto	Sciabica's Olive Oil		New Orleans	WeChem
	Sacramento	Pucci Pharmacy	Massachusetts	Gloucester	Mass. Fishermen's Partnership
	Salida	Flory Industries	Michigan	Detroit	Architectural Salvage Warehouse
	Stockton	Ross Roberts Truck Repair, Inc.		Detroit	RBV Contracting
	Valencia	King Henry's		Farmington Hills	Vicount Industries
	Westley	Great Pacific Nut Company		Plymouth	E&E Manufacturing
Colorado	Buena Vista	Elk Mountain Ranch	Missouri	Saint Louis	Chocolate, Chocolate, Chocolate
	Colorado Springs	Bristol Brewing Co. / Ivywild School	New Hampshire	Manchester	Red Arrow Diner
	Florissant	Florissant Fossil Beds Natl Monument	New Jersey	Budd Lake	KB Ingredients
	Fort Collins	Rocky Mountain Adventures		Chester	Alstede Farms
Florida	Cedar Key	Aquaculture Visit at FWC Senator Kirkpatrick Marine Lab		Edison	Argent Associates
	Geneva	Yarborough Ranches	New York	Brooklyn	Red Hook Winery
	Jacksonville	Florida Roads Contracting		Goshen	Pawleski Farms/Farmroot
	Jacksonville	Signature Land		Poughkeepsie	Service Master by NEST
	Lutz	B3 Medical		Wappinger Falls	Honey Bee Childcare
	Orlando	Global Enterprises	Ohio	Brecksville	Caruso's Coffee
	Oviedo	Black Hammock Adventures		Lebanon	FECOM Inc.
	Oviedo	Citizens Bank of Florida		Solon	Chagrin Valley Soap & Salve
	St. Augustine	St. Augustine Distillery		Willoughby	Metrose Farms Community
	Tampa	81 Bay Brewing Company		Willoughby	ProBuilt Homes
	Tampa	In the News	Pennsylvania	Dickson City	Red Line Towing
	Tampa	J.C. Newman Cigar Company		Dunmore	Road Scholar Transportation
	Tampa	PBX Change		Philadelphia	DiBruno Bros
	Tampa	Tabanero Cigars		Philadelphia	Geno's Steaks
	Tampa	Urban E Recycling		Philadelphia	Pat's King of Steaks
	Thonotosassa	Ameriscape Services			

Continued on next page.

Table 2. Advocacy's Small Business Site Visits, June 2017-September 2018

State	City	Business Visited	State	City	Business Visited
Georgia	Atlanta	Angel's Paradise Learning Academy	Texas	Galveston	Ocean Star Offshore Energy Museum
	Cumming	Grub Burger		Houston	Axistrade
	Marietta	Sigma Thermal		Houston	Everest Valve Company
Idaho	Boise	City Peanut Shop		Houston	Original Ninfá's on Navigation
	Boise	True Lock Manufacturing		Nixon	Mesquite Field Farm
	Hayden	Coeur Greens	Virginia	Chester	VHI Transport
Iowa	Cedar Rapids	Great Clips	Washington	Spokane	Wemco
	Cedar Rapids	Lion Bridge Brewing Company		Spokane	Zak Designs
	Council Bluffs	Rasmussen Mechanical Services	Wisconsin	Milwaukee	Lakefront Brewery
	Manning	Puck Custom Enterprises, Inc.		Sheboygan	Wigwam Mills
	West Des Moines	Focus OneSource	Wyoming	Casper	Mammoth Networks
Kansas	Kansas City	Watco Companies Kaw River Railroad		Laramie	Trihydro
	Lenexa	Lightbulbs, Etc.			

"The paperwork burden is astronomical when trying to run our business and comply with these regulations. Every step is duplicative. We redo the same process time and time again....The process takes too long and we give the same information to the federal government over and over.....This is an expensive and time consuming process."

—A small New Hampshire apple farmer upset about the State Department's visa rules and the accompanying paperwork burden

Additional Outreach: Online Comments and Small Business Forums

Advocacy has dedicated other resources to the regulatory reform effort as well: the online comment portal and the small business forums.

Online Comment Form

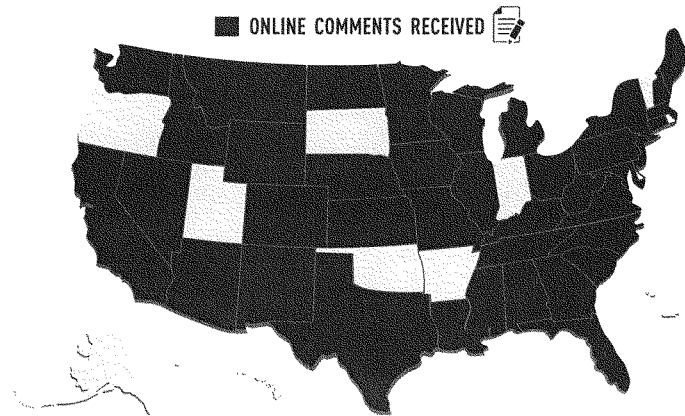
Advocacy posted an online comment form on its website for input by individuals who cannot attend a roundtable or who want to provide additional detail. Individuals in 39 states and the District of Columbia have submitted over 250 comments. Each issue is assigned to the assistant chief counsel who specializes in the area. Advocacy follows up directly with federal agencies to bring these issues to the fore and help solve regulatory problems. The map in Figure 2 shows the states from which online comments were received. The input form is online at <https://advocacy.sba.gov>.

Small Business Forums

The Office of Advocacy currently employs 10 regional and national advocates who are placed throughout the United States. Eight regional advocates serve the small business communities in their respective federal regions, and the two national advocates reach out to key segments of the U.S. small business economy such as rural businesses and manufacturing.

This team of advocates assists the regulatory reform effort by hosting small business forums to discuss the impact of federal regulations on small businesses in their respective regions and industry areas. The qualifying benchmark for these gatherings is for the advocate to have five or more small business stakeholders in attendance. At the conclusion of fiscal year 2018, over 3,000 small business stakeholders attended the 664 small business forums which the advocates hosted in 244 cities in 39 states and territories.

Figure 2. Online Input Received From These States, June 2017-September 2018



These small business forums provided valuable insight into small businesses federal regulatory challenges and help supplement the information gathered through the Regional Regulatory Reform Roundtables and online

input. The cities where these small business forums took place are listed in the shaded box.

Small Business Forum Locations, June 2017-September 2018

Wasilla, AK	Chamblee, GA	Metairie, LA	Chester, NJ	Astoria, OR	Ocean Shores, WA
Anchorage, AK	Pine View, GA	Covington, LA	Morristown, NJ	Tillamook, OR	Redmond, WA
Juneau, AK	Sioux City, IA	New Roads, LA	Madison, NJ	Newport, OR	Mountlake Terrace, WA
Fairbanks, AK	Des Moines, IA	Ascension Parish, LA	Edison, NJ	Bend, OR	Kent, WA
Mobile, AL	Grinnell, IA	Houma, LA	Phillipsburg, NJ	Lincoln City, OR	Preston, WA
Montgomery, AL	Meridian, ID	Frederick, MD	Somerville, NJ	Klamath Falls, OR	Issaquah, WA
Huntsville, AL	Boise, ID	Lansing, MI	Bridgewater, NJ	Philadelphia, PA	Mount Vernon, WA
Birmingham, AL	Chicago, IL	Midland, MI	Blackwood, NJ	Harrisburg, PA	Sumner, WA
Cabot, AR	Aurora, IL	Grand Rapids, MI	Paramus, NJ	Friendsville, PA	Gig Harbor, WA
Little Rock, AR	Springfield, IL	Detroit, MI	Lake Hiawatha, NJ	Dunmore, PA	Orting, WA
Fayetteville, AR	South Bend, IN	Minneapolis, MN	Toms River, NJ	Bethlehem, PA	Puyallup, WA
Scottsdale, AZ	Fort Wayne, IN	St. Paul, MN	Lake Hopcong, NJ	Taylor, PA	Mill Creek, WA
Prescott Valley, AZ	Greenwood, IN	Medonta Heights, MN	Mt Laurel, NJ	Allentown, PA	Bellingham, WA
Glendale, AZ	Indianapolis, IN	Golden Valley, MN	New Brunswick, NJ	York, PA	Lynnwood, WA
Chandler, AZ	Wichita, KS	Edina, MN	Las Cruces, NM	Waverly, PA	Tacoma, WA
Peoria, AZ	Overland Park, KS	Burnsville, MN	Santa Fe, NM	McKees Rocks, PA	Spokane Valley, WA
Sedona, AZ	Topeka, KS	West St. Paul, MN	Albuquerque, NM	Johnstown, PA	Spokane, WA
Fountain Hills, AZ	Lawrence, KS	Brooklyn Park, MN	Las Vegas, NV	Scranton, PA	Monroe, WA
Phoenix, AZ	Olathe, KS	Kansas City, MO	New York, NY	San Juan, PR	Snohomish, WA
Tempe, AZ	Fairway, KS	Jefferson City, MO	Rome, NY	Myrtle Beach, SC	Mukilteo, WA
Goodyear, AZ	Leawood, KS	St. Louis, MO	Syracuse, NY	Chattanooga, TN	Bellevue, WA
Tucson, AZ	Elizabethtown, KY	St. Charles, MO	Utica, NY	Houston, TX	Ballard, WA
Fullerton, CA	Paducah, KY	Clayton, MO	Columbus, OH	Austin, TX	Marysville, WA
Santa Ana, CA	Hopkinsville, KY	Hattiesburg, MS	Dayton, OH	Beaumont, TX	Tulalip, WA
Sacramento, CA	Bowling Green, KY	Jackson, MS	Cincinnati, OH	Port Arthur, TX	Milwaukee, WI
Citrus Heights, CA	Shelbyville, KY	Grenada, MS	Westerville, OH	El Paso, TX	Warrens, WI
Washington, DC	Baton Rouge, LA	Greensboro, NC	Troy, OH	The Woodlands, TX	Lyndon Station, WI
Dahlonega, GA	Chattahoochee, LA	Wilmington, NC	Portsmouth, OH	Lubbock, TX	Richland Center, WI
Norcross, GA	Alexandria, LA	Raleigh, NC	Cleveland, OH	Laredo, TX	Eau Claire, WI
Brunswick, GA	Watson, LA	Kannapolis, NC	Perrysburg, OH	San Antonio, TX	Rothschild, WI
Savannah, GA	Addis, LA	Jamestown, ND	Archbold, OH	St. Thomas, USVI	Superior, WI
Suwanee, GA	Morgan City, LA	Hankinson, ND	Steubenville, OH	Richmond, VA	Trego, WI
Duluth, GA	Lafayette, LA	Fargo, ND	Tulsa, OK	Everett, WA	Wisconsin Dells, WI
East Point, GA	New Orleans, LA	Omaha, NE	Oklahoma City, OK	Woodinville, WA	Ripon, WI
Sandy Springs, GA	Zachary, LA	Hackettstown, NJ	Norman, OK	Arlington, WA	Baraboo, WI
Berkley Lake, GA	Central, LA	Florham Park, NJ	McMinville, OR	Seattle, WA	Green Bay, WI
Liburn, GA	Luling, LA	Atlantic City, NJ	Tigard, OR	Kirkland, WA	Waukesha, WI
Lawrenceville, GA	Port Allen, LA	Lincroft, NJ	Canby, OR	Olympia, WA	New Glarus, WI
Peachtree Corners, GA	Leesville, LA	Morris, NJ	Lake Oswego, OR	Shoreline, WA	Wausau, WI
Warner Robbins, GA	Walker, LA	Parsippany, NJ	Portland, OR	Bothell, WA	
Atlanta, GA	Lake Charles, LA	Randolph, NJ	Coos Bay, OR	Renton, WA	

3

What We Heard: Small Businesses' Experience with Regulation



In Advocacy's face-to-face meetings with small businesses across the country, they told us stories that exemplify how federal regulations drain small businesses' resources, energy, and even their desire to stay in business. The following examples and the quotations in comment boxes throughout the report highlight the main recurring themes we heard.

Overlapping and conflicting regulations between agencies is an issue that comes up at almost every roundtable. In Baton Rouge, La., the owner of a **small chemical company** expressed frustration that many federal rules are confusing and complicated, and therefore extremely difficult and costly to comply with. He told Advocacy that smaller businesses do not have the same resources as large businesses to be able to interpret how to comply with requirements. While state and local offices provide some assistance to help businesses sort through their regulatory requirements, at the federal level no such clarity and assistance exists, he complained.

Another example of small business regulatory burden is the costly rules associated with the implementation of the Affordable Care Act (ACA) and health care costs in general. A **small hotel operator** in St. Louis, Mo., told Advocacy that not all small businesses can afford health insurance for their employees, particularly because they do not have the option of joining an association to lower health care costs. Additionally, he said that the ACA causes problems in finding skilled labor. He felt that larger businesses can provide better benefits at lower cost, while offering the same wages. Small businesses are unable to compete and lose skilled

employees to their larger counterparts. He suggested small businesses be given the opportunity to purchase insurance across states to help drive down costs.

The vice president of a **small vocational college** in Shreveport, La., said he has seen the cost of educating students nearly triple since 2010 because of the Department of Education's program integrity and gainful employment regulations. Complying with these rules has meant costs for hiring attorneys, accountants, and professional auditors. To handle the paperwork requirements, his school has had to invest almost a hundred thousand dollars in new technology and student management software. The school offers training programs in such high-demand fields as HVAC, medical assistance, electronics, and technology. He said that nearly all of their graduates are hired immediately, and employers say that they can't produce enough skilled graduates fast enough to fill their job openings.

A **small ice cream company** in Cleveland, Ohio, told Advocacy that Food and Drug Administration regulations enforcing the Food Safety Management Act (FSMA) have caused her an exponential increase in paperwork and costs. Specifically, she is concerned that the rules will require her to re-label dozens of products

and redo all associated packaging, adding significant costs and negatively affecting her business.

A Cincinnati, Ohio, **riverboat operator** who serves patrons meals during lunch and dinner cruises on the Ohio River told Advocacy that new FDA regulations have classified his business as a food manufacturer rather than a restaurant because meals are prepared in a central kitchen. This change makes him subject to the new FSMA food safety rules. He has had to hire additional employees to dedicate their time solely to complying with these regulations. He feels this is another example of federal regulations that are overly broad and not targeted to the problem they are meant to fix; as a result, innocent businesses are captured in the overreaching net of federal regulation.

At the San Antonio roundtable a **small farmer** said that FSMA regulations do not adequately account for different types and sizes of small businesses. She felt that these regulations create a disincentive for small farms that actually prevents them from increasing sales; this hampers small farms like hers, as well as the development of the local food system as an economic generator.

Another focus of small business complaints has been the Department of Labor's Overtime Rule, particularly the "white collar exemption." Advocacy is hearing that the threshold for this regulation was set too high, making it extremely costly and burdensome. While many small operators believe there should be an increase in pay for their workers, any mandatory increase should be less drastic. A **small human resources company** in Boise, Idaho, indicated that the rule does not recognize the very real problem small businesses face of retention and recruitment of employees. She explained that focusing only on salary negates other incentives and puts their organization at a disadvantage compared to large companies that can offer employees more money.

In Manchester, N.H., a **small apple farmer** also complained about the Department of Labor's Overtime Rule. He stated that a higher threshold didn't make sense for his operation and would be extremely costly to those small farms barely hanging on. Under the Fair Labor Standards Act, agricultural workers are normally exempt from receiving overtime. However, if these

workers move from the agricultural area to the retail operations at a farm, they would be entitled to overtime. The inflexibility of the current FLSA regulation limits the ability to use able workers for different aspects of his business.

A **small financial services company** in Cincinnati, Ohio, complained that the Department of Labor's Fiduciary Rule will put him and many other small broker-dealers out of business. They consider the rule to be the biggest change to the financial advisor sector in many years, and as such, they feel that more care should have been taken determining the rule's potential impact on small operators. He told Advocacy that the rule creates a barrier in the advisor-client relationship, and that small businesses who need investment advice are unable to get it.

Small businesses also expressed concern over the Consumer Financial Protection Bureau's impending Payday Lending Rule. A **small lender** in New Orleans believes the rule will make small businesses fail rather than protect consumers. He believes the result of the regulation will be to reduce the availability of storefront loans, particularly in rural and underserved markets. He complained about the lack of analysis of these markets as required by the Dodd-Frank Act.

Maritime small businesses are burdened by the cost of the Transportation Security Administration's Transportation Worker Identification Credential (TWIC) Card Rule. A **small tour boat company** in Ohio told Advocacy that while big businesses can absorb the cost, small businesses must pay for the card to find employees at the wages they can offer. He also complained that there is no system to determine whether TWIC cards are real or counterfeit. Small businesses want a system in place that can verify the cards to justify the cost of obtaining them.

Small businesses in the transportation industry nationwide have strong feelings about compliance with the Federal Motor Carrier Safety Administration's rule requiring electronic logging devices (or ELDs). A **small farmer** in Kansas City, Kan., complained that small farms cannot afford the new devices and its costly requirements. Large commercial carriers have the financial resources to implement the devices, but independent drivers do not. This is a common concern heard

by small businesses that need to transport their goods. His biggest complaint is that the ELD regulation is inflexible and does not allow for wait time. He believes this oversight will increase the shortage of commercial drivers, which is a big concern for his industry.

A small **manufacturer of road signs** in Glen Allen, Va., told Advocacy that the Federal Highway Administration (FHWA) regulations change too frequently, costing his industry millions of dollars in testing all of the products that his company produces. Adding to this frustration, after receiving letters of acceptance from FHWA for a product, his company received a reprieve to grandfather the original product under the previous, less onerous regulation. FHWA subsequently changed the rule and reversed its opinion, requiring him to perform costly retesting of his entire product line despite no evidence of injuries or fatalities due to his products.

The Food and Drug Administration's Tobacco Deeming rule is a big concern to small cigar manufacturers and store operators. The rule extends FDA's authority to electronic cigarettes, cigars, and pipe tobacco. These products are now subject to the federal prohibition on sales to minors, the federal prohibition on free sampling, federal warning label requirements, and the requirement that tobacco manufacturers register with the FDA and seek the agency's review of new tobacco products. At the roundtable in Tampa, Fla., the **owner of a cigar store** in Ybor City told Advocacy that despite the fact that his store does not have any youth customers, the costly impacts of this rule on small businesses will wipe out half of his industry.

An **owner of golf courses** in Jacksonville, Fla., was concerned about the lack of available labor for his business combined with the limits that the State Department has put on the H-2B visa program. Because of the state's warmer climate, he explained that Florida businesses have a different seasonal timeframe and a different need for workers than those in the northern states. He also complained about the lengthy application process, which makes it difficult for small businesses to estimate and plan during their busiest times.

In Dubuque, Iowa, a small business owner in the **camping industry** complained about Federal Emergency Management Agency regulations that are having a negative impact on his business. Every year he has to

purchase flood insurance for his 17 campgrounds even though there are no permanent structures on the land. The regulations were intended to protect structures when there is a flood. However, his business operates differently. When the bad weather and heavy rains come, the campers and motor homes leave and drive to higher ground or return home. Flooding is not an issue. Nevertheless, he must pay \$2,700 per year in flood insurance that is not needed. He feels this is a clear example of government overregulation that does not make common sense.

The owner of a small **human resources services company** in Poughkeepsie, N.Y., described the tremendous paperwork burden of OSHA's Electronic Reporting rule. The mechanics of figuring out how to comply with these complicated regulations is very burdensome. This reporting load is compounded by the many regulations promulgated by the Office of Federal Compliance Programs at the Department of Labor. She described compliance as "a monumental task," forcing small business owners decide whether to spend a considerable amount of money to hire professional assistance or risk being out of compliance.

The owner of a small **drone services company** in Princeton, N.J., has had to turn down thousands of dollars worth of work because of the long wait times associated with the Federal Aviation Administration's (FAA) approval process contained in its new regulations on drones.

These are some of the real life consequences of federal regulations promulgated without the full consideration of their impact on small businesses. The stories are numerous and the effects on businesses across the country are varied. But the message is clear: small businesses are not against regulation; rather they want certainty, clarity, and regulations that make sense for the real world in which they operate.

Roundtable Reports—Follow-Up Articles and Blogs

Advocacy staff documents the issues that small businesses share, and they are published as news items on the office's website. Advocacy has published dozens of these reports on the complexities and frustrations that small businesses grapple with in regulatory compliance. Table 3 contains a list of articles about the roundtables and links to them. Table 4 lists articles and blogs on dozens of site visits. These contain great detail about regulatory impediments in the real-life operation of small businesses. Both sets of articles illustrate small businesses' ongoing struggles with federal regulatory compliance.

Table 3. What We Heard: Small Business Roundtable Recaps

Date	Location	Title and Link
6/7/17 6/8/17	Baton Rouge, LA New Orleans, LA	Louisiana Small Biz Proclaims, "Federal Regulations are Stifling Business!"*
		Businesses on the Bayou are Burdened by Regulations and Paperwork
		A Baton Rouge Regional Regulatory Roundtable Roundup
		New Orleans Roundtable Hits on Common Themes
		Advocacy Holds Regulatory Roundtable in New Orleans
		Idaho and Washington Small Businesses Speak Out against Burdensome Regulations*
7/11/17	Boise, ID	Advocacy Hosts Regional Regulatory Reform Roundtable in Boise, Idaho
7/12/17	Spokane, WA	Region's Major Industries Have Their Voices Heard at Roundtables
7/13/17	Coeur d'Alene, ID	Regulatory Roundtables get to the Coeur of the Matter
		"One-Size-Fits-All Doesn't Fit!"—Small Businesses in Kentucky and Ohio Talk to Advocacy*
7/31/17	Lexington, KY	Lexington, Kentucky Welcomes Advocacy to the (Round) Table
8/1/17	Cincinnati, OH	From Riverboats to Land Surveys, Wide Range of Issues Highlight Cincinnati Roundtable
8/2/17	Cadiz, OH	Site Visit: Small Businesses in Oil and Gas Sector Voice Challenges to Regulatory Compliance
8/3/17	Cleveland, OH	Advocacy Rolls Along with Hearing Regulatory Concerns in Cleveland
		"We're Being Set Up to Fail!" Small Businesses in Missouri and Kansas Are Frustrated by "Too Much Regulation"*
9/12/17	St. Louis, MO	Wide Range of Issues Highlighted at Advocacy's Regional Regulatory Roundtable in St. Louis
9/14/17	Kansas City, KS	Labor and Transportation Issues Highlighted at Kansas Roundtable
10/16/17	Glen Allen, VA	"Regulations Are So Out of Control!": Virginia Small Business Owners Speak Out
		Small Businesses in Virginia Urge Agencies to Pursue Sensible Regulations
11/28/17	Manchester, NH	"How Did This Happen in This Country? Small Businesses Are "Overregulated and Treated So Poorly!": Small Businesses in New Hampshire and Massachusetts Speak Up*
11/29/17	Gloucester, MA	Granite State Solidifies their Small Business Concerns at Advocacy Roundtable
11/29/17	Boston, MA	Advocacy's Boston Roundtable Brings Multiple Sectors to the Table

*Indicates summary article of roundtables in the region. All articles are posted on Advocacy's website, <https://advocacy.sba.gov>.

Table 3 continued. What We Heard: Small Business Roundtable Recaps

Date	Location	Title and Link
3/13/18	Detroit, MI	<u>"Regulations Are Unfair and Deceptive!"*</u>
3/16/18	Milwaukee, WI	<u>Detroit Small Business Owners Want the Fed's to be Less of a Speed Bump</u>
		<u>Advocacy Gets a Taste of the Regulatory Problems of Wisconsin Small Businesses</u>
3/19/18	San Antonio, TX	<u>"Stop the Madness and Fix the Mess!": Texas Small Businesses Plead for Regulatory Relief*</u>
3/20/18	Houston, TX	<u>Federal Procurement, NAFTA, and Agricultural Issues Highlight San Antonio Roundtable</u>
4/10/18	Atlanta, GA	<u>Georgia Gets Grubby at Area Roundtable Discussion*</u>
4/30/18	Modesto, CA	<u>The Golden State Shines a Light On Regulatory Issues: "We Are So Overregulated!"*</u>
5/2/18	Sacramento, CA	<u>County Seat Modesto Puts Advocacy in Regulatory Hot Seat</u>
5/3/18	Santa Clarita, CA	
6/5/18	Tampa, FL	<u>Advocacy Travels To Tampa To Hear From Small Businesses</u>
6/6/18	Orlando, FL	<u>Overregulation Hurts Orlando Small Businesses</u>
6/7/18	Jacksonville, FL	<u>Federal Regulations Discussion Has Small Business Jumping Off the Rails</u>
		<u>Can't the Feds and the State Work Together?</u>
		<u>Clouds of Regulations Hover Over the Sunshine State: Small Businesses in Florida Talk To Advocacy*</u>
		<u>Small Business Are Not Bluffing About Burdensome Regulations in Iowa</u>
7/17/18	Council Bluffs, IA	<u>"We Can't Operate in a Constant State of Regulatory Uncertainty!" Small Business Owners in the Mid-</u>
7/18/18	Des Moines, IA	<u>west Urge Advocacy For Help*</u>
7/19/18	Dubuque, IA	<u>Small Business in Des Moines Face a Cornucopia of Burdensome Regulations</u>
		<u>Small Businesses From Three States Join Advocacy in Dubuque</u>
		<u>Small Businesses in Wyoming and Colorado Hopeful To Find Regulatory Relief*</u>
8/7/18	Casper, WY	<u>Wyoming Small Businesses Ride The Federal Regulatory Rodeo</u>
8/8/18	Fort Collins, CO	<u>Broad Range of Issues Highlight Fort Collins Roundtable</u>
8/9/18	Colorado Springs, CO	<u>Colorado Springs Roundtable Highlights a Wide Range of Regulatory Issues</u>
		<u>"Regulations Are An Impediment To Everything We Are Trying To Do!" Small Businesses in Pennsylvania,</u>
		<u>New York and New Jersey Ask For Relief*</u>
9/11/18	Princeton, NJ	<u>Wide Range Of Regulatory Issues Highlight New Jersey Roundtable</u>
9/12/18	Scranton, PA	<u>Advocacy Hears From Small Businesses In Scranton, PA</u>
9/13/18	Poughkeepsie, NY	<u>Advocacy Hears From Poughkeepsie Small Businesses</u>

*Indicates summary article of roundtables in the region. All articles are posted on Advocacy's website, <https://advocacy.sba.gov>.

Site Visit Input and Follow Up

Table 4 contains a list of the blogs and articles that Advocacy staff members wrote as follow-ups to small business site visits. They describe the unique businesses and their owners, as well as their discussions of regulatory issues and obstacles.

Table 4. What We Heard: Small Business Site Visit Recaps

Date of Visit	Location	Company	Title and Link
6/7/17	Maurice, LA	Dale Martin Offshore	Louisiana Towing Vessel Operator Unhappy With New Coast Guard Regulations
6/7/17	Shreveport, LA	Ayers Career College	Education Issues Heard At Baton Rouge Regional Regulatory Roundtable
6/7/17	Baton Rouge, LA	Tin Roof Brewing Company	Advocacy Staff Tours Tin Roof Brewing Company in Baton Rouge
6/8/17	New Orleans, LA	Blaine Kern's Mardi Gras World	Advocacy Visits Mardi Gras World: the Small Business Spreads 'Carnival' to the Rest of the World
6/9/17	New Orleans, LA	WeChem	Advocacy Tours Small Chemical Manufacturing and Distribution Plant in New Orleans
6/9/17	Port Fouchon, LA	Greater Lafourche Port Commission	Port Fouchon—A Service Port For Domestic Deep Water Oil and Gas
7/11/17	Boise, ID	City Peanut Shop	Advocacy Goes Nuts For City Peanut Shop
7/11/17	Meridian, ID	Big D Ranch	Small Farm Brings Big Business For Idaho's Treasure Valley
7/12/17	Spokane, WA	Zak Designs	Advocacy Has A Colorful Conversation With Zak! Designs
7/12/17	Spokane, WA	Wemco	Wemco 'Manufactures Productivity'
7/14/17	Colville, WA	Vaagen Brothers Lumber	Saw Mill Complains of Feds Lumbering Around
7/31/17	Newport, KY	BB Riverboats	BB Riverboats Owner Steamed About Federal Regulations
7/31/17	Lexington, KY	Salter's Alliance Farm	Farm Owner Jockeys For Regulatory Relief
8/1/17	Lebanon, OH	FECON Inc.	Advocacy Meets With Mulching Manufacturer
8/4/17	Solon, OH	Chagrin Valley Soap & Salve	Small Business Feeling Chagrin At Potential Product Rules
8/4/17	Willoughby, OH	ProBuilt Homes	Advocacy Builds Engagement With Home Developer
8/4/17	Brecksville, OH	Caruso's Coffee	Cool Beans: Advocacy Visits Small Coffee Roaster in Northeast Ohio
9/12/17	St. Louis, MO	Chocolate, Chocolate, Chocolate	Advocacy Hears Small Business Concerns At Chocolate, Chocolate, Chocolate
9/14/17	Kansas City, MO	Watco Companies Kaw River Railroad	Short Line Railroad Warns of "Death By A Thousand Cuts" Caused By Federal Regulations Tailored Only To Bigger Rail Companies
9/14/17	Lenexa, KS	Lightbulbs, Etc.	Advocacy Receives A Warm Welcome At Light Bulbs Etc.
10/16/17	Chester, VA	VHI Transport	Advocacy Visits Small Transportation Company Following Virginia Roundtable
11/28/17	Manchester, NH	Red Arrow Diner	Order Up! Advocacy Visits Red Arrow Diner To Discuss Its Regulatory Challenges

Note: Articles are posted on Advocacy's website, <https://advocacy.sba.gov>.

Continued on next page.

Table 4 continued. What We Heard: Small Business Site Visit Recaps

Date of Visit	Location	Company	Title and Link
11/29/17	Gloucester, MA	Massachusetts Fishermen's Partnership	Advocacy Discusses Regulatory Challenges Facing Fishermen During Visit With the Massachusetts Fishermen's Partnership
3/13/18	Plymouth, MI	E&E Manufacturing Company	Family Business Puts the Pedal To the Metal On Reducing Regulations
3/13/18	Detroit, MI	RBV Contracting	RBV Contracting Digs Detroit
3/13/18	Detroit, MI	Architectural Salvage Warehouse of Detroit	Architectural Salvage Warehouse Preserves the History of Detroit
3/13/18	Farmington Hills, MI	Vicount Industries	Michigan Company Shapes Constructive Criticism For NAFTA Revision
3/15/18	Sheboygan, WI	Wigwam Mills	Wigwam Knocks the Socks Off Its Competitors in Unraveling Apparel Industry
3/15/18	Waterloo, WI	Crave Brothers Farm; Crave Brothers Farmstead Cheese Factory	Wisconsin Dairy Farmers Concerned With NAFTA Re-Negotiations
3/15/18	Watertown, WI	Rosy-Lane Holsteins LLC	Wisconsin Dairy Farmers Concerned With NAFTA Re-Negotiations
3/16/18	Milwaukee, WI	Lakefront Brewery	Let the Beer Flow: A Milwaukeean Brewer's Story of Domestic and International Growth
3/19/18	Houston, TX	Everest Valve Company; Axistrade (2 companies)	Houston Has A Regulatory Problem That Advocacy Aims To Solve
3/19/18	Galveston, TX	Ocean Star Offshore Energy museum; Gulf Copper	Museum Brings Offshore Oil Industry Concerns Ashore
3/19/18	Houston, TX	The Original Ninja's on Navigation	Small Business Brings Sizzling Regulatory Concerns To the Table
3/19/18	San Antonio, TX	Concord Supply	Advocacy Staff Learns About Role of NAFTA During Visit With Owners of Concord Supply
3/22/18	Austin, TX	Gold Rush Vinyl	Plant Spins Regulatory Concerns Round and Round With Advocacy
4/10/18	Marietta, GA	Sigma Thermal	Georgia Small Businesses Partner With Advocacy To Hold Hot Roundtable
4/30/18	Westley, CA	Great Pacific Nut Company	Advocacy Learns About Walnut Grower and Processor in California
4/30/18	Salida, CA	Flory Industries	Some Federal Regulations Are Just Plain Nutty
5/1/18	Stockton, CA	Ross Roberts Truck Repair, Inc.	SBA Loans Give Entrepreneurs A Hand Up
5/3/18	Valencia, CA	King Henry's	Advocacy Takes A Bite Out of Snack Company's Regulatory Concerns
5/4/18	Santa Barbara, CA	Seek Thermal	Southern California Small Business Owners Are Hot About Senseless Regulations
6/5/18	Tampa, FL	In the News	Florida Small Business Makes Headlines With Their Plaque Company
6/5/18	Tampa, FL	Urban E Recycling	Tampa Recycler Turns Old Electronics Into Precious Materials
6/5/18	Tampa, FL	81Bay Brewing Co.	Ale in A Day's Work

Note: Articles are are posted on Advocacy's website, <https://advocacy.sba.gov>.

Continued on next page.

Table 4 continued. What We Heard: Small Business Site Visit Recaps

Date of Visit	Location	Company	Title and Link
6/5/18	Thonotusassa, FL	Ameriscape Services	Advocacy Visits Small Landscaping Company in Tampa Bay Area
6/5/18	Lutz, FL	B3 Medical	B3 Medical--Federal Regulations Give Health Clinic A Headache
6/6/18	Oviedo, FL	Black Hammock Adventures	Central Florida Small Business Owner Chomps Down On Excessive EPA Rules
6/6/18	Orlando, FL	Citizens Bank of Florida	Citizens Bank of Florida Believes Others Have Competitive Advantage
6/6/18	Seminole County, FL	Yarborough Ranches	Planting Skilled Labor Troublesome For Family Farm
6/8/18	Cedar Key, FL	Aquaculture visit at FWC Senator Kirkpatrick Marine Lab	Small Business Hatches Ideas To Ease Its Industry's Regulatory Burdens
7/17/18	Council Bluffs, IA	Rasmussen Mechanical Svcs	Small Mechanical Services Company in Council Bluffs, Iowa
7/17/18	West Des Moines, IA	Focus OneSource	Iowa Company Focusing On Helping Small Businesses Comply With Regulations
7/17/18	Manning, IA	Puck Custom Enterprises, Inc.	Puck Enterprises in Iowa
7/18/18	Cedar Rapids, IA	Great Clips	Great Clips! Entrepreneur Franchisee Provides Career Opportunities For Stylists
7/18/18	Cedar Rapids, IA	Lion Bridge Brewing Company	Tax Reform Passed By Congress Gives Small Brewery High "Hops"
8/6/18	Gillette, WY	Mammoth Networks	Mammoth Networks
8/7/18	Laramie, WY	Trihydro	Environmental and Engineering Firm in Laramie, WY
8/7/18	Fort Collins, CO	Rocky Mountain Adventures	Rocky Mountain Adventure in Colorado
8/8/18	Buena Vista, CO	Elk Mountain Ranch	Elk Mountain Ranch in Colorado
8/9/18	Colorado Springs, CO	Bristol Brewing Company	Bristol Brewing Co. in Colorado
8/9/18	Florissant, CO	Florissant Fossil Beds National Monument	Florissant Fossil Beds National Monument
9-10-18	Philadelphia, PA	Di Bruno Bros. House of Cheese	Di Bruno Bros. House Of Cheese In Pennsylvania
9-10-18	Philadelphia, PA	Pat's King of Steaks, Geno's Steaks	Cheesesteak Warriors Team Up To Fight Burdensome Regulations
9-11-18	Budd Lake, NJ	KB Ingredients	The Sweet Smell Of Success – Smells Like Pumpkin Pie At KB Ingredients
9-11-18	Edison, NJ	Argent Associates	Argent Controls
9-12-18	Dunmore, PA	Road Scholar Transport	Road Scholar Transport: Safety And Security The Key Concerns
9-12-18	Dickson City, PA	Red Line Towing, Inc.	Advocacy Discusses Red Tape At Red Line Towing, Inc.
9-13-18	Wappinger Falls, NY	Honey Bee Child Care	Nanny State: New York Daycare Service Perseveres Despite State Level Regulations And Taxation
9-13-18	Goshen, NY	Pawelski Farms	A Farmer's Growing Appreciation For Tax Cuts
9-13-18	Poughkeepsie, NY	ServiceMaster Restore by NEST	Starting A New Business Takes A Community Effort
9-14-18	Brooklyn, NY	Red Hook Winery	In The Shadow Of Lady Liberty

Note: Articles are posted on Advocacy's website, <https://advocacy.sba.gov>.

Regulations Most Frequently Cited by Small Businesses

Table 5 is a list of federal regulations that small businesses at roundtables complained about most often. Several dozen regulations are listed, although this is not an exhaustive list.

Table 5. What Small Businesses Told Us: Regulations in Need of Reform

Agency	Regulation Identified by Small Businesses
Affordable Care Act rules (various agencies)	Various ACA Rules and the Cost of Health Care. Many ACA regulations are costly and burdensome for small entities. Businesses complain that they can't afford costly health insurance for their employees. The voluminous paperwork associated with these rules is a costly burden as well.
Federal Procurement (various agencies)	Federal Procurement Rules and Procedures. Small businesses stagger under the weight and complexity of the federal procurement process, despite programs intended to encourage their participation. Various problematic rules are listed in this table and Appendix G. But procurement practices and process are also costly impediments to small businesses' participating in the federal marketplace for goods and services.
CFPB	Mortgage Servicing. Small mortgage companies and title companies say this rule has changed the culture of their business. They now operate in fear of being fined by the CFPB for even minor violations. Small businesses say the rule increases the cost for consumers, and the complexity and paperwork required to do a financial transaction is staggering.
CFPB	Payday Lending. The costs to comply with this rule may force small lenders to close, and rural areas without abundant capital options might be hit the hardest. Payday lenders, small banks, credit unions, vehicle title lenders and online lenders have said that this rule will have a negative impact on the revenue stream of their business if their customers no longer qualify for loans, resulting in many having to close their business.
DCAA/FAR	The Defense Contract Audit Agency's accounting requirements make it very difficult for small suppliers to be reimbursed. The federal procurement accounting requirements do not distinguish between a very large contract and a small contract, hence the same amount of information is required for a small contract. There needs to be a simpler requirement for small contractors to go through the process.
DOC/NOAA	Data Used to Determine Fishing Allocations. These allocations cause an undue financial burden on small boat fishermen by setting overly conservative groundfish allocations based on incomplete data. Small commercial fishermen have said they spend much of their time avoiding the fish so as not to exceed their catch limit.
DOC/NOAA	Payment for Onboard Observers Program. Fishermen have had to pay up to \$700 for the cost of an observer on their small boat plus travel costs, which frequently can exceed the value of the catch on the voyage. This regulatory burden is financially devastating for small boat ground fishermen throughout coastal New England.
DOD/GSA/FAR	A small business defense contractor expressed concerns with the cost of compliance with the over-reaching Department of Defense cybersecurity regulation.
DOI USDA Forest Service SBA	Harvest Sales on Federal Lands/Timber Set-aside Rule. Small timber mills are being bought out or going out of business due to a lack of timber available to small businesses and the predatory nature of large corporations in the bidding process. They also complain that the federal government takes so long to permit logging after a fire, that such salvage timber becomes unusable. Salvage timber is most often harvested by small businesses. Small businesses want a specific set-aside program for small business, they want agencies to explore stewardship options, and they have presented possible alternatives to consider.
DOI/FWS	Endangered Species Act Rules. Impacts on small business are not being considered when the agency is designating the critical habitat, even though these impacts can be devastating.

