



MEMORANDUM

TO: Heads of Executive Agencies
General Counsels
Agency Regulatory Staff

FROM: Thomas M. Sullivan, Chief Counsel for Advocacy

DATE: March 29, 2002

SUBJECT: Memorandum of Understanding Between the Office of Advocacy
and the Office of Information and Regulatory Affairs

On March 19, 2002, President Bush announced an historic memorandum of understanding (MOU) between the Office of Advocacy at the U.S. Small Business Administration (Advocacy) and the Office of Information and Regulatory Affairs at the Office of Management and Budget (OIRA). The purpose of the MOU is to ensure that Advocacy and OIRA work closely together to ensure that small business issues, particularly as they relate to disproportionate regulatory burden, are addressed as early as possible in the regulation writing process. The MOU is part of the President's overall small business agenda that gives small businesses the support they need to continue to drive this nation's economy. A copy of the MOU is attached for your convenience and the President's agenda is fully outlined in the following Web site, <http://www.whitehouse.gov/infocus/smallbusiness>.

What the MOU **does do**:

- Fosters an information sharing process between Advocacy and OIRA during the executive review process.

- Helps ensure that agencies make a good faith effort to comply with the Regulatory Flexibility Act (RFA). Failure to comply may result in a recommendation by Advocacy to OIRA to issue a “return letter.”¹
- Provides for RFA compliance training opportunities for Federal agencies.
- Requires Advocacy and OIRA to act expeditiously on urgent matters related to health, safety, environmental and homeland security.
- Requires Advocacy to issue guidance on RFA compliance.

What the MOU **does not** do:

The MOU should not in itself create additional burden for Federal agencies. If Federal agencies are complying with the RFA, and considering less burdensome regulatory alternatives that fit within the agency’s policy objectives, then it is likely that no additional work will be required by the agencies. In the near future, the President will be issuing an Executive Order to place further emphasis on the importance of regulatory reduction for small entities.

Advocacy maintains a Web site containing industry-based small business data, all official Advocacy comment letters, guidance on how to comply with the RFA (which will be updated in the coming months), and the text of several relevant laws such as the RFA, the Administrative Procedure Act, the Paperwork Reduction Act, etc. The Internet address is <http://www.sba.gov/advo>.

If you have any questions or concerns regarding the MOU or the RFA, please feel free to contact Shawne Carter McGibbon, Director of Interagency Affairs for the Office of Advocacy at 202-205-6945, or at shawne.carter@sba.gov.

¹ OMB explains the return letter on its Web site:

“During the course of OIRA's review of a draft regulation, the Administrator may decide to send a letter to the agency that returns the rule for reconsideration. Such a return may occur if the quality of the agency's analyses are inadequate, if the regulatory standards adopted are not justified by the analyses, if the rule is not consistent with the regulatory principles stated in Executive Order 12866 or with the President's policies and priorities, or if the rule is not compatible with other Executive Orders or statutes. Such a return does not necessarily imply that either OIRA or OMB is opposed to the draft rule. Rather, the return letter explains why OIRA believes that the rulemaking would benefit from further consideration by the agency.”