

**STATEMENT OF MICHAEL R. SEE, ASSISTANT CHIEF COUNSEL FOR ADVOCACY OF THE  
U.S. SMALL BUSINESS ADMINISTRATION  
BEFORE THE U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON GOVERNMENT REFORM,  
SUBCOMMITTEE ON REGULATORY AFFAIRS  
MAY 3, 2006**

Good morning, my name is Michael See, and I have the pleasure of serving as assistant chief counsel for advocacy of the U.S. Small Business Administration. I will open simply by giving brief background to the other participants and the distinguished members on my work, and my office's involvement in rulemaking under the Sarbanes-Oxley Act of 2002.

As assistant chief counsel for advocacy, I am charged with reviewing Federal agency actions—including those by the U.S. Securities and Exchange Commission—to ensure their compliance with the Regulatory Flexibility Act of 1980 (the RFA). Generally, the RFA requires agencies to consider the costs of their actions to small businesses, and to analyze regulatory alternatives that would reduce those costs while achieving the agencies' regulatory objectives. The Office of Advocacy is charged with overseeing agency compliance with the RFA. Through the Office of Advocacy's intervention at various stages of the rulemaking process, in 2005, the Office of Advocacy helped secure more than \$6.6 billion in regulatory cost savings for small business.

Small business plays a vital role in our economy. They generate between sixty and eighty percent of net new jobs annually, produce thirteen to fourteen times more innovative patents per employee than large firms, and employ half of all private sector employees. Yet these firms face disproportionate regulatory costs. Firms with less than twenty employees spend approximately forty-five percent more per employee to comply with Federal regulations than larger firms.

My involvement with the Sarbanes-Oxley Act began in 2002, when our office asked Chairman Oxley and Chairman Sarbanes to include flexibility in the bill then being considered that would be sufficient to avoid unnecessary impacts to small businesses. As the U.S. Securities and Exchange Commission (the Commission) began its rulemaking process to implement the various sections of the Act, my office advocated on behalf of small businesses, first in the rulemaking requiring CEO certifications, then in later proposed rules that would have required small audit firms to rotate partners on audits every few years, and finally on rules that would require small public companies to obtain outside audits of their internal controls—also known as section 404.

Almost immediately upon its passage, small business representatives contacted the Office of Advocacy to inform us of their concerns with the new audit requirements of section 404. The main concern was that, as auditors were faced with a new requirement to sign off on a company's internal controls, they would employ expensive and time-consuming audit procedures. These concerns were born out by experience, as surveys of actual compliance costs indicate the new audits are indeed costly. For example, the most recent

quarterly survey by Financial Executives International indicates that companies that have less than \$75 million in capitalization spent almost \$1,000,000 each in one year's section 404 costs.

To its credit, after passing the rules, the Commission quickly realized the expenses inherent in complying with section 404, and delayed the implementation of section 404 for small businesses, pending a review of its impacts by a formal Federal advisory committee, the Advisory Committee on Smaller Public Companies (the Advisory Committee). After a year of deliberations and solicitation of public input, the Advisory Committee made its final written recommendations late last month. Among these recommendations was a proposal to delay the implementation of section 404 among small public companies until such time as cost-effective accounting methods had been established and the new requirements did not represent a barrier to entry for small firms.

The Office of Advocacy of the U.S. Small Business Administration supports the Advisory Committee's recommendation to delay small business implementation of section 404. Attached to these comments is a letter sent this past week to the Commission outlining the Office of Advocacy's concerns, and highlighting the abundant evidence collected by the Advisory Committee on the harm to competition that could occur if the Commission were to extend section 404 to small businesses. I look forward to your questions.