



Advocacy: the voice of small business in government

Testimony of

*The Honorable Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy
U.S. Small Business Administration*

*United States Senate
Committee on Small Business and Entrepreneurship*

Date: March 31, 2011
Time: 10:00 a.m.
Location: Room 428
Russell Senate Office Building
Washington, D.C.
Topic: Office of Advocacy Fiscal Year 2012 Budget

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 the 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 offices in Washington, D.C., and by Regional Advocates. For more information about the Office of Advocacy, visit <http://www.sba.gov/advo>, or call (202) 205-6533.

Chair Landrieu, Ranking Member Snowe, and Members of the Committee, good morning. As Chief Counsel for Advocacy, I thank you for the opportunity to appear before the Committee today to discuss the Office of Advocacy's budget request for Fiscal Year 2012. That submission is part of the President's request for SBA and the government as a whole, and it accordingly has the full support of the administration. However, because Advocacy was established to provide independent counsel to policymakers, and its testimony is not circulated for comment through the Office of Management and Budget (OMB) or other federal offices, my views on matters other than the official budget request do not necessarily reflect the position of the administration or of SBA.

Advocacy activity update

Before I turn to the budget, I would like to bring you up to date on Advocacy activity generally. I am pleased to report that Advocacy has been extremely busy since my last appearance before you in November. As Chief Counsel, my top priority is and will continue to be ensuring that the voice of small business is heard in the regulatory process. We continue to work with agencies across government to help them mitigate the potential costs of regulation for small entities. Since my appointment last August, I have signed 32 public comment letters to 19 different agencies on a wide variety of issues (Appendix A). We are currently participating in seven separate Small Business Advocacy Review Panels now in various stages of progress on EPA rules. Additional panels are expected in the near future on regulations from OSHA and the new Bureau of Consumer Financial Protection.

All of us here know how important it is for agencies to take their Regulatory Flexibility Act (RFA) responsibilities seriously, and Advocacy continues to provide RFA compliance training to regulatory agencies, pursuant to Executive Order 13272. Also in furtherance of that order and the RFA, we continue to work closely with our colleagues in OMB's Office of Information and Regulatory Affairs to ensure that small business concerns are heard early in the regulatory development process. To help us understand those concerns, we have had more than 20 small business roundtables since my appointment. They have explored issues as diverse as

taxes and pensions, government contracting, work visas, telecommunications, OSHA and EPA rules, financial regulations, aviation and transportation rules, and veteran entrepreneurship.

Since the beginning of the current fiscal year, our economic research team has published twelve research or data products, including new editions of three of our most popular annual reports: *The Small Business Economy*, our state economic profiles, and our annual small business bank lending study. In addition, we have underway a variety of contract research projects on specialized issues, and these will be released as they become available.

When I testified before you in November, I was strongly encouraged by members of this Committee to travel outside of Washington to hear directly from small businesses around the country. Since then, I have had the pleasure to do just that in Rhode Island, Massachusetts, Georgia, Alabama and Louisiana; and I have scheduled trips to Wisconsin, Minnesota and Maine in the weeks to come. Additionally, we have now brought all ten of our regional advocates on board, giving a much stronger voice to businesses in every region in the country. They are out there talking to state and local elected officials about the importance of regulatory flexibility and listening to small business owners about the regulatory burdens they face.

Our information team reports that hard copies of Advocacy's monthly newsletter now go to more than 8,000, and almost 30,000 more subscribers receive it electronically. Advocacy's research listserv reaches nearly 16,000 subscribers, and our regulatory news goes to nearly 14,000 subscribers.

To conclude this brief overview, Advocacy recently released its annual report on implementation of the RFA and Executive Order 13272. I am proud to report to you today that in FY 2010 Advocacy's work with regulatory agencies to help them design smarter rules resulted in one-time regulatory cost savings for small entities of nearly **\$15 billion**. In addition, recurring annual savings of \$5.5 billion resulted from these efforts. These cost savings estimates are conservative and based in most cases on data from the rule-writing agencies themselves. (A listing of the rules and savings achieved is attached as Appendix B to this testimony.) Our FY 2010 savings were led by more than \$9.1 billion in savings from a single EPA rule which defers

greenhouse gas requirements for many small businesses by up to six years. Although our annual regulatory cost savings numbers can vary considerably from year to year, our five-year average for one-time cost savings remains an impressive \$8.5 billion.

