

110TH CONGRESS  
2D SESSION

# S. 2902

To ensure the independent operation of the Office of Advocacy of the Small Business Administration, ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 23, 2008

Ms. SNOWE (for herself and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

APRIL 29, 2008

Committee discharged; referred to the Committee on Small Business and Entrepreneurship

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## A BILL

To ensure the independent operation of the Office of Advocacy of the Small Business Administration, ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Independent Office of  
5 Advocacy and Small Business Regulatory Reform Act of  
6 2008”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to ensure that the Office of Advocacy of the  
4 Small Business Administration (referred to in this  
5 section as the “Office”) has adequate financial re-  
6 sources to advocate for and on behalf of small busi-  
7 ness concerns;

8 (2) to provide a separate authorization of ap-  
9 propriations for the Office; and

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

12 **SEC. 3. OFFICE OF ADVOCACY.**

13 (a) IN GENERAL.—Section 203 of Public Law 94–  
14 305 (15 U.S.C. 634c) is amended—

15 (1) in paragraph (4), by striking “and” at the  
16 end;

17 (2) in paragraph (5), by striking the period and  
18 inserting “; and”; and

19 (3) by adding at the end the following:

20 “(6) carry out the responsibilities of the Office  
21 of Advocacy under chapter 6 of title 5, United  
22 States Code.”.

23 (b) BUDGETARY LINE ITEM AND AUTHORIZATION OF  
24 APPROPRIATIONS.—Title II of Public Law 94–305 (15  
25 U.S.C. 634a et seq.) is amended by striking section 207  
26 and inserting the following:

1 **“SEC. 207. BUDGETARY LINE ITEM AND AUTHORIZATION OF**  
 2 **APPROPRIATIONS.**

3 “(a) APPROPRIATION REQUESTS.—Each budget of  
 4 the United States Government submitted by the President  
 5 under section 1105 of title 31, United States Code, shall  
 6 include a separate statement of the amount of appropria-  
 7 tions requested for the Office of Advocacy of the Small  
 8 Business Administration, which shall be designated in a  
 9 separate account in the General Fund of the Treasury.

10 “(b) ADMINISTRATIVE OPERATIONS.—The Adminis-  
 11 trator of the Small Business Administration shall provide  
 12 the Office of Advocacy with appropriate and adequate of-  
 13 fice space at central and field office locations, together  
 14 with such equipment, operating budget, and communica-  
 15 tions facilities and services as may be necessary, and shall  
 16 provide necessary maintenance services for such offices  
 17 and the equipment and facilities located in such offices.

18 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
 19 are authorized to be appropriated such sums as are nec-  
 20 essary to carry out this title. Any amount appropriated  
 21 under this subsection shall remain available, without fiscal  
 22 year limitation, until expended.”.

23 **SEC. 4. REGULATORY FLEXIBILITY REFORM FOR SMALL**  
 24 **BUSINESSES.**

25 (a) REQUIREMENTS PROVIDING FOR MORE DE-  
 26 TAILED ANALYSES.—

1           (1) INITIAL REGULATORY FLEXIBILITY ANAL-  
 2           YSIS.—Section 603 of title 5, United States Code, is  
 3           amended by adding at the end the following:

4           “(d) An agency shall notify the Chief Counsel for Ad-  
 5           vocacy of the Small Business Administration of any draft  
 6           rules that may have a significant economic impact on a  
 7           substantial number of small entities either—

8           “(1) when the agency submits a draft rule to  
 9           the Office of Information and Regulatory Affairs at  
 10          the Office of Management and Budget under Execu-  
 11          tive Order 12866, if that order requires such sub-  
 12          mission; or

13          “(2) if no submission to the Office of Informa-  
 14          tion and Regulatory Affairs is so required, at a rea-  
 15          sonable time prior to publication of the rule by the  
 16          agency.”.

17          (2) FINAL REGULATORY FLEXIBILITY ANAL-  
 18          YSIS.—

19                (A) INCLUSION OF RESPONSE TO COM-  
 20               MENTS ON CERTIFICATION OF PROPOSED  
 21               RULE.—Section 604(a)(2) of title 5, United  
 22               States Code, is amended by inserting “(or cer-  
 23               tification of the proposed rule under section  
 24               605(b))” after “initial regulatory flexibility  
 25               analysis”.

(B) INCLUSION OF RESPONSE TO COMMENTS FILED BY CHIEF COUNSEL FOR ADVOCACY.—Section 604(a) of title 5, United States Code, is amended—

(i) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and

(ii) by inserting after paragraph (2) the following:

“(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 changes made to the proposed rule in the final rule as a result of such comments;”.

