

Testimony of

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Regulations

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Chairman Schweikert, Ranking Member Clark, and Members of the Subcommittee, I am Dr. Winslow Sargeant, Chief Counsel for the Office of Advocacy at the U.S. Small Business Administration.

Thank you for the invitation to appear before you today to discuss the critical issue of agency compliance with the Regulatory Flexibility Act (RFA).

The Office of Advocacy was created in 1976 to be a voice for small business within the federal government. Advocacy advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and policymakers. We work with federal agencies in the rulemaking process to implement the requirements of the RFA.

The RFA requires federal agencies to consider the effects of their proposed rules on small businesses and other small entities, including small governments and small nonprofits. When an agency finds that a proposed rule may have a significant economic impact on a substantial number of small entities, it must undertake an analytical process to consider significant alternatives that would minimize the burden on small entities while still achieving the original goal of the regulation.

How Advocacy Helps Agencies Comply

The Office of Advocacy works with federal agencies in a number of ways to improve their RFA compliance and to ensure that the particular concerns of small businesses are considered during the federal rulemaking process.

RFA Training

As required in Executive Order 13272, Advocacy must train agencies on how to comply with the RFA. In addition to the officials previously trained at more than 60 agencies and subagencies, we have trained nearly 350 additional key agency officials in RFA compliance during my tenure. In FY 2012, we published an expanded and updated edition of *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*. Increased and improved RFA training leads to better agency rulemakings, which results in increased regulatory compliance.

Interagency Communications

Much of Advocacy's work with agencies is at the confidential, pre-proposal stage, when agencies are working through the regulatory development process. When warranted, Advocacy sends agencies public comment letters that take into account small business concerns about specific regulations and other proposals. I have signed more than 90 such letters on topics including proposed revisions to the definition of solid waste, small business perspectives on the Paperwork Reduction Act, Small Business Innovation Research size regulations, and comments on regulations related to the Real Estate Settlement Procedures and Truth in Lending Acts (RESPA-TILA).

SBREFA Panels

The RFA as amended by SBREFA and the Dodd-Frank Wall Street Reform and Consumer Protection Act also specifies that three agencies must conduct a SBREFA panel for gathering comments on a proposed regulation when it may have a significant economic impact on small businesses. The three agencies are the Environmental Protection Agency, the Occupational Safety and Health Administration (OSHA), and the Consumer Financial Protection Bureau (CFPB). The panels are required to include representation from the rulemaking agency, the Office of Management and Budget's Office of Information and Regulatory Affairs, and the Office of Advocacy. The panels solicit information from small entity representatives (SERs), who represent the small businesses likely to be affected by the proposed rule. The law requires a SBREFA panel to be convened and complete its report with recommendations within a 60-day period.

Since SBREFA was passed in 1995, the three agencies have conducted SBREFA panels on 55 regulations. In the last two years, we have participated in a dozen panels, including the first three panels ever by the CFPB. We provided support to the CFPB for the panels on RESPA-TILA, mortgage servicing, and mortgage loan origination rules and were able to work with the agency to provide small business flexibilities.

Roundtables

In an effort both to hear directly from small businesses and their representatives and to give federal agency rule writers a chance to hear specific small business concerns,

Advocacy continues to expand its stakeholder outreach. We have convened 84 roundtables on a variety of topics since I became chief counsel, including 32 in FY 2012. Many of the roundtables featured significant involvement from agency officials.

For example, we held several roundtables with OSHA, where senior OSHA officials were present, on small business perspectives related to labor safety issues.

We also held a series of roundtables in several regions around the country to solicit input from small business research and technology stakeholders about the SBA's proposed regulations implementing the revised Small Business Innovation Research program.

These small business roundtables help ensure that the voices of small businesses and other small entities are heard by officials whose actions will make a difference in the regulatory environment in which they operate.

Compliance

Having generally explained how the Office of Advocacy works with agencies, I would like to address agency compliance with their RFA responsibilities. I am pleased to report that agencies continued to improve their compliance with the RFA in FY 2012, bolstered by President Obama's focus on the need for regulatory review and emphasis on the special concerns of small businesses in the rulemaking process. A detailed analysis of this compliance can be found in *Advocacy's Report on the Regulatory Flexibility Act FY*

2012, which I delivered to Congress last month. I ask that a copy of this report be submitted, in its entirety, into the record.

Executive Order 13272

I also am pleased to report that in FY 2012 agencies continued to improve their compliance with E.O. 13272, which was signed in August 2002 by President George W. Bush. Some of the provisions of the executive order became law under the Small Business Jobs Act of 2010.

E.O. 13272 requires Advocacy to notify agencies of the requirements of the act, provide compliance training, and submit comments to agencies and the Office of Information and Regulatory Affairs (OIRA) on agency regulations. Agencies in turn must establish written policies and procedures for RFA compliance and notify Advocacy of any draft rules with a significant economic impact on a substantial number of small entities. Where Advocacy has provided written comments, agencies must give appropriate consideration to these comments and publish their response in the *Federal Register* with the final rule.

Executive Order 13563 and RFA Section 610

In 2011, President Obama provided Advocacy with additional tools to improve the regulatory development process. Executive Order (E.O.) 13563 and E.O. 13579 instructed agencies to develop a plan for periodic retrospective review of all existing regulations with the intention of reducing the cumulative regulatory burden. In response,

agencies developed plans, some with significant public input, and published these plans online. The White House also posted the plans and agency updates online.¹

Cost Savings

Agency compliance with Advocacy's RFA efforts pays real dividends to America's small businesses. In FY 2012, Advocacy's RFA activities resulted in small businesses saving \$2.4 billion in first-year regulatory costs and another \$1.2 billion in annually recurring costs.

It is important to note that these estimated annual cost savings are derived primarily from regulatory cost estimates from the agencies themselves. Cost savings are captured in the year in which the agency's rulemaking is affected by Advocacy's intervention; and the total varies from year to year. Over the two and a half years of my tenure, Advocacy's work with federal agencies has saved small businesses \$17 billion in new first-year regulatory costs.

Concluding Remarks

The passage of laws amending the RFA and the Executive Orders reinforcing it have made this critical small business law more effective in reducing the regulatory burdens of small entities early—when the regulations are still in the development stage. Agencies' willingness to attend Advocacy roundtables and hear the concerns of small businesses has been a welcome development that has resulted in improved agency compliance with the RFA.

¹ See <http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system>.

We have learned through our experience with the RFA that regulations are more effective when small firms are part of the rulemaking process. The result of enhanced agency cooperation with the Office of Advocacy and improved agency compliance with the RFA benefits small businesses, the regulatory environment, and the overall economy.

Thank you again for the opportunity to testify on the important work the Office of Advocacy does on behalf of small businesses. I would be happy to take any questions.