

## *Advocacy Files Comments on Federal Register's IBR Petition*

On June 1, 2012, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submitted comments to the Office of the Federal Register (OFR) on OFR's request for comments on the *Petition for Rulemaking on "Incorporation By Reference" and the term "Reasonably Available"* that was recently published in the Federal Register [77 Fed. Reg. 11414 (March 30, 2012)]. The petition was filed with OFR by a group of legal scholars affiliated with the Administrative Conference of the United States (ACUS) and asks OFR to define the term "reasonably available" with respect to matters that may be properly incorporated by reference under OFR regulations.

Incorporation by Reference (or "IBR") refers to federal agencies' adopting materials, such as industry consensus standards, into their regulations by simply referencing them in the Federal Register. The National Technology Transfer Advancement Act (NTTAA) encourages federal agencies to use private standards (rather than writing their own standards), and the Office of Management and Budget (OMB) has issued guidance in the form of OMB Circular A-119. OFR is not allowed to publish IBRs unless they are "reasonably available" to affected persons. The petition asks OFR to define the term "reasonably available" – including the possibility that all IBR materials should be available on the internet for free.

A number of small entity representatives contacted Advocacy and expressed concerns with agency use of IBR and the referenced petition. In response, Advocacy hosted a small business roundtable on May 9, 2012 to discuss the petition, as well as the broader issue of IBR. Advocacy's comments reflect the views expressed during the roundtable discussion and in subsequent conversations with small entity representatives.

- There is no uniform small entity perspective on "reasonably available," and standards development organizations (SDOs) want a reliable set of rules that values the service they provide to industry and the Federal government. The Federal government should avoid actions that jeopardize this community.
- There is no one policy best for small entities in all circumstances. Because of the balancing of interests required, Advocacy believes that issues raised in the petition are highly dependent on the specific circumstance of each rulemaking and should therefore be part of each agency's deliberations.

A complete copy of Advocacy's letter to OFR is available at: [www.sba.gov/advo/laws/comments/](http://www.sba.gov/advo/laws/comments/).

For more information, please visit Advocacy's Web page at [www.sba.gov/advo](http://www.sba.gov/advo) or contact Bruce Lundegren (at (202) 205-6144 or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov)) or David Rostker (at (202) 205-6966 or [david.rostker@sba.gov](mailto:david.rostker@sba.gov)).