(C) PUBLICATION OF ANALYSES ON WEBSITE.—

(i) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603 of title 5, United States Code, as amended by this Act, is amended by adding at the end the following:

“(e) An agency shall publish any initial regulatory flexibility analysis required under this section on the website of the agency.”.

1 (ii) FINAL REGULATORY FLEXIBILITY  
2 ANALYSIS.—Section 604(b) of title 5,  
3 United States Code, is amended to read as  
4 follows:

5 “(b) The agency shall make copies of the final regu-  
6 latory flexibility analysis available to the public, including  
7 placement of the entire analysis on the website, and shall  
8 publish in the Federal Register the final regulatory flexi-  
9 bility analysis, or a summary thereof that includes the  
10 telephone number, mailing address, and link to the website  
11 where the complete analysis may be obtained.”.

12 (3) CROSS-REFERENCES TO OTHER ANAL-  
13 YSES.—Section 605(a) of title 5, United States  
14 Code, is amended to read as follows:

15 “(a) A Federal agency shall be treated as satisfying  
16 any requirement regarding the content of an agenda or  
17 regulatory flexibility analysis under section 602, 603, or  
18 604, if such agency provides in such agenda or analysis  
19 a cross-reference to the specific portion of another agenda  
20 or analysis that is required by any other law and which  
21 satisfies such requirement.”.

22 (4) CERTIFICATIONS.—The second sentence of  
23 section 605(b) of title 5, United States Code, is  
24 amended by inserting “detailed” before “statement”.

1           (5) QUANTIFICATION REQUIREMENTS.—Section  
 2           607 of title 5, United States Code, is amended to  
 3           read as follows:

4   **“§ 607. Quantification requirements**

5           “In complying with sections 603 and 604, an agency  
 6           shall provide—

7                 “(1) a quantifiable or numerical description of  
 8           the effects of the proposed or final rule and alter-  
 9           natives to the proposed or final rule; or

10                “(2) a more general descriptive statement and  
 11           a detailed statement explaining why quantification is  
 12           not practicable or reliable.”.

13           (b) TECHNICAL AND CONFORMING AMENDMENTS.—

14                (1) HEADING.—The heading of section 605 of  
 15           title 5, United States Code, is amended to read as  
 16           follows:

17   **“§ 605. Incorporations by reference and certifi-**  
 18                 **cations”.**

19                (2) TABLE OF SECTIONS.—The table of sections  
 20           for chapter 6 of title 5, United States Code, is  
 21           amended—

22                        (A) by striking the item relating to section  
 23           605 and inserting the following:

          “605. Incorporations by reference and certifications.”;

24                        and

1 (B) by striking the item relating to section  
 2 607 and inserting the following:

“607. Quantification requirements.”.

3 **SEC. 5. OVERSIGHT OF REGULATORY ENFORCEMENT.**

4 Section 30 of the Small Business Act (15 U.S.C. 657)  
 5 is amended—

6 (1) in subsection (b)—

7 (A) in paragraph (1)—

8 (i) by inserting “(A)” before “Not  
 9 later than”;

10 (ii) by striking “Nothing in this sec-  
 11 tion is intended to replace” and inserting  
 12 the following:

13 “(B) Nothing in this section—

14 “(i) is intended to replace”;

15 (iii) by striking the period at the end  
 16 and inserting “; or”; and

17 (iv) by adding at the end the fol-  
 18 lowing:

19 “(ii) may be construed to exempt an agen-  
 20 cy from providing relevant information to the  
 21 Ombudsman upon request.”;

22 (B) in paragraph (2)—

23 (i) in subparagraph (A)—

24 (I) by inserting “(i)” before  
 25 “work with each agency”;



1 (II) by inserting “fine, for-  
2 feiture,” before “or other enforcement  
3 related”; and

4 (III) by adding at the end the  
5 following: “or

6 “(ii) refer any substantiated comment to  
7 the affected agency for response to the Om-  
8 budsman;”; and

9 (ii) by amending subparagraph (C) to  
10 read as follows:

11 “(C) based on cases that are substantiated  
12 by the Ombudsman, annually submit to Con-  
13 gress and affected agencies a report evaluating  
14 the enforcement activities of agency personnel,  
15 including—

16 “(i) ratings of the responsiveness to  
17 small business concerns; and

18 “(ii) a description of the policies, ac-  
19 tions, and activities impacting small busi-  
20 ness concerns described in subparagraph  
21 (A), for each Federal agency and regional  
22 or program office of each Federal agency,  
23 as determined appropriate by the Ombuds-  
24 man.”;

1           (2) in subsection (d)(1), by inserting “, in co-  
2           ordination with the Ombudsman,” after “hold such  
3           hearings”; and

4           (3) by adding at the end the following:

5           “(e) The Board shall coordinate with the Ombuds-  
6           man regarding any official correspondence to be sent by  
7           the Board.”.

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