



*Advocacy: the voice of small business in government*

**BY ELECTRONIC MAIL**

April 30, 2007

Dr. Robert Litan  
Vice President for Research and Policy  
The Ewing Marion Kauffman Foundation  
4801 Rockhill Road  
Kansas City, Missouri 64110

**RE: Comments on the Kauffman Foundation Document “On the Road to an Entrepreneurial Economy: A Research and Policy Guide”**

Dear Dr. Litan,

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) has reviewed with great interest your February 26, 2007 document, *On the Road to an Entrepreneurial Economy: A Research and Policy Guide*. The Guide provides an insightful description of the challenges confronting American entrepreneurs in the twenty-first century, from the struggle to find skilled workers and meet escalating health care costs to the need to continuously innovate and avoid unnecessary regulatory burdens. Advocacy shares the Kauffman Foundation’s perspective on these challenges, particularly with respect to the obstacles facing small business entrepreneurs.

## **Small Businesses Face Disproportionate Regulatory Impacts**

As the Guide discusses on pages 26-27, smaller companies do not have the legal resources or regulatory compliance capabilities of their larger counterparts, and must therefore deal with compliance costs that are significantly higher, when measured as a share of their total revenues or costs. The Guide cites an Advocacy-funded study<sup>1</sup> which found that the total cost of federal regulation is 45 percent greater per employee for firms having less than 20 employees than for firms with more than 500 employees. The findings of the 2001 Crain-Hopkins study were updated by Crain's 2005 study, *The Impact of Regulatory Costs on Small Firms*,<sup>2</sup> which concluded that small businesses are still disproportionately impacted by the total Federal regulatory burden. For example, the annual regulatory burden in 2004 for manufacturing firms employing fewer than 20 employees was estimated to be \$21,919 per employee – nearly 2½ times greater than the \$8,748 burden estimated for firms with 500 or more employees.<sup>3</sup> The overall regulatory burden was estimated by Crain to exceed \$1.1 trillion in 2004.

## **Estimating Regulatory Burdens through Regulatory Flexibility Act Analyses**

As described on page 27 of the Guide, the Regulatory Flexibility Act (RFA) was designed to help address the disproportionate regulatory burdens borne by small entrepreneurs. Federal regulatory agencies are required by the RFA to consider the needs of small businesses when new rules are written. Agencies must satisfy certain procedural requirements when they plan new regulations, including: (1) identifying the small

---

<sup>1</sup> W. Mark Crain and Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms* (October 2001) available at <http://www.sba.gov/advo/research/rs207tot.pdf>.

<sup>2</sup> W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (September 2005) available at <http://www.sba.gov/advo/research/rs264tot.pdf>.

<sup>3</sup> *Id.* at page 55, Table 18.

businesses that will be affected, (2) analyzing and understanding the economic impacts that the planned rule will impose on those businesses, and (3) considering alternative ways to achieve their regulatory goal while reducing the economic burden on those small businesses. The Office of Advocacy reviews scores of potential new rules under the RFA each year. As a result of the RFA review process, planned rules are often revised to reduce the compliance burden on regulated entities, particularly small businesses, while still accomplishing their intended objectives. Thus, the RFA review process has a proven track record of allowing draft rules to be made more efficient, more cost-effective, and better tailored to their specific task.

### **Periodic Reviews of Existing Regulations**

While most of the RFA's procedural review requirements apply only to prospective new regulations, section 610 of the RFA requires federal agencies to periodically review existing rules and to consider ways to reduce the overall regulatory burden on small businesses. The intent of section 610 is to compel agencies to retrospectively assess whether their existing rules are still needed and whether they are imposing unnecessary burdens on small businesses. Thus, section 610 was designed to address the ever-growing cumulative federal regulatory burden borne by regulated entities.

While agency compliance with section 610 has historically been mixed at best,<sup>4</sup> Advocacy believes the retrospective review of existing regulations can be a powerful tool

---

<sup>4</sup> See Michael See, *Willful Blindness: Federal Agencies' Failure to Comply with the Regulatory Flexibility Act's Periodic Review Requirement – and Current Proposals to Invigorate the Act*, 33 Fordham Urb. L. J. 1199 (2006).

for burden reduction. Advocacy is now preparing supplementary guidance to federal agencies on how to comply with section 610. Greater transparency and public involvement in the retrospective reviews of current rules should yield greater opportunities for reductions in unnecessary regulatory burdens.