Executive Order 13563

Since I last appeared before the Committee, President Obama signed on January 18th Executive Order 13563, *Improving Regulation and Regulatory Review*, and two related memoranda to the heads of executive branch departments and agencies: one titled *Regulatory Compliance*, and the other *Regulatory Flexibility, Small Business, and Job Creation*. (These documents are attached as Appendices C, D and E.) These directives supplement existing regulatory review processes, particularly the Executive Order 12866 process that has been in place since 1993. However, the new directives also reiterate key provisions of the RFA, as well as emphasize the administration's commitment to:

- public participation in the rulemaking process;
- the coordination, simplification and harmonization of regulations that are redundant, inconsistent or overlapping across agencies;
- the identification of means to achieve regulatory goals designed to promote innovation;
- consideration of regulatory flexibility whenever possible;
- the review of existing significant regulations and the consideration of how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient or excessively burdensome; and
- the modification, simplification, expansion or repeal of rules based on these analyses.

These objectives and the new directives are very much in keeping with Advocacy's mission, the RFA and Executive Order 13272. In fact, both Advocacy and the RFA are mentioned by name in the memorandum *Regulatory Flexibility, Small Business, and Job Creation*. In it, the President emphasized the importance of compliance with the RFA and its purposes. The President also expanded the existing requirement for an agency to document its decision to reject an alternative that may reduce regulatory burdens on small entities. The RFA currently requires agencies to explain in the Final Regulatory Flexibility Analysis accompanying final rules why significant alternatives were not selected. The President has directed that a similar explanation be provided for proposed rules as well.

In FY 2012, Advocacy will be assisting regulatory agencies in meeting the requirements of the President's regulatory initiative. We are already working with White House officials and OMB's Office of Information and Regulatory Affairs to implement Executive Order 13563. On February 1st, I sent a memorandum to the heads of executive branch departments and agencies concerning new RFA developments, including provisions in the President's regulatory initiative. I also reminded them of RFA amendments made by the Small Business Jobs Act of 2010, Public Law 111-240 (September 27, 2010). Through this Committee's leadership, the Jobs Act also included additional provisions of enormous importance to Advocacy, and it is to those provisions and our Fiscal Year 2012 budget request that I now turn.

Advocacy's independence and new separate account legislation

First, on behalf of the entire Advocacy team, let me thank the Committee for the tremendous support you have shown for our office over the years, through many changes in leadership in both the legislative and executive branches. This support was again underscored by inclusion in Public Law 111-240, last year's Small Business Jobs Act, a provision establishing in the Treasury a new separate account for Advocacy and a requirement that SBA provide an operating budget for our office. These provisions will enhance our independence and increase transparency for our many stakeholders on our costs and operations.

There is a long legislative history supporting the Congressional intent that Advocacy is an independent office housed within SBA, and that its mission and activities, and the discretion exercised by the Chief Counsel in their implementation, are independent of the SBA and its management and normal chain of command. As you know, Advocacy has its own statutory charter, Public Law 94-305, which is not part of the Small Business Act. The RFA also conveyed additional duties and powers on the Chief Counsel, as did Executive Order 13272. We also have special personnel authorities and a variety of other tools to help us represent the interests of small business within government.

Advocacy's independence allows us to take strong positions in our comment letters, publications, testimony and other work, without going through clearance within the executive branch. While such review and coordination is certainly appropriate for most agencies, in our case it is not. That is because it is the job of each Chief Counsel to transmit directly to policymakers the unfiltered views of our small entity stakeholders.

I would like to make clear that, since my appointment by the President, Administrator Mills and her staff have respected Advocacy's independence, and we have a good working relationship. When I speak of independence, I want to emphasize that Advocacy only makes decisions based on what we believe is best for small business. When I send a comment letter on a proposed regulation, it is not cleared by the Administrator, the White House or any other office or official in the administration. Neither are our research findings, testimony or other work products reviewed for clearance by the administration. We work independently as the Congress intended, and the SBA Administrator has been respectful of this independence.

