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ONE SIZE DOES NOT FIT ALL: UNDERSTANDING THE IMPORTANCE OF RIGHTSIZING REGULATIONS FOR SMALL BUSINESSES

FIELD HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

OF THE

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

AUGUST 23, 2023

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ONE SIZE DOES NOT FIT ALL: UNDERSTANDING THE IMPORTANCE OF RIGHTSIZING REGULATIONS FOR SMALL BUSINESSES

WEDNESDAY, AUGUST 23, 2023

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
Des Moines, IA.

The committee met, pursuant to notice, at 1:00 p.m. CDT, at Iowa Economic Development Authority, 1963 Bell Avenue, Des Moines, Iowa, Hon. Joni Ernst presiding.

Present: Senator Ernst [presiding].

OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Well, welcome everybody. We are going to go ahead and get started, so those that need chairs, if you can find one.

The hearing is called to order. Good afternoon and thank you all for joining us today in beautiful Iowa. I know that some of you have traveled from out of state to be here today.

As the Ranking Member of the Senate Small Business and Entrepreneurship Committee I want to specifically thank our witnesses for joining us as well as Sean Moore, the Committee's Democratic staff director, representing Chairman Ben Cardin. The issues facing small businesses continue to be the rare area of bipartisanship in Washington, and I appreciate the hard work Chairman Cardin, Sean, and their staff put in.

Today's hearing is focused on rightsizing regulations for small businesses because one size does not fit all. Our goal is to examine the challenges small businesses face when they are forced to comply with the same regulatory requirements as much larger competitors. We will also discuss the benefits to small businesses when agencies adjust their regulatory demands accordingly.

Small businesses today are drowning in red tape and unnecessary regulatory costs. In less than 3 years, the Biden administration has imposed almost $400 billion in regulatory costs on American businesses. By comparison, the previous two administrations combined, over the same time period, imposed $258 billion in regulatory costs, including during the implementation of Obamacare, with its hundreds of accompanying rules. In other words, the Biden administration has already imposed almost $140 billion more in

regulatory costs than the previous two administrations did, combined. By one estimate, Biden's out-of-control regulatory agenda has imposed over $5,000 per household in costs, and I would like to submit for the record a *Wall Street Journal* editorial entitled "Regulators Gone Wild," showing the full scale of the overreach.

Senator ERNST. How can any small business keep up, and folks, sadly they cannot. And while those numbers are truly staggering, they do not even begin to tell a whole story of just how complex the Federal regulatory climate is for small businesses in Iowa and across the country.

While regulatory costs hit all businesses, they are particularly damaging to small businesses, which is why, since 1980, the Regulatory Flexibility Act has required agencies to rightsize regulations by providing less-costly alternatives.

When writing a new rule, the only way agencies can evade the rightsize requirement is by checking a box to certify that the regulation will not significantly impact small businesses. And folks, we know that any time Washington is creating a new regulation, chances are our small businesses will be severely impacted.

Unfortunately, this has become a loophole for agencies to not put in the work to rightsize the regulation and provide flexibility to small businesses. The SBA's Office of Advocacy is an independent entity in the Federal Government that is charged with policing the Reg Flex Act, and we appreciate that the leader of this critical office, Mr. Major Clark, is with us today.

When regulators significantly underestimate the real costs of regulations it results in very real consequences for small businesses. To illustrate let's look at just two regulations with broad impacts on Iowa small businesses that Advocacy found were improperly certified.

First, the Federal Trade Commission recently underestimated the costs a regulation would place on auto dealer small businesses by almost $70 billion. Iowa franchised auto dealerships employ over 15,000 Iowans, and most are small businesses. I would like to submit for the record a one-pager from the Iowa and National Automobile Dealers Associations illustrating the problem.

Second, the Environmental Protection Agency improperly claimed a rule defining Waters of the United States would not significantly impact small businesses despite the fact that it would likely affect every farmer and small businesses that wished to build a new barn or expand their business.

In Iowa, 98 percent of agriculture businesses, 99 percent of construction businesses, and 89 percent of manufacturers are small businesses, and collectively employ over 46,000 Iowans. That is why I supported a resolution to repeal the WOTUS rule that passed the Senate, but unfortunately it was vetoed by the President.

So what happens when small businesses or the SBA make it known to these regulators that their costs are underestimated and they should find alternatives to protect small businesses? Unfortunately, right now agencies can simply ignore them. This is why I introduced the PROVE IT Act of 2023, to prevent agencies from simply checking the box and empowering the SBA Office of Advocacy to require these agencies to show their work.

My PROVE IT Act would require Federal agencies to prove they are not avoiding the Reg Flex Act and demonstrate that any new regulation is actually compliant with existing laws. It would also, for the first time, consider both the direct and indirect costs placed on small businesses, which would directly push back on the Biden administration's efforts to use far-reaching global benefits to justify imposing any costs. Finally, my bill would give Advocacy the tools they need to require, rather than ask, agencies to consider less-costly alternatives for small businesses.

I am proud to see that over 10,000 small businesses around the country and 75 small businesses in Iowa have sent letters to Congress showing support for my legislation.

As you can clearly see, it matters when agencies simply check the box and avoid rightsizing regulations. One-size-fits-all regulations do not suit Iowa's entrepreneurs, and that is why I am fighting to ensure our small businesses are heard and considered in future regulatory mandates from Washington. I look forward to hearing from our witnesses on this issue and how to address it.

Now we will introduce our witnesses, and again thank you to our witnesses for being here today. First we have Major L. Clark III. He is the Deputy Chief Counsel, Small Business Administration Office of Advocacy. He currently serves as the Deputy Chief Counsel for SBA's Office of Advocacy. The SBA Office of Advocacy is the independent voice for small businesses within the Federal Government to advance the views and interests of small firms with Federal agencies. In fiscal year 2021 and 2022 alone, Mr. Clark and his staff engaged with Federal agencies on almost 40 regulations that led to almost $3.4 billion in estimated regulatory cost savings.

Prior to joining the Small Business Administration, Mr. Clark was the Senior Corporate Officer for the Maxima Corporation and served as the Chief Administrative Officer for the House Small Business Committee. Thank you again for joining us today, Mr. Clark.

Next we have Representative Shannon Latham. Shannon is the Representative for Iowa's 55th Legislative District in the Iowa House of Representatives, serving since 2021, and it covers parts of Wright, Franklin, and Hamilton Counties. During her time in the Iowa House, Representative Latham has been a strong advocate for Iowa small businesses and has been a staunch ally in Governor Reynolds' efforts to modernize the regulatory system and make Iowa the best place in the country to do business.

In addition to serving in the Iowa House, Representative Latham also co-owns Latham Hi-Tech Seeds, a family-owned seed company headquartered in Alexander, Iowa. A fellow graduate of my alma mater, Representative Latham received her BS in Ag Journalism and Public Service and Administration in Agriculture from Iowa State University, and her MBA from the University of Iowa.

And finally we have Mrs. Megan Green. She currently serves as the Counsel and Engineering Manager for Knoxville-based Weiler Products, which designs, engineers, and manufactures equipment for the paving market. Mrs. Green is a member of the senior leadership team and serves as the President of the Weiler Foundation for Charitable Giving. She was also recently appointed as a member of the People's Bank Board of Director.

Prior to joining her current employment, Mrs. Green served as an in-house counsel for the State Farm in Bloomington, Illinois, counseling clients in multiple states on regulatory, legislative, and public policy issues. Mrs. Green also attended my alma mater, receiving her bachelor's degree in finance from Iowa State University and her JD from the University of Iowa.

And I will also mention, while it was not in his biography, Major Clark also attended the University of Iowa. So we all have those Iowa connections.

I do want to thank our witnesses very much for being here today.

We will go ahead and proceed with the testimony, and Mr. Clark, we will start with you please, sir.

STATEMENT OF MAJOR L. CLARK III, ACTING CHIEF COUNSEL, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, WASHINGTON, D.C.

Mr. CLARK. Good afternoon, Ranking Member Ernst and distinguished guests. I am honored to be able to return to Iowa. It has been a while since I have been here, but fond memories during my period here. Iowa taught me how to be a good lawyer, not one of the bad lawyers, so I am very honored with that.

Congress recognized the importance of small business to our nation's economy. As such, Advocacy was created in 1976, to be an independent voice for small businesses within the Federal Government, particularly during the Federal regulatory process. But that is not all that we do. Our legal team works to ensure regulations do not unduly burden small businesses, our regional advocates and our information team provide outreach to small business stakeholders across the country, and our economic research team conducts important research on small business and their roles, some of that which you have just heard from the Ranking Member.

Advocacy's research demonstrates that small businesses continue to be a critical part not only of the nation's economy but also local economies, as here in Des Moines and in the total state of Iowa. We released a new small business profile series, which is available on the table behind you. It is the 2022 Small Business Profile, which focuses specifically on this great state of Iowa.

This research confirms that small businesses are a vital component of Des Moines' and Iowa's economy. Small businesses account for 47 percent of Iowa's employment, which exceed the national share. Here in Des Moines metropolitan area, 98 percent of all businesses are small and account for about 41 percent of employment.

Our research also shows that small businesses play an important role in rural areas. For example, small businesses provide 54 percent of rural jobs in the United States. Advocacy's economic research also inform agencies on the small business economic impacts of their regulations, which is critical. It is also our hope that this now helps stakeholders, many of you who are here today, understand the critical role that you play as small business owners in the local economy.

After hearing from small businesses like those here in the state of Iowa, Congress passed what is called the Regulatory Flexibility Act to ensure Federal regulations are not, as the Chairman said,

one size fits all. Rather, Federal agencies must consider the impacts of their regulations on small business, analyze effective alternatives that minimize small entity impacts, and make their analysis available for you, the public.

As the watchdog for small businesses, Congress charged Advocacy with ensuring agency compliance with the RFA. Advocacy is required to report to Congress every year on agency compliance with the RFA, and our report for fiscal year 2022 was submitted to the Committees, House and Senate, in May of this year. Advocacy continues to remain active during fiscal year 2022. On behalf of our nation's small businesses, we submitted a record 37 comment letters to Federal agencies and hosted a record 30 roundtables on regulatory concerns facing small businesses.

We also achieved numerous victories for small businesses by working with agencies on RFA compliance, including what was mentioned earlier, the $73.5 million in cost savings for our small businesses across the country. And these numbers were due, in large part, I think, to new methods that we implemented to reach more stakeholders, to reach outside of the Washington, D.C., area, including holding virtual meetings, roundtables, and events as we are having today, and also our site visits.

In this current fiscal year, Advocacy has continued to be productive, and since October 1, of 2022, we have already submitted over 40 letters and held 23 roundtables this year.

Advocacy has increasingly argued that Federal agencies need to conduct more outreach to small entities during the rulemaking process and improve the quality of their small business data. Advocacy relies on stakeholders, primarily you, to provide input in the regulatory process by writing comment letters, directing to Federal agencies, and by sending us their concerns. It is critical for all small businesses, including those here, to express concerns to Federal agencies on regulations that may impact their economic survival. Our success, in Advocacy, depends on you, our stakeholders.

Madam Chair, this concludes my oral testimony, and I request that Advocacy's RFA report for fiscal year 2022 be included in the hearing record.

Thank you for this opportunity to testify today, and you know that I am happy to answer any questions that you may have, so thank you.

[The prepared statement of Mr. Clark follows:]

U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
REGULATION • RESEARCH • OUTREACH

Testimony of

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

United States Senate
Committee on Small Business & Entrepreneurship

Date:	August 23, 2023
Time:	1:00 pm CST
Location:	Iowa Economic Development Authority 1963 Bell Ave, Des Moines, Iowa
Topic:	One Size Does Not Fit All: Understanding the Importance of Rightsizing Regulations for Small Businesses

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration is an independent voice for small business within the federal government. Appointed by the President and confirmed by the U.S. Senate, the Chief Counsel for Advocacy directs the office. The Chief Counsel advances the views, concerns, and interests of small businesses before Congress, the White House, federal agencies, federal courts, and state policy makers. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional advocates and an office in Washington, DC, support the Chief Counsel's efforts.

For more information on the Office of Advocacy, visit https://advocacy.sba.gov/, or call (202) 205-6533.

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Chairman Cardin, Ranking Member Ernst, and Members of the Committee on Small Business & Entrepreneurship: I am honored to be here today on behalf of the Office of Advocacy (Advocacy) to present testimony about the impact of federal regulations on small businesses and Advocacy's oversight of agency compliance with the Regulatory Flexibility Act (RFA). Advocacy is an independent office that speaks on behalf of the small business community before federal agencies, Congress, and the White House. The views in my testimony do not necessarily reflect the views of the Administration or the Small Business Administration (SBA), and this statement has not been circulated to the Office of Management and Budget (OMB) for clearance.

Congress recognized early the importance of small businesses to our nation's economy. The Office of Advocacy was created by Congress in 1976 to be an independent voice for small business within the federal government. Title II of Public Law 94-305 and the RFA confer responsibilities and authorities on Advocacy. Both laws are standing, non-expiring legislation and have been amended since passage.

The RFA is the statutory basis of small entity consideration in federal rulemaking. It requires federal agencies to take small entity impacts and alternatives into consideration during the rulemaking process. Advocacy oversees whether agencies comply with the RFA and its analytical requirements. Advocacy also informs agencies of small businesses' concerns to improve the impact of those regulations on small entities.

The RFA directs the Chief Counsel for Advocacy to monitor and report on federal agencies' compliance with the law. In addition, Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," also imposes certain requirements on federal agency rulemaking and requires Advocacy to report on agency compliance with this executive order.[1] To fulfil that mandate, in May 2023, Advocacy sent the FY 2022 report to this Committee, which covered October 1, 2021, to September 30, 2022.[2]

Despite the challenges of the COVID-19 pandemic, Advocacy has ensured small businesses have remained an integral part of the rulemaking process by developing novel ways for their voices to be heard. While unable to meet small business stakeholders face-to-face, Advocacy held online roundtables and outreach events for small business stakeholders. Advocacy also complied with Executive Order 13272 by holding virtual RFA trainings for federal regulators. These actions kept small entity priorities at the forefront of federal rulemaking activities and allowed for more voices to become involved in the regulatory process.

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[1] Exec. Order No. 13,272, 67 Fed. Reg. 53,461 (Aug. 13, 2002).
[2] U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, REPORT ON THE REGULATORY FLEXIBILITY ACT, FY 2022 (May 2023), https://advocacy.sba.gov/2023/05/16/report-on-the-regulatory-flexibility-act-fy-2022-annual-report-of-the-chief-counsel-for-advocacy-on-implementation-of-the-regulatory-flexibility-act-and-executive-order-13272/.

While Advocacy has enforced the RFA for over 40 years, safeguards on the regulatory process continue to be important as the number of small businesses in the United States grows. Because of these safeguards and our mandate under the RFA, Advocacy continues to monitor new rules and regulations for impacts on small business.

I. Small Business Statistics in Iowa

When Advocacy was established in 1976, Congress recognized that there was a need for reliable and periodically updated statistics and research on small businesses. As a result, economic research is a core mission of the Office of Advocacy under Public Law 94-305. This mandate includes documenting the role of small businesses and entrepreneurship in the economy and examining various issues of relevance to small business owners. These elements of Advocacy's mission are the primary responsibility of the Office of Economic Research (OER). OER specializes in the following areas: the small business economy, small firm dynamics, small business finance, regulatory policy, international small business issues, barriers to entrepreneurship, and ownership of businesses by demographic groups such as veterans, women, and minorities.

Advocacy's research demonstrates that small businesses continue to be a critical part of not only the nation's economy, but also of local economies. One of Advocacy's most popular research products is the state profile series.[3] These profiles provide user-friendly snapshots of national, state, and local small business statistics. This includes statistics on Iowa and its local economies.

Iowa small businesses make an outsized contribution to the state. According to Advocacy's most recent profile for Iowa, there are 273,623 small businesses in the state, which accounts for 99.3 percent of all businesses. Additionally, small businesses accounted for 46.6 percent of Iowa employment in 2019, which exceeded the national share of this metric.[4] The business sector with the most small businesses in 2019 was construction, with 35,223 small businesses, including 26,569 businesses with no employees (i.e., nonemployers).[5] Small businesses in the construction industry employed the most workers with 56,693 employees and a payroll of over $3.5 billion.[6]

In addition to small business statistics at the state level, Advocacy launched a new profile series last month: the Small Business Profiles for Major Metropolitan Areas.[7] Des Moines was included as part of this profile series as a major metropolitan area. These profiles allow Advocacy to examine the role of small businesses in more local areas. According to the profile for Des Moines, there are 60,467 small

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[3] *See* U.S. Small Bus. Admin., Off. of Advocacy, *State Profiles*, https://advocacy.sba.gov/category/research/state-profiles/ (last visited Aug. 15, 2023).
[4] U.S. SMALL BUS. ADMIN., OFF. OF ADVOCACY, 2022 SMALL BUSINESS PROFILE FOR IOWA 4 (Aug. 31, 2022), https://advocacy.sba.gov/wp-content/uploads/2022/08/Small-Business-Economic-Profile-IA.pdf.
[5] *Id.* at 2.
[6] *Id.* at 4.
[7] U.S. Small Bus. Admin., Off. of Advocacy, *Small Business Profiles for Major Metropolitan Areas* (July 11, 2023), https://advocacy.sba.gov/2023/07/11/small-business-profiles-for-major-metropolitan-areas/.

businesses in the Des Moines metropolitan area, which makes up 98.2 percent of all businesses.[8] Additionally, small businesses accounted for 40.6 percent of employment in Des Moines in 2019.[9] The industry with the most small businesses in 2019 was Professional, Scientific, and Technical Services, with 8,234 small businesses, including 8,055 businesses with fewer than 20 employees.[10] The Health Care and Social Assistance industry had the most workers, at 19,466 workers with a payroll of $860.7 million.[11]

II. The Regulatory Flexibility Act

Federal regulations can have a disproportionate impact on small businesses. To mitigate these effects, the RFA, enacted in September 1980, requires federal agencies to consider the ramifications of their regulatory proposals for small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment.[12] The RFA applies to a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Advocacy continues to emphasize that the RFA "does not seek preferential treatment for small entities, nor does it require agencies to adopt regulations that impose the least burden on them, or mandate exemptions for them. Rather, it requires agencies to examine public policy issues using an analytical process that identifies barriers to small business competitiveness and seeks a level playing field for small entities, not an unfair advantage."[13]

Under the RFA, when an agency proposes a regulation that would have a "significant economic impact on a substantial number of small entities," the regulation must be accompanied by an impact analysis known as an initial regulatory flexibility analysis (IRFA) when the rule is published for public comment.[14] When the final rule is published, it must be accompanied by a final regulatory flexibility analysis (FRFA).[15] These analyses must describe, among other things:

1) The reasons why the regulatory action is being considered.
2) The small entities to which the proposed rule will apply and, where feasible, an estimate of their number.

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[8] U.S. SMALL BUS. ADMIN., OFF. OF ADVOCACY, *2023 Small Business Profile for Des Moines-West Des Moines*, *in* SMALL BUSINESS PROFILES FOR MAJOR METROPOLITAN AREAS OF THE MIDWEST 2023 25 (July 2023), https://advocacy.sba.gov/wp-content/uploads/2023/07/Midwest_2023_07_03.pdf.
[9] *Id.*
[10] *Id.* at 25, 26.
[11] *Id.* at 25, 28.
[12] 5 U.S.C. §§ 601-612. The Regulatory Flexibility Act was originally passed in 1980 (Pub. L. No. 96-354). The Act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121), the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203), and the Small Business Jobs Act of 2010 (Pub. L. No. 111-240).
[13] U.S. SMALL BUS. ADMIN., OFFICE OF ADVOCACY, A GUIDE FOR GOVERNMENT AGENCIES: HOW TO COMPLY WITH THE REGULATORY FLEXIBILITY ACT, 1 (Aug. 2017), https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf.
[14] 5 U.S.C. § 603.
[15] *Id.* § 604.

3) The projected reporting, recordkeeping, and other compliance requirements.
4) Any significant alternatives to the rule that would accomplish the statutory objectives while minimizing the impact on small entities.

Agency consideration of significant alternatives is the key to the RFA because the development and adoption of alternatives provide regulatory relief to small entities while allowing agencies to achieve their regulatory goals. Analyzing alternatives allows agencies to evaluate proposals that achieve their regulatory goals efficiently and effectively without unduly burdening small entities, erecting barriers to competition, or stifling innovation.

Alternatively, if a federal agency determines that a proposed rule would not have a significant economic impact on a substantial number of small entities, the head of that agency may "certify" the rule and bypass the IRFA and FRFA requirements.[16] This is commonly referred to as a "certification" and requires the agency to provide a factual basis for its determination that the rule will not have a significant economic impact on a substantial number of small entities.

In addition, the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Consumer Financial Protection Bureau (CFPB) are required to convene a small business advocacy review panel (also referred to as a SBREFA panel) whenever they are developing a rule that is expected to have a significant economic impact on a substantial number of small entities.[17] These agencies must notify Advocacy prior to the publication of an IRFA and provide information on the potential impacts of the proposed rule. The SBREFA panels consist of staff from the agency carrying out the proposed rule, the Office of Information and Regulatory Affairs within OMB, and the Chief Counsel for Advocacy.[18] The panel reviews materials related to the proposal and, importantly, the advice and recommendation of small entity representatives (SERs) on the rule's potential effects and possible mitigation strategies. The panel then issues a report on the comments of the SERs and on its own recommendations.[19]

Section 610 of the RFA also requires agencies to review their existing rules that have or will have a significant economic impact on a substantial number of small entities within ten years of their promulgation.[20] The purpose of the review is to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities.

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[16] *Id.* § 605(b).
[17] A list of all SBREFA panels that have been convened can be found in our annual report to Congress and in Appendix C of this testimony. It can also be viewed on Advocacy's website at https://advocacy.sba.gov/resources/reference-library/sbrefa/.
[18] 5 U.S.C. § 609(b)(3).
[19] *Id.* § 609.
[20] *Id.* § 610.

III. Advocacy's Report on the RFA for FY 2022

As previously stated, the RFA requires Advocacy to monitor and report on how well federal agencies are complying with the law. In addition, Executive Order 13272 requires Advocacy to educate federal agency officials on compliance with the RFA, to provide resources to facilitate continued compliance, and to report to OMB on agency compliance with the Executive Order.[21]

In FY 2022:

- Advocacy submitted 37 comment letters to federal agencies to publicly register official comments on behalf of small businesses.
- Advocacy hosted 30 issue roundtables to discuss the regulatory concerns facing small businesses.
- Advocacy provided training to 257 officials at 10 agencies to familiarize themselves with the requirements of the RFA.
- Advocacy convened four SBREFA panels, three with the EPA and one with the CFPB.
- Advocacy saved small businesses $73.5 million in estimated forgone regulatory cost savings because of the RFA and Advocacy's efforts to promote federal agency compliance.
- Advocacy achieved eight regulatory successes throughout FY 2022 that were not quantifiable.

A. Compliance with Executive Order 13272 and the Small Business JOBS Act of 2010

Executive Order 13272 requires Advocacy to educate federal agencies on compliance with the RFA, to provide resources to facilitate continued compliance, and to report to the Office of Management and Budget on agency compliance with the executive order. Portions of the executive order were codified in the Small Business Jobs Act of 2010.[22]

Since Advocacy launched its RFA training program in 2003, the office has continuously offered RFA training sessions to every rule-writing agency in the federal government. Agency attorneys, economists, and policymakers attend these training sessions. The COVID-19 pandemic caused Advocacy to move its sessions completely online beginning in 2020. In FY 2022, Advocacy held 10 training sessions for 257 federal officials. The list of agencies trained during FY 2022 is shown in Appendix A of this testimony and in Chapter 2 of the annual report.

To provide clear directions on RFA compliance, Advocacy publishes a manual called "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act." This manual can be found on Advocacy's website and is provided to agencies during training.[23]

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[21] Exec. Order No. 13,272, 67 Fed. Reg. 53,461 (Aug. 13, 2002).
[22] Small Business Jobs Act, Pub. L. No. 111-240, 124 Stat. 2504 (2010).
[23] The most recent edition of the compliance guide can be found on Advocacy's website at https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf.

Executive Order 13272 requires federal agencies to take certain steps to boost transparency and ensure small business concerns are represented in the rulemaking process, including the following:

- *Written RFA Procedures:* Agencies are required to show publicly how they take small business concerns and the RFA into account when creating regulations.
- *Notify Advocacy:* Agencies are required to engage Advocacy during the rulemaking process to ensure small business voices are being heard.
- *Respond to Comments:* When Advocacy submits written comments on a proposed rule, the agency must consider and provide a response to them in the final rule.

A summary of federal agencies' compliance with these three requirements is shown in Appendix B of this testimony and in Chapter 2 of the annual report.

B. Communication with Small Businesses and Federal Agencies

Advocacy uses numerous methods of communication to present the concerns of small entities to federal officials developing and promulgating new regulations. Advocacy holds meetings with officials, participates in OIRA-led review of upcoming rules, writes comment letters to agency directors, conducts outreach to small entities through roundtables and other methods, and (as previously stated) holds training sessions on RFA compliance to help facilitate meaningful participation by all interested parties.

One important function of this team is confidential interagency communications. Advocacy's goal is to participate in the regulatory development process as early as possible, both to counsel agencies on potential effects of their actions on small business and to provide RFA compliance expertise as needed. Advocacy believes it is essential that agency policymakers and regulatory development staff are confident that they can share pre-proposal information with Advocacy staff. Disclosing this information could have a variety of adverse consequences and, depending on what is disclosed to whom, could in some cases violate the law. By scrupulously abiding by this restriction, Advocacy has built trust with regulatory agencies, and they increasingly ask for Advocacy guidance early in the pre-proposal phase of the regulatory process.

As a result of these conversations, Advocacy is often able to help agencies adjust regulations before they are initially published in the Federal Register. However, because of the confidential nature of most interagency communications, it is difficult for Advocacy to document regulatory cost savings to small businesses that flow from this important work.

In addition to confidential interagency communications, SBREFA panels are another useful tool for Advocacy to express small business concerns in the regulatory process. As previously stated, three agencies (CFPB, OSHA, and EPA) are required to convene SBREFA panels whenever they are developing a rule that is expected to have a significant economic impact on a substantial number of small entities. Advocacy has found that these panels have helped the agencies improve their draft proposals before the notice-and-comment process. In some cases, agencies have withdrawn a rule after the potential impacts, costs, and benefits of a rule were better understood because of the panel

process. In other cases, revisions were made to a draft rule that mitigated potentially adverse impacts on small entities. Appendix C of this testimony lists every SBREFA panel through FY 2022. In FY 2022, four panels were convened.

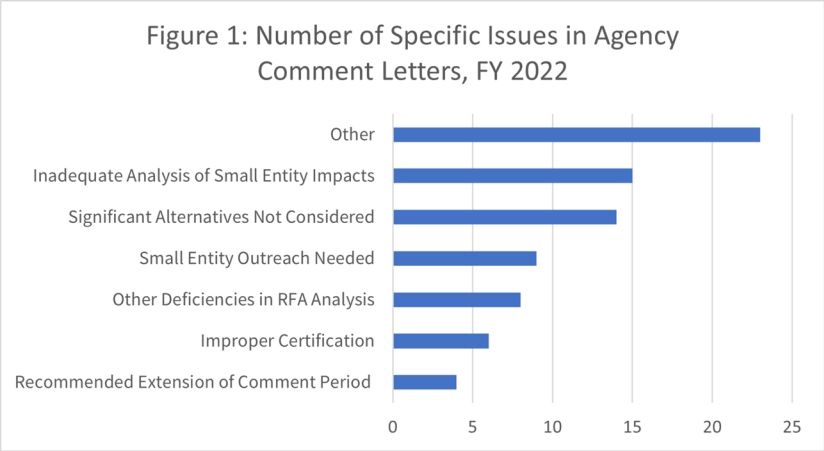
FY 2023 has been met with many SBREFA panels. As of the submission of this written testimony, ten panels have been convened in FY 2023: one with CFPB, one with OSHA, and eight with EPA.

One of Advocacy's most effective outreach strategies has been through roundtable events. In these roundtables, small businesses and their representatives discuss specific regulatory issues, in most cases with the federal agency present. Historically, Advocacy has mostly hosted these roundtables in Washington, D.C., with other roundtables held around the country as needed. During the pandemic, Advocacy staff moved roundtables online for safety and convenience.

As online communication has become more prevalent, Advocacy has included stakeholders that otherwise may have gone unnoticed or found it difficult to travel to Washington, D.C. Online roundtables have led to greater participation by stakeholders, including those from distant locations and underserved backgrounds. Advocacy plans on continuing to offer online roundtables, in large part thanks to these unforeseen benefits. In FY 2022, Advocacy held 30 regulatory roundtables with over 1,800 participants. A list of the roundtables can be found in Appendix D of this testimony, and descriptions of each roundtable can be found in Chapter 3 of the annual report.

C. Advocacy's Public Comments to Federal Agencies

In FY 2022, Advocacy submitted 37 comment letters to regulatory agencies. The most frequent concerns were inadequate analysis of small entity impacts (15 letters), significant alternatives not considered (14 letters), and the agencies needed to reach out to small entities (9 letters). Several letters (23 letters) referenced other issues not categorized. Figure 1 summarizes Advocacy's issues of



concern. Appendix E of this testimony lists all the comment letters submitted in FY 2022 in chronological order. Each letter is summarized in Chapter 4 of the annual report.

Despite Advocacy's operations moving to a full time telework status for most of 2020 and 2021 due to the COVID-19 pandemic and transitioning to a hybrid workplace since, Advocacy has maintained its work output and effectiveness. In fact, Advocacy's output has increased. For example, from FY 2017 through FY 2019, Advocacy submitted 63 comment letters to regulatory agencies and held 43 roundtables. In contrast, from FY 2020 through FY 2022, Advocacy submitted 74 comment letters to regulatory agencies and held 61 roundtables.