Note: Appendix G contains the formal titles and citations of regulations mentioned in this report.

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Table 5 continued. What Small Businesses Told Us: Regulations in Need of Reform

Agency	Regulation Identified by Small Businesses
DOJ	Title III of the ADA as applied to Passenger Vessels. Small U.S. flagged passenger vessel operators have said that they have difficulty understanding and complying with existing regulations implementing the Americans with Disabilities Act. Small businesses are concerned as to how the DOJ might apply Access Board Guidelines to passenger vessels, which are almost exclusively small businesses.
DOL	Fiduciary Rule. Small broker dealers say the rule is the biggest change to the financial advisor sector in a long time and that it will potentially put them out of business. The rule requires them to reassess their business models for servicing retirement accounts and to potentially restructure their businesses.
DOL/DHS	H-1B Visas. The H-1B visa program allows U.S. companies to hire foreign workers in fields such as science, engineering, and information technology. Small businesses are very concerned that H-1B visas will become harder to get. They are hoping these types of visas will still be available as these rules are revised.
DOL/DHS	H-2B Visas. Small businesses state that there are not enough H-2B visas to provide foreign workers for jobs that are currently going unfilled. They do not want this program to be taken away, rather they want more of these visas for non-agricultural workers.
DOL	Minimum Wage. Small businesses have stated that the compliance costs of this rule will have disproportionate impacts on them. Many are concerned that these increases will make them much less competitive in their industries, making the rule overly burdensome.
DOL	"White Collar" Exemption from Overtime Rule. In May 2016, the Department of Labor finalized changes to the overtime rule; that rule was permanently enjoined by the federal courts in November 2016. Small businesses say that the threshold limits established in the rule need to be more realistic. Many stated that it has forced them to decide which employees they could pay more and which ones they would have to lay off. They also say the rule was difficult to understand, and that who is exempt and who is not was confusing.
DOL/OSHA	Telecommunication Towers. Small businesses that construct or maintain telecommunications towers or install and maintain equipment on them want OSHA to adopt an industry consensus standard for this work. However, they fear that OSHA will go further and enact burdensome regulations.
DOL/OSHA	Confined Spaces in Construction. Homebuilders are concerned that the rule applies to areas of residential construction that don't pose significant risks, like crawl spaces and attics. They believe that the residential construction industry should have been exempted from the rule.
DOL/OSHA	Crystalline Silica. Small foundries and those in the construction industry stated that the lower permissible exposure limit is not feasible, and as a result, the rule is too costly.
DOL/OSHA	Fall Protection for Residential Construction. Small residential home builders would like OSHA to provide flexibility to its six-foot fall protection standard in residential construction in circumstances where complying with the standard would create a greater risk. They believe the current rule is unnecessarily stringent and lacks flexibility.
DOL/OSHA	Process Safety Management. Small businesses are concerned that the agency will move forward with requiring unnecessary independent third-party audits and other burdensome provisions. They are also concerned that OSHA will apply the rule to chemicals that don't pose significant safety risks.
DOL/OSHA	Workplace Safety—Electronic Recordkeeping and Reporting. Many small businesses complain that the rules result in a paperwork burden that requires a full-time employee to keep up with the reams of required paperwork.
DOT/FAA	Drones—Small Unmanned Aircraft System (UAS). Small businesses state that the current rule requiring operators to keep the aircraft within visual lines-of-sight and fly no higher than 400 feet are too restrictive. These rules prohibit using drones for beneficial purposes, such as inspecting facilities.

Note: Appendix G contains the formal titles and citations of regulations mentioned in this report.

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Table 5 continued. What Small Businesses Told Us: Regulations in Need of Reform

Agency	Regulation Identified by Small Businesses
DOT/FMCSA	Electronic Logging Devices (ELDs). Many small businesses struggle to afford the purchase of ELDs. They believe this rule is an excessive burden that has no positive impact on safety. They prefer paper logs which are reliable and less expensive. The rule doesn't make sense for small truckers and doesn't recognize interruptions of driving, such as wait times.
DOT/FMCSA	Hours of Service. Many small businesses say the rule needs more flexibility or needs to be removed. Small trucking companies describe scenarios in which the rule increases risk instead of reducing it.
EPA	Hard Rock Mining. This rule would have increased costly requirements on hard rock mine operations. Mine owners believe the rule as proposed was based on an inadequate study and would have had devastating effects on the mining industry.
EPA	Lead Renovation, Repair Program (LRRP). Small home builders say this rule has imposed hundreds of millions of dollars in costs for building renovations including recordkeeping and reporting.
EPA	Nonhazardous Secondary Materials (NHSM). Small manufacturers say the requirement of handling hazardous wastes in incinerators instead of boilers will be more costly.
EPA	EPA Oil and Gas Production; New Source Performance Requirements. EPA has established requirements on small oil and gas well and distribution facilities that reduce emissions of volatile organic compounds and methane. The agency is exploring alternatives that would exempt small production sites from some costly requirements and lower the frequency of leak monitoring for well and distribution sites.
EPA	Pesticides; Agricultural Worker Protection Standards. Small businesses, pesticide applicators, and handlers expressed concerns with the rule's minimum age requirement stating that it will reduce the workforce in some states, particularly on small farms. They also expressed concern with EPA's designated representative requirement, explaining that the rule lacks a verification method for the designated representative and does not provide any restrictions on how the information will be used. Small businesses are also concerned about how the rule would enforce the requirement for employers to keep workers and other persons out of areas defined as application exclusion zones.
EPA	Stormwater Permits—Multi-Sector General Permit. The one-size-fits-all approach does not work for small businesses. Construction companies take issue with the mandatory online reporting of pollution plans, which would end up with stale data and result in additional unnecessary fines.
EPA	Toxics Release Inventory. Chemical distributors and petroleum wholesale distributors should be exempted from this costly and unnecessary reporting requirement. Twenty years of reporting has shown minimal releases to the environment.
EPA, CORPS	Definition of Waters of the United States (WOTUS). In 2015, EPA finalized a new definition of WOTUS. Later that year, the rule was stayed by the federal courts. Small businesses stated that the rule was too broad and would have been costly and burdensome to comply with. Small businesses want the definition of "navigable waters" to be reviewed. The rule is now being redeveloped by EPA.
EPA	Wood Heaters. Small businesses that manufacture wood heaters say they will have to lay off employees as a result of this rule and that new efficient heaters do not need to be regulated. They also complain that the rule won't allow them to sell out of their existing inventory or retrofit older heaters.
GSA	Small business owners feel that the System for Award Management (SAM) contains unnecessary requirements for information that is not related to their businesses.
GSA/FAR	The Federal Acquisition Regulation Subpart 19.5 (Set-Asides for Small Business) excludes small businesses that are not connected to the Small Business Innovation Research and Development program (SBIR) from certain types of research and development contracting opportunities.

Note: Appendix G contains the formal titles and citations of regulations mentioned in this report.

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Table 5 continued. What Small Businesses Told Us: Regulations in Need of Reform

Agency	Regulation Identified by Small Businesses
HHS/FDA	Food Safety Regulations, FSMA. This rule will result in an unnecessary increase in paperwork and more burden for small food manufacturers and suppliers. Small manufacturers say it will have a drastic impact on their packaging, processing, and labeling requirements, adding unnecessary delays.
HHS/FDA	Tobacco Deeming Rule. Under an act of Congress intended to rein in big tobacco companies, FDA promulgated a rule that deemed premium cigars and electronic nicotine delivery systems to be the equivalent of cigarettes. Small tobacco companies, retailers, and electronic cigarette manufacturers feel that the rule is overly broad and burdensome; it creates barriers to prevent product development and threatens small businesses with failure, all in an effort to control a problem that these small businesses neither caused nor contributed to.
SBA	Business Certification Process. Small businesses identified a need for a unified certification process for women-owned small businesses (WOSB), businesses located in HUBZones, small disadvantaged businesses (SDB), and service-disabled veteran contractors
SEC	Conflict Minerals. This rule imposes significant costs to small manufacturers when trying to determine whether products in their supply chains contain conflict minerals (minerals or derivatives whose sale helps finance wars in the Democratic Republic of the Congo or an adjoining country).
SEC	Regulation D. This regulation against general solicitation and advertising prohibits security issuers and startups from pitching investment opportunities to those who are not accredited investors, potentially preventing small businesses from access to important sources of capital.
TREASURY/ IRS	IRS Form 1099-C, Cancellation of Debt. The IRS requires small auto dealers who self-finance automobile loans for customers to issue Form 1099-C to borrowers who are late on their payments. These auto dealers say this rule should not apply to them. They feel that it creates unnecessary and burdensome documentation requirements, does not make sense for this industry, and is an unwelcome shock to the customer.

Note: Appendix G contains the formal titles and citations of regulations mentioned in this report.

Agency Abbreviations

CFPB	Consumer Financial Protection Bureau	FCC	Federal Communications Commission
CORPS	U.S. Army Corps of Engineers	FDA	Food and Drug Administration
DCAA	Defense Contract Audit Agency	FMCSA	Federal Motor Carrier Safety Administration
DHS	Department of Homeland Security	FWS	Fish and Wildlife Service
DOC	Department of Commerce	GSA	General Services Administration
DOD	Department of Defense	HHS	Department of Health and Human Services
DOI	Department of Interior	IRS	Internal Revenue Service
DOJ	Department of Justice	NOAA	National Oceanic and Atmospheric Administration
DOL	Department of Labor	OSHA	Occupational Safety and Health Administration
DOT	Department of Transportation	SBA	Small Business Administration
EPA	Environmental Protection Agency	SEC	Securities and Exchange Commission
FAA	Federal Aviation Administration	TREASURY	Department of Treasury
FAR	Federal Acquisition Regulation		

4



Advocacy's Action Plan: Follow-Up with Federal Agencies and Progress Reports

The Office of Advocacy was created by Congress in 1976 as an independent voice for small business within the federal government. When Executive Orders 13771 and 13777 launched the era of federal emphasis on deregulation, Advocacy set out with renewed purpose to communicate small businesses' priorities for regulatory reform.

Advocacy's extensive national outreach has produced detailed complaints about the excessive costs and difficulties of small business compliance with numerous federal rules. Advocacy has acted on this information in a concerted fashion: communicating with the head of each agency head and their regulatory reform officer, and conveying information in numerous ways to each agency's rule writing officials. Through one-

on-one phone calls and meetings, teleconferences, webinars, and small business meetings, Advocacy's attorneys are diligently pursuing needed reforms. This engagement process has begun to yield results.

This section presents Advocacy's follow-up efforts with federal agencies, as well as instances of regulatory reform progress made so far.

"What we want is for the government to get out of the way. Let us do our thing and produce. The cumbersome involvement of the government in our business does more harm than good."

—A small steel parts manufacturer in Michigan

Formal Communications With Federal Agencies on Behalf of Small Business

Soon after the Regional Regulatory Reform Roundtables began, Advocacy started providing feedback to the federal agencies responsible for the rules with the highest number of complaints. In 15 letters to the heads of regulatory agencies, Advocacy enumerated the small business concerns and suggested fixes for specific rules.

In fall 2018, Advocacy sent 11 additional follow-up letters. All of these letters are publicly available on Advocacy's regulatory reform website, <http://advocacy.sba.gov/regulation/regulatory-reform>. Table 6 contains a list of these 26 letters. A sample of one of these letters is also reproduced in Appendix D.

Table 6. Formal Letters to Agency Heads and Regulatory Reform Officers

Agency and Link	Date	Issues Raised
2017		
Department of Agriculture	10/2/17	Delays in Forest Service issuance of permits for timber salvage. About 20 duplicative and outdated rules dealing with poultry handling and other topics
Department of Education	10/3/17	Difficulty complying with gainful employment regulation, regional wage variations, and schools' limited control over the data used to calculate compliance.
Department Energy	9/28/17	Energy efficiency standards and the Energy Star program.
Environmental Protection Agency	9/29/17	Chemical regulations; lead paint rule; land disposal and management regulations; Toxic Release Inventory, issues with the Clean Air Act and Clean Water Act, waters of the U.S. rule.
Federal Communications Commission	9/25/17	Barriers to rural broadband deployment.
Department of Health and Human Services	10/3/17	Affordable Care Act, Food Safety Modernization Act, and food labeling rules. Includes specific reform requests for Centers for Medicare and Medicaid Services and the Food and Drug Administration.
Department of Homeland Security	10/4/17	Deferred Action for Childhood Arrivals, Form I-9 Employment Verification process, H-2A and H-2B Visa programs, and the International Entrepreneur Rule. Issues with various Coast Guard safety and security plan rules.
Department of Housing and Urban Development	10/4/17	HUD's 2016 rules concerning criminal background checks.
Department of the Interior	9/29/17	Designation of critical habitats, Endangered and Threatened Species Act compensatory mitigation policy and litigation, and habitat conservation plans. Federal coal leasing issues.
Department of Justice	10/4/17	Title III of the Americans with Disabilities Act regarding public accommodations; Title III of the ADA as applied to passenger vessels.
Department of Labor	10/4/17	Fiduciary rule, H-2A and H-2B Visa Programs, federal paid sick leave for government contractors, OSHA electronic recordkeeping and reporting, Examinations of Working Places in Metal and Nonmetal Mines rule, and issues under the Fair Labor Standards Act.
Small Business Administration	10/23/17	System for Award Management, eligibility of HUBZone status to accommodate a partial overseas workforce, and single certification process for women-owned small business, HUBZone businesses, small disadvantaged businesses, and service-disabled veteran contractors.

Note: Letters are posted on Advocacy's website, <https://advocacy.sba.gov>.

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Table 6 continued. Formal Letters to Agency Heads and Regulatory Reform Officers

Agency and Link	Date	Issues Raised
<u>Department of State</u>	10/4/17	Intercountry adoptions and recent executive orders targeting the Summer Work Travel Program and Exchange Visitor Programs.
<u>Department of Transportation</u>	10/12/17	Design and production approvals from the Federal Aviation Administration; Compliance, Safety, Accountability and Safety Measurement System; and Electronic Logging Devices. Conflicting and confusing Federal Railroad Administration rules.
<u>Department of the Treasury</u>	9/28/17	Exempting small private companies from the penalties and requirements associated with deferred compensation arrangements under Internal Revenue Code section 409A; simplifying tax and inventory accounting rules; accounting for the small business impact when implementing legislative changes arising from tax reform; and revising the Basel III rules related to capital requirements on bank lending.
2018		
<u>Federal Communications Commission</u>	8/1/18	Definitions and regulations under the Telecommunications Consumer Protection Act, streamlining regulation to reduce barriers to infrastructure deployment, promoting investment in the 3550-3700 MHz band, and USTelecom Petition for Forbearance under 47 U.S.C § 160(c).
<u>Department of Energy</u>	10/17/18	Energy efficiency standards; Energy Star programming; Federal Energy Regulatory Commission oversight and proposed rule on distributed energy resources; energy efficiency process rule.
<u>Small Business Administration and Department of Agriculture</u>	10/17/18	Taking action on the Small Business Timber Set-Aside Program; finalizing the set-aside portion of the rule to provide a high enough volume of available timber to help small businesses stay in business.
<u>Department of the Treasury</u>	10/12/18	Contradictory Form 1099-C instructions; the disclosure of preparer information for Form 5500; repeal of duplicative and burdensome Treasury regulation § 1.401(a)-5(b), the "Top 25" rule; update instructions to Form 5330 clarifying that the late deposit of 403(b) plan deferrals is not subject to an excise tax; expanding self-correction options for participant loan failures in the IRS Employee Plans Compliance Resolution System (EPCRS).
<u>Environmental Protection Agency</u>	10/17/18	Multiple federal agency rules for handling regulated chemical substances, consistent small business definition for all federal agencies, hazardous waste regulations applicable to airbags.
<u>Department of Education</u>	10/18/18	Progress on the Gainful Employment regulation. Regarding the agency's proposed rulemaking on Institutional Accountability/Borrower Defenses to Repayment, Advocacy recommends that the agency publish a supplemental certification with a valid factual basis showing no significant impact on small entities, or else publish an initial regulatory flexibility analysis.
<u>Department of the Interior</u>	10/30/18	Endangered Species Act reform, National Park Service commercial use authorization fees, candidate conservation agreements, National Park Service and Bureau of Land Management permits, Bureau of Land Management mineral trespass, and Fish and Wildlife Service habitat conservation plans.
<u>Department of Agriculture</u>	11/07/18	National Organics Program: concerns with requirements for personal care products; fraudulent labeling of imported goods and liability connected to them. High costs of the electronic animal ID program for small entities. Changes needed to modernize crop insurance program.

Note: Letters are posted on Advocacy's website, <https://advocacy.sba.gov>.

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Table 6 continued. Formal Letters to Agency Heads and Regulatory Reform Officers

Agency and Link	Date	Issues Raised
<u>Department of Labor</u>	11/16/18	Nineteen issues of concern; four areas of improvement. Concerns include fiduciary rule; electronic ERISA notices; H-2A, H-2B visa programs; federal contracting issues (minimum wage, affirmative action, hospital reimbursements); communication tower safety; electronic recordkeeping and reporting; silica and beryllium rules; OSHA inspections and enforcement; mine inspections; overtime rule; companion care rule; tipping rule. Improvements include exemption for recreational companies on federal lands, definition of independent contractor and joint employment; rescinded part of the persuader rule.
<u>Department of Homeland Security</u>	11/16/18	Shortages, high costs, and slow processing times of H-1B visas (science, engineering and IT workers); H-2A visas (temporary agricultural workers); and H-2B visas (temporary non-agricultural workers). Coast Guard vessel safety and security plans are designed for large complex operations and impose outside burdens on small entities.
<u>Department of Justice</u>	11/16/18	Title III of the ADA. Small businesses and municipalities feel that rules for accessibility of public accommodations and websites are vague, and they have been targets of litigation on these issues. Owners of small passenger vessels feel that accessibility regulations may conflict with Coast Guard-mandated safety features, especially for older vessels.

Note: Letters are posted on Advocacy's website, <https://advocacy.sba.gov>.

Staff Level Regulatory Reform Follow-Up

In addition to these letters, Advocacy's regulatory staff continue to have meetings, conference calls, and detailed discussions with federal regulatory officials. Advocacy presents small business feedback from the various roundtables and works with the agencies on potential solutions and burden reductions as their Regulatory Reform Task Forces are making decisions. These contacts help Advocacy amplify the voice of the small businesses who have participated in Regional Regulatory Reform activities.

Small Business Regulatory Progress Reports

In the 16 months since Advocacy launched its nationwide regulatory reform effort, there have already been developments that have resulted in burden reduction and cost savings for small businesses. The following section describes some examples of progress toward reform. These include improvements on rules discussed during Advocacy's current regulatory reform efforts, as well as progress on rules that small businesses had brought to Advocacy's attention previously.¹

¹ Please note that these descriptions were current as of November 2018. Appendix G contains the formal names of regulations and citations.

1. Consumer Financial Protection Bureau— Home Mortgage Disclosure Act

The Consumer Financial Protection Bureau's Home Mortgage Disclosure Act rule requires small businesses to collect a significant amount of data. Small lenders have told Advocacy that the number of data points that need to be collected make the rule burdensome. Advocacy met with CFPB to discuss the issue and submitted a letter detailing the small business concerns.

On September 13, 2017, the CFPB issued a temporary amendment to the rule. It exempts financial institutions that originate between 100 and 499 open-end lines of credit in either of the two preceding calendar years from the requirement to collect, report, and disclose data on open-end lines of credit. The exemption lasts until June 30, 2020.

2. Consumer Financial Protection Bureau— Payday, Title, and Certain High-Cost Installment Loans

Small businesses have complained to Advocacy that the Consumer Financial Protection Bureau's Payday Lending Rule restricts how small dollar lenders can lend money and that it will force them out of business. Advocacy was very active in this rulemaking. Advocacy participated in the agency's small business review panel

preceding the rulemaking. Advocacy later submitted comments asking the agency to consider the potential effects of the regulation on small entities. In January 2018, the CFPB announced that it would reconsider the rulemaking.

3. Department of Commerce/National Oceanic and Atmospheric Administration—
Magnuson National Standard Number 2

Magnuson National Standard Number 2 states that “Conservation and management measures shall be based upon the best scientific information available.” The fishing industry is concerned that there are flaws in the science that the agency uses to regulate the industry. Fishermen attending Advocacy’s roundtable expressed these concerns. Advocacy contacted the Department of Commerce about the issue and obtained an explanation for the industry.

4. Department of Commerce/ National Oceanic and Atmospheric Administration—
Payment for Onboard Monitors for the Fishing Industry

This rule requires fishers to have an onboard observer when they are at sea. In the past, the federal government paid for the observers. In recent years, the fishers were required to pay for the observers. Small fishing operations, especially in New England, have told Advocacy about their concerns with this regulation. In March 2018, a legislative change allowed for the onboard monitoring program to be fully funded by the National Oceanic and Atmospheric Administration, relieving small businesses of this cost.

5. Department of Health and Human Services/Centers for Medicare and Medicaid Services—
ICD-9-CM Compliant Codes for Inpatient Rehabilitation Facilities; 60 Percent Rule

The Centers for Medicare and Medicaid Services is transitioning from ICD-9 Medicare billing codes to ICD-10. The agency believes this will result in much greater specificity and clinical information, improved ability to measure health care services, and decreased need to include supporting documentation with claims. Attendees at Advocacy’s regional roundtables, and stakeholders that submitted written regulatory

reform comments to Advocacy, requested that CMS restore certain ICD-9 codes because some codes were inadvertently eliminated during the transition to ICD-10. This has resulted in payment penalties for late-patient assessment submissions.

Advocacy has been following this issue for years. In fact the office filed a public comment letter on November 3, 2003, when CMS published the 75 percent rule affecting inpatient rehabilitation facilities, asking that CMS reduce the regulatory burden associated with the use of reimbursement codes. Recently, Advocacy communicated the stakeholders’ ICD-9 regulatory reform suggestions to CMS. In the 2018 inpatient rehabilitation facility prospective payment system rule, CMS reversed certain ICD-10 diagnosis codes and removed a 25 percent payment penalty for late-patient assessment submissions. These changes provide the relief requested by the stakeholders in this situation.

6. Department of Interior/Bureau of Land Management—
Hydraulic Fracturing Regulations

On March 26, 2015, the Bureau of Land Management published a final rule entitled, “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands.” The rule established new requirements for operator planning, drilling plans, surface use plans, enhanced record keeping requirements, and operational requirements.

Manufacturers and builders complained that states have long been the primary regulators of hydraulic fracturing and should remain in that role. They were concerned that federal regulations could harm any potential gains resulting from increased exploration of shale oil and gas. They believed that where there is a perceived deficiency in any one state’s regulatory mechanisms, the federal government should work with the state to fill in the gap rather than imposing one-size-fits-all federal rules on states where no deficiency exists.

On December 29, 2017, BLM published a final rule rescinding the 2015 BLM rule. This final rule effectively eliminates the burden described by stakeholders and provides for consistency and clarity on the state-federal issue.

**7. Department of Interior/Fish and Wildlife Service—
Mitigation Policy**

On November 21, 2016, the Fish and Wildlife Service published an update to its Mitigation Policy, which guides its recommendations on mitigating the adverse impacts of land and water developments on fish, wildlife, plants, and their habitats. The 2016 policy set a goal of net benefit for natural resources, or at a minimum, no net loss. The agency stated that it would apply a landscape-scale approach to mitigation that was to serve as an umbrella policy under which the agency could issue more detailed guidance directing various activities in the future.

Small entities stated that the new policy would increase costs and limit their ability to start, expand, and operate their businesses due to costly permitting and new mitigation requirements. They stated that the guidance added more confusion, and that the agency should instead withdraw it in favor of guidance that clarifies specific guidelines for conservation plans, streamlines the process, and does away with the untenable goal of no-net-loss for natural resources.

In response to various executive orders on November 6, 2017, the agency requested public comment on this and other mitigation policies. Advocacy held a webinar with the agency to encourage specific small business feedback on December 12, 2017. After reviewing the public comments, the agency announced on July 30, 2018, that it would be withdrawing this policy, thus restoring previous agency guidance and removing the untenable goals for small businesses.

**8. Department of Interior/Fish and Wildlife Service—
Endangered and Threatened Wildlife and Plants;
Endangered Species Act Compensatory Mitigation Policy**

On December 27, 2016, the Fish and Wildlife Service published a policy on compensatory mitigation under the Endangered Species Act. The policy was a shift from the project-by-project basis that the industry was used to, to a “landscape scale” approach to implementing mitigation. The rule covered permittee-responsible mitigation, conservation banking, in-lieu fee programs, and other third-party mitigation mechanisms. It also stressed the need to hold all compensatory mitigation mechanisms to equivalent and effective

standards. Furthermore, the agency shifted to a goal of net-benefits and/or no-net-loss for natural resources.

Small entities stated the rule made it much more difficult to start, expand, and otherwise operate their businesses due to costly mitigation requirements, and furthermore that it made the policy confusing, and inconsistent with other mitigation standards.

In response to various executive orders, the agency requested public comment on this and other mitigation policies on November 6, 2017. Advocacy held a webinar with the agency to encourage specific small business feedback on December 12, 2017. After reviewing the public comments, the agency announced on July 30, 2018 that it would be withdrawing this policy, thus restoring previous agency guidance and removing the untenable goals for small businesses.

**9. Department of Interior—
Moratorium on Leasing of Federal Coal**

In January 2016, the Department of Interior announced a moratorium on the leasing of coal on federal lands while it considered updates to the federal government’s coal leasing process. The moratorium prohibited leasing on federal lands by small power plants, industries that service coal plants, small utility companies and municipalities, and those manufacturing plants that rely on coal to power their facilities.

On March 29, 2017, the moratorium was revoked by DOI’s Secretarial Order number 3338. This increased the potential for small businesses to enter the market and allowed those already in the market to remain competitive.

**10. Department of Interior—
Consolidated Federal Oil & Gas and Federal & Indian Coal
Valuation**

In July 2016, the Department of Interior published a final rule allowing its Office of Natural Resource Revenue to change a payer’s calculations of value and deductions, and establishing inappropriate limits on deductions, including elimination of significant deduction for subsea transportation of product. This valuation structure was burdensome on small coal plants, gas plants, and the industries that service them. Small

entities felt that it established inappropriate limits on deductions. The final rule was repealed on August 7, 2017, reducing costs and regulatory burdens for small businesses.

**11. Department of Labor—
Companion Care Rule**

In 2015, the Department of Labor changed the companion-care services exemption to minimum wage and overtime requirements under the Fair Labor Standards Act, limiting the use of this exemption to those employed by the family or household using those services. Under this rule, home care agencies providing these services were required to pay minimum wage and overtime to their workers. Small businesses across the country told Advocacy that these changes would devastate their businesses, and reported business losses in general hourly services. The rule made it almost impossible for small home care companies to provide live-in care.

In 2018, Advocacy facilitated meetings between DOL and small business representatives from the Private Care Association and the National Association for Home Care and Hospice. These organizations sought to repeal the 2015 final regulations. In addition, the Private Care Association asked DOL to provide guidance stating that registries are not employers under FLSA and subject to these requirements. (These registries are companies that facilitate matches between clients and caregivers.) On July 13, 2018, DOL issued Field Assistance Bulletin No. 2018-4, which reaffirmed DOL's position that registries are typically not employers under the FLSA. This document provided specific examples of common registry business practices that may establish the existence of an employment relationship under the FLSA.

**12. Department of Labor—
Definition of Independent Contractor**

In 2015, the Department of Labor issued a guidance document narrowing the definition of an independent contractor and expanding the number of employees subject to the Fair Labor Standards Act's requirements, including overtime. Small businesses expressed concern with this guidance document, stating it was costly and burdensome. Advocacy communicated these

concerns to DOL in meetings on regulatory reform. On June 7, 2017, DOL withdrew this guidance document.

**13. Department of Labor—
Definition of Joint Employer**

In 2016, the Department of Labor issued an Administrator's Interpretation, which established an expanded definition of joint employment between two companies who determine the working conditions of employees under the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Small businesses expressed concern with the interpretation, as it classified many more businesses as joint employers who were subject to enforcement actions on overtime and other FLSA requirements. Advocacy communicated these concerns to DOL in meetings on regulatory reform. On June 7, 2017, DOL withdrew this guidance document.

**14. Department of Labor—
Minimum Wage for Federal Contractors**

The minimum wage for federal contractors and sub-contractors was raised to \$10.10 per hour as a result of Executive Order 13658 and a rule issued by the Department of Labor. The rule also affected individuals with federal contracts in connection to leases on federal property, lands, and military installations, including restaurants, retail enterprises, and outdoor recreational companies. Advocacy wrote a comment letter on the rule when it was proposed. In 2018, small businesses in the outdoor recreation industry expressed concern with this rule, which required them to pay higher wages and overtime to workers who often lead weeklong backpacking trips in national parks. Advocacy set up a meeting with DOL and stakeholders in the outdoor recreation industry to discuss possible regulatory reforms. On May 25, 2018, the Trump Administration issued Executive Order 13838, which created an exemption to the wage requirements for recreational services on federal lands. The exempted seasonal recreational services include river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps. On September 26, 2018, DOL released a final rule implementing the E.O.

**15. Dep't of Labor/Occupational Safety and Health Admin—
Electronic Recordkeeping and Reporting of Workplace
Injuries and Illnesses**

On May 12, 2016, the Occupational Safety and Health Administration issued a final rule requiring employers to submit injury and illness reports to OSHA electronically. OSHA stated that it planned to make this electronic information publicly available through a dedicated website. (The rule is formally called “Improving Tracking of Workplace Injuries and Illnesses.”) The rule also has anti-retaliation provisions that require reasonable reporting policies and purport to ban safety incentive programs and post-accident drug testing.

Small businesses representatives have complained that various provisions of the rule are illegal, that making the data publicly available can create a false impression of a company's safety record, and it could jeopardize confidential business information.

On July 30, 2018, OSHA published proposed changes to the rule (“Tracking of Workplace Injuries and Illnesses”) that would eliminate the electronic submission of some of the information, but retain the requirement to submit summary data electronically. OSHA also sought comment on whether employers must include their employer identification number (EIN) in the data collection. This might enable the Bureau of Labor Statistics (BLS) to match OSHA-collected data with the BLS's Survey of Occupational Injury and Illness (SOII) data, and could eliminate the need for employers to report injury and illness data to two agencies.

Advocacy filed a public comment letter on the proposed rule on September 27, 2018. Advocacy also attended OSHA's public hearing on the original proposed rule, has discussed this rule at several Advocacy roundtables, and attended various Executive Order 12866 review meetings on the rule.

**16. Dep't of Labor/Occupational Safety and Health Admin—
Occupational Exposure to Beryllium**

On January 9, 2017, the Occupational Safety and Health Administration issued its final rule lowering the permissible exposure limit (PEL) for occupational exposure to beryllium, a naturally occurring mineral that can cause—through contact or inhalation—beryl-

lium sensitization, chronic beryllium disease, and possibly lung cancer.

Attendees at Advocacy's roundtables raised this rule as a concern for their industries. They said that construction and shipyards (except abrasive blasting) had not been represented in the Small Business Advocacy Review panel on beryllium in 2008 and should not have been included in the final beryllium rule. They felt that OSHA had insufficient information about beryllium that occurs naturally in soil, stone, and other construction materials. The final rule is subject to ongoing litigation and negotiation.

OSHA has extended the compliance date several times, and on June 27, 2017, it published a proposed rule that would revoke the ancillary provisions for the construction and shipyard sectors, but retain the new, stricter exposure standards for both sectors. OSHA stated that it will not enforce the final rule for shipyards and construction without further notice while the rulemaking is pending. With respect to the final rule for general industry, OSHA has been negotiating with litigants and may propose to clarify revisions to that rule.

Advocacy has participated in the rulemaking since its earliest stages in 2008, and the office filed public comments on the latest proposed deregulatory action for maritime and construction.

**17. Dep't of Labor/Occupational Safety and Health Admin—
Occupational Exposure to Respirable Crystalline Silica**

On March 25, 2016, the Occupational Safety and Health Administration published its final rule on Occupational Exposure to Respirable Crystalline Silica. Respirable crystalline silica refers to very fine particles of sand that can become lodged deep in the lungs and can cause silicosis or lung cancer through long-term inhalation exposure. OSHA issued two separate standards: one for construction and one for general industry and maritime. Small business representatives—particularly in the foundry and construction industries—complained that OSHA's new rule was not based on a demonstration of significant risk and that compliance with the rule was neither technically nor economically feasible. Small business representatives from the construction industry also complained that the standards put in place for dust control are not

workable and need substantial revision. Following publication of the final rule, several industry groups sued OSHA to overturn the rule; however, the U.S. Court of Appeals for the D.C. Circuit upheld the final rule and litigation has concluded.

This issue has been brought up by attendees at several of Advocacy's Regional Regulatory Reform Roundtables, and Advocacy filed public comments on the proposed rule.

Advocacy has been continuously involved with this rulemaking since 2003. OSHA has now committed to providing industry with compliance assistance and agreed to work with the construction industry to improve the dust control methods (Table 1). The agency included a formal notification in its spring 2018 Regulatory Agenda that it will publish a Request for Information on revising and expanding the range of control measures.

**18. Dep't of Labor/Occupational Safety and Health Admin—
Safety Rules for Telecommunications Towers**

Small businesses at Advocacy's roundtables have long brought up the issue of telecommunications towers. Small businesses in the telecommunication tower construction and maintenance industry would like the Occupational Safety and Health Administration to adopt industry consensus standards for communication tower safety, rather than developing a separate regulatory standard. They are concerned that OSHA will exceed industry standards and promulgate a rule that is unduly costly, burdensome, and conflicting.

OSHA is considering the promulgation of worker safety regulations for the construction and maintenance of telecommunications towers, as well as the installation, maintenance, and replacement of equipment on or attached to them. While OSHA has indicated that it will focus primarily on telecommunication towers, the agency also plans to consider including other structures (e.g., buildings, rooftops, water towers, billboards, etc.) that have telecommunications equipment on or attached to them.

OSHA convened a Small Business Advocacy Review panel for this rulemaking on August 15, 2018, following several Advocacy roundtable meetings that includ-

ed presentations by the National Association of Tower Erectors (NATE). The next steps are the completion of the panel report and possible publication of a proposed rule.

**19. Departments of Labor and Homeland Security—
H-2B Visa Program**

The H-2B visa program allows employers facing a shortage of U.S. workers to hire temporary foreign workers to complete non-agricultural jobs in seasonal businesses. At almost every Advocacy regional roundtable, small businesses have expressed concern with the statutory limit of 66,000 H-2B workers per year. In 2018, both the Department of Labor and the Department of Homeland Security received more applications than the 33,000 visas allowed in the first half of the year. As of March 2018, DOL had received applications for over 140,000 H-2B workers. Both DHS and DOL instituted a lottery process for these visas.

In March 2018, President Trump signed into law a spending bill which included a provision that allows DHS in consultation with DOL to raise the number of H-2B visas from 66,000 cap by over 60,000 extra workers. However, the agencies had to create rulemakings to approve these numbers.

On April 14, 2018, Advocacy wrote a comment letter to DHS and DOL, recommending that the agencies authorize this increase. In May 2018, DHS, in consultation with DOL, published a final rule creating a one-time increase in the number of H-2B visas, adding 15,000 more visas and allowing more small businesses to take advantage of this program.

**20. Dept of Transportation/Federal Aviation Administration—
Small Unmanned Aircraft Systems (Small Drones)**

On June 28, 2016, the Federal Aviation Administration issued a final rule allowing the commercial operation of small unmanned aircraft systems (small UAS or drones) in the National Airspace System (NAS). The rule addressed the operation of small UAS and the certification of remote pilots.

Small UAS—defined as weighing less than 55 pounds—have tremendous potential commercial applications and benefits, including crop monitoring and inspec-

tion; power-line and pipeline inspection; construction, tower, and antenna inspections; search and rescue operations; bridge inspections; aerial surveying and photography; and medical and supply delivery. The final rule, however, placed significant operational limitations on small UAS operations, including a visual line-of-sight limit, a prohibition on nighttime flight, a 400-foot altitude limit, a 100 mph maximum speed, and a ban on flights from a moving vehicle or over people.

This issue has been discussed by small businesses at a number of Advocacy's regional roundtables. Small businesses—particularly in the agricultural, construction, and land surveying/mapping industries—can provide reasonable protection from a falling drone. They feel that the operational limits—particularly the visual line-of-sight limit—are prohibiting many innovative and beneficial services they would like to provide.

Advocacy has attended numerous FAA stakeholder meetings on this issue, hosted a small business roundtable on the original proposed rule, and filed public comments on the original proposed rule. FAA has announced its plans to issue a proposed rule to allow for the operation of small UAS over people in certain circumstances. FAA's draft proposed rule is under review at OMB.

21. Department of Treasury, Internal Revenue Service—
Estate Valuation

On August 4, 2016, the Internal Revenue Service published a notice of proposed rulemaking concerning estate, gift, and generation-skipping transfer taxes and restrictions on liquidation of an interest. The notice included the elimination of most of the valuation discounts for businesses operating under section 2704(b). The current law permits certain discounts for lack of control (minority interests) and lack of marketability that are commonly applied to lower the value of transferred interests for gift, estate, and generation-skipping tax purposes. On November 1, 2016, Advocacy submitted a public comment letter conveying small business concerns about the estate valuation proposal. Small business stakeholders indicated to Advocacy that the proposed regulations would be such a large departure from current IRS policy and industry practice that expensive new business valuations would need to

be completed for closely held businesses. Even more problematic for small business owners, by eliminating valuation discounts, the proposed regulations would negatively affect succession planning for many small businesses. As an example, the proposed regulations would result in higher estate taxes on small family businesses, possibly forcing them to either liquidate the business or sell large or controlling interests to non-family members.

On October 4, 2017, the Department of Treasury announced recommended actions to withdraw, partially revoke, or revise eight regulations identified as posing an undue burden on taxpayers, which included withdrawing the proposed regulations under section 2704 that would have eliminated valuation discounts.