Administrator Mills and other senior members of the administration understand that Advocacy's ability to provide the best information possible helps all of us to do our jobs better, whether this information consists of economic research or data products, the articulation of the views and concerns of small entities on policy issues affecting them, assistance to regulatory agencies in RFA compliance issues, or the professional judgment of our highly qualified team of attorneys and economists. I know from my conversations with past Chief Counsels that Advocacy's independence has been a constant through the years, and it remains the bedrock of Advocacy's ability to be effective.

Despite Advocacy's independence, our office has in the past been fully integrated within SBA's internal budgetary process. We have competed, as it were, with all SBA program offices for our share of resources within SBA's total budget. There are many stages in this process, including coordination with OMB as SBA's budget request is integrated into the administration's government-wide request. Throughout the process, difficult decisions are made about the allocation of scarce resources, many of them by the SBA Administrator and his or her senior staff. I am pleased to report that Administrator Mills has been very supportive of Advocacy, but

through the years the office has had its budgetary ups and downs, and we have borne our share of reductions in staffing and other resources.

Because of Advocacy's complete integration into SBA's budget in the past, the office has been vulnerable to the changing priorities of new administrations and within the SBA itself. There has not been much transparency at the individual SBA office level where Advocacy has resided in the budget process, and changes in accounting methods have made it even more difficult to compare Advocacy costs and needs from one year to another.

The Small Business Jobs Act of 2010 provides that Advocacy will have for the first time statutory line-item funding, to be segregated in a separate Treasury account similar to that of the SBA Inspector General. This basically means that the Congress will set the amount available for direct Advocacy costs, and these funds will not be commingled with other SBA funding. The enactment of the Advocacy budgetary provisions underscores our independence and indicates that Congress intended to identify clearly the resources available to Advocacy, provide a basis for performance measurement, and promote certainty in Advocacy budgets.

I am pleased to report that the new statutory line-item for Advocacy will be operational in FY 2012, and the President's recent budget request for that year reflects the establishment of a new Treasury account for our office.

Advocacy's FY 2012 budget request

The President's budget request for Advocacy direct costs in FY 2012 is \$9.12 million. This amount includes \$7.4 million to support 46 positions, the number of staff on board during Fiscal Years 2008 and 2009. We are now at 45, and an additional position will be filled in the next few weeks. Advocacy's professional staff is our most important asset, and it is appropriate that the largest share of our budget goes to human resources.

The FY 2012 budget request will also support an economic research program of \$1.3 million. This includes funding for data acquisition, specialized contract research, support of

custom data tabulations at other agencies, and related costs. In recent years, Advocacy has produced an average of 25 new reports or data products each year. However, there remains an increasing need for additional work. A number of older Advocacy studies require updating so that the maximum utility of investments already made can be realized. The recent update of our study on the cost of regulation is a good example of this. The proposed funding level for Advocacy research in FY 2012 will also allow for additional data acquisition from other government agencies and new research projects to meet the changing needs of our stakeholders.

The remaining \$420,000 in Advocacy's budget request for FY 2012 will cover all expenses for travel, training, office supplies, subscriptions, printing of publications, and other incidental expenses attributable directly to Advocacy.

Additional support for Advocacy in the FY 2012 budget request

In addition to a separate account for Advocacy, the Jobs Act also included a provision that SBA was to supply Advocacy with operational support such as office space, rent and utilities, telecommunications, equipment and maintenance, etc. I am pleased to announce that we have negotiated an agreement with SBA's Office of the Chief Financial Officer and other SBA support offices in which the agency has agreed to provide all of the items contemplated in the new law without charge to our new appropriation. Included in this support package are a variety of centrally managed services such as human resources/payroll services, legal counsel, facilities management, procurement, security and emergency planning, computer technical support, web services and the use of mail room and delivery services. Our agreement has been formalized in a Memorandum of Understanding (MOU) signed by SBA Deputy Administrator Marie Johns and myself.

