



Office of Advocacy

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**Testimony of**

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**Before the**

**Subcommittee on Workforce, Empowerment and Government  
Programs**

**and the**

**Subcommittee on Regulatory Reform and Oversight**

**U.S. House of Representatives  
Committee on Small Business**

**On**

**The Small Business Office of Advocacy Improvements**

**April 1, 2003  
2:00 P.M.**

Chairman Akin, Chairman Schrock and Members of the Subcommittees, good afternoon and thank you for the opportunity to discuss ways to strengthen and improve the Office of Advocacy. Just over one year ago, I appeared before the full committee to lend my support to similar legislation. It is still my belief that a budget line item is the best and most efficient way to ensure that our office's independence will last well beyond my tenure as chief counsel, and ensure that government continues to be accountable to

small business through compliance with the Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement Fairness Act (SBREFA), and Executive Order 13272.

I am borrowing from my March 2002 testimony when I say that the two bedrock principles that underlie the Office of Advocacy's ability to represent small businesses effectively are independence and flexibility. The office is able to present the views of small entities to lawmakers and policymakers independent of the views of the U.S. Small Business Administration (SBA) and the Administration. The office has broad statutory authority, which gives it the flexibility to be both reactive and proactive on matters of concern to small entities.

### **Holding Government Accountable to Small Business**

Advocacy's accomplishments and challenges are documented in our annual RFA report to Congress. I would like to submit a copy for this hearing record. Our flexibility and independence have allowed us unprecedented access to rules in the earliest stages of the rulemaking process. The result of this early intervention is often the delay, removal or alteration of otherwise unnecessary or burdensome regulations. Our regulatory intervention efforts resulted in a cost savings of \$21 billion in fiscal year 2002 alone.

The \$21 billion in cost savings exceeded even my expectations and are attributable to both my office's involvement and the President's leadership in holding government accountable for how it affects the small business community. One year ago

President Bush stood before hundreds of our country's most successful women entrepreneurs, down the street at the Reagan International Trade Center, and rolled out his small business plan. He committed to removing regulatory barriers that stifle job growth. The President is counting on my office to lead that effort, and the cost savings already realized are a good start.

On August 13, 2002, President Bush signed Executive Order 13272, titled "Proper Consideration of Small Entities in Agency Rulemaking." The Executive Order strengthens the Office of Advocacy and promotes greater federal agency compliance with the RFA. Under the Executive Order, Advocacy is required to, among other things, notify agencies of the requirements of the RFA, review the RFA policies and procedures of all federal regulatory agencies for adequacy, and train all federal agencies on RFA compliance. Our office is well under way in the effort to meet the President's small business priorities. We have published our own draft guidance on RFA compliance, we have reviewed the federal agency RFA policies and procedures that have been submitted to us, and we are in the process of soliciting outside contractors to help us implement the training requirement.

Focusing our efforts here in Washington is not enough. As part of our mandate to make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations on small business, Advocacy has started a nationwide initiative to pursue implementation of regulatory flexibility at the state level. To accomplish this, the Office of Advocacy is promoting model state RFA legislation through our Regional Advocates.

We have one Regional Advocate in each of the ten SBA regions. They are my office's "Main Street reality check." Our Regional Advocates take the pulse of Main Street small businesses every day and make sure that we stay on track here in Washington, DC. Their interaction with governors, state legislators, and small business leaders in the states provide a perfect liaison for our model bill initiative.

A December 2002 study by Advocacy highlighted the status of small business friendly laws and regulations in each state. Advocacy has used the report as a roadmap to help state leaders learn how they may benefit from RFA legislation. I am pleased to report that at least nine states have introduced RFA legislation to date as a result of our initiative.

