

40th Anniversary Symposium Edition



The Office of Advocacy held its Anniversary Symposium on June 22, 2016 to mark a number of important milestones for small business. The year 2016 marks the 40th anniversary of the creation of the Office of Advocacy, the 35th anniversary of the signing of the Regulatory Flexibility Act, the 20th anniversary of the Small Business Regulatory Enforcement Fairness Act, and the 15th anniversary of the signing of Executive Order 13272.

To celebrate these significant anniversaries Advocacy hosted an all-day event that brought together congressional leaders, small business trade associations, federal agency regulatory staff, think tanks, universities, attorneys,

economists, policymakers, and small business stakeholders. The historic celebration included panels on regulatory progress for small business, ways to properly assess the costs of regulations on small business, discussions of historical changes to Advocacy and the laws it oversees, ways to improve agency regulatory compliance, and potential changes to these laws which would be best for small business.

The event highlighted various congressional leaders' perspectives on all of these topics and looked for new ways to assist the Office of Advocacy to complete its important mission in the next 40 years.



Advocacy staff at the 40th Anniversary Symposium on June 22, 2016.

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Chairman David Vitter Congratulates Advocacy for 40 Years of Serving Small Businesses

By Katie Moore, Legal Intern

Senator David Vitter, chairman of the Senate Small Business and Entrepreneurship Committee (SBC), delivered the keynote speech at the Office of Advocacy's 40th Anniversary Symposium.

Chairman Vitter congratulated Advocacy on 40 years of serving small entities and expressed his own commitment to the important agenda of addressing small businesses' needs. He listed his three top priorities before completing his chairmanship of the SBC. First, he plans to make his bill S.2992, entitled the Small Business Lending Oversight Act of 2016, into law. He stated that this will give needed strength and support to the SBA's 7(a) loan program because, "Access to capital is a small business' lifeline, and as that business grows, so do jobs and the economy."

Second, he plans to reauthorize the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer

(STTR) programs this year. Chairman Vitter said this "will help ensure long-term stability and foster an environment of innovative entrepreneurship by directing more than \$2 billion annually in already-existing federal R&D funding to the nation's small firms that are most likely to innovate and help create jobs in this way."

Third, he wants the SBC's central focus to continue to be regulatory reform. Chairman Vitter stressed that small businesses have been hit by "this Administration's regulatory onslaught," causing owners to spend a "staggering" number of hours in order to comply. Chairman Vitter contrasted the resources of larger entities to the "far heavier compliance costs for small businesses." Therefore, Chairman Vitter stressed that "the Office of Advocacy and the Regulatory Flexibility Act (RFA) are so vital in holding agencies accountable in the rulemaking process." Chairman Vitter emphasized



Chairman David Vitter speaking to the crowd at Advocacy's Anniversary Symposium.

the valuable role the Office of Advocacy serves as "the independent voice for small businesses" and stated agency compliance with Advocacy's comments is essential.

He concluded his speech by once again congratulating the Office of Advocacy on its 40th Anniversary, and said that he looks forward to continuing to work together to "continue to implement common-sense reforms."

Chairman Steve Chabot: Small, But Mighty Job Creators

By Elle Patout, Congressional Affairs and Public Relations Manager



Chairman Steve Chabot delivering remarks on fighting for small business.

Congressman Steve Chabot, chairman of the House Small Business Committee, took time out of his busy schedule to address the audience during Advocacy's Anniversary Symposium, a day that recognized pivotal events in the office's history. However, the event was a day of celebration not only for the Office of Advocacy, but also, for the Chairman himself. Wednesday, June 22, 2016, marked 43 years of marriage for Chairman Chabot and his wife Donna. Instead of

spending the day in his hometown of Cincinnati, Ohio, the Chairman came to the conference to speak with small businesses.

His remarks focused on the continued fight on behalf of small businesses—the small, but mighty job creators. Chairman Chabot outlined his belief that, "The devastating impact of new regulations on small businesses continues to grow even though small businesses are more engaged and better represented in the rule-making

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The Great Compromise: The Capitol Hill Outlook on Regulatory Reform

By Elle Patout, Congressional Affairs and Public Relations Manager

The first panel of the day, “Congressional Perspectives: Views from the Hill on the Importance of Small Business,” focused on a multitude of ways to productively reform the Regulatory Flexibility Act. President of the National Small Business Association Todd McCracken moderated the discussion.

The four panelists were:

- Eric Bursch, Minority Staff Director, Senate Regulatory Affairs and Federal Management Subcommittee, Homeland Security and Governmental Affairs Committee;
- Susan Eckerly, Director of Regulatory Review, Senate Budget Committee;
- Ami Sanchez, General Counsel, Senate Small Business and Entrepreneurship Committee;
- Viktoria Seale, Counsel, House Small Business Committee.

A couple topics on the forefront of the day’s discussion included retrospective review and indirect effects. Panelists on both sides of the aisle agreed that with the ever-changing nature of today’s world many rules are becoming counterproductive and reviewing old regulations is no longer important, it is imperative for America to remain a vibrant economy. In addition, participants stated that

legislation where retrospective review is ingrained would be beneficial. Similar to the Office of Advocacy’s legislative priorities, it seems there is common belief that agencies should prepare periodic reviews demonstrating that they have considered alternative means of achieving the regulatory objective while reducing the regulatory impact on small businesses. In addition to making some executive orders part of the statute, panelist Viktoria Seale expressed the belief that RFA reforms should better clarify the law as opposed to only making changes to the law.

One topic that got all the Congressional staff involved and the dialogue flowing was the indirect effect of regulation. There was consensus among the panelists that indirect effects would not be the easiest to define and compute. Susan Eckerly addressed how there is widespread disagreement among economists, academics, and policymakers on how to calculate indirect effects. Fellow panelist Eric Bursch made a sports’ comparison to drive the point home. Bursch explained how Congress does not make many 50-yard touchdown passes, instead they gain three yards here and there before they cross the goal line. However, Ami Sanchez and Viktoria Seale agreed there

are reasonable and tangible ways to address this goal. In the end, Eckerly recommended that Advocacy work together with the Office of Information and Regulatory Affairs to put together some agreed upon language that would move the ball forward in this arena.

Beyond certain niche topics, the overall message that participants underscored was the need for policymakers to frame the discussion correctly. Most importantly, if lawmakers want to make changes to improve the regulatory environment, they cannot take political sides forcing people to choose between two different ends of the spectrum. Panelist Ami Sanchez phrased it well by saying, “On one hand, it really can’t be about ‘all regulations are burdensome and therefore bad.’ And on the other, it can’t be ‘any attempt to evaluate or reform the system is going to undermine public health and safety.’” As Advocacy continues to be the independent voice for small business, our efforts and conversations with policymakers will continue, and we hope to improve legislation to help advance regulatory consideration for our nation’s small businesses in the 40 years to come.



The Congressional panel discussing reforming the Regulatory Flexibility Act.

Leading the Charge: A Conversation with Former Chief Counsels

By Daniel Kane, Law Clerk

To celebrate 40 years of service and reflect on many watershed moments, the Office of Advocacy invited five former chief counsels for advocacy to describe how the office navigated the ebbs and flows of federal regulation under their leadership. Former Chief Counsels Frank Swain, Thomas Kerester, Jere Glover, Thomas Sullivan, and Winslow Sargeant each recounted their time at the helm of Advocacy and some of the successes they—and Advocacy’s staff—achieved for small businesses.

However, before any stories could be shared, Director of Regional Affairs Michael Landweber reminded all in attendance that Advocacy’s anniversary

celebration would not be complete without remembering the late Milton “Milt” Stewart, the first chief counsel for Advocacy. Reading from Advocacy’s tribute to the late leader, Landweber said “Many of [Advocacy’s] accomplishments are the fruit of seed planted by Milt and the team he assembled to form the Office of Advocacy.” Many of the chief counsels present for the 40th anniversary recalled their interactions with Milt, his unwavering passion for small businesses, and his lasting impact on both Advocacy and the small business advocates he inspired.