22. Environmental Protection Agency—
Accidental Release Prevention Requirements: Risk
Management Programs under the Clean Air Act

On January 13, 2017, the Environmental Protection Agency revised its Risk Management Plan under the Clean Air Act with new requirements for facilities that store hazardous chemicals. This rule affects hundreds of small manufacturers. Small facilities that use and handle chemicals are concerned that some of the rule's requirements add unnecessary burdens and substantial costs without improving safety. Industry members submitted a petition to amend the new rule in June 2017.

Advocacy has engaged with the agency on behalf of the small entities. EPA published a proposed rule to address the small business concerns on May 30, 2018. In June 2018, EPA postponed the effective date of the current rule until February 2019. If the proposed changes are finalized, small businesses would avoid significant costs.

23. Environmental Protection Agency—
Airbag Regulatory Status Under RCRA

According to EPA, some undeployed airbag modules and airbag inflators are considered hazardous waste under the Resource Conservation and Recovery Act (RCRA) due to their reactive and ignitable characteristics. As such, they are subject to EPA's permit requirements regarding the treatment, storage and disposal of hazardous waste. According to EPA, the deployment

of the airbag removes the reactivity and ignitability characteristics.

Defective or recalled airbags that have been removed from vehicles present problems under RCRA. Small businesses expressed confusion and frustration with EPA's position. Advocacy has engaged with the agency to address the small business concerns with the treatment of airbags under RCRA. On July 19, 2018, EPA issued a memorandum providing clarification on the regulatory status of undeployed airbag modules and inflators. Also, in the memorandum, EPA contemplated a future rulemaking to exempt discarded airbag modules and airbag inflators from some RCRA regulatory requirements under certain conditions.

Advocacy anticipates working with EPA on the potential rulemaking to further address small business issues regarding defective or recalled airbags.

24. Environmental Protection Agency— Disposal of Coal Combustion Residuals

On April 17, 2015, the Environmental Protection Agency published a final rule to regulate the disposal of coal combustion residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act. Small coal-fired power plants are concerned that the rule's deadlines require them to make irreversible decisions based on standards that may not be final. For example, under the existing regulations, some facilities will be required to close their coal ash impoundments (ponds containing coal ash), yet these may later be eligible for flexibilities via an approved state permit program.

Advocacy has worked with EPA on this issue. On March 15, 2018, EPA proposed a rulemaking to address some of the small business concerns including reducing the scope of the required closures. Advocacy submitted a comment letter to urge the agency to align the compliance deadlines with the anticipated reconsiderations of the rule's provisions and to provide any flexibilities that would be available in a state permit program under the self-implementing rule. On July 30, 2018, the agency finalized part of its proposed rule. The final rule provides regulated entities flexibility with regard to complying with performance standards and allowed

the additional time for compliance. As a result, small businesses will avoid significant CCR unit closure costs.

25. Environmental Protection Agency— Once-In, Always-In

Under the Clean Air Act, the Environmental Protection Agency regulates the emissions of hazardous air pollutants (HAPs) from industrial sources. Generally, EPA imposes the most stringent requirements on major sources and less stringent requirements on smaller emitters, known as area sources. Many small businesses are classified as major sources, and under a 20-year-old EPA policy known as "once-in always-in," a business has been unable to reduce its emissions and be reclassified as an area source.

Small businesses have complained that this policy imposes significant costs while discouraging innovation and investment that could reduce air emissions. Small business representatives raised this as a problem in the SBREFA panels for the Mercury and Air Toxics Rule and the Brick Industry Hazardous Air Pollutants Rule, as well as in recent Advocacy regulatory reform roundtables.

On January 25, 2018, EPA reversed the policy. EPA expects to codify the policy change in a rulemaking in the near future. Small businesses will benefit from this change slowly, as they implement changes to their industrial processes to lower their uncontrolled emissions below the major source threshold.

26. Environmental Protection Agency— Pesticides; Agricultural Worker Protection Standard Revisions

The Environmental Protection Agency finalized updates and revisions to its existing worker protection regulation for pesticides on November 2, 2015.

Small businesses expressed concerns with the rule's minimum age requirement stating that it will reduce workforce in some states, particularly on small farms. They are also concerned with EPA's designated representative requirement explaining that the rule lacks a verification method for the designated representative and does not provide any restrictions on how the information will be used. Moreover, small businesses

are also concerned that the requirement for agricultural employers, which requires employers to keep workers and other persons out of certain areas defined as application exclusion zones during pesticide application, does not include clarity on how the rule would be enforced.

Advocacy previously engaged with the agency during the rulemaking process. On December 21, 2017, EPA announced that it initiated a rulemaking process to revise certain requirements in the final rule. On June 18, 2018, EPA submitted a proposed rule to OMB, where it is under review.

**27. Environmental Protection Agency—
Pesticides; Certification of Pesticide Applicators**

The Environmental Protection Agency finalized updates to its existing regulation concerning the certification of applicators of restricted use pesticides on January 4, 2017.

Small businesses expressed concerns with the rule's minimum age requirement stating that not all states have a required minimum age of 18 and that it will require states to enact legislation to comply with the new federal requirement. They also added that this will reduce the workforce in some states, with particular impact on small farms.

Advocacy has engaged with the agency to revise or eliminate the minimum age requirement, leaving it up to the states. On December 19, 2017, EPA announced that it initiated a rulemaking process to revise the minimum age requirements in the final rule. More recently, on June 18, 2018, EPA submitted a proposed rule to OMB.

**28. Environmental Protection Agency—
Steam Electric Effluent Limitation Guidelines (ELG)**

The Steam Electric Effluent Limitation Guidelines affect hundreds of coal-fired power plants that are required to upgrade their units to address water pollution. Small businesses have raised this issue as a big concern.

In April 2017 Advocacy submitted a regulatory petition to the Environmental Protection Agency, asking

it to reduce the stringency of the requirements for small plants whose compliance costs would be very high compared with the pollution reduction achieved. EPA granted the petition in April 2018. It subsequently extended the compliance deadlines for the rule while it reconsiders the rule requirements. Rule revisions could save small firms hundreds of millions of dollars in annual costs.

**29. Environmental Protection Agency—
Small Business Size Standards, Fees Rule**

The Environmental Protection Agency has discretion to define small businesses for the purpose of collecting fees and providing exemptions from recordkeeping requirements under the Toxic Substance Control Act (TSCA). These definitions do not match the industry-based small business standards established by the Small Business Administration (SBA) that are used by most federal agencies.

Small businesses expressed concerns about inconsistent small business definitions among federal agencies. Specifically, small businesses noted that EPA's definition for small manufacturers under TSCA was outdated and did not capture small businesses as they exist today.

Advocacy engaged with the EPA and SBA to revise EPA's small business size standards under TSCA. On September 27, 2018, EPA signed its final rule on the fee collecting rule under TSCA. The rule established a fee schedule for a business that is required to submit information to EPA under several sections of TSCA. In this rule, EPA revised its small business definition to align with the SBA's small business standards. The new definition will qualify more small businesses for a reduced fee.

**30. Federal Communications Commission—
ISP Privacy Rules**

In 2014, the Federal Communications Commission reclassified broadband Internet as a "communications service" under Title II of the Communications Act. This reclassification gave the FCC the authority to regulate Internet service providers (ISPs) like telecommunications companies. In 2016, the FCC issued final regulations to protect the privacy of broadband customers

using its new authority. The proposed regulations included: (1) requirements to provide notice of privacy policies, (2) requirements to obtain customer approval for the use and disclosure of customer proprietary information (PI), (3) conditions for disclosure of aggregate customer PI, (4) requirements to protect the security and confidentiality of customer PI, (5) data breach notification requirements, (6) other practices implicating privacy, and (7) dispute resolution provisions.

Small Internet service providers (ISPs) argued that the rules were disproportionately burdensome and that they unfairly restricted ISPs from engaging in commercial activities that were permitted for companies not classified as ISPs, putting them at a competitive disadvantage.

Advocacy forwarded these concerns to the FCC. In 2017 Congress used the Congressional Review Act to prevent the FCC from implementing these rules. Additionally, the FCC reclassified broadband as an “information service,” which limits its authority to propose rules like this in the future.

**31. Federal Communications Commission—
Mobility Fund Phase II Challenge Process**

The purpose of the Federal Communications Commission’s Mobility Fund is to improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing, and to do so by supporting private investment. The Mobility Fund uses a reverse auction to make one-time support available to service providers to extend mobile coverage in specified unserved areas. Providers are able to challenge the FCC’s determination that an area is not eligible for support.

Advocacy has heard persistent concerns from small rural wireless advocates that the process for determining whether an area is ineligible for support because it is already “served” is flawed, and that the challenge process for areas that are presumptively ineligible was too burdensome for small entities to utilize.

Advocacy forwarded these concerns about the Mobility Fund to FCC. In August 2017, the FCC adopted an order that established the parameters for a one-time collection of more specific and current data on the de-

ployment of 4G LTE, in lieu of using existing form 477 data to establish a map of areas presumptively eligible for support. The agency also established a less complex challenge process for areas that would be considered ineligible using the new data. These reforms ensure that the Mobility Fund support is accurately directed to underserved areas, and they make it easier for small wireless companies to meet the needs of rural communities.

**32. Federal Communications Commission—
Net Neutrality (Enhanced Network Transparency
Requirements under the FCC 2014 Open Internet Order)**

In 2014, the Federal Communications Commission reclassified Internet service providers as communications providers under Title II of the Communications Act. The decision to classify broadband Internet service as a Title II service gave the agency authority to adopt various rules to ensure net neutrality, including enhanced network transparency requirements. Advocacy reached out to small service providers who would be affected by this rule who were concerned about the potential compliance burdens.

Advocacy filed comments with the FCC recommending that the agency exempt small businesses from these rules. The FCC adopted a small business exemption from its enhanced transparency requirements in early 2017, and then ultimately withdrew the entire set of rules and reclassified broadband as a Title I information service—setting new, less burdensome rules for ISPs under that authority.

**33. Federal Communications Commission—
Pole Attachments (One Touch-Make Ready)**

Advocacy spoke with a number of small competitive local exchange carriers about the need for the FCC to adopt so-called “one-touch-make-ready” pole attachment policies. This approach would simplify the process by which companies wishing to string aerial fiber on existing utility poles obtain permission and make the necessary preparations prior to starting work.

Advocacy met with representatives of the FCC chairman’s office in August 2018 and shared support for its proposal to adopt one-touch-make-ready policies.

Subsequently, the FCC voted to approve final rules adopting the measures.

**34. Federal Communications Commission—
Removing Barriers to Wireless Infrastructure
Deployment**

Small wireless carriers have told Advocacy that the costs of certain environmental, historic, and tribal reviews make the widespread deployment of small-cell technology needed to launch 5G networks too costly. Under existing Federal Communications Commission regulations, a company would have to conduct the same reviews when installing a small-cell device that it would when building a macro-cell tower. Some industry analysts estimate that these reviews would impose over \$1.5 billion in costs related to small-cell deployment.

Advocacy published a blog highlighting these concerns and supporting an exemption for small business: “Advocacy Urges the FCC to Preserve Small Business Choice in Communications Services.” The FCC initiated a proceeding in 2017 seeking input on reducing barriers to infrastructure deployment. In March 2018, the FCC finalized regulatory reforms that would exempt small-cell deployment from most of these reviews. This will help speed the deployment of next-generation wireless networks by reducing costs associated with deployment.

**35. National Labor Relations Board—
Joint Employment**

Small businesses at Advocacy’s regional roundtables expressed concern with the 2015 National Labor Relations Board decision in *Browning-Ferris Industries*, 362 NLRB No. 186 (2015), which expanded the definition of joint-employer between two companies who determine the working conditions of a group of employees. Under this decision, an employer could be considered a joint employer and liable for violations under the National Labor Relations Act when the employer has indirect control of its employees. This overruled the longstanding NLRB precedent that required that an employer had to have direct control of an employee to be considered a joint employer. Small franchise owners expressed concern that the decision

would alter the franchisor-franchisee relationship; it would increase franchisors’ liability, thereby increasing the price of a franchise and limiting franchisors’ ability to provide human resources and legal advice to franchisees. Advocacy communicated these concerns to the NLRB in internal meetings and communications on regulatory reform.

On September 14, 2018, the NLRB published a proposed rule which returned the standard for the joint-employer relationship back to the longstanding precedent: an employer must possess and actually exercise substantial direct and immediate control over the essential terms and conditions of employment such as hiring, firing, discipline, supervision, and direction. In this rule, the NLRB identified the following types of small entities most likely to be affected by this rule: contractors, subcontractors, suppliers and users of temporary help services, franchisees, and labor unions.

5

Where Do We Go From Here?

The Next Steps

Advocacy has received invaluable information from hundreds of small businesses to date, but there is still much more to learn from small businesses across the country. One lesson that has emerged during this process is how varied the challenges facing small businesses are. These challenges vary based on geographical location, business size, and type of industry; and so do the solutions small businesses offer to deal with such challenges. In order to add to Advocacy's awareness of the numerous and varied regulatory concerns in different parts of the country and to understand which solutions work best for which businesses, Advocacy is continuing the effort to canvass small businesses from as many states and geographic regions of the country as possible. In this way Advocacy can be more effective and responsive in its goal of being the voice of small business in the regulatory reform effort underway at federal regulatory agencies.



Conclusion: The Mission Continues

Advocacy expects to continue hosting Regional Regulatory Reform Roundtables across the United States in order to update and complete this report, and continue to report and provide input to federal agencies tasked with reforming their regulatory agendas. Advocacy staff will continue to share information about specific rules with the federal agencies with the goal of small business burden reduction. With Advocacy's input in this process, the voice of small business is less likely to be muffled, and their valuable suggestions for reform lost in the mix. Advocacy's mission in this endeavor continues, as does the reporting on what small business across the nation are dealing with and the changes they feel would make their business more successful.

For more information on Advocacy's regulatory reform efforts or to attend one of the upcoming roundtables, please visit advocacy.sba.gov/regulatory-reform.

"The regulations are taking the passion out of running a business."

—Owner of a small trucking company in Houston

Appendix A. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs¹

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Budget and Accounting Act of 1921, as amended (31 U.S.C. 1101 et seq.), section 1105 of title 31, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Purpose. It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of the direct expenditure of taxpayer dollars through the budgeting process, it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, it is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.

Sec. 2. Regulatory Cap for Fiscal Year 2017. (a) Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

(b) For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget (Director).

(c) In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Any agency eliminating existing costs associated with prior regulations under this subsection shall do so in accordance with the Administrative Procedure Act and other applicable law.

(d) The Director shall provide the heads of agencies with guidance on the implementation of this section. Such guidance shall address, among other things, processes for standardizing the measurement and estimation of regulatory costs; standards for determining what qualifies as new and offsetting regulations; standards for determining the costs of existing regulations that are considered for elimination; processes for accounting for costs in different fiscal years; methods to oversee the issuance of rules with costs offset by savings at different times or different agencies; and emergencies and other circumstances that might justify individual waivers of the requirements of this section. The Director shall consider phasing in and updating these requirements.

Sec. 3. Annual Regulatory Cost Submissions to the Office of Management and Budget. (a) Beginning with the Regulatory Plans (required under Executive Order 12866 of September 30, 1993, as amended, or any successor order) for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of this order, and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation.

(b) Each regulation approved by the Director during the Presidential budget process shall be included in the

¹ Executive Order 13,771, *Reducing Regulation and Controlling Regulatory Costs*, <https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs>.

Unified Regulatory Agenda required under Executive Order 12866, as amended, or any successor order.

(c) Unless otherwise required by law, no regulation shall be issued by an agency if it was not included on the most recent version or update of the published Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance in writing by the Director.

(d) During the Presidential budget process, the Director shall identify to agencies a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director. The total incremental cost allowance may allow an increase or require a reduction in total regulatory cost.

(e) The Director shall provide the heads of agencies with guidance on the implementation of the requirements in this section.

Sec. 4. Definition. For purposes of this order the term "regulation" or "rule" means an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, but does not include:

(a) regulations issued with respect to a military, national security, or foreign affairs function of the United States;

(b) regulations related to agency organization, management, or personnel; or

(c) any other category of regulations exempted by the Director.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

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

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

Donald J. Trump
The White House,
January 30, 2017

Appendix B. Executive Order 13777, Enforcing the Regulatory Reform Agenda

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to lower regulatory burdens on the American people by implementing and enforcing regulatory reform, it is hereby ordered as follows:²

Section 1. Policy. It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.

Sec. 2. Regulatory Reform Officers. (a) Within 60 days of the date of this order, the head of each agency, except the heads of agencies receiving waivers under section 5 of this order, shall designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. These initiatives and policies include:

- (i) Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;
- (ii) Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;
- (iii) section 6 of Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and
- (iv) the termination, consistent with applicable law, of programs and activities that derive from or implement Executive Orders, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

(b) Each agency RRO shall periodically report to the agency head and regularly consult with agency leadership.

Sec. 3. Regulatory Reform Task Forces. (a) Each agency shall establish a Regulatory Reform Task Force composed of:

- (i) the agency RRO;
- (ii) the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866;
- (iii) a representative from the agency's central policy office or equivalent central office; and
- (iv) for agencies listed in section 901(b)(1) of title 31, United States Code, at least three additional senior agency officials as determined by the agency head.

(b) Unless otherwise designated by the agency head, the agency RRO shall chair the agency's Regulatory Reform Task Force.

(c) Each entity staffed by officials of multiple agencies, such as the Chief Acquisition Officers Council, shall form a joint Regulatory Reform Task Force composed of at least one official described in subsection (a) of this section from each constituent agency's Regulatory Reform Task Force. Joint Regulatory Reform Task Forces shall implement this order in coordination with the Regulatory Reform Task Forces of their members' respective agencies.

(d) Each Regulatory Reform Task Force shall evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. At a minimum, each Regulatory Reform Task Force shall attempt to identify regulations that:

- (i) eliminate jobs, or inhibit job creation;
- (ii) are outdated, unnecessary, or ineffective;
- (iii) impose costs that exceed benefits;
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and

² Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, <https://www.federalregister.gov/documents/2017/03/01/2017-04187/enforcing-the-regulatory-reform-agenda>.

- policies;
 - (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
 - (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.
 - (e) In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.
 - (f) When implementing the regulatory offsets required by Executive Order 13771, each agency head should prioritize, to the extent permitted by law, those regulations that the agency's Regulatory Reform Task Force has identified as being outdated, unnecessary, or ineffective pursuant to subsection (d)(ii) of this section.
 - (g) Within 90 days of the date of this order, and on a schedule determined by the agency head thereafter, each Regulatory Reform Task Force shall provide a report to the agency head detailing the agency's progress toward the following goals:
 - (i) improving implementation of regulatory reform initiatives and policies pursuant to section 2 of this order; and
 - (ii) identifying regulations for repeal, replacement, or modification.
- Sec. 4. Accountability. Consistent with the policy set forth in section 1 of this order, each agency should measure its progress in performing the tasks outlined in section 3 of this order.
- (a) Agencies listed in section 901(b)(1) of title 31, United States Code, shall incorporate in their annual performance plans (required under the Government Performance and Results Act, as amended (see 31 U.S.C. 1115(b))), performance indicators that measure progress toward the two goals listed in section 3(g) of

this order. Within 60 days of the date of this order, the Director of the Office of Management and Budget (Director) shall issue guidance regarding the implementation of this subsection. Such guidance may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.

(b) The head of each agency shall consider the progress toward the two goals listed in section 3(g) of this order in assessing the performance of the Regulatory Reform Task Force and, to the extent permitted by law, those individuals responsible for developing and issuing agency regulations.

Sec. 5. Waiver. Upon the request of an agency head, the Director may waive compliance with this order if the Director determines that the agency generally issues very few or no regulations (as defined in section 4 of Executive Order 13771). The Director may revoke a waiver at any time. The Director shall publish, at least once every 3 months, a list of agencies with current waivers.

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

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

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

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

Donald J. Trump
The White House,
February 24, 2017

Appendix C. Office of Advocacy Memorandum to Heads of Agencies, March 30, 2017

<small>U.S. SMALL BUSINESS ADMINISTRATION</small> OFFICE OF ADVOCACY <small>REGULATION • RESEARCH • OUTREACH</small>	<h1>MEMORANDUM</h1>
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TO: Heads of Agencies
FROM: *MICHAEL*
 Major L. Clark, III Acting Chief Counsel for Advocacy, U.S. Small Business Administration
DATE: March 30, 2017
SUBJECT: Implementation of Executive Orders 13771, "Reducing Regulation and Controlling Regulatory Costs," and 13777, "Enforcing the Regulatory Reform Agenda"

As required by Executive Order (EO) 13272¹, I am writing to advise you of the activities of the Office of Advocacy (Advocacy) related to recent Executive Orders on the reduction of regulatory burdens and offer additional assistance related to these new policies. Advocacy strongly endorses the principles and policies of these Executive Orders and urges that they be implemented consistent with the Regulatory Flexibility Act (RFA)² in order to reduce the regulatory burdens and the disproportionate impacts of regulations on small entities.


Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small entities before federal agencies and Congress. Because Advocacy is an independent office within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.³ The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), gives small entities (businesses, organizations, and local governments) a voice in the federal rulemaking process and requires agencies to consider the impacts of their rulemakings on small entities. Under EO 13272, Advocacy provides training to agencies on the RFA.

Over the coming months, Advocacy will be making available additional assistance and tools to implement Executive Orders 13771 and 13777 and engaging in outreach to small entities to identify opportunities to reduce burdens on small entities. Advocacy will also be seeking additional opportunities to train policy officials and regulatory staff on the RFA and its importance in the implementation of these EOs.

¹ Executive Order 13272, signed August 13, 2002 (67 Fed. Reg. 53,461 (August 16, 2002)). Section 2(a) requires the Chief Counsel for Advocacy to "notify agency heads from time to time of the requirements of the [Regulatory Flexibility] Act."

² 5 U.S.C. § 601, *et. seq.*

³ 15 U.S.C. § 634a, *et. seq.*



409 3rd Street SW / MC 3114 / Washington, DC 20438 / 202-205-6533 ph / 202-205-6928 fax
www.sba.gov/advocacy

- 2 -

To initiate Advocacy assistance to your agency in the implementation of EO 13771, EO 13777, and the Regulatory Flexibility Act, please provide me with the names of the officials you have designated as the Regulatory Policy Officer, named under EO 12866, section 6(a)(2), and the Regulatory Reform Officer, named under EO 13777, section 2(u).

This information should be sent to Charles Maresca, Director of Interagency Affairs, SBA Office of Advocacy, Charles.Maresca@sba.gov, as it is available. Please also contact me or Mr. Maresca if you have any questions about this memorandum or your agency's compliance with the RFA.

Thank you for your consideration of these requests. I look forward to a productive effort to reduce the regulatory burdens on small entities.

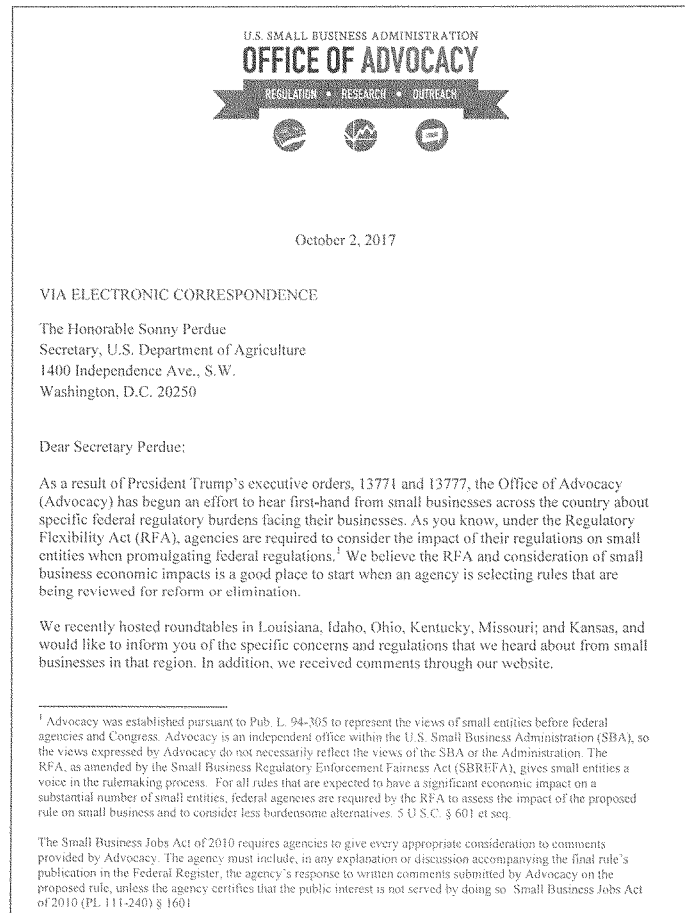
cc: Dominic Mancini, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget



Appendix D. Office of Advocacy Letters to Heads of Agencies

Advocacy has sent 22 letters to the heads of agencies and their regulatory reform officers. The complete list of letters appears in Table 6, along with individual links. A sample letter is included here. The list of

letters also appears on Advocacy's Regulatory Reform webpage: <http://advocacy.sba.gov/regulation/regulatory-reform>.



Summary of Concerns from Roundtables and Website

- **FSIS Regulation 9 C.F.R. § 418.2—misbranding of products**
 Advocacy has heard from stakeholders that this regulation should be revised. Small entities stated that the regulation requires any issue related to misbranding or be reported by the shipping and/or receiving establishment to the relevant FSIS District Office. Stakeholders suggested placing the reporting onus on the shipping entity rather than the shipping and receiving entity.
- **FSIS Regulation 9 C.F.R. § 310.25 (a)- contamination with microorganisms**
 Stake holders indicated that the rule requiring generic E. coli testing adds cost to operations but provides little benefits. Stakeholders stated that inspectors rarely review results and reviews of establishment data show little relation to public health objectives. In addition, newer technologies for screening and process control assessments have been developed and are used, which results in more meaningful and robust data. Stakeholders have indicated that the rule should be revised.
- **FSIS Regulation 9 C.F.R. § 381.91- contamination**
 Advocacy has heard from small entities that this rule should be amended to eliminate the need to rinse poultry salvage parts with 20-50 ppm chlorine. Stakeholders indicate that there is little scientific data supporting the need to use chlorine and the prescriptive nature of the rule contradicts a HACCP approach. They stated that a facility should have to address hazards of concern and in doing so companies may and should consider alternatives to rinsing with chlorine.
- **FSIS Regulation 9 C.F.R. § 381.65 (g)- controlling contamination through slaughter and dressing operation**
 Stakeholders indicated that the regulation includes prescriptive and burdensome sampling requirements for poultry slaughter establishments. They stated that requiring plants to sample 1/22,000 carcasses is burdensome and unnecessary. Stakeholders also indicated that a facility should collect data to support its processes and what best serves public health may not include sampling at this frequency, particularly for APC or other generic organisms. When SIP was in place, Salmonella sampling was necessary but with the new poultry inspection system the need for such testing has been eliminated. In addition, each poultry facility has over two years' of data now under the NPIS system. Stakeholders believe the required testing does not add value or enhance food safety and ask that it be revised.
- **FSIS Regulation 9 C.F.R. §381.36-facilities**
 Stakeholders indicated that most provisions in this section no longer apply under the new poultry inspection system (NPIS), and therefore the regulations should either be repealed or revised.
- **FSIS 9 C.F.R. § 381.66-temperatures and chilling and freezing procedures**
 Advocacy heard from stakeholders that the temperature and chilling regulations are outdated and should be repealed or revised.

- **FSIS 9 C.F.R. § 381.67- slaughter inspection rate maxims**
Stakeholders indicated that under NPIS the line configuration provisions no longer apply.
- **FSIS 9 C.F.R. § 381.76- post mortem inspection**
Stakeholders indicated that this regulation is not about food safety but product quality and should be rescinded.
- **FSIS 9 C.F.R. § 381.79-passing of carcasses and parts**
Advocacy heard from stakeholders that this regulation is superfluous and not needed.
- **FSIS 9 C.F.R. § 381.80-93- relating to several diseases**
Stakeholders indicated that these regulations are outdated and not in use because plant programs accomplish the same objectives more efficiently. The regulations should be rescinded.
- **FSIS Specific Risk Materials Rules**
Advocacy heard from stakeholders that certain components addressing the issues involving removal of SRM (i.e., the feed ban) should remain, but that the Agency should review the science regarding the risk and reassess the cost and effectiveness of the SRM removal/disposal regulations, including those relating to non-ambulatory disabled livestock (NADL). Stakeholders stated that the rule imposes a cost exceeding the benefits and results in added food waste. They stated that at a minimum, the Agency should allow public health veterinarians to make a professional case-by-case disposition.
- **Organic Standards**
Advocacy heard from one stakeholder about the need to properly enforce organic standards rules for labeling and that there should be better enforcement and policing of entities that mislabel products that are not USDA certified. Advocacy also heard from stakeholders in the fishing industry about the need to finalize the organic aquaculture standard for fish, as well as develop an organic standard for shellfish.
- **Forest Service Timber on Federal Lands**
Several stakeholders indicated that Forest Service should make more timber available for purchase on federal lands. They also spoke about the need to speed up the process for sales of wildfire salvage timber, indicating that the current NEPA process delays the sales to the point where the wood is no longer salvageable. Furthermore, they stated that Forest Service should offer every sale as a set-aside first, and then open it up if no small business bids. Furthermore they stated that stewardship should be counted in small business calculations, and that the NEPA process for bids should be streamlined so that it is not as costly or burdensome.

The Office of Advocacy looks forward to working with your agency to reduce the burden of federal regulations on behalf of the small businesses that have asked us to be their voice in this regulatory reform process. We hope that you will include these specific rules when you compile your list of rules to review. Advocacy would be happy to meet with you or your representative so

that we may detail the concerns and help suggest less burdensome alternatives for small business as rules are being considered for revision. I have provided the contact information for Assistant Chief Counsels **Linwood Rayford** and **Prianka Sharma** below.

As we continue to hear from small businesses across the country at our regional regulatory reform roundtables or through our outreach from our regulatory reform website, we will update you with additional summaries from those locations.

Thank you for considering small business impacts as a vital part of your regulatory reform efforts and for including the Office of Advocacy as an important part of the process.

Sincerely,


/s/ Major L. Clark, III

Major L. Clark, III
Acting Chief Counsel for Advocacy

Assistant Chief Counsel, Linwood Rayford
Linwood.Rayford@sba.gov
(202) 401-6880
* FSIS, FNS

Assistant Chief Counsel, Prianka Sharma
Prianka.Sharma@sba.gov
(202) 205-6938
* AMS, APHIS, GIPSA, NOS, Forest Service, NCRS

Appendix E. Roundtable Requests from Congress and the Public

<p>COMMITTEE ON THE BUDGET</p> <p>COMMITTEE ON EDUCATION AND THE WORKFORCE</p> <p>COMMITTEE ON SMALL BUSINESS</p> <p>CHAIRMAN OF SUBCOMMITTEE ON ECONOMIC GROWTH, TAX, AND CAPITAL ACCESS</p>	 <p>Dave Brat Congress of the United States 7th District, Virginia</p>	<p>1028 LONGWORTH HOUSE OFFICE BUILDING WASHINGTON, DC 20515 (202) 225-2815 (202) 225-0111 (F)</p> <p>4201 COMMONWEALTH AVENUE SUITE 110 GLEN ALLEN, VA 23060 (804) 747-4023 (804) 747-5308 (F)</p> <p>9104 COURTHOUSE ROAD P.O. BOX 98 SPOTTSFORD, VA 22593 (540) 507-7218 (540) 507-7819 (F)</p> <p>WWW.BRAT.HOUSE.GOV</p>
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July 14, 2017

Major L. Clark, III
Acting Chief Counsel, Office of Advocacy
Small Business Administration
409 3rd St, SW
Washington, DC 20416

Dear Acting Chief Counsel Clark,


I am writing to request that the Small Business Administration schedule a Regulatory Reform Roundtable in the near future in Virginia's 7th Congressional District.

As Chairman of the House Small Business Subcommittee on Economic Growth, Tax, and Capital Access, and as an economist, I understand how unnecessary regulations can hinder a business's ability to succeed. Many of these businesses are in my economically diverse district, which includes the counties of Culpeper, Orange, Spotsylvania, Louisa, Goochland, Powhatan, Henrico, Chesterfield, Amelia, and Nottoway, Virginia.

I often hear from small business owners in my district about how burdensome federal regulations are directly harming their economic livelihood. I believe it's important that the Administration hear from them as well. Since no Regulatory Reform Roundtables have been hosted in Region III yet, I would like to request one be held in my district.

Thank you in advance for your attention to this letter. If you or your staff have any questions, please contact my Legislative Aide, Jay Kronzer, at 202-225-2815.

Sincerely,



Dave Brat
Chairman
Subcommittee on Economic Growth, Tax, and
Capital Access

PRINTED ON RECYCLED PAPER

<p>JEFF DENHAM 10th District, California</p> <p>E-MAIL VIA WEBSITE: Denham.house.gov</p>	<p>Congress of the United States House of Representatives Washington, DC January 18, 2018</p>	<p>HOUSE AGRICULTURE COMMITTEE HOUSE NATURAL RESOURCES COMMITTEE HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE CHAIRMAN, SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS</p>
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Major L. Clark, III
Acting Chief Counsel, Office of Advocacy
U.S. Small Business Administration
409 3rd St., SW
Washington, DC 20416


Dear Acting Chief Counsel Clark,

I am writing to request that the U.S. Small Business Administration's Office of Advocacy schedule a Regulatory Reform and Jobs Roundtable in the near future in California's 10th Congressional District.



As a small business owner myself, I know that burdensome federal regulations can harm business, restrict job creation and depress economic growth. Many such businesses are in my economically diverse district, which includes San Joaquin and Stanislaus counties.

I frequently hear from small business owners and entrepreneurs in the California 10th district about how government over-regulation is restricting job creation. I believe it's important that the Administration hear from them as well. Since no Regulatory Reform and Jobs Roundtables have been hosted in Region IX as of yet, I would like to request one be held in my district.

Thank you in advance for your attention to this letter. If you or your staff have any questions, please contact Walker Barrett on my staff at 202-225-4540.

Sincerely,

 Jeff Denham
 United States Representative

<p>MOBILE 4021 Skyway Blvd., Suite 100 Mossburn, CA 95355 Phone: (209) 579-5458 Fax: (209) 579-5038</p>	<p>CONNECTIONS YOUTUBE.COM/REPJEFFDENHAM TWITTER.COM/REPJEFFDENHAM FACEBOOK.COM/REPJEFFDENHAM</p>	<p>WASHINGTON, DC 1770 Longworth House Office Building Washington, DC 20518 Phone: (202) 225-4540 Fax: (202) 225-3432</p>
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<p>TOM RICE 7th District, South Carolina</p> <hr/> <p>WASHINGTON OFFICE 223 CONGRESS HOUSE DOOR BUILDING WASHINGTON, DC 20515 TEL: (202) 225-8885 FAX: (202) 225-8890</p>		<p>HOUSE COMMITTEE ON WAYS AND MEANS</p> <hr/> <p>SUBCOMMITTEE ON TRADE</p> <hr/> <p>SUBCOMMITTEE ON SOCIAL SECURITY</p>
<p>Congress of the United States House of Representatives Washington, DC 20515-4007</p>		
<p>January 29, 2018</p>		
<p>Major L. Clark, III Acting Chief Counsel, Office of Advocacy U.S. Small Business Administration 409 3rd St., SW Washington, DC 20416</p>		
<p>Dear Acting Chief Counsel Clark,</p>		
<p>I am writing to request that the U.S. Small Business Administration's Office of Advocacy schedule a Regulatory Reform and Jobs Roundtable in the near future in South Carolina's 7th Congressional District.</p>		
<p>Small businesses play a vital role in the communities of the 7th District. Creating jobs is my number one priority in Congress. As such, I am constantly engaging with local businesses and stakeholders to find ways to grow the economy. Too often, I hear about federal regulations that restrict economic growth and job creation.</p>		
<p>In order to discuss ways to cut red tape and create jobs, I would like to request a Regulatory Reform and Jobs Roundtables to be held in my district.</p>		
<p>Thank you in advance for your attention to this letter. If you or your staff have any questions, please contact Walker Truluck on my staff at 202-225-9895.</p>		
<p>Sincerely,</p>		
		
<p>Tom Rice Member of Congress</p>		
<p>CHANDLER REGIONAL OFFICE: 2411 NORTH OAK STREET SUITE 405 MARIETTA, GA 30067 TEL: (404) 445-6458 FAX: (404) 445-6410</p>	<p>THE HOUSE OF REPRESENTATIVES 2001 CONGRESS BUILDING WASHINGTON, DC 20540 TEL: (202) 225-8885 FAX: (202) 225-8890</p>	<p>PERDUE REGIONAL OFFICE 1821 WEST COLUMBIA STREET SUITE 300 JACKSONVILLE, FL 32202 TEL: (904) 679-6781 FAX: (904) 679-3183</p>
<p>PRINTED ON RECYCLED PAPER</p>		

<p>JOE WILSON 2nd District, South Carolina Assistant Majority Whip</p> <p>COURTESY ARMED SERVICES CHINA, BUSINESS FOREIGN AFFAIRS EDUCATION AND THE WORKFORCE VICE-CHAIR HOUSE REPUBLICAN POLICY</p>	<p>Congress of the United States House of Representatives</p> <p>January 30, 2018</p>	<p>COPIES A-100 B-100 C-100 D-100 E-100 F-100 G-100 H-100 I-100 J-100 K-100 L-100 M-100 N-100 O-100 P-100 Q-100 R-100 S-100 T-100 U-100 V-100 W-100 X-100 Y-100 Z-100</p>
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Major L. Clark, III
Acting Chief Council, Office of Advocacy
Small Business Administration
409 3rd St, SW
Washington, DC 20416

Dear Acting Chief Counsel Clark,


I am writing to request that the Small Business Administration schedule a Regulatory Reform Roundtable in South Carolina's 2nd Congressional District.

The success of small businesses in the 2nd District is key to economic prosperity and stability in the community. I am always working on ways to grow the economy and promote job creation to ensure their continued success.

In visiting with my constituents, I often hear how burdensome federal regulations are directly limiting economic growth and job creation. I believe it is of the utmost importance that the Administration hear from them as well. Since no Regulatory Reform Roundtables have been hosted in South Carolina's 2nd Congressional District yet, I would like to request one be held in my district.

