

Legislative Priorities for the 109th Congress **Office of Advocacy, U.S. Small Business Administration**

The Office of Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Office of Advocacy's top legislative priority is to give small businesses a legitimate voice in the regulatory process.

Advocacy's research shows that small businesses pay an average of \$6,975 per employee annually to comply with federal regulations—60% more than large businesses. Yet, small businesses generate 60-80% of all net new jobs, represent 99.7% of employers, employ half of all private sector employees, and innovate at a rate 13 times greater than large firms.

For twenty-five years, the Regulatory Flexibility Act (RFA) has required that agencies consider less burdensome approaches to regulation in order to level the playing field for small business. The RFA was amended in 1996 by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Among other things, the 1996 amendments made agency small business impact analysis subject to judicial review and required two agencies [Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA)] to seek direct input from small entities prior to issuing regulatory proposals.

Government has saved small entities billions of dollars by following the RFA's direction and minimizing the impact of regulatory mandates on small business. History has shown that regulatory sensitivity towards small entities can be achieved without sacrificing the underlying purpose of environmental protection, workplace safety, border security, and other governmental priorities.

The 109th Congress has the opportunity to amend the RFA and SBREFA to improve the regulatory climate for small business. The following four amendments fill in loopholes that currently reduce the effectiveness of both statutes.

I. Review of Existing Rules – *The W. Mark Crain study on regulatory cost showed a costs to Americans of 1.1 trillion. Much of that burden falls on the business community. Since new regulations are promulgated each year, the cumulative impact can be staggering. It is necessary to evaluate existing regulations periodically to minimize this impact.*

Amendment: Modify section 610 of the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612 (RFA), that requires federal agencies to review 10-year-old regulations to assess their present-day impact. Section 610 should be broadened so that agencies review all rules periodically and not just those viewed as significant when initially promulgated. This change would encourage agencies to update their rules every ten years to ensure that regulatory protections reflect current conditions.

II. Proper Consideration of Small Entities in Agency Rulemaking – *The President prioritized the need for government agencies to consider their impact on small entities under the RFA when he signed Executive Order 13272. Section 3 of the Executive Order requires agencies to notify the Office of Advocacy of draft rules that will have a significant economic impact on a substantial number of small entities. It also requires agencies to give appropriate consideration to Advocacy’s comments and address the comments in final rules.*

Amendment: Codify section 3 of the Executive Order to ensure that the President’s attention to the impact of regulation on small entities becomes a permanent part of how government operates. This amendment will also ensure that independent agencies comply with the RFA.

III. Help States Consider Alternatives to Costly Regulation – *The federal government sometimes issues regulations that must be implemented by the states. When this happens, federal agencies are not required to do the detailed analysis of impacts and alternatives required under the RFA. Instead, states with RFA-type laws on the books, and with fewer resources than federal agencies, must do the analysis themselves, resulting in what amounts to an unfunded mandate. Under current law, agencies are only required to analyze direct impacts, even though there may be foreseeable and costly indirect impacts when states enforce federal regulations.*

Amendment: Amend the RFA to ensure that agencies analyze the impact of their rules on small entities and provide states with regulatory alternatives that will enable states to meet federal requirements while minimizing the impact on small entities.

IV. Help Small Business Comply with Regulations – *Sometimes small business non-compliance with federal regulations is simply due to the fact that they do not understand the regulations. The intent behind section 212 of SBREFA was to ensure that small businesses had a way to understand often complex and technical federal regulations. Section 212 of SBREFA requires federal agencies to publish a small business compliance guide for each final rule that has a significant economic impact on a substantial number of small entities. However, small business continues to be frustrated with rules that are not published with adequate compliance information.*

Amendment: Amend SBREFA to require that agencies publish plain language small business compliance guides whenever a final rule requires a final regulatory flexibility analysis (FRFA). Agencies would also be required to report annually on their efforts to comply with this section.