Although the support package for Advocacy that SBA will be providing beginning in FY 2012 will not be charged to our new appropriation account, the costs for these services and other indirect overhead will appear elsewhere in SBA's budget. Because these overhead costs do not affect our direct costs, and because they for the most part reflect SBA accounting conventions, Advocacy will not be directly involved in their calculation. As we make the transition to the new

appropriations and accounting system, questions in this area will undoubtedly arise, but I am confident that with the MOU between Advocacy and SBA, we will be able to implement the new legislation as intended by Congress.

Next steps

While the Congress considers the President's FY 2012 budget request, we will soon begin the process of formulating the FY 2013 budget request. When the Jobs Act was enacted, the FY 2012 budget request was already in an advanced state of preparation. I want to thank especially the offices of SBA's Chief Financial Officer and General Counsel for their extra effort in expediting the establishment of our new Treasury account and making the many conforming revisions in budget documents that had already been prepared for FY 2012. There will be additional changes in the FY 2013 documents as we continue the transition process to our new accounting system. Advocacy has been assured that we will have a separate section in the next budget request, similar to that used for the Office of the Inspector General. I am hopeful that this will improve transparency and allow us to present more detail in future budget requests. In the meantime, the key elements we need are in place for FY 2012.

Conclusion

In closing, I would like to draw your attention to an important performance metric that all of us on the Advocacy team are very proud of, the annual calculation of the cost per \$1 million in regulatory savings attributable to Advocacy interventions. This number is basically just the total of one-time regulatory cost savings achieved in a given year, divided by the total cost of Advocacy for that year. This metric is always impressive, but it can vary considerably because we do not control what final cost-saving actions agencies take, or when they take them. On average during the last five years, each \$1,618 spent on Advocacy has yielded \$1 million in regulatory cost savings. Not bad. But in FY 2010, the taxpayers paid only \$625 for Advocacy expenses to realize \$1 million in new regulatory cost savings, the lowest amount since this metric has been in use. I think that this makes a pretty good case that your investment in Advocacy yields a good return.

In conclusion, let me again thank the Committee and its staff for the tremendous support you have given the Office of Advocacy for so many years. It helps us immeasurably in our work to know that we have this support. I look forward to continuing to work with you on issues of importance to small business. I would be happy to answer any questions that you might have.

Appendix A Regulatory Comment Letters

Regulatory Comment Letters

Regulatory comment letters concerning the Federal Government's compliance with the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act.

- **Letter dated 03/17/11 - Department of Labor, Employment and Training Administration**
- Wage Methodology for the Temporary Non-agricultural Employment H-2B Program; Final Rule
- **Letter dated 03/04/11 - Department of Transportation, Federal Aviation Administration**
Safety Management Systems for Part 121 Certificate Holders; Proposed Rule; 75 Fed. Reg. 68224, November 5, 2010
- **Letter dated 02/25/11 - Department of Transportation**
FMCSA's proposed rule would revise its regulations for hours of service for drivers of property-carrying commercial motor vehicles (CMV) by, among other things, reducing the daily maximum driving limit from 11 hours to 10, reducing the maximum on-duty time within the driving window from 14 hours to 13, requiring the release from duty at the end of the 14-hour driving window, requiring a mandatory break of at least 30 minutes within seven hours of the last off-duty period, and requiring that the current 34-hour restart provision include at least two periods between midnight and 6:00 a.m.
- **Letter dated 02/14/11 - Department of Interior, Fish and Wildlife Service**
Designation of Critical Habitat for the Sonoma County Distinct Population Segment of the California Tiger Salamander (*Ambystoma californiense*); 76 Fed. Reg. 2863, January 18, 2011
- **Letter dated 02/01/11 - Federal Reserve System**
Letter dated 02/01/11 - Federal Reserve System - Compliance Guide for Regulation Z; Docket No. R-1366, Truth in Lending
- **Letter dated 01/24/11 - Department of Justice**
Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations; 75 Fed. Reg. 43460 (July 26, 2010).
- **Letter dated 01/19/11 - Environmental Protection Agency**
Proposed Settlement Agreements for Petroleum Refineries; (75 Fed. Reg. 82,390 (December 30, 2010) and Electric Utility Generating Units (75 Fed. Reg. 82,392 (December 30, 2010)
- **Letter Dated 01/13/11 - Federal Reserve Board**
Final rule on Regulation Z; Docket No R-1366, Truth in Lending
- **Letter Dated 01/14/11 - Internal Revenue Service**
Notice 2011-6, Implementation of Rules Governing Tax Return Preparers

