



**OFFICE OF ADVOCACY
U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416**

May 18, 2004

The Honorable Nydia Velazquez
Ranking Democratic Member
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Re: Letter for the record of the May 5, 2004, hearing on H.R. 2345, the Regulatory Flexibility Improvements Act of 2003.

Dear Representative Velazquez:

Thank you for the opportunity to provide you and the U.S. House of Representatives Committee on Small Business with additional information related to my testimony¹ on H.R. 2345, the Regulatory Flexibility Improvements Act of 2003. This letter clarifies my answer to your question regarding the Office of Advocacy's staffing and resource needs, and responds to your follow-up letter dated May 6, 2004. In particular, I am writing to provide additional information on: 1) the resources required for the Office of Advocacy to participate in the small business advocacy review panels under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), and in the panel process contemplated in H.R. 2345 as currently drafted; and 2) current staffing levels and any restrictions applicable to Office of Advocacy staffing.

Congress established Advocacy pursuant to Public Law 94-305² to advocate the views of small business before Federal agencies and Congress. Because Advocacy is an independent office within the U.S. Small Business Administration (SBA), these views do not necessarily reflect the position of the Administration or the SBA.

Panels under the RFA, as amended by SBREFA

Under current law, the Office of Advocacy participates in small business advocacy review panels convened by the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) to review draft proposed rules for which EPA or OSHA anticipate publishing an initial regulatory flexibility analysis (IRFA).³ In fiscal year (FY) 2003, Advocacy participated in two panels, one for EPA and one for OSHA, requiring a total of approximately 1,050 hours of Advocacy staff time. So far in FY 2004, we have participated in

¹ The Chief Counsel for Advocacy's May 5, 2004 testimony on H.R. 2345 is available on Advocacy's website at http://www.sba.gov/advo/laws/test04_0505.html.

² 15 U.S.C. § 634a *et seq.*

³ Advocacy's website includes summary lists of EPA and OSHA panels held to date, available at http://www.sba.gov/advo/laws/is_epapanels.html and http://www.sba.gov/advo/laws/is_oshapanel.html.

five panels, three for OSHA and two for EPA, requiring a total of approximately 1,500 hours of Advocacy staff time.⁴ In FY 2005, we expect to participate in six panels: four EPA panels for a total of 1,600 staff hours, and two OSHA panels for a total of 560 staff hours.⁵ These estimates include hours invested by attorneys in Advocacy's Office of Interagency Affairs and regulatory economists in the Office of Economic Research. Advocacy's involvement in each panel spans a 120-day period (60 days of preparation precede the 60-day panel). To help Advocacy manage the demands on its staff resources, we work with EPA and OSHA to coordinate panel schedules, minimize overlap, and ensure ample time for review of materials by the federal agency participants and small entity representatives. In addition, Advocacy sometimes uses a task order contract to obtain outside research and analysis to support its panel participation. In FY 2004, one EPA panel and one OSHA panel have benefited from task order research, at a combined cost of \$48,680. In FY 2005, Advocacy estimates the need for such task order contracts will occur on one half to one quarter of the EPA and OSHA panels, with the cost per task order averaging about \$20,000. The task order contract is funded within Advocacy's \$1.1 million dollar line item for economic research.⁶

Panels under H.R. 2345

If enacted in its current form, H.R. 2345 would amend the panel process. Most importantly, Section 6 of H.R. 2345 expands the panel process to include proposed rules from the Internal Revenue Service (IRS), the Federal Communications Commission (FCC), and the Centers for Medicare and Medicaid Services (CMS). Advocacy reviewed recent Regulatory Flexibility Agendas and Regulatory Agendas for each agency to estimate the number of additional panels Advocacy could potentially be required to participate in under the expanded agency provisions of H.R. 2345. We took into consideration the revisions in Section 3 related to coverage of IRS interpretative rules. We provide these estimates with the caveat that the volume of agency rulemaking fluctuates from year to year and agency timetables for rulemaking are imprecise and subject to change. We are estimating our staff hour and resource needs based on our experience with the current panel process and our expectation of the data and analysis involved. We recognize that Section 6, as currently drafted, would revise the mechanics of the panel process, providing additional authority and discretion to Advocacy. We believe these changes, if implemented, would not increase the overall staffing levels of Advocacy. Please note, however, I have previously expressed our preference for preserving the current panel procedures.⁷ Advocacy did not estimate what, if any, additional panels might possibly result from language in Section 6 that describes a proposed rule for purposes of the panel process or a provision in Section 3 that requires analysis of indirect impacts. Therefore, our estimates may be somewhat conservative.

