



Testimony of

The Honorable Darryl L. DePriest, Esq.

Chief Counsel for Advocacy

U.S. Small Business Administration

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Committee on Small Business and Entrepreneurship

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Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs this office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by Advocacy's staff in Washington, D.C., and by Regional Advocates throughout the country. For more information about the Office of Advocacy, visit <http://www.sba.gov/advocacy>, or call (202) 205-6533.



The Honorable Darryl L. DePriest, Esq.
Chief Counsel for Advocacy
SBA Office of Advocacy

Chairman Vitter, Ranking Member Shaheen, and Members of the Committee, good morning. As the Chief Counsel for Advocacy, I would like to thank you for the opportunity to appear before the Committee today to discuss the Office of Advocacy and its recently released legislative priorities for Congress.

Over the past 40 years, the Office of Advocacy has facilitated greater consideration of small business impacts through regulatory flexibility trainings, roundtables, comment letters, economic research, publications, and collaboration with federal officials throughout government. Federal agencies treat Advocacy as a partner in the rulemaking process in the effort to reduce the regulatory burden on small business.

As Chief Counsel, I will guarantee that the office continues to work with federal agencies to alleviate the potential costs of regulation on small entities. To further describe our commitment to this cause and how we believe Congress could improve this process, I would like to update you on Advocacy's 2016 Legislative Priorities.

The topic areas that our legislative priorities include are:

- Indirect Effects,
- Scope of the Regulatory Flexibility Act (RFA),
- Quality of Analysis,
- Quality of Certification,
- SBREFA panels, and
- Retrospective Review.

Indirect Effects

Under the RFA, agencies are not currently required to consider the impact of a proposed rule on small businesses that are not directly regulated by the rule, even when the impacts are foreseeable and often significant. Advocacy believes that indirect effects should be part of the RFA analysis, but that the definition of indirect effects should be specific and limited so that the analytical requirements of the RFA remain reasonable. Congress should amend section 601 of the RFA to define "impact" as including the reasonably foreseeable effects on small entities that purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule; are directly regulated by other governmental entities as a result of the rule; or are not directly regulated by the agency as a result of the rule but are otherwise subject to other agency regulations as a result of the rule.

Scope of the RFA

Currently, the requirements of the RFA are limited to those rulemakings that are subject to notice and comment. Section 553 of the Administrative Procedure Act (APA), which sets out the general requirements for rulemaking, does not require notice and comment for interim final rulemakings, so agencies may impose a significant economic burden on small entities through these rulemakings without conducting an Initial Regulatory Flexibility Analysis (IRFA) or Final Regulatory Flexibility Analysis (FRFA). Advocacy believes the definition of a rule needs to be expanded to include interim final rulemakings that have the potential to impose economic burdens on small entities.

In addition, the RFA has its own definition of information collection. However, this definition is identical to the Paperwork Reduction Act (PRA) (35 USC 3501, et. seq.). A cross-reference to the PRA would allow Advocacy to rely on OMB's existing implementing regulations (5 CFR 1320) and guidance. For these reasons, Advocacy recommends that Congress (1) require RFA analysis for all interim final rulemakings with a significant economic impact on a substantial number of small entities and (2) amend the conditions for IRS rulemakings to require an IRFA/FRFA to reference the PRA.

Quality of Analysis

The Office of Advocacy is concerned that some agencies are not providing the information required in the IRFA and the FRFA in a transparent and easy-to-access manner. This hinders the ability of small entities and the public to comment meaningfully on the impacts on small entities and possible regulatory alternatives. Agencies should have a single section in the preamble of the notice of proposed rulemaking and notice of final rulemaking that lays out clearly the substantive contents of the IRFA or FRFA, including a specific narrative for each of the required elements. In addition, agencies should be required to include an estimate of the cost savings to small entities in the FRFA.

Quality of Certification

Some agencies' improper certifications under the RFA have been based on a lack of information in the record about small entities, rather than data showing that there would not be a significant impact on a substantial number of small entities. A clear requirement for threshold analysis would be a stronger guarantee of the quality of certifications. Advocacy believes that the RFA should be amended to require agencies to publish a threshold analysis, supported by data in the record, as part of the factual basis for the certification.

SBREFA Panels

I do not believe panels are necessary in most cases, since many agencies have developed internal procedures for the consideration of small entity impacts that are appropriate for their organizations and their particular rulemakings. However, the Department of Interior's Fish and Wildlife Service consistently promulgates regulations without proper economic analyses. Advocacy believes the rules promulgated by this agency would benefit from being added as a covered agency subject to Small Business Advocacy Review Panels.

In addition, Advocacy also believes that some recent Small Business Regulatory Enforcement Fairness Act (SBREFA) panels have been convened prematurely. SBREFA panels work best when small entity representatives have sufficient information to understand the purpose of the potential rule, likely impacts, and preliminary assessments of the costs and benefits of various alternatives. With this information small entities are better able to provide meaningful input on the ways in which an agency can minimize impacts on small entities consistent with the agency mission. Therefore the RFA should be amended to require that prior to convening a panel, agencies should provide, at a minimum, a clear description of the goals of the rulemaking, the type and number of affected small entities, a preferred alternative, a series of viable alternatives, and projected costs and benefits of compliance for each alternative.

Retrospective Review

Advocacy believes Congress should help strengthen Section 610 retrospective review through legislation. This could be accomplished by prioritizing petitions for review that seek to reduce the regulatory burden on small business and provide for more thorough consideration of alternatives. We believe this would be valuable in addition to the existing required periodic review. Moreover, agencies should be required to provide a timely and effective response in which they demonstrate that they have considered alternative means of achieving the regulatory objective while reducing the regulatory impact on small businesses. This demonstration should take the form of an analysis similar to a FRFA.

In closing, I would like to thank the Committee and its staff for its continued support of the Office of Advocacy. As Chief Counsel, I look forward to working closely with you on ways to improve the Regulatory Flexibility Act and on issues affecting small entities across this country. If there are any questions, I would be pleased to answer them.