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Small Business Administration Office of Advocacy

Office of Advocacy Origins

During the early 1970s, small business trade associations indicated at congressional hearings that they were not satisfied with advocacy efforts at the Small Business Administration (SBA), especially in achieving regulatory relief for small businesses—even though the Small Business Act of 1953 (P.L. 83-163, as amended) had directed the SBA to “aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns.” Congress then passed legislation (P.L. 93-386, the Small Business Amendments of 1974) that authorized the SBA Administrator to create an Office of Chief Counsel for Advocacy. Section 10 of P.L. 93-386 assigned the Chief Counsel five duties:

1. serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other federal agency that affects small businesses;
2. counsel small businesses on how to resolve questions and problems concerning the relationship of the small business to the federal government;
3. develop proposals for changes in the policies and activities of any agency of the federal government that will better fulfill the purposes of the Small Business Act and communicate such proposals to the appropriate federal agencies;
4. represent the views and interests of small businesses before other federal agencies whose policies and activities may affect small businesses; and
5. enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the federal government, which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services.

The SBA’s Office of Chief Counsel for Advocacy (“Advocacy”) was created in October 1974 and was fully operational by March 1975.

An “Independent” Office within SBA

After lobbying by small business organizations for Advocacy to have greater independence from the SBA’s Administrator, Congress passed P.L. 94-305 in June 1976. Title II of P.L. 94-305 required Advocacy to be established

as a separate, stand-alone office within the SBA and that the Chief Counsel be appointed by the President, with the advice and consent of the Senate. A report accompanying this legislation stated that “this position be given a great deal of latitude in its operation and that it not be filled by a person who will become a ‘yes’ man for the Agency.”

At that time, Advocacy’s budget was provided through the SBA’s Salaries and Expenses’ Executive Direction account. Years later, through the Small Business Jobs Act of 2010 (P.L. 111-240), Congress enhanced Advocacy’s independence by requiring the President to provide a separate statement on the amount of appropriations requested for Advocacy, to be designated in a separate account in the General Fund of the Treasury.

Advocacy’s Regulatory Oversight Role

P.L. 96-354, the Regulatory Flexibility Act of 1980 (RFA, as amended) expanded the role of the Office of Advocacy by charging Advocacy’s Chief Counsel with monitoring and reporting agencies’ compliance with RFA provisions. The RFA requires federal agencies to assess the economic impact of forthcoming regulations on *small entities*, including small businesses, small not-for-profit organizations, and small governmental jurisdictions (generally, the government of a city, county, town, school district or special district with a population of less than 50,000). Agencies must also notify Advocacy prior to issuing certain rules, for possible comment by the Chief Counsel. Advocacy’s role in RFA implementation is codified at 5 U.S.C. §§601-612. More information on the RFA is available in CRS In Focus IF1900, *The Regulatory Flexibility Act: An Overview*, by Maeve P. Carey.

Advocacy is also responsible for monitoring agency compliance with Executive Order (E.O.) 13272, Proper Consideration of Small Entities in Agency Rulemaking (August 13, 2002). E.O. 13272 requires federal agencies to make information concerning how they will comply with the RFA’s statutory mandates publicly available. It also requires federal agencies to send to Advocacy copies of any draft regulations that may have “a significant economic impact on a substantial number of small entities.”

Advocacy is responsible for training agencies in how to comply with the RFA, and produces a periodic publication, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*. In FY2023, Advocacy held nine training sessions for 139 federal officials. Advocacy must report annually on federal agency compliance with the executive order, which is accomplished primarily through Advocacy’s annual publication of *Report on the Regulatory Flexibility Act*. The report includes details on agency rulemaking as well as Advocacy’s activities.

Amendments to the RFA in 1996 (Title II of P.L. 104-121), the Small Business Regulatory Enforcement Fairness Act (SBREFA), required the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) to ensure that small entities have an opportunity to participate in rulemaking through “SBREFA panels.” The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) required this for Consumer Financial Protection Bureau (CFPB) rulemaking as well.

