



# Office of Advocacy

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**Testimony of  
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**U.S. House of Representatives  
Subcommittee on Energy Policy, Natural  
Resources, and Regulatory Affairs**

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**Location:** 2154 Rayburn House Office Building  
**Topic:** Hearing on Regulatory Accounting

*Created by Congress in 1976, The Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates located across the United States. For more information on the Office of Advocacy, visit <http://www.sba.gov/advo>, or call (202) 205-6533.*

Chairman Ose, Ranking Member Tierney, Members of the Subcommittee, good afternoon and thank you for the opportunity to appear before you today to discuss Regulatory Accounting: Costs and Benefits of Federal Regulations.

First, let me tell you what an honor and privilege it is for me to have been appointed Chief Counsel for Advocacy by President Bush. Since my confirmation just over one month ago, I have had an incredible experience. I am grateful for the tremendous support I have had from Members of Congress; Administrator Barreto; the staff of the Office of Advocacy; government leaders; and our many small business organization and trade association friends.

Today's topic, Regulatory Accounting, is one the Office of Advocacy understands very well, but from a slightly different perspective. We are concerned about increasing governmental regulations and the corresponding economic burden on this nation's small businesses. The focus of our office in this area continues to be an early exchange of information with OMB and federal agencies in order to assist agencies in reducing unnecessary burdens, while accomplishing their public policy objectives. We believe OMB's regulatory accounting report demonstrates clearly the overwhelming burden placed on the nation's economy and the employers who drive the economy. Frankly, from my perspective, many of the 71 regulations identified in OMB's 2001 report would not have appeared there as "troublesome" regulations if agencies had consulted with our office early in the regulatory process, complied with the Regulatory Flexibility Act, and crafted less burdensome regulatory alternatives. We appreciate the opportunity to discuss these important issues today and to continue our important working relationship with the Office of Information and Regulatory Affairs (OIRA) at OMB and Congress.

Advocacy was given a mandate to act as an independent voice for small business within the federal government. In September 1980, Congress enacted the Regulatory Flexibility Act (RFA) which required agencies to consider the impact of their regulatory proposals on small entities, analyze equally effective alternatives, and make their analyses available for public comment. The law was not intended to create special treatment for small businesses. Congress intended that agencies consider impacts on small business to ensure that their proposals did not have unintended anti-competitive impacts and that agencies explore less burdensome alternatives that are equally effective in resolving agency objectives.

In March 1996, the Small Business Regulatory Enforcement Fairness Act (SBREFA) raised the stakes for regulatory agencies. SBREFA added judicial review and reinforced the RFA requirement that agencies reach out to small entities in the development of regulatory proposals. This precedent-setting law institutionalized outreach to small entities and ensured that two agencies, EPA and OSHA, identify and consider effective alternatives early in the rulemaking process.

### **Early Intervention in the Rulemaking Process**

Since enactment of SBREFA, Advocacy has witnessed significant changes in the ways rules are made. The most significant phenomenon we have seen is the change in the regulatory culture in at least some federal agencies. Some regulators are beginning to think about the effects of their proposals **before** they act, and our experience has shown that this makes for better rules; i.e. rules that are less costly to those that are regulated. This practice has resulted in a more consistent application of the RFA for those agencies—a more efficient approach than tackling

RFA violations on a rule-by-rule basis. It is sometimes difficult to quantify the effect this early exchange of information has on mitigating the cost of regulation to small business, but we are convinced that it is real.

Early consultation has led to the development of improved regulations – regulations that avoid undue burdens but still accomplish the agency’s objective. This shift to pre-proposal work is productive for agencies, for Advocacy, and most important, for small business. Time and again Advocacy has successfully identified weaknesses in agency analyses before publication. Advocacy’s pre-proposal activities have helped agencies provide information that would be the most useful to the public in order to elicit informed submissions from the public during the comment period. This early attention to RFA compliance issues helps reduce the overall cost of regulatory development and the risk that a rule will be judicially challenged.

The review panel provisions of SBREFA, which apply only to EPA and OSHA, provide a model for early intervention with a proven record of success. The panel process has confirmed that: (1) credible economic and scientific data, as well as sound analytical methods, are crucial to rational decision-making in solving regulatory problems; and (2) information provided by small businesses themselves on real-world impacts is invaluable in identifying equally effective regulatory alternatives.

The importance of data to the regulatory process and rational decision-making cannot be overemphasized. It was data that persuaded EPA to drop an industrial laundries water pollution regulation that saved small businesses approximately \$103 million annually. The data showed

there was no need for a national rule. It was data that convinced OSHA that its compliance cost estimates were too low for its ergonomics rule.

One of the benefits that has emerged from early consultation has been increased awareness of what agencies do not know, but should know, about the industries they are trying to regulate. This has helped agencies understand how the regulatory process aids in eliciting relevant information from the public.

We estimate that during fiscal years 1998 through 2001, modifications to federal regulatory proposals in response to RFA/SBREFA provisions, and consultation with Advocacy, resulted in cost savings totaling more than \$16.4 billion, or more than \$4.1 billion per year on average.

