

Legislative Priorities for the 112th Congress Office of Advocacy, U.S. Small Business Administration

The Office of Advocacy was established by Public Law 94-305 to represent the views of small businesses before federal agencies and the U.S. Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Office of Advocacy's top legislative priority is to give small businesses a voice in the regulatory process.

Advocacy's research shows that small firms generate 60-80 percent of all net new jobs, represent 99.7 percent of employers, and employ about half of all private sector employees. Small patenting firms produce about 16 times more innovations per employee than larger firms. Executive Order 13563 calls for regulations that protect public health, welfare, safety, and the environment, while promoting economic growth, innovation, competitiveness, and job creation.

Advocacy works to reduce the burden of regulation on small business through its role as the guardian of the Regulatory Flexibility Act (RFA). For more than 30 years, the RFA has required that agencies examine their proposed regulations for the effects on small entities and consider less burdensome approaches as appropriate.

In July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act established the Consumer Financial Protection Bureau (CFPB) to supervise certain activities of financial institutions. The act required the CFPB to comply with the RFA section 609 small business advocacy review (SBAR) panel process, making it the third agency given this responsibility, along with the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA). In September 2010, the Small Business Jobs Act gave Advocacy increased budgetary independence by creating a separate account for the office in the Treasury's General Fund. The law also requires agencies to provide more detailed analysis in response to comments from the Chief Counsel for Advocacy.

The federal government has saved small entities billions of dollars by following the RFA's direction and minimizing the impact of regulatory mandates on small business. History has shown that regulatory sensitivity toward small entities can be achieved without sacrificing the underlying purposes of environmental protection, workplace safety, border security, and other governmental priorities.

The 112th Congress has placed a strong emphasis on reducing barriers and promoting small business. The following amendments represent Chief Counsel for Advocacy Winslow Sargeant's legislative priorities.

1. Review of Existing Rules. With the promulgation of new regulations each year, the cumulative impact can be extremely burdensome on small business. Evaluating existing regulations periodically helps minimize this impact. Advocacy believes there should be additional triggers for such reviews.

Amendment: Strengthen section 610 of the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612 (RFA), that currently requires federal agencies to review regulations at the ten-year mark to assess their present-day impact. Section 610 should provide for public petitions for review and analysis of burdensome regulations without regard for how long the rules have been in place. Additionally, the list of scheduled section 610 reviews should be incorporated into the section 602 Regulatory Agenda.

2. Improve SBAR Panels. The SBAR panel process plays an important role in allowing for small business comment at EPA, OSHA, and CFPB. If small business panels are to work efficiently and to allow maximum input from small businesses, at least two months' notice of an impending panel is required. Over the years, disagreements have arisen about the amount and quality of information provided to the small entity representatives in the SBAR panels. Amending section 609 of the RFA would address these issues and help achieve better panels.

Amendment: Modify section 609 of the RFA to require more detailed notification in advance of convening a panel and to specify information that must be provided to small entity representatives to the panel.

3. Narrowly Analyze Indirect Economic Impacts. Under the RFA, agencies are not currently required to consider the impact of a proposed rule on small businesses that are not directly regulated by the rule, even when the impacts are foreseeable and often significant. Advocacy believes that indirect effects should be part of the RFA analysis, but that the definition of indirect effects should be specific and limited so that the analytical requirements of the RFA remain reasonable.

Amendment: Amend section 601 of the RFA to define "impact" as including the reasonably foreseeable effects on small entities that purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule; are directly regulated by other governmental entities as a result of the rule; or are not directly regulated by the agency as a result of the rule but are otherwise subject to other agency regulations as a result of the rule.

Additional Improvements to the RFA or Other Legislation to Help Small Business

While this list represents Advocacy's top legislative priorities, Advocacy is prepared to work with Congress on other ideas for improving the RFA or on other legislation to support small business. The RFA has been an increasingly effective tool over the years, and Advocacy is wary of any changes that would potentially overwhelm its unique purpose or undermine its effectiveness. However, we do believe that a number of measured and technical changes could improve the RFA.