### **OMB's Public Nomination Process for Reforming Existing Regulations**

In addition to the Regulatory Flexibility Act, another tool for addressing the cumulative federal regulatory burden has been the regulatory reform nomination process overseen by the Office of Management and Budget (OMB). The “Regulatory Right-to-Know Act”<sup>5</sup> requires the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the costs and benefits of federal regulations. Since 1997, these Reports to Congress have also included a call for public nominations of regulations that could be updated or otherwise reformed. In its May 2001 draft Report to Congress, for example, OMB called for nominations from the public on “specific regulations that could be rescinded or changed that would increase net benefits to the public by either reducing costs and/or increasing benefits.”<sup>6</sup> In response, OMB received a total of 71 nominations for regulatory reform. Of these 71 nominations, OMB made the determination that 23 should be pursued as “high priority” nominations.<sup>7</sup>

Subsequently, in its March 2002 draft Report to Congress, OMB called for public nominations of rules whose reform would increase overall net benefits to the public, as well as regulations and paperwork requirements that impose disproportionate burdens on

---

<sup>5</sup> 31 U.S.C. § 1105 note, Pub. L. 106-554 [Title VI, § 624], Dec. 21, 2000, 114 Stat. 2763, 2763A-161.

<sup>6</sup> Draft, *Making Sense of Regulation: Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on States, Local, and Tribal Entities* (May 2001).

<sup>7</sup> The other 48 nominations were deemed to be of lower priority or were believed to be ongoing projects by agencies.

small entities without an adequate benefit justification.<sup>8</sup> OMB received 316 nominations from the public, including sixteen nominations from the Office of Advocacy.<sup>9</sup> Based on feedback from federal agencies and further suggestions from Advocacy, OMB identified 45 rules and guidance documents as “new candidates” for reform.<sup>10</sup> Most recently, OMB called for public nominations of regulatory reforms that could reduce the regulatory burden on U.S. manufacturers;<sup>11</sup> OMB ultimately chose 76 manufacturing rule reforms to prioritize.

To date, many of these publicly-nominated regulatory reforms have been completed by the agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Department of Transportation. Where these reforms have been implemented, cumulative regulatory burdens have been reduced. Advocacy believes that the public reform nomination process is valuable, and the burden reductions that it yields make the process more than worthwhile.

## **Conclusion**

The Office of Advocacy appreciates the work of the Kauffman Foundation to ensure that the U.S. economy remains entrepreneurial and innovative. In the pursuit of that goal, which Advocacy shares, we recommend that the Kauffman Foundation focus on prospective and retrospective regulatory reviews. The evaluation of proposed new

---

<sup>8</sup> See 67 Fed. Reg. 15014, 15015 (March 28, 2002).

<sup>9</sup> Letter to John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, from Thomas M. Sullivan, Chief Counsel for Advocacy (May 28, 2002); available at [www.sba.gov/advo/laws/comments/omb02\\_0528.pdf](http://www.sba.gov/advo/laws/comments/omb02_0528.pdf).

<sup>10</sup> See Table 9, “New Reforms Planned or Underway – Regulations” and Table 10, “New Reforms Planned or Underway – Guidance Documents” in *Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (September 2003) at 26-34; available at [www.whitehouse.gov/omb/inforeg/2003\\_cost\\_ben\\_final\\_rept.pdf](http://www.whitehouse.gov/omb/inforeg/2003_cost_ben_final_rept.pdf).

<sup>11</sup> Office of Management and Budget, *Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations* (February 20, 2004)

rules under the RFA is a useful tool for minimizing regulatory burdens while achieving regulatory objectives. The review of existing rules under section 610 of the RFA and through the public reform nomination process gives the best opportunity to address cumulative regulatory burden. The Kauffman Foundation can play a role in helping Advocacy to make these reviews as robust and effective as possible. Please do not hesitate to call me or Keith Holman ([keith.holman@sba.gov](mailto:keith.holman@sba.gov) or (202) 205-6936) if we can be of further assistance.

Sincerely,

/s/

Thomas M. Sullivan  
Chief Counsel for Advocacy

cc: The Honorable Susan Dudley, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget