

Advocacy Welcomes Its Seventh Chief Counsel

On January 4, 2016, Darryl L. DePriest was sworn in as the Office of Advocacy's seventh presidentially appointed and Senate-confirmed Chief Counsel for Advocacy. Joined by his family, DePriest was sworn in by SBA Administrator Maria Contreras-Sweet at the Small Business Administration's headquarters. He has hit the ground running, filling up his first couple of weeks with meetings with Advocacy staff and other small business stakeholders.

"I am honored and humbled to serve on behalf of America's small businesses. I want to thank President Obama, the U.S. Senate, and the numerous small business owners and organizations who supported my nomination," said DePriest. "My utmost responsibil-

ity will be to serve as the independent voice for our nation's small businesses within the federal government. With more than 28 million small businesses in America, I know the job will be tough, but I am prepared for the challenge. I look forward to keeping our nation's economy strong through a vibrant small business marketplace."

Hailing from Chicago, DePriest has a distinguished legal career. He was most recently the senior consultant for legal and regulatory communications for Hill + Knowlton Strategies, a position he held since 2008. Before joining Hill + Knowlton, DePriest served as the general counsel of the American Bar Association from 1988 until 2006. From 1980 to

1988, he was a litigation attorney at Jenner & Block and was named partner in 1987. From 1979 to 1980, he was a judicial law clerk for the Judge Robert E. Keeton of the United States District Court for the District of Massachusetts. And he served as a fellow, board member, and president of Leadership Greater Chicago, and as chair of the City of Chicago Board of Ethics.



Darryl L. DePriest is sworn in as chief counsel for advocacy by SBA Administrator Maria Contreras-Sweet. From left is Michele DePriest, Bertha DePriest, Maria Contreras-Sweet, Darryl L. DePriest, Colleen Connell, and Carlyle DePriest.

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Advocacy News

Former Chief Counsels Discuss the RFA's Staying Powers

By Rebecca Krafft, Senior Editor, and Daniel T. Kane, Law Clerk

In 1980, Milt Stewart was chief counsel for advocacy, “Who Shot J.R.?” was the number one TV mystery, and President Jimmy Carter signed the Regulatory Flexibility Act (RFA) into law.

The latest edition of Advocacy’s annual report on the RFA, published this month, looks back over the law’s 35-year evolution. To mark this anniversary, four former chief counsels who helped shape and strengthen the statute shared their perspectives on the RFA’s milestones. Their accounts help show how the RFA has become an important part of the federal rulemaking process.

The RFA’s passage in 1980 marked an important milestone for the new Office of Advocacy, which had been established in 1976. However, getting agencies to comply with the statute was an uphill battle early on.

Frank Swain, chief counsel from 1981 to 1989, discussed the signing of the RFA in 1980. While on the one hand, Swain noted that “We were just draining the swamp,” (i.e., just starting the process), he also explained the RFA’s success and continuing relevance. “The RFA is the only regulatory reform that is statutorily required,” Swain said. “Most of the regulatory reforms are

largely executive orders,” which frequently expire at the end of the president’s term. “The RFA, because of its statutory basis, is going to be around indefinitely,” Swain said.

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 added teeth to the RFA—providing judicial review and requiring small business review panels at the Environmental Protection Agency and Occupational Health and Safety Administration. Jere W. Glover, chief counsel for advocacy from 1994 to 2001, made two key observations in this regard. First, “If you get to the agency early in the process, they are more likely to change their mind.” And second, the mission of these efforts is to “make the regulation work for the industry,” not to “kill the regulation.” Glover’s perspective is unique in that he was also present at the creation of the RFA as deputy to Milton Stewart, the first chief counsel for advocacy.

Thomas M. Sullivan, chief counsel from 2002 to 2008, discussed Executive Order 13272, which strengthened agency compliance and launched RFA compliance training for federal officials. Sullivan said that “Advocacy became a part of the fabric of federal rulemaking,” as a result of the E.O. “Training really

helped accomplish this,” Sullivan said. “The goal is to create regulations that meet the regulatory purpose and are sensitive to small business requirements.”

President Obama’s E.O.s 13563 and 13610 bolstered the RFA’s look-back requirements, directing all executive agencies to conduct periodic retrospective review of existing rules. Another related administrative action, E.O. 13579, recommended that all independent agencies do the same. This emphasis on the principles of regulatory review and the sensitivity to small business concerns in the federal rulemaking process further increased federal agency compliance with the RFA.

Dr. Winslow Sargeant, chief counsel for advocacy from 2010 to 2015, stressed that these executive orders sought to “make federal regulation more clear, predictable, and transparent.” Sargeant identified two key areas, “retrospective review of existing regulation and deregulation when rules are no longer needed,” as important future challenges for regulatory improvement.

The Report on the Regulatory Flexibility Act, FY 2015 is available on Advocacy’s website at <http://go.usa.gov/cnzve>.

Economic News

Annual Economic Research Report Released

In December, the Office of Advocacy released its Annual Report of the Office of Economic Research, FY 2015. This report details 26 economic research publications that were released and eight Small Business Economic Research Forums that were conducted during fiscal year 2015. This year, the

Office of Economic Research (OER) produced research on topics including access to capital, employment, innovation, minority- and women-owned businesses, and veterans.

Each year, OER produces a number of contracted research reports on current issues affecting small businesses. It also releases in-house

research in the form of quarterly reports, issue briefs, and general economic research. The staff of OER is constantly seeking to report on current topics to produce timely and relevant research that is important to small business.