Landweber then turned the discussion over to Frank Swain, who served as chief counsel

from 1981 to 1989. Swain, currently a partner at Faegre Baker Daniels in Washington, D.C., began advocating for small businesses at the National Federation of Independent Business and came to Advocacy during the “golden era” of government agencies, which, he explained, was “when there weren’t so many.” Swain recalled the first time he testified before Congress as chief counsel and how his actions emphasized Advocacy’s independence from the Reagan Administration. Hours before Swain was to testify to the Senate Small Business Committee on the impact of the Davis-Bacon threshold, he received a call from the White House asking him not to testify as they had not yet issued an opinion on the matter. Swain, recognizing the importance of Advocacy’s role as an independent voice, told the White House that he was still going to testify, but would stress that his testimony represented the views of the chief counsel and not the White House or the Small Business Administration.

Thomas Kerester, who served as chief counsel from 1992-1993, echoed Swain’s regard for

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Former Chief Counsels discussing their time in Advocacy.

Chabot, *from page 2*

process than ever before.” For this reason, he discussed the committee’s extensive oversight of agency compliance with the RFA. Moreover, he explained how the committee has been identifying weaknesses and loopholes in the law and working on legislative solutions to strengthen the RFA and the Office of Advocacy. He underscored this effort by sharing details of his recent legislation that focused on modernizing

and strengthening the RFA. Some specific topics he chose to highlight were reasonably foreseeable indirect effects, new opportunities through SBREFA panels, and giving Advocacy more authority in the rule writing process. He also addressed regulations that he believed were impeding small business success such as the Environmental Protection Agency’s Waters of the United States and the Department of

Labor’s Overtime rule.

In the end, the Chairman re-emphasized the importance of fighting on behalf of the small, but mighty job creators. His remarks charmed the audience through his various anecdotes of working on behalf of small business and his 20 years of tireless work on the House Small Business Committee.

Former Chief Counsels

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Advocacy's independence in government. According to Kerester, during his confirmation as chief counsel, the chairman of the Senate Small Business Committee said "when you get approved, take [Advocacy's] message outside the Beltway." As requested, Kerester recounted zigzagging across the country, enjoying his time meeting small businesses—"the backbone of the economy."

Jere Glover, chief counsel from 1994-2001, began by recalling his earlier tenure at Advocacy under the late Milt Stewart. Glover described Milt's knack for working with the White House and people, including government officials. Glover said that Milt's "tricks" included getting permission from President Jimmy Carter to compile a list of accomplishments on behalf of small businesses, a task that allowed Stewart and Glover to gain access to the regulatory process with each agency and advocate for small businesses within the government. "I learned a lot from Milt," Glover said, and he used this knowledge

later as chief counsel working for the passage of the Small Business Regulatory Enforcement and Fairness Act (SBREFA) in 1996. According to Glover, Advocacy works best when working with an agency who wants to help the small businesses understand the regulation. The key is getting both sides to work together.

Tom Sullivan, chief counsel from 2001-2008, recounted Advocacy's successes with implementing Executive Order 13272 and advancing state-level regulatory reform with the regional advocates. Sullivan also expressed his immense gratitude to the office's staff for their work and support during his tenure. When asked, "What worked the best when you were serving as chief counsel," Sullivan replied, "the staff worked the best." Sullivan, who was the named author of the aforementioned tribute to Milt Stewart, said "I didn't write that. Jody [former director of information] or someone else wrote it and I believed it. The same is true for many comment letters and testimony."

Winslow Sargeant, who served as chief counsel from 2010-2015, echoed Sullivan's gratitude to Advocacy's staff, especially when referring to the "bump in the road," referencing his tumultuous 2009 confirmation process. Sargeant then described his "introduction" to Advocacy, which included a congressional request for legislative priorities, a letter from Congress questioning Advocacy's independence from the White House regarding the Affordable Care Act (ACA), and testimony on the Form 1099 provisions of the ACA on which he broke from the Obama Administration. Despite these difficulties "I had good staff and support from our stakeholders," Sargeant said.