Advocacy continues to be productive in FY 2023. As of the submission of this written testimony, Advocacy has submitted over 40 comment letters to regulatory agencies since October 1, 2022. Advocacy has also held 23 roundtables, with more planned in the coming months.

In analyzing Advocacy's most recent reports, the most frequent concerns that Advocacy has identified in comment letters from FY 2020 to FY 2022 continue to be that agencies had an inadequate analysis of small entity impacts (29 letters), significant alternatives were not considered (28 letters), and small entity outreach was needed (15 letters). Additionally, Advocacy's comment letters also identify other issues not categorized (34 letters).

D. Small Business Regulatory Cost Savings and Success Stories

Because of Advocacy's efforts to promote federal agency compliance, in FY 2022, small businesses saved $73.5 million in estimated forgone regulatory cost savings. Compliance cost savings for small businesses that resulted from these actions arose from the modification, withdrawal, or delay of final and proposed regulations. There were eight regulatory successes whose impacts are not quantifiable, which Advocacy categorizes as success stories.

Appendix F summarizes the cost savings from three final actions at three federal agencies in FY 2022, and descriptions of the cost savings can be found in Chapter 6 of the annual report. Appendix G of this testimony summarizes the success stories from eight agency actions in FY 2022, and descriptions of each success can be found in Chapter 6 of the annual report.

IV. Conclusion

Thank you for the opportunity to testify today. Advocacy looks forward to continuing to work with you and other Members of Congress to be the voice for small businesses in the federal government and work with agencies to reduce small businesses' regulatory burdens during the rulemaking process. I would be happy to answer any questions you may have.

Appendix A

RFA Training at Federal Agencies in FY 2022

Date	Agency	Number Trained
10/26/21	Federal Communications Commission	6
03/02/22	National Labor Relations Board	37
03/03/22	U.S. Army Corps of Engineers	5
04/19/22	Federal Communications Commission	41
04/26/22	Securities and Exchange Commission	50
05/05/22	Mine Safety and Health Administration	18
06/29/22	Employee Benefits Security Administration	13
07/21/22	Department of Education	15
09/13/22	Small Business Administration	25
09/22/22	Federal Aviation Administration	47
	Total	257

Appendix B

Federal Agency Compliance with Rule-Writing Requirements under Executive Order 13272 and the JOBS Act, FY 2022

Agency	Written Procedures on Website	URL of Agency's RFA Procedures	Notifies Advocacy	Responds to Comments
Cabinet Agencies				
Department of Agriculture	√	https://www.usda.gov/directives/dr-1512-001	√	√
Department of Commerce(a)	√	www.fisheries.noaa.gov/national/laws-and-policies/guidance-conducting-economic-and-social-analyses-regulatory-actions	√	√
Department of Defense	√	https://www.acquisition.gov/node/28713/printable/print	√	√
Department of Education	X		√	n.a.
Department of Energy	√	www.energy.gov/sites/prod/files/gcprod/documents/eo13272.pdf	√	√
Department of Health and Human Services	√	FDA: https://www.fda.gov/industry/small-business-assistance/letter-proper-consideration-small-entities-agency-rulemaking CMS: https://www.cms.gov/Regulations-and-Guidance/Guidance/CMSSmallBusAdminOmbuds	√	√
Department of Homeland Security	√	www.dhs.gov/publication/signed-regulatory-flexibility-act-executive-order-13272-memo-2004	√	n.a.
Department of Housing and Urban Development	√	www.hud.gov/program_offices/sdb/policy/sbrefa	n.a.	n.a.
Department of the Interior	√	https://www.fws.gov/policy/library/rgeo12372.pdf	√	x
Department of Justice	X		√	n.a.
Department of Labor	√	www.dol.gov/general/regs/guidelines	√	√
Department of State	X		√	n.a.

Agency	Written Procedures on Website	URL of Agency's RFA Procedures	Notifies Advocacy	Responds to Comments
Department of Transportation	√	www.transportation.gov/sites/dot.dev/files/docs/1979%20Regulatory%20Policies%20and%20Procedures.doc	√	n.a.
Department of the Treasury (b)	√	Treasury: https://home.treasury.gov/about/general-information/orders-and-directives/td28-03 Internal Revenue Service: www.irs.gov/irm/part32/irm_32-001-005#idm140712272166000	√	√
Department of Veterans Affairs	√	www.va.gov/ORPM/Regulatory_Flexibility_Act_EO_13272_Compliance.asp	√	n.a.
Environmental Protection Agency	√	www.epa.gov/sites/production/files/2015-06/documents/guidance-regflexact.pdf	√	√
Small Business Administration	X		√	n.a.
Noncabinet Agencies				
Commodity Futures Trading Commission	n.a.	n.a.	X	n.a.
Consumer Financial Protection Bureau (c)	n.a.	n.a.	√	n.a.
Consumer Product Safety Commission	√	www.cpsc.gov/Regulations-Laws--Standards/Rulemaking#The Regulatory Flexibility Act	√	√
Equal Employment Opportunity Commission	√	www.eeoc.gov/eeoc/plan/regflexibilityact.cfm	√	n.a.
Federal Acquisition Regulation Council	X	https://www.acquisition.gov/node/28713/printable/print	√	n.a.
Federal Communications Commission	√	www.fcc.gov/sites/default/files/fcc-directive- 1158.2.pdf	√	√
Federal Reserve Board (c)	n.a.	n.a.		n.a.

Agency	Written Procedures on Website	URL of Agency's RFA Procedures	Notifies Advocacy	Responds to Comments
Federal Retirement Thrift Investment Board	n.a.	n.a.	√	n.a.
General Services Administration	X		√	n.a.
National Labor Relations Board (c)	n.a.	n.a.	√	n.a.
Pension Benefit Guarantee Corporation	n.a.	n.a.	√	n.a.
Securities and Exchange Commission (c)	n.a.	n.a.	√	n.a.

Notes: √ = Agency complied with the requirement. X = Agency did not comply with the requirement.
n.a. = Not applicable because Advocacy did not submit a comment letter in response to an agency rule in FY 2022 or because the agency is not required to do so.

a. NOAA drafts most regulations the Commerce Department releases.
b. On April 11, 2018, Treasury and the Office of Management and Budget signed a Memorandum of Agreement stating that tax regulations would be reviewed under Executive Order 12866.
c. Independent agencies are not subject to the E.O. requiring written procedures. However, some independent agencies do have written procedures available on their websites.

Appendix C
SBREFA Panels Convened Through FY 2022

Consumer Financial Protection Bureau				
SBREFA Panel Rule	**Date Convened**	**Date Completed**	**Notice of Proposed Rulemaking**	**Final Rule Published**
Automated Valuation Model (AVM)	03/14/22	05/13/22		
Small Business Lending Data Collection	10/15/20	12/14/20	10/08/21	
Debt Collection	08/25/16	10/19/16	05/21/19. Supplemental rule published 03/03/20.	11/30/20
Arbitration Clauses	10/20/15	12/11/15	05/24/16	Rule published 07/19/17. Repealed via Congr. Review Act, 10/24/17.
Limit Certain Practices for Payday, Vehicle Title, and Similar Loans	04/27/15	06/25/15	07/22/16	11/17/17
Home Mortgage Disclosure Act	02/27/14	04/24/14	08/29/14	10/15/15
Loan Originator Compensation Requirements under Regulation Z	05/09/12	07/12/12	09/07/12	02/15/13
Mortgage Servicing under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	04/09/12	06/11/12	09/17/12	02/14/13
Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	02/21/12	04/23/12	08/23/12	12/31/13

Department of Labor, Occupational Safety and Health Administration				
SBREFA Panel Rule	**Date Convened**	**Date Completed**	**Notice of Proposed Rulemaking**	**Final Rule Published**
Emergency Response	10/04/21	12/02/21		
Tree Care Operations	03/23/20	05/22/20		
Telecommunications Towers	08/15/18	10/11/18		
Process Safety Management Standard	06/02/16	08/01/16		
Occupational Exposure to Infectious Diseases in Healthcare and Other Related Work Settings	10/14/14	12/22/14		
Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl	05/05/09	07/02/09		
Occupational Exposure to Beryllium	09/17/07	01/15/08	08/07/15	
Cranes and Derricks in Construction	08/18/06	10/17/06	10/09/08	08/09/10
Occupational Exposure to Hexavalent Chromium	01/30/04	04/20/04	10/04/04	02/28/06
Occupational Exposure to Crystalline Silica	10/20/03	12/19/03	09/12/13	03/25/16
Confined Spaces in Construction	09/26/03	11/24/03	11/28/07	
Electric Power Generation, Transmission, and Distribution	04/01/03	06/30/03	06/15/05	04/11/14
Ergonomics Program Standard	03/02/99	04/30/99	11/23/99	11/14/00
Safety and Health Program Rule	10/20/98	12/19/98		
Tuberculosis	09/10/96	11/12/96	10/17/97	Withdrawn 12/31/03

Environmental Protection Agency				
SBREFA Panel Rule	**Date Convened**	**Date Completed**	**Notice of Proposed Rulemaking**	**Final Rule Published**
TSCA Section 8(a)(7) Rule: Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances	04/06/22	08/02/22		
Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation (NPDWR)	05/24/22	08/01/22		
Cyclic Aliphatic Bromide Cluster (HBCD) Risk Management Rulemaking Under the Toxic Substances Control Act	01/06/22	09/09/22		
Standards of Performance for New, Reconstituted, and Modified Sources: Oil and Natural Gas Sector Review	07/15/21	09/20/21	11/15/21	
1-Bromopropane; Rulemaking under TSCA §6(a)	04/27/21	12/16/21		
Methylene Chloride; Rulemaking under TSCA §6(a)	01/07/21	10/28/21		
National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations	11/25/20	04/26/21		
Financial Responsibility Requirements for Hard Rock Mining	08/24/16	12/01/16	12/01/16	Withdrawn 02/21/18
Regulation of Trichloroethylene for Vapor Degreasers under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	
Regulation of N-Methylpyrrolidone and Methylene Chloride in Paint and Coating Removal under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	03/27/19
Risk Management Program Modernization	11/04/15	02/19/16	03/14/16	01/13/17
Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector	06/16/15	08/13/15	09/18/15	06/3/16
Federal Plan for Regulating Greenhouse Gas Emissions from Electric Generating Units	04/30/15	07/28/15	10/23/15	Withdrawn 04/03/17

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Vehicles	10/22/14	01/15/15	07/13/15	10/25/2016
PCB (Polychlorinated Biphenyls) Use Authorizations Update Rule	02/07/14	04/07/14		
Review of New Source Performance Standards and Amendments to Emission Guidelines for Municipal Solid Waste Landfills	12/05/13	07/21/15	07/17/14 08/27/15	08/29/16
National Emissions Standards for Hazardous Air Pollutants (NESHAP): Brick and Structural Clay Products and Clay Products	06/12/13	01/16/14	12/18/14	10/26/15
Long Term Revisions to the Lead and Copper Rule	08/14/12	08/16/13	-	-
Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards	08/04/11	Rule proposed rule w/o completion of SBREFA panel report	06/30/14	12/01/15
Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards	08/04/11	10/14/11	05/21/13	04/28/14
Greenhouse Gas Emissions from Electric Utility Steam Generating Units	06/09/11	Rule proposed rule w/o completion of SBREFA panel report	04/14/13	04/13/12 01/08/14 06/02/14
National Emission Standards for Hazardous Air Pollutants (NESHAP) Risk and Technology Review for the Mineral Wool and Wool Fiberglass Industries	06/02/11	10/26/11	11/12/11	07/29/15
Formaldehyde Emissions from Pressed Wood Products	02/03/11	04/04/11	06/10/13	12/16/16
Stormwater Regulations Revision to Address Discharges from Developed Sites	12/06/10	10/04/11	-	Withdrawn 06/06/17
National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units	10/27/10	03/02/11	05/03/11	02/16/12
Revision of New Source Performance Standards for New Residential Wood Heaters	08/04/10	10/26/11	02/03/14	03/16/15

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Pesticides; Reconsideration of Exemptions for Insect Repellents	11/16/09	01/15/10		
National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers: Major and Area Sources	01/22/09	03/23/09	06/04/10	03/21/11
Pesticides; Certification of Pesticide Applicators (Revisions)	09/04/08	11/03/08	08/24/15	01/04/17
Pesticides; Agricultural Worker Protection Standard Revisions	09/04/08	11/03/08	03/19/14	11/02/15
Renewable Fuel Standards 2	07/09/08	09/05/08	05/26/09	03/26/10
Total Coliform Monitoring	01/31/08	01/31/08	07/14/10	
Non-Road Spark-Ignition Engines/ Equipment	08/17/06	10/17/06	05/18/07	10/08/08
Mobile Source Air Toxics	09/07/05	11/08/05	03/29/06	02/26/07
Federal Action Plan for Regional Nitrogen Oxide/Sulfur Dioxide (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Section 126 Petition (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Cooling Water Intake Structures Phase III Facilities	02/27/04	04/27/04	11/24/04	06/16/06
Nonroad Diesel Engines – Tier IV	10/24/02	12/23/02	05/23/03	06/29/04
Lime Industry – Air Pollution	01/22/02	03/25/02	12/20/02	01/05/04
Aquatic Animal Production Industry	01/22/02	06/19/02	09/12/02	08/23/04
Construction and Development Effluent Limitations Guidelines	07/16/01	10/12/01	06/24/02	Withdrawn 04/26/04

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Nonroad Large Spark Ignition Engines, Recreation Land Engines, Recreation Marine Gas Tanks and Highway Motorcycles	05/03/01	07/17/01	10/05/01 08/14/02	11/08/02
Stage 2 Disinfectant Byproducts; Long Term 2 Enhanced Surface Water Treatment	04/25/00	06/23/00	08/18/03	01/04/06
Reinforced Plastics Composites	04/06/00	06/02/00	08/02/01	04/21/03
Concentrated Animal Feedlots	12/16/99	04/07/00	01/12/01	02/12/03
Metals Products and Machinery	12/09/99	03/03/00	01/03/01	05/13/03
Lead Renovation and Remodeling Rule	11/23/99	03/03/00	01/10/06	04/22/08
Diesel Fuel Sulfur Control Requirements	11/12/99	03/24/00	06/02/00	01/18/01
Recreational Marine Engines	06/07/99	08/25/99	10/05/01 08/14/02	11/08/02
Arsenic in Drinking Water	03/30/99	06/04/99	06/22/00	01/22/01
Light Duty Vehicles/Light Duty Trucks Emissions and Sulfur in Gas	08/27/98	10/26/98	05/13/99	02/10/00
Filter Backwash Recycling	08/21/98	10/19/98	04/10/00	06/08/01
Long Term 1 Enhanced Surface Water Treatment	08/21/98	10/19/98	04/10/00	01/14/02
Radon in Drinking Water	07/09/98	09/18/98	11/02/99	
Section 126 Petitions	06/23/98	08/21/98	09/30/98	05/25/99
Phase I (FIP) To Reduce the Regional Transport of Ozone in the Eastern United States	06/23/98	08/21/98	10/21/98	05/06/05
Ground Water	04/10/98	06/09/98	05/10/00	11/08/06
Underground Injection Control (UIC) Class V Wells	02/17/98	04/17/98	07/29/98	12/07/99

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Centralized Waste Treatment Effluent Guideline	11/06/97	01/23/98	09/10/03 01/13/99	12/22/00
Transportation Equipment Cleaning Effluent Guidelines	07/16/97	09/23/97	06/25/98	08/14/00
Stormwater Phase II	06/19/97	08/07/97	01/09/98	12/08/99
Industrial Laundries Effluent Guidelines	06/06/97	08/08/97	12/17/97	Withdrawn 08/18/99
Nonroad Diesel Engines	03/25/97	05/23/97	09/24/97	10/23/98

Appendix D
Regulatory Roundtables Hosted by the Office of Advocacy, FY 2022

Agency	Purpose	Date
Consumer Financial Protection Bureau	Roundtable on Financial Issues	11/09/21
Consumer Product Safety Commission	Safety Standards for Clothing Storage Units Roundtable	02/16/22
Department of Agriculture, Animal and Plant Health Inspection Service	Birds Not Bred for Research Roundtable	04/19/22
Department of Agriculture, Forest Service	Alaska Roadless Rule Roundtable	01/18/22
Department of Commerce	Technology and Trade Council Digital Tools Roundtables	06/17/22
Department of Commerce, National Marine Fisheries Service	North Atlantic Right Whale Roundtable	09/15/22
Department of Energy	Energy Conservation for Appliances Roundtable	02/11/22
Department of the Interior	Working Group on Mining Regulations Roundtable	07/21/22
Department of the Interior, Bureau of Ocean Energy Management	Offshore Wind Development and Fisheries Roundtable	12/14/21
	BOEM Morro Bay Environmental Assessment Roundtable	04/20/22
	Outer Continental Shelf Lands Act Renewable Energy Roundtable	08/04/22
Department of the Interior, Fish and Wildlife Service	Incidental Take of Migratory Birds Roundtable	11/16/21
	Endangered Species Experimental Populations Roundtable	07/20/22
Department of Labor	FLSA Minimum Wage and Overtime Roundtable	03/25/22
	Davis-Bacon Act Regulations Roundtable	04/05/22
Environmental Protection Agency	Waters of the United States Roundtables	01/06/22 01/10/22
	Draft TSCA Risks to Fenceline Communities Roundtable	02/18/22
	Petition to Revise the Non-Hazardous Secondary Material Standard Roundtable	03/11/22
	Clean Truck Plan and Heavy-Duty Vehicle NOx Emissions Roundtable	04/08/22
	Chrysotile Asbestos Under Section 6(a) of the Toxic Substances Control Act Roundtable	05/26/22
	EPA's Proposed Reporting and Recordkeeping Requirements for Asbestos Roundtable	06/17/22
Federal Acquisition Regulatory Council	Project Labor Agreements Roundtable	09/29/22
Federal Energy Regulatory Commission	Interconnection Procedures Roundtable	09/29/22

Agency	Purpose	Date
Occupational Safety and Health Administration	Regulatory Update from OSHA Assistant Secretary, Heat Stress, COVID-19 Roundtable	11/19/21
	COVID-19, Heat Stress, Surface Mobile Mining Equipment Safety Roundtable	01/28/22
	COVID-19 Inspections, Heat Stress, ABA OSH Law Meeting Roundtable	03/18/22
	OSHA Electronic Reporting, Heat Injury and Illness Reporting, COVID-19 in Healthcare Settings Roundtable	05/20/22
	Blood Lead Level for Medical Removal, OSHRC Update, Cal/OSHA Roundtable	09/16/22
White House Office of Science and Technology Policy	Sustainable Chemistry Roundtable	05/06/22

Appendix E
Regulatory Comment Letters Filed by the Office of Advocacy, FY 2022

Date Filed	Agency*	Topic	Citation to Rule
11/18/21	DOI	Advancing Racial Equity and Support for Underserved Communities Through Recreation Opportunities	86 Fed. Reg. 57848
11/23/21	FWS, NMFS	Regulations for Designating Critical Habitat	86 Fed. Reg. 59346; 86 Fed. Reg. 59353
12/15/21	EPA	Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources- Extension	86 Fed. Reg. 63110
12/17/21	EPA	Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting	86 Fed. Reg. 57614
01/06/22	CFPB	Small Business Lending Data Collection	86 Fed. Reg. 56356
01/07/22	BOEM	Mitigating the Impacts of Offshore Wind Development on Fisheries	https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM-2021-0083-0001.pdf
01/20/22	FCC	Improving Competitive Broadband Access to Multiple Tenant Environment	86 Fed. Reg. 52120
01/24/22	FS	Roadless Area Conservation; National Forest System Lands in Alaska	86 Fed. Reg. 66498
01/31/22	DOL	Revising Wage Methodology for Agricultural Guest Workers	86 Fed. Reg. 68174
01/31/22	EPA	Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources	86 Fed. Reg. 63110
02/04/22	FinCEN	Beneficial Ownership Information Reporting Requirements	86 Fed. Reg. 69920
02/07/22	EPA, CORPS	Revised Definition of "Waters of the United States"	86 Fed. Reg. 69372
03/03/22	NMFS	Atlantic Large Whale Take Reduction Plan	86 Fed. Reg. 51970
03/07/22	CMS	Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs	87 Fed Reg. 1842
03/11/22	DOE	Inputs to Inform Social Science Research Related to Offshore Wind	https://www.energy.gov/eere/wind/articles/doe-requests-inputs-inform-social-science-research-related-offshore-wind
03/23/22	CPSC	Consumer Safety Standard for Operating Cords on Custom Window Coverings	87 Fed. Reg. 1014
03/29/22	EPA	Petition to Revise the Non-Hazardous Secondary Material Standard	87 Fed. Reg. 4536
04/14/22	CORPS	Approved Jurisdictional Determinations Under the Navigable Waters Protection Rule	88 Fed. Reg. 3004

Date Filed	Agency*	Topic	Citation to Rule
04/18/22	CPSC	Safety Standard for Clothing Storage Units	87 Fed. Reg. 6246
05/06/22	SEC	Cybersecurity Risk Management and Incident Disclosure	87 Fed. Reg. 16590
05/13/22	DOE	Request to Reopen Comments on Energy Conservation Program for Appliance Standards	86 Fed. Reg. 18901
05/16/22	BOEM	Environmental Assessment for the Morro Bay Offshore Wind Energy Area	Docket No. BOEM-2021-0044
05/17/22	DOL	Updating Davis-Bacon Act for Federal Construction Contracts	87 Fed. Reg. 15698
05/23/22	IRS	Required Minimum Distributions	87 Fed. Reg. 10504
05/24/22	APHIS	Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act	87 Fed. Reg. 9880
05/25/23	CEQ	Climate and Economic Justice Screening Tool	87 Fed. Reg. 10176
07/05/22	EPA	TSCA Asbestos Reporting Rule	87 Fed. Reg. 27060
07/25/22	EPA	Clean Water Act Hazardous Substance Worst Case Discharge Planning Rule	87 Fed. Reg. 17890
08/05/22	EPA	Water Quality Certification Improvement Rule	87 Fed. Reg. 35318
08/05/22	FTC	Extension of Implementation Period for the Standards for Safeguarding Customer Information	86 Fed. Reg. 70272
08/08/22	FWS	Endangered and Threatened Wildlife and Plants; Designation of Experimental Populations	87 Fed. Reg. 34625
08/22/22	BOEM	Mitigating the Impacts of Offshore Wind Development on Fisheries	https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT%20Fisheries%20Mitigation%20Guidance%2006232022_0.pdf
08/22/22	FTC	Motor Vehicle Trade Regulation Extension	87 Fed. Reg. 42012
08/29/22	FRA	Comment Period Extension on Proposed Train Crew Size Safety Requirements Rule	87 Fed. Reg. 45564
09/08/22	FTC	Motor Vehicle Trade Regulation	87 Fed. Reg. 42012
09/12/22	ED	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance Proposed Rule	87 Fed. Reg. 41390

*Abbreviations:

APHIS	Animal Plant and Health Inspection Service
BOEM	Bureau of Ocean Energy Management
CEQ	Council on Environmental Quality
CFPB	Consumer Financial Protection Bureau
CMS	Center for Medicare and Medicaid Services
CORPS	Army Corps of Engineers
CPSC	Consumer Product Safety Commission
DOE	Department of Energy
DOI	Department of the Interior
DOL	Department of Labor
ED	Department of Education
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
FinCEN	Financial Crimes Enforcement Network
FRA	Federal Railroad Administration
FS	Forest Service
FTC	Federal Trade Commission
FWS	Fish and Wildlife Service
IRS	Internal Revenue Service
NMFS	National Marine Fisheries Service
SEC	Securities and Exchange Commission

Appendix F
Summary of Small Business Regulatory Cost Savings, FY 2022

Agency	Rule	Initial cost savings ($million)	Recurring cost savings ($million)
Department of Defense	Cybersecurity Maturity Model Certification[1]	62.7	62.7
Environmental Protection Agency	Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act[2]	7.9	7.9
	Unregulated Contaminant Monitoring Rule 5 (UCMR 5)[3]	2.9	2.9
Total Foregone Regulatory Cost Savings, FY 2022		73.5	73.5

Note: Advocacy generally bases its cost savings estimates on agency estimates. Cost savings estimates are derived independently for each rule from the agency's analysis, and accounting methods and analytical assumptions for calculating costs may vary by agency. Cost savings for a given rule are captured in the fiscal year in which the agency finalizes changes in the rule because of Advocacy's intervention. These are best estimates to illustrate reductions in regulatory costs to small businesses. Initial cost savings consist of capital or recurring costs foregone that may have been incurred in the rule's first year of implementation by small businesses. Recurring cost savings are listed where applicable as annual or annualized values as presented by the agency. The actions listed in this table include deregulatory actions such as delays and rule withdrawals.

Sources:
1. 87 Fed. Reg. 16590 (March 23, 2022).
2. 86 Fed. Reg. 27150 (May 19, 2021).
3. 86 Fed. Reg. 13846 (March 11, 2021).

Appendix G
Summary of Small Business Regulatory Success Stories, FY 2022

Agency	Rule
Department of Commerce	Atlantic Large Whale Take Reduction[1]
Department of the Interior	Equity Action Plan[2]
Department of the Treasury, Financial Crimes Enforcement Network	Beneficial Ownership[3]
Environmental Protection Agency	EPA's Proposed TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances[4]
Federal Communications Commission	Supply Chain Security—Equipment Authorization Rule[5]
	Small Provider Exception for STIR/SHAKEN[6]
	Broadband Competition in Multi-tenant Environments[7]
Internal Revenue Service	Required Minimum Distributions[8]

Sources:
1. 86 Fed. Reg. 51970 (September 17, 2021).
2. 86 Fed. Reg. 57848 (October 19, 2021).
3. 87 Fed. Reg. 59498 (September 30, 2022).
4. 86 Fed. Reg. 33926 (June 28, 2021).
5. 86 Fed. Reg. 46644 (September 19, 2021).
6. 87 Fed Reg. 3684 (January 25, 2022).
7. 87 Fed Reg. 17181 (March 28, 2022).
8. 87 Fed Reg. 10504 (February 24, 2022).

Senator ERNST. Thank you very much, Mr. Clark, and we will submit that, without objection, so thank you.

[The information follows:]

Senator ERNST. Representative Latham, thank you.

STATEMENT OF REP. SHANNON LATHAM, IOWA HOUSE OF REPRESENTATIVES, DES MOINES, IA

Ms. LATHAM. Thank you. Good afternoon, Ranking Member Ernst, members of the Committee, and distinguished guests. It is a real honor to be here as a representative of Latham Hi-Tech Seeds to provide insights about difficulties faced by small businesses when complying with regulatory requirements.

Latham Hi-Tech Seeds is a third-generation, family-owned seed company that is headquartered on our family's Century Farm in north central Iowa. Latham brand hybrid seed corn, soybeans, and alfalfa products are sold across the Upper Midwest, primarily through a farmer-dealer network.

We are proud to have celebrated our company's 75th anniversary in 2022, but our success did not come without overcoming obstacles, and some of the obstacles we face today include gene editing, antitrust enforcement, and trucking.

So I will begin with gene editing. Sustainable agriculture and food production require a range of innovative solutions, including the latest precision plant breeding tools, like gene editing. These tools allow plant breeders to develop better crops, in less time, with more accuracy than other methods. And because our seed company has a corn breeding program, we are greatly concerned with EPA's recent final rule on plant incorporated protectants. The EPA's precautionary and process-based policy imposes non-risk-based regulatory hurdles for certain plant characteristics created using the latest precision breeding tools.

And antitrust enforcement. Consolidation in agriculture, livestock, fertilizer, chemicals, and seed is reducing competition, and we know that reduced competition leads to increased costs. The United States Department of Agriculture, in March 2023, issued a competition report that issued recommendations of being a voice for farmers and plant breeders as well as interagency coordination to promote fair competition.

And trucking, I could have gone on a while for trucking. The U.S. Department of Transportation's Federal Motor Carrier Safety Administration Entry Level Driver Training final rule went into effect in February of 2022. The additional coursework costs between $1,000 and $4,000, depending on the course and the provider. This is a really large investment for small businesses. Whenever you add time and money it discourages people from actually getting their CDL.

In addition to decreasing regulatory costs, one policy change that can help address trucking shortages is lifting interstate weight limits and making them uniform nationwide. Increasing interstate weight limits would create added efficiencies to transporting goods.

During the 2023 session, the Iowa legislation passed a resolution encouraging Congress to increase weight limits on interstate highways in Iowa. Iowa allows higher weight limits on our state highways during the business times for agriculture. And because driv-

ers can operate heavier loads on road that are under state jurisdiction they often avoid interstates. If the interstate system allowed heavier loads, truck drivers could take the most direct route, they would save driving time, and reduce fuel usage.

And finally, electronic logging devices, or ELDs, are time-consuming and expensive for small businesses. It is especially challenging for businesses like ours that serve rural America. Electronics are prone to error, plus there are just a lot of areas in our trade territory where we lose phone service and we cannot get satellite signals.

Another downfall is that these logs start clocking your time as soon as the truck moves. So it is problematic for a company like ours, like when we are trying to just load seed from a dock, because it will begin to clock the time. And then we have had instances where the driver forgot to log out, and then it made it look like the truck was parked and he was there. Yeah, you can overcome those, but it takes time and energy, and it just detracts from your day-to-day business.

One solution for the overburdensome ELD regulations is to exempt companies with five trucks or fewer. Another solution is to just simply exempt anyone who carries 100 percent of their own products. This solution offered for ELDs is an example of how one-size regulations do not fit all businesses. Small businesses frequently encounter challenges stemming from regulations that were designed for larger enterprises. Examples include burdensome paperwork, expensive compliance measures, and intricate reporting requirements.

