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*Advocacy: the voice of small business in government*

***Testimony of***

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***U.S. Senate  
Committee on Small Business and Entrepreneurship***

**Date:** November 18, 2010  
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**Topic:** Next Steps for Main Street: Reducing the Regulatory and  
Administrative Burdens on America's Small Businesses

*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, Members of the Committee, good morning and thank you for the opportunity to appear before you today to discuss regulatory and administrative burdens on small businesses. As Chief Counsel for Advocacy, it is my top priority to ensure that small businesses are not unfairly burdened by regulations, which my office does in large part through monitoring federal agencies' compliance with the Regulatory Flexibility Act (RFA). The Office of Advocacy is an independent office within the U.S. Small Business Administration (SBA). The views in my testimony do not necessarily reflect the views of the Administration or the SBA and this statement was not circulated to the Office of Management and Budget (OMB) for clearance.

I have had the honor of serving as Chief Counsel for almost three months and Advocacy has been very busy during that time. The Office of Advocacy held a symposium celebrating the thirtieth anniversary of passage of the RFA. Advocacy also hosted a symposium on Capitol Hill on job creation by high-impact firms. We have held nine small business roundtables, on issues including the environment, transportation, labor, safety and health, and tax. One of those tax roundtables covered the expanded Form 1099 reporting requirement, which I will discuss in greater detail shortly. I have signed thirteen public regulatory comment letters, including ones on environmental, education, medical privacy, and Medicare rules. I am monitoring ongoing EPA Small Business Advocacy Review (SBAR) panels on wood heaters, hazardous air pollutants from small electric utilities, and stormwater discharge. As we do every day, we have been hard at work making certain that small business does not get unnecessarily burdened by federal regulatory requirements. This is possible because Advocacy has a team of dedicated and talented lawyers, economists and other highly trained professionals that I am lucky to work with every day. Soon, that team will grow further as we hire Regional Advocates that will give me the necessary eyes and ears on the ground to help us communicate with and assist small businesses in every part of the country.

It is difficult to overstate the important role that small businesses play in our nation's economy. There are over 27 million small businesses in the U.S. which is 99.7 percent of all businesses in America. These businesses are the most dynamic, fast-changing part of the economy, employing about half of the American workforce and creating 64 percent of net new jobs. Many people believe that technology and innovation are solely the products of big businesses with massive R&D budgets, but in fact, small businesses in high tech fields tend to be more innovative than their large counterparts, producing 16 times as many patents per employee as larger firms. Not only that, but these firms are on the cutting edge of new technologies, as confirmed by the fact that the patents they produce are twice as likely to be in the top one percent of patent citations.

How do small businesses accomplish this? Well, my personal experience in starting my first business is a prime example: I left a big company to help found a small business in order to innovate and grow a company the way I thought was best. In doing so, we created new technologies and new jobs. Small businesses cannot accomplish these things if they are overburdened by federal government regulations.

As I mentioned, we recently celebrated the thirtieth anniversary of the Regulatory Flexibility Act. As part of the Office of Advocacy symposium, we released a new study authored by Dr. Mark Crain on the costs of the federal regulatory burden to small businesses. The results of the

study were eye-opening. Dr. Crain found that the total regulatory burden on small firms is larger than ever, with the smallest businesses, those with fewer than 20 employees, paying \$10,585 per employee on average to comply with federal regulations. The regulatory burden is 36 percent greater in these small firms than in their large counterparts, creating a staggering competitive disadvantage (see Appendix).

Even more stark is the contrast between the burden of environmental regulation on large and small firms in the manufacturing industry. Small manufacturers spent over \$22,000 per employee to comply with regulations from the U.S. Environmental Protection Agency (EPA), while large manufacturers spent less than \$5,000 per employee. It simply is not possible to expect small manufacturers to remain competitive with their larger domestic and international counterparts when their cost of complying with environmental regulations is 464 percent greater.

On my first day in office as Chief Counsel of Advocacy, August 23rd of this year, I sent a public comment letter to the EPA on their proposed rule on packaging hazardous air pollutants from industrial, commercial, and institutional boilers. EPA had conducted an SBAR panel on two rules regarding Major Source and Area Source boilers, which affected literally millions of small businesses. Through the panel process, EPA reduced the scope of the Area Source rule on smaller boilers and, almost by definition, smaller businesses, leading to over \$20 billion in burden reduction in the rule that was eventually proposed. This is an example of how the SBREFA panel process should work, informing agencies of small business concerns and the agency incorporating this information into the rulemaking process to design better standards.

The Major Source rule that EPA proposed, however, was problematic in that EPA did not adopt the majority of the panel's recommendations for more flexible compliance options. Advocacy believes that EPA had the authority and should have done more to reduce the burden of the rule on over 150 small manufacturers, municipal power plants, and other facilities that fall into the Major Source category. The rule will cost some small businesses millions of dollars to bring their facilities into compliance. Both the panel report and my letter recommended that EPA (1) adopt less stringent emissions standards that could be met without extremely costly capital investments; (2) reduce monitoring and recordkeeping requirements; and (3) incorporate special subcategories for boilers that are only infrequently used or vary in significant ways from the ones EPA used to determine the emissions standards. The point of my letter was simple: that EPA should craft emissions standards that small businesses can actually meet, rather than ones that, in some instances, will be hard for even the largest firms to achieve without redesigning entire facilities. As with all regulatory matters, we will continue to work with EPA on this issue.

