

Congress of the United States
Washington, DC 20510

December 22, 2017

The Honorable Major L. Clark, III
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Dear Mr. Clark:

As the Ranking Members of the Senate Committee on Small Business & Entrepreneurship and the Regulatory Affairs and Federal Management Subcommittee of the Senate Committee on Homeland Security and Governmental Affairs, respectively, we write to request information about the Office of Advocacy's process for awarding a study on the "burden of regulations on small businesses" to an analytics and research firm whose past work has been criticized for using unreliable methodology and flawed data.

On September 21, 2017, the Office of Advocacy awarded a federal research contract to Interaction Analytics, LLC (owned by Nicole V. Crain and W. Mark Crain) to examine 26 major rules from the 2016 Office of Management and Budget's (OMB) report on regulatory costs and benefits and to develop a plan to evaluate the relative burden on small businesses.

As you know, both the Congressional Research Service (CRS) and the Government Accountability Office (GAO) called into question a previous study conducted by Nicole and Mark Crain in 2010 – *The Impact of Regulatory Costs on Small Firms* – for using unreliable methodology and flawed data to estimate the overall cost of federal regulations. According to CRS, the authors came up with 70 percent of their estimate by using a methodology that relied on the World Bank's regulatory index. One of the authors of that index said that the Crains "misinterpreted and misused the data, resulting in an erroneous and overstated cost estimate." For another part of their estimate, the Crains used the highest cost estimates from OMB reports because they believed "government agencies tend to be conservative in estimating regulatory costs."

In other instances, CRS noted that the authors failed to accurately transfer OMB data on environmental regulatory costs for fiscal years 2003-2004, potentially double-counted the costs of regulations and failed to account for technological advancements in regulatory estimates. In another independent report, the GAO faulted the Office of Advocacy, in 2014, for not following the federal information quality guidelines on retaining data for studies or substantiating the

quality of the information when data cannot be retained. When GAO raised concerns about the methodological weaknesses and questionable data used in the Crain study, the Office of Advocacy could not substantiate the findings.

As you know, Congress has tasked the Office of Advocacy with conducting research on issues important to small businesses. To carry out this important responsibility, it is imperative that the Office of Advocacy have proper protocols in place to ensure that the research and information disseminated to policymakers and the public is credible.

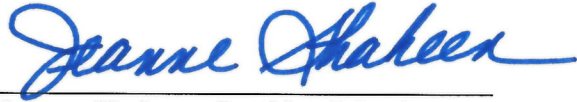
To help clarify the Office of Advocacy's decision to award this contract and to ensure current practices are consistent with federal information quality guidelines, please provide a written response to the following questions and the requested documents no later than **January 8, 2018**:

1. What outreach did the Office of Advocacy perform to ensure it received bids from multiple qualified researchers? Please provide a detailed list of all organizations and researchers the Office of Advocacy contacted about this proposal.
2. What companies or researchers submitted an official proposal in response to the open solicitation?
3. Please describe in detail how the Office of Advocacy followed applicable policies and procedures in making this award.
4. Please provide all documentation to demonstrate the Office of Advocacy is consistently following the federal information quality guidelines.
5. What specific criteria did the Office of Advocacy use in evaluating the technical expertise and past performance of proposals? What were the key differences among the proposals in terms of technical expertise, past performance and cost?
6. Please provide a copy of source selection memo, including the evaluation and scorecard of both proposals on the three factors: technical approach, past performance and cost/price as described in the Instruction to Offerors in the solicitation for "Research on the Burden of Regulations on Small Businesses," (SBAHQ-17-Q-0020), and any additional memoranda that documented justification for the award.

Thank you for your prompt attention to this matter. If you have any questions, please contact Ellen Harrington on the Small Business Committee at (202) 224-5175 or

[Ellen Harrington@sbc.senate.gov](mailto:Ellen_Harrington@sbc.senate.gov) and Anthony Papian with the Subcommittee on Regulatory Affairs and Federal Management at (202) 224-9326 or [Anthony Papian@hsgac.senate.gov](mailto:Anthony_Papian@hsgac.senate.gov).

Sincerely,



Jeanne Shaheen, Ranking Member
Senate Committee on Small Business
& Entrepreneurship



Heidi Heitkamp, Ranking Member
Senate Subcommittee on Regulatory Affairs
& Federal Management