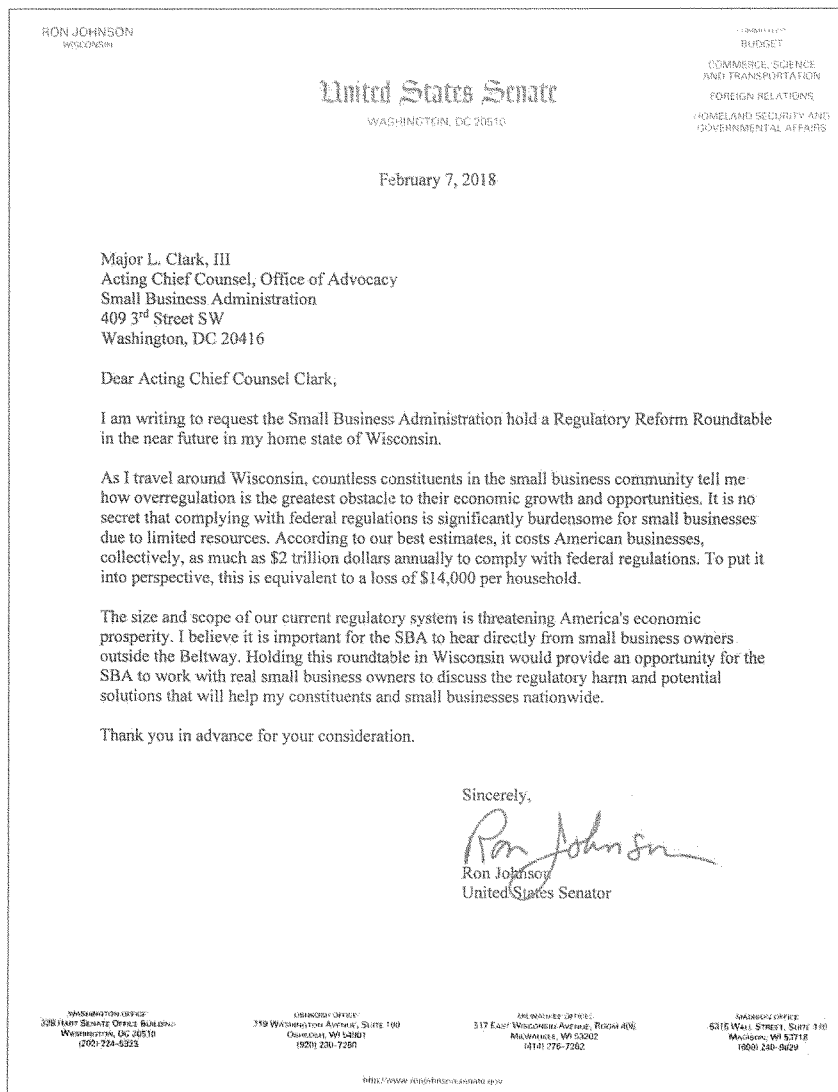
Thank you in advance for your attention to this letter. If you or your staff have any questions, please contact Leah Grace Denny on my staff at (202) 225-2452.

Sincerely,



Joe Wilson
Member of Congress

<p>JW/d MEMORANDUM 1200 SUNSET BLVD, SUITE 100 DALLAS, TEXAS 75210 (817) 339-0001 FAX: (817) 339-0078</p>	<p>1436 LONGWORTH HOUSE OFFICE BUILDING WASHINGTON, DC 20515-4802 (202) 225-2452 FAX: (202) 225-2455 www.joewilson.house.gov</p>	<p>JOE WILSON 1930 UNIVERSITY PARKWAY, SUITE 1800 ARLINGTON, VA 22204 (703) 672-6176 FAX: (703) 672-6178</p>
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Oviedo~Winter Springs


Regional Chamber of Commerce

376 North Central Ave., Oviedo, FL 32765
 P.O. Box 621236, Oviedo, FL 32762
 Ph: 407-365-6500 Fax: 407-650-2712
www.OviedoWinterSprings.org

CHAMBER TRUSTEES

PARTNERS IN PROGRESS



Major L/ Clark, III
 Acting Chief Counsel, Office of Advocacy
 Small Business Administration
 409 3rd St., SW
 Washington, DC 20416

Dear Acting Chief Counsel Clark,

I, on behalf of our Economic Development Committee, am writing to request that the SBA Office of Advocacy conduct a Regional Regulatory Reform Roundtable in Seminole County.


The success of small business in Seminole is key to our economic success. Thus, we want to do everything possible to help them succeed including removing harmful federal regulatory barriers.

The members of our chamber often tell us how burdensome federal regulations are to their individual businesses. That is why we think your important effort to hear directly from small businesses should include central Florida, specifically Oviedo-Winter Springs.

We don't believe the Office of Advocacy has held a roundtable in the state of Florida yet, so we respectfully request that you consider scheduling one in early June this year.

If you have any questions or need any further information or assistance in setting up a roundtable in Oviedo-Winter Springs, please feel free to contact me.

Thank you for your consideration.



Bridget Lake
 President/CEO
 Oviedo-Winter Springs Regional Chamber of Commerce
Bridget@oviedowintersprings.org
 (407) 278-4870

Appendix F. Roundtables in the News

Jim Risch, "Unleashing the Job-Creating Potential of the American Entrepreneur," The Idaho Statesman, July 12, 2017. <https://www.idahostatesman.com/opinion/readers-opinion/article161100514.html>

Small-business owners need real regulatory relief. They need an advocate to force government agencies to consider the impact of regulations on their businesses. They need a chance to look up from the massive piles of paperwork required by each of the thousands of new regulations passed over the last eight years. And, most importantly, they need Washington out of their way.

The estimated cost of compliance with federal regulations is disproportionately shouldered by small businesses. Federal agencies don't understand how much new regulations increase costs and uncertainty in the business world. Over the last eight years, small businesses in Idaho and across the country have overwhelmingly pleaded for a break from the regulations they've been suffering under. Regulators have continued to pile on more rules, leading to more difficult compliance and higher penalties. It is up to Congress to step in and break this cycle.

As Chairman of the Senate Committee on Small Business and Entrepreneurship, I have introduced two bills that will help small businesses finally enjoy relief from burdensome federal regulations: the Advocacy Empowerment Act and the [Hearing Small Businesses Act](#). These bills would give the Office of Advocacy at the Small Business Administration (SBA) the authority it needs to hold the government accountable for how their actions impact small businesses.

The Office of Advocacy is an independent branch of the SBA that exists to prevent regulations from crushing small businesses. This office stands up for small businesses, giving them a way to speak directly with the federal agencies that make regulations. Advocacy works with agencies to find ways to regulate without further devastating America's 28 million

small businesses. The Office of Advocacy has asked for tools to help give businesses a break, and it is time for Congress to deliver these.

My legislation requires federal agencies to monitor their regulations' impact on small businesses. These bills give the Office of Advocacy the power to make sure agencies have considered how many small businesses will be affected by a regulation, if additional regulations overlap, and other alternatives to making an additional regulation. This legislation also will allow small businesses to provide direct input on interim final rules, which are agency rules that could be issued and go into immediate effect.

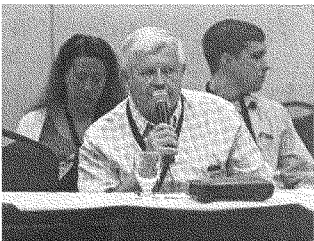
Making it easier for small businesses to start and flourish should not be a partisan issue. I have been disappointed to see so many of my colleagues call for regulatory reform but fail to advance meaningful solutions to get it done. These two bills provide small, common-sense reforms that directly deliver the tools that the Office of Advocacy has asked for in order to effectively do its job of speaking for small businesses. Business owners across the country have been forced to choose between growing their business and devoting time, money, and man hours to complying with federal rules for far too long. It is up to those of us in Congress to do what is in the best interest of business owners across the country.

Idaho's Republican Sen. Jim Risch is chairman of Senate Committee on Small Business and Entrepreneurship.


Brian Walker, "Taking Aim at the Rules," The Bonner County Daily Bee, July 14, 2017.
http://www.bonnercountydailybee.com/front_page_slider/20170714/taking_aim_at_the_rules

TAKING AIM AT THE RULES

July 14, 2017 at 9:55 am



LOREN BENNETT, President of the Bonner County Forest Products Association, speaks at a roundtable discussion on forest products and protecting small businesses during a regulatory roundtable talk show by the Office of Advocacy of the Small Business Administration Thursday morning at the East Western Plus Courtyard in Ketchikan.



By BRIAN WALKER
 Magazine News Network

COEUR D'ALENE — Mark Freeman topped the show-and-tell method to drive home his point on how environmental regulations are impacting the wood processing company.

The president and CEO of Kuma Stoves in Garwood on Thursday brought a display of two pipes — one 12 times longer than the other — to illustrate the ratio of how much the EPA has required stove emissions to be reduced in recent years.

"If the auto industry told me, you already have had to walk mine today," he told officials with the Office of Advocacy of the Small Business Administration during a regulatory roundtable attended by about 50 at the East Western Plus Courtyard here. "Enough is enough."

The SBA hoped the event to hear how federal regulations are hampering small businesses. Input from Thursday's roundtable and others will be compiled into a report for Congress to review when considering to cut regulations under a directive from President Donald J. Trump.

Freeman said the EPA has not been willing to come to the negotiating table with the wood stove industry when it comes to further reducing emissions, so the pipes are tied up in litigation.

"We need something we need relief," Freeman said. "The emission targets are unreasonable and onerous."

The ripple effect, he said, will be a negative economic impact.

"It will make stoves more expensive, so fewer people will buy them," he said. "We can't punish rural Americans who need a furnace for their business. It's not only asinine but our industry is at stake."

Freeman said he's not against clean air standards, but regulations need to be reasonable.

Steven Kneough, executive director of Associated Logging Contractors, said his industry also made a plea in 2015 to the SBA about a burdensome task with the Small Business Timber Set-Aside Program.

"We have not seen that issue resolved," she said. "We wonder if anyone is truly listening."

The program asked SBA to ensure that small businesses receive a fair proportion of the total sales of government property.

Kneough, also a Republican state senator from Sandpoint, said her trade association would like to see an amendment to the set-aside program. She said it should include timber volume sold as part of a stewardship services contract in the calculation for the smaller share for small business.

To fix that, she said, "it's the same challenge for small businesses. We have to secure the work, compete with other regulatory burdens within the U.S. Forest Service. Make it difficult for our small businesses to compete on the same playing field with big business."

Another regulatory issue the timber industry faces is that of restoration after a wildfire on national forests and.

"The regulations coming out of the U.S. Forest Service often mean that it takes at least one year and more likely longer before all the trees are dotted and it's crossed on the landscape required to start salvaging of dead burned trees," Kneough said.

As a result, the trees lose their value as the wood chips are used in turn, potential purchasers of that wood must be logging contractors and sawmills won't buy the trees because the value is no longer there. This sets us a vicious circle.

Hugh McMillan, an Oregon manager of Century Travel Services, said consolidation of contractors hurt a business. The workforce for the travel management agency had dropped from 40 to 17.

"We've lost more than 50 percent of our contracting business due to consolidation," he said.

Doug Wolford, of Washington Trust Bank, said regulations are also an ongoing concern in the banking industry.

"By fear of what they'll have a negative impact on my ability to lend to small businesses," he said.

In case you missed it:

There are federal regulations that are hampering your small business and you were unable to attend Thursday's regulatory roundtable. In Coeur d'Alene, the Office of Advocacy of the Small Business Administration will want to hear your concerns at info@coeuridalebee.com.

Emily Bamforth, "Are Federal, State Regulations Hurting Northeast Ohio Businesses? Owners Discuss Problems." [Cleveland.com, August 4, 2017.](https://www.cleveland.com/metro/index.ssf/2017/08/are_federal_state_regulations.html)
https://www.cleveland.com/metro/index.ssf/2017/08/are_federal_state_regulations.html

Are federal, state regulations hurting Northeast Ohio businesses? Owners discuss problems

Updated Aug 4, 2017, Posted Aug 4, 2017

By Emily Bamforth, cleveland.com, bamforth@cleveland.com

CLEVELAND, Ohio — Federal and state regulations touch everything from whether truck drivers need to get tested for sleep apnea to requiring more than 1,500 hours of training to become a cosmetologist.

Some small business owners are sick of it. At a Cleveland roundtable presented by the Office of Advocacy of the Small Business Association, people aired their concerns to officials who are looking for real-world examples of how regulations are burdening small businesses in America.

In Ohio, 90.6 percent of Ohio businesses qualify as small businesses, defined as businesses with fewer than 500 employees. Employees of those businesses total 2.1 million, making up 46 percent of employees, according from the Office of Advocacy.

The roundtable comes at a time where government officials are contemplating rolling back or reforming regulations. President Donald Trump signed an executive order in January trying to cut down on federal regulations, saying agencies should cut two regulations for every new one.

Ohio Republican Senator Rob Portman was part of introducing the bipartisan Regulatory Accountability Act, which requires cost-benefit analysis for all regulations and aims to improve transparency.

Read more: [Sen. Rob Portman's push to peel back regulations meets fierce criticism](#)

U.S. Sen. Rob Portman has tried to change government regulations since he became a senator. Now he has his last chance.

Here are some of the regulations that small business owners felt were hindering their success:

The Affordable Care Act

Not being able to afford to provide health care was a common complaint among the business owners who spoke. As health care reform battles and starts in Congress, many business owners are anxiously awaiting the results. If some form of change doesn't pass, some owners are afraid they won't be able to provide health care at all.

Frank Castro, who owns U.S. Industrial Sales Inc., which helps manufacturers sell their wares, said the healthcare expenses for his business have increased 25 percent per year since the Affordable Health Care Act passed.

"It prevents me from hiring people," he said.

Patricia Miller, owner of GraceSound, a technology product company, said employers typically want to be able to provide the best benefits for their employees but that the additional costs that come with these kinds of regulations force employers to cut somewhere else.

She also said that in the grand scheme of things, officials could benefit from listening to small business owners, because they know what employees need.

Overtime pay regulations

Expansions in overtime pay rules under the Obama administration left some employers having to change the way that they do business. Many cited a proposed 2016 rule — eventually blocked in court — that allowed full-time salaried employees to earn overtime if they make up to \$47,470 a year.

Miller said this stops employers from using discretion when it comes to their employees due to having to document hours to show they're complying with federal overtime rules. If an employee has an emergency, it's a lot more difficult to shift hours around, she said.

Lack of streamlining processes and unnecessary rules

A large part of administrative burdens comes from having to hire accountants and lawyers to make sure businesses are compliant, attendees said.

Tony Pione, government affairs director for the Ohio State Council of Society for Human Resource Management, said technology could help streamline submitting information and other processes that take up time for business owners.

For example, being able to verify if someone is able to work in the United States. Making it possible to check out a potential employee's status quickly from a phone or app would make life easier for small business owners, he said.

Modernizing laws like the Fair Labor Standards Act is also key, Pione added.

"We can't have 1933's frameworks governing the policy of the 21st century — that's just not feasible," he said.

Appendix G. Formal Titles of Regulations in this Report

Issue	Agency	Title of Proposed or Enacted Rule	Citation to Rule
60 Percent Rule	HHS/ CMS	ICD-9-CM Compliant Codes for Inpatient Rehabilitation Facilities (IRF) 60% Rule; Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Fiscal Year 2018	82 Fed. Reg. 36238 (proposed on August 3, 2017) (to be codified at 42 CFR Part 412)
ADA Accessibility of Passenger Vessels	DOJ	Nondiscrimination on the Basis of Disability by Public Accommodations on Passenger Vessels	28 CFR Part 36
Affirmative Action Requirements for Federal Contractors	DOL	Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities	41 CFR Part 60-741
Affordable Care Act Compliance Paperwork Burdens	Treasury / IRS	Employers with at Least 50 Employees	Form 1095-C
Affordable Care Act Compliance Paperwork Burdens	Treasury / IRS	Self-insured Employers with Fewer than 50 Employees	Form 1095-B
Affordable Care Act Rules; Difficulty Determining Full-Time Versus Part Time Employment For ACA Coverage	HHS / DOL / IRS	Shared Responsibility For Employers Regarding Health Coverage	26 U.S. Code § 4980H(c)(4)
Affordable Care Act Rules; Reducing Cost Of Coverage; Purchasing Coverage Across State Lines	HHS / DOL / IRS	Executive Order Promoting Healthcare Choice and Competition Across the United States	Exec. Order 13813 of Oct 12, 2017
Basel III Rules Related To Capital Requirements On Bank Lending	Treasury	Minimum Capital Requirements	12 CFR 3.10
Beryllium Rule	DOL/ OSHA	Proposed Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyards	82 Fed. Reg. 29182 (June 27, 2017)
Calculation of Star Ratings	HHS/ CMS	Calculation of Star Ratings	42 CFR 422.166
Coal Combustion Residuals (CCR) Rule	EPA	Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities; Amendments to the National Minimum Criteria (Phase One, Part One)	83 Fed. Reg. 36435 (July 30, 2018)
Communication Towers	DOL/ OSHA	OSHA has re-initiated its Small Business Advocacy Review panel on Communication Tower Safety	
Companion Care Rule	DOL	Application of the Fair Labor Standards Act to Domestic Service	29 CFR Part 552; 76 Fed. Reg. 81190 (December 27, 2011)
Compliance Costs associated with DFARS, Part 252	SBA	Defense Federal Acquisition Regulation Supplement Part 252—Solicitation Provisions and Contract Clauses	DFARS 252.204-7012 - Safeguarding Covered Defense Information and Cyber Incident Reporting
Confined Spaces	DOL/ OSHA	Confined Spaces in Construction	29 CFR Part 1926

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Appendix G. Formal Titles of Regulations in this Report, continued

Issue	Agency	Title of Proposed or Enacted Rule	Citation to Rule
Conflict Minerals	SEC	Requirement of report regarding disclosure of registrant's supply chain information regarding conflict minerals.	17 CFR Part 240, 240.13p-1
Criminal Background Check Rules	HUD	Guidance on Criminal Background Checks	Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (April 4, 2016).
Data Used to Determine Fishing Allocations	DOC/ NOAA	Magnuson-Stevens Fishery Conservation and Management Act Provisions: Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 57	50 CFR Part 648 (New England Fishery) 16 USC 1851 (a)(2)(Magnuson Stevens Act, National Standard 2)
Definition of Destruction or Adverse Modification of Critical Habitat	DOI	Definitions	50 CFR Part 402.02
Definition of Independent Contractor	DOL	US Secretary Of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance	U.S. Dep't of Labor, Release No. 17-0807-NAT (June 7, 2017)
Definition of Joint Employer	DOL	US Secretary Of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance	U.S. Dep't of Labor, Release No. 17-0807-NAT (June 7, 2017)
Design and Production Approvals	DOT	Certification Procedures for Products and Articles	14 CFR Part 21
Drones	DOT/ FAA	Operation and Certification of Small Unmanned Aircraft Systems	14 CFR Part 107, Subpart B
Drones	DOT/ FAA	Small Unmanned Aircraft Systems (Small Drones); Department Regulatory and Deregulatory Agenda; Semiannual Summary	83 Fed. Reg. 27161; Operations of Small Unmanned Aircraft over People RIN: 2120-AK85
Electronic Logging Devices (ELDs)	DOT/ FMCSA	Electronic Logging Devices and Hours of Service Supporting Documents	49 CFR Parts 395, Subpart B
Electronic Recordkeeping and Reporting	DOL/ OSHA	Tracking of Workplace Injuries and Illnesses	83 Fed. Reg. 36494 (proposed July 30, 2018) (to be codified at 29 CFR Part 1904)
Emissions Standards for Oil and Gas Production	EPA	Review of the 2016 Oil and Gas New Source Performance Standards for New, Reconstructed, and Modified Sources	40 CFR Part 60
Endangered and Threatened Species Act Compensatory Mitigation Policy And Litigation	DOI	Endangered and Threatened Wildlife and Plants; Endangered Species Act Compensatory Mitigation Policy; Withdrawal	83 Fed. Reg. 36469 (effective July 30, 2018) (to be codified at 50 CFR Chapter I)
Endangered Species Act Rules	DOI/ FWS	Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat	83 Fed. Reg. 35193 (proposed on July 25, 2018) (to be codified at 50 CFR Part 424)
Endangered Species Listing of the Lesser Prairie Chicken	DOI	Endangered and Threatened Wildlife and Plants	50 CFR Part 17

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Appendix G. Formal Titles of Regulations in this Report, continued

Issue	Agency	Title of Proposed or Enacted Rule	Citation to Rule
Endangered Species Listing of the Northern Long-Eared Bat	DOI	Endangered and Threatened Wildlife and Plants	50 CFR Part 17
Endangered Species Listing of the Northern Spotted Owl	DOI	Endangered and Threatened Wildlife and Plants	50 CFR Part 17
Endangered Species Listing of the Rusty Patched Bumble Bee	DOI	Endangered and Threatened Wildlife and Plants	50 CFR Part 17
Energy Efficiency Standards and Energy Star programming	DOE	Part 430—Energy Conservation Program For Consumer Products	10 CFR 430
Energy Efficiency Standards And Energy Star Programming For Automatic Commercial Ice Makers	DOE	Part 431—Energy Efficiency Program For Certain Commercial And Industrial Equipment	10 CFR 431, Subpart H
Energy Efficiency Standards And Energy Star Programming For Compressors	DOE	Part 431—Energy Efficiency Program For Certain Commercial And Industrial Equipment	10 CFR 431, Subpart T
Energy Efficiency Standards And Energy Star Programming For Refrigerated Bottled or Canned Beverage Vending Machines	DOE	Part 431—Energy Efficiency Program For Certain Commercial And Industrial Equipment	10 CFR 431, Subpart O
Energy Efficiency Standards And Energy Star Programming for Walk-In Coolers and Walk-In Freezers	DOE	Part 431—Energy Efficiency Program For Certain Commercial And Industrial Equipment	10 CFR 431, Subpart R
Estate Valuation	Treasury	Estate, Gift, and Generation-Skipping Transfer Taxes; Restrictions on Liquidation of an Interest	82 Fed. Reg. 48779 (withdrawal of notice of proposed rulemaking)
Exchange Visitor/ Summer Work Travel Program Programs	STATE	Exchange Visitor Program-Summer Work Travel	82 Fed. Reg. 4,120 (proposed Jan. 12, 2017) (to be codified at 22 CFR pt. 62)
Fall Protection for the Construction Industry	DOL/ OSHA	Subpart M—Fall Protection	29 CFR part 1926, subpart M
Fiduciary Rule	DOL	Definition of the Term "Fiduciary"	29 CFR Part 2510
Food Labeling Rules	HHS	Food Labeling: Revision of the Nutrition and Supplement Facts Labels	21 CFR Part 101
Food Labeling Rules	HHS	Food Labeling: Serving Sizes of Foods that Can Reasonably Be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments	21 CFR Part 104
Form I-9- Employment Verification Process	DHS	Verification of identity and employment authorization	8 CFR Part 274a.2
Food Safety Regulations— Controlling Contamination Through Slaughter And Dressing Operation	USDA/FSIS	Poultry Products Inspection Regulations	9 CFR § 381.65 (g)

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Appendix G. Formal Titles of Regulations in this Report, continued

Issue	Agency	Title of Proposed or Enacted Rule	Citation to Rule
Food Safety Regulations—Disposition of Condemned Livestock	USDA/FSIS	Disposition of Condemned Livestock	9 CFR § 309.13
Food Safety Regulations—National Organic Program	USDA/FSIS	National Organic Program	7 CFR Part 205
Food Safety Regulations—Post Mortem Inspection	USDA/FSIS	Poultry Products Inspection Regs; Post Mortem Inspection; Disposition of Carcasses and Parts	9 CFR § 381.76- post mortem inspection
Food Safety Regulations—Contamination	USDA/FSIS	Poultry Products Inspection Regulations	9 CFR § 381.91
Food Safety Regulations—Contamination with Micro-organisms	USDA/FSIS	Post-Mortem Inspection	9 CFR § 310.25 (a)
Food Safety Regulations—Facilities	USDA/FSIS	Poultry Products Inspection Regulations	9 CFR §381.36
Food Safety Regulations—Misbranding of Products	USDA/FSIS	Recalls	9 CFR § 418.2
Food Safety Regulations—Passing of Carcasses and Parts	USDA/FSIS	Poultry Products Inspection Regs; Post Mortem Inspection; Disposition of Carcasses and Parts	9 CFR § 381.79
Food Safety Regulations—Relating to Several Diseases	USDA/FSIS	Poultry Products Inspection Regs; Post Mortem Inspection; Disposition of Carcasses and Parts	9 CFR § 381.80-93-
Food Safety Regulations—Slaughter Inspection Rate Maximums	USDA/FSIS	Poultry Products Inspection Regulations	9 CFR § 381.67
Food Safety Regulations—Temperatures and Chilling and Freezing Procedures	USDA/FSIS	Poultry Products Inspection Regulations	9 CFR § 381.66
FSMA Rules (Food Safety Modernization Act)	HHS	Accreditation of Third-Party Certification Bodies To Conduct Food Safety Audits and Issue Certifications	21 CFR Parts 1, 11, and 16
FSMA Rules (Food Safety Modernization Act)	HHS	Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food	21 CFR Parts 1, 11, 16, 106, 110, 114, 117, 120, 123, 129, 179, and 211
Gainful Employment Rule	ED	Gainful Employment Regulation	34 CFR § 66.403, et seq.
H-1B Visas	DHS	Buy American and Hire American	Exec. Order No. 13,788, 82 Fed. Reg. 18,837 (April 18, 2017)
H-1B Visas	DHS	Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject to the Numerical Limitations	76 Fed. Reg. 11686 (proposed on March 03, 2011) (to be codified at 8 CFR pts. 214 and 299)
H-2A and H-2B Visa Programs	DOL / DHS	Temporary Employment of Foreign Workers in the United States; Nonimmigrant Classes	20 CFR Part 655; 8 CFR Part 214
Hard Rock Mining	EPA	Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry	83 Fed. Reg. 7556 (February 21, 2018)
Harvest Sales on Federal Lands/ Timber Set-aside Rule	SBA/ USDA/ DOI	Small Business Timber Set-Aside Program	81 Fed. Reg. 66199 (proposed on September 26, 2016)(to be codified at 13 CFR Part 121)

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Appendix G. Formal Titles of Regulations in this Report, continued

Issue	Agency	Title of Proposed or Enacted Rule	Citation to Rule
Home Mortgage Disclosure Act	CFPB	Home Mortgage Disclosure (Regulation C)	12 CFR Part 1003
Hours of Service	DOT/ FMCSA	Hours of Service; Notice of Public Listening	49 CFR Part 395; 83 Fed. Reg. 45204
HUBZone	SBA	HUBZONE Program	13 CFR Part 126
Hydraulic Fracturing (Fracking)	DOI	Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule	43 CFR Part 3160
International Adoptions	STATE	Intercountry Adoptions	81 Fed. Reg. 62,321 [proposed on Sept. 08, 2016] (to be codified at 22 CFR Part 96)
International Entrepreneur Rule	DHS	Removal of International Entrepreneur Parole Program	83 Fed. Reg. 24415 [proposed May 29, 2018] (to be codified at 8 CFR pts. 103, 212, 274a)
IRS Form 1099 C, Cancellation of Debt	Treasury/ IRS	Information reporting for discharges of indebtedness by certain entities.	26 CFR § 1.6050P-1
Joint Employment	NLRB	The Standard for Determining Joint Employer Status	83 Fed. Reg. 46681 [proposed on Sept. 14, 2018] (to be codified at 29 CFR Chapter I)
Lead Renovation Repair and Painting (LRRP) Program Rules	EPA	Lead-based Paint Poisoning Prevention in Certain Residential Structures	40 CFR Part 745, Subpart E
Minimum Wage	DOL	Fair Labor, Minimum Wage	29 USC § 206
Minimum Wage for Contractors	DOL	Establishing a Minimum Wage for Contractors	Exec. Order No. 13,658, 79 Fed. Reg. 9849 (February 12, 2014)
Minimum Wage for Contractors	DOL	Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of Jan. 1, 2019	83 Fed. Reg. 44906 (September 4, 2018)
Mobility Fund Phase II Challenge Process	FCC	FCC Establishes Challenge Process For Mobility Fund Phase II To Promote Access To Mobile Broadband Services In Rural America	Order on Reconsideration and Second Report and Order (FCC 17-102)
Mobility Fund Phase II Challenge Process	FCC	Procedures for the Mobility Fund Phase II Challenge Process	83 Fed. Reg. 13417 (March 29, 2018)
Moratorium on Enforcement of Federal Contractor Requirements Against Hospitals	DOL	TRICARE Subcontractor Enforcement Activities	Directive 2014-01, U.S. Department Of Labor, Office of Federal Contract Compliance Programs
Moratorium on Leasing of Federal Coal	DOI	Secretary of the Interior - Order 3348 Subject: Concerning the Federal Coal Moratorium	Secretarial Order 3348, Concerning the Federal Coal Moratorium (March 29, 2017)
Mortgage Servicing, Regulation Z	CFPB	Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)	12 CFR Part 1026
Multiple Device Reporting	HHS/ FDA	Multiple Device Reporting	21 CFR Part 803
National Environmental Policy Act (NEPA) Compliance	USDA	National Environmental Policy Act (NEPA) Compliance	36 CFR Part 220
Net Neutrality	FCC	Restoring Internet Freedom; ISP Privacy Rules Net Neutrality (Enhanced Network Transparency Requirements under the FCC 2014 Open Internet Order)	83 Fed. Reg. 7852 [proposed on February 22, 2018] (to be codified at 47 CFR Parts 1, 20, and 8)

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Appendix G. Formal Titles of Regulations in this Report, continued

Issue	Agency	Title of Proposed or Enacted Rule	Citation to Rule
Nonhazardous Secondary Materials (NHSM)	EPA	Solid Wastes Used As Fuels Or Ingredients In Combustion Units	41 CFR Part 241
Nonhazardous Secondary Materials (NHSM)	EPA	Standards Of Performance For New Stationary Sources	40 CFR Part 60
Oil, Natural Gas, and Coal Valuation Rule	DOI	Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform	30 CFR parts 1202 and 1206
Payment for Onboard Observers Program	DOC/NOAA	Payment for Onboard Observers Program. At-Sea Onboard Monitoring for the Fishing Industry. Magnuson-Stevens Act	16 USC 1881b
Once-In, Always-In	EPA	Issuance of Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act"	Memo at: www.epa.gov/sites/production/files/2018-01/documents/reclassification_of_major_sources_as_area_sources_under_section_112_of_the_clean_air_act.pdf
Overtime Rule	DOL	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (EAP Exemption) under the Fair Labor Standards Act	29 CFR Part 541; 81 Fed. Reg. 32,391 (May 23, 2016)
Paid Sick Leave For Federal Contractors	DOL	Establishing Paid Sick Leave for Federal Contractors	Exec. Order No. 13,706, 80 Fed. Reg. 54,697 (September 7, 2015); 29 CFR Part 13
Payday Lending	CFPB	Payday, Vehicle Title, and Certain High-Cost Installment Loans	12 CFR part 1041
Persuader Rule	DOL	Rescission of Rule Interpreting "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act	83 Fed. Reg. 33826 (effective August 16, 2018)(to be codified at 29 CFR 405 and 406)
Pesticides; Agricultural Worker Protection Standard Revisions	EPA	Pesticides; Agricultural Worker Protection Standard; Reconsideration of Several Requirements and Notice About Compliance Dates	82 Fed. Reg. 60576 (December 21, 2017)
Pesticides; Certification of Pesticide Applicators	EPA	Pesticides; Certification of Pesticide Applicators Rule; Reconsideration of the Minimum Age Requirements	82 Fed. Reg. 60195 (December 19, 2017)
Positive Train Control (PTC) Exemption	DOT	Requirements for Positive Train Control Systems	49 CFR § 236.1005
Process Safety Management	DOL/ OSHA	Executive Order - Improving Chemical Facility Safety and Security	Exec. Order No. 13,650, 78 Fed. Reg. 48029 (August 1, 2013)
Process Safety Management	DOL/ OSHA	Hazardous Materials	29 CFR Part 1910, Subpart H
Quality System Regulation	HHS/ FDA	Quality System Regulation	21 CFR Part 820
Recall Reporting	HHS/ FDA	Recall Reporting	21 CFR Part 806
Regulation D	SEC	Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings	17 CFR Parts 230, 239 and 242

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Appendix G. Formal Titles of Regulations in this Report, continued

Issue	Agency	Title of Proposed or Enacted Rule	Citation to Rule
Removing Barriers to Wireless Infrastructure Deployment	FCC	Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	83 Fed. Reg. 19440 (May 03, 2018)
Removing Barriers to Wireless Infrastructure Deployment	FCC	Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	83 Fed. Reg. 46812 (September 14, 2018)
Requirements for inpatient CAH Services (Critical Access Hospitals)	HHS/ CMS	Requirements for inpatient CAH services	42 CFR 424.15
Risk Management Program (RMP) Rule	EPA	Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act	83 Fed. Reg. 24850 (May 30, 2018)
Risk Reduction and Crew Size Proposed Rules	DOT	Risk Reduction Program	80 Fed. Reg. 10949 (proposed on February 27, 2015)(to be codified at 49 CFR 271)
Risk Reduction and Crew Size Proposed Rules	DOT	Train Crew Staffing	81 Fed. Reg. 13917 (proposed March 15, 2016)(to be codified at 49 CFR 218)
Safety Measurement System	DOT	Withdrawal of Proposed Enhancements to the Safety Measurement System	83 Fed. Reg. 32949 (July 16, 2018)
Section 409A	Treasury / IRS	Application of Section 409A and effective dates. Exempting Small Private Companies from the Penalties and Requirements Associated with Deferred Compensation Arrangements Under Internal Revenue Code Section 409A	26 CFR § 1.409A-6
Service Disabled Veteran Contractors	SBA	Eligibility Requirements for the SDVO SBC Program	13 CFR Part 125, Subpart B
Silica Rule	DOL/ OSHA	Occupational Exposure to Respirable Crystalline Silica	29 CFR Parts 1910, 1915, and 1926
Small Business Excluded from Some R&D contracts Because They Are Not Related to the Small Business Innovation Research and Development (SBIR) Program	SBA	Federal Acquisition Regulation - Subpart 19.5—Set-Asides for Small Business	19.502-2 Total Small Business Set-Asides
Small Disadvantaged Business (SDB)	SBA	8(a) Business Development/Small Disadvantaged Business Status Determinations	13 CFR Part 124
Standards for the Electronic Health Record Technology Incentive Program	HHS/ CMS	Standards For The Electronic Health Record Technology Incentive Program	42 CFR Part 495
Steam Electric	EPA	Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category	82 Fed. Reg. 43494 (September 18, 2017)

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Appendix G. Formal Titles of Regulations in this Report, continued

Issue	Agency	Title of Proposed or Enacted Rule	Citation to Rule
Steam Electric	EPA	SBA Petition for Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category	https://www.epa.gov/sites/production/files/2017-04/documents/sba_petition_for_effluent_limitations_guidelines_and_standards_for_the_steam_electric_power_generating_point_source_category.pdf
Stormwater Permits - Multi-Sector General Permit	EPA	Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities	80 Fed. Reg. 34403
Stormwater Permits - Multi-Sector General Permit	EPA	NPDES Multi-Sector General Permit (MSGP) for Industrial Stormwater (2015)	40 CFR Part 122
System For Award Management	SBA	System for Award Management	48 CFR Part 52, Subpart 52.204-7
Tax and Inventory Accounting Rules	Treasury	Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule	12 CFR Parts 208, 217, and 226
Tip Rules	DOL	Tip Regulations Under the Fair Labor Standards Act (FLSA)	82 Fed. Reg. 59562 (proposed on December 15, 2017) (to be codified at 29 CFR 531)
Tobacco Deeming	HHS/ FDA	Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products	21 CFR Parts 201, 801, and 1100
Tobacco Deeming	HHS/ FDA	Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act	21 CFR Parts 1100, 1140, and 1143
Toxic Substance Control Act (TSCA) Fee Rule	EPA	Fees for the Administration of the Toxic Substance Control Act	83 Fed. Reg. 52694 (October 17, 2018)
Toxics Release Inventory	EPA	Toxic Chemical Release Reporting: Community Right-To-Know	40 CFR Part 372
Training, Qualification, and Oversight for Safety-Related Railroad Employees	DOT	Training, Qualification, and Oversight for Safety-Related Railroad Employees	49 CFR Part 243
US Coast Guard Safety and Security Plan Rules	DHS	Vessel Security	46 CFR 140.660
Wood Heaters	EPA	Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces	40 CFR Part 60, Subpart AAA
WOTUS, Waters of the United States	EPA, CORPS	Addition of an Applicability Date to 2015 Clean Water Rule	33 CFR 328, 40 CFR 110, 112, 116-17, 122, 230, 232, 300, 302, 401

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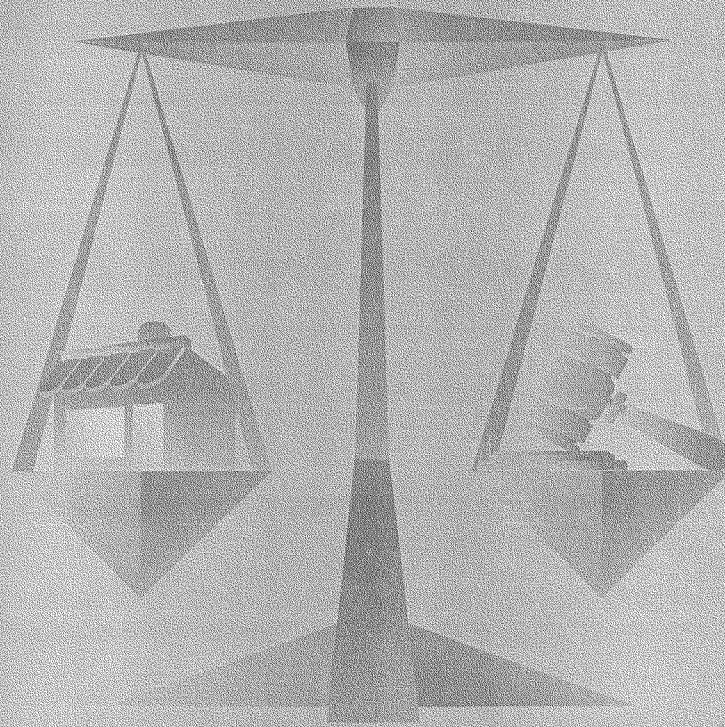
Appendix G. Formal Titles of Regulations in this Report, continued

Issue	Agency	Title of Proposed or Enacted Rule	Citation to Rule
WOTUS, Waters of the United States	EPA, CORPS	Clean Water Rule: Definition of "Waters of the United States"	80 CFR 37053, 33 CFR 328, 40 CFR 110, 112, 116-17, 122, 230, 232, 300, 302, 401
WOTUS, Waters of the United States	EPA, CORPS	Recodification of Preexisting Rule	83 Fed. Reg. 32227 (July 12, 2018)
Agency Abbreviations			
CFPB	Consumer Financial Protection Bureau	FSIS	Food Safety and Inspection Service
DHS	Department of Homeland Security	FWS	Fish and Wildlife Service
DOC	Department of Commerce	HHS	Department of Health and Human Services
DOI	Department of Interior	IRS	Internal Revenue Service
DOJ	Department of Justice	NOAA	National Oceanic and Atmospheric Administration
DOL	Department of Labor	OSHA	Occupational Safety and Health Administration
DOT	Department of Transportation	SBA	Small Business Administration
EPA	Environmental Protection Agency	SEC	Securities and Exchange Commission
FAA	Federal Aviation Administration	STATE	Department of State
FCC	Federal Communications Commission	TREASURY	Department of Treasury
FDA	Food and Drug Administration	CORPS	U.S. Army Corps of Engineers
FMCSA	Federal Motor Carrier Safety Administration	USCIS	Citizenship and Immigration Service
FS	Forest Service	USDA	Department of Agriculture

April 2019

Report on the Regulatory Flexibility Act, FY 2018

Annual Report of the Chief Counsel for
Advocacy on Implementation of the
Regulatory Flexibility Act and Executive
Order 13272



The Office of Advocacy of the U.S. Small Business Administration was created by Congress in 1976 to be an independent voice for small business within the federal government. The office is led by the Chief Counsel for Advocacy who is appointed by the President and confirmed by the U.S. Senate. The chief counsel advances the views, concerns, and interests of small business before the White House, Congress, federal agencies, federal courts, and state policymakers. The office relies on economic research, policy analysis, and small business outreach to identify issues of small business concern.