Compliance with Internal Revenue Service (IRS) tax regulations is another area where small business is at a severe cost disadvantage to large firms. The cost to small businesses of tax compliance is over 300 percent greater per employee than the cost to large companies. Fixed costs like this make it that much harder for small firms to hire new employees and help the economy grow. The disproportionate burden of tax compliance costs is precisely why small businesses are so uniformly opposed to expanding the scope of tax reporting through Form 1099. As I will describe in detail, the Form 1099 provision would greatly increase the reporting and recordkeeping burdens on small businesses. Because of this, Advocacy commends Senator Baucus and Senator Landrieu on the introduction of the "Small Business Paperwork Relief Act"

that would repeal the expanded Form 1099 reporting requirement. Advocacy fully supports their call for a repeal of this reporting requirement.

Advocacy has been involved with this issue from the beginning. Following an IRS-issued notice requesting public comments for ways to reduce the burden of reporting and record keeping required with Form 1099,<sup>1</sup> Advocacy hosted a roundtable on September 22, 2010. The roundtable gave small businesses an opportunity to comment on how they anticipated that the expanded reporting requirements would impact them and what suggestions they could offer to reduce the burdens of the expanded reporting requirement.

Over 30 small business owners and representatives attended the roundtable or participated by phone. Participants said that the expanded Form 1099 reporting requirement would increase burdens on small businesses in two ways. First, the expanded reporting requirement would result in a significantly greater paperwork burden. As an example, one roundtable participant said that the expanded Form 1099 requirement would result in his business increasing its tax year filings from ten 1099 forms to three hundred and sixty. Second, and more significantly, roundtable participants focused on the all-new internal data controls that would need to be implemented to address the expanded reporting requirements.

The information reported on a Form 1099, such as the Tax Identification Number (TIN) of a vendor, is different from the information usually maintained and tracked by businesses. As a result, all-new internal controls will need to be implemented to determine if the expanded Form 1099 requirement is triggered and this information will need to be saved. Most small businesses do not have specific personnel available to create and manage such a system, and the costs of compliance will be daunting.

Ultimately, at the roundtable, small business owners and representatives called for legislative action to address the burdens caused by the expanded Form 1099 reporting requirement. I agree with this assessment and support the repeal of the expanded Form 1099 reporting requirement.

Economic regulations are another area of significant cost burden for small businesses, as illustrated by Dr. Crain's report. These include regulations that affect the banking and financial services sectors. It is especially crucial at present that we do everything possible to ensure that small businesses in need of capital are not hampered, including by regulatory barriers that make lending more costly than necessary. My staff and I have been working closely with the newly created Consumer Financial Protection Bureau (CFPB) to help them build compliance with the RFA, and especially the SBAR panel process, into their rulemaking processes from the beginning.

I met earlier this week with the leadership of the CFPB to discuss implementation of the SBREFA panel process into CFPB's rulemaking plans. I also attended a meeting at the White

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<sup>1</sup> <http://www.irs.gov/pub/irs-drop/n-10-51.pdf>. In the notice, the IRS provided one example of reducing the burden of the expanded requirement by observing that the IRS has "already issued a proposed regulation that would allow a broad exemption from [Internal Revenue Code] section 6041 information reporting for payment card transactions that would otherwise be reportable [on Forms 1099]." The IRS Notice sought public comments on similar methods to reduce the burdens associated with the expanded 1099 reporting requirement.

House on Tuesday where Elizabeth Warren briefed trade associations on her plans to begin implementing the CFPB's mandate. Finally, this afternoon, the Office of Advocacy will be hosting a small business roundtable that will allow small firms in the banking and finance sector to discuss future regulatory action and the SBREFA process with the CFPB and other federal financial regulatory agencies. We believe that building the SBAR process into these future rulemakings earlier rather than later will best serve the interests of small business and ensure that rules made under this process will be stronger and more effective.

I would like to thank you once again for inviting me to speak to you today. Advocacy stands ready to voice the concerns of small business throughout the process, from legislative actions to rule finalization. It is critical that Advocacy communicate the concerns of small businesses to help foster an atmosphere of certainty and fairness for small businesses. Being able to plan ahead and to compete on a level playing field encourages small businesses to have confidence. When this happens, small business is an engine for the economy and a major source of job creation. I commend the Committee on your commitment to reducing the regulatory burden on small business.

## Appendix

<b>Annual Cost of Federal Regulations by Firm Size</b>				
<b>Type of Regulation</b>	<b>Cost per Employee for All Firms</b>	<b>Cost per Employee for Firms with:</b>		
		<b>Fewer than 20 Employees</b>	<b>20–499 Employees</b>	<b>500 or More Employees</b>
All Federal Regulations	\$8,086	\$10,585	\$7,454	\$7,755
Economic	5,153	4,120	4,750	5,835
Environmental	1,523	4,101	1,294	883
Tax Compliance	800	1,584	760	517
Occupational Safety and Health and Homeland Security	610	781	650	520

Source: *The Impact of Regulatory Costs on Small Firms*, by Nicole Crain and Mark Crain, 2010. U.S. Small Business Administration, Office of Advocacy ([www.sba.gov/advo/research/rs371tot.pdf](http://www.sba.gov/advo/research/rs371tot.pdf)).