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Vice Chairman Baxter and members of the House Commerce Committee on Business Regulation, my name is Ray Marchiori and I am the Regional Advocate for the U.S. Small Business Administration's Office of Advocacy in Region V (which includes Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin). It is an honor for me to speak to you today and testify on House Bill (HB) 5849 and HB 5850.

As the Regional Advocate for Region V, my job is to be the direct link between state and local governments, small business groups, small business owners and employees and the Office of Advocacy, based in Washington, DC. My chief focus is to help identify the regulatory concerns of small business by monitoring the impact of federal and state policies at the local level. It is my goal to see that programs and policies that encourage fair regulatory treatment of small business are developed and implemented to ensure future growth and prosperity. This is why I am testifying in

support of proposed legislation which will strengthen small business regulatory flexibility in Michigan.

The Office of Advocacy enforces the Regulatory Flexibility Act (RFA) on the federal level in order to reduce the regulatory burden on small business. There are over 24 million small businesses in the United States and they create between 60 and 80 percent of the net new jobs in our economy. As Advocacy's research demonstrates, small businesses with less than 20 employees spend \$7,647 each year per employee to comply with federal regulations compared with the \$5,282 spent by firms with 500 or more employees. Small businesses face a 45 percent greater burden than their larger counterparts. And that is just the cost of compliance with federal regulations. Small business owners also have to shoulder the cost of compliance with state and local regulations.

There is no question that small business is the backbone of the economy in Michigan. According to the definition of small business under Michigan law (less than 250 employees), approximately 96% of firms in the state are small.

Under the federal RFA, Advocacy has shown time and again that regulations can be reduced and the economy improved without sacrificing important goals such as environmental quality, travel safety, and workplace safety. By working with federal agencies to implement the RFA, in FY 2005 the Office of Advocacy saved small businesses nationwide over \$6 billion in foregone regulatory costs. That figure

represents parts of regulations that were filtered out between proposal and final rulemaking because they did not make sense for small business.

Any small business owner on Main Street will explain that the regulatory burden does not just come from Washington. The regulatory burden also comes from state capitals where state agencies are located. Sensitizing government regulators to how their mandates affect the employer community does not stop at the Beltway. Regulatory flexibility is a practice that must be successful at a state and federal level in order to keep America competitive.

While some states such as Michigan have a regulatory flexibility law that mandates state agencies to prepare an economic impact analysis and to consider regulatory alternatives for small business before regulating, many do not. For that reason, in December of 2002 the Office of Advocacy drafted model legislation patterned after the federal RFA and presented it in a report titled, *Small Business Friendly Regulation: Model Legislation*, which can be found on our website at www.sba.gov.advo.

There are five critical elements contained in the state regulatory flexibility model bill which are: (1) a small business definition that includes most small businesses, (2) a requirement that state agencies prepare 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 to give the law teeth, and (5) a provision for state government to periodically review existing regulations. In order for regulatory flexibility

to work, there is a need for the Governor's leadership, trained and educated state agencies that understand their responsibilities, and the continued involvement of the small business community.

Since the model was introduced, 34 state legislatures have considered regulatory flexibility legislation and 19 states have implemented regulatory flexibility via Executive Order (EO) or legislation. This year, 11 states including Michigan have introduced regulatory flexibility legislation (*Alabama, Colorado, Illinois, Kansas, Michigan, Mississippi, Nebraska, New Jersey, Pennsylvania, South Dakota and Washington*) and two states have passed regulatory flexibility legislation or implemented an EO in 2006 (*Georgia and South Dakota*).

While Michigan does have some administrative procedure provisions pertaining to regulations affecting small business, it is missing two key components that give regulatory flexibility its effectiveness. HB 5849 enhances Michigan's current administrative procedure law by adding the important requirement that agencies periodically review its regulations. Existing rules may unduly burden small businesses because they may no longer serve their purpose, they may be duplicated by newer federal or state legislation, or they may have been promulgated without consideration of the effects on small businesses. Also, given the length of time that may have passed since the rules were promulgated, technology, economic conditions, or other relevant factors may have significantly changed in the area affected by the rules.

A clear example of how benefits can be derived from the periodic review of existing regulations comes from the Washington State Department of Labor and Industries (L&I). L & I is currently reviewing 27 of its health and safety regulations to eliminate conflicting and duplicative rule requirements; reach small employers with easy to use and understandable workplace safety and health information; provide safety and health information to a broader group of employers and employees; achieve greater awareness of workplace hazards among Washington State's workforce; and to reduce worker injury, illness and deaths. As a result of this review, L & I has eliminated duplicative requirements, saved small business owners hours of work and frustration by rewriting some of its rules, and helped small business owners, with limited resources, to avoid the need to hire a safety and health professional to interpret confusing regulations.

HB 5850 also strengthens Michigan's administrative procedure law by adding judicial review. As we learned on the federal level, regulatory flexibility law had limited success in curbing excess regulatory burdens for 16 years until judicial review was enacted in 1996. The effect of the 1996 law was to give the RFA some "teeth" and to focus the heightened attention of regulatory officials on small business issues. Allowing small businesses to challenge state agencies for noncompliance with the regulatory process is critical, as it provides an incentive for agencies to conduct a thorough and well-reasoned economic and regulatory flexibility analysis and to produce better regulations.

Sometimes, because of their size, the aggregate importance of small businesses to the economy is overlooked and it is very easy to fail to notice the negative impact of

regulatory activities on them. One of the many reasons, I believe, regulatory flexibility legislation has been so successful over the last three years is because policy makers across the country are realizing that it is as an economic development tool. The Office of Advocacy commends you for bringing HB 5849 and HB 5850 forward to enhance Michigan's current administrative law and the regulatory environment for small business in your state.