Ten regional advocates around the country and an office in Washington, D.C., support the chief counsel's efforts. This annual report on federal agency compliance with the Regulatory Flexibility Act is mandated by Section 612 of the Regulatory Flexibility Act. It is available on Advocacy's website at <https://advocacy.sba.gov>. Reports from previous years are available there as well.

Information about Advocacy's initiatives on behalf of small businesses is accessible via the website; three Listservs (regulatory communications, news, and research); and social media including a blog, Twitter feed, Facebook page, and LinkedIn presence.



Website advocacy.sba.gov



Facebook facebook.com/AdvocacySBA



Email advocacy@sba.gov



Twitter twitter.com/AdvocacySBA



LinkedIn <https://www.linkedin.com/company/u-s-small-business-administration-office-of-advocacy>

April 2019

To: The White House
 The Senate Committee on Small Business and Entrepreneurship
 The House Committee on Small Business

The Regulatory Flexibility Act (RFA) is the statutory basis of small entity consideration in federal rulemaking. The RFA assigns the Office of Advocacy official responsibility in rulemaking—to monitor whether agencies are taking small entities into account and to inform them of small businesses' concerns in order to improve regulations.

The RFA allows small businesses to participate in regulatory decisions that affect them. It also directs the Chief Counsel for Advocacy to monitor and report on how well federal agencies are complying with the law. This report fulfills this mandate, covering fiscal year 2018: from October 1, 2017, to September 30, 2018. In addition, Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," requires Advocacy to report on agency activities that demonstrate consideration of small entities in rulemaking. Chapter 2 reports on their compliance in FY 2018.

From the earliest days of his administration, President Trump identified private-sector deregulation as a top priority. Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," required that any new regulations be balanced by the reduction of at least two other regulations. It also required that any costs imposed by new regulations be entirely offset by eliminating costs of existing regulations. Executive Order 13777, "Enforcing the Regulatory Reform Agenda," put a framework in place to bring about this vision of regulatory reform.

Advocacy has captured this deregulatory momentum to bring small businesses' priorities to the forefront—to inform agencies' decisions about which rules to review and reform, and to articulate small businesses' concerns with them. The RFA requires agencies to analyze the economic impact of a rule whenever it would impose a significant economic burden on a substantial number of small entities. Advocacy continues to monitor and speak up on behalf of small businesses in deregulatory rulemakings. And in response to Executive Orders 13771 and 13777, our small business outreach has expanded nationally, in the Regional Regulatory Reform Roundtable initiative.

Advocacy's overall efforts to promote federal agency compliance with the RFA resulted in \$253.3 million in regulatory cost savings for small entities in FY 2018. These savings came from seven deregulatory actions taken by five agencies.

- The largest compliance cost saving resulted from changes to the Department of the Interior's Venting and Flaring Rule. According to the agency, the compliance costs of the earlier rule amounted to 24 to 86 percent of annual revenues from marginal wells, which form the majority of those on agency-administered leases. The revisions yielded small business cost savings of \$72,000 per firm, or \$127 million.
- Another regulatory cost savings resulted from the Environmental Protection Agency's decision not to impose additional insurance requirements on hardrock mining sites. Small businesses argued that this would duplicate existing federal and state regulations that address this issue. The withdrawal resulted in annual cost savings of \$60.4 million.
- Compliance cost savings also ensued from the one-year delay in implementing the Department of Energy's Ceiling Fan Light Rule. This delay gives small businesses more time to comply with the rule, and saves them as much as \$1.7 million.

Other successes lightened the small business regulatory load, though not easily quantifiable.

- In one example, EPA reversed a policy known as “once-in always-in.” This policy imposed the most stringent requirements on major sources of hazardous air pollutants, but it contained no incentive to improve performance and reduce emissions. The revised policy allows small businesses that have been classified as major sources to benefit from their pollution reduction efforts.
- Federal agencies’ varying definitions of “small business” complicate regulatory compliance, creating confusion and extra paperwork with no apparent benefit. One improvement this year was EPA’s adoption of the Small Business Administration’s small business size standards for the fee schedule for the Toxic Substance Control Act. The new definition also allows more small businesses to qualify for reduced fees.

Chapter 2 reports on agencies’ compliance with Executive Order 13272. Advocacy provided training in RFA compliance to 132 officials at six agencies. Advocacy confirmed whether agencies had posted their RFA procedures on their websites. Table 2.2 provides these links, which all but two agencies provided.

Also of note in FY 2018:

- Advocacy continued its deregulatory effort, the Regional Regulatory Reform Roundtable Initiative. The initiative informs federal agencies of small businesses’ priorities for deregulation.
- Advocacy held 23 regulatory reform roundtables in 16 states and received input from small businesses in many others. In some cases, agency officials attended roundtables and heard small business concerns directly. And in all cases, Advocacy followed up with agencies in formal letters, teleconferences, and issue roundtables.
- Advocacy staff visited 67 small businesses in 15 states. They heard directly from small business owners and observed business locales and operations, and they came away with a better understanding of the practical issues small businesses face with regulatory compliance.
- The Regional Roundtable initiative effort has yielded progress in lightening small businesses’ regulatory load. Details appear in the report, [What Small Businesses Are Saying and What Advocacy Is Doing About It: Progress Report on the Office of Advocacy’s Regional Regulatory Reform Roundtables](#), on page 34.
- On April 11, 2018, the Treasury Department and White House Office of Information and Regulatory Affairs signed a memorandum of agreement allowing Treasury regulations to be reviewed under E.O. 12866. This executive order requires significant regulations to be submitted to the Office of Management and Budget. Previously, most Internal Revenue Service regulations were exempt from 12866 review.
- Finally, in 2018, Advocacy continued its work coordinating the interagency working group called for by the Trade Facilitation and Trade Enforcement Act. The group of six agencies evaluated the small business impact of the NAFTA renegotiation which resulted in the United States–Mexico–Canada Agreement.

It is an honor to present to you this report on federal agency compliance with the Regulatory Flexibility Act. My office looks forward to continuing these efforts and achieving significant reductions in small businesses’ regulatory burdens.

Sincerely,



Major L. Clark, III
Acting Chief Counsel for Advocacy

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Chapter 1

The Regulatory Flexibility Act, Small Business, and the Era of Deregulation

Shortly after his inauguration in January 2017, President Donald J. Trump issued two executive orders aimed at ameliorating the regulatory burden faced by the private sector. The first, E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs,” commonly known as “one-in, two-out,” required that any new regulations be balanced by the elimination of at least two other regulations. It also required that the incremental cost of new regulations be entirely offset by elimination of existing costs of other regulations. The second, E.O. 13777, “Enforcing the Regulatory Reform Agenda,” set a framework for implementing this vision of regulatory reform, requiring inter alia that each agency appoint a Regulatory Reform Officer to supervise the process of regulatory reform going forward. The Office of Advocacy determined that these measures could be an opportunity to reduce the federal regulatory impact on small business. Since in most instances

the agencies will implement the regulatory reform executive orders through notice and comment rulemaking, the requirements of the Regulatory Flexibility Act (RFA) will play a role.

To maximize this opportunity for small business regulatory reform, Advocacy has launched the Regional Regulatory Reform Roundtable initiative. Advocacy headquarters staff and regional advocates have hosted small business roundtables around the country in order to identify small business regulatory issues and to assist agencies with regulatory reform and reduction in compliance with Executive Orders 13771 and 13777. Advocacy invited several federal agencies to send representatives to these roundtables to hear directly from stakeholders on specific recommendations for regulatory changes. In FY 2018, these regulatory review and reform roundtables were held in 23 cities.



Regional Regulatory Reform Roundtable, Milwaukee, Wis.

SBA Administrator Linda McMahon joins Advocacy staff members at the Regional Regulatory Reform Roundtable in Milwaukee, Wis., as part of Advocacy's continuing effort to hear directly from affected small businesses about their existing federal regulatory burdens. She shared her personal story of building her family business, and she encouraged small businesses to discuss their ideas for regulatory reform.

Agencies' implementation of these executive orders offer significant opportunities for regulatory relief targeted to small businesses. In this context, the RFA requires agencies to analyze their deregulatory actions to maximize small business benefits in the marketplace. This report includes descriptions of success stories of small business burden reduction achieved by the agencies and Advocacy.

Since its passage in 1980, the Regulatory Flexibility Act (RFA)¹ has helped establish small business consideration as a necessary part of federal rulemaking. In 2017, Advocacy sent a memorandum to federal agencies recommending that agencies consider small entity interests in implementing EO 13771 and in subsequent deregulatory actions. (See Appendix C.) The memo also reminded agencies of their obligations under the RFA and of the assistance Advocacy could offer to conduct small entity outreach.

In the past, Advocacy has made regulatory reform recommendations directly to agencies based on a review of rules subject to the requirements of section 610 of the RFA and based on outreach to small entity representatives. In addition, once agencies designated Regulatory Reform Officers and established Regulatory Reform Task Forces under EO 13777, Advocacy offered these recommendations and other assistance and views to agencies, as suggested by EO 13777, section 3(e). Since then, Advocacy has engaged in a longer-term effort to make specific recommendations to agencies and the Office of Management and Budget about regulations and regulatory policies that could be modified to lower small entities' compliance costs. In addition to writing public comment letters to voice small business concerns, Advocacy also has been working

directly with agencies to assist in developing and recommending regulatory changes. Advocacy's Regional Regulatory Reform Roundtables have allowed small businesses around the country to discuss the challenges they face with regulatory implementation and compliance. These meetings explore small entities' suggestions for regulatory streamlining and savings, and participants discuss ways to improve small business participation in agencies' rulemakings. These discussions inform Advocacy's ongoing and future recommendations to the federal agencies tasked with reducing the number of regulations.

The RFA, Its Requirements, and Efforts to Strengthen It

The RFA was passed in 1980 to address the disproportionate impact of federal regulations on small businesses. Under the RFA, when an agency proposes a rule that would have a "significant economic impact on a substantial number of small entities," the rule must be accompanied by an impact analysis, known as an initial regulatory flexibility analysis (IRFA), when it is published for public comment.² When the final rule is published, it must be accompanied by a final regulatory flexibility analysis (FRFA).³ Alternatively, if a federal agency determines that a proposed rule would not have such an impact on small entities, the head of that agency may "certify" the rule and bypass the IRFA and FRFA requirements.⁴

The key to understanding the RFA's importance is that in order to produce an IRFA, the agency must consider less burdensome alternatives to its own rule, and in the FRFA the agency must explain why it

1. 5 U.S.C. § 601, et seq. The Regulatory Flexibility Act was originally passed in 1980 (Pub. L. No. 96-354). The Act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121), the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203), and the Small Business Jobs Act of 2010 (Pub. L. No. 111-240).

2. 5 U.S.C. § 603.

3. 5 U.S.C. § 604.

4. 5 U.S.C. § 605(b).

chose among the alternatives in the IRFA.⁵ Applying the RFA to deregulatory actions is the latest development in the enforcement of the RFA.

In 1996 Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA). The amendments to the RFA under SBREFA emphasized federal agency compliance with the RFA, imposing specific procedures addressing small business concerns regarding environmental and occupational safety and health regulations and making a federal agency's compliance with certain sections of the RFA judicially reviewable, meaning petitioners could challenge regulations based on the agency's failure to comply with those sections of the statute.

In 2002, Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," directed Advocacy to begin providing training to federal agencies to apprise them of their responsibilities under the RFA and to educate them on the best RFA compliance practices. Advocacy continues to train agency rulewriters and to track agency compliance with these requirements.

The Small Business Jobs Act of 2010⁶ codified some of the procedures introduced in E.O. 13272. That same year, the Dodd-Frank Wall Street Reform and Consumer Protection Act became law.⁷ The new law created the Consumer Financial Protection Bureau and made the agency's major rules subject to the RFA's SBREFA panel provisions.

Executive Order 13563, "Improving Regulation and Regulatory Review," signed in 2011, directed agencies to heighten public participation in rulemaking, consider overlapping regulatory requirements and

flexible approaches, and conduct ongoing regulatory review.⁸ President Obama concurrently issued a memorandum to all federal agencies, reminding them of the importance of the RFA and of reducing the regulatory burden on small businesses through regulatory flexibility. In this memorandum, President Obama directed agencies to increase transparency by providing written explanations of any decision not to adopt flexible approaches in their regulations. The following year, President Obama further attempted to reduce regulatory burdens with Executive Order 13610, "Identifying and Reducing Regulatory Burdens," which placed greater focus on initiatives aimed at reducing unnecessary regulatory burdens, simplifying regulations, and harmonizing regulatory requirements imposed on small businesses.⁹

Conclusion

Since its passage in 1980, the RFA has demonstrated remarkable staying power. It has helped establish small business consideration as a necessary part of federal rulemaking. The careful tailoring of regulation to business size has helped make better regulations with improved compliance in pursuit of safety, health, and other public goods. The subsequent regulatory and legislative improvements have solidified Advocacy's participation in rulemakings affecting small business. What these regulatory reform initiatives all have in common is agreement that the regulatory burden on small business must be minimized. Over its 38-year history, the RFA has provided federal agencies with the framework to accomplish this goal. With Advocacy's ongoing monitoring, this important tool will continue to

5. 5 U.S.C. § 604.

6. *Small Business Jobs Act*, Pub. L. No. 111-240 (2010).

7. *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub. L. No. 111-203 (2010).

8. E.O. 13563, "Improving Regulation and Regulatory Review," www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf (Jan. 18, 2011).

9. E.O. 13610, "Identifying and Reducing Regulatory Burdens," www.whitehouse.gov/sites/default/files/docs/microsites/omb/eo_13610_identifying_and_reducing_regulatory_burdens.pdf (May 10, 2012).

remind agencies that are writing new rules or reviewing existing ones to guard against "significant economic impacts on a substantial number of small entities."

Chapter 2

Compliance with Executive Order 13272 and the Small Business JOBS Act of 2010

Federal agencies' compliance with the Regulatory Flexibility Act has improved since President George W. Bush signed Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, in 2002. The executive order established new responsibilities for Advocacy and federal agencies to facilitate greater consideration of small businesses in regulatory development. Portions of it have been codified in the Small Business Jobs Act of 2010.¹⁰

E.O. 13272 requires Advocacy to educate federal agency officials on compliance with the RFA, to provide resources to facilitate continued compliance, and to report to the Office of Management and Budget on agency compliance with it.

RFA Training

Advocacy launched its RFA training program in 2003. Since that time the office has offered RFA training sessions to every rule-writing agency in the federal government. These training sessions are attended by the agencies' attorneys, economists, and policymakers. In FY 2018, Advocacy held six training sessions for 132 federal officials (see Table 2.1). The entire list of agencies trained since FY 2003 appears in Appendix D.

Table 2.1 RFA Training at Federal Agencies in FY 2018

Date	Agency	Number Trained
11/08/17	Department of Labor	37
03/07/18	Department of Justice, Drug Enforcement Agency	16
03/14/18	Department of Commerce, Bureau of Industry and Security	13
06/14/18	Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service	22
07/10/18	Federal Deposit Insurance Corporation	27
07/26/18	Department of Transportation, Federal Aviation Administration	17

RFA Compliance Guide

To provide clear directions on RFA compliance, Advocacy publishes a practical manual called "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act." The hands-on guide has been updated to include Executive Orders 13771 and 13777 on reducing and reforming federal regulations.¹¹

¹⁰ *Small Business Jobs Act*, Pub. L. No. 111-240, 124 Stat. 2504 (2010).

¹¹ The current edition can be found at www.sba.gov/advocacy/guide-government-agencies-how-comply-regulatory-flexibility-act.

Agency Compliance with E.O. 13272

E.O. 13272 requires federal agencies to take certain steps to boost transparency and ensure small business concerns are represented in the rulemaking process. These steps include the following:

- **Written RFA Procedures.** Agencies are required to show publicly how they take small business concerns and the RFA into account when creating regulations. Most agencies have posted their RFA policies and procedures on their websites. Table 2.2 provides links to each agency's procedures.
- **Notifying Advocacy.** Agencies are required to engage Advocacy during the rulemaking process, to ensure small business voices are being heard. If a draft regulation may have a significant impact on a substantial number of small entities, the agency must notify Advoca-

cacy by sending copies of the draft regulation to the office.

- **Responding to Comments.** If Advocacy submits written comments on a proposed rule, the agency must consider these comments and provide a response to them in the final rule published in the *Federal Register*. The Small Business Jobs Act of 2010 codified this as an amendment to the RFA.

A summary of federal agencies compliant with these three requirements is shown in Table 2.2.

As a result of E.O. 13272 and the Small Business Jobs Act, federal agencies have become more familiar with the RFA and have established cooperative relationships with Advocacy. In addition to improving compliance with the RFA, Advocacy finds that E.O. 13272 has improved the office's overall relationship with federal agencies.

Small Business Site Visit, Detroit, Mich.

Advocacy staff members visited the headquarters of RBV Contracting to discuss the regulatory burdens facing small construction companies. Owners and employees explained how some federal regulations could be simplified to decrease burdensome paperwork and streamline the application processes.



Table 2.2 Federal Agency Compliance with Rule-Writing Requirements under E.O. 13272 and the JOBS Act, FY 2018

Agency	Written Procedures on Website in 2018	Url of Agency's RFA Procedures	Notifies Advocacy	Responds to Comments
Cabinet Agencies				
Agriculture	✓	https://www.ocio.usda.gov/policy-directives-records-forms/guidelines-quality-information/regulatory	✓	✓
Commerce ^a	✓	https://www.fisheries.noaa.gov/national/laws-and-policies/guidance-conducting-economic-and-social-analyses-regulatory-actions	✓	✓
Defense	✓	https://www.acq.osd.mil/dpap/dars/index.html	✓	n.a.
Education	X		✓	✓
Energy	✓	https://www.energy.gov/sites/prod/files/gcprod/documents/eo13272.pdf	✓	n.a.
Environmental Protection Agency	✓	https://www.epa.gov/sites/production/files/2015-06/documents/guidance-regflexact.pdf	✓	✓
General Services Administration	✓	https://www.gsa.gov/policy-regulations	✓	n.a.
Health and Human Services	✓	https://www.fda.gov/forIndustry/SmallBusinessAssistance/ucm167644.htm	✓	n.a.
Homeland Security	✓	https://www.dhs.gov/publication/signed-regulatory-flexibility-act-executive-order-13272-memo-2004	✓	✓
Housing and Urban Development	✓	https://www.hud.gov/program_offices/sdb/policy/sbrefa	n.a.	n.a.
Interior	✓	https://www.doi.gov/sites/doi.gov/files/migrated/ppa/upload/Interim-Guidance-UMRA-and-EQ-12866-C3_APP3.pdf	✓	✓
Justice	X		✓	n.a.
Labor	✓	https://www.dol.gov/general/regs/guidelines	✓	✓
Small Business Administration	✓	https://www.sba.gov/about-sba/sba-performance/policy-regulations/laws-regulations	✓	n.a.
State	X		✓	n.a.
Transportation	✓	https://www.transportation.gov/sites/dot.dev/files/docs/1979%20Regulatory%20Policies%20and%20Procedures.doc	✓	n.a.

Table 2.2 Federal Agency Compliance with Rule-Writing Requirements under E.O. 13272 and the JOBS Act, FY 2018

Agency	Written Procedures on Website in 2018	Url of Agency's RFA Procedures	Notifies Advocacy	Responds to Comments
Treasury ^b	√	Treasury: https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/td28-03.aspx Internal Revenue Service: https://www.irs.gov/irm/part32/irm_32-001-005#idm140712272166000	√	n.a.
Veterans Affairs	√	https://www.va.gov/ORPM/Regulatory_Flexibility_Act_EO_13272_Compliance.asp	√	n.a.
Independent Agencies				
Consumer Financial Protection Bureau ^c	n.a.	n.a.	√	√
Consumer Product Safety Commission	√	https://www.cpsc.gov/Regulations-Laws-Standards/Rulemaking#TheRegulatoryFlexibilityAct	√	n.a.
Equal Employment Opportunity Commission	√	https://www.eeoc.gov/eeoc/plan/regflexibilityact.cfm	√	n.a.
Federal Acquisition Regulation Council	√	https://www.acquisition.gov/	√	n.a.
Federal Communications Commission	√	https://www.fcc.gov/sites/default/files/fcc-directive-1158.2.pdf	√	√
Federal Reserve Board ^c	n.a.	n.a.		
National Labor Relations Board ^c	n.a.	n.a.	√	n.a.
Securities and Exchange Commission ^c	n.a.	n.a.	√	n.a.
Notes: √ = Agency complied with the requirement. X = Agency did not comply with the requirement. n.a. = Not applicable because Advocacy did not publish a comment letter in response to an agency rule in FY 2018 or because the agency is not required to do so. a. NOAA drafts most regulations the Commerce Department releases. b. On April 11, 2018, Treasury and the Office of Management and Budget signed a memorandum of agreement stating that tax regulations would be reviewed under E.O. 12866. c. Independent agencies are not subject to the E.O. requiring written procedures.				

Chapter 3

Communication with Federal Agencies and Small Businesses

Advocacy's Communication with Federal Agencies

An essential goal of the Regulatory Flexibility Act is to communicate the special concerns of small business to the federal agencies as they go about their rulemaking business. In fact the RFA requires of the agencies some specific forms of engagement with small business. These communications form the basis of their small business regulatory analysis and regulatory burden reduction.

Interagency Communications

Advocacy utilizes numerous methods of communication to present the concerns of small businesses and other small entities to federal officials promulgating new regulations. Meetings with officials, comment letters to agency directors, and training sessions on RFA compliance help facilitate

meaningful participation by all interested parties and produce more effective federal regulation. In FY 2018, Advocacy's communications with federal agencies included 17 formal comment letters and RFA compliance training sessions for 132 federal officials. Table 2.1 lists the agencies where training was held this year, and Appendix D contains a list of all agencies that have participated in RFA training since 2003.

In response to President Trump's executive orders on private sector deregulation, the office has received considerable small business input through regional regulatory reform roundtables and an online comment form. Advocacy has sent 26 letters to the heads of federal agencies conveying small



Regional Regulatory Reform Roundtable, Scranton, Pa.

Small businesses shared insights into the effects of federal agency regulations at the Regional Regulatory Reform Roundtable in Scranton, Pa. Advocacy staff members received feedback about federal regulatory compliance hurdles from small businesses in the banking, construction, and real estate industries.

businesses' experiences with federal regulatory compliance and their top priorities for reform.

E.O. 12866 and Interagency Review of Upcoming Rules

Executive Order 12866, Regulatory Planning and Review, celebrated its 25th anniversary in FY 2018.¹² The stated objectives of EO 12866 are to enhance planning and coordination of new and existing regulations, reaffirm the primacy of federal agencies in the regulatory decision-making process, restore the integrity and legitimacy of regulatory review and oversight, and make the process more accessible and open to the public.

Under EO 12866, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) reviews all significant executive agency regulations. OIRA will also meet with interested parties to listen to any issues with a rule under its review in what are called "12866 meetings." Advocacy attends these meetings when the regulation will affect small businesses. Advocacy also participates in the OIRA-led review of upcoming rules in order to advise on the anticipated impact of those rules on small entities.

Of note during FY 2018, on April 11, 2018, the Treasury Department and OIRA signed a memorandum of agreement allowing the review of Treasury regulations under EO 12866. Previously, certain Treasury regulations were exempt from 12866 review.

Additionally, each agency, including independent regulatory agencies, prepares an agenda of all the regulatory actions under development or review for the fiscal year. OIRA then publishes these as the Unified Regulatory Agenda. Each agency, including independent regulatory agencies, must also create a regulatory plan containing the most important proposed or final regulations the agency expects to release that fiscal year or thereafter.

SBREFA Panels

In 1996, the Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require certain agencies to convene review panels whenever a potential regulation is expected to have a significant economic impact on a substantial number of small entities. These are commonly called SBREFA or SBAR panels (for small business advocacy review). These panels provide for small business input at the earliest stage of rulemaking—when a topic is still being studied, before a proposed rule sees the light of day.

Three agencies are covered by this requirement: The Consumer Financial Protection Bureau, Environmental Protection Agency, and Occupational Safety and Health Administration (OSHA). In FY 2018, one SBREFA panel was initiated: OSHA convened a panel on telecommunications towers in August 2018. The list of SBREFA panels convened since 1996 can be found in Appendix D.

Regulatory Agendas

In addition to the Unified Regulatory Agenda, agencies are required by section 602 of the RFA to publish a regulatory flexibility agenda that specifically addresses regulatory actions that will affect small businesses. These also must be published in the Federal Register each spring and fall. The agendas facilitate public participation, specify the subjects of upcoming proposed rules, and indicate whether these rules are likely to have a significant economic impact on a substantial number of small entities. Agencies are specifically required to provide these agendas to the Chief Counsel for Advocacy and make them available to small businesses and their representatives. Often, the agendas alert Advocacy and interested parties to forthcoming regulations of interest. The FY 2018 regulatory agendas were published on January 12, 2018, and June 11, 2018. They are a key component of the regulatory planning mechanism prescribed in Executive Orders 12866 (Regulatory Planning and Review) and 13771 (Reducing Regulation and Controlling Regulatory

12. Executive Order 12866, *Regulatory Planning and Review*, September 30, 1993. https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf

Costs). The regulatory agendas can be found here: <https://www.reginfo.gov/public/do/eAgendaMain>.

Retrospective Review of Existing Regulations

Under section 610 of the RFA, agencies are required to conduct a retrospective review of existing regulations that have a significant economic impact on small entities. Executive Orders 13563 and 13610, requiring all executive agencies to conduct periodic retrospective reviews of all existing regulations, bolster the mandate of section 610. As a result, agencies publish retrospective reviews in the Unified Agenda of Regulatory and Deregulatory Actions semiannually. The purpose of the retrospective reviews is to determine whether such regulations should be continued without change or amended or rescinded to minimize any significant economic impact on a substantial number of small entities.¹³ In reviewing the regulations, agencies must consider the following factors:

- the continued need for the rule;
- complaints or comments from the public;
- the complexity of the rule;
- whether the rule overlaps, duplicates or con-

- flicts with federal, state, and local rules; and
- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The Department of Transportation's regulatory review process is just one useful example of how agencies incorporate section 610 reviews into their semiannual regulatory unified agenda.¹⁴ DOT divides its rules into ten groups and analyzes one group each year. For rules that do not appear to have a significant economic impact on a substantial number of small entities, DOT provides a short explanation in its fall agenda. For rules that appear to have such an impact, DOT conducts a formal section 610 review the following year and seeks public comments to determine whether there are opportunities to reduce the economic burden on small entities. In each fall agenda, DOT publishes the results of the analyses completed during the previous year.¹⁵

Advocacy continues to monitor retrospective review plans and their implementation and accepts feedback from small entities regarding any rules needing review.

Advocacy's Outreach to Small Business

In the Congressional Findings and Declaration of Purpose section of the Regulatory Flexibility Act, Congress states, "The process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions..."¹⁶

In helping to fulfill this purpose, Advocacy assists governmental agencies by conducting outreach to small entities and relaying information from one to the other. In most instances, Advocacy encourages the agencies to participate in these outreach efforts.

¹³ 5 U.S.C. § 610(a).

¹⁴ U.S. Department of Transportation's Review Process (Jan. 20, 2015), <https://www.transportation.gov/regulations/dots-review-process>.

¹⁵ 83 Fed. Reg. 58051 (Nov. 16, 2018), <https://www.federalregister.gov/documents/2018/11/16/2018-24091/department-regulatory-and-deregulatory-agenda-semiannual-summary>.

¹⁶ Regulatory Flexibility Act, Pub. L. No. 96-3554, 94 Stat. 1164 (codified at 5 U.S.C. § 601).

Advocacy engages with small business stakeholders through a variety of mechanisms, ensuring that the lines of communication remain open and that small business concerns are heard by the appropriate contacts within the federal agencies. For example, Advocacy publishes regulatory alerts that are emailed to various small entity lists. In addition, Advocacy directs targeted email notices to stakeholders who may be affected by a rulemaking. These alerts allow small businesses to stay informed of regulatory developments without having to conduct searches of their own. Advocacy regularly meets with small entities, both informally through in-person meetings and teleconferences, and at more structured events. Advocacy routinely attends stakeholder events and conferences to present specific regulatory topics, and more generally to inform small business stakeholders about the federal rulemaking process and how to write effective comment letters.

Advocacy hosts in-person gatherings as a key means of acquiring small business input. Two kinds of roundtables were held in FY 2018: issue roundtables and regional roundtables.

Regulatory Roundtables

Advocacy's issue roundtables focus on small business regulatory topics. Most of these sessions occur in Washington, D.C. These roundtables provide direction on which issues are of greatest importance, and they facilitate open and frank discussions about small business-related concerns. Advocacy hosted 12 issue roundtables in FY 2018. They are listed in Table 3.1 and described in the section that follows.

Consumer Financial Protection Bureau

Financial Issues

May 10, 2018

The roundtable focused on two requests for information issued by the Consumer Financial Protection Bureau (CFPB) seeking input on the agency's rulemaking processes, adopted regulations, and new rulemaking authorities. The participants discussed the requests and suggested possible changes to the rulemaking process. Officials from the CFPB attended the roundtable.

Department of Agriculture, Agricultural Marketing Service

Bioengineered Food Disclosure Requirements

June 14, 2018

On May 4, 2018, the U.S. Department of Agriculture's Agricultural Marketing Service (AMS) proposed a rule to establish a national mandatory bioengineered food disclosure standard. The proposed rule would require food manufacturers and all other entities that label foods for retail sale to disclose information about bioengineered food and ingredient content. The rule provides a uniform standard for disclosure. During a teleconference Advocacy gave a brief overview of how to write an effective comment letter on the rule and sought input from small entities on the proposed rule and its effects, specifically the definition of very small business for the purposes of exemption, and whether the agency should consider other alternatives to the rule.

Department of the Interior, Fish and Wildlife Service

Mitigation Policy

December 12, 2017

On November 6, 2017, the Fish and Wildlife Service published a request for comment on its existing Mitigation Policy and Endangered Species Act Compensatory Mitigation Policy. The agency specifically requested comments on whether to retain or remove net conservation gain as a planning goal within mitigation policies. During the roundtable teleconference, agency officials conducted a brief overview of current mitigation policies and participants gave feedback on the policies and the goal of net conservation gain.

Department of Labor

Proposed Rule on Tip Regulations Under the Fair Labor Standards Act

December 14, 2017

On December 14, 2017, Advocacy held a roundtable teleconference on a Department of Labor proposal to rescind the parts of its tip regulation that bar certain tip-sharing arrangements in establishments where the employers pay full federal minimum wage and do not take a tip credit against their minimum wage obligations. This proposal reverses a 2011 DOL regulation that created this restriction.

Under this proposed rule, employers paying a full minimum wage to employees could require workers to share their tips with other employees, including employees who do not customarily receive tips (such as “back of the house” staff). In the FY 2018 Consolidated Appropriations Act, Congress amended multiple provisions of the Fair Labor Standards Act with respect to an employer’s use of its employees’ tips and rescinded part of the 2011 DOL regulations. DOL plans on releasing a new proposed rule on this issue in 2019.

Department of Labor, Occupational Safety and Health Administration (OSHA); Mine Safety and Health Administration (MSHA)

Labor Department Regulatory Reform; OSHA Update
October 2, 2017

This roundtable was held at the U.S. Department of

Labor. It began with a regulatory reform meeting hosted by the agency called “Cut the Red Tape Summit: Eliminating Excessive Regulation to Create Jobs and Growth.” This was pursuant to the Executive Orders 13771 and 13777 on reducing the private sector’s regulatory burden. The high-level presenters included the agency’s acting solicitor of labor, acting chief of staff, and acting assistant secretary of labor for policy. Following that presentation, the deputy assistant secretary and acting assistant secretary of labor for occupational safety and health provided an update about regulatory reform at the agency and outlined its policy and regulatory priorities going forward.

OSHA’s State and Cooperative Programs; Litigation; Regulatory Reform

January 19, 2018

Table 3.1 Regulatory Roundtables Hosted by the Office of Advocacy

Agency	Purpose	Date
Consumer Financial Protection Bureau	CFPB’s rulemaking processes, adopted regulations, and new rulemaking authorities	05/10/18
Department of Agriculture	Proposed rule to establish national mandatory bioengineered food disclosure standard	06/14/18
Department of Interior, Fish and Wildlife Service	Teleconference on mitigation policy	12/12/17
Department of Labor	Department of Labor’s proposed rule on tip regulations under the FLSA	12/14/17
Department of Labor, Occupational Safety and Health Administration; Mine Safety and Health Administration	Executive Orders 13771 and 13777; update on OSHA activities and policy priorities	10/02/17
	OSHA’s state and cooperative programs; litigation; regulatory reform	01/19/18
	DOL’s public liaison; electronic reporting; Congressional hearings	03/16/18
	Regulatory reform; telecommunications towers; OSHA’s Safe and Sound program	07/27/18
	Compliance initiatives; electronic reporting; telecommunications towers	09/21/18
Environmental Protection Agency	Web and teleconference on persistent, bioaccumulative, and toxic (PBT) chemicals under TSCA Section 6(h)	11/16/17
	User fees for administration of TSCA; March 2018 update of decision on definition of Solid Waste	03/30/18
	Reviewing new chemicals under amended TSCA; industry perspective on TSCA section 5	09/07/18

This roundtable featured an update by OSHA officials on the agency's cooperative and state programs. These programs encompass compliance assistance and outreach activities for businesses and organizations. They include OSHA's Alliance Program, OSHA Challenge, Safety and Health Achievement Recognition Program (SHARP), OSHA Strategic Partnership Program (OSPP), and Voluntary Protection Programs (VPP). Next, there was an update on recent litigation concerning OSHA rulemaking practices that test longstanding OSHA policies and could affect small businesses. Advocacy provided an update on its activities on regulatory reform for small business and reviewed OSHA and MSHA's Regulatory Agendas, noting particularly the significant shift in regulatory priorities and the regulatory outlook for small business.

DOL's Public Liaison; Electronic Reporting;
Congressional Hearings
March 16, 2018

This roundtable covered four topics. First was an update from the Office of Public Liaison at the U.S. Department of Labor, which creates and coordinates opportunities for dialog between the agency and the public. Second, OSHA officials gave an overview of its new electronic injury and illness recordkeeping and reporting requirements. The final rule requires employers in certain industries to submit their employee injury and illness recordkeeping data to OSHA electronically. Third, a staff member of the House Education and Workforce Committee discussed two recent hearings about OSHA and MSHA. The first hearing concerned MSHA's regulatory priorities and the state of workplace safety in the mining industry. The second hearing focused on how OSHA can work with small business job creators to expand compliance assistance to promote safe and healthy workplaces. Fourth was a recap of a recent meeting of the American Bar Association's Occupational Safety and Health Law Section. Topics from the meeting included litigation, rulemaking initiatives, regulatory reform, and enforcement.

Regulatory Reform; Telecommunications Towers;
OSHA's Safe and Sound Program

July 27, 2018

This roundtable had three parts. First was an update on Advocacy's Regional Regulatory Reform Roundtables. Next was a discussion of OSHA's planned panel on telecommunications towers, including the scope of the rulemaking and the industries that might be affected.¹⁷ Third, an OSHA official discussed the agency's Safe+Sound initiative and its upcoming Safe+Sound Week—a nationwide event to raise awareness of the value of safety and health programs.

Compliance Initiatives; Electronic Reporting;
Telecommunications Towers

September 21, 2018

This roundtable began with an update on DOL's Office of Compliance Initiatives. The office seeks to foster a culture of compliance assistance within DOL to complement the agency's enforcement efforts. In August 2018, the office launched two websites: Worker.gov, to provide information about workers' rights, and Employer.gov, on job creators' responsibilities toward their employees. Next was a presentation on OSHA's proposal to amend its final electronic reporting rule, which requires employers in certain industries to electronically submit to OSHA injury and illness data. Third, an industry representative discussed OSHA's SBREFA panel on telecommunications towers.

Environmental Protection Agency

Persistent, Bioaccumulative, and Toxic Chemicals
Under TSCA Section 6(h)

November 16, 2017

At this roundtable, EPA officials provided a presentation on five persistent, bioaccumulative, and toxic (PBT) chemicals that the agency had identified under the Toxic Substance Control Act. These chemicals included decabromodiphenyl ethers (DecaBDE); hexachlorobutadiene (HCBd); penta-chlorothiophenol (PCTP); phenol, isopropylated, phosphate (3:1); and 2,4,6-Tris(tert-butyl) phenol. The agency provided background information on PBTs and the agency's obligation to regulate as

¹⁷ The panel meets prior to the issuance of a draft rule. It is known as a Small Business Advocacy Review (SBAR) or SBREFA panel.

mandated by TSCA. Additionally, the agency highlighted its existing knowledge on the uses of the five chemicals, as well as other information on them.

Toxic Substances Control Act User Fees; Decision on Definition of Solid Waste
March 30, 2018

The roundtable had two parts. First, EPA officials discussed the agency's proposal to establish fees to cover costs associated with its work under various sections of the Toxic Substances Control Act. As part of its proposed rule, the agency also discussed a revision to its small business definition. The SBA Office of Size Standards also presented on the same topic, providing information about the SBA process for establishing size standards and discussing its consultation with EPA on this proposed rule. Second was a discussion of the D.C. Circuit Court's reconsideration of the recycling provisions of the EPA hazardous waste rule and the implications of these changes for manufacturers and recyclers who are subject to these regulations.

Reviewing New Chemicals under the Amended Toxic Substances Control Act
September 7, 2018

At this roundtable EPA provided an overview of its review process for new chemicals under the Toxic Substances Control Act. Additionally, there were

two industry speakers representing the interests of small businesses who urged the agency to reduce delays, complete reviews within the statutory deadlines, and perform with greater predictability and transparency.

