

**TESTIMONY OF**

**JIM HENDERSON**

**REGION VIII ADVOCATE**

**OFFICE OF ADVOCACY**

**U.S. SMALL BUSINESS ADMINISTRATION**

**BEFORE THE**

**HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE**

**NORTH DAKOTA STATE LEGISLATURE**

**JANUARY 14, 2003**

Chairman Keiser, members of the House Industry, Business and Labor Committee, I am pleased to be here today to testify on behalf of proposed legislation to create a regulatory flexibility act for North Dakota. I will briefly summarize my thoughts on this legislation and ask that my full statement be made a part of the hearing record.

My name is Jim Henderson and I am the Region VIII Advocate for the Office of Advocacy in the U.S. Small Business Administration. Region VIII includes North Dakota, South Dakota, Montana, Wyoming, Utah, and Colorado. I am based in Denver. The Office of Advocacy was established by federal statute in 1976 (15 USCS 634). While much of the focal point of that legislation relates to the authority of the Office of Advocacy to assist small businesses by improving the regulatory practices of the Federal government, the legislated primary functions of the Office are broad. In fact, from its very beginning Advocacy recognized that to carry out its role of assisting small businesses throughout the U.S., some examination of state policies that could help or harm small businesses had to be done.

In 1978, barely after the Office of Advocacy was up and running, it sponsored the first of many national conferences bringing together state small business leaders and state policy makers to share successful examples of good policy for small business that already existed within the states. In fact, in the two most recent conferences in 1998 and 1999, North Dakota received recognition for Fargo-Cass County Economic Development Corporation and for the Center for Innovation in Grand Forks.

The central mission of the Office of Advocacy remains reducing the excessive regulatory burden that falls on small business. An Advocacy research study, *The Impact of Regulatory Costs on Small Business*, establishes that small businesses with less than 20 employees spend nearly \$7,000 each year per employee just to comply with federal regulations and mandates. That's 60 percent more than large firms. State and local regulatory burdens simply add to that cost.

The key to Advocacy's effectiveness in fighting federal regulations has been the Regulatory Flexibility Act (RFA) passed by Congress in 1980 and strengthened in 1996. The premise behind RFA is not that there should be no regulations at all but rather that regulatory agencies should be acutely aware of the fact that burdens disproportionately fall on small entities. Under this law federal agencies are required to consider the impact of proposed regulations on small entities and to discuss alternative ways to achieve their regulatory objective without imposing undue burdens.

Under RFA, Advocacy has shown time and again that regulations can be reduced and the economy improved without sacrificing such important goals as environmental quality, travel safety, workplace safety, and family financial security. By working with federal agencies to implement the RFA, the Office of Advocacy in 2002 saved small businesses over \$21 billion in foregone regulatory costs that can now be used to create jobs, buy equipment and expand access to health care for millions of Americans.

Advocacy has always recognized that states can and do impose significant regulatory burdens for small business as well. To help address this, Advocacy has drafted model legislation for consideration by states. The model bill mirrors the RFA.

Its intent is to foster a climate for entrepreneurial success in the states, so that small businesses will continue to create jobs, produce innovative new products and services, bring more Americans into the economic mainstream, and broaden the tax base.

This is not a new idea. Many states already have similar legislation and it has been one of the topics discussed at many of the Advocacy state and local government conferences over the years. Unfortunately, North Dakota is not one of those states. We applaud this effort to offer this important new tool to help small businesses deal with the problems of burdensome state regulation.

We believe that there are five critical elements that are contained in the model bill. Successful state-level regulatory flexibility laws should address: (1) a small business definition that includes most small businesses, (2) a requirement that state agencies perform an economic impact analysis before they regulate, (3) a requirement that state agencies consider less burdensome alternatives that still meet regulatory goals, (4) judicial review so that the law has teeth, and (5) a provision that forces state government to periodically review all its regulations. Likewise, there should be few, if any exemptions from the law. Even the best regulatory flexibility initiative has little value if the majority of state agencies are exempted from it.

We are pleased that many states around the country are recognizing the need for state regulatory flexibility laws if they do not have them or strengthening them if they do. Oklahoma and Hawaii have just recently enacted this kind of legislation and the Commonwealth of Puerto Rico has had remarkable success with a small business

ombudsman's office that has regulatory flexibility authority. These examples do show that successful legislation is the important first step in bringing needed regulatory relief to small entities.

The process doesn't end there, however. There remains a need for committed executive leadership, for trained and educated state agencies so that they will know what their responsibilities are and how to accomplish them, and for continued involvement of the small business community to provide feedback on what still needs to be done.

There is no question that small business is the backbone of the economy here in North Dakota just as it is throughout the country. Sometimes, because small business is small, it is easy to overlook their aggregate importance to the economy—and it is very easy to overlook the negative impact of regulatory activities on them. The intent of this legislation is to compel regulatory agencies to consider small businesses in the process by which regulations are developed and particularly consider the disproportionate impact that those regulations might have.

This legislation is needed. The Office of Advocacy commends you for bringing this forward and we urge its support.

Thank you for this opportunity to appear and I would be happy to attempt to answer any questions that you might have.