- **Letter dated 01/04/11 – Food and Drug Administration**

Comment Request; Restaurant Menu and Vending Machine Labeling: Recordkeeping and Mandatory Third Party Disclosure Under Section 4205 of the Patient Protection and Affordable Care Act of 2010
- **Letter dated 12/23/10 - Board of Governors of the Federal Reserve System**

On December 23, 2010, the U.S. Small Business Administration's Office of Advocacy (Advocacy) submitted comments on the Board of Governors for the Federal Reserve Board's (Board) proposed regulation on Regulation Z; Docket No R-1390 Truth in Lending.
- **Letter dated 12/23/10 - Federal Reserve System**

Truth in Lending; Proposed Rule; Docket R-1393 Truth in Lending/Credit Card Act
- **Letter dated 12/20/10 - Internal Revenue Service (IRS)**

Specified Tax Return Preparers Required to File Individual Income Tax Returns Using Magnetic Media
- **Letter dated 12/13/10 – Centers for Medicare and Medicaid Services and Food and Drug Administration**

Parallel Review of Medical Products
- **Letter dated 12/02/10 - Environmental Protection Agency**

Reply to the notification letter regarding a Small Business Advocacy Review Panel for the forthcoming regulatory proposal, "Formaldehyde Emissions from Pressed Wood Products."
- **Letter dated 12/01/10 - Department of Health and Human Services**

Concerning the forthcoming listing of styrene as a "reasonably anticipated" carcinogen in the National Toxicology Program (NTP) Report on Carcinogens.
- **Letter dated 12/01/10 - Financial Accounting Standards Board**

Proposed Accounting Standards Update regarding Leases (Topic 840)
- **Letter dated 11/22/10 - Department of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement**

Oil and Gas and Sulphur Operations in the Outer Continental Shelf--Increased Safety Measures for Energy Development on the Outer Continental Shelf
- **Letter dated 11/19/10 - Environmental Protection Agency**

Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities; Proposed Rule
- **Letter dated 11/17/10 - Department of Labor, Office of Workers' Compensation Programs**

Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels
- **Letter dated 11/16/10 - Department of Commerce, National Oceanic and Atmospheric Administration**

Listing Endangered and Threatened Wildlife and Plants: 90-Day Finding on a Petition to List Atlantic Bluefin Tuna as Threatened or Endangered under the Endangered Species Act

- **Letter dated 11/02/10 - Department of Labor, Occupational Safety and Health Administration**

Consultation Agreements: Proposed Changes to Consultation Procedures Rule
- **Letter dated 10/29/10 - Financial Accounting Standards Board**

Proposed Accounting Standards Update regarding Revenue from Contracts with Customers
- **Letter dated 10/27/10 - Department of Labor, Employment and Training Administration**

Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program
- **Letter dated 10/15/10 - Federal Communications Commission**

Wireline Competition Bureau Seeks Comment on Business Broadband Marketplace
- **Letter dated 10/12/10 - Department of Energy**

Test Procedures for Walk-In Coolers and Walk-In Freezers; Proposed Rule
- **Letter dated 10/4/10 – Department of Health and Human Services, Centers for Medicare and Medicaid Services**

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices; Proposed Rule
- **Letter dated 09/14/10 – Department of Health and Human Services, Centers for Medicare and Medicaid Services**

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices; Proposed Rule
- **Letter dated 09/09/10 – Department of Health and Human Services, Office for Civil Rights**

Modifications to the HIPAA Privacy, Security, and Enforcement Rules under the Health Information Technology for Economic and Clinical Health Act
- **Letter dated 09/08/10 - Department of Education**