Regional Regulatory Reform Roundtable Initiative

In June 2017, Advocacy launched the Regional Regulatory Reform Roundtable initiative to allow small businesses around the country to discuss the unique challenges they face with regulatory implementation and compliance. This outreach initiative is meant to help relieve the private sector regulatory burden as directed by Executive Orders 13771 and 13777. Advocacy is working with federal agencies to ensure that small businesses' priorities for relief are addressed.

Regional Regulatory Reform Roundtables

Regional roundtables bring together local small businesses, trade associations, congressional leaders, and federal regulatory agencies to identify regulatory barriers and challenges in each region. The meetings also explore small entities' suggestions for regulatory streamlining and savings, and



Small Business Site Visit, Tampa, Fla.

Advocacy staff members visited Ameriscape Services following a Regional Regulatory Reform Roundtable in Tampa. The nursery and landscaping industries in Florida have a large economic impact on the state, producing \$21 billion in sales per year and employing 232,000 people.

participants discuss ways to improve small business participation in agencies' rulemakings. These discussions inform Advocacy's ongoing and future recommendations to the federal agencies tasked with reducing the number of regulations. This initiative began in June 2017 and continues to the present. For a detailed report on this effort, see [What Small Businesses Are Saying and What Advocacy Is Doing About It, Progress Report on the Office of Advocacy's Regional Regulatory Reform Roundtables](#).

Between June 1, 2017, and September 30, 2018, Advocacy held 33 regional regulatory reform roundtables in 21 states. The locations included rural and urban areas, geographic regions, and a range of industries. The geographical diversity provided a close-up perspective of how a single federal rule can have varying economic impacts on different types of small businesses based upon the practices, economic conditions, and other factors specific to their region. Table 3.2 shows the roundtable dates and locations.

Site Visits

To maximize Advocacy's resources, each roundtable trip included site visits to nearby small businesses to discuss their specific regulatory concerns. These have been valuable and informative experiences for

Advocacy. Small business owners greatly appreciated Advocacy's site visits. They were grateful for the chance to show Advocacy staff how their business functions, as well as the rare opportunity to meet one-on-one and talk through their concerns. Advocacy has encouraged the small business hosting the site visit to invite their peers, in order to learn from others facing similar regulatory burdens. These small personal meetings have become an important way to collect more detailed information to help in the regulatory reform effort.

Advocacy made at least 84 site visits in 22 states between June 2017 and September 2018. The list of business locations appears in Table 3.3.

Examples of Regulatory Concerns

As a result of the roundtables, Advocacy learned firsthand of the current and most pressing challenges small businesses across the country are dealing with and what the federal government can do to assist them. In these face-to-face meetings, small businesses have told Advocacy stories that exemplify how federal regulations drain small businesses' resources, energy, and in some cases even their desire to stay in business. The following examples highlight recurring themes that small business owners raised.

Small Business Site Visit, Galveston, Tex.

In Galveston, Tex., Advocacy staff toured the Ocean Star Offshore Energy museum, a small, nonprofit museum situated on a decommissioned oil rig. After the tour, the group discussed the history of the offshore industry and how small entities play a major role in an industry that is assumed to be dominated by large corporations.



- The costly rules associated with the implementation of the **Affordable Care Act (ACA)**, and health care costs in general, are an example of small businesses' regulatory burden. A small hotel operator in St. Louis, Mo., told Advocacy that not all small businesses can afford health insurance for their employees, particularly because they do not have the option of joining an association to lower health care costs. Additionally, he said that the ACA causes problems in finding skilled labor. He felt that larger businesses can provide better benefits at lower cost, while offering the same wages. Small businesses are unable to compete and lose skilled employees to their larger counterparts. He suggested small businesses be given the opportunity to purchase insurance across states to help drive down costs.
- Another focus of small business complaints has been the Department of Labor's **Overtime Rule**, particularly the "white collar exemption." Advocacy heard that the threshold

for this regulation was set too high, making it extremely costly and burdensome. While many small operators believe there should be an increase in pay for their workers, any mandatory increase should be less drastic. A small human resources company in Boise, Idaho, indicated that the rule does not recognize the very real problem small businesses face recruiting and retaining employees. Focusing only on salary negates other incentives and puts a small organization at a disadvantage compared to large companies that can offer employees more money.

- A small financial services company in Cincinnati, Ohio, complained that the Department of Labor's **Fiduciary Rule** will put many small broker-dealers out of business. They consider the rule to be the biggest change to the financial advisor sector in years, and that more care should have been taken determining the rule's potential impact on small operators. They told Advocacy that the rule creates a bar-

Table 3.2 Regional Roundtable Dates and Locations through FY 2018

Date	Location	Date	Location
6/7/17	Baton Rouge, Louisiana	4/10/18	Atlanta, Georgia
6/8/17	New Orleans, Louisiana	4/30/18	Modesto, California
7/11/17	Boise, Idaho	5/2/18	Sacramento, California
7/13/17	Coeur d'Alene, Idaho	5/3/18	Santa Clarita, California
7/31/17	Lexington, Kentucky	6/5/17	Tampa/Brandon, Florida
8/1/17	Cincinnati, Ohio	6/6/18	Oviedo, Florida
8/2/17	Cadiz, Ohio	6/7/18	Jacksonville, Florida
8/3/17	Cleveland, Ohio	7/18/18	West Des Moines, Iowa
9/12/17	St. Louis, Missouri	7/19/18	Dubuque, Iowa
9/14/17	Kansas City, Kansas	7/19/18	Platteville, Wisconsin
10/16/17	Glen Allen, Virginia	8/7/18	Casper, Wyoming
11/28/17	Manchester, New Hampshire	8/8/18	Fort Collins, Colorado
11/29/17	Boston, Massachusetts	8/9/18	Colorado Springs, Colorado
3/13/18	Detroit, Michigan	9/11/18	Princeton, New Jersey
3/16/18	Milwaukee, Wisconsin	9/12/18	Scranton, Pennsylvania
3/19/18	San Antonio, Texas	9/13/18	Poughkeepsie, New York
3/20/18	Houston, Texas		

rier in the advisor-client relationship, and that small businesses who need investment advice will be unable to get it.

- Small businesses in the transportation industry nationwide reported strong feelings about compliance with the Federal Motor Carrier Safety Administration's rule requiring **electronic logging devices (or ELDs)**. A small farmer in Kansas City, Kan., complained that small farms cannot afford the new devices and the rule's costly requirements. Large commercial carriers have the resources to implement the devices, but independent drivers do not. This is a common concern heard from small businesses that need to transport their goods. The farmer's biggest complaint was that the ELD regulation is inflexible and does not allow for wait time. He believed this oversight will increase the shortage of commercial drivers, a big concern for his industry.

- The Food and Drug Administration's **Tobacco Deeming rule** was reported to be a big concern to small cigar manufacturers and store operators. The rule implements FDA's authority to electronic cigarettes, cigars, and pipe tobacco. These products are now subject to the federal prohibition on free sampling, federal warning label requirements, and the require-

ment that tobacco manufacturers register with the FDA and seek the agency's review of new tobacco products. At the roundtable in Tampa, Fla., the owner of a cigar store in Ybor City told Advocacy that the costly impacts of this rule on small businesses will wipe out half of his industry.

Follow Up

After the initial regional roundtables, Advocacy started providing feedback to the federal agencies responsible for the rules with the highest number of complaints. In 15 letters to the heads of regulatory agencies, Advocacy enumerated the small business concerns and suggested fixes for specific rules. In fall 2018, Advocacy sent 11 additional follow-up letters. A sample of these letters to agency heads appears as Appendix E of this report. All of these letters are publicly available on Advocacy's regulatory reform website, <http://advocacy.sba.gov/regulation/regulatory-reform>.

Small Business Site Visit, Tampa, Fla.

The owners of Urban E Recycling discussed the high cost of regulatory compliance in relation to transportation and fuel. The company properly disposes of and recycles electronics from neighboring recycling centers.



Table 3.3. Locations of Regulatory Reform Site Visits through FY 2018

State	City	Business Visited
California	Berkeley	Lawrence Berkeley National Lab
	Clovis	Valley Chrome Plating Inc.
	Goleta	Seek Thermal
	Lodi	Valley Iron Works
	Los Angeles	Los Angeles Cleantech Incubator
	Modesto	Sciabica's Olive Oil
	Sacramento	Pucci Pharmacy
	Salida	Flory Industries
	Stockton	Ross Roberts Truck Repair, Inc.
	Valencia	King Henry's
	Westley	Great Pacific Nut Company
Colorado	Buena Vista	Elk Mountain Ranch
	Colorado Springs	Bristol Brewing Co. / Ivywild School
	Florissant	Florissant Fossil Beds Natl Monument
	Fort Collins	Rocky Mountain Adventures
Florida	Cedar Key	Aquaculture Visit at FWC Senator Kirkpatrick Marine Lab
	Geneva	Yarborough Ranches
	Jacksonville	Florida Roads Contracting
	Jacksonville	Signature Land
	Lutz	B3 Medical
	Orlando	Global Enterprises
	Oviedo	Black Hammock Adventures
	Oviedo	Citizens Bank of Florida
	St. Augustine	St. Augustine Distillery
	Tampa	81Bay Brewing Company
	Tampa	In the News
	Tampa	J.C. Newman Cigar Company
	Tampa	PBX Change
	Tampa	Tabanero Cigars
	Tampa	Urban E Recycling
	Thonotosassa	Ameriscape Services
Georgia	Atlanta	Angel's Paradise Learning Academy
	Cumming	Grub Burger
	Marietta	Sigma Thermal
Idaho	Boise	City Peanut Shop
	Boise	True Lock Manufacturing
	Hayden	Coeur Greens
Iowa	Cedar Rapids	Great Clips
	Cedar Rapids	Lion Bridge Brewing Company
	Council Bluffs	Rasmussen Mechanical Services
	Manning	Puck Custom Enterprises, Inc.
	West Des Moines	Focus OneSource
Kansas	Kansas City	Watco Companies Kaw River Railroad
	Lenexa	Lightbulbs, Etc.

Table 3.3. Locations of Regulatory Reform Site Visits through FY 2018

State	City	Business Visited
Kentucky	Lexington	Barrel House Distillery
	Lexington	Salters Alliance Farm
	Newport	BB Riverboats
Louisiana	Baton Rouge	Tin Roof Brewing Company
	New Orleans	Blaine Kern's Mardi Gras World
	New Orleans	WeChem
Massachusetts	Gloucester	Massachusetts Fishermen's Partnership
Michigan	Detroit	Architectural Salvage Warehouse
	Detroit	RBV Contracting
	Farmington Hills	Vicount Industries
	Plymouth	E&E Manufacturing
Missouri	Saint Louis	Chocolate, Chocolate, Chocolate
New Hampshire	Manchester	Red Arrow Diner
New Jersey	Budd Lake	KB Ingredients
	Chester	Alstede Farms
	Edison	Argent Associates
New York	Brooklyn	Red Hook Winery
	Goshen	Pawleski Farms/Farmroot
	Poughkeepsie	Service Master by NEST
	Wappinger Falls	Honey Bee Childcare
Ohio	Brecksville	Caruso's Coffee
	Lebanon	FECON Inc.
	Solon	Chagrin Valley Soap & Salve
	Willoughby	Melrose Farms Community
	Willoughby	ProBuilt Homes
Pennsylvania	Dickson City	Red Line Towing
	Dunmore	Road Scholar Transportation
	Philadelphia	DiBruno Bros
	Philadelphia	Geno's Steaks
Texas	Philadelphia	Pat's King of Steaks
	Galveston	Ocean Star Offshore Energy Museum
	Houston	Axistrade
	Houston	Everest Valve Company
	Houston	Original Ninfa's on Navigation
Virginia	Nixon	Mesquite Field Farm
	Chester	VHI Transport
Washington	Spokane	Wemco
	Spokane	Zak Designs
Wisconsin	Milwaukee	Lakefront Brewery
	Sheboygan	Wigwam Mills
Wyoming	Casper	Mammoth Networks
	Laramie	Trihydro

Chapter 4

Advocacy's Public Comments to Federal Agencies in FY 2018

In FY 2018 the Office of Advocacy submitted 17 formal comment letters to regulatory agencies. The most frequent concerns were that agencies needed to consider the impact of their proposed rules on small business (seven letters) and that they did not consider significant alternatives (seven letters). The lack of or need for more small entity outreach was also noted in five of the comment letters.

Figure 4.1 summarizes Advocacy's issues of concern. Table 4.1 lists all the comment letters submitted in FY 2018 in chronological order. Each letter is summarized in the following section, arranged by agency.

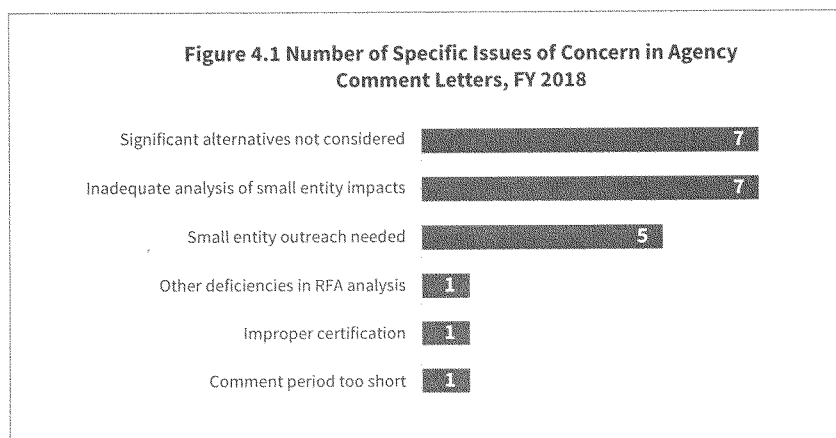


Table 4.1 Regulatory Comment Letters Filed by the Office of Advocacy, FY 2018

Date	Agency*	Topic	Citation to Rule
12/26/17	Fed Reserve Board, FDIC, OCC	Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996	82 Fed. Reg. 49984 (10/27/17)
02/02/18	DOC Census Bureau	Annual Business Survey (ICR 201712-0607-001)	82 Fed. Reg. 61534 (12/28/17)
02/09/18	NAS NRC	Review of Advances Made to the IRIS Process	(PIN: DELS-BEST-17-03)
03/09/18	DOI BOEM	2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program	82 Fed. Reg. 30886, (07/03/17)
03/12/18	DOI NPS	Proposed Changes to Road-based Commercial Tour Requirements and Fees	Proposed Changes to Road-based Commercial Tour Requirements and Fees, (10/24/17), available at https://parkplanning.nps.gov/document.cfm?documentID=83652
04/17/18	DOL and DHS	Small Business Feedback to Approve Increases in Worker Capacity Under the H-2B Visa Program	83 Fed. Reg. 3189 (01/23/18)
04/27/18	EPA	Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities	83 Fed. Reg. 36435 (07/30/18)
05/19/18	FCC	In the Matter of Petition of USTelecom for Forbearance	WC Docket 18-141
05/24/18	EPA	National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards: Petroleum Refinery Sector	83 Fed. Reg. 15458 (04/10/18)
06/07/18	CFPB	Request for Information Regarding CFPB Rulemaking Processes	83 Fed. Reg. 10437 (03/09/18)
06/29/18	USDA	Proposed National Bioengineered Food Disclosure Standard	83 Fed. Reg. 19860 (05/04/18)
07/25/18	HHS FDA	Regulation of Premium Cigars, Advance Notice of Proposed Rulemaking	83 Fed. Reg. 12901 (03/26/18)
08/01/18	FCC	Regulatory Reform Priorities	CG Dkt. Nos. 18-152, 02-278; WC Dkt. No. 17-84; WT Dkt. No. 17-79; GN Dkt. No. 17-258; and WC Dkt. No. 18-141
08/13/18	EPA	Definition of "Waters of the United States"-Recodification of Pre-Existing Rules	83 Fed. Reg. 32227 (07/02/18)
08/30/18	EDUC	Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program	83 Fed. Reg. 37272 (07/31/18)
09/25/18	DOI FWS	Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat; Interagency Cooperation; and Prohibitions to Threatened Wildlife and Plants	83 Fed. Reg. 35193, 83 Fed. Reg. 35178, 83 Fed. Reg. 35, 174 (07/25/18)
09/27/18	DOL OSHA	Proposed Tracking of Workplace Injuries and Illnesses Rule (Electronic Reporting Rule)	83 Fed. Reg. 36494 (07/30/18)

Date	Agency*	Topic	Citation to Rule
*Abbreviations:			
BOEM	Bureau of Ocean Energy Management	FDA	Food and Drug Administration
Census	U.S. Census Bureau	FDIC	Federal Deposit Insurance Corporation
CFPB	Consumer Financial Protection Bureau	FWS	Fish and Wildlife Service
EDUC	Department of Education	HHS	Department of Health and Human Services
DHS	Department of Homeland Security	NAS	National Academy of Sciences
DOC	Department of Commerce	NRC	National Research Council
DOI	Department of the Interior	NPS	National Park Service
DOL	Department of Labor	OCC	Office of the Comptroller of the Currency
EPA	Environmental Protection Agency	OSHA	Occupational Safety and Health Administration
FCC	Federal Communications Commission	USDA	Department of Agriculture

Summaries of Advocacy's Official Public Comments

Consumer Financial Protection Bureau

Issue: Request for Information on CFPB's Rulemaking Processes

On June 7, 2018, Advocacy submitted comments on the Consumer Financial Protection Bureau's request for information on its rulemaking processes. Advocacy recommended that the agency:

- improve its initial outreach to small entities,
- gather information specific to the small entities it regulates, and
- improve its panel process by improving informational materials, providing more time to review and respond to them, and allowing more time to prepare for conference calls.

Advocacy also recommended that the agency:

- improve its method of dealing with proprietary information,
- consider new data and studies presented by

small entity representatives,

- include recommendations in the SBREFA panel report on how to reduce the impact of upcoming regulations, and adopt these recommendations,
- improve its notices of proposed rulemaking by adhering to the Plain Writing Act,
- establish comment periods long enough to allow small businesses to read and understand the proposed rule and to formulate a comment, and
- improve its compliance guides by improving readability, using fewer disclaimers, and providing written clarification upon request.

Department of Agriculture

Issue: National Bioengineered Food Disclosure Standard

On May 4, 2018, the U.S. Department of Agriculture's Agricultural Marketing Service (AMS) published a proposed rule titled National Bioengineered Food Disclosure Standard. Advocacy submitted a com-

ment letter on June 28, 2018. While Advocacy appreciated AMS's work on the congressionally mandated bioengineered food disclosure standards, Advocacy remained concerned about the proposed rule's im-

pact on small businesses, including small food manufacturers and retailers. Advocacy recommended that AMS adopt a broader definition of “very small business,” provide an exemption for small retail-

ers displaying food for sale in bulk containers, and extend the compliance deadlines for the rule. As of year-end FY 2018, the rule had not been made final.

Department of Commerce, Census Bureau

Issue: Annual Business Survey

In January 2018, the U.S. Census Bureau submitted announced plans for a new survey titled the Annual Business Survey (ABS). The new survey would take the place of three existing economic surveys: The Survey of Business Owners, the Annual Survey of Entrepreneurs, and the Business R&D and Innovation for Microbusinesses survey. The new survey would lower respondent burden, increase data quality, and create operational efficiencies. The new survey would not collect demographic characteristics of nonemployer business owners, who comprise 80 percent of all business owners. Unless an alternative data collection method for non-employers is developed, the 2012 SBO will be the last full count of all small businesses by gender, ethnicity, race, and veteran status.

On February 2, 2018, Advocacy submitted a letter to the Census Bureau urging the agency to continue to produce comprehensive small business data, including both small employer firms and nonemployer firms. Further, Advocacy supported the Census Bureau's initial plan in development to continue to produce non-employer demographic data by leveraging existing government administrative records.

As of year-end FY 2018, Advocacy was working with the Census Bureau to begin the process of producing demographic statistics on non-employer business owners using administrative records to continue to provide a comprehensive view of small businesses in the economy.

Department of Education

Issue: Federal Loan Program Repayment Rules

On August 30, 2018, Advocacy submitted a comment letter in response to the Department of Education's notice of proposed rulemaking entitled General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program. The department proposed to create institutional accountability regulations for evaluating and adjudicating borrower defenses to repayment for loans first disbursed on or after July 1, 2019. The proposed rule would also provide for actions the department may take to collect from schools financial losses due to successful borrower defense to repayment discharges.

Advocacy was concerned that the department had certified that the proposal would not have a significant economic impact on a substantial number of small entities but had not provided a sufficient fac-

tual basis for this claim. Small institutions communicated to Advocacy that the proposal could result in potentially significant costs. Advocacy recommended that the department publish either a supplemental certification with a valid factual basis or an initial regulatory flexibility analysis before proceeding with the rulemaking. This would satisfy the requirements of the RFA and give interested parties enough information to file meaningful comments. As of September 30, 2018, a final rule has not been published.

Dept of Health and Human Services, Food and Drug Administration

Issue: Regulation of Premium Cigars

In April 2014, the Food and Drug Administration (FDA) issued a proposed regulation (the “deeming rule”) that would make certain unregulated products subject to FDA regulation, including premium cigars. Advocacy submitted comments on the deeming rule at that time, including concerns that the initial regulatory flexibility act analysis did not consider alternatives that the FDA could pursue to accomplish its goals while minimizing the economic impact on small businesses. The deeming rule be-

came final in May 2016. On March 26, 2018, the FDA published an advance notice of proposed rulemaking (ANPRM) entitled Regulation of Premium Cigars. On July 25, 2018, Advocacy submitted a comment letter to the FDA, commending the agency for requesting further information on the regulation of premium cigars and reiterating that the agency should explore all significant alternatives to minimize the economic impact on small businesses. At the end of FY 2018, the agency was still reviewing the ANPRM.

Department of the Interior, Bureau of Ocean Energy Management

Issue: Outer Continental Shelf Oil and Gas Leasing

On April 28, 2017, President Trump issued Executive Order 13795, Implementing an America-First Offshore Energy Strategy. This E.O. directs agencies to revise the schedule of proposed oil and gas lease sales so that they include annual lease sales to the maximum extent permitted by law. On May 1, 2017, the secretary of the interior responded to this directive by issuing Secretarial Order 3350, America-First Offshore Energy Strategy, which called for enhanced opportunities for energy exploration, leasing, and development in the Outer Continental Shelf.

On January 4, 2018, The Interior Department’s Bureau of Ocean Energy Management released the 2019–2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program. The draft proposal would open 98 percent of the Outer Continental Shelf for consideration for oil and gas leasing over the five-year period beginning in 2019. The proposal names 47 lease sales in all four regions of the Outer Continental Shelf: Alaska (19 lease sales); Pacific region (7 lease sales); Gulf of Mexico (12 lease sales); Atlantic region (9 lease sales).



Regional Regulatory Reform Roundtable, Council Bluffs, Iowa

Small businesses, their representatives, and Senate and Congressional staffers convened at the Regional Regulatory Reform Roundtable in Council Bluffs, Iowa. They discussed the unique regulatory challenges faced by small businesses in this region and potential solutions that Advocacy could bring back to Washington, D.C.

Advocacy filed comments on the proposal on March 9, 2018. Advocacy applauded the agency for keeping the public informed of its proposal for oil and gas leasing. Advocacy advised the agency to consider the economic impacts on small entities when evaluating the proposed program. Given the information Advocacy received from small business owners, the proposal may have both positive and negative

effects on small entities. The agency should consider ways to offset any burdens on other industries as a result of offshore drilling, including impacts to tourism, coastal recreation, commercial fisheries, and sport fishing. Comments on the draft proposed plan were due March 9, 2018. As of September 30, 2018, the agency had not published a proposed plan for review.

Department of the Interior, Fish and Wildlife Service

Issue: Revision of the Regulations for Listing Species and Designating Critical Habitat; Interagency Cooperation; Prohibitions to Threatened Wildlife and Plants

On July 25, 2018, the Interior Department's Fish and Wildlife Service and the Commerce Department's National Marine Fisheries Service published two proposed revisions to regulations for endangered and threatened wildlife and plants. The Fish and Wildlife Service concurrently published a third rule.

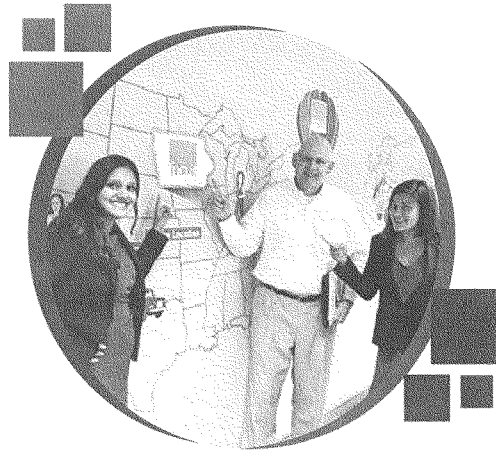
The first joint rule revises portions of the regulations implementing section 4 of the Endangered Species Act, designating critical habitat. The second joint rule clarifies the interagency consultation process under section 7 of the Endangered Species Act, and the third rule revises Fish and Wildlife Service

regulations concerning the prohibition for activities involving endangered and threatened species.

In a comment letter dated September 25, 2018, Advocacy applauded the agencies' efforts to update and revise these specific provisions of the Act to make them clearer and more succinct. Advocacy recommended that the agencies give special consideration to the public comments and small business recommendations on several specific areas for review in each of the three rules. As of September 30, 2018, the rule had not been finalized.

Small Business Site Visit, West Des Moines, Iowa

Advocacy staff members met with Focus OneSource, a company created to manage human resources administration and regulatory compliance for small businesses. The group discussed this new type of employment relationship and the regulatory compliance assistance these companies provide.



Department of the Interior, National Park Service

Issue: Road-based Commercial Tour Requirements and Fees

On October 24, 2017, the Department of the Interior National Park Service announced an open comment period on a proposal to change commercial use authorization requirements and fees. The proposed fee structure would increase fees at seventeen of the top revenue-producing national parks and was scheduled to go into effect on January 1, 2019. Though not required to do so, the Park Service collected public comments through its website. Advocacy heard

from several small businesses that the effects of the fee increase would be detrimental. In its comment letter, Advocacy applauded the agency's efforts to engage the public and encouraged it to consider the impacts on small entities of the increased fees. Advocacy encouraged the agency to consider alternatives for small businesses, including exemptions to the fee increases based on the size of the business. The finalized rates go into effect on October 1, 2019.

Departments of Labor and Homeland Security

Issue: Raising the H-2B Visa Program Worker Cap

The H-2B visa program allows employers to hire temporary foreign workers to perform non-agricultural jobs in seasonal businesses. At almost every Advocacy regional roundtable, small businesses expressed concern with the statutory limit of 66,000 H-2B workers per year. In 2018, both the Departments of Labor and Homeland Security received far more applications than the 33,000 visas allowed in the first half of the year. As of March 2018, DOL received applications for over 140,000 H-2B workers, and the two agencies instituted a lottery process to distribute these visas.

In March 2018, President Trump signed into law a spending bill with a provision that allows DHS and DOL to raise the number of H-2B visas, because the number of workers requested had exceeded that year's cap of 66,000 workers. On April 16, 2018, Advocacy submitted a comment letter to DHS and DOL recommending that the agencies authorize this increase. In May 2018, DHS, in consultation with DOL, published a final rule creating a one-time increase in the number of H-2B visas. This action added 15,000 more visas and allowed more small businesses to take advantage of this program.

Department of Labor, Occupational Safety and Health Administration

Issue: Electronic Reporting Rule (Tracking of Workplace Injuries and Illnesses)

On July 30, 2018, the Occupational Safety and Health Administration (OSHA) published a proposed rule on electronic reporting of employee injury and illness data. It rescinded the requirement that employers with 250 or more employees submit certain employee injury and illness data to OSHA electronically. These employers would still be required to submit summaries to OSHA electronically. The proposal was intended to protect sensitive worker information and avoid unnecessary costs.

On September 27, 2018, Advocacy submitted comments on the proposed changes and raised four

issues. First, due to concerns over the disclosure of confidential business information, Advocacy recommended eliminating the requirement to electronically submit summary data. Second, because certain industries have declining injury and illness rates, Advocacy recommended exempting more industries to reduce unnecessary paperwork and reporting. Third, Advocacy recommended eliminating or better defining the anti-retaliation provisions of the rule. Finally, Advocacy recommended that OSHA reconsider the necessity of collecting employer identification numbers due to the potential for fraud. No final rule was published in FY 2018.

Environmental Protection Agency

Issue: Disposal of Coal Combustion Residuals from Electric Utilities

On April 27, 2018, Advocacy submitted a comment letter to the EPA on the following proposed rule: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria (Phase One). The proposal sought to revise the existing federal regulations for coal combustion residuals (CCR) from electric utilities. The proposed changes included establishing alternative performance standards for units located in states with approved permit programs, modifying alternate closure provisions, allowing the use of CCR in a final cover system of a unit subject to closure, and adding boron to the list of constituents. Advocacy

conveyed small business concerns that the proposed revisions would increase their compliance costs. Advocacy recommended that EPA carefully address small business concerns and consider providing relief and flexibilities to small businesses while still accomplishing the agency's regulatory objective. On July 30, 2018, EPA finalized part of the proposed revisions. In its final rule, EPA modified compliance dates for the closure of unlined surface impoundments and aquifer location standards. EPA also revised its groundwater protection standards for constituents that were previously required to meet background levels.

Issue: National Emission Standards for the Petroleum Refinery Sector

In a comment letter dated May 24, 2018, Advocacy reiterated its comments of October 28, 2014, opposing the imposition of fence-line monitoring requirements on small refiners. Advocacy recommended

that the agency consider broader relief from fence-line monitoring than the limited technical changes proposed. The agency had taken no further action as of September 30, 2018.

Issue: Definition of "Waters of the United States"; Recodification of Pre-Existing Rules

On July 12, 2018, the EPA and the Army Corps of Engineers published a supplemental notice of proposed rulemaking. The notice pertained to a proposed rule of the same title published on July 27, 2017. The proposed rule began the two-step process of revising the definition of "waters of the United States." The 2017 proposal would rescind the definition of "waters of the United States" as promulgated in the 2015 Clean Water Act rule and instead apply the definition of "waters of the United States" as it existed before the 2015 rule. The 2018 notice clarifies that the regulatory action would permanently repeal the 2015 rule. Furthermore, the notice seeks additional comments from the public on reasons and considerations for the agencies' proposal to repeal the 2015 rule.

In a comment letter dated August 13, 2018, Advocacy applauded the two agencies' efforts to revise the

definition of "waters of the United States." First, rescinding the 2015 rule would provide certainty to small entities as to the current definition. Second, Advocacy believes that the agencies had not properly considered small entity impacts under the RFA in the 2015 rule, an additional important consideration in support of its repeal. For the second step of the rule-making process, Advocacy urged the agencies to consider the impacts on small entities when revising the definition and to conduct a proper and thorough regulatory flexibility analysis when writing the new rule. As of September 30, 2018, the agencies were still reviewing comments submitted on the proposed and supplemental proposed rules.

Federal Communications Commission

Issue: In the Matter of Petition of USTelecom for Forbearance

On May 4, 2018, USTelecom filed a petition with the FCC requesting a grant of nationwide forbearance from regulations regarding the unbundling and resale mandates imposed on incumbent local exchange carriers (ILECs) under the 1996 Telecommunications Act. The FCC subsequently established a schedule for comment giving affected parties only 30 days to provide comments and/or file opposition, with a 15-day reply comment period. On May 19, 2018, Advocacy submitted public comments expressing support for several motions filed by affected small business stakeholders requesting that the

FCC extend the time period allowed for comment on the petition. The FCC ultimately extended the comment period. Advocacy met with the FCC chairman's staff in July 2018 and shared the concerns that small competitive local exchange carriers raised regarding the petition. The FCC must deny the petition within one year of its filing, or else it will be deemed granted. Advocacy continues to speak with small business stakeholders that oppose the petition. As of September 30, 2018, the FCC is continuing to consider the petition, and the agency has until August 2019 to make a decision to deny the petition.

Issue: Regulatory Reform Priorities

On July 30, 2018, Advocacy met with the FCC chairman's staff to discuss issues identified by Advocacy as regulatory priorities through outreach with small businesses, as well as any new regulatory approaches that may unduly disadvantage small businesses. On August 1, 2018, Advocacy submitted a letter to the FCC summarizing the meeting, which included

a discussion of the following topics: (1) definitions and regulations under the Telecommunications Consumer Protection Act, (2) promoting investment in the 3550–3700 MHz band, (3) the USTelecom petition for forbearance, and (4) streamlining regulation to reduce barriers to infrastructure deployment.

Federal Reserve, Federal Deposit Insurance Corp, Comptroller of the Currency

Issue: Simplifications to Capital Rules

On December 26, 2017, Advocacy submitted comments to the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency on the agencies' proposed rulemaking on Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The proposal would simplify compliance with certain aspects of the capital requirements for small community banks. Specifically, the agencies proposed that those banking organizations apply a simpler regulatory capital treatment for: (1) Mortgage servicing assets; (2) certain deferred tax assets arising from temporary differences; (3) investments in the capital of unconsolidated financial institutions; and (4) capital issued by a consolidated subsidiary of a banking organization and held by third parties. The

proposal also included revisions to the treatment of certain acquisition, development, or construction exposures that are designed to address comments regarding the current definition of high volatility commercial real estate exposure under the capital rule's standardized approach. Under the standardized approach, the proposed revisions to the treatment of acquisition, development, or construction exposures would not apply to existing exposures that are outstanding or committed before any final rule's effective date. In addition to the proposed simplifications, the agencies also proposed various additional clarifications and technical amendments to the agencies' capital rule.

Advocacy commended the agencies for taking steps to reduce the burden on small financial institutions.

However, Advocacy noted that for several years, small financial institutions have incurred several costly regulatory changes and that there may be ways to reduce the burden further. Advocacy en-

couraged the agencies to consider the alternatives that the industry may suggest. As of September 30, 2018, a final rule had not been published.

National Academy of Sciences, National Research Council

Issue: Integrated Risk Inventory System

On February 9, 2018, Advocacy submitted a comment letter to the National Research Council, the operating arm of the National Academy of Sciences, regarding improvements to EPA's Integrated Risk Inventory System (IRIS). The chemical hazard assessments made under IRIS are often used in regulations promulgated by EPA and other regulatory bodies. Small businesses are very concerned with the accuracy of their scientific determinations. In April 2011 the National Research Council tasked the EPA with improving the scientific objectivity and transparency of these chemical assessments. While Advocacy applauded EPA's substantial achievements in implementing the National Research Council's recommendations, the office noted that EPA needed additional work on steps necessary to identify study quality, select key studies, utilize expert judgment evaluating complex streams of evidence, and finally derive sound toxicity values.

Chapter 5

Small Business Regulatory Cost Savings and Success Stories

In FY 2018, small businesses saved \$255.3 million in estimated forgone regulatory cost savings because of the Regulatory Flexibility Act and the Office of Advocacy's efforts to promote federal agency compliance. There were additional regulatory successes whose impacts are not quantifiable. These are described in the Small Business Regulatory Success Stories section of this chapter.

In FY 2018, small businesses benefited from Advocacy's RFA activities through seven deregulatory actions. Compliance cost savings for small businesses that resulted from deregulatory actions arose from the withdrawal or delay of final and proposed regulations.

One of this year's deregulatory cost savings concerned the delay and suspension of certain provisions of the Venting and Flaring Rule proposed by the Department of the Interior's Bureau of Land Management. Advocacy published regulatory alerts encouraging small businesses affected by the rule to comment. The Bureau of Land Management subsequently finalized a rule to rescind and/or revise certain requirements of the 2016 final rule, resulting in total cost savings of \$127 million.

Another deregulatory cost saving highlighted this year was the Environmental Protection Agency's decision not to issue final regulations on financial responsibility requirements applicable to hardrock mining sites. The proposed rule required hardrock mining facilities to maintain insurance to remediate the impacts of potential releases of hazardous substances. However, as addressed in Advocacy's comments asking EPA to withdraw the proposed rule, the rule would have duplicated existing federal and state regulations that address this issue. The

withdrawal resulted in annual cost savings of \$60.4 million.

Savings also occurred because of the one-year delay in implementing the Department of Energy's Ceiling Fan Light Rule. This delay helps small businesses who need more time to comply with the rule, and it resulted in cost savings of up to \$1.7 million.

Table 5.1 summarizes the cost savings from seven final actions at five federal agencies in FY 2018.

There were also successes throughout FY 2018 that were not easily quantifiable. On January 25, 2018, EPA reversed a policy known as "once-in always-in." This policy imposed the most stringent requirements on major sources of hazardous air pollutants, but it made no allowance for businesses that reduce their emissions to be reclassified to a less stringent category. The revised policy allows small businesses who have been classified as major sources to benefit from their pollution reduction efforts.

In another case, EPA's position that undeployed airbag modules and inflators are hazardous waste caused confusion among small businesses on how hazardous waste regulations and exemptions apply to the different types of modules and inflators. On July 19, 2018, EPA issued a memorandum that clarified the regulatory status of undeployed automotive airbag modules and inflators. These and other success stories are listed in Table 5.2 of this report.

Descriptions of Small Business Regulatory Cost Savings

Table 5.1 Summary of Small Business Regulatory Cost Savings, FY 2018

(Deregulatory actions shown in bold.)

Agency	Rule	Initial cost savings (\$million)	Recurring cost savings (\$million)
Department of Agriculture	Organic Livestock and Poultry Practice¹	22.9	22.9
Department of Energy	Ceiling Fan Light Kit Final Rule²	1.7	-
Department of the Interior	Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule³	34.7	34.7
	Waste Prevention, Production Subject to Royalties, and Resource Conservation (Venting and Flaring)⁴	127	127
Department of Labor	Exemption of Certain Recreational Companies from Executive Order Increasing the Minimum Wage for Federal Contractors⁵	3	3
Environmental Protection Agency	CERCLA 108(b) Final Rulemaking Determination⁶	60.4	60.4
	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria⁷	5.6	5.6
FY 2018 Total Small Business Regulatory Cost Savings		\$255.3 million	

Note: Advocacy generally bases its cost savings estimates on agency estimates. Cost savings estimates are derived independently for each rule from the agency's analysis, and accounting methods and analytical assumptions for calculating costs may vary by agency. Cost savings for a given rule are captured in the fiscal year in which the agency finalizes changes in the rule as a result of Advocacy's intervention. These are best estimates to illustrate reductions in regulatory costs to small businesses. Initial cost savings consist of capital or recurring costs foregone that may have been incurred in the rule's first year of implementation by small businesses. Recurring cost savings are listed where applicable as annual or annualized values as presented by the agency. The actions listed in this table include deregulatory actions such as delays and rule withdrawals.

Sources:

1. 83 Fed. Reg. 10775 (Mar. 13, 2018).
2. 83 Fed. Reg. 22587 (May 16, 2018).
3. 82 Fed. Reg. 61924 (Dec. 29, 2017).
4. 83 Fed. Reg. 49184 (Sept. 28, 2018).