### **Research to Create Greater Awareness of Small Business Contributions**

Advocacy continues to publish vital small entity research to help guide legislators and policymakers, and to increase recognition of the important role that small entities play in the U.S. economy. Advocacy is working toward establishing research-based focus groups to promote entrepreneurial academic research. We expect the long-term result of this initiative will be to increase the base of scholars researching issues concerning small business. In addition to our outreach efforts, a stream of innovative and timely research continues to be produced by our own economists and outside contractors. The true value of these reports, though, is in their usefulness to our constituents, including each of you. I am pleased to share with you that these reports are often cited by

government officials as well as private sector representatives in a number of venues—the press, journal articles, and elsewhere. Moreover, the academic community has been eager for this research, as evidenced by conference presentations and publication requests. For example, one contractor’s research paper on bank lending to small businesses will be presented at an upcoming conference at the Federal Reserve Board of Chicago, and research from Advocacy’s economists is being considered for publication in professional journals.

### **Advocacy’s Budget Process**

None of the above would be possible without the flexibility to react and shift resources based on the changing needs of small entities and the economy. Moreover, none of it would be possible without an independent voice to say what is right or wrong about government policies or regulations. The long-term viability of our office depends on preserving our unique statutory mandate.

Yet a conundrum exists that may threaten the future of Advocacy and the important role it plays. Under the current budget process, the chief counsel must rely on the budget decisions of the SBA Administrator. To put it more bluntly, each year, the chief counsel must go hat-in-hand to SBA’s Administrator for a portion of SBA’s overall budget appropriation.

I am pleased to report that the current SBA Administrator, Hector Barreto, is one of our strongest supporters. His budget decisions reflect the President's priorities and the critical role our office plays in helping small business. However, a day may come when future SBA administrators and chief counsels do not get along as well. The current budget process is a dangerous one because the Office of Advocacy's budget is too easily pillaged when administration priorities change.

When you examine the statutory mandate of my office and the authority we have to defend small business, it becomes obvious why our office is independent. The Office of Advocacy is supposed to be critical of government that treats small business unfairly. SBA is a regulatory agency. And my office treats SBA the same as we do the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Department of Transportation (DOT), the Internal Revenue Service (IRS), and the other agencies. We make sure that SBA adequately considers their impact on small business before they finalize rules (the basic requirement of the RFA and SBREFA). The system is flawed when the Office of Advocacy's budget is determined by a part of government we hold accountable for compliance with the RFA.

### **Budget Line-Item**

A budget line-item for Advocacy would certainly help address the problems identified above. A line-item would provide assurance to small entities that they can

continue to count on the Office of Advocacy as a strong and independent voice on their behalf.

Last year, in my testimony to the full Committee, I registered my strong support for S. 395. That particular bill, introduced by Senator Kit Bond, cleanly and simply used a line-item approach to bolster Advocacy's independence. As I stated last year, this approach would be preferable to language that creates an altogether separate budget process specific to the Office of Advocacy. In other words, Advocacy would have a line-item just as SBA's Office of the Inspector General currently has. Advocacy currently has a line-item for its economic research budget. The line-item (which has come and gone over the years in both report and statutory language) has "protected" the funds from possible reductions and enabled our office to plan its research activities with greater certainty.

### **Working with the Office of the National Ombudsman**

The Office of Advocacy and SBA's Office of the National Ombudsman are partners in the fight to reduce regulatory burdens—Advocacy generally dealing with regulations before they are implemented, and the Ombudsman dealing with instances of excessive or unfair enforcement once regulations are already on the books. On March 20, 2002, Advocacy signed a memorandum of understanding (MOU) with the Ombudsman. In that MOU, we each pledged the highest degree of cooperation and Advocacy agreed to

offer the services of its Regional Advocates in planning the Ombudsman's regional fairness board hearings.

Michael Barrera and I have a terrific relationship. I would strongly encourage the continuation of an MOU even as administrations change.

### **The Structure of the Office of Advocacy**

I would not encourage legislative attempts to alter the structure of the Office of Advocacy or expand/alter the ability of the chief counsel to hold office. While I certainly appreciate the efforts of Congress to increase the stature or tenure of the chief counsel and other employees of the office, I believe that including such language complicates the goal of independence, which may be achieved cleanly through a budget line-item.

This concludes my prepared testimony. Thank you again for this opportunity to testify today. I would be happy to address any questions you may have, including questions on other ways to improve the Office of Advocacy not mentioned in my testimony.