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Message from the Chief Counsel

New Year's Resolution: Make Small Business Voice Heard in Washington

By Darryl L. DePriest, Chief Counsel for Advocacy

As one year ends and a new year begins, many of us normally take time to reflect on the past. Today, I am only looking toward the future. I am humbled to begin my service as the seventh presidentially appointed and Senate-confirmed chief counsel for advocacy. The Office of Advocacy plays a pivotal role in the success of small businesses across America. The voice of small business can often be overshadowed in the regulatory process. For this reason, Advocacy is of the utmost importance. It is our duty to elevate small business concerns while ensuring that we continue to achieve regulatory goals.

Beginning my tenure as chief counsel for advocacy carries with it the legacies of those who have led before me. While recognizing that the task ahead may be difficult, I look forward to being a strong independent voice on behalf of small business. To this end, I will be evaluating areas for legislative improvements and finding avenues to strengthen the Regulatory Flexibility Act (RFA).

As the new chief counsel, I will continue to utilize the office's team of seasoned attorneys to stand strong for small business in the federal regulatory process. By involving Advocacy early in the

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rule writing process, federal regulators not only ensure that they are staying within the legal bounds of the RFA, but they can also provide less burdensome alternatives for small business while still achieving their regulatory goals. The continued training of regulatory agencies is also an integral part of Advocacy's mission, and one that I plan to emphasize. Year in and year out, Advocacy's work in the regulatory process has saved small businesses across the country billions of dollars. Under my direction, the great work that Advocacy performs will continue and I can promise that small businesses will have a voice at the table.

Standing strong for small business in the regulatory process would not be possible without the valuable research that Advocacy produces. By understanding the small business contribution to the economy, the chief counsel can constructively speak on their behalf. We need to understand their demographics, we need to



explore their innovations, and we need to look at how they evolve in an ever-changing global economy. The research that Advocacy publishes is an essential component in ensuring that the small business point of view is present in all Washington, D.C., policy discussions.

The Office of Advocacy is an essential office within the federal government, and one that small businesses across the United States can rely on. I am looking forward to meeting small business owners from all over the country, listening to their stories, and speaking on their behalf. Small businesses make America great, and we must do all that we can to make sure they have every opportunity to do so.

OER Report, from page 2

One topic to which OER paid special attention this year was innovation, which Advocacy believes is key in the formation of new small businesses.

In addition to research reports, new during FY 2015 was Advocacy's dialogue series about the small business economy.

The new series, Small Business Economic Research Forums, give economists and researchers an opportunity to give presentations on relevant small business issues. These forums also informed Advocacy's staff of the cutting-edge topics that are affecting small businesses. OER held eight forums in FY 2015 and hopes to have many more in the years to come.

The Annual Report of the Office of Economic Research, FY 2015 can be found on Advocacy's website at <http://go.usa.gov/cnzvQ>.

The report contains hyperlinks to each report referred to, all of which are hosted on Advocacy's website.

Regulatory News

Advocacy Urges Veterans Affairs to Reconsider Impact on Small Businesses

On January 6, 2016, Advocacy sent a letter to the Department of Veterans Affairs (VA) to comment on a proposed rulemaking which would clarify eligibility requirements for veteran and service-disabled veteran-owned small businesses to obtain “verified” status to participate in the VA’s Veterans First Contracting Program.

In the letter, Advocacy urged the VA to perform an Initial Regulatory Flexibility Analysis (IRFA) instead of certifying that the rule would not have a significant economic impact on a substantial number of small entities. The letter can be found on Advocacy’s website at <http://go.usa.gov/cnzRJ>. For more information contact Major Clark at Major.Clark@sba.gov.

Comments to EPA Related to the Clean Power Plan

The Environmental Protection Administration (EPA) issued the final Clean Power Plan (CPP) in October 2015. EPA also proposed a federal implementation plan for all states that wouldn’t do their own plan. Advocacy submitted a comment letter on this federal plan on December 21, 2015. In this letter, Advocacy strongly recommends that EPA re-propose individual federal plans for each state that must have one, and that the agency develop a supplemental IRFA to aid small entities in understanding the issues unique to their business, state, and region.

The letter can be found on Advocacy’s website at <http://go.usa.gov/cnzU4>. For more information, contact David Rostker at David.Rostker@sba.gov.

Letter Addresses Certification of Pesticide Applicators

The Environmental Protection Administration (EPA) regulates the use of pesticides. Some pesticides require special handling, and may only be applied by a certified applicator or someone under their direct supervision. In August 2015, EPA proposed changes to the rules for certifying applicators.

On December 1, 2015, Advocacy submitted comments to EPA expressing concern about these changes. The letter states that EPA’s proposal will impose unnecessary burdens on small businesses and result in less effective and timely training. The letter can be found on Advocacy’s website at <http://go.usa.gov/cnzEJ>. For more information, contact David Rostker at David.Rostker@sba.gov.

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The Small Business Advocate

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The Small Business Advocate newsletter is published by the U.S. Small Business Administration’s Office of Advocacy. It is distributed electronically to 35,000 subscribers.

The Office of Advocacy is the independent voice for small business in the federal government. The office is the watchdog of the Regulatory Flexibility Act (RFA) and the source of small business statistics. Advocacy advances the views and concerns of small business before Congress, the White House, the federal agencies, the federal courts, and state policymakers.

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