These issues all impede growth, discourage innovation, and often lead to disproportionate costs that hinder small business success. I encourage this Committee to consider the recommendations presented here.

The written document I submitted also includes comments that I gathered from other small business owners throughout my district and across the state. As a member of the Iowa House of Representatives, I visit regularly with business owners, and it is my honor to represent them.

Thank you for your attention. Together I know that we can help Federal regulations become a catalyst rather than a hindrance for small business success. And you know I would be happy to answer questions.

[The prepared statement of Ms. Latham follows:]

Shannon Latham
Vice President, Latham Hi-Tech Seeds
Iowa House of Representatives, House District 55

Testimony for Field Hearing on Regulatory Challenges and Benefits for Small Businesses

The Honorable Ben Cardin, Chairman, the Honorable Joni Ernst, Ranking member, Members of the Committee, and Distinguished Guests,

Thank you for the opportunity to testify today on the critical topic of regulatory challenges and benefits for small businesses. As a representative of Latham Hi-Tech Seeds, I am honored to provide insights into the difficulties faced by small businesses when complying with regulatory requirements identical to those of their larger competitors.

Latham Hi-Tech Seeds is a third-generation, family-owned seed company. My husband, John, his brother, Chris, and I are proud that our business headquarters remain on the Latham family's Century Farm in North Central Iowa. We offer a full lineup of corn, soybeans and alfalfa seed products. Latham® brand seed products are sold across the Upper Midwest primarily through a farmer-dealer network.

Latham Seeds was founded in 1947 in Alexander, Iowa, by my husband's grandparents Willard and Evelyn Latham. Three of their sons joined the business in the 1960s-70s, and the second generation of Lathams added a dealer sales component to the company's production efforts. Our generation started Latham Hi-Tech Hybrids in April 2004. After boot-strapping the business and not paying ourselves for five years, we brought the two companies together in 2009, evolving the business into Latham Hi-Tech Seeds.

Today build our business on the foundation Willard provided with a commitment to personal service, tailored solutions and the same spirit of families helping families. We are proud to share our story of what hard work and persistence can achieve, but our success did not come without obstacles and hurdles to overcome along the way. Some of those obstacles encompass three areas of regulation:

1. Gene Editing (Plant Incorporated Protectants)
2. Anti-Trust Enforcement
3. Trucking

Gene Editing

The seed industry is founded on innovation, and innovation is a part of everything we do – from plant breeding and seed treatments to soil health and habitat restoration.

Seed companies make significant investments in research, collaboration and data over long periods of time to understand and meet the unique and changing needs of their customers. Because of the inherent risk involved in this process, it's vital that government policies around seed and conservation programs are clear and workable, for the seed industry and for farmers at all levels.

Sustainable agriculture and food production require a diverse range of innovative solutions, including the latest precision plant breeding tools like gene editing. These tools allow plant breeders to develop better crops, in less time with more accuracy than older methods. For example, plant breeders are using innovative tools to develop crops that are drought tolerant and climate resilient, berries with added nutritional benefits, and produce that addresses food waste by staying fresher, longer. [1]

Plant Incorporated Protectants (PIPs)

Because our seed company has a corn breeding program, we are concerned with the EPA's recent final rule on Plant Incorporated Protectants (PIPs). This rule will handcuff U.S. agricultural innovation, especially from small companies and public sector plant breeding programs.

EPA's precautionary and process-based policy imposes non-risk based regulatory hurdles for certain plant characteristics created using the latest precision breeding tools, even though the agency itself has stated that they are "virtually indistinguishable from those created through conventional breeding." [1]

For example, the new EPA rule allows a plant breeder to generate a disease-resistant soybean through conventional breeding without any requirements to market that product. A soybean breeder who uses gene editing to generate the exact same disease-resistant characteristic, however, must make a submission to EPA. This soybean breeder must provide data, justifying the variety is eligible under EPA's exemption for "PIPs created through genetic engineering from a sexually compatible plant." Then this plant breeder must wait for the EPA to confirm the justification. If the EPA allows this soybean to go to market, the breeder must maintain records for five years.

This regulation could impact seed businesses, new technology entrants, and Iowa farmers. Farmers need innovative seed products to combat seed diseases and pests that could destroy a whole crop and have an impact on our national agricultural supply.

[1] https://www.agri-pulse.com/articles/19670-opinion-once-a-world-leader-in-innovation-the-us-is-now-falling-behind

Anti-Trust Enforcement

One additional thing that small businesses in agriculture could use is anti-trust enforcement. Consolidation in agriculture – livestock, fertilizer, chemicals and seed – is reducing competition and increasing costs to small businesses and consumers. Consolidation limits competition[i]. The U.S. Department of Agriculture in March 2023 issued a competition report, which includes a recommendation "to be a voice for farmers and plant breeders." Another recommendation is "interagency coordination to promote fair competition."

Trucking

The trucking industry has a shortage of more than 78,000 truck drivers coupled with a need to hire 1.2 million new drivers over the next decade to meet increasing freight demands. Unfortunately, new regulations make it increasingly more difficult to attract drivers.

Earlier this summer, I met with a constituent about the increased time and money required to secure a Commercial Drivers License (CDL). Implementation of the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) Entry Level Driver Training (ELDT) final rule went into effect February 7, 2022. The additional course work required obviously adds time to the process, but it costs an additional $1,000 to $4,000, depending on the course and the provider. This is a large investment for a small business! Iowa Governor Kim Reynolds recently allocated federal funds in the form of grants to help offer this ELDT course, so hopefully this will increase the pool of CDL drivers.

Another way to increase the labor pool would be to allow 18- to 21-year olds with a CDL to drive across state lines. A new federal pilot program will allow 3,000 selected 18- to 21-year-olds to drive across state lines in a semi as a sort of apprenticeship program with more than 400 hours of training required. This pilot program could provide the data needed to support this change across the nation. I can see this being particularly helpful for farmers and other industries.

A third policy change to help address trucking shortages would be to lift interstate weight limits and making them uniform nationwide. The current interstate weight limit in Iowa is 80,000 pounds but our neighbor to the west, Nebraska, has a higher interstate weight limit that was grandfathered in during the establishment of the interstate system. Increasing interstate weight limits would create added efficiencies to transporting goods.

During the 2023 session, the Iowa Legislature passed a resolution encouraging Congress to increase weight limits on interstates in Iowa to 96,000 pounds. Iowa allows higher weight limits on our state highways. At the busiest times for agriculture, trucks hauling agriculture products and inputs can operate up to 90,000 pounds with an exemption proclamation from the governor. A new all-systems overweight permit established in 2021 and operated by the Iowa Department of Transportation allows permit holders to operate at that weight all year round in certain areas.

Because drivers can operate at heavier loads on roads under state jurisdiction, often they will not use the most direct route between their starting and ending points to avoid interstates. If the interstate system allowed heavier loads, truck drivers could take the most direct route. This would save driving time and reduce fuel usage.

The last trucking regulation I will address is electronic logging devices, or ELDs. This is another time-consuming, expensive regulation for small businesses like Latham Seeds. It's especially challenging for businesses, like ours, which service rural America.

Electronics are prone to error, especially because there are areas in our trade territory where we lose phone service and cannot get satellite signals. As a result, truck drivers sometimes keep a paper set of logs for backup.

Speaking of paper logbooks, it only costs $7 to buy a 30-day supply of paper logs. However, it costs about 50 times more each month to comply with ELDs. We paid $600 per truck for the hardware and were required to sign a three-year contract when ELDs first went into effect. In addition, we had to pay $66 per truck per month for the software. That company went out of business, so we lost our money and had to contract with another provider. We believe this unfortunate circumstance cost us about $5,000.

Another downfall of ELDs is that log starts clocking your time as soon as the truck moves. This is problematic for a company like ours that sometimes moves trucks around the lot to load and unload trailers. We had a driver forget to log out when he pulled into the dock. Then another worker jumped into that semi tractor, pulled away from the dock and parked it for hours. The full-time driver returned to make the delivery only to find that his ELD made it look like he was out of hours. While this may be remedied, it takes time and effort to do so.

One solution to overburdensome ELD regulations is to exempt those with five trucks or fewer trucks, which would cover most small businesses and farmers. Another solution is to simply exempt anyone who carries 100% of their own products.

This solution offered for ELDs is a prime example of how one-size regulations do not fit all businesses. Small businesses frequently encounter challenges stemming from regulations that were designed with larger enterprises in mind. Examples include burdensome paperwork, expensive compliance measures, and intricate reporting requirements. These issues impede growth, discourage innovation, and often lead to disproportionate costs that hinder small business success.

Many small, family-owned businesses like Latham Hi-Tech Seeds must comply with regulations from multiple agencies including the USDA, EPA and IRS. We rely on our membership to organizations like the American Seed Trade Association and the Independent Seed Professionals Association to help us stay informed and in compliance.

The challenges small businesses encounter when complying with regulations designed for larger competitors are significant. By fostering regulatory sensitivity and implementing targeted

reforms, we can empower small businesses to thrive, thereby promoting economic growth and innovation.

As we move forward, I encourage this committee to consider the recommendations presented here. I also am including some additional comments that I gathered from other small business owners. As a member of the Iowa House of Representatives, I visit regularly with business owners across our state.

Together we can ensure that federal regulations become a catalyst for small business success rather than a hindrance. Thank you for your attention, and I am happy to address any questions you may have.

Comments Compiled from Other Iowa Business Owners

1. **Regulatory Disparity: Leveling the Playing Field.** Many government contracts have provisions mandating a certain percentage of involvement by small businesses. While these goals are commendable, the enforcement mechanisms to ensure compliance are often lacking. This lack of accountability creates an uneven playing field, where large entities or government contractors may circumvent their obligations, reducing opportunities for smaller enterprises.

2. **Increasing Small Business Benefits from Federal Regulations.** To enhance the number of small businesses benefiting from regulations sensitive to their concerns, we recommend the following measures:
    a. Tailored Education and Assistance: Regulatory agencies should offer comprehensive guidance and resources specifically designed for small businesses, aiding them in navigating complex compliance requirements.
    b. Robust Accountability Mechanisms: Stricter enforcement and penalties for non-compliance with small business participation goals in government contracts can ensure accountability and a level playing field.
    c. Feedback Loops: Establishing additional channels for regular feedback from small business owners can provide agencies with valuable insights into the practical impact of regulations and inform necessary adjustments.

3. **The Impact of FinCEN and the Federal Transparency Act.** The Financial Crimes Enforcement Network (FinCEN) and the Federal Transparency Act exemplify regulatory efforts aimed at increasing accountability and reducing financial misconduct. While these initiatives are commendable, they can inadvertently burden small businesses, which might lack the resources to implement sophisticated compliance programs. Balancing the goals of regulatory oversight with the practical realities faced by small businesses is crucial to prevent undue strain on their operations.

[i] https://www.ams.usda.gov/about-ams/fair-competitive-seed

Senator ERNST. Wonderful, and thank you Representative Latham.

And Mrs. Green.

STATEMENT OF MEGAN GREEN, COUNSEL AND ENGINEERING MANAGER, WEILER PRODUCTS, KNOXVILLE, IA

Ms. GREEN. Thank you. Good afternoon and thank you to Ranking Member Ernst for inviting me to testify today. My name is Megan Weiler Green and I am Counsel and Engineering Manager for Weiler Products in Knoxville. We are a heavy equipment manufacturer. We do everything from design to taking raw steel all the way to a finished product. We make heavy equipment, primarily for the asphalt paving industry.

I am also a second-generation business owner. Our business was started in 2000, with 4 employees and we have 615—or 618 or 620, depending on the day—employees now. What started as a small business in a 40,000-square-foot spec building is now 625,000 square feet under roof. Our equipment is sold into all 50 states and 15 countries.

We are the market leader because we listen to our customers. We are proactive. We move quickly. We are innovative and find innovative solutions. And we are hands on. These core values describe many small businesses and many Iowa success stories. But they are often at odds with government regulators and government regulations. Entire industries are born out of interpreting government regulations for small businesses.

We know from our experience that every minute one of our employees spends trying to decipher new regulations, creating reports to respond to regulations, purchasing new systems that add no value to our organization other than compliance with a new regulation is a minute taken away from what we do best: serve our customers and design industry-leading equipment.

As we react to new regulations, small businesses are often left wondering "who is this benefitting?" The purpose of regulations is often nonobvious from the perspective of those who are asked to comply. We have also seen several instances of regulations being announced alongside the deadline for compliance. While we, as a business, work diligently to decipher unreadable regulatory jargon, announcements from the government are released days before that compliance deadline hits, saying we are going to move that date back. There is no recognition of the wasted time and duplicative effort that that puts on our business.

Similarly, our team works together to gather complicated reports and data to respond to various mandatory surveys and government requests for information. While the demand for this information is firm, there is no discernible benefit to us, as a company, or explanation as to how the collection of this information is moving the greater good forward.

In business, we operate in cost/benefit analyses. In order to come out with an accurate assessment, we need information that we can rely on. When new regulations are announced, we are often in a position to ask ourselves: Does this apply to our business? What does this mean for our business? Can I find anyone in this govern-

ment agency who can answer my questions? And maybe most importantly, what happens if I do this wrong?

When the rules are unknown, or the rules change in the middle of the game, we cannot trust that we are making decisions in the best interest of our customers and our employees.

Entrepreneurs and small business owners created their companies out of a passion for a product, a passion for serving customers, or a passion for improving the status quo. No one starts their own business out of a passion for the paperwork. Dedicating resources to regulatory compliance makes it more difficult for small businesses to compete with large companies, who can depend on big staff and healthy budgets dedicated to outside experts who can assist with information gathering, compliance, and audits.

The bottom line is this: small businesses want to do the right thing. The Senate Committee on Small Business and Entrepreneurship can assist by helping small businesses in the following ways. Help small businesses understand regulatory requirements and the why behind new regulations. Leverage data that is already required, rather than creating new reporting requirements. Be flexible on what the output looks like for small businesses. Provide resources and access to people who can help navigate changing rules.

We appreciate the attention that Senator Ernst and her office is bringing to this issue, and I welcome any questions that you have and appreciate your time.

[The prepared statement of Ms. Green follows:]

Megan Green
Counsel and Engineering Manager
Weiler

Good afternoon and thank you for inviting me to testify today.

My name is Megan Weiler Green and I am Counsel and Engineering Manager at Weiler in Knoxville. We are a heavy equipment manufacturer, doing everything from machine design to turning raw steel into finished product for construction equipment primarily for the asphalt paving industry. I am also a second generation business owner. Our business was founded in 2000 with 4 employees and has grown to over 600 employees. What started as a 40,000 square foot spec building has grown to over 625,000 square feet under roof. Our equipment is sold into all 50 states and over 15 countries.

We are the market leader because we listen to our customers. We are proactive. We move quickly. We find innovative solutions. We are hands on. These core values describe many small businesses and many Iowa success stories. But they are often at odds with government regulators and government regulations. Entire industries are born out of interpreting government regulations for small businesses. We know from our experience that every minute one of our employees spends trying to decipher new regulations, creating reports to respond to regulations, purchasing new systems that add no value to our organization other than to comply with regulatory requirements is a minute taken away from what we do best: serve our customers and design industry-leading equipment.

As we react to new regulations, small businesses are left wondering "who does this benefit?" The purpose of regulations is often nonobvious from the perspective of those asked to comply. We have also seen several instances of regulations being announced alongside the deadlines for compliance. While we as a business work diligently to decipher unreadable regulatory jargon, announcements from the government are released days before the deadline moving the compliance date into the future, without recognition of the wasted time and duplicative effort this creates. Similarly, our team works hard to pull together complicated reports and data to respond to various mandatory surveys and government requests for information. While the demand for this information is firm, there is no discernible benefit to our company or explanation as to how the collection of this information moves the greater good forward.

In business, we do many cost/benefit analyses. In order to come out with an accurate assessment, we need information we can rely on. When new regulations are announced, small businesses are often in a position to ask themselves: does this apply to me? What does this mean for my business? Will I be able to find someone within this government agency who can answer my questions? How much time is this going to take away from my business? When the rules are unknown, or the rules change in the middle of the game, we can't trust that we're making decisions in the best interest of our customers and our employees.

Entrepreneurs and small business owners created their companies out of a passion for a product, a passion for serving people or a passion for improving the status quo. No one starts their own business with a passion for the paperwork. Dedicating resources to regulatory compliance makes it more difficult for small businesses to compete with big companies, who can depend on large staff and healthy budgets dedicated to outside experts who can assist with information gathering, compliance and audits.

The bottom line is this: small businesses want to do the right thing. The Senate Committee on Small Business and Entrepreneurship can assist by helping small businesses in the following ways. Help small businesses understand regulatory requirements and the *why* behind new regulations and reporting requirements. Leverage data that is already required for other purposes rather than creating new reporting requirements. Be flexible on what the output looks like for small businesses. Provide resources and access to people who can help navigate changing rules.

I welcome any questions you have and thank you for your time.

Senator ERNST. Thank you. Thank you, Megan, and a big thank-you to all of you for being here today and serving as our witnesses. It has been very informative testimony, and we appreciate your unique perspectives on today's hearing.

Mr. Clark, we will start with you, sir, and thank to you and your staff for the great work that you do on behalf of our small businesses in Iowa and across the country. I also want to thank Darcella Craven, who is the regional advocate serving Iowa and the Midwest. Thank you for being here and for being a resource for Iowans.

Mr. Clark, Federal agencies often improperly certify that a regulation will not significantly impact small businesses to avoid the Regulatory Flexibility Act, such as the EPA's WOTUS rule. Can you share why this happens and the significance of this issue for our small businesses?

Mr. CLARK. Thank you for your question, and yes, I can give you our insight as to why it may happen—well, not may happen. It does happen in some of the situations.

One of the things—and I enjoyed the testimony from the other two distinguished guests because everything that was said kind of fit into what we look and see and do. But one of the things that is missing in this equation, extensively, is adequate data on small businesses. One of the things that we attempt to do when we worked with agencies is to get agencies to understand, as this hearing is talking about, one size does not fit all. So we want agencies to be able to break down their small business data to better respond to the types of small businesses that are being impacted, the small business that is 1 to 5 member employees, or 10 member employees, or 20 members employees, because that analysis has a different impact on each one of those groups. So that is one of the issues that goes on with this certification.

The other issue is with training. Executive order—I cannot remember the executive order. Gray hair makes me forget executive orders. But there was an executive order that requires us to train agencies on the compliance with the Regulatory Flexibility Act. And we, in our RFA report, talk about the amount of training that we have done. That training has been very instrumental, I think, in getting some of these agents to better understand the significance of why it is important to analyze small businesses. So we have to do more training.

And I think the other part of it is really the overall just education that goes on with this whole process. And that is, some of the agencies simply think that they are not going to be called to task in some of these situations. And what our office is designed to do, by statute, is to bring this to their attention when they fail to comply with these requirements.

Senator ERNST. And Mr. Clark, so when an agency then improperly certifies a rule under the RFA, and you do bring it to their attention, you are notifying them in a timely manner, what then happens if that agency just simply chooses to ignore you?

Mr. CLARK. Well, several things happen in that situation. First, some of the agencies attempt to provide this certification when the rule is in its proposed stage. And when it is in that particular stage one of the things that we bring out to them is that depending on

what that rules is really saying and depending on how they have provided the information we will bring out to them that they did not provide an adequate, factual basis for this particular rule.

And in that regard, we will basically provide them with an alternative, and the alternative is to either provide a better factual basis to comply with the certification requirement or to conduct what is called an IRFA, an Initial Regulatory Flexibility Analysis, which goes into a little more detail in terms of the impact of that rule on small businesses. That IRFA looks at alternatives that the agency could come up with, and so forth.

So in that regard, as a proposal, we are watching that process. If that rule actually goes final one of the things that his required, again, by another executive order, is that agency has to, in its final regulation, specifically mention what Advocacy has shared with them, told them about that process. And that then becomes—the next level for that clearly is the basis for litigation once that rule goes final.

Senator ERNST. Okay. So just bottom line up front then, an agency, they do not have to change the rule, even if presented alternatives by Advocacy. Would that be correct?

Mr. CLARK. They do not have to change the rule but they have to provide a factual basis for that rule, such as we were talking about with the trucking here. They are going to have to show how that particular rule, what is the factual basis for that rule, how that rule impacts small businesses so that in that proposal stage that information can then be shared with the public for comment. Because if that certification does not have that factual basis then we are not able to get testimony from a Latham Seed or anyone else in terms of the impact that regulation is having.

So the critical piece of that is the factual basis and then being able to get public input as to the impact.

Senator ERNST. Right. And so you stated then that the organizations do have that right to judicial review of those improper certifications. You cannot bring the lawsuit until after the rule is finalized. And can you talk about why that is an issue and whether review of the certification prior to the finalization could give small entities some real relief?

Mr. CLARK. Well, the review prior to the certification would actually give small entities—we say small entities but we are really saying small businesses—would really give small businesses the opportunity to better dissect that rule in terms of impact. And it would also give small businesses a better opportunity to propose alternatives to what is being proposed.

I mean, for example, we just heard from dealing with trucking. Would exempting small businesses from one to five employees be better than just a blanket covering of that situation? So that is why it becomes important to have that factual basis, and that is why it becomes important for stakeholders, here today and across the state of Iowa, to be able to provide us with comments so that we can better challenge the agency in terms of what they are proposing.

Senator ERNST. Very good. Thank you, sir.

Representative Latham, thank you for joining us as well and the great work that you do serving the 55th District of Iowa. And I

would like to start by asking you about the state-led efforts here in Iowa to reduce the regulatory burden on small businesses.

So can you share what you think are the greatest success stories and whether there are any lessons that I could take from your examples back to Washington?

Ms. LATHAM. Sure. I would be glad to share what I think are a couple of our successes at the state level. Three examples of recently passed legislation come to mind. One is updating the Iowa code on youth employment, another one is realigning state government, and then prohibiting local regulations on home-based businesses.

So when we were working on updating youth employment it was not without controversy. But what we did is we just stuck to the facts. We also made sure we listened to Iowans and small businesses who are living this day-to-day, and that is really what guided our decision-making. We believe that youth employment can help. It is not going to totally solve the workforce crisis, but it is certainly going to help, especially in businesses that need help at night, on the evenings, weekends, and during the summer.

One of the things that was outdated—and I am smiling as I even think about this—is why should teenagers in the workplace not be able to use a microwave? I mean, that was one of the questions we asked because they were prohibited from doing that. As someone who grew up in a family restaurant and bar, there were times when there were two of us working, and we were swamped, but I could not help in ways like grabbing the alcoholic beverage off the bar and taking it to a table I was already serving. She would have to walk all the way around. That is a change that has been made. If an adult is present, the parents approve it, you are in full sight, why not let that 17-year-old just simply deliver the alcoholic beverage.

The third one is why should teenagers not be able to work past 7 p.m.? That is the heart of the dinner rush hour. They were prohibited from working past 7:00. As a mom of an athlete who played four sports, I mean, I would have loved him to be home at 7 p.m., but there were times when games started after that and buses did not get home until late. So why are we penalizing teenagers who want to work?

So we removed those barriers while still keeping the requirements for safety and training and supervision in place. So that is one.

Another one that I think is worth exploring is passing prohibitions on local regulations. We did that for home-based businesses. It pertained to requiring applications, permits, fees, zoning. Basically what it would do is allow startups to grow up a little bit before they had to comply with all of the regulations of a storefront business.

The other thing that the realignment did that we passed this session was really to simplify the regulatory process so now it is almost one-stop location from the Iowa Department of Inspection and Appeals for licensing, building permits, safety. I think the more we can simplify processes for small businesses, the better. I mean, I agree with Mrs. Green when she said small businesses really want

to comply, so let's not make it overly cumbersome, so we can help them do the right thing.

And then I think I would also be remiss if I did not mention childcare. It is a huge workforce issue. We know that there are people who cannot go to work because they cannot find quality childcare. And the last 3 years I have served in the Iowa legislature we have sent 11 childcare-related bills that the governor has signed. Many of these came from her task force. I think whenever people hear "task force" they think, oh, that is just somebody checking the box, but really, there were recommendations that were implemented that are making a difference.

And again, I truly believe that is just key to economic growth, is helping get those highly skilled, highly qualified people back in the workforce. So those are just a few of the highlights.

Senator ERNST. Wonderful. No, that is fabulous, and I am very excited that our Iowa House and Senate and the Governor's Office have been able to find a way forward on these issues. And thank you for mentioning, as well, childcare. We did just, in the recent package that we put through, the Senate Small Business Committee did include a provision within that package for childcare, expanding opportunities for childcare, and thanking Senator Jacky Rosen for working me on that issue, and Senator Ben Cardin for including that in this recently passed package.

We have some work to do with the House, but still great effort moving forward. It is key to getting people back into a place of employment if they know that they have safe and low-cost childcare available to them. So thank you.

Mrs. Green, for you. Again, thank you for being with us and for sharing your story as well because it is really an incredible Iowa success story, so thank you. Iowa is very, very lucky to have Weiler Products in our state.

In your testimony you discussed the difficulty of trying to grow a small business, manufacturing business, in a field with many, many large competitors. So why do you believe it is hard for a company like Weiler to face the same regulations and costs as larger manufacturers?

Ms. GREEN. Well thank you for the question. I think it really comes down to resources. It is hours in the day. Workforce continues to be an issue for us. And even if we were fully staffed, we want our employees to focus on what moves our company forward, which is taking care of our customers.

I think what we are seeing in many government regulations is uncertainty and things being passed that may never be implemented or things being implemented that may later change. And uncertainty is really expensive for businesses, in general, and it is increasingly expensive for small businesses. And if you think about even in your personal life, uncertainty is expensive, it is a distraction, and it takes our focus away from where it needs to be, which is customers and innovation on the business front.

Senator ERNST. That is very good. I was doing a county visit earlier today in Taylor County, and that was brought up by a number of the farmers, the contractors, the state workers. It was at a conservation project that had been done in some farmland. And they mentioned just the changes in rules and regulations from one ad-

ministration to the next, and that uncertainty, how it affects the decision-making process of those that are investing in their farmland, in their businesses. That is a very, very good point.

Representative Latham, going off of Mrs. Green's comments, I am going to ask you to take off your legislative cap and focus on your business cap and ask the same question as well. Can you please talk about why it is so important to ensure regulations are rightsized so that your family-owned seed business is not burdened by the same costs as much larger companies in the grain industry?

Ms. LATHAM. Sure. So family-owned businesses like ours are operating on much smaller margins, so regulations that might just be considered maybe inconvenient for a larger competitor could essentially shut down our business. It could put smaller businesses just simply out of business.

You know, larger companies have resources that we do not have. You know, we do not have anybody on staff with a legal background. We rely a lot on trade associations to help keep us abreast of regulations. There are companies who cannot even, because of the economy they are in today, cannot even afford to pay for those associations. So they are trying to navigate through these regulations, and it really does have that ripple effect. You wind up with lower competition, increased costs.

And it does have a ripple effect on the small communities too. Like I am just thinking at Latham Seeds we invest not only in our people but I mentioned we market through farmer-dealer networks, and those people are invested in their communities. They are the ones that are helping support the local league, the prom, the whatever. So as you get larger competitors who are not located in those communities, you have got out-of-state or out-of-country, they just do not have that same commitment to community. And then, ultimately, that affects the whole culture in the state of Iowa. We are a state of many small businesses, many small communities. That is really the backbone and the heart of who we really are, as Iowans.

Senator ERNST. I really appreciate that context as well because we do have so many visitors that are here from out of state. The makeup of Iowa is large, in part, small, rural, Ag-based communities where those small businesses really do reinvest back into their communities. You mentioned prom and things of that nature. But yes, that is how our communities survive is by assisting one another. So whether it is here in Iowa, whether it is in Maryland, wherever it might happen to be, all of these little, small communities made up of small businesses and people reinvesting in the livelihoods of others. So thank you for that perspective.

Mr. Clark, we will turn back to you. The Biden administration recently changed how agencies calculate the costs and benefits of their regulations. According to the *Wall Street Journal* article I referenced in my opening statement, those changes have given agencies the ability to justify regulatory costs on Iowans by claiming the rules could provide global benefits.

What are your thoughts on this change, and do you believe agencies should be required to consider indirect costs if they are going to consider indirect benefits?

Mr. CLARK. Madam Chair, I am not sure what global really means in terms of small business because as you just said, small businesses are really very localized. One of the things that we—as I said earlier in my testimony, one of the things that we strive to do is to provide and to solicit and to gain data on the various impacts on small business. So changing the cost-benefit analysis, I am not sure really deals with the essence of what happens with a regulation in terms of its impact on small business.

We just heard from Representative Latham and Mrs. Green that it is the margins. So when you start looking at cost-benefit analysis, and you are not able to break that analysis down into the detail it has to be broken down into in terms of the small business itself, it is hard to get a true cost-benefit analysis in terms of the impact.

We had a regulation some years ago with the Department—not some years ago but a few years back—Department of Defense on what is called RFI, radio frequency, and the Department of Defense did not want to do a cost-benefit analysis on small business. We were able to get them to do one, and what we found was that the small business that only had a contract with the Department of Defense for one or two items paid a great cost as opposed to that regulation than a business that had 10 or 15 contracts.

So it is very important, in Advocacy, when we look at this issue that we look at it from the context of who is being impacted, what size business is being impacted, and what are the margins, and what are the other parameters that impact of that situation.

So when we go to whether it is direct or indirect, right now we are primarily looking at direct costs. But there are arguments to be made for looking at indirect costs. And the only situation that really occurs with looking at indirect costs is how far down that chain do you go to find the real impact, and continuing to go down that chain may force a missing of the family seed farm and other entities in that process.

