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Report on the Regulatory Flexibility Act, FY 2005

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Background

Under the Regulatory Flexibility Act of 1980 (RFA), federal agencies must consider the impact of their rules on small entities and examine significant alternatives that minimize small entity impacts. Executive Order 13272 (E.O. 13272), issued by President George W. Bush in 2002, requires agencies to submit for review to the Office of Advocacy draft rules that may have a significant economic impact on small entities and to address Advocacy's comments in the analysis accompanying the final rule. The executive order also requires the Office of Advocacy to train regulatory agencies in how to comply with the RFA and E.O. 13272.

The Office of Advocacy monitors agency compliance with the RFA and reports progress to the Congress and the Executive Branch. This *Report on the Regulatory Flexibility Act, FY 2005*, covers RFA and E.O. 13272 implementation in Fiscal Year 2005. September 2005 marked the 25th anniversary of the RFA and this report highlights significant achievements in the 25-year history of the RFA.

Highlights

RFA and E.O. 13272 implementation efforts by the Office of Advocacy, working with federal agencies and small entities in FY 2005 produced the following results:

- Advocacy involvement in agency rulemakings helped secure \$6.62 billion in first-year cost savings and \$966 million in recurring annual savings for small entities (see full report for rule-specific cost savings).
- Advocacy conducted 21 training sessions on the RFA, in accordance with the requirements of E.O. 13272.
- The training helped increase the number of draft rules sent to Advocacy's email notification system.
- More agencies sought assistance from Advocacy early in the rulemaking process.

- Advocacy participated in Small Business Regulatory Enforcement Fairness Act (SBREFA) panels focusing on three EPA rules.

- More agencies considered significant alternatives to their rules following discussions with Advocacy and affected small entities, evidenced in more agency rules containing realistic alternatives that would benefit small entities.

- The office submitted two dozen written comments on a variety of agency rules.

- Ten of the rules that went final resulted in cost savings for small firms, and of these, four had been included in the Office of Management and Budget's *Reports to Congress on the Costs and Benefits of Regulations* as candidates for regulatory reform because of their impact on small businesses.

- Two RFA cases in which Advocacy participated were decided by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). As a result of *U.S. Telecom Ass'n v. FCC*, the FCC agreed to more fully consider impacts on small business and to urge state regulators to consider the concerns of small rural telecom providers that seek waivers to the new portability rules. In *National Association of Home Builders v. United States Army Corps of Engineers*, the D.C. Circuit ruled that permits of general applicability are rules subject to the Administrative Procedure Act.

In related developments in FY 2005:

- The Office of Advocacy and the Ewing Marion Kauffman Foundation sponsored an RFA symposium on the occasion of the RFA's 25th anniversary to look at how the law has been working and how it might work even better. Symposium proceedings are on the web at http://www.sba.gov/advo/rfa_sym0905.pdf.

- Just prior to the symposium, Advocacy released a new study on the small business impact of regulation which found that firms with fewer than 20 employees annually spend \$7,647 per employee to comply with federal regulations, or 45 percent more

than the \$5,282 spent by firms with 500 or more employees.

- Advocacy regional staff worked successfully with seven states to pass state regulatory flexibility legislation in 2005.

Scope and Methodology

The Office of Advocacy bases its cost savings estimates on agency estimates. Cost savings for a given rule are captured in the fiscal year in which the agency agrees to changes in the rule as a result of Advocacy's intervention. Where possible, savings are limited to those attributable to small businesses. First-year cost savings consist of either capital or annual costs that would be incurred in the rule's first year of implementation. Recurring annual cost savings are listed where applicable. Where cost savings are accrued during the prepublication draft stages of the rule, they are not publicly available.

Ordering Information

The full text of this report and summaries of other studies performed under contract with the U.S. Small Business Administration's Office of Advocacy are available on the Internet at www.sba.gov/advolresearch.

Copies are available for purchase from:

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