⁴ Rather than deriving an average based on these 7 panels, Advocacy is excluding one outlier (which required substantial staff time due to its technical complexity and economic significance) to end up with an average of 214 staff hours per panel.

⁵ Based on an estimated 400 staff hours per panel for EPA panels, and 280 staff hours for OSHA panels

⁶ Since FY 1991, Advocacy's research budget has fluctuated from a high of \$1.508 million in that year to a low of \$654,000 in FY 1997. Since FY 2000, the budget has been \$1.1 million annually; which, in addition to task order contracts for research on specific regulatory proposals, funds external research contracts awarded through a competitive process and all data purchased by Advocacy from other Federal agencies.

⁷ In my May 5, 2004, testimony, I expressed our support for expanding the panel to the IRS, CMS and FCC. I also recommended that H.R. 2345 not restructure the panel process itself due to concerns that removing the need for consensus may decrease the likelihood that the regulating agency will follow the recommendations of the panel report. This May 5, 2004 testimony is available at http://www.sba.gov/advo/laws/test04_0505.html.

If H.R. 2345 were enacted as currently written, we estimate that Advocacy could potentially participate in 29 additional panels in FY 2005, with the panels allocated as follows: 10 IRS panels, 11 CMS panels, and 8 FCC panels. This estimate reflects the number of draft proposed rules Advocacy believes may have a significant economic impact on a substantial number of small entities and thereby trigger the panel requirement. We estimate that Advocacy would spend between 6,206 and 9,860 staff hours on the additional panels.⁸ With four Advocacy staff members currently dedicated to these three agencies and the possibility of other staff in Advocacy's Office of Interagency Affairs providing additional legal backup, we do not anticipate the need to hire additional legal staff. However, we would anticipate the need to hire one or two more regulatory economists to compliment the work of the two regulatory economists currently on our staff. We are able to re-direct our resources to accommodate these additions under a staffing level of 50 employees. In addition, we anticipate that one half to one quarter of the 29 additional panels would require task order contracts, funded within our research budget for a total cost ranging from \$72,500 to \$217,500.⁹

Advocacy Staffing Levels

The Office of Advocacy currently has 44 employees, including 7 Regional Advocates. The Office anticipates filling the remaining 3 Regional Advocate positions and 3 open positions in Washington, D.C. Under our authorizing statute, the Chief Counsel has the power to employ and fix the compensation of personnel, without regard to provisions of Title 5 governing appointment in the competitive service, but with certain limits on maximum compensation which are also set forth in the statute.¹⁰ Because funds for Advocacy's staffing are currently derived from SBA's overall budget for salaries and expenses, our share of the agency's total budget is related to the level of appropriations available to SBA as a whole.

Again, I appreciate the opportunity to clarify the staffing level and resource needs of the Office of Advocacy. Please let me know if I can provide any additional information.

Sincerely,

/s/

Thomas M. Sullivan
Chief Counsel for Advocacy

Cc: The Honorable Donald Manzullo, Chairman
Committee on Small Business
U.S. House of Representatives

⁸ Our estimates are based on the following assumption: A range of average staff hours will be used. The lower bound of which will be the average observed expended staff hours per panel of 214, and the higher bound will be the average estimated staff hours for FY 05 ($340 = (400+280)/2$).

⁹ Our estimates are based on the following assumptions: An average of \$10,000-\$15,000 will be spent on each task order contract. If a quarter of the panels require task order contracts, a total of \$72,500 will be spent ($(29/4) \times \$10,000$); if one half of the panel require task order contracts, a total of \$217,500 will be spent ($(29/2) \times \$15,000$).

¹⁰ 15 U.S.C. § 634d.