So we need to be careful as to how far we go down that chain, looking at indirect costs. But definitely look at direct costs and look at some baseline for indirect costs makes a lot of sense, yes.

Senator ERNST. Thank you, and I had the same thoughts about global benefits. I was not sure exactly what the definition of "global benefit" was. Thank you.

Mr. CLARK. Well, I am not sure it relates to small business, and that is our statutory authority, to look at small business.

Senator ERNST. Right. Thank you very much.

Mrs. Green, one important piece of the PROVE IT Act is that it would ensure small businesses like Weiler can easily access agency guidance documents and allow small businesses to comment on these documents to seek clarification or suggest improvements. Can you discuss your experience with guidance documents and whether this provision would help you and other small businesses?

Ms. GREEN. I think the concept is wonderful, and if it is implemented effectively it has great potential to be really useful. The concerns that I would have are being sure that whoever the comments are going to have the ability to respond quickly to those comments and that whoever is on the other end of responding to

those comments has the authority to buy into whatever agency that are responding on behalf of.

I have a law degree so I am the one who ends up, on behalf of the company, calling a lot of these agencies, saying, "What does this mean?" And a lot of times the agency, either they are not really sure or we have not really gotten there yet, or I am not sure how that is going to apply to you yet. But all of the time when you call, what I am about to tell you is just my interpretation, this is not binding on this agency. I mean, if I were to answer a question to my customer in that way, think about how that would go.

So I think that is just really important, that whatever advice we are getting from that agency, we have to be able to rely on it, because again, that uncertainty is so expensive, so distracting, and just makes it so difficult to run a business.

Senator ERNST. Okay. That is a very important point, Mrs. Green. And you have the legal background. But when you are calling an agency they will state that "This is just my interpretation. It is not binding on the agency that I represent."

Ms. GREEN. Yes.

Senator ERNST. So again, why the call in the first place then, because it could change in the future. You may start to act on a rule or regulation and not actually have that be the right interpretation then.

Ms. GREEN. Correct. And again, we would not be calling if we were not trying to do the right thing. We want to play by the rules, but we have to understand what they are.

Senator ERNST. Okay. Very important point. Thank you.

And for all of our witnesses—and again, thank you so much for this incredible testimony—I would like to finish today's hearing by asking one question to each of you, and we will start with Mr. Clark and then we will go on down the table.

Mr. Clark, if you could leave one message for Federal regulators about the importance of truly considering how their regulatory costs hurt small businesses, what would it be?

Mr. CLARK. You are asking a lawyer to leave one message.

[Laughter.]

Mr. CLARK. Well, the message to the regulatory community has to be that small businesses are the economic backbone of our nation, and if we do not have small businesses then this global environment that they are talking about does not exist. So we have to find ways to ensure that our small businesses continue to survive, but more so than continue to survive we have to find ways to ensure that they continue to grow and to expand and become multigenerational businesses because that is where wealth is built for many of our small businesses.

So from a regulatory standpoint, it is clearly what we have pushed, and that is that one size does not fit all, that we must look at a deeper dive, take a deeper dive into the impact of the regulation on our small businesses.

Senator ERNST. Thank you so much. And one of my favorite phrases, Mr. Clark, is "not just survive but thrive." We really want them to thrive. Thank you very much.

And Representative Latham, the same question to you. What would your message be?

Ms. LATHAM. So if I could just leave them with one message it would be just because you can does not mean you should. And as a business owner, whenever we are starting a new project or somebody proposes a new idea, my very first question is what is the objective?

So I think we need to ask, is it going to make it easier for small businesses, less confusing, easier for compliance? Does it increase safety? I think every regulation, every administrative rule should really be scrutinized to make sure it is even needed or is it vitally important.

Again, less is more. The smaller the code is, the fewer the regulations, the more small businesses can thrive. Thank you.

Senator ERNST. Wonderful. Thank you, Representative Latham.

And Mrs. Green.

Ms. GREEN. I would echo both thoughts. I think regulators need to take a step back and figure out what the end goal is, what is the actual objective that they are trying to accomplish, and then say is this actually moving the ball forward or are we regulating for the sake of regulating. And then just to continue with my theme of anything that we can do to reduce uncertainty and make it easier to run a business for the long term I think will be very effective.

Senator ERNST. Wonderful. Thank you. Once again, thanks to all of you for joining us today, and a special thank you to our witnesses for their enlightening testimony.

Before we conclude the hearing I would like to add to the record the following: an op-ed from John Sorensen, President and CEO of the Iowa Bankers Association, who published in the *Des Moines Register*. Thank you for that very much. We are very lucky to have you with us today. And also a statement from the U.S. Chamber of Commerce, who I am thankful has sent Tom Sullivan, the Chamber's Vice President for Small Business Policy, to join us today. As well, a letter from Alfredo Ortiz, the President and CEO of the Job Creators Network, who we are also lucky to have join us today. Thank you, Mr. Ortiz. And then a statement from the National Federation of Independent Businesses; a letter from Dr. James Berlau, a senior fellow and regulatory economist with the Competitive Enterprise Institute; a letter from Daniel Goldbeck, the Director of Regulatory Policy at the American Action Forum; and a statement from Karen Kerrigan at the Small Business and Entrepreneurship Council.

[The information follows:]

Senator ERNST. And with that today's hearing has concluded. I want to thank everyone for joining us today.

[Whereupon, at 1:57 p.m., the hearing was adjourned.]

1310 L Street, NW, 7th Floor
Washington, DC 20005
cei.org

202 331 1010 *main*
202 331 0640 *fax*



The Disproportionate Burden of Federal Regulation on Small Businesses

James Broughel, PhD

Submission to the U.S. Senate Committee on Small Business & Entrepreneurship

Hearing on "One Size Does Not Fit All: Understanding the Importance of Rightsizing Regulations for Small Businesses"

Iowa Economic Development Authority
1963 Bell Ave
Des Moines, Iowa 50315

August 23, 2023

Chair Cardin, Ranking Member Ernst, and Members of the Senate Committee on Small Business and Entrepreneurship:

My name is James Broughel and I am a senior fellow with the Competitive Enterprise Institute, a non-profit public interest organization committed to advancing the principles of free markets and limited government. My research focuses on regulation, innovation, and economic dynamism. Thank you for the opportunity to submit this written statement on the disproportionate burden that federal regulation places on small businesses.

I have three main points I want to emphasize in this comment:

1. Regulations act as a hidden tax on the public. This tax is also very frequently regressive, meaning its impacts have particular relevance for both small businesses and the poor.
2. Empirical studies suggest the cost of regulation is in the trillions of dollars annually. This burden tends to fall disproportionately on the poor and small businesses, as well as future generations.
3. Regulatory impact analysis should include analysis of the distribution of benefits and costs, but in practice rarely does so. Improved certification procedures for identifying regressive regulations could improve analysis and, more importantly, improve regulatory outcomes for small businesses and society.

The Regressive Nature of Regulatory Costs

Regulation acts much like a tax that takes place off of the government's books. Much like a value added tax, it is a hidden tax on the economy, because the cost of regulation is built into all of the products and services we purchase and sell. Regulatory costs also tend to be regressive, meaning they fall

disproportionally on lower income groups of people.[1] Several factors contribute to the regressive nature of regulation.

In the business context, regulation often requires firms to make certain expenditures or investments irrespective of their output or sales level.[2] Such mandatory costs do not vary with the quantity of output and thus become part of the fixed costs of doing business. Thus, a business must contend with them before entering into or continuing to operate in an industry. Smaller firms, with less revenue and lower output, tend to have a harder time absorbing these fixed costs compared to large firms, which can more easily amortize regulatory compliance activities across their more sizable revenue base.

Next, academic evidence suggests regulatory costs are often regressive in their final incidence.[3] Costs imposed on businesses will be passed on to individuals in the form of higher prices, to workers in the form of lower wages, and to shareholders in the form of reduced returns on capital. When these costs represent a larger share of a lower income person's budget than a higher income person, as is often the case, regulatory costs disproportionately burden poorer citizens.

Finally, the benefits of regulation often accrue disproportionately to higher income individuals.[4] The affluent exhibit a greater willingness to pay for regulatory outcomes like safety, environmental quality, carbon reduction, and consumer protections. This higher willingness to pay tends to skew regulatory benefits in their favor, as evaluated in a cost-benefit analysis. Meeting these preferences comes at a cost that is very often imposed regressively for the reasons just discussed. Thus, regulations often have the effect of redistributing from the relatively less well-off to the rich.

The High Burden of Regulatory Costs

The tendency of regulations to force low-income households to bear costs that only high-income households are willing to pay for is like forcing low income households to have champagne taste on a beer budget. This is according to University of Chicago economist Casey Mulligan, in a recent testimony before the House Oversight Committee.[5]

Analysis by Mulligan sheds light on how regulatory costs impact Americans.[6] In a recent report, Mulligan compared the regulatory records of the Biden, Trump, and Obama administrations. He found that, as of the end of 2022, the Biden administration was imposing new regulatory costs at a faster rate than the

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[1] Diana W. Thomas. "Regressive Effects of Regulation." *Public Choice* 180 (2019): 1–10. https://doi.org/10.1007/s11127-018-00634-8.

[2] Thomas Hopkins. "A Survey of Regulatory Burdens." U.S. Small Business Administration, report number SBA-8029-OA-93 (1995); Thomas Hopkins. "Regulatory Costs in Profile." Center for the Study of American Business, Washington University, Policy Study Number 132 (1996).

[3] James B. Bailey, Diana W. Thomas, and Joseph R. Anderson. "Regressive Effects of Regulation on Wages." *Public Choice* 180, (2019): 91–103. https://doi.org/10.1007/s11127-018-0517-5.

[4] Ibid.

[5] Testimony of Casey B. Mulligan. Hearing on "Death by a Thousand Regulations: The Biden Administration's Campaign to Bury America in Red Tape." Committee on Oversight and Accountability, U.S. House of Representatives (June 14, 2023). https://oversight.house.gov/hearing/death-by-a-thousand-regulations-the-biden-administrations-campaign-to-bury-america-in-red-tape/.

[6] Casey B. Mulligan. "Burden is Back: Comparing Regulatory Costs between Biden, Trump, and Obama." *Committee to Unleash Prosperity* (June, 2023). https://committeetounleashprosperity.com/wp-content/uploads/2023/06/CTUP_BurdenisBack_ComparingRegulatoryCosts.pdf.

Obama administration did in a comparable period. Biden's regulations are estimated to impose costs on Americans of almost $10,000 per household.[7]

Meanwhile, Mulligan's report argues that federal agencies significantly understate regulatory costs by overlooking opportunity and resource costs. Compounding matters, the Biden White House is currently attempting to phase out consideration of the opportunity costs of investment from federal regulatory impact analysis.[8] Even assuming agency cost estimates are correct, the report concludes that the Biden administration is adding regulatory costs at a rate of over $600 billion per year.

If this pace continues over eight years at the rate seen under Obama, it would amount to almost $60,000 per household in added costs. To many, that will be a crushing burden. The Trump administration's deregulation efforts worked in the opposite direction, reducing regulatory costs by about $11,000 per household over 4 years.

The Growing Burden of Regulatory Costs: Regulations Slow Economic Growth

A review of recent academic literature indicates that regulations substantially reduce economic growth, though estimates vary by how much. According to a 2021 survey of cross-country research conducted by Robert Hahn and me,[9] the academic consensus among studies is that economic regulations like price controls and barriers to entry hamper growth, while the effects of social regulations are more ambiguous largely because they haven't been studied to the same extent.

A 2020 study estimates that the accumulation of federal regulations since 1980 lowered U.S. GDP growth by around 0.8 percentage points per year, reducing 2012 GDP by $4 trillion or 25% below what it would otherwise have been.[10] A study by my CEI colleague Wayne Crews estimates the annual cost of federal regulations at around $1.9 trillion.[11] Another published paper by John Dawson and John Seater estimates that the total accumulation of federal regulations from 1949 to 2005 reduced U.S. output growth by 2 percentage points annually, lowering GDP to just 28% of what it could have been by 2005–a $38.8 trillion loss.[12]

Meanwhile, one 2023 study by Shikhar Singla estimated that annual regulatory costs faced by US firms increased by $1 trillion from 1970 to 2018.[13] The paper finds that regulatory costs have disproportionately impacted small firms, with an average cost per employee of $9,093 compared to $5,246 for large firms. These figures are broadly consistent with other studies that have also found the

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[7] Note that these costs will tend to be spread across time.
[8] James Broughel. "Biden Knocks Opportunity Cost." *Wall Street Journal* (August 11, 2023).
[9] James Broughel and Robert W. Hahn. "The Impact of Economic Regulation on Growth: Survey and Synthesis." *Regulation & Governance* 16, no. 2 (2021): 448–69. https://doi.org/10.1111/rego.12376.
[10] Bentley Coffey, Patrick A. McLaughlin and Pietro Peretto. "The Cumulative Cost of Regulations." *Review of Economic Dynamics* 38 (2020): 1–21. https://doi.org/10.1016/j.red.2020.03.004.
[11] Wayne Crews. "Ten Thousand Commandments 2022." *Competitive Enterprise Institute* (2022). https://cei.org/studies/ten-thousand-commandments-2022/.
[12] John W. Dawson and John J. Seater. "Federal Regulation and Aggregate Economic Growth." *Journal of Economic Growth* 18 (2013): 137–77. https://doi.org/10.1007/s10887-013-9088-y.
[13] Shikhar Singla. "Regulatory Costs and Market Power." *DFG Center for Advanced Studies on the Foundations of Law and Finance*, LawFin Working Paper No. 47 (2023). https://shikharsingla.com/files/reg.pdf.

cost of regulation per employee to be higher for smaller firms than larger ones.[14] Not surprisingly, over regulation was the top concern among CEOs in a 2018 Price Waterhouse Coopers survey.[15]

The 2023 Singla paper shows that increases in regulatory costs can have harmful effects on competition, leading to small firms becoming smaller and large firms becoming larger.[16] For example, a 100% increase in regulatory costs leads to a 1.2-1.9% increase in establishments, employees and wages for large firms, while decreasing those metrics by 1.4-1.6% for small firms. The smaller the firm, the more competitively disadvantaged it becomes. The highest regulatory costs are found to be from environmental and transportation regulations. Overall, the disproportionate impact of regulations on small firms explains 31-37% of the rise in industry concentration and markups during the study period.

The empirical literature indicates regulations can impose a significant drag on measurable economic growth, compounding to trillions of dollars over time. Moreover, these costs fall disproportionately on small businesses. More careful analysis of new regulations for their impacts on investment, innovation, competition, and total factor productivity, combined with reforms to streamline inefficient rules, could yield sizable economic gains, especially for small businesses. Unfortunately, the current state of regulatory economic analysis leaves much to be desired.

Distributional Analysis Can Help Identify Impacts on Small Businesses

The Biden administration is now in the process of updating the federal government's guidance to executive agencies on the production of regulatory impact analysis.[17] There is much to dislike about the update, as it creates too much analytical discretion that will make the economic analysis of regulatory actions all but meaningless.[18] I am on record as being a critic of the administration's updates.[19] As I noted in a recent comment to OMB, "It is the equivalent of basing analysis on Scientology or some related pseudoscience."[20]

Criticisms aside, however, there are actually some things to like in the Biden administration's update, and one such area is an increased focus on the distribution of benefits and costs. More disaggregation of benefits and costs to focus on the parties actually impacted by regulation—if it were done objectively—would be a welcome development. It is very likely that small businesses should be singled out for distributional analysis purposes and that such analyses would often uncover that small businesses are disproportionately impacted by regulations.

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[14] See Wayne Crews. "Ten Thousand Commandments 2022," at 33, as well as the referenced studies on p. 31.
[15] Price Waterhouse Coopers. "2018 Global Investor Survey." (2018). https://www.pwc.com/gx/en/news-room/docs/report-pwc-global-investor-survey-2018.pdf.
[16] Shikhar Singla. "Regulatory Costs and Market Power."
[17] Office of Management and Budget. "Circular A-4: Regulatory Analysis, Draft for Public Review." Washington, DC: Office of Management and Budget (April 6, 2023).
[18] James Broughel. "Comments to the Office of Management and Budget on the proposed draft update to Circular A-4: Regulatory Analysis." Competitive Enterprise Institute (June, 2023). https://cei.org/regulatory_comments/comments-to-the-office-of-management-and-budget-on-the-proposed-draft-update-to-circular-a-4-regulatory-analysis/.
[19] James Broughel. "Biden's 'Evil' Modernizing Regulation Update." *Forbes* (June 6, 2023).
[20] James Broughel. "Comments to the Office of Management and Budget on the proposed draft update to Circular A-4: Regulatory Analysis."

The history of federal regulatory agencies conducting distributional analysis is not encouraging, however. Studies that have looked into the issue find that it is rarely done,[21] especially in the context of evaluating the distribution of regulatory costs.[22] This is despite numerous existing executive orders already requiring consideration of distributional impacts.[23] The proposed Prove It Act represents a step forward that could help in this area.[24] The Regulatory Flexibility Act of 1980 requires agency heads to certify that particular regulations do not have "a significant economic impact on a substantial number of small entities."[25] Otherwise, a regulatory flexibility analysis (RFA) is required. Such certifications are well-known to be unreliable,[26] demonstrating the need for third party review of certifications. It is unlikely that further executive orders or guidance to federal agencies will lead to more or better distributional analysis, given this poor track record. What is likely needed is fresh input from Congress.

Wayne Crews in his annual *10,000 Commandments* report documents the number of regulations identified as impacting small businesses.[27] These numbers are reported in figure 1 below from 2008 onward. In recent years, more than 900 regulations per year were identified as affecting small businesses. This could be an underestimate given the inconsistent certification of regulations. Nevertheless, it still constitutes about 20 to 30 percent of regulations issued each year,[28] a not insignificant number.

There is also some confusion about what constitutes a regulation affecting small business. For example, the Unified Agenda of Regulatory and Deregulatory Actions identifies rules that require an RFA, but also denotes rules that affect small entities.[29] This is problematic given that regulations with a significant impact on a substantial number of small entities are supposed to be required to have an RFA. This confusion further demonstrates the need for improving the certification process. This Senate committee could help clarify the impact of regulations on small businesses by strengthening the certification process and requiring via statute careful consideration of the distributional impacts of regulations.

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[21] Lisa A. Robinson, James K. Hammitt, and Richard J. Zeckhauser. "Attention to Distribution in U.S. Regulatory Analyses." *Review of Environmental Economics and Policy* 10, no. 2 (2016): 308–28. https://doi.org/10.1093/reep/rew011; Caroline Cecot and Robert Hahn, "Incorporating equity and justice concerns in regulation," *Regulation & Governance,* Online version of record before inclusion in an issue. https://onlinelibrary.wiley.com/doi/full/10.1111/rego.12508

[22] Caroline Cecot. "An Equity Blindspot: The Incidence of Regulatory Costs." *Journal of Benefit-Cost Analysis* 14, no. 1 (2023): 35–43. https://doi:10.1017/bca.2023.3.

[23] Executive Order no. 12866, Federal Register 58, no. 190 (October 4, 1993): 51,736; Executive Order No. 12898, Federal Register 59, no. 32 (February 16, 1994): 7629; Executive Order no. 13563, Federal Register 76, no. 11 (January 21, 2011): 3,821.

[24] S.1411 - Prove It Act of 2023. 118th Congress (2023-2024).

[25] The Regulatory Flexibility Act of 1980 (P.L. 96-354), § 605.

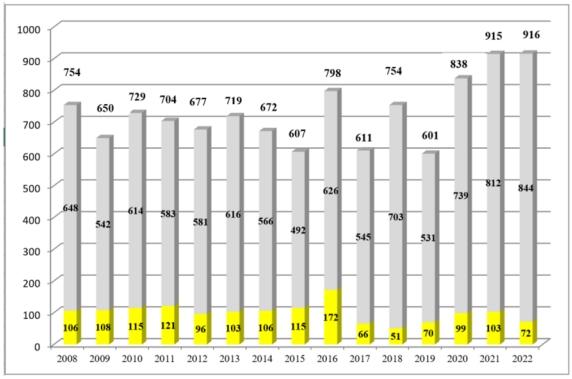
[26] Keith W. Holman. "The Regulatory Flexibility Act at 25: Is the Law Achieving Its Goal?" *Fordham Urban Law Journal* 33, No. 4 (2006): 101-118.

[27] Wayne Crews. "Ten Thousand Commandments 2022."

[28] Federal Register Statistics, "Federal Register & CFR Publication Statistics – Aggregated Charts," Accessed August 11, 2023. Available at: https://www.federalregister.gov/reader-aids/federal-register-statistics.

[29] Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions, available at: https://www.reginfo.gov/public/do/eAgendaMain.

Figure 1: Number of Final Rules in the Federal Register Affecting Small Business



Note: "Significant" subset of rules depicted in yellow.
Source: Compiled from the Federal Register by CWC Jr. in 10,000 Commandments Report.

Conclusion

The regulatory system we have today represents what may be the worst of all possible worlds. Within the current generation, regulations tend to redistribute from the poor to the rich, as low-income households and small businesses are forced to subsidize the policy preferences of the well-off. Across time, regulations slow economic growth, leaving future generations with lower living standards than would otherwise be the case.

Thus, we are consuming resources through regulation today to serve the interests of the rich and large corporations. Those that pay the consequences are low income citizens, small businesses and future generations.

Federal agencies are able to avoid accountability for their actions in part because their analysis of regulatory impacts is so sparse and unreliable. A major step toward addressing these problems is to better account for the distributional impacts of regulations, including distributional impacts on small businesses. The academic evidence consistently tells the same story, which is that small businesses are disproportionately impacted by the burdens of federal regulations.

Fortunately, there are proactive steps Congress can take to alleviate these burdens, some of which, like the Prove It Act, are already activity being considered by this committee.

Thank you once again for the opportunity to submit this statement. Please feel free to reach out to me with questions.

James Broughel, PhD

Statement for the Record on Senate Small Business Committee Field Hearing Regarding Regulations and Small Business

Ranking Member Ernst, Members of the Committee, and distinguished witnesses, thank you for the opportunity to provide some brief comments related to this hearing's topic. The views expressed here are my own and not those of the American Action Forum (AAF). There are three main points I would like to bring to the Committee's attention:

- An examination of the most recent Small Business Administration (SBA) Office of Advocacy (Advocacy) report on agency compliance with the Regulatory Flexibility Act (RFA) reveals that, despite a 10-year peak in the level of input from Advocacy on RFA matters, agencies have yielded the lowest amount of cost savings for small businesses across that span – suggesting that agencies have an increasingly diminished regard for RFA proceedings.
- Anecdotal examples of this trend include a recent rulemaking from the Federal Trade Commission on automobile dealerships that includes a flawed overall economic analysis as well as a merely cursory look at the proposal's small business impacts that belies how significant such effects could actually be.
- A lack of rigorous analysis of the appropriate data on the front-end likely has the run-on effect of impairing either the agencies' or outside stakeholders' ability to examine the rule's post-hoc effects and conduct a proper retrospective review, such as that which is required under the RFA's Section 610.

CONCERNING TREND OF AGENCY RFA COMPLIANCE

This past spring, the SBA Office of Advocacy (Advocacy) produced its annual "Report on the Regulatory Flexibility Act [RFA]" for Fiscal Year (FY) 2022. In this report, Advocacy notes how, through its interactions with agencies during the RFA process, its input resulted in $73.5 million in annual cost savings for small businesses. While such a figure may seem significant on its face, an examination of Advocacy RFA reports from the past decade reveals that this amounts to the lowest level of RFA savings across that time period. Most years involved savings in the billions of dollars, with the highest amount being $9.6 billion in FY 2014. Additionally, Advocacy has traditionally included the number of instances where its input likely produced some qualitative burden reduction. FY 2022 marked a low point for that metric as well.

What is perhaps most concerning about this trend, however, is that it appears agency intransigence may be its key driver. The level of cost savings derived from Advocacy input may be at its lowest in recent memory, but the amount of effort on Advocacy's part has never been higher during that timeframe. Advocacy submitted 37 comments and convened 30 roundtables on agency compliance with the RFA – both marking the highest amount over the past decade for each category. The number of agency personnel that Advocacy trained in RFA process for FY 2022 (257) was runner-up to only the year before it (FY 2021). As such, agencies produced the lowest amount of savings despite Advocacy being as busy as ever over the past decade. There is clearly a disconnect here.

CAR DEALER RULE AS CASE STUDY

Beyond the overall, top-line trends, there are some notable examples in this FY 2022 Advocacy report that provide some anecdotal evidence of how lacking agency consideration of small business impacts can be in the rulemaking process. One of the more egregious examples is last year's proposed "Motor

Vehicle Dealers Trade Regulation Rule" from the Federal Trade Commission (FTC). Advocacy provided comment to the Commission on both the substance of the rulemaking as well as requesting that FTC extend the deadline of the proposal's comment period to all for more meaningful input on the "49 questions that required extensive research by the industry." As Advocacy notes, "The comment period closed without an extension." FTC's apparent treatment of the substantive considerations in this instance is perhaps even more worrisome.

The FTC automotive dealers rulemaking included an overall economic analysis that estimated benefits to outweigh costs by a roughly 30-to-1 ratio. An AAF examination found, however, that simple – and in some cases likely more realistic – adjustments to the assumptions underlying FTC's calculations yielded a more even cost-benefit balance than that. In fact, AAF found that there is a potential scenario where costs exceed benefits. As such, the overall quality of FTC's analysis remains questionable.

When one arrives at FTC's "analysis" of the specific impacts on small entities, one finds two paragraphs largely summarizing the rulemaking's requirements and qualitatively discussing how affected entities may respond. To its credit, the Commission recognizes that since "many" of the "46,525 franchise, new motor vehicle, and independent/used motor vehicle dealers" fit the description of small entities under the RFA, the rulemaking "will likely affect a substantial number of small entities." The Commission demurs, however, on the question of whether such impacts will be significant for the purposes of the RFA.

Yet even a rudimentary analysis is easily calculable. If one takes the $1.4 billion total cost figure from the proposal at face value and divides it across those 46,525 dealerships, that yields a per-entity cost of roughly $29,000. If one takes the updated cost estimate from AAF's analysis of approximately $5.6 billion ($5.1 billion in new disclosure costs plus $510 million from other aspects of the proposal) and divides that across the 46,525 dealerships, that yields a per-entity cost of more than $120,000. For context, according to Bureau of Labor Statistics data, an average automobile dealer employee makes roughly $60,600 per year.

The Commission's inability or unwillingness to conduct even a modest analysis like this suggests that it does not take its duties under the RFA seriously. The trends discussed in the previous section also suggest that FTC is not an outlier.

THE LACK OF MEANINGFUL RETROSPECTIVE REVIEW

Finally, it is important to discuss the matter of retrospective review here as well. Retrospective review is an important component of the RFA. Under Section 610 of the RFA, agencies are required to regularly identify rules that have a "significant economic impact on a substantial number of small entities" and conduct a review of the rules' viability and effectiveness "within 10 years" of the rules' original promulgation. Yet here, too, it appears that the RFA's effectiveness wanes.

In 2021, AAF examined "The Failed Promise of 610 Reviews" and found that A) the section's requirements end up covering a small subsection of rulemakings overall and B) the number of rules that actually undergo meaningful retrospective review is considerably smaller. The report identified multiple potential reasons for this, including unclear definitions and terminology as well as a lack of consequences for agencies not following through on the 610 Review process. Furthermore, a 2022

report found that a lack of clear data – from a given rulemaking's initial levels of analysis on through its implementation – also likely contributes to this paucity in retrospective review.

Retrospective review of regulatory requirements is hardly a novel or ideologically loaded proposition. From Section 610 of the RFA on through various presidential directives – such as President Obama's Executive Order 13,563 and its ensuing implementation memoranda – it has been a well-tread policy concept. The difficulty, of course, comes in regularly and rigorously implementing it. Having clear definitions and requirements for agencies and a robust set of data for interested parties to pore over as a rule comes into effect are important considerations in this regard.

CONCLUSION

The RFA and Office of Advocacy exist, at least theoretically, to help give a greater voice to the concerns of small businesses in the regulatory process. Whether it be in an increasing lack of responsiveness to the federal government's official small business advocate, sub-par regulatory analyses, or lackluster efforts to reexamine past rules, there are worrying signs that agencies are not taking the unique challenges facing small businesses as seriously as they should. One hopes that the efforts of this Committee will help alleviate some of these deficiencies.

Again, I appreciate the opportunity to provide some insight to the Committee on this important policy topic. Please feel free to contact me with any additional questions.

Sincerely,

Daniel Goldbeck

Director of Regulatory Policy
American Action Forum

Statement for the Record Before the U.S. Senate Committee on Small Business and Entrepreneurship
"One Size Does Not Fit All: Understanding the Importance of Rightsizing Regulations for Small Business"
August 23, 2023
Alfredo Ortiz, President and CEO of Job Creators Network

Job Creators Network submits this statement for the record as part of the United States Senate Committee on Small Business and Entrepreneurship's Field Hearing entitled "One Size Does Not Fit All: Understanding the Importance of Rightsizing Regulations for Small Business" held on Wednesday, August 23, 2023.

JCN is a nonpartisan organization founded by entrepreneurs who believe that many government policies are getting in the way of the economic freedom that helped make this country prosperous.

JCN provides business leaders and entrepreneurs with the tools to become the voice of free enterprise in the media, in Congress, in state capitals, in their communities, and their workplaces – allowing them to hold politicians accountable to job creators and their employees.

JCN applauds U.S. Senate Small Business and Entrepreneurship Ranking Member Joni Ernst for prioritizing America's job creators by holding this important hearing exploring the unique and detrimental impact that regulations have on small businesses across America.

Moreover, JCN supports The Prove It Act, legislation Ranking Member Ernst introduced in May that would help shield small businesses from executive overreach. The Prove It Act provides Main Street with important tools to help contend with government overregulation.