Program Integrity: Gainful Employment; Proposed Rule
- **Letter dated 09/01/10 - Environmental Protection Agency**

Reply to the notification letter regarding a Small Business Advocacy Review Panel for the forthcoming regulatory proposal, for Stormwater Regulations to Address Discharges from Developed Sites
- **Letter dated 08/23/10 - Environmental Protection Agency**

National Emission Standards for Hazardous Air Pollutants for Major and Area Sources: Industrial, Commercial, and Institutional Boilers

Appendix B Summary of Cost Savings, FY 2010

Summary of Cost Savings, FY 2010 (dollars)¹

Rule / Intervention	First-Year Costs	Annual Cost
Hazardous Air Pollution Rule for Prepared Animal Feed Manufacturing (EPA) ²	7,000,000	9,000,000
Certification Procedures and Identification Requirements for Aviation Parts and Articles (FAA) ³	327,100,000	
Construction and Development Final Rule (EPA) ⁴	1,957,000,000	1,957,000,000
FAR Case 2008-015, Payments under Fixed-price Architect Engineer Contracts (FAR) ⁵	335,000,000	335,000,000
Reciprocating Internal Combustion Engines (EPA) ⁶	291,000,000	291,000,000
Clean Air Act Greenhouse Gas Regulations GHG "tailoring" (EPA) ⁷	9,143,099,941	
Women-owned Small Business ⁸	34,875,000	3,487,500
Sarbanes-Oxley ⁹	2,899,500,000	2,899,500,000
TOTAL	14,994,574,941	5,494,987,500

1. The Office of Advocacy generally bases its cost savings estimates on agency estimates. Cost savings for a given rule are captured in the fiscal year in which the agency agrees to changes in the rule as a result of Advocacy's intervention. Where possible, we limit the savings to those attributable to small business. These are best estimates. First-year cost savings consist of either capital or annual costs that would be incurred in the rule's first year of implementation. Recurring annual cost savings are listed where applicable.

2. Source: EPA.

3. Source: FAA.

4. Source: EPA November 2009 Economic Analysis, Table 2-1.

5. Source: FPDS-NG Data.

6. Source: EPA RIA Feb 2010 Table 4-4.

7. Source: EPA RIA Table 4-7.

8. Source: SBA.

9. Source: FERF Survey.

Appendix C Executive Order 13563, January 18, 2011

Presidential Documents

Title 3—

Executive Order 13563 of January 18, 2011

The President

Improving Regulation and Regulatory Review

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. *General Principles of Regulation.* (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Sec. 2. *Public Participation.* (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally

be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

Sec. 3. *Integration and Innovation.* Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

Sec. 4. *Flexible Approaches.* Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

Sec. 5. *Science.* Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

Sec. 6. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 7. *General Provisions.* (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

- (i) authority granted by law to a department or agency, or the head thereof; or

- (ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
January 18, 2011.

[FR Doc. 2011-1385
Filed 1-20-11; 8:45 am]
Billing code 3195-W1-P

**Appendix D President's Memorandum on Regulatory Compliance,
January 18, 2011**

Presidential Documents

Memorandum of January 18, 2011

Regulatory Compliance

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to enhancing effectiveness and efficiency in Government. Pursuant to the Memorandum on Transparency and Open Government, issued on January 21, 2009, executive departments and agencies (agencies) have been working steadily to promote accountability, encourage collaboration, and provide information to Americans about their Government's activities.

To that end, much progress has been made toward strengthening our democracy and improving how Government operates. In the regulatory area, several agencies, such as the Department of Labor and the Environmental Protection Agency, have begun to post online (at ogesdw.dol.gov and www.epa-echo.gov), and to make readily accessible to the public, information concerning their regulatory compliance and enforcement activities, such as information with respect to administrative inspections, examinations, reviews, warnings, citations, and revocations (but excluding law enforcement or otherwise sensitive information about ongoing enforcement actions).

Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.

Accordingly, I direct the following:

First, agencies with broad regulatory compliance and administrative enforcement responsibilities, within 120 days of this memorandum, to the extent feasible and permitted by law, shall develop plans to make public information concerning their regulatory compliance and enforcement activities accessible, downloadable, and searchable online. In so doing, agencies should prioritize making accessible information that is most useful to the general public and should consider the use of new technologies to allow the public to have access to real-time data. The independent agencies are encouraged to comply with this directive.