### **Partnership with OIRA**

On January 11, 1995, OIRA and Advocacy signed an “Exchange of Letters” outlining how both agencies would work together on regulatory issues. In those letters, Advocacy agreed to contact OIRA whenever it had concerns about an agency’s compliance with the RFA. OIRA in turn agreed that it would consult with Advocacy when it was not able to resolve RFA issues with an agency.

The SBREFA panel process has brought Advocacy and OIRA even closer together, and a mutual respect has developed from this information-sharing relationship. An early exchange of

information enables Advocacy to comment at a vital stage of the rule's development and to have an impact on its final design.

Prior to promulgation of a final rule, Advocacy often participates in meetings and discussions with both OIRA and the relevant regulatory agency, in order to advocate for crucial changes on behalf of small business. This important working relationship with OMB at all stages of a rule's development has assisted the Office of Advocacy in monitoring agency compliance with the RFA more closely

With its new leadership, OIRA is positioned to be of even greater help to this office and to small business. Advocacy is currently working with OIRA to ensure that our close relationship continues. This renewed commitment to provide early information on regulatory proposals is vital to reducing the economic burden on small entities. This renewed commitment will likely result in an increased effort from OIRA staff to assist Advocacy in developing agency compliance guidance as well as initiating agency RFA training. Whatever shape this commitment takes, it will be transparent to the public—in keeping with Dr. Graham's effort to uncover the mystery behind the rulemaking process.

I commend the new leadership of both OMB and OIRA for facing these challenges with renewed commitment and purpose. OIRA's use of "return letters" to inform an agency of the deficiencies in a proposed regulation forces an agency to assess carefully the economic impact of its proposals on those they intend to regulate. The existence of these letters provides an incentive for agencies to get it right the first time in order to avoid the embarrassment of receiving such a letter. Dr. Graham has created other important tools within OIRA to enhance the regulatory

process. For instance, he devised the “prompt letters” that are intended to suggest a new regulatory priority to a federal agency which further stimulates public input into the regulatory process.

The continued partnership between Advocacy and OIRA/OMB may further enhance the information that goes into future regulatory accounting reports. Advocacy stands ready to supply OIRA/OMB with data and anecdotal evidence to complement its report. The hope is that our continued early involvement as partners in the regulatory process will at least reduce the number of unnecessarily burdensome federal regulations appearing in future reports.

### **Small Business and OMB’s Regulatory Accounting Report**

The RFA, SBREFA and the Office of Advocacy exist because of the bedrock importance of small business to our economy, both at the national and community levels. The latest data we have indicate that small businesses:

- Represent more than 99 percent of all employers;
- Employ 51 percent of private sector workers;
- Provide about 75 percent of net new jobs; and
- Represent 96 percent of all exporters of goods.

Small businesses are and have historically been our nation’s primary source of innovation, job creation, and productivity. They have led us out of recessions and economic downturns, offsetting job contraction by larger firms, and providing new goods and services. They have provided tremendous economic empowerment opportunities for women and minority



entrepreneurs. They play an invaluable role in our defense industrial base. Small employers spend more than \$1.5 trillion on their payroll. In order for small businesses to continue to be such a valuable asset to our nation's economy, they must have a level playing field. The regulatory playing field is a vital one for small business.

We recently released a study on this subject by W. Mark Crain and Thomas D. Hopkins. As the report disclosed, and Mr. Hopkins testified today, the cost of federal regulation to firms with fewer than 20 employees was almost \$7,000 per employee, more than 50 percent higher than the per-employee cost to businesses with 500 or more employees. This disproportionate burden is a huge impediment to small businesses realizing their full potential.

This is why it is so important for OMB/OIRA to do what it does so well – track, analyze and report to Congress on the impact of significant regulations in their regulatory accounting report. Providing the public with this valuable information, as they did in their last report, enables all to see how the government intends to regulate the regulated. This latest report has taken that requirement an important step further by pointing out regulations with a questionable cost basis or questionable beneficial result. In this way, agencies are held accountable for the regulations they draft. They must stand up to the strict scrutiny of OMB and the analysis required from them by OIRA.

In its most recent report, of the 71 rules identified, OMB listed 23 that it considered most in need of reform to reduce costs or increase effectiveness. Advocacy was involved in nearly half of those 23 and had previously found them to be problematic for small business. OMB/OIRA was right on target with the choice of these rules. As a result of this list, agencies were put on

notice of the need for additional analysis and justification of their proposals and the need to return to the drawing board to discover more cost-effective alternatives.

In summary, regulatory accounting and early receipt of agency information continue to be important priorities for the Office of Advocacy. Without such analysis and review early in the regulatory process, we would see a continuation of overly burdensome rules with questionable results. I am confident that the continued partnership between my office and OMB/OIRA will benefit small business greatly and I look forward to working with Dr. John Graham and his staff to continue to create innovative solutions to these important problems facing small businesses.

This concludes my prepared testimony. Thank you again for inviting me here today, and I am pleased to answer any questions you may have.