According to the U.S. Small Business Administration's Office of Advocacy small businesses employ almost half – 46.4 percent – of America's employees.[1] Truly America's job creators, small businesses accounted for 62.7 percent of net new jobs from 1995 to 2021.[2]

Despite their significant contributions to our nation's economy, small business owners get the short end of the stick when it comes to regulation -- one size does *not* fit all.

[1] U.S. Small Business Administration, Office of Advocacy, "What's New With Small Business?" (March 2023).
[2] Id.

As Ranking Member Ernst correctly noted when introducing The Prove It Act:

> *For too long, federal bureaucrats have ignored the concerns of our job creators and the negative impact their many rules have on hardworking small and family-owned businesses. One-size-fits-all regulations don't suit Iowa's entrepreneurs, and that's why I'm fighting to ensure our small businesses are heard and considered in future regulatory mandates from Washington.*[3]

It is well-documented that small business owners are disproportionately negatively impacted by regulation as compared to big businesses.

When it comes to regulation, it is important to remember that seventy-nine percent of small businesses have fewer than ten employees.[4] Firms with fewer than ten employees do not employ attorneys, accountants, or human resource professionals. If they are lucky, they have someone to manage sales. As a practical matter that means that it is the small business owner who is tasked with those duties, many of which involve regulatory compliance. JCN's polling backs this up – finding that that three in five small businesses nationwide say complying with government regulations is time-consuming.[5]

Moreover, it is well-documented that small business owners spend more on regulation than larger businesses. Businesses with fewer than 50 employees pay $11,700 per employee, as compared to $10,700 per employee for medium-sized businesses, and $9,100 per employee for large businesses.[6]

Despite these realities, increasingly we see federal regulators view their legal obligation to assess small business impact of new regulations as nothing more than a "check the box" exercise. According to an investigation conducted by the House Committee on Small Business, many government agencies in Washington are "failing to properly implement" statutes intended to shield small businesses from overburdensome regulations.[7]

For example, the Army Corps of Engineers has twice certified as *not* significantly impacting small businesses its proposal to redefine "waters of the United States" in a way that would require millions of landowners to get a federal permit before doing things as simple as moving mulch. Similarly, the Department of Labor had the audacity to certify its proposed regulation

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[3] Joni Ernst, "Ernst Gives Small Businesses a Voice in Rulemaking Process," (May 3, 2023).
[4] John McLaughlin and Scott Rasmussen, "Small Business IQ Monthly Poll" Job Creators Network, July 2023, at 5.
[5] Id. at
[6] Mark Crain and Nicole Crain, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing, and Small Business," Sept. 2014.
[7] House Committee on Small Business, "Williams, Luetkemeyer, and Van Duyne Lead Committee on Small Business Oversight of the Biden Administration's Regulatory Agenda" (Feb. 23, 2023).

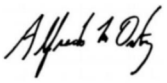
that would effectively convert most independent contractors into employees as a mandate with little impact on small business. These are just two of many examples where federal bureaucrats are not following the letter and spirit of the Regulatory Flexibility Act when it comes to protecting small businesses from one-size-fits-all regulation.

Senator Ernst's legislation fulfills a key pillar of the Job Creators Network's American Small Business Prosperity Plan—an eight-point policy blueprint launched last year-- by reducing the regulatory burden on small businesses.[8] JCN provided valuable input to Sen. Ernst from the small business community regarding the disproportionate impact regulations have on entrepreneurs. And over 10,000 small business owners from JCN's network have sent letters to their Senator or Member of Congress supporting this important legislation.

The Prove It Act would bolster existing law that federal agencies have been side-stepping at the expense of small businesses. It would hold agencies accountable by providing a meaningful opportunity for small businesses to challenge an agency certification that a proposed regulation will not impact a substantial number of small entities. And small businesses would be exempt from any rule in which an agency fails to follow the law. Sen. Ernst's legislation is a much-needed breath of fresh air amid the current war on small businesses.

Small business regulatory protections are in dire need of restoration. Passage of The Prove It Act would be a step in the right direction. Sen Ernst's colleagues—regardless of political affiliation—should support it. It's time for our elected leaders in Washington to prioritize Main Street.

Alfredo Ortiz
President and CEO
Job Creators Network



[8] Job Creators Network, "The American Small Business Prosperity Plan"

NADA | National Automobile Dealers Association



Oppose Overreaching $38 Billion FTC "Vehicle Shopping Rule" Which Would Burden Consumers with Added Costs, More Paperwork and a Longer Sales Process

ISSUE

The Federal Trade Commission's (FTC) proposed "Vehicle Shopping Rule" would needlessly overwhelm car buyers and small businesses with added costs, additional paperwork and a longer car buying process. The FTC proposed the rule without credible data-driven analysis or the necessary time for public comment and denied a routine request for an extension of the public comment period. Additionally, a study by the Center for Automotive Research (CAR) found that the ten-year cost of the rule to consumers would be over $38 billion. **Congress should use its oversight authority and "power of the purse" to ensure the flawed and rushed "Vehicle Shopping Rule" does not negatively impact consumers and small businesses.**

BACKGROUND

The FTC rushed to publish its "Vehicle Shopping Rule" on July 13, 2022 without issuing an Advance Notice of Proposed Rulemaking, violating its own rules. The agency allowed only 60 days for the public to review this rule and denied a routine extension of the public comment period despite the rule's massive new costs and widespread impact on consumers and small businesses. NADA submitted comments to the FTC summarized here.

To support the rule, the FTC relies on data that is unverified, inapplicable, previously rebutted, or anecdotal. A major rule with market-changing ramifications requires data-driven, *quantitative* evidence of systemic issues. The FTC rule instead relies primarily on a *qualitative,* internal study with a sample size of only 38 D.C. area residents. This unvalidated and unscientific "study" explicitly stated that data from the study should not be used to form any *quantitative or generalizable conclusions*.

Vehicle sales are already extensively regulated with a document-intensive process. Many provisions of the proposed rule ignore, duplicate or contradict existing federal and state laws or regulations. For example, the proposed rule requires that dealers provide a "cash price" disclosure that differs from the "cash price" disclosure dealers must provide under the Truth In Lending Act.

Despite Congress not having mandated this rule or set any deadlines, the FTC issued this proposed rule without performing any consumer testing of the new disclosures it would mandate. Whenever contemplating a market changing rule, a federal agency should conduct research and testing in advance to ensure its proposed rule would work in practice. For example, the development of model privacy disclosures issued pursuant to the Gramm-Leach-Bliley Act were subject to significant consumer testing before being implemented by the FTC.

KEY POINTS

- **The FTC has not followed a fair and transparent process in issuing this proposed rule which would add more time and cost to the car buying process.** Despite adding more paper to the sales process, the FTC counterintuitively (and without any analysis or support) assumes that this new rule would save consumers three hours per transaction and, in turn, save consumers $29.7 billion. The CAR report, with clear supporting evidence, shows that consumers would spend an additional two hours per transaction, with an overall consumer cost of $38.1 billion.
- **This rule increases the complexity of the car-buying process, adding more paperwork for consumers while also creating inconsistent and unnecessary rules and burdens for small businesses.** Under the rule, every time a consumer asks about a specific vehicle or monthly payments, there would be new disclosures involved.
- **Congress should slow down the FTC's rushed and flawed rule since adding additional regulatory burdens must be the result of an informed process.** All the behaviors the FTC rule is aimed at addressing are already against the law, and the agency presently has sufficient enforcement authority to police any alleged wrongdoing**.** The FTC should work collaboratively with the auto industry, as it has in the past, to promote compliance without unnecessarily adding costs, lengthening transaction times, and harming consumers.

STATUS

The FTC closed the comment period for the rule on Sept. 12, 2022 and has not released a timeframe for releasing the final rule. On July 13, the House Appropriations Committee reported out the Fiscal Year 2024 Financial Services and General Government (FSGG) appropriations bill (H.R. 4664) which included language that stops the FTC from finalizing, implementing, or enforcing the "Vehicle Shopping Rule." The companion Senate bill approved by the Senate Appropriations Committee also on July 13 (S. 2309) does not include this language. **Congress must stop the proposed "Vehicle Shopping Rule" that would needlessly impose significant burdens and costs on consumers and small business dealers.**

August 1, 2023

NFIB

555 12th St NW, Suite 1001
Washington, D.C. 20004

1-800-552-5342
NFIB.com

August 23, 2023

The Honorable Ben Cardin
Chairman
Committee on Small Business
& Entrepreneurship
U.S. Senate
Washington, D.C. 20510

The Honorable Joni Ernst
Ranking Member
Committee on Small Business
& Entrepreneurship
U.S. Senate
Washington, D.C. 20510

Dear Chairman Cardin and Ranking Member Ernst,

On behalf of NFIB, the nation's leading small business advocacy organization, I write regarding the field hearing entitled, "One Size Does Not Fit All: Understanding the Importance of Rightsizing Regulations for Small Businesses." NFIB's nearly 300,000 small businesses appreciate the opportunity to discuss the impacts of burdensome regulations and ways Congress can reduce red tape for small businesses.

Small businesses are concerned with the unprecedented pace of regulations flowing out of Washington. According to one estimate, in a little over two and a half years, the Biden Administration has imposed more than $403 billion in final rule costs and 232 million paperwork hours.[1] By contrast, over the same period of his presidency, President Obama's Administration imposed more than $225 billion in final rule costs and 147 million paperwork hours.[2]

These staggering totals fall disproportionately on small businesses that do not have lawyers or compliance officers to navigate complex regulatory issues. They also demonstrate the urgent need for Congress to provide regulatory relief to small businesses.

We believe legislators should look to the example set by President Carter and the Democratic-led 96th Congress. In 1980, President Carter and Congress recognized the disproportionate impact of federal regulations on small businesses and unanimously approved the Regulatory Flexibility Act (RFA). Upon signing the RFA into law, President Carter stated, "[t]his bill adds

[1] Dan Goldbeck, *Biden Administration Goes Past $400 Billion in Final Rule Costs*, American Action Forum, August 14, 2023, https://www.americanactionforum.org/week-in-regulation/biden-administration-goes-past-400-billion-in-final-rule-costs/.
[2] *Id.*

another piece to the far-reaching regulatory reform record that we and the Congress are building."[3] The President continued, "[s]mall businesses are crucial to a competitive, healthy, and productive economy. However, regulations often impose heavier burdens on small organizations than on big ones. The Regulatory Flexibility Act recognizes that regulations need not be uniform to be effective. It requires agencies, whenever appropriate, to tailor their rules to the size and resources of those affected."[4]

As President Carter described, federal regulations disproportionately impacted small businesses and the RFA sought to remedy the increasing burdens on small businesses. However, in the 40-plus years since the RFA became law, agencies have found ways to disregard or bypass many of the requirements. NFIB's recent white paper analyzed the Small Business Administration (SBA) Office of Advocacy's comment letters to federal agencies from January 2021 to January 2023 and found significant noncompliance with the RFA.[5] In these letters, Advocacy highlighted 28 instances where agencies failed to adequately examine the economic costs of regulations.[6] Advocacy noted that agencies often improperly certify that rules will not have a significant economic impact on a substantial number of small entities.[7] By doing so, agencies disregard the intent of the law, leaving small businesses subject to the one-size-fits-all regulatory environment the RFA sought to correct.

One recent example of a federal agency's questionable certification of a rule is the Environmental Protection Agency's (EPA) and the Department of the Army's expansive Waters of the United States (WOTUS) rule. In finalizing the rule, the EPA and Department of the Army certified it "will not have a significant economic impact on a substantial number of small entities."[8]

This conclusion seems implausible. According to one estimate by the Attorney General of Iowa, as much as 97% of land in Iowa could now be subject to federal regulation under the final WOTUS rule.[9] In response, a farmer in Iowa will be forced to hire expensive consultants to determine whether their land is subject to the EPA and Department of the Army's regulatory authority. And yet somehow, the EPA and the Department of the Army concluded that the millions of farmers, ranchers, developers, and small businesses across the country will not be significantly affected.

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[3] The American Presidency Project "*Regulatory Flexibility Act Statement on Signing S. 299 Into Law,* UC Santa Barbara, https://www.presidency.ucsb.edu/documents/regulatory-flexibility-act-statement-signing-s-299-into-law.
[4] *Id.*
[5] Rob Smith, *The Regulatory Flexibility Act: Turning a Paper Tiger Into a Legitimate Constraint on One-Size-Fits-All Agency Rulemaking,* National Federation of Independent Business Small Business Legal Center, May 2023, https://strgnfibcom.blob.core.windows.net/nfibcom/NFIB-RFA-White-paper.pdf.
[6] *Id.*
[7] *Id.*
[8] 88 *Fed. Reg.* 3139, col. 3. https://www.epa.gov/system/files/documents/2023-01/Revised%20Definition%20of%20Waters%20of%20the%20United%20States%20FRN%20January%202023.pdf.
[9] Donnelle Eller, *Iowa joins states fighting Biden's EPA 'power grab' to regulate waters of the US*, Yahoo! News, February 18, 2023, https://news.yahoo.com/iowa-joins-states-fighting-bidens-114024507.html.

Farmers and small businesses in Iowa know this conclusion is absurd. Thankfully, on May 25, 2023, the U.S. Supreme Court ruled the EPA and Department of the Army had overstepped their regulatory authority under the *Clean Water Act*. The agencies are expected to issue a revised definition by September 1, 2023.[10] Small businesses remain concerned that the agencies will issue a similarly burdensome regulation that does not consider the economic impacts on small businesses.

The WOTUS rule shows the creative ways that agencies often disregard or minimize the economic impacts of regulations. The result is a massive expansion of the regulatory costs and burdens facing small businesses. According to one estimate, President Biden has imposed a "historic regulatory burden" of more than $10,000 in regulatory costs for each household.[11] These significant burdens will only continue to grow as burdensome pending rules are finalized or go into effect. The Securities and Exchange Commission's (SEC) proposed rule on climate disclosures is just one example. The rule would require public companies to report the greenhouse gas emissions of the private companies with which they do business. Through the rule, millions of private, small businesses would fall under the SEC's regulatory authority. However, the SEC estimated that only 1,004 small entities would be affected by the proposed rules.[12]

Additionally, on January 1, 2024, one of the most expansive small business regulations in history will go into effect. This substantial new reporting requirement, known as the Corporate Transparency Act, will affect 32.6 million small businesses in the first year and five to six million small businesses each year thereafter.[13] The cost of this regulation is a staggering $22.7 billion in its first year and $5.6 billion per year moving forward.[14] Failure to file completed and updated reports could result in civil penalties of up to $10,000 and criminal penalties of up to 2 years in prison. In total, this burdensome regulation smothers the smallest businesses in America with more than $73 billion in compliance costs and it only applies to small businesses with 20 or fewer employees and $5 million or less in annual revenue.

The unprecedented burdens and the obvious understatements of the impacts of regulations highlight the need for Congress to address the regulatory burdens imposed on small businesses. Congress should consider the following proposals to reduce red tape and strengthen laws like the RFA:

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[10] Amendments to the 2023 Rule, Environmental Protection Agency, June 26, 2023, https://www.epa.gov/wotus/amendments-2023-rule.
[11] Casey Mulligan, *The Costs and Benefits of Biden's Regulation*, Wall Street Journal, August 18, 2023, https://www.wsj.com/articles/biden-regulation-cost-benefit-analysis-7dcdb1ab.
[12] 87 *Fed. Reg.* 21462, col. 3, https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf.
[13] Comments were submitted saying that FinCEN underestimated the compliance costs. NFIB agrees. See Comments of James Richards, Principal of RegTech Consulting LLC, FinCEN's Proposed Beneficial Ownership Information Reporting Form, FinCEN, January 18, 2023, https://www.regulations.gov/comment/FINCEN-2023-0002-0003.
[14] Beneficial Ownership Information Reporting Requirements, Final Rule, Financial Crimes Enforcement Network, September 30, 2022, https://www.regulations.gov/document/FINCEN-2021-0005-0461.

1. Publish less burdensome alternative rules for small businesses. The RFA requires agencies to consider less burdensome alternative rules for small entities. Agencies have proven they are not seriously considering less burdensome alternatives for small businesses. By requiring agencies to publish less burdensome alternatives, rather than just simply considering them, agencies can help small employers who usually do not have dedicated compliance staff.

2. Impose statutory penalties on agencies for failing to conduct retrospective reviews, including a requirement that would make a rule cease to be effective if a review is not conducted promptly. Section 610 of the Regulatory Flexibility Act (RFA) requires that federal agencies review each rule that has or will have a significant economic impact on a substantial number of small entities within ten years of publication of the final rule. These periodic rule reviews are a mechanism for agencies to assess the impact of existing rules on small entities and to determine whether the rules should be continued without change, or should be amended or rescinded, consistent with the objectives of applicable statutes.

3. Require Advocacy to certify the economic analyses of agencies. By requiring Advocacy to review the analyses to determine a rule's economic impact, agencies will more accurately account for the effects on small entities.

4. Require agencies to consider the indirect or downstream effects of rules. When conducting rulemaking, agencies do not consider the indirect effects that regulations may have on small businesses. By requiring agencies to explore the indirect effects of regulations, agencies will more accurately assess the total economic impact on small businesses.

5. Require agencies to meet with a panel of affected small business owners before promulgating rules. These panels which are currently in use by EPA, OSHA, and the CFPB will help to give regulators a true understanding of the small companies they are attempting to regulate and will expose them to the potentially unforeseen effects of a regulatory proposal.

6. Repeal the proposed changes to OMB's Circular A-4 guidance. The proposed guidance would increase the requirement of significant regulatory action from a $100 million annual economic impact to $200 million and make changes to the ways agencies calculate the costs and benefits of regulations. By eliminating these changes, OMB can ensure agencies are accounting for the impacts of regulations on small businesses.

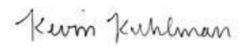
In 2021, President Biden stated, "[s]mall businesses are the engines of our economic progress; they're the glue and the heart and soul of our communities. But they're getting crushed."[15] We agree with President Biden—small businesses are the engines of economic progress, and they are getting crushed. However, it is the President's unprecedented regulatory agenda that is

[15] *Remarks by President Biden on Helping Small Businesses*, Feb. 21, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/.

crushing small businesses with red tape and paperwork. Congress must come together to provide relief for small businesses across the country.

NFIB appreciates your leadership in creating an environment where small businesses can grow, invest, and flourish. We look forward to working with you on these critical issues facing small businesses during the 118th Congress.

Sincerely,



Kevin Kuhlman
Vice President, Federal Government Relations
NFIB

Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act and Executive Order 13272

Report on the Regulatory Flexibility Act, FY2022

April 2023



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. Appointed by the President and confirmed by the U.S. Senate, the Chief Counsel for Advocacy 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. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional advocates and an office in Washington, DC, support the Chief Counsel's efforts.

The views expressed by Advocacy here do not necessarily reflect the position of the Administration or the SBA because Advocacy is an independent entity within the U.S. Small Business Administration.


Advocacy Website: https://advocacy.sba.gov


Email Advocacy: advocacy@sba.gov


Facebook: https://www.facebook.com/AdvocacySBA


LinkedIn: https://www.linkedin.com/company/u-s-small-business-administration-office-of-advocacy/


Twitter: https://www.twitter.com/AdvocacySBA



April 2023

To: The White House
The Senate Committee on Small Business and Entrepreneurship
The House Committee on Small Business

The Regulatory Flexibility Act (RFA) is the statutory basis of small entity consideration in federal rulemaking. The RFA assigns the Office of Advocacy official responsibility in rulemaking. Advocacy monitors whether regulations consider small entities and informs agencies of small businesses' concerns to improve regulations.

The RFA directs the Chief Counsel for Advocacy to monitor and report on federal agencies' compliance with the law. This report fulfills that mandate, covering fiscal year 2022: from October 1, 2021, to September 30, 2022. In addition, Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," also imposes certain requirements on federal agency rulemaking and requires Advocacy to report on agency compliance with that executive order. Chapter 2 reports on their compliance in FY 2022.

As the United States moved toward the end of the COVID-19 pandemic, Advocacy took stock of the past several years. Advocacy used new processes to ensure that, despite being unable to meet small businesses face-to-face, stakeholders were involved in the regulatory process. These processes included online roundtables, events, and trainings for federal regulators, all of which allowed for more voices to become involved in Advocacy's work. New channels of communication established in the pandemic allow Advocacy to better track small business needs and focus on new burdens, including issues of equity and fairness.

While Advocacy has enforced the RFA for over 40 years, safeguards on the regulatory process continue to be important as the number of small businesses continues to skyrocket. Advocacy has remained attuned to regulatory changes and continues to monitor new rules and regulations for impacts on small business.

Advocacy's efforts to monitor federal regulatory compliance with the Regulatory Flexibility Act included the following actions in FY 2022:

- Advocacy submitted 37 formal comment letters to regulatory agencies. These letters pointed out RFA issues the agencies needed to correct.
- Advocacy held 30 regulatory roundtables. These roundtables (which Advocacy continued to hold online) are held so Advocacy can discuss with small businesses the impact of upcoming rules. Agency officials often attend these roundtables.
- Advocacy provided training on RFA compliance in 10 training sessions for 257 federal officials via online communication platforms.

- In FY 2022, Advocacy convened four SBREFA panels, three with the Environmental Protection Agency (EPA) and one with the Consumer Financial Protection Bureau.

Advocacy's overall efforts to promote federal agency compliance also resulted in a series of victories. Some of the most prominent changes are listed here:

- One success surrounded the Department of Defense's (DOD) Cybersecurity Maturity Model Certification. After Advocacy contacted DOD with concerns about the model, DOD announced in November 2021 that the original framework for the model would not be implemented.
- Advocacy commented on the Environmental Protection Agency (EPA) allowance allocation and trading program for hydrofluorocarbons (HFC). During the public comment period, Advocacy raised concerns about the cost and feasibility of the proposed ban on disposable HFC cylinders and a new HFC reporting and tracking system.
- Another rule change was related to the EPA's Fifth Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5). EPA's original language would have required all small public water systems participate in UCMR 5 regardless of whether EPA would pay for their non-labor costs of compliance. After Advocacy encouraged the agency to comply with the America's Water Infrastructure Act of 2018, EPA modified the rule.
- Advocacy requested the EPA conduct a small business advocacy review panel regarding reporting requirements for perfluoroalkyl and polyfluoroalkyl substances. The EPA agreed to convene a panel to solicit feedback from impacted small businesses. The panel was completed on August 2, 2022, and EPA plans to issue an initial regulatory flexibility analysis for public comment.
- Advocacy commented on a Federal Communications Commission rule regarding improving broadband competition in multi-tenant environments. Advocacy's letter suggested specific policies for reducing barriers to entry for broadband providers. The Commission adopted these suggestions, citing Advocacy's comments in the final proceeding.

Chapter 2 reports on agencies' compliance with Executive Order 13272. Additionally, Advocacy confirmed whether agencies had posted their RFA procedures on their websites. Table 2.2 provides these links.

I am pleased to present you this report on federal agency compliance with the Regulatory Flexibility Act. Advocacy looks forward to further achievements in reducing small businesses' regulatory burdens.

Sincerely,



Major L. Clark, III
Deputy Chief Counsel

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Chapter 1
The Regulatory Flexibility Act, Small Business, and Regulation During the Pandemic

Over the course of the COVID-19 pandemic, the Office of Advocacy (Advocacy) maintained its mission of being an independent voice for small businesses within the federal government. Advocacy produced timely research on the impact of the pandemic[1] and focused on both regulatory reform to help struggling businesses and educating regulators who craft rules and regulations that could disproportionately impact small business.

In FY 2022, as the United States moved toward the end of the pandemic, Advocacy took stock of the past several years. Processes developed by Advocacy and federal agencies in 2020 ensured that, despite being unable to meet small businesses face-to-face, stakeholders were involved in the regulatory process. These processes became part of the new normal for Advocacy. Online roundtables and events reached stakeholders across the country, and online trainings for federal regulators allowed for more convenient ways to reach the people who write federal rulemakings. New channels of communication allow Advocacy to better track small business needs and focus on new burdens in the post-pandemic age, including issues of equity and fairness.

This chapter documents the Regulatory Flexibility Act (RFA) and other laws Advocacy uses to help protect small businesses against burdensome regulatory action. While Advocacy has monitored compliance the RFA for over 40 years, safeguards on the regulatory process are important as the number of small businesses continues to skyrocket. Advocacy has remained attuned to regulatory changes and continues to monitor new rules and regulations for burdensome impacts on small businesses. In the case of deregulatory actions, Advocacy has monitored potential outcomes to ensure maximum benefits for small entities.

1. Advocacy's research on pandemic effects can be found online at https://advocacy.sba.gov/tag/covid-19/.

The Regulatory Flexibility Act

No law after Advocacy's basic charter has had more influence on the office's activities than the RFA, first enacted in 1980[2] and strengthened in 1996[3] and 2010.[4] It established into law the principle that government agencies must consider the effects of their regulatory actions on small entities and mitigate them where possible. The RFA arose from years of frustration with ever-increasing federal regulation that disproportionately harmed large numbers of smaller entities. From the RFA's section titled "Congressional Findings and Declaration of Purpose":

> It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.[5]

2. Public Law 96-354 (September 19, 1980), 5 U.S.C. § 601 ***et seq.***
3. The Small Business Regulatory Enforcement Fairness Act, Public Law 104-121, Title II (March 29, 1996).
4. The Small Business Jobs Act of 2010, Public Law 111–240, title I, § 1601 (September 27, 2010) and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, title X, § 1100G(a) (July 21, 2010).
5. 5 U.S.C. § 601 note.

The RFA includes procedures for agencies to accomplish this purpose and provides Advocacy, whom a Florida federal court called the "watchdog of the RFA," with tools to help promote compliance. The 1996 amendments to the RFA provided judicial review for many of its provisions, and since then a significant body of RFA case law has developed, including instances in which rules or their impact analyses have been remanded by the courts due to RFA problems.[6]

In addition to RFA legislation, several executive orders have given Advocacy additional responsibilities to assist agencies in meeting their RFA obligations. One of these, Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,*[7] requires Advocacy to report annually on agencies' compliance with the RFA. That report is included in this Annual Report on the RFA.

Executive Order 13272 also requires Advocacy to provide RFA compliance training to federal regulatory officials, which ordinarily occurs through live classroom training. As the federal government continued a high-telework policy because of COVID-19 and changing norms, training during FY 2022 was mostly conducted online through meeting software. Better-trained regulatory and policy staff can better assess the potential need for both deregulation and regulation, and when regulation is necessary, develop smarter rules that reduce impacts on small entities. Additionally, RFA training provides federal regulators with a better understanding of how the RFA is a positive tool for regulatory compliance. Fully RFA-compliant rules can result in better rules, better small business compliance, and reduced litigation.

Since the enactment of the RFA in 1980, Advocacy has sought to help agencies develop a regulatory culture that internalizes the Act's purposes. Advocacy shows regulatory and policy officials how considering the potential effects of their proposals on small entities and adopting mitigation strategies can improve their regulations, both by reducing costs to small entities and the broader economy, and by improving compliance by those regulated. Since 2003, when Advocacy began its ongoing RFA compliance training program, through 2022, training has been provided to officials in 18 cabinet-level departments and agencies, 80 separate component agencies and offices within these departments, 24 independent agencies, and various special groups including congressional staff, business organizations, and trade associations.

Since its passage in 1980, the RFA has helped establish small business consideration as a necessary part of federal rulemaking. In the past, Advocacy has made regulatory reform recommendations directly to agencies based on a review of rules subject to the requirements of Section 610 of the RFA and based on outreach to small entity representatives. In addition to recommendations under Section 610, and after agencies had designated Regulatory Reform Officers and established the Regulatory Reform Task Forces required under Executive Order 13777, Advocacy offered its recommendations and other assistance to agencies, as suggested by that order. Since then, Advocacy has continued to engage in a longer-term effort to make specific recommendations to agencies and the Office of Management and Budget about regulations and regulatory policies that could be modified to lower small entities' compliance costs.

The RFA, Its Requirements, and Efforts to Strengthen It

Congress passed the RFA in 1980 to address the disproportionate impact of federal regulations on small businesses. Under the RFA, when an agency proposes a rule that would have a "significant economic impact on a substantial number of small entities," the rule must be accompanied by an impact analysis, known as an initial regulatory flexibility analysis (IRFA), when it is published for

6. E.g., ***Southern Offshore Fishing Association v. Daley,*** 55 F. Supp. 2d 1336 (M.D. Fla. 1999), and ***Northwest Mining Assoc. v. Babbitt,*** 5 F. Supp. 2d 9 (D.D.C. 1998), in which Advocacy filed an ***amicus*** brief.

7. Executive Order 13272 (August 13, 2002), 67 Fed. Reg. 53461.

public comment.[8] When the final rule is published, it must be accompanied by a final regulatory flexibility analysis (FRFA).[9] Alternatively, if a federal agency determines that a proposed rule would not have a significant impact on small entities, the head of that agency may "certify" the rule and bypass the IRFA and FRFA requirements.[10]

In an IRFA, the agency must consider less burdensome alternatives to its own rule, and in the FRFA the agency must explain why the final rule was chosen from among the alternatives in the IRFA.[11]

In 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA). The amendments to the RFA under SBREFA emphasized federal agency compliance with the RFA, imposing specific procedures addressing small business concerns regarding environmental and occupational safety and health regulations. Additionally, the amendments made compliance with certain sections of the RFA judicially reviewable, meaning petitioners could challenge regulations based on the agency's failure to comply with those sections of the statute.

The Small Business Jobs Act of 2010 codified some of the procedures introduced in Executive Order 13272. That same year, the Dodd-Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau and made the agency's rules subject to the RFA's SBREFApanel provisions.