Second, the Federal Chief Information Officer and the Chief Technology Officer shall work with appropriate counterparts in each agency to make such data available online in searchable form, including on centralized platforms such as data.gov, in a manner that facilitates easy access, encourages cross-agency comparisons, and engages the public in new and creative ways of using the information.

Third, the Federal Chief Information Officer and the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and their counterparts in each agency, shall work to explore how

best to generate and share enforcement and compliance information across the Government, consistent with law. Such data sharing can assist with agencies' risk-based approaches to enforcement: A lack of compliance in one area by a regulated entity may indicate a need for examination and closer attention by another agency. Efforts to share data across agencies, where appropriate and permitted by law, may help to promote flexible and coordinated enforcement regimes.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of OMB is authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be "S. M. M.", written in a cursive style.

THE WHITE HOUSE,
Washington, January 18, 2011

**Appendix E President's Memorandum on Regulatory Flexibility,
Small Business and Job Creation, January 18, 2011**

Presidential Documents

Memorandum of January 18, 2011

Regulatory Flexibility, Small Business, and Job Creation

Memorandum for the Heads of Executive Departments and Agencies

Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. More than half of all Americans working in the private sector either are employed by a small business or own one. During a recent 15-year period, small businesses created more than 60 percent of all new jobs in the Nation.

Although small businesses and new companies provide the foundations for economic growth and job creation, they have faced severe challenges as a result of the recession. One consequence has been the loss of significant numbers of jobs.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public. The RFA emphasizes the importance of recognizing “differences in the scale and resources of regulated entities” and of considering “alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions.” 5 U.S.C. 601 note.

To promote its central goals, the RFA imposes a series of requirements designed to ensure that agencies produce regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses. Among other things, the RFA requires that when an agency proposing a rule with such impact is required to provide notice of the proposed rule, it must also produce an initial regulatory flexibility analysis that includes discussion of significant alternatives. Significant alternatives include the use of performance rather than design standards; simplification of compliance and reporting requirements for small businesses; establishment of different timetables that take into account the resources of small businesses; and exemption from coverage for small businesses.

Consistent with the goal of open government, the RFA also encourages public participation in and transparency about the rulemaking process. Among other things, the statute requires agencies proposing rules with a significant economic impact on small businesses to provide an opportunity for public comment on any required initial regulatory flexibility analysis, and generally requires agencies promulgating final rules with such significant economic impact to respond, in a final regulatory flexibility analysis, to comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

My Administration is firmly committed to eliminating excessive and unjustified burdens on small businesses, and to ensuring that regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses. Executive Order 12866 of September 30, 1993, as amended, states, “Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account,

among other things, and to the extent practicable, the costs of cumulative regulations.”

In the current economic environment, it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation.

Accordingly, I hereby direct executive departments and agencies and request independent agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. As the RFA recognizes, such flexibility may take many forms, including:

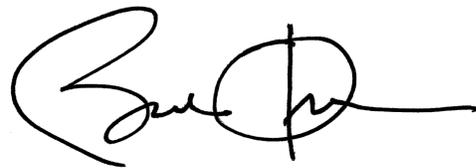
- extended compliance dates that take into account the resources available to small entities;
- performance standards rather than design standards;
- simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
- different requirements for large and small firms; and
- partial or total exemptions.

I further direct that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule.

Adherence to these requirements is designed to ensure that regulatory actions do not place unjustified economic burdens on small business owners and other small entities. If regulations are preceded by careful analysis, and subjected to public comment, they are less likely to be based on intuition and guesswork and more likely to be justified in light of a clear understanding of the likely consequences of alternative courses of action. With that understanding, agencies will be in a better position to protect the public while avoiding excessive costs and paperwork.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "Paul Ryan". The signature is stylized with a large, looped "P" and a vertical line through the "R".

THE WHITE HOUSE,
Washington, January 18, 2011

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