5. 83 Fed. Reg. 48537 (Sept. 26, 2018).
6. 83 Fed. Reg. 7556 (Feb. 21, 2018).
7. 83 Fed. Reg. 36435 (Jul. 30, 2018).

Department of Agriculture, Agricultural Marketing Service

Repeal of the Final Rule on Organic Livestock and Poultry Practice

On January 19, 2017, the Department of Agriculture's Agricultural Marketing Service published a final rule amending the production requirements for organic livestock and poultry. The rule added provisions for living conditions, livestock handling, and transport for slaughter, and it clarified existing requirements for livestock care and production practices. On December 18, 2017, the agency proposed withdrawing the final rule. After a public comment period, the agency withdrew the 2017 rule on March 13, 2018, stating that the 2017 rule exceeds USDA's statuto-

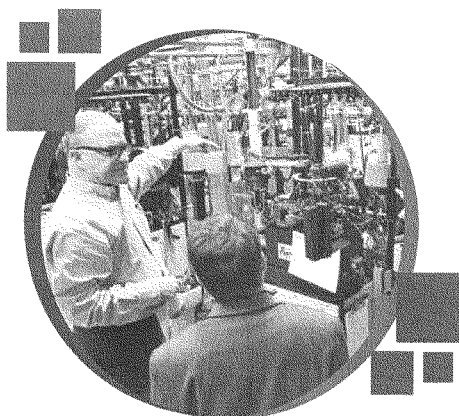
ry authority. In addition the agency stated that the withdrawal was independently justified based on a review of an assessment of the regulatory burdens. Advocacy engaged in interagency review and communications regarding the proposed rule and withdrawal of the rule. Advocacy also published a regulatory alert and alerted stakeholders to comment on the repeal of the rule. **The final rule repealed the full burden of the 2017 rule, which results in estimated cost savings of up to \$22.9 million.**

Department of Energy

Delayed Implementation of the Ceiling Fan Light Kit Final Rule

Because of a law passed by Congress, the implementation date of the Department of Energy's Ceiling Fan Light Kit final rule is being delayed by one year. **This delay is expected to save industry, most of which are small businesses, up to \$1.7 million in compliance costs.** This figure is based on the 2016 rule's estimated cost to the industry, discounted by one year, and a specific small business cost estimate was not determined by the agency. Advocacy wrote

a comment letter to the Department of Energy's regulatory reform team indicating that the energy efficiency rule for ceiling fans was a concern for small businesses. Advocacy also conducted outreach to small businesses who indicated that they needed more time to comply with the rule.



Small Business Site Visit, Sheboygan, Wis.

Advocacy staff members toured Wigwam Mills to learn more about the concerns of apparel manufacturers. These on-site meetings help Advocacy gain a deeper understanding of the impact of federal regulations on daily operations.

Department of the Interior, Bureau of Land Management

Repeal of 2015 Rule, Hydraulic Fracturing on Federal and Indian Lands

On March 26, 2015, the Bureau of Land Management published a final rule entitled, Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands. The rule established new requirements for operator planning, drilling plans, surface use plans, enhanced record keeping requirements, and operational requirements.

Manufacturers and builders objected that states have long been the primary regulators of hydraulic fracturing and should remain in that role. They were concerned that federal regulations could harm potential gains from increased exploration of shale oil and gas. They believed that where there is a

perceived deficiency in any one state's regulatory mechanisms, the federal government should work with the state to fill in the gap rather than imposing one-size-fits-all federal rules on states where no deficiency exists.

On December 29, 2017, the agency published a final rule rescinding the 2015 rule. This eliminates the burden described by stakeholders and provides for consistency and clarity on the state-federal issue. **This results in an estimated up to \$34.7 million in annual small business savings as a result of the rulemaking.**

Venting and Flaring

On November 18, 2016, the U.S. Department of the Interior's Bureau of Land Management issued a final rule entitled Waste Prevention, Production Subject to Royalties, and Resource Conservation. The rule aimed to reduce waste of natural gas from venting, flaring, and leaks during oil and gas production on onshore federal and Indian lands. It also clarified situations in which gas lost through these activities would be subject to royalties and when production may be used royalty-free. The agency at that time prepared a final regulatory flexibility analysis, but it stated that the rule would not have a significant economic impact on a substantial number of small entities. On June 15, 2017, the agency published a notification of postponement of the compliance dates due to pending litigation in federal courts.

On December 8, 2017, the agency finalized a rule to delay and suspend certain requirements of the 2016 final rule. Following the delay and suspension, on February 22, 2018, the agency promulgated a rule to rescind and/or revise certain requirements of the 2016 final rule. This proposed rule was finalized on September 28, 2018. Advocacy was heavily involved in interagency review of these rules, and published regulatory alerts encouraging small businesses affected by the rule to comment. **The final rule to rescind or revise certain requirements estimated a reduction in compliance costs of approximately \$72,000 per firm. The industry includes an estimated 1,764 small firms, thus total cost savings amount to approximately \$127 million.**

Department of Labor

Exemption of Certain Recreational Companies from Executive Order Increasing the Minimum Wage for Federal Contractors

The minimum wage for federal contractors and subcontractors was raised to \$10.10 per hour as a result of Executive Order 13658 and a rule issued by the Labor Department. The rule also affected individuals with federal contracts in connection to leases

on federal property, lands, and military installations, including restaurants, retail enterprises, and outdoor recreational companies. Advocacy wrote a comment letter on the rule when it was proposed. In 2018, small businesses in the outdoor recreation

industry expressed concern with this rule, which required them to pay higher wages and overtime to workers who often lead weeklong backpacking trips in national parks. Advocacy set up a meeting with the Labor Department and stakeholders in the outdoor recreation industry to discuss possible regulatory reforms. On May 25, 2018, the Trump Administration issued Executive Order 13838, which created an exemption to the wage requirements for

recreational services on federal lands. The exempted seasonal recreational services include river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps. **On September 26, 2018, DOL issued a final rule implementing EO 13838. The net annualized cost savings for small businesses under this action is \$3 million.**

Environmental Protection Agency

CERCLA 108(b) Final Rulemaking Determination

EPA proposed a rule in January 2017 requiring hardrock mining facilities to maintain instruments of financial responsibility (e.g., insurance) to address costs to remediate potential releases of hazardous substances from currently operating mining sites, under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known also as Superfund. Advocacy submitted comments in January 2017 asking EPA to withdraw the proposed rule, as being

unnecessary because current federal and state regulations already address this taxpayer risk. On December 1, 2017, EPA announced that this rule would not be promulgated. On February 21, 2018, EPA issued a final rule announcing its decision to not issue final regulations on its proposed regulations for financial requirements applicable to hard rock mining facilities that were published on January 11, 2017. **Annual savings to small businesses, using EPA data, is estimated at \$60.4 million per year.**

Disposal of Coals Combustion Residuals

On April 17, 2015, the Environmental Protection Agency published a final rule to regulate the disposal of coal combustion residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act. Small coal-fired power plants are concerned that the rule's deadlines require them to make irreversible decisions based on standards that may not be final. For example, under the existing regulations, some facilities will be required to close their coal ash impoundments (ponds containing coal ash), yet these may later be eligible for flexibilities via an approved state permit program.

Advocacy has worked with EPA on this issue. On March 15, 2018, EPA proposed a rulemaking to address some of the small business concerns including reducing the scope of the required closures. Advocacy submitted a comment letter to urge the agency to align the compliance deadlines with the anticipated reconsiderations of the rule's provisions and to

provide any flexibilities that would be available in a state permit program under the self-implementing rule. On July 30, 2018, the agency finalized part of its proposed rule. The final rule provided regulated entities flexibility with regard to complying with performance standards and allowed the additional time for compliance. As a result, small businesses will avoid significant CCR unit closure costs. **The total cost savings for small businesses is approximately \$5.6 million.**

Small Business Regulatory Success Stories

Table 5.2 Summary of Small Business Regulatory Success Stories, FY 2018

Agency	Rule
Department of Health and Human Services, Centers for Medicare and Medicaid Services	ICD-9-CM Compliant Codes for Inpatient Rehabilitation Facilities; 60 Percent Rule ¹
Department of the Interior, Fish and Wildlife Service	U.S. Fish and Wildlife Service Mitigation Policy ² Endangered and Threatened Wildlife and Plants; Endangered Species Act Compensatory Mitigation Policy ³
Department of Labor	Companion Care Rule ⁴
Departments of Labor and Homeland Security	H-2B Visa Program ⁵
Department of Treasury	Estate Evaluation ⁶ Airbag Regulatory Status Under RCRA ⁷
Environmental Protection Agency	Once-In, Always-In ⁸ Steam Electric Effluent Limitation Guidelines (ELG) ⁹ Small Business Size Standards, Fees Rule ¹⁰
Federal Communications Commission	Removing Barriers to Wireless Infrastructure Deployment ¹¹

1. 82 Fed. Reg. 36238 (Aug. 3, 2017) (effective Oct. 1, 2017). www.federalregister.gov/documents/2017/08/03/2017-16291/medicare-program-inpatient-rehabilitation-facility-prospective-payment-system-for-federal-fiscal.
2. 83 Fed. Reg. 36472 (Jul. 30, 2018). www.federalregister.gov/documents/2018/07/30/2018-16172/us-fish-and-wildlife-service-mitigation-policy.
3. 83 Fed. Reg. 36469 (Jul. 30, 2018). www.federalregister.gov/documents/2018/07/30/2018-16171/endangered-and-threatened-wildlife-and-plants-endangered-species-act-compensatory-mitigation-policy.
4. U.S. Department of Labor, Field Assistance Bulletin No. 2018-4, www.dol.gov/whd/FieldBulletins/fab2018_4.htm.
5. 85 Fed. Reg. 24905 (May 31, 2018). www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the.
6. U.S. Department of Treasury, Second Report to the President on Identifying and Reducing Tax Regulatory Burdens (Oct. 2, 2017). www.treasury.gov/press-center/press-releases/Documents/2018-03004_Tax_EO_report.pdf.
7. U.S. Environmental Protection Agency, Memorandum (Jul. 29, 2018). www.epa.gov/sites/production/files/2018-08/documents/airbags_memo_signed_7-19-18.pdf.
8. William L. Wehrum, Memorandum on Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (Jan. 25, 2018). www.epa.gov/sites/production/files/2018-01/documents/reclassification_of_major_sources_as_area_sources_under_section_112_of_the_clean_air_act.pdf.
9. 82 Fed. Reg. 43494 (Sep. 18, 2017). www.federalregister.gov/documents/2017/09/18/2017-19821/postponement-of-certain-compliance-dates-for-the-effluent-limitations-guidelines-and-standards-for.
10. 83 Fed. Reg. 52694 (Oct. 17, 2018). www.federalregister.gov/documents/2018/10/17/2018-22252/fees-for-the-administration-of-the-toxic-substances-control-act.
11. Federal Communications Commission, Fact Sheet (Sep. 5, 2018). <https://docs.fcc.gov/public/attachments/DOC-353962A1.pdf>.

Department of Health and Human Services, Centers for Medicare and Medicaid Services

ICD-9 Diagnosis Codes for Inpatient Rehabilitation Facilities; 60 Percent Rule

The Centers for Medicare and Medicaid Services is transitioning from ICD-9 Medicare billing codes to ICD-10. The agency believes this will result in much greater specificity and clinical information, improved ability to measure health care services, and decreased need to include supporting documentation with claims. Advocacy received requests from attendees at regional roundtables and stakeholders submitting written regulatory reform comments, asking that CMS restore certain ICD-9 codes because some codes were inadvertently eliminated during the transition to ICD-10. This has resulted in financial penalties for late submission of patient assessments.

Advocacy has been following this issue for years. In fact the office filed a public comment letter on November 3, 2003, when CMS published the 75 percent rule affecting inpatient rehabilitation facilities, asking that CMS reduce the regulatory burden associated with the use of reimbursement codes. Recently, Advocacy communicated the stakeholders' ICD-9 regulatory reform suggestions to CMS. In the 2018 Inpatient Rehabilitation Facility Prospective Payment System rule, CMS reversed certain ICD-10 diagnosis codes and removed a 25 percent payment penalty for late patient assessment submissions. These changes provide the relief requested by the stakeholders in this situation.

Department of the Interior, Fish and Wildlife Service

Mitigation Policy; Compensatory Mitigation Policy for Endangered and Threatened Wildlife and Plants

On November 21, 2016, the Fish and Wildlife Service published an update to its Mitigation Policy. This policy guides its recommendations on addressing the adverse impacts of land and water developments on fish, wildlife, plants, and their habitats. The 2016 policy set a goal of net benefit for natural resources, or at a minimum, no net loss. The agency stated that it would apply a landscape-scale approach to mitigation, which would broadly inform more detailed guidance in other areas in the future. The goals and approach expressed in the umbrella policy were also embodied in the agency's policy on compensatory mitigation under the Endangered Species Act, which it published on December 27, 2016.

Small entities stated that both the umbrella mitigation policy and the Endangered Species Act policy would increase costs and limit their ability to start, expand, and operate their businesses due to costly permitting and new mitigation requirements. They stated that the guidance increased confusion and that the agency should withdraw it in favor of guidance that clarifies specific guidelines for conserva-

tion plans, streamlines the process, and does away with the untenable goal of no-net-loss for natural resources.

In response to executive orders to reduce the private sector regulatory burden, on November 6, 2017, the Fish and Wildlife Service requested public comment on these policies. On December 12, 2017, Advocacy held a webinar with the agency to encourage specific small business feedback. After reviewing the public comments, the agency announced on July 30, 2018, that it would be withdrawing both policies, restoring previous agency guidance, and removing the untenable goals for small businesses.

Department of Labor

Clarification of the Companion Care Rule

In 2015, the Department of Labor changed the companion-care services exemption to minimum wage and overtime requirements under the Fair Labor Standards Act. Under the new rule, only those employed by the family or household using these services could use the exemption, and home care agencies providing these services were required to pay minimum wage and overtime to their workers. Small businesses across the country told Advocacy that these changes would devastate their businesses, and they reported business losses in general hourly services. The rule made it almost impossible for small home care companies to provide live-in care.

In 2018, Advocacy facilitated meetings between the Department of Labor and small business representatives from the Private Care Association and the National Association for Home Care and Hospice. These organizations sought to repeal the 2015 final regulations. In addition, the Private Care Association asked the agency to provide guidance stating that registries are not employers under FLSA and subject to these requirements. (These registries are companies that facilitate matches between clients and caregivers.) On July 13, 2018, the agency issued Field Assistance Bulletin No. 2018-4, which reaffirmed its position that registries are typically not employers under the FLSA.

Departments of Labor and Homeland Security

H-2B Visa Program

The H-2B visa program allows employers facing a shortage of U.S workers to hire temporary foreign workers to complete non-agricultural jobs in seasonal businesses. At almost every Advocacy regional roundtable, small businesses have expressed concern with the statutory limit of 66,000 H-2B workers per year. In 2018, the Labor Department received over twice that many applications in the first half of the year.

In March 2018, President Trump signed into law a spending bill which included a provision to allow

the Departments of Labor and Homeland Security to raise the number of H-2B visas by over 60,000 extra workers. However, the agencies had to create rulemakings to implement these numbers.

On April 14, 2018, Advocacy wrote a comment letter to the agencies recommending that the agencies authorize this increase. In May 2018, the agencies published a final rule increasing the number of H-2B visas by 15,000 for one year, allowing more small businesses to take advantage of the program.

Department of Treasury, Internal Revenue Service

Estate Valuation

On August 4, 2016, the Internal Revenue Service published a notice of proposed rulemaking concerning estate, gift, and generation-skipping transfer taxes and restrictions on liquidation of an interest. The notice included the elimination of most of the valuation discounts for businesses operating under section 2704(b). On November 1, 2016, Advocacy submitted a public comment letter conveying

small business concerns about the estate valuation proposal. Small business stakeholders indicated to Advocacy that the proposed regulations would be such a large departure from current IRS policy and industry practice that expensive new business valuations would need to be completed for closely held businesses. Even more problematic for small business owners, by eliminating valuation dis-

counts, the proposed regulations would negatively affect succession planning for many small businesses. As an example, the proposed regulations would result in higher estate taxes on small family businesses, possibly forcing them to either liquidate the business or sell large or controlling interests to non-family members.

On October 4, 2017, the Treasury Department announced recommended actions to withdraw, partially revoke, or revise eight regulations identified as posing an undue burden on taxpayers, which included withdrawing the proposed regulations under section 2704 that would have eliminated valuation discounts.

Environmental Protection Agency

Airbag Regulatory Status Under RCRA

According to EPA, some undeployed airbag modules and airbag inflators are considered hazardous waste under the Resource Conservation and Recovery Act (RCRA) due to their reactive and ignitable characteristics. As such, they are subject to EPA's permit requirements regarding the treatment, storage and disposal of hazardous waste. According to EPA, the deployment of the airbag removes the reactivity and ignitability characteristics.

Defective or recalled airbags that have been removed from vehicles present problems under RCRA. Small businesses expressed confusion and frustration with EPA's position. Advocacy has engaged with the agency to address the small business concerns with the treatment of airbags under RCRA. On July 19, 2018, EPA issued a memorandum providing clarifi-

cation on the regulatory status of undeployed airbag modules and inflators. Also, in the memorandum, EPA contemplated a future rulemaking to exempt discarded airbag modules and airbag inflators from some RCRA regulatory requirements under certain conditions.

Advocacy anticipates working with EPA on the potential rulemaking to further address small business issues regarding defective or recalled airbags.



Site Visit, Florissant, Colo.

Advocacy staff members met with rangers from the National Park Service at the Florissant Fossil Beds National Monument in Colorado. This visit allowed Advocacy staff to better understand the on-the-ground perspectives of agency staff.

Once-In, Always-In

Under the Clean Air Act, the Environmental Protection Agency regulates the emissions of hazardous air pollutants (HAPs) from industrial sources. Generally, EPA imposes the most stringent requirements on major sources and less stringent requirements on smaller emitters, known as area sources. Many small businesses are classified as major sources, and under a 20-year-old EPA policy known as “once-in always-in,” a business has been unable to reduce its emissions and be reclassified as an area source.

Small businesses have complained that this policy imposes significant costs while discouraging inno-

vation and investment that could reduce air emissions. Small business representatives raised this as a problem in the SBREFA panels for the Mercury and Air Toxics Rule and the Brick Industry Hazardous Air Pollutants Rule, as well as in recent Advocacy regulatory reform roundtables.

On January 25, 2018, EPA reversed the policy. EPA expects to codify the policy change in a rulemaking in the near future. Small businesses will benefit from this change slowly, as they implement changes to their industrial processes to lower their uncontrolled emissions below the major source threshold.

Steam Electric Effluent Limitation Guidelines

The Steam Electric Effluent Limitation Guidelines affect hundreds of coal-fired power plants that are required to upgrade their units to address water pollution. Small businesses have raised this issue as a concern. In April 2017 Advocacy submitted a regulatory petition to the Environmental Protection Agency, asking it to reduce the stringency of the requirements for small plants whose compliance costs would be very high compared with the pollution reduction achieved. EPA granted the petition in August 2017. It subsequently extended the compliance

deadlines for the rule while it reconsiders the rule requirements. Rule revisions could save small firms hundreds of millions of dollars in annual costs.

Regional Regulatory Reform Roundtable, Casper, Wyo.

Advocacy staff members listen to small business feedback regarding the effects of federal agency regulations in Casper, Wyo. Small business owners expressed concerns about the impact that federal regulations have on the ability of rural states, like Wyoming, to grow their economies and keep existing businesses in the state.



Small Business Size Standards, Fees Rule

The Environmental Protection Agency uses its own small business definition for collecting fees and providing exemptions from recordkeeping requirements under the Toxic Substance Control Act (TSCA). EPA's definitions do not match the industry-based small business standards established by the Small Business Administration and which most federal agencies use.

A recurring concern expressed by small businesses at Advocacy's regional roundtables was that inconsistent small business definitions among federal agencies create confusion and extra paperwork for no apparent benefit. In addition, small businesses

noted that EPA's definition for small manufacturers under TSCA was outdated and did not capture small businesses as they exist today.

Advocacy engaged with the EPA and SBA to revise EPA's small business size standards under TSCA. On September 27, 2018, EPA signed its final rule on the fee collecting rule under TSCA. The rule established a fee schedule for a business that is required to submit information to EPA under several sections of TSCA. In this rule, EPA revised its small business definition to align with the SBA's small business standards. The new definition will allow more small businesses to qualify for a reduced fee.

Federal Communications Commission

Removing Barriers to Wireless Infrastructure Deployment

Small wireless carriers have told Advocacy that the costs of certain environmental, historic, and tribal reviews make the widespread deployment of small-cell technology needed to launch 5G networks too costly. Under existing FCC regulations, a company would have to conduct the same reviews when installing a small-cell device as it would when building a macro-cell tower. Some industry analysts estimate that these reviews would impose over \$1.5 billion in costs related to small-cell deployment.

The FCC initiated a proceeding in 2017 seeking input on reducing barriers to infrastructure deployment. Advocacy submitted a letter to FCC highlighting these concerns and commending the agency's efforts to reduce barriers for small businesses and accelerate broadband deployment. In March 2018, the FCC finalized regulatory reforms that would exempt small-cell deployment from most of these reviews. This will help speed the deployment of next-generation wireless networks by reducing costs associated with deployment.

Appendix A

Text of the Regulatory Flexibility Act

The following text of the Regulatory Flexibility Act of 1980, as amended, is taken from Title 5 of the United States Code, sections 601–612. The Regulatory Flexibility Act was originally passed in 1980 (P.L. 96–354). The act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104–121), the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203), and the Small Business JOBS Act of 2010 (P.L. 111–240).

Congressional Findings and Declaration of Purpose

(a) The Congress finds and declares that —

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act [enacting this chapter and provisions set out as notes under this section] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

Regulatory Flexibility Act

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

§ 601. Definitions

For purposes of this chapter—

- (1) the term “agency” means an agency as defined in section 551(1) of this title;
- (2) the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term “rule” does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;
- (3) the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
- (4) the term “small organization” means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field,

unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term “small governmental jurisdiction” means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

(6) the term “small entity” shall have the same meaning as the terms “small business,” “small organization” and “small governmental jurisdiction” defined in paragraphs (3), (4) and (5) of this section; and

(7) the term “collection of information” —

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either —

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) Recordkeeping requirement — The term “recordkeeping requirement” means a requirement imposed by an agency on persons to maintain specified records.

§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain —

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small

entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain —

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as —

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(d) (1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

(A) any projected increase in the cost of credit for small entities;

(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain —

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected;

(6)¹ for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

¹ So in original. Two paragraphs (6) were enacted.

§ 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

§ 606. Effect on other law

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

§ 607. Preparation of analyses

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

§ 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the

final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

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

§ 609. Procedures for gathering comments

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

(1) the inclusion in an advance notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility

analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term “covered agency” means

(1) the Environmental Protection Agency,

(2) the Consumer Financial Protection Bureau of the Federal Reserve System, and

(3) the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

(2) Special circumstances requiring prompt issuance of the rule.

(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the *Federal Register* a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may

be amended by the agency at any time by publishing the revision in the *Federal Register*. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the *Federal Register* and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

- (1) the continued need for the rule;
- (2) the nature of complaints or comments received concerning the rule from the public;
- (3) the complexity of the rule;
- (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local government rules; and
- (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the *Federal Register* a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

§ 611. Judicial review

(a)

(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3) (A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to —

(A) remanding the rule to the agency, and

(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

§ 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

Appendix B

Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

Executive Order of August 13, 2002

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:²

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

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

- (a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;
- (b) shall provide training to agencies on compliance with the Act; and
- (c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regula-

tory Affairs of the Office of Management and Budget (OIRA).

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

- (a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies' procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;
- (b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

² 67 FR 53461. www.federalregister.gov/documents/2002/08/16/02-21056/proper-consideration-of-small-entities-in-agency-rulemaking

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby.

Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

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

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

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

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

Sec. 8. Judicial Review. This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the

United States, its departments, agencies, or other entities, its officers or employees, or any other person.

George W. Bush

THE WHITE HOUSE,
August 13, 2002.

Filed 08-15-02; 8:45 am]
{FR Doc. 02-21056

Billing code 3195-01-P

Appendix C

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

Executive Order of January 30, 2017

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Budget and Accounting Act of 1921, as amended (31 U.S.C. 1101 et seq.), section 1105 of title 31, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:³

Section 1. Purpose. It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of the direct expenditure of taxpayer dollars through the budgeting process, it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, it is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.

Sec. 2. Regulatory Cap for Fiscal Year 2017. (a) Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

(b) For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required

by law or consistent with advice provided in writing by the Director of the Office of Management and Budget (Director).

(c) In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Any agency eliminating existing costs associated with prior regulations under this subsection shall do so in accordance with the Administrative Procedure Act and other applicable law.

(d) The Director shall provide the heads of agencies with guidance on the implementation of this section. Such guidance shall address, among other things, processes for standardizing the measurement and estimation of regulatory costs; standards for determining what qualifies as new and offsetting regulations; standards for determining the costs of existing regulations that are considered for elimination; processes for accounting for costs in different fiscal years; methods to oversee the issuance of rules with costs offset by savings at different times or different agencies; and emergencies and other circumstances that might justify individual waivers of the requirements of this section. The Director shall consider phasing in and updating these requirements.

Sec. 3. Annual Regulatory Cost Submissions to the Office of Management and Budget. (a) Beginning with the Regulatory Plans (required under Executive Order 12866 of September 30, 1993, as amended, or any successor order) for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall

³ 82 FR 9339. www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs

identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of this order, and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation.

(b) Each regulation approved by the Director during the Presidential budget process shall be included in the Unified Regulatory Agenda required under Executive Order 12866, as amended, or any successor order.

(c) Unless otherwise required by law, no regulation shall be issued by an agency if it was not included on the most recent version or update of the published Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance in writing by the Director.

(d) During the Presidential budget process, the Director shall identify to agencies a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director. The total incremental cost allowance may allow an increase or require a reduction in total regulatory cost.

(e) The Director shall provide the heads of agencies with guidance on the implementation of the requirements in this section.

Sec. 4. Definition. For purposes of this order the term "regulation" or "rule" means an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe

law or policy or to describe the procedure or practice requirements of an agency, but does not include:

(a) regulations issued with respect to a military, national security, or foreign affairs function of the United States;

(b) regulations related to agency organization, management, or personnel; or

(c) any other category of regulations exempted by the Director.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

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

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

Donald J. Trump

THE WHITE HOUSE,
January 30, 2017.

Filed 2-2-17; 11:15 am}
{FR Doc. 2017-02451

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Executive Order 13777: Enforcing the Regulatory Reform Agenda

Executive Order of February 24, 2017

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to lower regulatory burdens on the American people by implementing and enforcing regulatory reform, it is hereby ordered as follows:⁴

Section 1. Policy. It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.

Sec. 2. Regulatory Reform Officers. (a) Within 60 days of the date of this order, the head of each agency, except the heads of agencies receiving waivers under section 5 of this order, shall designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. These initiatives and policies include:

- (i) Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;
- (ii) Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;
- (iii) section 6 of Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and
- (iv) the termination, consistent with applicable law, of programs and activities that derive from or implement Executive Orders, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

(b) Each agency RRO shall periodically report to the agency head and regularly consult with agency leadership.

Sec. 3. Regulatory Reform Task Forces. (a) Each agency shall establish a Regulatory Reform Task Force composed of:

- (i) the agency RRO;
- (ii) the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866;
- (iii) a representative from the agency's central policy office or equivalent central office; and
- (iv) for agencies listed in section 901(b)(1) of title 31, United States Code, at least three additional senior agency officials as determined by the agency head.

(b) Unless otherwise designated by the agency head, the agency RRO shall chair the agency's Regulatory Reform Task Force.

(c) Each entity staffed by officials of multiple agencies, such as the Chief Acquisition Officers Council, shall form a joint Regulatory Reform Task Force composed of at least one official described in subsection (a) of this section from each constituent agency's Regulatory Reform Task Force. Joint Regulatory Reform Task Forces shall implement this order in coordination with the Regulatory Reform Task Forces of their members' respective agencies.

(d) Each Regulatory Reform Task Force shall evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable

⁴ 82 FR 12285, www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda

law. At a minimum, each Regulatory Reform Task Force shall attempt to identify regulations that:

- (i) eliminate jobs, or inhibit job creation;
- (ii) are outdated, unnecessary, or ineffective;
- (iii) impose costs that exceed benefits;
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

(e) In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

(f) When implementing the regulatory offsets required by Executive Order 13771, each agency head should prioritize, to the extent permitted by law, those regulations that the agency's Regulatory Reform Task Force has identified as being outdated, unnecessary, or ineffective pursuant to subsection (d)(ii) of this section.

(g) Within 90 days of the date of this order, and on a schedule determined by the agency head thereafter, each Regulatory Reform Task Force shall provide a report to the agency head detailing the agency's progress toward the following goals:

- (i) improving implementation of regulatory reform initiatives and policies pursuant to section 2 of this order; and

- (ii) identifying regulations for repeal, replacement, or modification.

Sec. 4. *Accountability.* Consistent with the policy set forth in section 1 of this order, each agency should measure its progress in performing the tasks outlined in section 3 of this order.

(a) Agencies listed in section 901(b)(1) of title 31, United States Code, shall incorporate in their annual performance plans (required under the Government Performance and Results Act, as amended (see 31 U.S.C. 1115(b))), performance indicators that measure progress toward the two goals listed in section 3(g) of this order. Within 60 days of the date of this order, the Director of the Office of Management and Budget (Director) shall issue guidance regarding the implementation of this subsection. Such guidance may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.

(b) The head of each agency shall consider the progress toward the two goals listed in section 3(g) of this order in assessing the performance of the Regulatory Reform Task Force and, to the extent permitted by law, those individuals responsible for developing and issuing agency regulations.

Sec. 5. *Waiver.* Upon the request of an agency head, the Director may waive compliance with this order if the Director determines that the agency generally issues very few or no regulations (as defined in section 4 of Executive Order 13771). The Director may revoke a waiver at any time. The Director shall publish, at least once every 3 months, a list of agencies with current waivers.

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

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

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

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

Donald J. Trump

THE WHITE HOUSE,
February 24, 2017.

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[FR Doc. 2017-04107

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Appendix D

RFA Training, Case Law, and SBREFA Panels

Federal Agencies Trained in RFA Compliance, 2003–2018

Executive Order 13272 directed the Office of Advocacy to provide training to federal agencies in RFA compliance. RFA training began in 2003, and since that time Advocacy has conducted training for 18 cabinet-level departments and agencies, 79 separate component agencies and offices within these departments, 23 independent agencies, and various special groups including congressional staff, business organizations and trade associations. The following agencies have participated in RFA training since its inception in 2003.

Cabinet Agencies

Department of Agriculture	Center for Disease Control and Prevention
Animal and Plant Health Inspection Service	Center for Medicare and Medicaid Services
Agricultural Marketing Service	Center for Tobacco Products
Forest Service	Food and Drug Administration
Grain Inspection, Packers, and Stockyards	Indian Health Service
Administration	Office of Policy
Livestock, Poultry, and Seed Program	Office of Regulations
National Organic Program	Department of Homeland Security
Rural Utilities Service	Federal Emergency Management Agency
Office of Budget and Program Analysis	National Protection and Programs Directorate
Office of the General Counsel	Office of the Chief Procurement Officer
Department of Commerce	Office of the General Counsel
Bureau of Industry and Security	Office of Small and Disadvantaged Business
National Oceanic and Atmospheric Administration	Utilization
National Telecommunications and Information	Transportation Security Administration
Administration	U.S. Citizenship and Immigration Service
Office of Manufacturing Services	U.S. Coast Guard
Patent and Trademark Office	U.S. Customs and Border Protection
Department of Defense	U.S. Immigration and Customs Enforcement
Defense Acquisition Regulations System	Department of Housing and Urban Development
Defense Logistics Agency	Office of Community Planning and Development
Department of the Air Force	Office of Fair Housing and Equal Opportunity
Department of the Army, Training and Doctrine	Office of Manufactured Housing
Command	Office of Public and Indian Housing
U.S. Strategic Command	Department of the Interior
Department of Education	Bureau of Indian Affairs
Office of Elementary and Secondary Education	Bureau of Land Management
Office of Post-Secondary Education	Bureau of Ocean Energy Management, Regulation
Office of Special Education and Rehabilitative	and Enforcement
Services	Fish and Wildlife Service
Office of the General Counsel	National Park Service
Department of Energy	Office of Surface Mining Reclamation and
Department of Health and Human Services	Enforcement

Department of Justice
 Bureau of Alcohol, Tobacco, and Firearms
 Drug Enforcement Administration
 Federal Bureau of Prisons
 Department of Labor
 Employee Benefits Security Administration
 Employment and Training Administration
 Employment Standards Administration
 Mine Safety and Health Administration
 Occupational Safety and Health Administration
 Office of Federal Contract Compliance Programs
 Department of State
 Department of Transportation
 Federal Aviation Administration
 Federal Highway Administration
 Federal Motor Carrier Safety Administration
 Federal Railroad Administration
 Federal Transit Administration
 Maritime Administration
 National Highway Traffic Safety Administration

Independent Federal Agencies

Access Board
 Consumer Financial Protection Bureau
 Consumer Product Safety Commission
 Commodity Futures Trading Commission
 Environmental Protection Agency
 Farm Credit Administration
 Federal Communications Commission
 Federal Deposit Insurance Corporation
 Federal Election Commission
 Federal Energy Regulatory Commission
 Federal Housing Finance Agency
 Federal Maritime Commission

Pipeline and Hazardous Materials Safety
 Administration
 Research and Special Programs Administration
 Department of the Treasury
 Alcohol, Tobacco, Tax, and Trade Bureau
 Bureau of Fiscal Services
 Financial Crimes Enforcement Network
 Financial Management Service
 Internal Revenue Service
 Office of the Comptroller of the Currency
 Office of the General Counsel
 Surface Transportation Board
 Department of Veterans Affairs
 National Cemetery Administration
 Office of the Director of National Intelligence
 Office of Management and Budget
 Office of Federal Procurement Policy
 Small Business Administration
 Office of the General Counsel

Federal Reserve System
 Federal Trade Commission
 General Services Administration / FAR Council
 National Aeronautics and Space Administration
 National Credit Union Administration
 National Endowment for the Arts
 National Endowment for the Humanities
 Nuclear Regulatory Commission
 Pension Benefit Guaranty Corporation
 Securities and Exchange Commission
 Trade and Development Agency

RFA-Related Case Law, FY 2018

Courts across the country have decided various issues regarding the Regulatory Flexibility Act through litigation. This section notes pertinent cases in which the courts discussed the RFA. Both cases reach unique interpretations of the prudential standing requirements of small entities under the RFA. This section does not reflect the Office of Advocacy's opinion of the cases and is intended to provide the reader with information on what the courts have held regarding agency compliance with the RFA in FY 2018.

*Cal. Cattlemen's Ass'n v. United States Fish and Wildlife Service*¹

California ranchers and farmers challenged the United States Fish and Wildlife Service's designation of nearly 2 million acres as critical habitat for certain amphibian species. The plaintiffs alleged that the agency violated the RFA by issuing proposed and final critical habitat designations under the Endangered Species Act without conducting sufficient regulatory flexibility analysis of the impact that the designations will have on small business. Among other justiciability arguments, the agency sought dismissal on the ground that plaintiffs do not have prudential standing to sue—that is, the plaintiffs do not fall within the zone of interests that the RFA is designed to protect. The agency argued that because the rule merely requires consultation between federal agencies, the plaintiffs are not directly regulated; as such, they do not fall within the statute's zone of interests.

The court rejected the agency's argument, distinguishing this matter from *Mid-Tex Electric Cooperative Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (concluding that the scope of the RFA analysis requirements apply to impacts to entities directly regulated by the applicable rule). Here, the final rule requires consultation between agencies about the impact on the land use, and the "ultimate impact of the consultation will be felt by small entities like the

plaintiffs." The court concluded that the involvement of many federal agencies does not "break[] the chain of RFA causation" and it would be contrary to the purpose of the RFA to allow an agency to escape regulatory flexibility analysis by "ordering a sister agency to implement the rule on its behalf." Because the court found that plaintiffs are the type of entities that the RFA was designed to protect, the court denied the agency's motion to dismiss. Currently, this case is still open in the District Court for the District of Columbia and there are motions for summary judgment pending.

*U.S. Citrus Sci. Council v. United States Department of Agriculture*²

In *U.S. Citrus Sci. Council v. USDA*, plaintiffs challenged a rule allowing for the importation of lemons from Argentina, claiming RFA and other statutory violations. Defendants requested that the court reconsider its position that plaintiffs have standing under the RFA, arguing that plaintiffs are only indirectly regulated by the rule. Plaintiffs sought summary judgment under the RFA arguing that the agency's assessment of the economic impacts of the rule was arbitrary and capricious.

First, the court found that the RFA requires an agency to consider the effect of an agency action to small entities only directly regulated by the final rule. Here, a rule lifting a ban on lemons from Argentina does not directly apply to small entities and no provision in the rule is being enforced against small entities. Second, the court found that even if the plaintiffs had standing to sue under the RFA, the agency's regulatory flexibility analysis was not arbitrary and capricious. The court found that although the agency's estimate of the volume of lemons imported as a result of the lift on the ban was lower than that of a representative of the Argentine Citrus Federation, the agency's estimate "was based on sound reasoning" and not on irrational or arbitrary actions of the agency.

1. *Cal. Cattlemen's Ass'n v. U.S. Fish and Wildlife Serv.*, 315 F. Supp. 3d 282 (D.D.C., May 29, 2018).

2. *U.S. Citrus Sci. Council v. USDA*, 312 F. Supp. 3d 884 (E.D. Cal., Feb. 27, 2018).