In 2011, President Obama issued Executive Order 13563, *Improving Regulation and Regulatory Review*,[12] which directed agencies to heighten public participation in rulemaking, consider overlapping regulatory requirements and flexible approaches, and conduct ongoing regulatory review. Concurrently, the president issued a memorandum to all federal agencies, reminding them of the importance of the RFA and of reducing the regulatory burden on small businesses through regulatory flexibility. In this memorandum, the president directed agencies to increase transparency by providing written explanations of any decision not to adopt flexible approaches in their regulations.

In 2012, Executive Order 13610, *Identifying and Reducing Regulatory Burdens*,[13] provided that "… further steps should be taken…to promote public participation in retrospective review, to modernize our regulatory system, and to institutionalize regular assessment of significant regulations." This aligns with the RFA's Section 610 "look-back" provision mandating the periodic review of existing regulations. The executive order also called for greater focus on initiatives aimed at reducing unnecessary regulatory burdens, simplifying regulations, and harmonizing regulatory requirements imposed on small businesses.

Conclusion

Since its passage in 1980, the RFA has demonstrated remarkable results. It has helped establish small business consideration as a necessary part of federal rulemaking. The careful tailoring of regulation to business size has made better regulations with improved compliance in pursuit of safety, health, and other public goods. The subsequent regulatory and legislative improvements have solidified Advocacy's participation in rulemakings affecting small businesses. What these initiatives all have in common is agreement that the regulatory burden on small businesses must be minimized. Over its 41-year history, the RFA has provided federal agencies with the framework to accomplish this goal, which is especially important in times of disruption like the COVID-19 pandemic. With Advocacy's ongoing monitoring, this important tool will continue to remind agencies that are writing new rules or reviewing existing ones to guard against "significant economic impacts on a substantial number of small entities."[14]

8. 5 U.S.C. § 603.
9. 5 U.S.C. § 604.
10. 5 U.S.C. §605(b).
11. 5 U.S.C. § 604.
12. Executive Order 13563 (January 18, 2011), 76 Fed. Reg. 3821.
13. Executive Order 13610 (May 10, 2012), 77 Fed. Reg. 28469.
14. 5 U.S.C. § 601.

Chapter 2
Compliance with Executive Order 13272 and the Small Business JOBS Act of 2010

Federal agencies' compliance with the Regulatory Flexibility Act (RFA) improved markedly after President George W. Bush signed Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, in 2002. The executive order established new responsibilities for the Office of Advocacy (Advocacy) and federal agencies to facilitate greater consideration of small businesses in regulatory development. Portions of it have been codified in the Small Business Jobs Act of 2010.[1]

Executive Order 13272 requires Advocacy to educate federal agency officials on compliance with the RFA, to provide resources to facilitate continued compliance, and to report to the Office of Management and Budget on agency compliance with the executive order.

RFA Training

Advocacy launched its RFA training program in 2003. Since then, the office has offered RFA training sessions to every rule-writing agency in the federal government. These training sessions are attended by the agencies' attorneys, economists, and policymakers. While RFA training is normally held in person, the COVID-19 pandemic caused Advocacy to move its sessions online. In FY 2022, Advocacy held 10 training sessions for 257 federal officials (see Table 2.1). The entire list of agencies trained since FY 2003 appears in Appendix D.

1. Small Business Jobs Act, Pub. L. No. 111-240, 124 Stat. 2504 (2010).

Table 2.1: RFA Training at Federal Agencies in FY 2022

Date	Agency	Number Trained
10/26/21	Federal Communications Commission	6
03/02/22	National Labor Relations Board	37
03/03/22	U.S. Army Corps of Engineers	5
04/19/22	Federal Communications Commission	41
04/26/22	Securities and Exchange Commission	50
05/05/22	Mine Safety and Health Administration	18
06/29/22	Employee Benefits Security Administration	13
07/21/22	Department of Education	15
09/13/22	Small Business Administration	25
09/22/22	Federal Aviation Administration	47
	Total	257

RFA Compliance Guide

To provide clear directions on RFA compliance, Advocacy publishes a manual called "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act." Versions of the manual can be found on the Advocacy website and are provided to agencies during training.[2]

Agency Compliance with Executive Order 13272

Executive Order 13272 requires federal agencies to take certain steps to boost transparency and ensure small business concerns are represented in the rulemaking process. These steps include the following:

Written RFA Procedures. Agencies are required to show publicly how they take small business concerns and the RFA into account when creating regulations. Most agencies have posted their RFA policies and procedures on their websites.

Notify Advocacy. Agencies are required to engage Advocacy during the rulemaking process to ensure small business voices are being heard. If a draft regulation may have a significant impact on a substantial number of small entities, the agency must send copies of the draft notification to Advocacy.

Respond to Comments. When Advocacy submits written comments on a proposed rule, the agency must consider and provide a response to them in the final rule published in the *Federal Register.* The Small Business Jobs Act of 2010 codified this as an amendment to the RFA.

A summary of federal agencies' compliance with these three requirements is shown in Table 2.2.

As federal agencies have become more familiar with the RFA and have established cooperative relationships with Advocacy, the regulatory environment under Executive Order 13272 and the Small Business Jobs Act has led to less burdensome federal regulation. In addition to improving compliance with the RFA, Advocacy finds that Executive Order 13272 has improved the office's overall relationship with federal agencies.

2. The most recent edition can be found at https://advocacy.sba.gov/resources/the-regulatory-flexibility-act/a-guide-for-government-agencies-how-to-comply-with-the-regulatory-flexibility-act/.



Table 2.2 Federal Agency Compliance with Rule-Writing Requirements under Executive Order 13272 and the JOBS Act, FY 2022

Agency	Written Procedures on Website	URL of Agency's RFA Procedures	Notifies Advocacy	Responds to Comments
Cabinet Agencies				
Department of Agriculture	√	https://www.usda.gov/directives/dr-1512-001	√	√
Department of Commerce(a)	√	www.fisheries.noaa.gov/national/laws-and-policies/guidance-conducting-economic-and-social-analyses-regulatory-actions	√	√
Department of Defense	√	https://www.acquisition.gov/node/28713/printable/print	√	√
Department of Education	X		√	n.a.
Department of Energy	√	www.energy.gov/sites/prod/files/gcprod/documents/eo13272.pdf	√	√
Department of Health and Human Services	√	FDA: https://www.fda.gov/industry/small-business-assistance/letter-proper-consideration-small-entities-agency-rulemaking CMS: https://www.cms.gov/Regulations-and-Guidance/Guidance/CMSSmallBusAdminOmbuds	√	√
Department of Homeland Security	√	www.dhs.gov/publication/signed-regulatory-flexibility-act-executive-order-13272-memo-2004	√	n.a.
Department of Housing and Urban Development	√	www.hud.gov/program_offices/sdb/policy/sbrefa	n.a.	n.a.
Department of the Interior	√	https://www.fws.gov/policy/library/rgeo12372.pdf	√	x
Department of Justice	X		√	n.a.
Department of Labor	√	www.dol.gov/general/regs/guidelines	√	√
Department of State	X		√	n.a.
Department of Transportation	√	www.transportation.gov/sites/dot.dev/files/docs/1979%20Regulatory%20Policies%20and%20Procedures.doc	√	n.a.

Department of the Treasury (b)	√	Treasury: https://home.treasury.gov/about/general-information/orders-and-directives/td28-03 Internal Revenue Service: www.irs.gov/irm/part32/irm_32-001-005#idm140712272166000	√	√
Department of Veterans Affairs	√	www.va.gov/ORPM/Regulatory_Flexibility_Act_EO_13272_Compliance.asp	√	n.a.
Environmental Protection Agency	√	www.epa.gov/sites/production/files/2015-06/documents/guidance-regflexact.pdf	√	√
Small Business Administration	X		√	n.a.
Noncabinet Agencies				
Commodity Futures Trading Commission	n.a.	n.a.	X	n.a.
Consumer Financial Protection Bureau (c)	n.a.	n.a.	√	n.a.
Consumer Product Safety Commission	√	www.cpsc.gov/Regulations-Laws--Standards/Rulemaking#The Regulatory Flexibility Act	√	√
Equal Employment Opportunity Commission	√	www.eeoc.gov/eeoc/plan/regflexibilityact.cfm	√	n.a.
Federal Acquisition Regulation Council	X	https://www.acquisition.gov/node/28713/printable/print	√	n.a.
Federal Communications Commission	√	www.fcc.gov/sites/default/files/fcc-directive-1158.2.pdf	√	√
Federal Reserve Board (c)	n.a.	n.a.		n.a.
Federal Retirement Thrift Investment Board	n.a.	n.a.	√	n.a.
General Services Administration	X		√	n.a.
National Labor Relations Board (c)	n.a.	n.a.	√	n.a.
Pension Benefit Guarantee Corporation	n.a.	n.a.	√	n.a.
Securities and Exchange Commission (c)	n.a.	n.a.	√	n.a.

Notes: √ = Agency complied with the requirement. X = Agency did not comply with the requirement.
n.a. = Not applicable because Advocacy did not submit a comment letter in response to an agency rule in FY 2022 or because the agency is not required to do so.
a. NOAA drafts most regulations the Commerce Department releases.
b. On April 11, 2018, Treasury and the Office of Management and Budget signed a Memorandum of Agreement stating that tax regulations would be reviewed under Executive Order 12866.
c. Independent agencies are not subject to the E.O. requiring written procedures. However, some independent agencies do have written procedures available on their websites.

Chapter 3
Communication with Small Business and Federal Agencies

Communication with Federal Agencies

The principal goal of the Regulatory Flexibility Act (RFA) is to reduce regulatory burdens on small businesses. Advocacy accomplishes this in large part by communicating small business concerns to federal agencies as they craft regulations. The RFA requires federal agencies to engage with small businesses in specific ways. These communications form the basis of federal small business regulatory analysis and regulatory burden reduction.

Direct Communications

The Office of Advocacy (Advocacy) uses numerous methods of communication to present the concerns of small businesses and other small entities to federal officials promulgating new regulations. Meetings with officials, comment letters to agencies, and training sessions on RFA compliance provide meaningful participation by all interested parties and produce more effective federal regulation. In addition, Advocacy roundtables often feature agency officials interested in small business input. In FY 2022, Advocacy's communications with federal agencies included 35 public comment letters and 10 RFA compliance training sessions for 257 federal officials. Table 2.1 lists the agencies where training was held this year, and Appendix D contains a list of all agencies that have participated in RFA training since 2003.

Additionally, Advocacy's regional advocates assist in the burden reduction process. By reaching out to local businesses, regional advocates obtain valuable input directly from small businesses across the country. In turn, regional advocates refer regulatory issues to Advocacy attorneys for review.

Executive Order 12866 and Interagency Review of Upcoming Rules

Executive Order 12866, Regulatory Planning and Review, celebrated its 29th anniversary in FY 2022.[1] The executive order's goals are to enhance planning and coordination of new and existing regulations, reaffirm the primacy of federal agencies in the regulatory decision-making process, restore the integrity and legitimacy of regulatory review and oversight, and make the process more accessible and open to the public.

Under Executive Order 12866, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) reviews all significant executive agency regulations. Interested parties can request a meeting with OIRA to discuss any issues with a rule under its review. These are known as 12866 meetings. Advocacy attends these meetings when invited.

SBREFA Panels

In 1996, the Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require certain agencies to convene review panels whenever a potential regulation is expected to have a significant economic impact on a substantial number of small entities. These are commonly called SBREFA or Small Business Advocacy Review (SBAR) panels. These panels provide for small business input before the proposed rule is published. The list of SBREFA panels convened since 1996 can be found in Appendix D.

Three agencies are covered by this requirement: the Consumer Financial Protection Bureau (CFPB),

1. Executive Order 12866, Regulatory Planning and Review, September 30, 1993. https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.

Environmental Protection Agency (EPA), and Occupational Safety and Health Administration (OSHA). Four panels were convened in FY 2022:

- The EPA convened a panel on cyclic aliphatic bromide cluster Risk Management Rulemaking under the Toxic Substances Control Act in January 2022.
- The CFPB convened a panel on the automated valuation model in March 2022.
- The EPA convened a panel on reporting and recordkeeping requirements for perfluoroalkyl and polyfluoroalkyl substances under the Toxic Substances Control Act (TSCA) Section 8(a)(7) in April 2022.
- The EPA convened a panel on per- and polyfluoroalkyl substances related to the National Primary Drinking Water Regulation (NPDWR) in May 2022.

Confidential Interagency Dialogue

While Advocacy uses tools like 12866 meetings and SBREFA panels to directly talk about regulatory issues with federal agencies seeking to promulgate rules, a significant amount of work is done behind the scenes through confidential interagency communications. Advocacy's goal is to participate in the regulatory development process as early as possible, both to counsel agencies on the effects of their actions on small businesses and to provide RFA compliance expertise as needed. Many of the formal processes support these goals, but assistant chief counsels spend most of their time working with counterparts at agencies to perform better analysis, propose more and better alternatives, disclose their thinking, and explain their ultimate rationale.

Advocacy encourages agency policymakers and regulatory development staff to share pre-proposal information with Advocacy. During these reviews, federal regulators can ask Advocacy for guidance early in the pre-proposal phase of the regulatory process and are able to avoid issues while rules are still in a development phase.

Regulatory Agendas

Each spring and fall, federal agencies, including independent regulatory agencies, prepare an agenda of all the regulatory actions under development or review for the fiscal year. Each agency, including independent regulatory agencies, must also create a regulatory plan containing the most important proposed or final regulations the agency expects to release that fiscal year or thereafter. In addition to the regulatory agendas, agencies are also required by Section 602 of the RFA to publish a regulatory flexibility agenda that specifically addresses regulatory actions that will affect small businesses. These also must be published in the Federal Register each spring and fall.

The agendas facilitate public participation, specify the subjects of upcoming proposed rules, and indicate whether these rules are likely to have a significant economic impact on a substantial number of small entities. Agencies are specifically required to both provide these agendas to the Chief Counsel for Advocacy and make them available to small businesses and their representatives. Often, the agendas alert Advocacy and other interested parties to forthcoming regulations of interest.

OIRA then publishes these as the Unified Regulatory Agenda. The Fall 2021 regulatory agendas were published on January 31, 2022, and the Spring 2022 agendas were published on August 8, 2022. The Unified Regulatory Agendas are a key component of the regulatory planning mechanism prescribed in Executive Order 12866. The full regulatory agendas can be found on reginfo.gov, while the introductions to the regulatory agendas can be found here:

Fall 2021: https://www.federalregister.gov/documents/2022/01/31/2022-00702/introduction-to-the-unified-agenda-of-federal-regulatory-and-deregulatory-actions-fall-2021

Spring 2022: https://www.federalregister.gov/documents/2022/08/08/2022-14654/introduction-to-the-unified-agenda-of-federal-regulatory-and-deregulatory-actions

Retrospective Review of Existing Regulations

Under Section 610 of the RFA, agencies are required to conduct a retrospective review of existing regulations that have a significant economic impact on a substantial number of small entities. Executive Orders 13563 and 13610, which require all executive agencies to conduct periodic retrospective reviews of all existing regulations, bolster the mandate of RFA Section 610. As a result of Section 610, agencies publish retrospective review plans in the Unified Agenda of Regulatory and Deregulatory Actions semiannually.

The Department of Transportation's regulatory review process is one useful example of how agencies can incorporate Section 610 reviews into their semiannual retrospective reviews of all existing regulations.[2] Advocacy continues to monitor retrospective review plans and their implementation and accepts feedback from small entities regarding any rules needing review.

Outreach to Small Business

In the Congressional Findings and Declaration of Purpose section of the RFA, Congress states, "The process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions…."[3]

To help fulfill this purpose, Advocacy assists governmental agencies by conducting outreach to small entities, relaying information from one to the other. In most instances, Advocacy encourages agencies to participate in these outreach efforts, and most agencies are receptive to the invitation.

Advocacy engages with small business stakeholders through a variety of mechanisms, ensuring that lines of communication remain open and that small business concerns are heard by the appropriate contacts within federal agencies. For example, Advocacy publishes regulatory alerts that are emailed to lists of small entities. In addition, Advocacy directs targeted email notices to stakeholders who may be affected by rulemaking. These alerts allow small businesses to stay informed of regulatory developments without having to conduct searches of their own. Regional advocates serve as a daily point of contact for small businesses throughout the country.

Throughout its history, Advocacy has met regularly with small entities, both informally through in-person meetings and teleconferences, and at more structured events. Those events have included stakeholder conferences to present specific regulatory topics, where Advocacy can work to inform small business stakeholders about the federal rulemaking process and how to write effective comment letters.

One of Advocacy's most effective outreach strategies has been through roundtable events. In these roundtables, specific regulatory issues are discussed by small businesses and their representatives, in almost all cases with the federal agency present. Historically, Advocacy has mostly hosted these roundtables in Washington, D.C., with other roundtables around the country as needed. These roundtables are often Advocacy's principal means of gathering extensive small business input.

During the pandemic, Advocacy staff have moved roundtables online for safety and convenience. As online communication has become more prevalent, Advocacy has been able to include stakeholders that otherwise may have gone unnoticed. The result has been greater participation by stakeholders, including those from distant locations. Advocacy plans on

2. DOT divides its rules into ten groups, and analyzes one group each year, checking to determine whether any rule has a significant economic impact on a substantial number of small entities. If a rule is found to do so, DOT reviews it in accordance with Section 610. U.S. Department of Transportation's Review Process (Jan. 20, 2015). https://www.transportation.gov/regulations/dots-review-process

3. Regulatory Flexibility Act, Pub. L. No. 96-3554, 94 Stat. 1164 (codified at 5 U.S.C. § 601).

continuing to offer online roundtables, in large part thanks to these unforeseen benefits.

In addition, Advocacy performs site visits to small businesses to learn specifically about their interactions with federal regulations. These visits provide Advocacy the opportunity to learn how industries work first-hand, which can help staff better articulate small business concerns. Small business owners, meanwhile, appreciate the opportunity to meet one-on-one with Advocacy to talk through their regulatory concerns. Advocacy encourages the small business hosting the site visit to invite their peers, allowing Advocacy to learn from others facing similar regulatory burdens. While the pandemic has limited Advocacy's opportunities to perform site visits, we look forward to increasing the number in subsequent years.

Advocacy also participates as a liaison member Administrative Conference of the United States events. Advocacy has often been called upon to present regulatory issues from the small business perspective. These provide Advocacy attorneys the opportunity to engage in high-level conversations on administrative law with leading minds in the legal field, ensuring that Advocacy is up-to-date in understanding the law and that small business concerns are brought into those conversations. Advocacy attorneys also attend industry events and conferences for the agencies in their regulatory profiles so that they have a stronger understanding of how businesses in their areas of expertise function and the attendees have a better understanding of the impact of federal regulations on small businesses.

Table 3.1 Regulatory Roundtables Hosted by the Office of Advocacy, FY 2022

Agency	Purpose	Date
Consumer Financial Protection Bureau	Roundtable on Financial Issues	11/09/21
Consumer Product Safety Commission	Safety Standards for Clothing Storage Units Roundtable	02/16/22
Department of Agriculture, Animal and Plant Health Inspection Service	Birds Not Bred for Research Roundtable	04/19/22
Department of Agriculture, Forest Service	Alaska Roadless Rule Roundtable	01/18/22
Department of Commerce	Technology and Trade Council Digital Tools Roundtables	06/17/22
Department of Commerce, National Marine Fisheries Service	North Atlantic Right Whale Roundtable	09/15/22
Department of Energy	Energy Conservation for Appliances Roundtable	02/11/22
Department of the Interior	Working Group on Mining Regulations Roundtable	07/21/22
Department of the Interior, Bureau of Ocean Energy Management	Offshore Wind Development and Fisheries Roundtable	12/14/21
	BOEM Morro Bay Environmental Assessment Roundtable	04/20/22
	Outer Continental Shelf Lands Act Renewable Energy Roundtable	08/04/22
Department of the Interior, Fish and Wildlife Service	Incidental Take of Migratory Birds Roundtable	11/16/21
	Endangered Species Experimental Populations Roundtable	07/20/22

Department of Labor	FLSA Minimum Wage and Overtime Roundtable	03/25/22
	Davis-Bacon Act Regulations Roundtable	04/05/22
Environmental Protection Agency	Waters of the United States Roundtables	01/06/22 01/10/22
	Draft TSCA Risks to Fenceline Communities Roundtable	02/18/22
	Petition to Revise the Non-Hazardous Secondary Material Standard Roundtable	03/11/22
	Clean Truck Plan and Heavy-Duty Vehicle NOx Emissions Roundtable	04/08/22
	Chrysotile Asbestos Under Section 6(a) of the Toxic Substances Control Act Roundtable	05/26/22
	EPA's Proposed Reporting and Recordkeeping Requirements for Asbestos Roundtable	06/17/22
Federal Acquisition Regulatory Council	Project Labor Agreements Roundtable	09/29/22
Federal Energy Regulatory Commission	Interconnection Procedures Roundtable	09/29/22
Occupational Safety and Health Administration	Regulatory Update from OSHA Assistant Secretary, Heat Stress, COVID-19 Roundtable	11/19/21
	COVID-19, Heat Stress, Surface Mobile Mining Equipment Safety Roundtable	01/28/22
	COVID-19 Inspections, Heat Stress, ABA OSH Law Meeting Roundtable	03/18/22
	OSHA Electronic Reporting, Heat Injury and Illness Reporting, COVID-19 in Healthcare Settings Roundtable	05/20/22
	Blood Lead Level for Medical Removal, OSHRC Update, Cal/OSHA Roundtable	09/16/22
White House Office of Science and Technology Policy	Sustainable Chemistry Roundtable	05/06/22

Roundtables by Agency and Date

Consumer Financial Protection Bureau

Roundtable on Financial Issues

November 9, 2022

On November 9, 2021, Advocacy held a roundtable on financial issues. The primary focus of the roundtable was the Consumer Financial Protection Bureau's notice of proposed rulemaking on small business lending data collection or section 1071 of the Dodd Frank Act. Section 1071 of the Dodd-Frank Act requires the collection and reporting of credit application data for small businesses, including women-owned and minority-owned small businesses. Small banks, credit unions, and other types of credit issuing institutions attended the roundtable. The information garnered was used in Advocacy's subsequent comment letter on the issue.

Consumer Product Safety Commission

Safety Standards for Clothing Storage Units Roundtable

February 16, 2022

On February 3, 2022, the U.S. Consumer Product Safety Commission (CPSC) published a proposed rule to establish safety standards for clothing storage units. Specifically, the CPSC required that clothing storage units be tested and exceed minimum stability requirements and be labeled with safety information and a hangtag. The CPSC prepared an initial

regulatory flexibility analysis for the rulemaking outlining the costs and impacts to small business. The analysis showed that a substantial number of manufacturers are considered small businesses and would be impacted by this rulemaking. The CPSC requested comments on the rule, and small businesses were encouraged to provide detailed information on the direct cost implications as well as whether there were any regulatory alternatives that would minimize the impact on small entities.

On February 16, 2022, Advocacy hosted a roundtable to gather comments and feedback from small entities on the rulemaking. Attendees shared comments regarding the impacts the rule would have to their small businesses, updates on the voluntary standards deliberations, and potential alternatives to the proposed rule.

Department of Agriculture, Animal and Plant Health Inspection Service

Birds Not Bred for Research Roundtable

April 19, 2022

On February 22, 2022, the Department of Agriculture's Animal and Plant Health Inspection Service published a proposed rule establishing standards to govern the humane handling, care, treatment, and transportation of birds not bred for research. The agency sought comments on requirements for enclosures, sanitation, lighting, climate, feeding and watering, veterinary care, and several other practices. On April 19, 2022, Advocacy held a roundtable to discuss the proposed rule and gather small entity feedback.

Department of Agriculture, Forest Service

Alaska Roadless Rule Roundtable

January 18, 2022

On November 23, 2021, the U.S. Department of Agriculture's Forest Service published a proposed rule to repeal its 2020 final Alaska roadless rule. The agency took this action under the direction of Executive Order 13990, which directs agencies to review and revise policies that conflict with protecting the environment. The 2020 final rule exempted the Tongass National Forest from the requirements of the 2001 Roadless Rule. The 2001 rule prohibited timber harvest and road construction in designated areas within Alaska. On January 18, 2022, Advocacy held a roundtable with interested small entity stakeholders. Attendees shared comments and feedback on the proposed rule as well as information about the potential impacts the rule would have on small businesses.

Department of Commerce

Technology and Trade Council Digital Tools Roundtables

June 17, 2022

In September 2021, the United States (U.S.)-European Union (E.U) Trade and Technology Council (TTC) was formed to reaffirm U.S-E.U. objectives. The Department of Commerce leads the Small and Medium-sized Enterprises (SME) Working Group, which focuses on promoting SME access to and use of digital technologies. At the request of the Department of Commerce, Advocacy conducted outreach on behalf of the TTC SME working group that will culminate in a report.

The purpose of the listening sessions was to develop recommendations for U.S. and E.U. policymakers to implement in order to help accelerate SME access to and the uptake of digital technologies.

Department of Commerce, National Marine Fisheries Service

North Atlantic Right Whale Roundtable

September 15, 2022

On August 1, 2022, the U.S. Department of Commerce's National Marine Fisheries Service published a proposed rule to restrict vessel speeds in areas where the North Atlantic Right Whale is known to be present. The proposed rule is intended to reduce the risk of harm to the species caused by strikes from vessels traveling at high speeds. In 2021, the National Marine Fisheries Service published an assessment of the effectiveness of a previous vessel speed rule. The assessment stated that, while the rule had made progress, additional action was needed to reduce the rate of mortality of the species. On September 15, 2022, Advocacy held a roundtable to discuss the proposed rule and gather small entity feedback.

Department of Energy

Energy Conservation for Appliances Roundtable

February 11, 2022

On December 13, 2021, the U.S. Department of Energy (DOE) finalized a rule entitled, "Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/ Industrial Equipment." This rule repealed several provisions of a 2020 final rule that revised procedures for establishing energy efficiency standards for covered products. DOE also published a second proposed rule with the same title on April 12, 2021 that proposed additional revisions to the process rule. DOE accepted comments on that proposed rule until September 13, 2021 and has not finalized the rule yet.

Also, in 2021, the National Academies of Sciences, Engineering, and Medicine released a report entitled, "Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards." The report outlined several findings and recommendations for revising DOE's process rule. On February 11, 2022, Advocacy hosted a roundtable to discuss whether DOE should reopen the comment dockets for its process rules, and what (if any) comments small entities have on the report.

Department of the Interior

Working Group on Mining Regulations Roundtable

July 21, 2022

On July 21, 2022, Advocacy hosted a roundtable to discuss the United States Department of the Interior's Request for Information to Inform Working Group on Mining Regulations, Laws, and Permitting. Attendees discussed ongoing challenges facing the industry as well as regulations that are not in need of any updates.

Department of the Interior, Bureau of Ocean Energy Management

Offshore Wind Development and Fisheries Roundtable

December 14, 2021

On November 22, 2021, the U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM) published a request for information to aid its development of agency guidance for mitigating the impacts of offshore wind development on fisheries. BOEM also announced a series of public listening sessions to gather information and feedback from interested parties. Roundtable attendees shared comments and information about various shortcomings with the current wind leasing process and how it excludes fisheries and other small entity ocean users from the decision-making process. They also shared additional comments regarding how the process could be improved.

BOEM Morro Bay Environmental Assessment Roundtable

April 20, 2022

On April 6, 2022, BOEM announced the availability of a draft environmental assessment for the Morro Bay Wind Energy Area located off the coast of San Luis Obispo County, California. On April 20, 2022, Advocacy hosted a roundtable to gather specific small entity input and presentations on BOEM's request for comments. Attendees shared comments on the draft assessment and what if any impacts wind energy development projects may have on other ocean users.

Outer Continental Shelf Lands Act Renewable Energy Roundtable

August 4, 2022

On June 23, 2022, BOEM published a draft fisheries mitigation guidance. Renewable energy lessees are required by the Outer Continental Shelf Lands Act to submit information on potential impacts their projects may have on commercial fishing. They must also provide mitigation measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts. The purpose of BOEM's draft guidance was to recommend an approach for developing mitigation measures, including but not limited to safety measures, compensation, monitoring, and the duration of the mitigation period. On August 4, 2022, Advocacy held a roundtable to discuss the draft guidance and gather small entity feedback.

Department of the Interior, Fish and Wildlife Service

Incidental Take of Migratory Birds Roundtable

November 16, 2021

On October 4, 2021, the U.S. Department of the Interior's Fish and Wildlife Service (FWS) published an advance notice of proposed rulemaking to develop regulations that authorize incidental take of migratory birds under certain conditions. FWS proposed three mechanisms by which it will authorize take under the Migratory Bird Treaty Act. These include exceptions to the prohibition on incidental take, general permits, and specific or individualized permits. On November 16, 2021, Advocacy held a roundtable to discuss this rulemaking. Roundtable participants shared comments and information on current regulatory impacts under the Migratory Bird Treaty Act and potential impacts of the three proposed alternatives. FWS attended the teleconference but did not present.

Endangered Species Experimental Populations Roundtable

July 20, 2022

On June 7, 2022, FWS published a proposed rule to update regulations concerning experimental populations of endangered and threatened species. FWS proposed to remove "historical range" from the regulatory language to allow for the introduction of populations into habitat outside of their historical range for conservation purposes. FWS stated that the rule change was necessary for instances in which little to no habitat remains in the historical range of a species. FWS also proposed several additional regulatory text edits. On July 20, 2022, Advocacy held a roundtable to allow small businesses the opportunity to share comments and feedback on the proposed rule.