Advocacy became what it is today under the leadership of these individuals and has accomplished a lot on behalf of small business. As Sullivan suggested, "If you get to step back, you'll see you make a positive impact for small businesses—you're making an incredible difference."

Admiral Gay speaks to Advocacy Symposium about Office Differences

By Jennifer Smith, Assistant Chief Counsel

SBA's National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness Earl L. Gay, a U.S. Navy Rear Admiral (Retired), joined SBA following a distinguished career as a naval officer and aviator. Admiral Gay matriculated at the U.S. Naval Academy in 1976—the same year that the country celebrated the Bicentennial, US military service academies admitted women and Congress created the Office of Advocacy.

Admiral Gay spoke about the collaboration that the Ombudsman has had with Advocacy and the

difference between the two offices. Whereas Advocacy listens to small businesses, submits comments and works with the agencies before the final rules have been promulgated, the Ombudsman's office comes into play after the rules and regulations have been enacted. The Ombudsman receives comments from small business owners regarding any kind of federal burden or regulation that impedes a small business owner's ability to operate their business. This includes leveling of fines or penalties, excessive audits or any kind of compliance issues that the

business owner might have. The Ombudsman reviews the issue and refers the issue to the particular agency and expects a high-level response within 30 days. Advocacy has a strong relationship with the Ombudsman's office and the regional advocates are very active in the Ombudsman's regulatory fairness board meetings across the country. Admiral Gay thanked the regionals for all of their hard work and for helping his office be successful by helping small businesses find them.

Estimating Small Business Burdens: Challenges and Opportunities

By Michael McManus, Regulatory Economist

The Symposium's third panel commenced in a surprisingly light hearted fashion; with panelists' favorite economist jokes. The panel focused on how agencies measure regulatory costs to small businesses, the difficulties surrounding these analyses, and the importance of SBREFA panels. Moderated by the Office of Advocacy's Chief Economist, Christine Kymn, the panel contained four individuals with expertise in regulatory economic analysis. Adam Finkel, currently a senior fellow at the University of Pennsylvania Law School and previously the director of Occupational Safety and Health Administration's health standards programs, and Alexei Alexandrov, senior economist at the Consumer Financial Protection Bureau, provided insight from within rule writing agencies and academia. Joining them were Mary Fitzpatrick and Jim Laity from the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) who review federal agencies' economic analysis of significant regulations.

To begin, the panel noted the importance of analyzing the costs and benefits of regulations to specific groups like small businesses. Performing this analysis, called distributional analysis, for small businesses can help lower costs and is a key aspect of the Regulatory Flexibility Act. Finkel stressed that the distributional analysis should not be "secondary" to a main economic analysis, but be part of the same process and given equal weight. The other panelists agreed that small business distribution analyses improve policy decisions and should not be considered merely ancillary.



Economists on the cost of regulation panel all spoke on understanding how the cost of regulations can affect small businesses.

The panel also discussed the issues agencies face when estimating the costs of regulations on small businesses. Understanding the uncertainties around cost and benefit estimates was a key aspect that Finkel felt agencies and government economists could improve. Fitzpatrick noted that agencies sometimes miss or are unable to estimate some types of effect, such as the possibility of business closings, employment changes, and the loss of product variety. Laity commented that regulatory costs should be compared against businesses' profits to understand their true burden. However, all of these deeper analyses would require better data which is often unavailable. For example, Alexandrov agreed that comparing costs to profit may be the best practice, but said he rarely sees representative data on business profits.

Every panelist spoke about data availability issues. Alexandrov noted that agencies often want to gather more data from businesses, but must weigh that desire against the added costs on businesses of additional forms or surveys. Further, he said that small

businesses tend to be exempt from some paperwork requirements, which adds to the difficulty in estimating small business regulatory costs. Many panelists talked about the SBREFA process as an important tool that can alleviate this issue. While they usually do not provide a large amount of hard data, the small business representatives (SERs) often call attention to the regulatory provisions that will be the most burdensome to small business. Further, as Laity mentioned, the SERs know how their business practices will interact with an agency's regulatory proposals and often suggest more efficient alternatives.