An SBREFA panel provides a mechanism for small entities to provide input into EPA, OSHA, or CFPB rules by soliciting information from small entity representatives and other sources about the potential impacts of a new rule. The panel is to consider regulatory alternatives that minimize burdens on small entities, and prepares a report with recommendations. The panel must consist of full-time federal employees from the rulemaking agency, the Office of Management and Budget, and SBA’s Chief Counsel for Advocacy. Advocacy has several responsibilities related to these panels, including the identification of individuals who should serve and as a participant on the panel. In FY2023, 10 SBREFA panels were convened.

Apart from compliance training and SBREFA panels, Advocacy seeks to influence agency regulatory processes by convening “roundtables” with small business representatives on regulatory issues, as well as through letters to agencies that “alert them to their rules’ small business impacts and to propose alternative approaches to achieving regulatory goals.” During FY2023 (the most recent year for which data is available), Advocacy provided 46 letters to 27 agencies and hosted 28 roundtables.

As a result of its regulatory oversight activities, Advocacy estimated that it enabled \$91.3 million in “regulatory cost savings” in FY2023, from actions related to regulations from four agencies (the EPA, the Securities and Exchange Commission, the CFPB, and the Food and Drug Administration). The annual *Report on the Regulatory Flexibility Act* notes that Advocacy bases cost savings estimates on an analysis performed by the agency issuing each rule.

Advocacy’s Research and Other Activities

Economic Research

Advocacy’s Office of Economic Research conducts and publishes various products and analyses. Part of this office’s work also includes outreach to academic, media, and policy audiences. According to the *Office of Advocacy FY 2025 Congressional Budget Justification and FY 2023 Annual Performance Report*, Advocacy’s economists “serve as a key resource for congressional staff, SBA offices and resource partners, other federal agencies, the media, and trade associations.” In FY2023, Advocacy published 20 new research and data products, and made 14 outreach presentations. Publications included several “fact sheets” and a series of *Small Business Profiles for Major Metropolitan Areas*. Recent economic studies have included an “issue brief” discussing the long-term trend of

declining small business receipts over time and another brief on small businesses in the childcare industry.

International Trade Negotiations

Section 502 of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) directs Advocacy to lead small business outreach through an Interagency Working Group, to solicit input from small businesses during international trade negotiations. The act provides that the working group shall be convened when the President notifies Congress of the intention to enter into certain trade negotiations with another country, including renegotiations of agreements. Also, that the working group shall include representatives of the following.

- The Office of the United States Trade Representative
- The Department of Commerce
- The Department of Agriculture
- Any other agency that the Chief Counsel for Advocacy, in consultation with the United States Trade Representative, determines to be relevant with respect to the subject of the covered trade agreement.

Upon convening the working group, the Chief Counsel shall identify a “diverse group of small businesses, representatives of small businesses, or a combination thereof,” to share the perspective of small firms in manufacturing, services, and agriculture industries with the working group, about the potential economic effects of the trade agreement. Within 180 days, the Chief Counsel shall then submit a report on the economic impacts of the trade agreement on small businesses to congressional committees, including the Small Business and Ways and Means committees.

One example of an agreement negotiation that spurred working group activities includes the renegotiation of the North American Free Trade Agreement (NAFTA). On May 18, 2017, the Trump Administration notified Congress of its intent to renegotiate NAFTA and Advocacy convened an Interagency Working Group on June 14, 2017, to identify small business stakeholders and seek their views of the NAFTA renegotiation’s small business impacts, releasing its report in December 2018.

Advocacy’s Scope and Capacity

Advocacy’s resources determine its ability to engage in activities not directly related to its RFA role. Although Advocacy provides some research and other functions, it primarily works “to reduce the burdens that Federal regulations and other policies impose on small entities,” as seen from the “accomplishments” described in the *Office of Advocacy FY 2025 Congressional Budget Justification and FY 2023 Annual Performance Report*. Advocacy’s appropriations in recent fiscal years have been between \$9 and \$10 million, and the office has employed about 50 staff members.

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