Department of Labor

FLSA Minimum Wage and Overtime Roundtable

March 25, 2022

On March 25, 2022, Advocacy held a roundtable on the Department of Labor's (DOL) upcoming changes to regulations that implement the Fair Labor Standards Act's (FLSA) minimum wage and overtime exemptions for bona fide executive, administrative, and professional employees. The current salary level for this exemption is $684 a week, or $35,568 annualized. Participants expressed concern that DOL's new regulations may significantly increase the salary level for this exemption, increasing administrative burdens and adding costs for small businesses. Small businesses recommended that DOL's regulations should reflect regional and industry differences in salaries. Participants also recommended that DOL consider significant regulatory alternatives that would minimize the economic impact of this rule on small entities.

Davis-Bacon Act Regulations Roundtable

April 25, 2022

On March 18, 2022, the DOL's Wage and Hour Division published a proposed rule updating the Davis-Bacon Act and Related Acts regulations, the first comprehensive review of federal construction regulations in over forty years. On April 25, 2022, Advocacy held a small business roundtable with the officials from the DOL and over 100 small businesses and their representatives on this proposed rule. The provisions of most interest to the small businesses in attendance included the provisions expanding industry coverage, changes to the calculation of the prevailing wage, and updated enforcement provisions. Small businesses also commented that the agency underestimated the costs of this regulation, at only at only $100 per small business in first year costs.

Environmental Protection Agency

Waters of the United States Roundtables

January 6 and January 10, 2022

On December 7, 2021, the Environmental Protection Agency (EPA) and the Department of the Army (Army) published a notice of proposed rulemaking defining "the waters of the United States" under the Clean Water Act. On January 6 and 10, 2022, Advocacy held roundtables with interested small entity stakeholders to discuss the proposed rule. Attendees offered comments and feedback on the proposal as well as concerns about EPA and the Department of the Army's lack of a proper Regulatory Flexibility Act analysis.

Draft TSCA Risks to Fenceline Communities Roundtable

February 18, 2022

Advocacy held a roundtable to discuss EPA's draft rule "TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities." EPA plans to use the screening level methodology to evaluate potential chemical exposures and associated potential risks to fenceline communities in its Toxic Substances Control Act (TSCA) risk evaluations. The agency intends to apply the screening level methodology to seven of the "first 10" chemicals undergoing risk evaluation under TSCA Section 6. This methodology will also be employed by the agency for all future chemicals undergoing the risk evaluation process under TSCA. At this roundtable, EPA provided an overview of its proposed methodology. The American Composites Manufacturers Association also presented at this roundtable to provide the perspective of small businesses producing fiber reinforced polymer composite products.

Petition to Revise the Non-Hazardous Secondary Material Standard Roundtable

March 11, 2022

Advocacy held a roundtable to discuss EPA's proposed response to an industry petition to revise the Non-Hazardous Secondary Material (NHSM) regulations. The NHSM requirements consists of standards and procedures that are used to identify whether non-hazardous secondary materials are solid wastes when used as fuels or ingredients in combustion units. The petitioners requested various changes. At this roundtable, EPA discussed its proposed response, in which the agency denied the requested revisions. EPA explained that the requested changes would negatively affect the NHSM program by increasing the levels of contaminants that could be burned in units that are not appropriately designed to burn them. Watco, a small single source transportation and supply chain services company, also presented at this roundtable to discuss the perspective of shortline railroads and the impacts of the agency's proposed decision on its ability to manage railroad ties.

Clean Truck Plan and Heavy-Duty Vehicle NOx Emissions Roundtable

April 8, 2022

In August 2021, EPA announced the Clean Trucks Plan, which included a series of rulemakings to reduce emissions from commercial highway traffic. As part of this plan, in March 2022, EPA published the first rule, which would set new, more stringent standards to reduce pollution from heavy-duty vehicles and engines starting in model year 2027. The proposed standards would significantly reduce emissions of smog- and soot-forming nitrogen oxides (NOx) from heavy-duty gasoline and diesel engines and set more stringent greenhouse gas standards for certain commercial vehicle categories.

At this roundtable, EPA presented on the Clean Trucks Plan and this first proposed rule.

Chrysotile Asbestos Under Section 6(a) of the Toxic Substances Control Act Roundtable

May 26, 2022

Advocacy held a roundtable to discuss EPA's proposed rule to ban ongoing uses of chrysotile asbestos based on its unreasonable risk determination under TSCA. To address the agency's identified unreasonable risks for the uses of chrysotile asbestos, EPA issued a proposal on April 12, 2022, to prohibit the manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos in various products. At this roundtable, EPA presented an overview of the final risk determinations for chrysotile asbestos, proposed risk management requirements, alternative risk management options, and cost impacts of its proposed action.

EPA's Proposed Reporting and Recordkeeping Requirements for Asbestos Roundtable

June 17, 2022

Advocacy held a roundtable to discuss EPA's proposal to require a one-time reporting and recordkeeping requirements for asbestos under TSCA. The agency issued the proposed rule on May 6, 2022. Although TSCA Section 8(a) provides an exemption for small manufacturers (including importers) or processors, EPA is imposing these requirements on all small businesses for all forms of asbestos, except for Libby Amphibole. While EPA is using its existing definition for small manufacturer, the agency is proposing to establish a definition of small processors in this rulemaking. EPA is consulting with the Small Business Administration on the new definition, as required by statute. At this roundtable, the agency provided an overview of its proposal including reporting requirements, data elements required to be reported, and small business impacts of the rule.

Federal Acquisition Regulatory Council

Project Labor Agreements Roundtable

September 29, 2022

On September 29, 2022, Advocacy held a roundtable on the Federal Acquisition Regulatory Council's (FAR Council) proposed rule to implement project labor agreements in federal construction contracts where the estimated cost is $35 million or more. Participants commented that the FAR Council's proposal would result in higher compliance costs than estimated and would deter small businesses from bidding on federal contracts. Small businesses also commented that the rule's estimate of two affected small business subcontractors per project is too low and minimizes compliance costs. Small businesses also recommended that the FAR Council remove the mandatory requirement that small businesses join a union to participate in these federal construction contracts.

Federal Energy Regulatory Commission

Interconnection Procedures Roundtable

September 29, 2022

On July 5, 2022, the Federal Energy Regulatory Commission published a proposed rule to amend and reform interconnection procedures. Currently, the Federal Energy Regulatory Commission requires that all public utilities that operate facilities used for the transmission of electric energy in interstate commerce have standard procedures and a standard agreement for interconnecting generating facilities. On September 29, 2022, Advocacy held a roundtable to discuss the proposed rule and gather small entity feedback.

Occupational Safety and Health Administration

Regulatory Update from OSHA Assistant Secretary, Heat Stress, COVID-19 Roundtable

November 19, 2021

On November 19, 2021, Advocacy hosted a small business labor safety roundtable that featured remarks from the newly confirmed Assistant Secretary of Labor for Occupational Safety and Health (OSHA). His remarks focused on OSHA's regulatory priorities, including COVID-19, emergency response, heat stress, workplace violence, and personal protective equipment in construction. Next, a senior director from OSHA's Directorate of Standards and Guidance provided an overview of OSHA's Advance Notice of Proposed Rulemaking on "Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings," including the 100-plus questions on which OSHA seeks public comment and data. Finally, an OSHA law practitioner provided a detailed overview of the various OSHA actions on COVID-19, including OSHA's recent Emergency Temporary Standard (ETS) on mandatory COVID-19 Vaccination and Testing that is the subject of ongoing, broad-based litigation.

COVID-19, Heat Stress, Surface Mobile Mining Equipment Safety Roundtable

January 28, 2022

This roundtable focused on the U.S. Supreme Court's recent decision remanding OSHA's COVID-19 Vaccination and Testing ETS to the U.S. 6th Circuit Court of Appeals. Two attorneys discussed the case's merits and the high Court's refusal to lift the 6th Circuit's preliminary determination that the ETS likely exceeds OSHA's statutory authority. Next, another attorney discussed business planning in the aftermath of the Supreme Court's COVID-19 holding, including policies, procedures, and practices that prudent small businesses might follow to protect themselves from legal and regulatory risks going forward. Third, several small business representatives

from the manufacturing and construction sectors discussed OSHA's advanced notice of proposed rulemaking on indoor and outdoor heat stress and some of their concerns about this issue. Finally, representatives from the Mine Safety Health Administration (MSHA) provided an overview of their decision to reopen the rulemaking record and hold its recent public hearing on their proposed Safety Program for Surface Mobile Equipment rule.

COVID-19 Inspections, Heat Stress, ABA OSH Law Meeting Roundtable

March 18, 2022

On March 19, 2022, Advocacy hosted a small business labor safety roundtable. It began with a discussion of OSHAs new COVID-19 inspection initiative in the healthcare sector. The initiative seeks to use highly targeted, focused inspections to mitigate the spread of COVID-19 and future variants to protect healthcare workers. Next, OSHA provided an update on its newly formed work group on heat injury and illness prevention in indoor and outdoor activities. The group, which includes representatives from various sectors such as agriculture, manufacturing, construction, and defense, is tasked with considering various strategies and methods to mitigate and control hazardous heat exposure in the workplace. Finally, two participants in the American Bar Association's annual Occupational, Safety, and Health Law section meeting provided an update on key OSHA and MSHA regulatory, policy, enforcement, and litigation topics raised during the conference.

OSHA Electronic Reporting, Heat Injury and Illness Reporting, COVID-19 in Healthcare Settings Roundtable

May 20, 2022

This roundtable included a presentation by OSHA on its proposal to amend and re-instate its Electronic Injury and Illness Reporting rule, which would require, among other things, certain employers to electronically submit injury and illness information annually to OSHA. Next, a small business representative and participants on OSHA's newly formed heat stress work group discussed OSHA's recent listening session on "Initiatives to Protect Workers from Heat-Related Hazards" and the activities of the work group to consider various strategies and methods to mitigate and control hazardous heat exposure in the workplace. Finally, a panel of healthcare sector experts discussed OSHA's recent four-day public hearing on possibly finalizing its Emergency Temporary Standard on COVID-19 in Healthcare. The hearings included scores of witnesses from labor, healthcare, manufacturing, retail, and construction industries concerning employee exposure and injury and illness impacts from COVID-19.

Blood Lead Level for Medical Removal, OSHRC Update, Cal/OSHA Roundtable

September 16, 2022

On September 16, 2022, Advocacy hosted a roundtable that included a presentation by OSHA on its advance notice of proposed rulemaking on Blood Lead Level for Medical Removal. The notice seeks data and public comment on OSHA's possible plan to revise its standards for medical removal and return to work provisions under its occupational exposure to lead rules. Next, a Commissioner from the Occupational Safety and Health Review Commission (OSHRC), which hears appeals of OSHA citations or penalties, provided an overview of the OSHRC and discussed several recent decisions of particular interest to small business. Finally, a pair of occupational safety and health attorneys from California provided an overview of Cal/OSHA, which is known for its aggressive regulatory and enforcement postures. They discussed some of the key issues Cal/OSHA is working on, what these actions and priorities portent for federal and state OSHA's, and their potential impact on small businesses going forward.

White House Office of Science and Technology Policy

Sustainable Chemistry Roundtable

May 6, 2022

The 2021 National Defense Authorization Act requires the White House Office of Science and Technology Policy (OSTP) to lead an interagency group that will report to Congress on Sustainable Chemistry. Advocacy is a participant in this interagency group. In April 2022, OSTP issued a notice in the Federal Register seeking public input on the definition of Sustainable Chemistry, federal regulations impacting Sustainable Chemistry, and other issues. Advocacy hosted a roundtable, in coordination with the interagency group, to raise awareness of the notice and solicit small business feedback on these questions.

Regional Advocate Outreach

Advocacy's regional advocates reach out directly to small businesses in their respective regions to inform them of the role Advocacy plays in the regulatory process and to hear directly from them on issues affecting their business operations. The regional advocates also receive information from small businesses concerning the enforcement of agency actions. Advocacy forwards this information to the Office of the National Ombudsman. The Office of the National Ombudsman is primarily concerned with helping small businesses when they experience excessive or unfair federal regulatory enforcement actions.

Chapter 4
Advocacy's Public Comments to Federal Agencies in FY 2022

In FY 2022, Advocacy submitted 37 comment letters to regulatory agencies. The most frequent concerns were inadequate analysis of small entity impacts (15 letters), significant alternatives not considered (14 letters), and the agencies needed to reach out to small entities (9 letters). Several letters (23 letters) referenced other issues not categorized. Figure 4.1 summarizes Advocacy's issues of concern. Table 4.1 lists all the comment letters submitted in FY 2022 in chronological order. Each letter is summarized in the following section, arranged by agency.

Figure 4.1 Number of Specific Issues of Concern in Agency Comment Letters, FY 2022

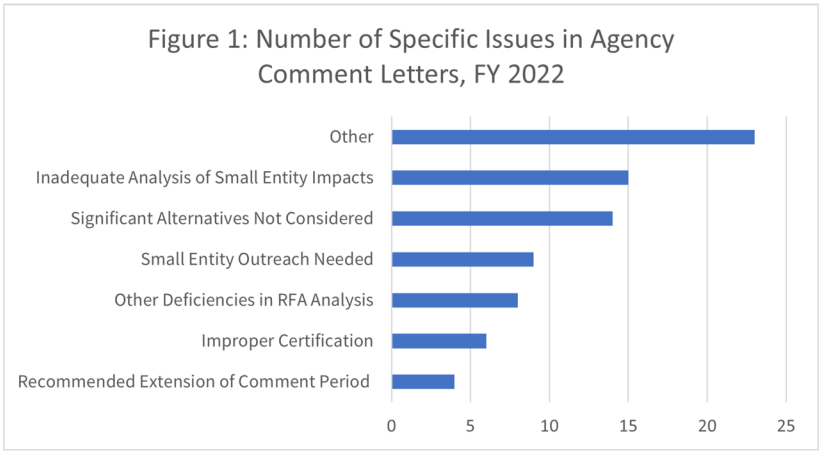


Table 4.1 Regulatory Comment Letters Filed by the Office of Advocacy, FY 2022

Date Filed	Agency*	Topic	Citation to Rule
11/18/21	DOI	Advancing Racial Equity and Support for Underserved Communities Through Recreation Opportunities	86 Fed. Reg. 57848
11/23/21	FWS, NMFS	Regulations for Designating Critical Habitat	86 Fed. Reg. 59346; 86 Fed. Reg. 59353
12/15/21	EPA	Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources- Extension	86 Fed. Reg. 63110
12/17/21	EPA	Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting	86 Fed. Reg. 57614
01/06/22	CFPB	Small Business Lending Data Collection	86 Fed. Reg. 56356
01/07/22	BOEM	Mitigating the Impacts of Offshore Wind Development on Fisheries	https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM-2021-0083-0001.pdf
01/20/22	FCC	Improving Competitive Broadband Access to Multiple Tenant Environment	86 Fed. Reg. 52120
01/24/22	FS	Roadless Area Conservation; National Forest System Lands in Alaska	86 Fed. Reg. 66498
01/31/22	DOL	Revising Wage Methodology for Agricultural Guest Workers	86 Fed. Reg. 68174
01/31/22	EPA	Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources	86 Fed. Reg. 63110
02/04/22	FinCEN	Beneficial Ownership Information Reporting Requirements	86 Fed. Reg. 69920
02/07/22	EPA, CORPS	Revised Definition of "Waters of the United States"	86 Fed. Reg. 69372
03/03/22	NMFS	Atlantic Large Whale Take Reduction Plan	86 Fed. Reg. 51970
03/07/22	CMS	Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs	87 Fed Reg. 1842
03/11/22	DOE	Inputs to Inform Social Science Research Related to Offshore Wind	https://www.energy.gov/eere/wind/articles/doe-requests-inputs-inform-social-science-research-related-offshore-wind
03/23/22	CPSC	Consumer Safety Standard for Operating Cords on Custom Window Coverings	87 Fed. Reg. 1014
03/29/22	EPA	Petition to Revise the Non-Hazardous Secondary Material Standard	87 Fed. Reg. 4536
04/14/22	CORPS	Approved Jurisdictional Determinations Under the Navigable Waters Protection Rule	88 Fed. Reg. 3004
04/18/22	CPSC	Safety Standard for Clothing Storage Units	87 Fed. Reg. 6246

05/06/22	SEC	Cybersecurity Risk Management and Incident Disclosure	87 Fed. Reg. 16590
05/13/22	DOE	Request to Reopen Comments on Energy Conservation Program for Appliance Standards	86 Fed. Reg. 18901
05/16/22	BOEM	Environmental Assessment for the Morro Bay Offshore Wind Energy Area	Docket No. BOEM-2021-0044
05/17/22	DOL	Updating Davis-Bacon Act for Federal Construction Contracts	87 Fed. Reg. 15698
05/23/22	IRS	Required Minimum Distributions	87 Fed. Reg. 10504
05/24/22	APHIS	Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act	87 Fed. Reg. 9880
05/25/23	CEQ	Climate and Economic Justice Screening Tool	87 Fed. Reg. 10176
07/05/22	EPA	TSCA Asbestos Reporting Rule	87 Fed. Reg. 27060
07/25/22	EPA	Clean Water Act Hazardous Substance Worst Case Discharge Planning Rule	87 Fed. Reg. 17890
08/05/22	EPA	Water Quality Certification Improvement Rule	87 Fed. Reg. 35318
08/05/22	FTC	Extension of Implementation Period for the Standards for Safeguarding Customer Information	86 Fed. Reg. 70272
08/08/22	FWS	Endangered and Threatened Wildlife and Plants; Designation of Experimental Populations	87 Fed. Reg. 34625
08/22/22	BOEM	Mitigating the Impacts of Offshore Wind Development on Fisheries	https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT%20Fisheries%20Mitigation%20Guidance%2006232022_0.pdf
08/22/22	FTC	Motor Vehicle Trade Regulation Extension	87 Fed. Reg. 42012
08/29/22	FRA	Comment Period Extension on Proposed Train Crew Size Safety Requirements Rule	87 Fed. Reg. 45564
09/08/22	FTC	Motor Vehicle Trade Regulation	87 Fed. Reg. 42012
09/12/22	ED	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance Proposed Rule	87 Fed. Reg. 41390

*Abbreviations:

APHIS	Animal Plant and Health Inspection Service
BOEM	Bureau of Ocean Energy Management
CEQ	Council on Environmental Quality
CFPB	Consumer Finanical Protection Bureau
CMS	Center for Medicare and Medicaid Services
CORPS	Army Corps of Engineers
CPSC	Consumer Product Safety Commission
DOE	Department of Energy
DOI	Department of the Interior
DOL	Department of Labor
ED	Department of Education
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
FinCEN	Financial Crimes Enforcement Network
FRA	Federal Railroad Administration
FS	Forest Service
FTC	Federal Trade Commission
FWS	Fish and Wildlife Service
IRS	Internal Revenue Service
NMFS	National Marine Fisheries Service
SEC	Securities and Exchange Commission

Summaries of Advocacy's Public Comments to Federal Agencies

Army Corps of Engineers

Issue: Approved Jurisdictional Determinations Under the Navigable Waters Protection Rule

In response to confusion over whether certain water features are considered "waters of the United States" under the Clean Water Act, the Army Corps of Engineers (Corps) established a program for project proponents to obtain certainty about such status. Under this program, project proponents can obtain an approved jurisdictional determination (AJD) from the Corps, which is "a Corps document stating the presence or absence of waters of the United States on a parcel or written statement and map identifying the limits of waters of the United States on a parcel." An AJD, generally valid for five years, is considered a final agency action that prevents both the Environmental Protection Agency (EPA) as well as the Corps from taking any action contrary to the AJD. The time and resources expended to obtain an AJD can be significant, ranging in time from weeks to several months and in cost from tens of thousands to hundreds of thousands of dollars.

On January 5, 2022, in response to a federal court decision vacating the regulatory definition of "waters of the United States," the Corps made an announcement on its website that it would not be reconsidering past AJDs, but that it also would not rely on these AJDs when making new permit decisions, including enforcement actions against projects started in reliance on an AJD that found that no permit was required.

On April 14, 2022, Advocacy wrote to the Corps, expressing a concern that the new policy will have a direct and potentially costly impact on small entities. Advocacy recommended that the Corps revise the policy to provide a clear safe harbor for small entities relying on past AJDs and to directly communicate its new policies to all affected small entities.

Army Corps of Engineers; Environmental Protection Agency

Issue: Revised Definition of "Waters of the United States"

On December 7, 2021, EPA and the Department of the Army published a notice of proposed rulemaking defining "the waters of the United States" under the Clean Water Act. Advocacy commented that the agencies improperly certified the proposed rule under the RFA and that the rule would have a direct and potentially costly impact on small entities. Because of the limited economic analysis which the agencies submitted with the proposed rule and the lack of data on the impacts to small entities, Advocacy advised the agencies to hold the proposed rule in abeyance for the purpose of convening a Small Business Advocacy Review panel.

Center For Medicare and Medicaid Services

Issue: Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs

On January 12, 2022, the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) published a proposed rule revising the Medicare Advantage (Part C) program and the Medicare Prescription Drug Benefit (Part D) program. CMS justified their modification by arguing that the current regulatory process regarding pharmacy price concessions may have had a negative effect on competition. Prior to the proposed rule, under Medicare Part D, small pharmacies contracted with a pharmacy benefit manager (PBM). These PBMs manage contracts between both the pharmacy and the prescription drug manufacturers and process and pay prescription drug claims. One way that these PBMs generated revenue was by charging fees to the small pharmacies, known as Direct and Indirect Remuneration. These fees include administrative fees, price concessions, performance adjustments, and more. CMS stated that the proposed change was

meant to eliminate any unknowns by the PBM at the point-of-sale so that the transaction is inclusive of all price concessions.

On March 7, 2022, Advocacy submitted comments on the Prescription Drug Benefit (Part D) program. Advocacy and small businesses generally supported CMS' proposed rule. However, Advocacy suggested that further clarity was required to ensure that the revised regulatory policy would have the intended effect.

Consumer Product Safety Commission

Issue: Consumer Safety Standard for Operating Cords on Custom Window Coverings

On March 23, 2022, Advocacy submitted comments on a proposed rule published on January 7, 2022 by the U.S. Consumer Product Safety Commission (CPSC) regarding the need to establish safety standards for operating cords on custom window coverings. Advocacy commented that CPSC's initial regulatory flexibility analysis relies on incomplete information and the CPSC should publish an updated analysis for comment. Advocacy encouraged CPSC to consider alternatives that reduce the burden to small businesses while still meeting the stated objectives of increased child safety. Advocacy also asked CPSC to consider exceptions in situations where corded window coverings are a necessity, such as under the Americans with Disabilities Act.



Issue: Safety Standard for Clothing Storage Units

On February 3, 2022, the U.S. Consumer Product Safety Commission (CPSC) published a proposed rule establishing safety standards for clothing storage units (CSUs). The proposed rule requires that CSUs be tested and exceed minimum stability requirements, be marked and labeled with safety information, and bear a hang tag providing data about the unit's stability. Advocacy commented that CPSC's initial regulatory flexibility analysis underestimates the impact the proposed rule will have on small businesses. Advocacy made five requests of CPSC.

Advocacy encouraged CPSC to consider alternatives that reduce the burden to small businesses while still meeting the stated objectives of increased child safety.

Advocacy asked CPSC to consider a later effective date for the rulemaking, and in the interim require small businesses to educate and assist consumers with existing product safety options.

Advocacy asked CPSC to reconsider its two proposed testing methods, as they produce different results that may be confusing for consumers and small businesses alike.

Advocacy suggested CPSC should consider updating existing voluntary standards if it is appropriate to do so.

Advocacy recommended CPSC should also clarify that once a product has been tested and certified, small importers and retailers may rely on that certification without incurring additional testing costs.

Consumer Financial Protection Bureau

Issue: Small Business Lending Data Collection

On October 8, 2021, the Consumer Financial Protection Bureau (CFPB) published a notice of proposed rulemaking (NPRM) in the Federal Register entitled Small Business Lending Data Collection under the Equal Credit Opportunity Act. The CFPB's proposal would require financial institutions to collect and report data regarding applications for credit for small businesses, including those that are owned by women and minorities but not women-owned and minority-owned businesses that are not small.

The CFPB estimated that the overall market impact of one-time costs would be between $143 million and $153 million for small depository institutions and $63 million for small non-depository institutions. For ongoing costs, CFPB estimated the overall market impact would be between $112 million and $126 million per year for small institutions. Advocacy argued that these costs may be underestimated under the RFA.

The NPRM defined "covered credit transactions" to determine which financial institutions fell within the scope of the rule. In addition, instead of using the Small Business Administration's size standards, the NPRM defined "small" as any businesses that had $5 million or less in gross annual revenue in the preceding fiscal year. Advocacy encouraged the CFPB to analyze whether setting the definition at a lower level would still garner sufficient data because smaller institutions could decide not to make business loans if it is too burdensome.

Council on Environmental Quality

Issue: Climate and Economic Justice Screening Tool

On May 25, 2022, Advocacy submitted public comments to the Council on Environmental Quality (CEQ) on the beta version of its Climate and Economic Justice Screening Tool (CEJS Tool). The CEJS Tool identifies which communities are disadvantaged under the Justice40 Initiative. The Justice40 Initiative instructs federal agencies to direct "40 percent of the overall benefits" from certain Federal investments to bolster clean energy and economic mobility to "disadvantaged communities." Advocacy encouraged CEQ to ensure that the beta version of the CEJS Tool considers additional indicators that identify the diverse types of disadvantaged communities. Advocacy recommended CEQ include additional socioeconomic indicators in the CEJS Tool and that CEQ directly engage with small governmental jurisdictions and their residents to understand what makes a community disadvantaged.

Department of Agriculture, Forest Service

Issue: Roadless Area Conservation; National Forest System Lands in Alaska

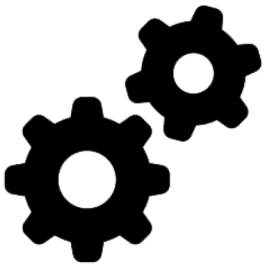
On November 23, 2021, the U.S. Department of Agriculture's Forest Service published a notice of proposed rulemaking to repeal the 2020 final Alaska Roadless Rule. The 2020 final rule exempted the Tongass National Forest from the requirements of the 2001 Roadless Rule, which prohibited timber harvest and road construction within designated areas within Alaska. Advocacy commented that the Forest Service should consider the comments of small businesses, which make up the predominate number of firms in the affected Alaskan industries. Advocacy also encouraged the Forest Service to weigh the impacts of all affected small entities and decide on an approach that minimizes overall small entity impacts while still meeting its stated conservation goals. Advocacy requested that the Forest Service make

the language within the regulatory text consistent with the findings presented in its initial regulatory flexibility analysis. Finally, Advocacy argued the Forest Service should seek comment on regulatory alternatives that will minimize the impact on small businesses while still accomplishing the statutory objective.

Department of Agriculture, Animal Plant and Health Inspection Service

Issue: Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act

On February 22, 2022, the U.S. Department of Agriculture's Animal Plant and Health Inspection Service (APHIS) published a proposed rule to establish animal welfare standards in birds not bred for research. The proposed rule creates new recordkeeping, licensing, and operational requirements for bird breeders, dealers, and exhibitioners. On May 24, 2022, Advocacy filed a public comment letter on the proposed rule. Advocacy and small businesses agree that care should be taken to ensure the health and safety of birds. Advocacy supported the use of performance-based standards in the rulemaking but suggested modifications to minimize the burden to small entities while still meeting the rule's stated objectives.



As of September 30, 2022, APHIS sent a draft final rule to the Office of Information and Regulatory Affairs for review. That rule was published on February 1, 2023.

Department of Commerce, National Marine Fisheries Service

Issue: Comments on the Atlantic Large Whale Take Reduction Plan

On September 17, 2021, the U.S. Department of Commerce's National Marine Fisheries Service (NMFS) published a final rule implementing the Atlantic Large Whale Take reduction plan. The plan aims to reduce incidental mortality and serious injury to three species of whales in the northeast United States. Advocacy asked NMFS to grant a 60-day delay of the May 1, 2022 implementation deadline for the final rule to allow small businesses additional time to procure gear necessary for compliance with the rule. Advocacy cited significant manufacturing and supply chain delays and noted that many small fishermen struggled to obtain the necessary gear to comply with the requirements of the rule.

As of the time of this report, NMFS did not extend the compliance deadline but said it would relax enforcement of the requirements until the necessary gear was more readily available. The agency did not specify how it would relax such enforcement.

Department of Commerce, National Marine Fisheries Service; Department of the Interior, Fish and Wildlife Service

Issue: Regulations for Designating Critical Habitat

On October 27, 2021, the U.S. Department of the Interior's Fish and Wildlife Service (FWS), along with the NMFS, published a proposed rule rescinding the 2020 final rule that added a definition of "habitat" to regulations implementing Section 4 of the Endangered Species Act. On the same date, FWS published a proposed rule rescinding its 2020 final rule that revised policies and procedures

for implementing exclusionary analysis when designating critical habitats.

Advocacy suggested that rather than completely rescinding both 2020 rules, the agencies should instead revise the rules to address agency concerns but retain provisions for regulatory transparency and certainty. Advocacy asked that the agencies extend the comment periods for both rules, and further argued that the agencies should not resort to a case-by-case analysis for determining whether an unoccupied area is habitat of the species. Advocacy was concerned that this would lead to more unoccupied areas being designated despite those areas not being actual habitat of the species and despite a Supreme Court decision. Finally, Advocacy asked the agencies not to remove provisions of its 2020 final rule pertaining to exclusionary analysis and should instead modify the language within the rule to address concerns raised by the agency.

As of the time of publication of this report, the agencies finalized both rules with few if any changes.