The panel's discussion was far reaching and underscored the importance of economic analysis in the regulatory process. Regulatory economic analyses are a critical tool to ensure governmental agencies are not only hearing from small business, but also accounting for them in their policy. While this panel highlighted the improvements still to be made, it also showed the amazing progress that has occurred since the passage of the RFA and SBREFA.

How to Reduce the Small Business Impact: a Panel of Government and Private Sector Professionals

By Rebecca Krafft, Senior Editor

The fourth panel, Reducing the Burdens: Making Better Policies for Small Business, consisted of experts with background in government and the private sector discussing regulations in the financial, transportation, environmental, and telecommunications sectors. The panelists were:

- Jane Luxton, a partner at Clark Hill, PLC, and former general counsel for the National Oceanic and Atmospheric Administration (NOAA);
- Jonathan Moss, assistant general counsel for regulation at the Department of Transportation (DOT);
- Bill Wehrum, partner at Hunton & Williams, and former acting assistant administrator and chief counselor in the Environmental Protection Agency's Office of Air and Radiation; and
- S. Jenell Trigg, a member of Lerman Senter, PLLC, former assistant chief counsel at the Office of Advocacy and also former staff at the Federal Communications Commission (FCC).

The moderator, Office of Advocacy Assistant Chief Counsel David Rostker, asked them to consider whether the RFA has lived up to its purpose—requiring federal agencies to consider the impact of their regulations on small entities. Each speaker brought their own significant experiences to the question.

Luxton discussed the SBREFA panel process as applied to the Consumer Finance Protection Bureau. “The CFPB considers itself an agency designed to protect consumers. . . . Some of those small businesses are the people who consumers say aren't treating them right. . . . the SBREFA

panels are the only recourse some small businesses may have to make their views known.” For that reason, she stated that SBREFA panels at CFPB “might be more important than ever.”

Moss discussed DOT's experience with the RFA, stating that “The RFA has lived up to its purpose. It has had and will continue to have a significant impact on

way of doing what it is that they do. And when they're required to do what they do in a somewhat different way, then it's a catalyst for bringing in new ideas and new energy, and new creativity into the process.” Fourth, the RFA brings a different group of people into the discussion, from small businesses themselves to the Office of Advocacy.



The final panel discussed the RFA and SBREFA panels in depth.

rulemaking at DOT.” Moss stated that “Small entities are at the core of each of the business sectors that we regulate. And we are sensitive of the impact the regulations have on their viability, as well as on the U.S. economy. Consideration for small business impacts is embedded throughout our rulemaking process. We strive to ensure that small businesses are aware of, and know how to engage in our rulemaking process.”

Wehrum identified a number of important benefits of the RFA. First, the RFA forces agencies to consider small business impacts through “analyses that might not otherwise be done.” Second, the RFA tends to make agencies seriously consider the regulatory approach with the least impact on small entities. Third, the RFA creates a venue for exploration of new ideas. He explained this by saying, “In my experience the regulators get into a particular

Trigg discussed the importance of the RFA and expressed concerns about FCC's compliance with the RFA in some recent high-profile rulings, noting its lack of economic analysis. She discussed some specific RFA cases that she has litigated, expressing hope that the courts would take FCC to task for its lack of analysis. However, she also noted a recent case that served to undermine the RFA by allowing the FCC to make major changes in policy without rulemaking.

The panelists agreed that the RFA works by getting agencies to consider small business impacts in their rulemakings. Although each of the panelists named examples in which small business concerns weren't fully resolved, they generally agreed that the RFA process works and that federal rules are better thanks to agencies RFA compliance.



Assistant Chief Counsel Major Clark (left) and Director of Regional Affairs Michael Landweber (right) posing for a photo with Small Business and Entrepreneurship Council President Karen Kerrigan (middle).



Chief Counsel for Advocacy Darryl L. DePriest (right) welcoming Admiral Earl L. Gay (Ret.) (left) to the stage to speak.



Former Chief Counsels Winslow Sargeant (left) and Thomas Sullivan (right) enjoying their panel discussion.



Advocacy employees taking advantage of a good photo opportunity.

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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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