



Advocacy: the voice of small business in government

Testimony of

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*United States Senate
Committee on Small Business and Entrepreneurship*

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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

Appendix B Summary of Cost Savings, FY 2010

Appendix C Executive Order 13563, January 18, 2011

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

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