SBREFA Panels Convened Through FY 2018

Table D.1 SBREFA Panels Convened Through FY 2018

Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Consumer Financial Protection Bureau				
Debt Collection	08/25/16	10/19/16		
Arbitration Clauses	10/20/15	12/11/15	05/24/16	Rule published 07/19/17. Repealed under Congressional Review Act, 10/24/17
Limit Certain Practices for Payday, Vehicle Title, and Similar Loans	04/27/15	06/25/15	07/22/16	11/17/17
Home Mortgage Disclosure Act	02/27/14	04/24/14	08/29/14	10/15/15
Loan Originator Compensation Requirements under Regulation Z	05/09/12	07/12/12	09/07/12	02/15/13
Mortgage Servicing under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	04/09/12	06/11/12	09/17/12	02/14/13
Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	02/21/12	04/23/12	08/23/12	12/31/13
Department of Labor, Occupational Safety and Health Administration				
Telecommunications Towers	08/15/18	10/11/18		
Process Safety Management Standard	06/02/16	08/01/16		
Occupational Exposure to Infectious Diseases in Healthcare and Other Related Work Settings	10/14/14	12/22/14		
Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl	05/05/09	07/02/09		
Occupational Exposure to Beryllium	09/17/07	01/15/08	08/07/15	
Cranes and Derricks in Construction	08/18/06	10/17/06	10/09/08	08/09/10
Occupational Exposure to Hexavalent Chromium	01/30/04	04/20/04	10/04/04	02/28/06
Occupational Exposure to Crystalline Silica	10/20/03	12/19/03	09/12/13	03/25/16
Confined Spaces in Construction	09/26/03	11/24/03	11/28/07	
Electric Power Generation, Transmission, and Distribution	04/01/03	06/30/03	06/15/05	04/11/14
Ergonomics Program Standard	03/02/99	04/30/99	11/23/99	11/14/00

Table D.1 SBREFA Panels Convened Through FY 2018

Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Safety and Health Program Rule	10/20/98	12/19/98		
Tuberculosis	09/10/96	11/12/96	10/17/97	Withdrawn 12/31/03
Environmental Protection Agency				
Financial Responsibility Requirements for Hard Rock Mining	08/24/16	12/01/16	12/01/16	Withdrawn December 2017
Regulation of Trichloroethylene for Vapor Degreasers under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	
Regulation of N-Methylpyrrolidone and Methylene Chloride in Paint and Coating Removal under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	
Risk Management Program Modernization	11/04/15	02/19/16	03/14/16	01/13/17
Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector	06/16/15	08/13/15	09/18/15	06/3/16
Federal Plan for Regulating Greenhouse Gas Emissions from Electric Generating Units	04/30/15	07/28/15	10/23/15	Withdrawn 04/03/17
Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Vehicles	10/22/14	01/15/15	07/13/15	10/25/2016
PCB (Polychlorinated Biphenyls) Use Authorizations Update Rule	02/07/14	04/07/14		
Review of New Source Performance Standards and Amendments to Emission Guidelines for Municipal Solid Waste Landfills	12/05/13	07/21/15	07/17/14 08/27/15	08/29/16
National Emissions Standards for Hazardous Air Pollutants (NESHAP): Brick and Structural Clay Products and Clay Products	06/12/13	01/16/14	12/18/14	10/26/15
Long Term Revisions to the Lead and Copper Rule	08/14/12	08/16/13		-
Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards	08/04/11	Rule proposed rule w/o completion of SBREFA panel report	06/30/14	12/01/15
Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards	08/04/11	10/14/11	05/21/13	04/28/14
Greenhouse Gas Emissions from Electric Utility Steam Generating Units	06/09/11	Rule proposed rule w/o completion of SBREFA panel report	04/14/13	04/13/12 01/08/14 06/02/14

Table D.1 SBREFA Panels Convened Through FY 2018

Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
National Emission Standards for Hazardous Air Pollutants (NESHAP) Risk and Technology Review for the Mineral Wool and Wool Fiberglass Industries	06/02/11	10/26/11	11/12/11	07/29/15
Formaldehyde Emissions from Pressed Wood Products	02/03/11	04/04/11	06/10/13	07/27/16
Stormwater Regulations Revision to Address Discharges from Developed Sites	12/06/10	10/04/11	-	Withdrawn 07/06/17
National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units	10/27/10	03/02/11	05/03/11	02/16/12
Revision of New Source Performance Standards for New Residential Wood Heaters	08/04/10	10/26/11	02/03/14	03/16/15
Pesticides; Reconsideration of Exemptions for Insect Repellents	11/16/09	01/15/10		
National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers: Major and Area Sources	01/22/09	03/23/09	06/04/10	03/21/11
Pesticides; Certification of Pesticide Applicators (Revisions)	09/04/08	11/03/08	08/24/15	01/04/17
Pesticides; Agricultural Worker Protection Standard Revisions	09/04/08	11/03/08	03/19/14	09/28/15
Renewable Fuel Standards 2	07/09/08	09/05/08	05/26/09	03/26/10
Total Coliform Monitoring	01/31/08	01/31/08	07/14/10	
Non-Road Spark-Ignition Engines/Equipment	08/17/06	10/17/06	05/18/07	10/08/08
Mobile Source Air Toxics	09/07/05	11/08/05	03/29/06	02/26/07
Federal Action Plan for Regional Nitrogen Oxide/Sulfur Dioxide (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Section 126 Petition (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Cooling Water Intake Structures Phase III Facilities	02/27/04	04/27/04	11/24/04	06/15/06
Nonroad Diesel Engines – Tier IV	10/24/02	12/23/02	05/23/03	06/29/04
Lime Industry – Air Pollution	01/22/02	03/25/02	12/20/02	01/05/04
Aquatic Animal Production Industry	01/22/02	06/19/02	09/12/02	08/23/04
Construction and Development Effluent Limitations Guidelines	07/16/01	10/12/01	06/24/02	Withdrawn 04/26/04
Nonroad Large Spark Ignition Engines, Recreation Land Engines, Recreation Marine Gas Tanks and Highway Motorcycles	05/03/01	07/17/01	10/05/01 08/14/02	11/08/02

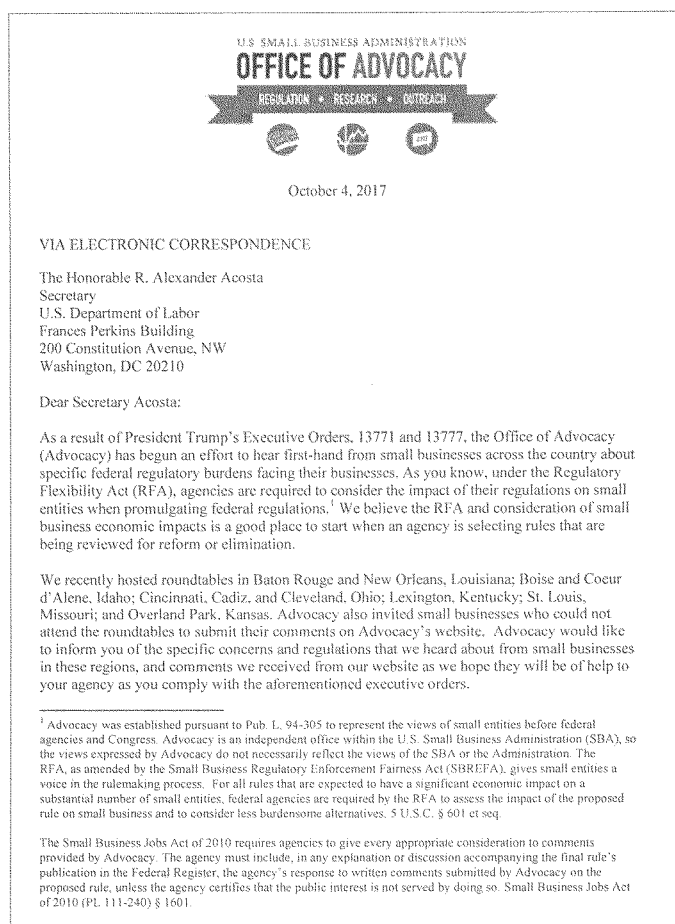
Table D.1 SBREFA Panels Convened Through FY 2018

Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Stage 2 Disinfectant Byproducts; Long Term 2 Enhanced Surface Water Treatment	04/25/00	06/23/00	08/11/03 08/18/03	01/04/06 01/05/06
Reinforced Plastics Composites	04/06/00	06/02/00	08/02/01	04/21/03
Concentrated Animal Feedlots	12/16/99	04/07/00	01/12/01	02/12/03
Metals Products and Machinery	12/09/99	03/03/00	01/03/01	05/13/03
Lead Renovation and Remodeling Rule	11/23/99	03/03/00	01/10/06	04/22/08
Diesel Fuel Sulfur Control Requirements	11/12/99	03/24/00	06/02/00	01/18/01
Recreational Marine Engines	06/07/99	08/25/99	10/05/01 08/14/02	11/08/02
Arsenic in Drinking Water	03/30/99	06/04/99	06/22/00	01/22/01
Light Duty Vehicles/Light Duty Trucks Emissions and Sulfur in Gas	08/27/98	10/26/98	05/13/99	02/10/00
Filter Backwash Recycling	08/21/98	10/19/98	04/10/00	06/08/01
Long Term 1 Enhanced Surface Water Treatment	08/21/98	10/19/98	04/10/00	01/14/02
Radon in Drinking Water	07/09/98	09/18/98	11/02/99	
Section 126 Petitions	06/23/98	08/21/98	09/30/98	05/25/99
Federal Action Plan for Regional Nitrogen Oxide Reductions	06/23/98	08/21/98	10/21/98	04/28/06
Ground Water	04/10/98	06/09/98	05/10/00	11/08/06
Underground Injection Control (UIC) Class V Wells	02/17/98	04/17/98	07/29/98	12/07/99
Centralized Waste Treatment Effluent Guideline	11/06/97	01/23/98	09/10/03 01/13/99	12/22/00
Transportation Equipment Cleaning Effluent Guidelines	07/16/97	09/23/97	06/25/98	08/14/00
Stormwater Phase II	06/19/97	08/07/97	01/09/98	12/08/99
Industrial Laundries Effluent Guidelines	06/06/97	08/08/97	12/17/97	Withdrawn 08/18/99
Nonroad Diesel Engines	03/25/97	05/23/97	09/24/97	10/23/98
See Appendix G for abbreviations.				

Appendix E

Sample of Letters to Agency Heads

Advocacy sent 26 letters to the heads of federal agencies reflecting the input received at the Regional Regulatory Reform Roundtables. A sample of these letters is reproduced here. These letters are online on Advocacy's web-page: <https://advocacy.sba.gov/regulatory-reform/regulatory-reform-follow-up>. See Chapter 3 to learn more.



Summary of Concerns from Roundtables and Website

Employee Benefits Security Administration

- **Definition of the Term “Fiduciary” - Conflict of Interest Rule - Retirement Investment Advice.**

Small business owners and representatives expressed concerns about the costs and burdens imposed by the new Fiduciary Rule and the rule's related exemptions.

Employment and Training Administration

- **H-2A Visa Program**

One small dairy business recommended that the dairy industry be allowed to utilize the H-2A visa program for temporary agricultural foreign workers, as this industry is struggling to obtain the necessary workforce for their operation. Advocacy realizes that this would require a statutory change.

- **H-2B Visa Program**

Small businesses have commented on the importance of this program to obtain temporary non-agricultural foreign workers for their seasonal businesses; and recommend that the agency continue this program and approve any opportunities to increase the worker capacity under this program. Some small businesses cited concern with recent Executive Orders that have specifically targeted this program for reform and potential cuts.

Office of Federal Contract Compliance Programs

- **Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities**

Small business representatives were concerned with the paperwork costs and hiring goals for individuals with disabilities for federal contractors, particularly in certain industries like construction.

- **Federal Paid Sick Leave for Government Contractors**

Small businesses were concerned about this final rule that requires parties that contract with the Federal Government to provide their employees with up to seven days of paid sick leave annually. Small businesses from the construction industry commented that this rule is difficult to implement in their project-based character of their work; others have had a hard time incorporating their current paid time off programs with the requirements of this rule. This rule has also been problematic for concessionaires and lease holders in

federal and military buildings; they cannot recover the costs from the federal government. Advocacy has written a comment letter on this issue.²

- **Moratorium on Enforcement of Federal Contractor Requirements Against Hospitals**

Small business representatives recommend that OFCCP extend the moratorium on enforcement of federal contractor requirements against hospitals receiving TRICARE and other federal health care reimbursement programs. Federal contractor status imposes affirmative action recordkeeping and reporting burdens on small hospitals.

Office of Labor-Management Standards

- **Persuader Rule - Interpretation of the Advice Exemption in the 203(c) of the Labor-Management Reporting and Disclosure Act**

Small businesses were concerned about this final rule that expands the reportable activity that employers and their outside consultants file when they provide advice on unionizing and collective bargaining. Small businesses have stated that this rule would have resulted in paperwork costs and would have deterred these entities from seeking legal advice. In June 2017, DOL published a proposed rule that proposes to rescind this final rule.

Occupational Safety and Health Administration (OSHA)

- **Communication Tower Safety**

Small business representatives from the communication tower construction and maintenance industry would like OSHA to adopt the new industry consensus standards for communication tower safety, but are concerned that OSHA will exceed industry standards and promulgate a rule that is unduly costly and burdensome.

- **Electronic Recordkeeping and Reporting**

Small businesses representatives have complained that OSHA is now requiring the electronic submission of injury and illness data by certain businesses and that OSHA is planning to make that data publicly (which they oppose because they say it can create a false impression of the safety record at a company). Other sectors, such as automobile dealers, have complained that they are required to report to OSHA for the first time even though their injury and illness rates continue to decline.

² Comment Letter from Daryl DePriest, Chief Counsel for Advocacy and Janis C. Reyes, Assistant Chief Counsel, SBA Office of Advocacy to the Honorable Thomas E. Perez, Secretary, U.S. Department of Labor (April. 6, 2016), <https://www.sba.gov/advocacy/4-6-2016-establishing-paid-sick-leave-federal-contractors-proposed-rule>.

- **Occupational Exposure to Beryllium**

Small businesses representatives complained that construction and shipyards (except abrasive blasting) were not represented in OSHA's SBREFA panel on beryllium and should not have been included in OSHA's final beryllium rule. They also expressed concern that OSHA lacks sufficient information about the health risks from naturally-occurring beryllium in soil, stone, and other construction materials.³

- **Occupational Exposure to Respirable Crystalline Silica**

Small business representatives – particularly in the foundry and construction industries – have complained that OSHA's new silica rule is not based on a demonstration of significant risk and is not technically or economically feasible to comply with. Small business representatives from the construction industry also complained that Table 1 of the construction standard is not workable in its current form and needs substantial revision.⁴

- **OSHA Inspection and Enforcement Policies**

Small business representatives from both the manufacturing and construction industries have complained that OSHA's inspection and enforcement policies are unduly rigid and unfair. They recommended that OSHA provide greater flexibility and focus more on compliance assistance than fines and penalties.

- **Severe Violator Enforcement Program**

Small business representatives have complained that the removal criteria for OSHA's Severe Violator Enforcement Program is unfair and unduly complicated, which can result in companies being unable to be removed from the program despite abating hazards and improving their safety and health programs. Others complained about OSHA's increasing use of corporate-wide settlement agreements in enforcement actions.

Mine Safety and Health Administration (MSHA)

- **Examinations of Working Places in Metal and Nonmetal Mines**

Small business representatives have stated that MSHA should amend the agency's final rule on Examinations of Working Places in Metal and Nonmetal Mines that was

³ Comment Letter from Major L. Clark, III, Acting Chief Counsel for Advocacy, and Bruce E. Lundegren, Assistant Chief Counsel, SBA Office of Advocacy to William Perry, Director, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor (August 28, 2017), <https://www.sba.gov/advocacy/08-28-17-comments-oshas-proposed-occupational-exposure-beryllium-and-beryllium-compounds>.

⁴ Comment Letter from Winslow Sargeant, PhD, Chief Counsel for Advocacy, and Bruce E. Lundegren, Assistant Chief Counsel, SBA Office of Advocacy to The Honorable David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor (February 11, 2014), <https://www.sba.gov/content/2112014-comments-osha%E2%80%99s-proposed-occupational-exposure-respirable-crystalline-silica-rule>.

published in January 2017 to provide mine operators with additional flexibility in managing their safety and health programs and reduce regulatory burdens while retaining adequate safety protections afforded to miners.

Wage and Hour Division (WHD)

- **Application of the Executive, Administrative, Professional, Outside Sales and Computer Employees (EAP Exemption) under the Fair Labor Standards Act (FLSA)**

Small businesses are concerned with a DOL final rule that increases the salary threshold under the EAP exemption to minimum wage and overtime under the FLSA to \$47,476 stating that this rule would have added significant compliance costs and paperwork burdens. In response to a DOL Request for Information, Advocacy recommended that DOL adopt a lower level national salary threshold adjusted to minimize small business impacts to the most adversely affected low wage regions and industries.⁵

- **Application of the Fair Labor Standards Act to Domestic Service**

In 2015, DOL changed the companion care services exemption to minimum wage and overtime under the FLSA, limiting the use of this exemption to those employed by the family or household using those services. Small businesses providing these services could no longer claim this exemption, and reported business losses in live-in care services and general hourly services due to increased costs. These businesses recommend reform of this rule. Advocacy has written a comment letter on this issue.⁶

- **All Agency Memorandum (AAM) No. 212- Applicability of Davis-Bacon Act labor standards to members of survey crews**

Small businesses in the surveying industry were concerned with DOL's 2013 AAM No. 212, which reversed long standing labor policy and determined that survey crews working on Federal projects were "laborers and mechanics" subject to the Davis-Bacon Act and prevailing wages. Small businesses stated that this imposed paperwork burdens and increased the compliance costs to these firms and the government agencies that contract for these services.

- **Tip Regulations under the Fair Labor Standards Act**

Small businesses in the restaurant industry were concerned about a DOL regulation that restricted an employer's ability to pool employee tips; this is regardless of whether the employer takes a tip credit or pays tipped employees the full minimum wage. These

⁵ Comment Letter from Major L. Clark III, Acting Chief Counsel for Advocacy and Janis C. Reyes, Assistant Chief Counsel, SBA Office of Advocacy to the Honorable R. Alexander Acosta, Secretary, U.S. Department of Labor (Sept. 22, 2017), <https://www.sba.gov/advocacy/9-22-17-re-request-information-defining-and-delimiting-exemptions-executive-administrative>.

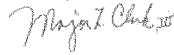
⁶ Comment Letter from Winslow Sargeant, Ph.D., Chief Counsel for Advocacy and Janis C. Reyes, Assistant Chief Counsel, SBA Office of Advocacy to the Honorable Hilda Solis, Secretary, U.S. Department of Labor (March 12, 2012), <https://www.sba.gov/content/letter-dated-3122012-department-labor-wage-and-hour-division>.

businesses were encouraged and supported efforts by the current DOL to rescind this regulation in the current regulatory agenda.

The Office of Advocacy looks forward to working with your agency to reduce the burden of federal regulations on behalf of the small businesses that have asked us to be their voice in this regulatory reform process. We hope that you will include these specific rules when you compile your list of rules to review. Advocacy would be happy to meet with you or your representative so that we may detail the concerns and help suggest less burdensome alternatives for small business as rules are being considered for revision. I have provided the contact information for Assistant Chief Counsels **Janis Reyes**, **Bruce Lundegren** and **Dillon Taylor** below.

As we continue to hear from small businesses across the country at our regional regulatory reform roundtables or through our outreach from our regulatory reform website, we will update you with additional summaries from those locations. Thank you for considering small business impacts as a vital part of your regulatory reform efforts and for including the Office of Advocacy as an important part of the process.

Sincerely,



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Appendix F

History of the Regulatory Flexibility Act

Shortly after the Office of Advocacy was founded in 1976, the first White House Conference on Small Business engaged small business representatives from across the United States in national brainstorming sessions. One recurring concern was the difficulty that “one-size-fits-all” regulations created for small businesses trying to compete in U.S. markets. President Jimmy Carter, a one-time small business owner himself, understood the necessity for greater protections for small businesses in the regulatory process and helped facilitate administrative and legislative changes. In 1979, President Carter issued a memorandum to the heads of all executive agencies, instructing them to “make sure that federal regulations [would] not place unnecessary burdens on small businesses and organizations,” and more specifically, to apply regulations “in a flexible manner, taking into account the size and nature of the regulated businesses.”¹ He asked Advocacy to ensure that the agencies’ implementation would be consistent with government-wide regulatory reform.

In 1980, Congress enacted the Regulatory Flexibility Act (RFA), which elevated aspects of this memorandum to the level of federal statute.² The new law mandated that agencies consider the impact of their regulatory proposals on small businesses, analyze

proposed regulations for equally effective alternatives, and make their analyses of equally effective alternatives available for public comment. This new approach to federal rulemaking was viewed as a remedy for the disproportionate burden placed on small businesses by one-size-fits-all regulation, “without undermining the goals of our social and economic programs.”³

RFA Requirements

Under the RFA, when an agency proposes a rule that would have a “significant economic impact on a substantial number of small entities,” the rule must be accompanied by an impact analysis (an initial regulatory flexibility analysis or IRFA) when it is published for public comment.⁴ Following that, should the agency publish a final rule, that agency must publish a final regulatory flexibility analysis (FRFA) as well.⁵ If a federal agency determines that a proposed rule would not have a “significant economic impact on a substantial number of small entities,” the head of that agency may “certify” the rule and bypass the IRFA and FRFA requirements.⁶

During a November 2015 interview, Frank Swain, chief counsel for advocacy from 1981 to 1989, noted that “The RFA is the only regulatory reform that is

1. Jimmy Carter, *Regulation of Small Businesses and Organizations Memorandum from the President*, (Nov. 16, 1979), www.presidency.ucsb.edu/ws/?pid=31709.

2. 5 U.S.C. § 601 et seq.

3. Carter, *supra* note 1.

4. 5 U.S.C. § 603.

5. 5 U.S.C. § 604.

6. 5 U.S.C. § 605(b).

statutorily required. Most of the regulatory reforms are largely executive orders.” Executive orders frequently expire at the end of a president’s term. “The RFA, because of its statutory basis, is going to be around indefinitely,” Swain said. As such, the RFA continues to be an important check on burdensome regulation in an era where regulatory reform is an Administration priority.

Interpreting and Strengthening the RFA

During the first half of the 1980s, the federal courts were influential in developing the RFA’s role in the regulatory process. One question that required the courts’ intervention was whether a federal agency had to consider a proposed rule’s indirect effects on small businesses, in addition to its direct effects. In *Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission (FERC)*, the D.C. Circuit found that “Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy.”⁷ This interpretation—that federal agencies must only consider the direct effects on small businesses within the jurisdiction of the rule—has continued to be the judicial interpretation of the RFA, even after subsequent amendments.⁸

The following year, in the run-up to the second White House Conference on Small Business in 1986, conference planners noted that “the effectiveness of the RFA largely depends on small business’ awareness of proposed regulations and [their] ability to effectively voice [their] concerns to regulatory agencies.”⁹ They also voiced concern that at the time “the courts’ ability to review agency compliance with the law is limited.” Eight years later, the Government Accounting Office reported that agency compliance with the RFA varied widely across the

federal government, a condition that likely impaired efforts to address the disproportionate effect of federal regulation on small business.

Advocacy was statutorily required to report annually on federal agency compliance, but given that compliance with the RFA was not itself reviewable by the courts at the time, the effectiveness of such reporting was limited. The RFA did allow the chief counsel for advocacy to appear as *amicus curiae* (friend of the court) in any action to review a rule, expanding the chief counsel’s role in representing small business interests in policy development. However, given that Courts did not review compliance with the RFA, any challenge to regulation would need to be primarily under the Administrative Procedure Act.

After the third White House Conference on Small Business in 1995 renewed the call for strengthening the RFA, Congress and President Bill Clinton did so by enacting the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). SBREFA provided new checks on federal agency compliance with the RFA’s requirements, as well as additional procedures specifically addressing small business concerns regarding environmental and occupational safety and health regulations. The SBREFA amendments also made a federal agency’s compliance with certain sections of the RFA judicially reviewable, allowing challenges to regulations based on the agency’s failure to supply a FRFA or sufficient reason for certification.

After amending the RFA to allow for judicial review of agency compliance, the courts again provided guidance regarding the RFA’s requirements for federal agencies. In *Southern Offshore Fishing Associations v. Daley*, the court held that the National Marine Fisheries Service failed to make a “reasonable, good-faith effort” to inform the public about the potential impacts of a proposed rule imposing fishing quotas and to consider less harmful

7. *Mid-Tex Elec. Coop. v. FERC*, 773 F.2d 327, 341 (D.C. Cir. 1985).

8. See *American Trucking Ass’n v. EPA*, 175 F.3d 1027 (D.C. Cir. 1999).

9. *The Small Business Advocate newsletter*, U.S. Small Business Administration, Office of Advocacy, September 2005.

alternatives.¹⁰ The agency had published a FRFA with its final rule, but had not published an IRFA when the rule was proposed. The court's holding established that an IRFA must precede a FRFA for an agency to have "undertak[en] a rational consideration of the economic effects and potential [regulatory] alternatives."¹¹

SBREFA Panels

The SBREFA amendments also required the Environmental Protection Agency and the Occupational Safety and Health Administration to convene small business advocacy review panels whenever the agency proposes a rule that may have a significant impact on a substantial number of small entities. These panels consist of officials from the promulgating agency, the Office of Information and Regulatory Affairs, and the Office of Advocacy. Their task is to consult with small business representatives on the agency's regulatory proposals to ensure that the agency has identified and considered regulatory alternatives that could attain the policy objectives while minimizing the impacts on small businesses. After each collaborative panel has concluded, the panel issues a report of its findings and any recommendations for providing flexibility for small entities.

The innovation of SBREFA panels has allowed for greater consideration of small business alternatives for federal rules. Jere W. Glover, chief counsel for advocacy during the passage of SBREFA, made two key observations about the rulemaking process. First, "If you get to the agency early in the process, they are more likely to change their mind." And second, the mission of these efforts is to "make the regulation work for the industry," not to "kill the regulation." Glover's perspective comes not only from his tenure as chief counsel from 1994 to 2001; he was also present at the creation of the RFA as

deputy to Milton Stewart, the first chief counsel for advocacy.

Executive Order 13272

As the President George W. Bush's administration began to consider small business priorities, improved RFA compliance was one key goal. To this end, President Bush issued Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" in 2002.¹² This order tasked Advocacy with training federal agencies and other stakeholders on the RFA. The training sessions helped apprise agencies of their responsibilities under the RFA and educated agency officials on the best RFA compliance practices. In addition, E.O. 13272 required Advocacy to track agency compliance with these education requirements and report on them annually to the White House Office of Management and Budget.

E.O. 13272 also instituted new procedures to help facilitate a collaborative relationship between agencies and the Office of Advocacy. First, it required agencies to notify Advocacy of any draft proposed rule that would impose a significant impact on a substantial number of small entities. Second, it required agencies to provide a response in the *Federal Register* to any written comment on the proposed rule from the Office of Advocacy when the final rule was published.

Thomas M. Sullivan, chief counsel for advocacy during the Bush administration, discussed E.O. 13272's pivotal role in furthering RFA compliance. He noted that, because of the executive order, "Advocacy became a part of the fabric of federal rulemaking." The aspect most responsible for this evolution in Sullivan's view was federal agency training. "Training really helped accomplish this," he said. "The goal is to create regulations that meet

10. *Southern Offshore Fishing Ass'n v. Daley*, 995 F.Supp. 1411, 1437 (M.D. Fla. 1998).

11. *Id.*

12. E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," www.gpo.gov/fdsys/pkg/FR-2002-08-16/pdf/02-21056.pdf, (Aug. 13, 2002).

the regulatory purpose and are sensitive to small business requirements.” Sullivan added that “The biggest misperception is how hard it is to work with an agency for a win-win solution as opposed to just being critical of regulation.”

Eight years and one presidential administration later, Congress and President Barack Obama enacted the Small Business Jobs Act of 2010,¹³ which codified some of the procedures introduced in E.O. 13272. That same year, the Dodd-Frank Wall Street Reform and Consumer Protection Act became law.¹⁴ The new law created the Consumer Financial Protection Bureau and required that the new agency’s major rules come under the SBREFA panel provisions of the RFA.

The Obama administration looked to Advocacy for ways of encouraging economic activity. Again, the RFA was an important part of the answer. Executive Order 13563, “Improving Regulation and Regulatory Review,”¹⁵ signed in 2011, directed agencies to heighten public participation in rulemaking, consider overlapping regulatory requirements and flexible approaches, and conduct ongoing regulatory review. President Obama concurrently issued a memorandum to all federal agencies, reminding them of the importance of the RFA and of reducing the regulatory burden on small businesses through regulatory flexibility. In this memorandum, President Obama directed agencies to increase transparency by providing written explanations of any decision not to adopt flexible approaches in their regulations. The following year, President Obama further attempted to reduce regulatory burdens with Executive Order 13610, “Identifying and Reducing Regulatory Burdens,”¹⁶ which placed greater focus on initiatives

aimed at reducing unnecessary regulatory burdens, simplifying regulations, and harmonizing regulatory requirements imposed on small businesses.

Executive Orders 13563 and 13610 bolstered the retrospective review requirements of the RFA by requiring all executive agencies to conduct periodic retrospective review of existing rules. President Obama also issued an administrative action, Executive Order 13579, which recommended that all independent agencies do the same.¹⁷ This emphasis on the principles of regulatory review and the sensitivity to small business concerns in the federal rulemaking process further increased federal agency compliance.

Dr. Winslow Sargeant, chief counsel for advocacy from 2010 to 2015, stressed that these executive orders sought to “make federal regulation more clear, predictable, and transparent.” Sargeant identified two key areas, “retrospective review of existing regulation and deregulation when rules are no longer needed,” as important future challenges for regulatory improvement.

New Horizons: Small Business and International Trade

With the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, Advocacy’s duties to small business expanded beyond our borders. Under the Act, the chief counsel for advocacy must convene an interagency working group whenever the president notifies Congress that the administration intends to enter into trade negotiations with another country. The working group conducts small

13. Small Business Jobs Act, Pub. L. 111–240 (2010).

14. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203 (2010).

15. E.O. 13563, “Improving Regulation and Regulatory Review,” www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf (Jan. 18, 2011).

16. E.O. 13610, “Identifying and Reducing Regulatory Burdens,” www.whitehouse.gov/sites/default/files/docs/microsites/omb/eo_13610_identifying_and_reducing_regulatory_burdens.pdf (May 10, 2012).

17. E.O. 13579, “Regulation and Independent Regulatory Agencies,” www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf (July 14, 2011).

business outreach in manufacturing, services, and agriculture sectors and gather input on the trade agreement's potential economic effects. Informed by these efforts, the working group is charged with identifying the most important priorities, opportunities, and challenges affecting these industry sectors in a report to Congress.

With the inauguration of President Donald J. Trump in January 2017, the regulatory process would see its most dramatic reform yet. Shortly after the beginning of his administration, President Trump issued two executive orders aimed at substantially ameliorating the regulatory burden faced by the private sector. The first, E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," commonly known as "one-in, two-out," required that any new regulations be balanced by the reduction of at least two other regulations—and that the incremental cost of new regulations be entirely offset by elimination of existing costs of other regulations. The second, E.O. 13777, "Enforcing the Regulatory Reform Agenda," set a framework for implementing this vision of regulatory reform, requiring *inter alia* each agency appoint a Regulatory Reform Officer to supervise the process of regulatory reform going forward. These measures are another opportunity for small business regulatory reform, and the challenge to Advocacy going forward is to match both the letter and spirit of these measures with vigor. Agency implementation of these executive orders offers significant opportunities for regulatory relief targeted to small businesses. FY 2017 offers the first instance of how the RFA functions in a deregulatory environment.

Since its passage in 1980, the RFA has demonstrated remarkable staying power. It has helped establish small business consideration as a necessary part of federal rulemaking.

Appendix G

Abbreviations

RFA	Regulatory Flexibility Act	HAPs	hazardous air pollutants
SBREFA	Small Business Regulatory Enforcement Fairness Act	HCBD	hexachlorobutadiene
SBAR	small business advocacy review	ILECs	incumbent local exchange carriers
IRFA	initial regulatory flexibility analysis	IRFA	initial regulatory flexibility analysis
FRFA	final regulatory flexibility analysis	IRIS	Integrated Risk Inventory System
		IRS	Internal Revenue Service
		JOBBS Act	Jumpstart Our Business Startups
ABS	Annual Business Survey	MSHA	Mine Safety and Health Administration
ACA	Affordable Care Act	NESHAP	national emission standards for hazardous air pollutants
ADA	Americans with Disabilities Act	NPRM	notice of proposed rulemaking
AMS	Agricultural Marketing Service	OIRA	Office of Information and Regulatory Affairs
ANPRM	advance notice of proposed rulemaking	OMB	Office of Management and Budget
CCR	coal combustion residuals	OSHA	Occupational Safety and Health Administration
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980	OSPP	OSHA Strategic Partnership Program
CFPB	Consumer Financial Protection Bureau	PBT	persistent, bioaccumulative, and toxic chemicals
CORPS	Army Corps of Engineers	PCB	polychlorinated biphenyls
CPSC	Consumer Product Safety Commission	PCTP	pentachlorothiophenol
DecaBDE	decabromodiphenyl ethers	PI	proprietary information
DOD	Department of Defense	RCRA	Resource Conservation and Recovery Act
DOE	Department of Energy	RESPA	Real Estate Settlement Procedures Act
DOI	Department of the Interior	RFA	Regulatory Flexibility Act
DOJ	Department of Justice	RMP	risk management program
DOL	Department of Labor	SBA	Small Business Administration
DOT	Department of Transportation	SBREFA	Small Business Regulatory Enforcement Fairness Act
E.O.	executive order	SHARP	Safety and Health Achievement Recognition Program
ELD	electronic logging devices	TILA	Truth in Lending Act
ELG	effluent limitations guideline	TSCA	Toxic Substances Control Act
EPA	Environmental Protection Agency	U.S.C.	United States Code
FAR	Federal Acquisition Regulation Council	UIC	Underground Injection Control
FCC	Federal Communications Commission	USCIS	U.S. Citizenship and Immigration Services
FDA	Food and Drug Administration	VPP	Voluntary Protection Programs
Fed. Reg.	Federal Register		
FLSA	Fair Labor Standards Act		
FRFA	final regulatory flexibility analysis		
GSA	General Services Administration		

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

CHRISTEL SLAUGHTER, PhD, CHAIR
SMALL BUSINESS COUNCIL

TOM SULLIVAN, EXECUTIVE DIRECTOR
SMALL BUSINESS COUNCIL

June 5, 2019

The Honorable James Lankford
Chairman, Subcommittee on Regulatory
Affairs and Federal Management
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Marco Rubio
Chairman
Committee on Small Business &
Entrepreneurship
United States Senate
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member, Subcommittee on Regulatory
Affairs and Federal Management
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Ben Cardin
Ranking Member
Committee on Small Business &
Entrepreneurship
United States Senate
Washington, DC 20510

Re: Reauthorization of SBA Office of Advocacy

Dear Chairman Lankford, Chairman Rubio, Ranking Member Carper, and Ranking Member Cardin:

I am writing to thank you for holding a joint hearing on May 22nd on the reauthorization of the Office of Advocacy at the U.S. Small Business Administration (SBA). I ask that this statement be included in the Committees' official hearing record.

I serve as Vice President for Small Business at the U.S. Chamber of Commerce and in that capacity, I serve as Executive Director for the Chamber's Small Business Council. The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. Over 99% of private sector businesses in the United States are defined as small.¹ Similarly, the vast majority of Chamber member companies are small businesses and the Small Business Council works to ensure their views are considered as part of the Chamber's policy-making process.

¹ *Frequently Asked Questions*, Office of Advocacy, U.S. Small Business Administration (August 2018), viewable at: <https://www.sba.gov/sites/default/files/advocacy/Frequently-Asked-Questions-Small-Business-2018.pdf>.

It is also worth noting that I served as Chief Counsel for Advocacy at the SBA from 2002-2008, so the topic of this hearing is of particular interest.

SBA's Office of Advocacy is charged with independently representing the views of small business before Congress and the Administration and oversees agency compliance with the Regulatory Flexibility Act.² Effective implementation of the Regulatory Flexibility Act plays an important role in preventing overly burdensome federal regulatory mandates from harming the small business community and because of the office's role, the Chamber has included strengthening the Office of Advocacy as a priority for 2019.³

Research conducted by the U.S. Chamber of Commerce Foundation sheds some light on how small businesses struggle under the weight of excessive regulatory requirements. The report entitled, "The Regulatory Impact on Small Business: Complex. Cumbersome. Costly," pegs the impact of federal regulatory burden at "\$1.9 trillion per year in direct costs, lost productivity, and higher prices."⁴ The Foundation's research also shows that those costs hit small businesses the hardest, with an impact on firms with 50 employees or fewer that is 20 percent higher than the average for all firms.

During a recent trip to Cleveland, Ohio, I visited our Small Business Council member, Michael Canty, President & CEO of Alloy Bellows & Precision Welding, Inc. He brought the Foundation's research findings to life and explained to me that one-size-fits-all regulations do not work when it comes to many federal environmental and safety and health mandates. Michael is also a leader with the Greater Cleveland Partnership's Council on Smaller Enterprises (COSE) and he has shared his views before the Senate in the past.⁵

In addition to reauthorizing SBA's Office of Advocacy, the Chamber supports the Prove It Act (S.2014), the Early Participation in Regulations Act (S.1419), and the Small

² *Regulatory Flexibility Act*, Pub. L. No. 96-354, 94 Stat. 1164 (1980), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified as amended at 5 U.S.C. Sec. 601-612), also amended by Sec. 1100 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 2112 (July 21, 2010).

³ *The State of American Business*, U.S. Chamber of Commerce, 2019 Policy Priorities Booklet, Page 24 (January 10, 2019), viewable at: https://www.uschamber.com/sites/default/files/023587_soab_2019_booklet_inside_final_spread.pdf.

⁴ *The Regulatory Impact on Small Business: Complex. Cumbersome. Costly*, U.S. Chamber of Commerce Foundation (March 2017), available at: <https://www.uschamberfoundation.org/reports/small-business-regulation-study>.

⁵ *Testimony*, Michael Canty, President & CEO of Alloy Bellows and Precision Welding, Inc., On behalf of the National Small Business Association, Senate Committee on Environment and Public Works, Subcommittee on Superfund, Waste Management and Regulatory Oversight, (April 12, 2016), viewable at: https://www.nsba.biz/wp-content/uploads/2016/04/NSBA_Michael-Canty_Testimony_Senate-EPW-Subcmte4.12.16.pdf.

Business Regulatory Flexibility Improvements Act (S.1120). We believe these measures will bolster the effectiveness of SBA's Office of Advocacy.

Finally, the Chamber echoes the sentiments of several witnesses who appeared before the joint Committee hearing and testified in support of David Tryon's nomination to serve as Chief Counsel for Advocacy. Last year, I joined with Winslow Sargeant, Ph.D., who served as Chief Counsel in the last Administration, and asked Leader McConnell and Senator Schumer to take up Mr. Tryon's nomination.⁶ The Chamber supports the nomination of David Tryon to serve as Chief Counsel and we ask that you urge your Senate colleagues to take up his nomination so that small businesses have an independent high-ranking official in the Administration fighting for them.

Thank you for considering these views and please do not hesitate to contact me at tsullivan@uschamber.com if you have any questions concerning the Chamber's views on this important topic.

Sincerely,



Thomas M. Sullivan
Vice President, Small Business Policy
Executive Director, Small Business Council

⁶ Letter to Leader McConnell and Senator Schumer, Winslow L. Sargeant, Ph.D. and Thomas M. Sullivan (July 31, 2018), viewable at: <http://bit.ly/2WmpFlgChiefCounsel>.