Department of Education

Issue: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance Proposed Rule

On September 12, 2022, the Office of Advocacy filed public comments in response to the Department of Education's (ED) proposed rulemaking on "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance." The proposed rule would ban all forms of sex discrimination. The rule would also expand the definition of sex discrimination to encompass discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. The proposal will no longer require live hearings for Title IX investigations and reverts the definition of sexual harassment back to "unwelcome sex-based conduct that creates a hostile environment by denying or limiting" a person's ability to participate in a school's education program or activity. The current rule prohibits unwelcome sex-based misconduct only if it is "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity."

ED published an IRFA that failed to define and analyze economic impacts to small entities outside of the education sector that will be subject to Title IX, such as libraries, museums, and nonprofits. In comments, Advocacy recommended that ED use the SBA size standards to analyze small entity impacts or provide additional detailed analysis supporting continuing the use of an enrollment-based standard. Advocacy also recommended ED publish for public comment an IRFA that considers significant alternatives and includes sufficient analyses to measure and consider the regulatory impacts of the proposed rule on all affected small entities. The IRFA should also give interested parties enough information to file meaningful comments.

Department of Energy

Issue: Request for Information on Social Science Research Related to Offshore Wind

On February 9, 2022, the U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy, Wind Energy Technologies Office published a request for information on research needs related to community effects from offshore wind energy development. Advocacy asked DOE to analyze the impacts of offshore wind development on small businesses including small coastal communities. This research will assist developers in understanding the impacts of their activities on the existing community. The research will also show how they can better engage with these stakeholders prior to development to ensure that both are able to co-exist.

Issue: Request to Reopen Comments on Energy Conservation Program for Appliance Standards

On April 12, 2021, DOE published a proposed rule to update policies for consideration in new or revised energy conservation standards and test procedures for consumer products and commercial and industrial equipment (2021 Process Rule). In December 2021, the National Academies of Sciences published a report entitled, "Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards," recommending improvements that Advocacy believes should be properly considered in the 2021 Process Rule. The National Academies of Science report also includes useful findings that may inform future DOE energy efficiency rulemakings. Considering the report's findings, Advocacy requested that DOE reopen the public comment period on its final rulemaking and the concurrent proposed rulemaking to give the public the opportunity to review and provide comments on the findings of the report as they pertain to the rules.

Department of the Interior

Issue: Advancing Racial Equity and Support for Underserved Communities Through Recreation Opportunities

On October 19, 2021, the U.S. Department of the Interior (DOI) published a request for comment regarding implementation of Executive Order 13985 on advancing equity in underserved communities. On November 18, 2021, Advocacy filed a comment letter encouraging DOI to revise its policies to ensure greater equity for small businesses, small governmental jurisdictions, and small organizations. Advocacy also encouraged DOI to adopt permanent strategies by which the agency will measure and increase equity within its policies and rulemakings.

Advocacy asked DOI to offer opportunities for virtual participation in meetings and a variety of scheduling options including different times and days to accommodate schedules of commenters. In addition, Advocacy recommended that DOI lengthen the time for written public comments so that all interested stakeholders have a chance to submit meaningful substantive comments. Advocacy also made additional recommendations to various programs and policies including under the Historical Preservation Act, concessions contract bidding process, user and special use fees, permitting for special events, and impacts of critical habitat designations.

As of the time of this report, DOI published an agency equity action plan that addressed some but not all of Advocacy's concerns. Advocacy wrote a summary of DOI' responses, available online at https://advocacy.sba.gov/2022/04/27/interior-equity-action-plan-addresses-small-business-concerns/.

Department of the Interior, Bureau of Ocean Energy Management

Issue: Mitigating the Impacts of Offshore Wind Development on Fisheries

On November 22, 2021, the U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM) published a Request for Information on Reducing or Avoiding Impacts of Offshore Wind Energy on Fisheries. Advocacy made the following comments on the request for information. First, BOEM's guidance documents should not be "one and done." Rather, the agency should conduct ongoing outreach and outline plans for regular updates. Second, BOEM should publish small business impact analyses within its draft environmental impact statements.

Issue: Environmental Assessment for the Morro Bay Offshore Wind Energy Area

On April 6, 2022, BOEM published a draft environmental assessment for the Morro Bay Wind Energy Area. On May 16, 2022, Advocacy filed a public comment letter on the assessment. In its letter, Advocacy suggested that BOEM should conduct and include a small business impact analysis in its final environmental assessment for the call area. The analysis will provide greater transparency to impacted small entities and ensure that they are considered throughout the leasing process.

As of the time of this report, BOEM has committed to earlier opportunities for input in the leasing process including allowing public comments on call area notices and other proposals. BOEM will also release the rationale for the specific areas chosen.

Issue: Mitigating the Impacts of Offshore Wind Development on Fisheries

On June 7, 2022, BOEM published a proposed guidance for mitigating the impacts of offshore wind energy on fisheries. On August 22, 2022, Advocacy filed public comments on the proposal. While Advocacy noted BOEM's attempts to ensure that offshore wind developers are mitigating the impacts of their actions on small businesses, the guidance lacked specificity and adequate data regarding the actual impacts of these activities. Advocacy requested that BOEM conduct a Regulatory Flexibility Act analysis in its draft Environmental Assessments and Environmental Impact Statements to ensure that the agency and developers are properly considering the impacts of offshore wind development projects on small businesses. Advocacy also asked BOEM to commit to updating its guidance on a regular basis and find ways to incentivize mitigation measures for developers.

Department of the Interior, Fish and Wildlife Service

Issue: Endangered and Threatened Wildlife and Plants; Designation of Experimental Populations

On June 7, 2022, FWS proposed a rule to remove language that restricts the introduction of experimental populations of endangered and threatened species outside of the species' "historical range." Advocacy commented that it does not believe the rule is necessary to accomplish FWS's intended objectives, as these provisions already exist within the statute. If, however, FWS wishes to proceed, the agency must conduct a proper Regulatory Flexibility Act analysis of the proposed rule that considers the impacts on small entities. FWS should also consider modifications to the proposed rule that would eliminate uncertainty and ambiguity for regulated entities.

Department of Labor

Issue: Revising Wage Methodology for Agricultural Guest Workers

On December 1, 2021, the U.S. Department of Labor (DOL) Employment and Training Administration proposed a rule to revise the wage methodology of temporary agricultural guest workers in the H-2A visa program. DOL determines the Adverse Effect Wage Rate or the rate that will not adversely affect the wages and working conditions of workers in the United States. Small businesses use the H-2A visa program to obtain a vital supply of foreign agricultural guest workers for temporary and seasonal needs due to the shortage of local U.S. workers.

On January 31, 2022, Advocacy submitted a public comment letter to DOL on this rule, arguing that DOL's certification is improper and lacks an adequate factual basis. Additionally, DOL significantly underestimated the economic impacts of this rule, such as significant wage increases and administrative costs from extra petitions for multiple job categories.

Advocacy recommended that DOL prepare and make available for public comment an initial regulatory flexibility analysis that adequately assesses the small business compliance costs from this regulation and consider significant alternatives that would accomplish the objectives of the statute while minimizing the economic impacts to small entities.

Issue: Updating Davis-Bacon Act for Federal Construction Contracts

On March 18, 2022, the DOL's Wage and Hour Division published a proposed rule updating the Davis-Bacon Act and Related Acts (DBRA). The Davis-Bacon Act applies to federal contracts that are over $2,000 for the construction, alteration, or repair of public buildings or public works. Under the DBRA, DOL determines wage rates that are prevailing for each classification of covered laborers and mechanics, as determined by voluntary wage surveys of contractors.

On May 17, 2022, Advocacy filed a comment letter recommending that DOL reassess the impact of this rule on small entities in a new IRFA. Advocacy commented that DOL's IRFA as published does not adequately estimate the number of small businesses affected by this rule and their compliance costs. Small businesses were concerned that the rule's definitions expand coverage of the DBRA to businesses including prefabrication businesses, material suppliers, truck drivers, demolition companies, flaggers, surveyors, and green technology businesses. DOL also underestimated the administrative burdens and compliance costs of this complicated regulation at only $100 per small business in first year costs. Advocacy recommended that DOL consider significant alternatives that would accomplish the objectives of the statute while minimizing the economic impacts to small entities.

Department of Transportation, Federal Railroad Administration

Issue: Comment Period Extension on Proposed Train Crew Size Safety Requirements Rule

On July 28, 2022, the Federal Railroad Administration (FRA) published a proposed rule on train crew size safety requirements. The proposed rule would require a minimum of two crewmembers for all railroad operations, with exceptions for operations that do not pose significant safety risks to railroad employees, the public, or the environment; minimum requirements for the location of crewmembers on moving trains to promote safe and effective teamwork; and a special approval procedure to allow railroads to petition FRA to continue legacy operations with one-person train crews and allow any railroad to petition FRA for approval to initiate a new train operation with fewer than two crewmembers.

The comment period for the proposed rule was scheduled to close on September 26, 2022. However, based on input from small business representatives in the short line and regional railroad sector, Advocacy recommended that FRA extend the public comment period by at least 60 days to give small businesses more time to assess the impact and provide more meaningful comments on the proposed rule.



Department of Treasury, Financial Crimes Enforcement Network (FinCEN)

Issue: Beneficial Ownership Information Reporting Requirements

On December 8, 2021, the Department of Treasury, Financial Crimes Enforcement Network (FinCEN) published a notice of proposed rulemaking on Beneficial Ownership Information Reporting Requirements in the Federal Register. The proposed regulations would implement Section 6403 of the Corporate Transparency Act, which was enacted into law as part of the National Defense Authorization Act.

The proposed rule is to help prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity. It prescribes: (1) who must file, (2) when they must file, and (3) what information must be provided. For the purpose of the IRFA, FinCEN assumed that all entities estimated to be reporting companies were small.

Congress allowed for more flexibility than FinCEN proposed. Advocacy encouraged FinCEN to allow for the maximum flexibility allowed in the statute and extend the compliance requirements accordingly. Section 212 of SBREFA requires agencies to provide a compliance guide for each rule (or related series of rules) that requires a final regulatory flexibility analysis. Advocacy encouraged FinCEN to provide a clear and concise compliance guide that provides information about the requirements of the rule.

FinCEN finalized the rule on September 30, 2022, retaining the reporting timelines. With respect to corrected reports, FinCEN extended the filing deadline from 14 to 30 days to provide reporting companies with adequate time to obtain and report the correct information. FinCEN also agreed to publish a compliance guide as required by statute.

Environmental Protection Agency

Issue: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Methane Emissions

On November 15, 2021, EPA published a proposed rule to set new requirements for methane emissions from sources in the oil and natural gas sectors of the economy. These requirements included work practices, monitoring requirements, and equipment bans. The rule would have provisions covering new sources (those sources established as of November 15, 2021) and existing sources. This notice of proposed rulemaking, however, did not include the text or analysis of the costs of the regulation. Instead, EPA committed to publishing a supplemental notice of proposed rulemaking.

EPA convened a SBREFA panel on this rule in summer 2021 to consult with small entities that would be affected by the new source standards. Small entities were generally concerned about the significant cost of frequent monitoring, particularly for low-producing or inactive small wells. They were particularly concerned about the cost of Optical Gas Imaging (OGI). EPA believes that OGI is a lower-cost alternative to current monitoring techniques, but small businesses were concerned that EPA underestimated the cost of OGI and the ease of getting the contractors and equipment to perform it.

On December 15, 2021, Advocacy filed a public comment requesting an extension of the comment period due to the length and complexity of the proposed rule, which was not granted.

On January 31, 2022, Advocacy filed a public comment letter on this proposed rule. Advocacy expressed concerns that EPA had not fully considered the impact of the proposed rule on small businesses. Advocacy recommended EPA analyze the costs of every provision of its proposal, recognize that small entities often face disproportionate costs for similar regulatory requirements, and consider a broader

range of regulatory flexibilities to reduce the cost to small businesses.

Issue: Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting

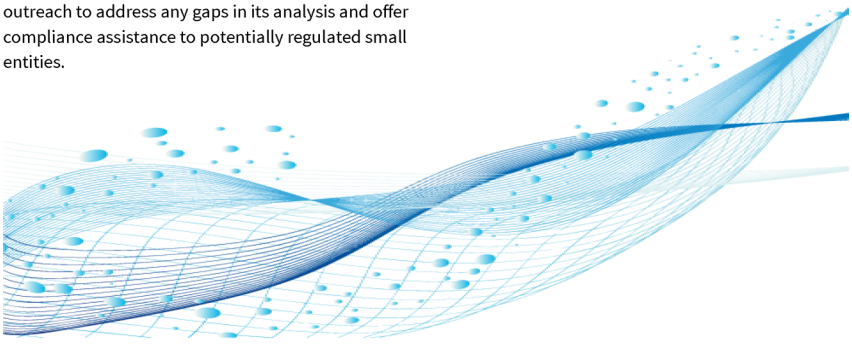
On October 18, 2021, EPA proposed to add 1,3,4,6,7,8-hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran (HHCB), along with 11 other chemicals, to the list of toxic chemicals subject to the reporting requirements under the Emergency Planning and Community Right-To-Know Act and the Pollution Prevention Act, which will require reporting in the Toxic Release Inventory publicly available database. Moreover, EPA proposed adding HHCB to the list of chemicals of special concern as a persistent, bioaccumulative, and toxic chemical with the lower, 100-pound reporting threshold. HHCB is primarily used as a fragrance additive in several consumer products.

On December 17, 2021, Advocacy filed public comments to express its concerns about the impact of this rule given the extremely low threshold for reporting and the multiple downstream users of HHCB who would be subject to the rule's requirements. Advocacy recommended the agency assess the number of small entities that could be subject to the proposed requirements using the most recently available information. Advocacy also recommended the agency engage in targeted outreach to address any gaps in its analysis and offer compliance assistance to potentially regulated small entities.

Issue: Petition to Revise the Non-Hazardous Secondary Material Standard

On January 28, 2022, EPA published its proposed response denying an industry petition to revise the Non-Hazardous Secondary Material regulations. These regulations consist of standards and procedures that are used to identify whether non-hazardous secondary materials are solid wastes when used as fuels or ingredients in combustion units. The denied requests included removing the mandatory "contaminant comparison" in the rule's legitimacy criteria and removing associated "designed to burn" and other limitations for creosote-treated railroad ties (CTRTs).

On March 29, 2022, Advocacy filed public comments to express its concern that EPA overlooked important relevant factors in its proposed decision to retain the limitation on the use of CTRTs. Advocacy explained that the agency has the discretion to increase the capacity to use CTRTs as a fuel source. As a result, Advocacy recommended that EPA take the necessary actions to promote the productive and less impactful use of CTRTs as a fuel source. Advocacy also recommended that EPA address the one-year railroad tie storage timeframe by providing compliance flexibilities for the affected small entities.



Issue: TSCA Asbestos Reporting Rule

On May 6, 2022, EPA published a proposed rulemaking on reporting and recordkeeping requirements for asbestos under the Toxic Substance Control Act. The proposed rule imposes a one-time electronic reporting requirement for information regarding asbestos. It applies to entities that manufactured (including imported) or processed asbestos and asbestos containing articles (including as an impurity) in the four years prior to the date of publication of the final rule.

On July 5, 2022, Advocacy submitted public comments to express concerns highlighting the agency's improper certification under the RFA, small businesses' ability to comply with the rule, and the lack of public notice about EPA's SBA consultation for the proposed definition for small processors. Advocacy recommended EPA address its concerns by improving its analysis to support its RFA certification or conducting a SBREFA panel. Advocacy also recommended that the agency clarify the scope of the rule and consider burden-reducing compliance flexibilities for small businesses, including an exemption for reporting for the presence of asbestos as an impurity. Finally, Advocacy recommended that the agency reopen the docket to solicit feedback from small entities on its SBA consultation.

Issue: Clean Water Act Hazardous Substance Worst Case Discharge Planning Rule

On March 28, 2022, EPA published a proposed rule that would require certain facilities to plan and prepare for a worst-case discharge of a hazardous substance into navigable waters. The proposal set a threshold for compliance based on the capacity of a facility.

On July 25, 2022, Advocacy filed public comments raising a concern about the burden on facilities owned or operated by small entities that do not pose a risk of substantial harm to the environment. Advocacy recommended that EPA modify its threshold by requiring facilities to comply with the planning and preparation requirements only if the facility has an amount of the hazardous substance on site to pose a substantial harm to the environment.

Issue: Water Quality Certification Improvement Rule

On June 9, 2022, EPA published a notice of proposed rulemaking on the Water Quality Certification Improvement Rule under the Clean Water Act. This proposal would require applicants for water quality certifications to provide more information to the states and tribes that make these certifications. This additional information would include draft federal permits and licenses.

On August 5, 2022, Advocacy filed public comments stating that the proposed rule had been improperly certified under the Regulatory Flexibility Act because EPA had not considered the burden on small entities of obtaining and submitting draft federal permits and licenses. Advocacy further believes that project proponents should not be required to submit draft federal permits and licenses. Federal agencies do not generally make draft permits available to applicants and, in some cases, do not prepare draft permits until after the water quality certification is being considered by the state or tribe.

Federal Communications Commission

Issue: Improving Competitive Broadband Access to Multiple Tenant Environment

On January 20, 2022, Advocacy filed a letter with the Federal Communications Commission (FCC) regarding its proceeding to improve competitive broadband access in multi-tenant environments (MTEs). In the letter, Advocacy shared the importance of a competitive broadband market to small businesses and highlighted the comments of competitive broadband providers regarding possible barriers to competition in MTEs. Advocacy also recommended that the FCC consider if there are ways to overcome obstacles to greater broadband deployment other than allowing broadband providers

to create monopolies in individual MTEs. Specifically, Advocacy pointed to the broadband grant programs funded under the 2021 Infrastructure Investment and Jobs Act.

The FCC voted to adopt several of Advocacy's recommendations in February 2022. These included rules to prohibit broadband providers from entering into certain revenue sharing agreements with building owners, rules requiring providers to inform tenants about the existence of exclusive marketing arrangements with building owners, and a Declaratory Ruling, clarifying that the FCC's existing cable inside wiring rules prohibit sale-and-leaseback arrangements that block competitive access to alternative providers.

Federal Trade Commission

Issue: Extension of Implementation Period for the Standards for Safeguarding Customer Information

On April 4, 2019, the Federal Trade Commission (FTC) published a notice of proposed rulemaking on Standards for Safeguarding Customer Information (Safeguards Rule). The proposal contains modifications to the existing rule. On July 31, 2019, Advocacy submitted a letter to the FTC regarding the Safeguards Rule.

Trade associations told Advocacy that the proposal was overly prescriptive and created a high burden for small entities without any data on how it will lower risks to consumers. Advocacy expressed concerns about the lack of data on the potential impact. Data would allow the FTC to thoroughly assess the impact of this action on small entities.

Although the FTC has exempted some small entities from a portion of the proposed rule, Advocacy expressed concerns that the proposal would be unduly burdensome for small entities. Advocacy asserted that the best alternative for assuring that the action will not be unduly burdensome is to maintain the status quo for small entities, as defined by the SBA size standards, until FTC can ascertain the potential impact.

On December 9, 2021, the FTC published a final rule to amend the Safeguards Rule. The final rule adds provisions designed to provide covered financial institutions with more guidance on how to develop and implement specific aspects of an overall information security program. Because of the shortage of labor, lack of external resources, and necessary equipment, small entities were concerned that they would not be able to comply with the requirements of the rule by the effective date of December 9, 2022.

On August 5, 2022, Advocacy submitted a letter requesting that the implementation date be extended to December 9, 2023.

Issue: Motor Vehicle Trade Regulation and Recommendation that the Comment Period Be Extended

On July 13, 2022, the FTC published a NPRM related to the sale, financing, and leasing of motor vehicles by motor vehicle dealers. The NPRM would prohibit motor vehicle dealers from making certain misrepresentations, require accurate pricing disclosures in dealers' advertising and sales discussions, require dealers to obtain consumers' express consent, require informed consent for charges, prohibit the sale of any add-on product or service that confers no benefit to the consumer, and require dealers to keep records of advertisements and customer transactions.

On August 22, 2022, Advocacy recommended an extension of the comment period for a NPRM related to the sale, financing, and leasing of motor vehicles by motor vehicle dealers. The proposed rule contained 49 questions that required extensive research by the industry. Advocacy argued that the small entities that would be required to comply with the regulation were in the best position to provide the FTC with information about the potential costs associated with the proposal, but the amount of time

provided for the comments was insufficient. This information was crucial for determining the economic impact of the rule and for considering less costly alternatives as required by the Regulatory Flexibility Act.

The comment period closed without an extension.

Issue: Motor Vehicle Trade Regulation

On September 8, 2022, Advocacy submitted a comment letter on the FTC's notice of proposed rulemaking on the Motor Vehicle Trade Regulation. In the NPRM, the FTC stated that the rulemaking would not have a significant economic impact on small entities. However, the FTC did not provide a description of the impact of the rule as required by the Regulatory Flexibility Act. Since the FTC did not consider alternatives, the document is not an Initial Regulatory Flexibility Analysis, and the FTC's certification is not supported by a factual basis. Advocacy encouraged the FTC to perform threshold analyses to determine whether the costs associated with the proposal are significant. If the threshold analysis indicates that there is a significant economic impact, Advocacy encouraged the FTC to prepare and publish an IRFA outlining the costs associated with the rulemaking.

Internal Revenue Service

Issue: Required Minimum Distributions

On February 24, 2022, the Internal Revenue Service (IRS) published a notice of proposed rulemaking to amend the income tax regulations on required minimum distributions (RMDs) from qualified retirement plans. The proposal would modify the RMD requirements for plans qualified under section 401(a) of the Internal Revenue Code of 1986 to reflect the amendments made by sections 114 and 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

In addition, the SECURE Act established new distribution rules for the designated beneficiaries (who are not eligible designated beneficiaries) of defined contribution plans and IRAs whose owners die after December 31, 2019. The new rules require that balances inherited by those beneficiaries be distributed by the end of the 10th year after the original account owner or plan participant dies, regardless of whether the deceased retirement saver had begun required distributions. In many cases, this 10-year rule shortened the required distribution period from the lifetime of the designated beneficiary to 10 years. The proposed rulemaking would modify the existing RMD regulations in accordance with the SECURE Act for calendar years beginning on or after January 1, 2022.

On May 23, 2022, Advocacy submitted a public comment letter to IRS about the proposed RMD regulation amendments. In the letter, Advocacy voiced multiple concerns about the proposed rulemaking. First, in accordance with feedback from small business representatives in the tax and employee benefits industries, Advocacy expressed concerns about the proposal's interpretation of the 10-year rule. Second, Advocacy relayed stakeholder concerns about the effective date and compliance deadlines found in the proposed rulemaking given that many practitioners' good-faith interpretations of the 10-year rule differed from the proposed regulations. Finally, Advocacy expressed concerns that IRS's certification that the proposed rules will not have a significant economic impact on a substantial number of small entities lacked an adequate factual basis.

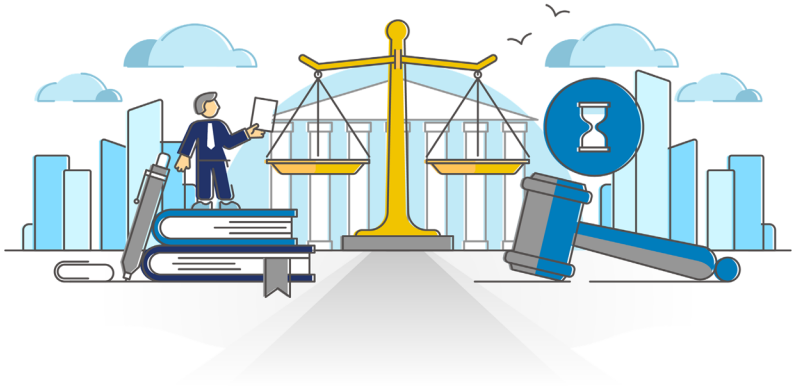
Securities and Exchange Commission

Issue: Cybersecurity Risk Management , Strategy, Governance, and Incident Disclosure

On March 23, 2022, the Securities and Exchange Commission (SEC) published proposed rules that would enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and cybersecurity incident reporting by public companies subject to the reporting requirements of the Securities Exchange Act of 1934 (Exchange Act). The proposed rules were intended to provide investors with additional information about cybersecurity risks by amending Regulation S-K, Regulation S-T, the Securities Act of 1933, and the Exchange Act. The amendments would require registrants to provide current and periodic reporting of material cybersecurity incidents and periodic disclosures about a registrant's policies and procedures to identify and manage cybersecurity risks.

On May 6, 2022, Advocacy submitted comments on the proposed rules. Advocacy was concerned that the IRFA published with the proposed rules did not adequately describe the regulated small entities or the costs of the proposed amendments to those entities. SEC also did not analyze significant alternatives that would accomplish its stated objectives while minimizing the significant economic impact of the proposal on small entities.

Advocacy was particularly concerned that the IRFA did not adequately analyze the relative impact of costs to small entities, given that the rules would impose similar costs on large and small businesses. To help SEC understand the cost burden faced by small entities, Advocacy recommended that it further analyze the impact of the proposed rules on small entities and consider regulatory alternatives in a supplemental IRFA. Advocacy recommended that the supplemental IRFA should include a detailed analysis of each potential alternative and discuss how that alternative might reduce the economic burden on small entities.



Issue: Enhancement and Standardization of Climate-Related Disclosures

On April 11, 2022, SEC published a notice of proposed rulemaking that would require public companies to provide detailed disclosures about climate-related risks and climate-related financial metrics in their registration statements and annual reports. Among other requirements, a major component of the proposed climate disclosures is the requirement that registrants disclose greenhouse gas (GHG) emissions. The SEC based its proposed emissions disclosure rules on the Greenhouse Gas Protocol, which uses the concept of "scopes" of emissions to delineate emissions that are directly attributable or indirectly attributable to a given company. Companies would be required to disclose information about direct GHG emissions (Scope 1) and indirect GHG emissions from purchased electricity or other forms of energy (Scope 2). Small entities would be exempt from rules requiring additional disclosure of GHG emissions from upstream and downstream activities in a company's value chain (Scope 3), but not from the proposed Scope 1 or Scope 2 emissions disclosure requirements.

On June 17, 2022, Advocacy submitted public comments to SEC. Those comments supported SEC's commitment to ensure that investors have consistent and reliable information, including information about companies' climate-related risks and metrics. Nevertheless, the office expressed concerns that the climate disclosure rules would impose fixed costs that would fall disproportionately on small entities.

Advocacy expressed concerns about the widespread economic impacts of the proposed climate disclosure rules on both public and privately owned small businesses. First, Advocacy stated that the IRFA in the proposed rules lacked essential information required by the RFA. Second, despite potentially vast effects on the broader economy due to the proposed rules' Scope 3 emissions requirements, the proposal did not consider indirect impacts to privately owned businesses that are not generally subject to SEC regulation.

For these reasons, Advocacy recommended that SEC publish a supplemental IRFA for public comment before proceeding with the rulemaking. Advocacy further recommended that SEC reconsider its requirements for the Scope 3 GHG emissions disclosure when considering the impacts these rules could have on the small business community.

Chapter 5
Small Business Regulatory Cost Savings and Success Stories

In FY 2022, small businesses saved $73.5 million in estimated forgone regulatory cost savings because of the Regulatory Flexibility Act and the Office of Advocacy's (Advocacy) efforts to promote federal agency compliance. There were additional regulatory successes whose impacts are not quantifiable. These are described in the Small Business Regulatory Success Stories section of this chapter.

Small businesses benefited from Advocacy's Regulatory Flexibility Act (RFA) activities through three actions. Compliance cost savings for small businesses that resulted from these actions arose from the modification, withdrawal, or delay of final and proposed regulations.

One of this year's cost savings surrounded the Department of Defense's (DOD) Cybersecurity Maturity Model Certification. After Advocacy contacted DOD with concerns about the draft model, DOD announced in November 2021 that the original framework for the model would not be implemented. These led to roughly $62.7 million in estimated cost savings.

Another cost savings involved the Environmental Protection Agency (EPA) allowance allocation and trading program for hydrofluorocarbons (HFC). During the public comment procedure, Advocacy raised concerns about the cost and feasibility of the proposed ban on disposable HFC cylinders and a new HFC reporting and tracking system. This change led to $7.9 million in cost savings.

A third cost savings was related to the EPA's Fifth Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5). Originally, EPA proposed regulatory language that would have required all small public water systems participate in UCMR 5 regardless of whether EPA would pay for their non-labor costs of compliance. After Advocacy encouraged the agency to comply with the America's Water Infrastructure Act of 2018, EPA modified the rule to comply with the Act's appropriations limitations. This led to roughly $2.9 million in cost savings.

Table 5.1 summarizes the cost savings from three final actions at three federal agencies in FY 2022.

There were also eight successes throughout FY 2022 that were not quantifiable. One success came from the Department of Interior, which prepared an Equity Action Plan in response to an Advocacy letter encouraging the agency to better comply with Executive Order 13985. The plan outlines DOI's efforts to remove barriers to access in agency programs, and per Advocacy's request, directly provides revisions targeted toward ensuring greater equity for small entities.



In another case, Advocacy requested the EPA conduct a small business advocacy review panel regarding reporting requirements for perfluoroalkyl and polyfluoroalkyl substances. The EPA agreed to convene a panel to solicit feedback from impacted small businesses. The panel was completed on August 2, 2022, and the agency plans to issue an initial regulatory flexibility analysis for public comment.

In addition, Advocacy commented on a Federal Communications Commission rule regarding improving broadband competition in multi-tenant environments. Advocacy's letter shared the importance of a competitive broadband market to small businesses and suggested specific policies for reducing barriers to entry for broadband providers. The Federal Communications Commission adopted these suggestions, citing Advocacy's comments in the final proceeding.

Table 5.1 Summary of Small Business Regulatory Cost Savings, FY 2022

Agency	Rule	Initial cost savings ($million)	Recurring cost savings ($million)
Department of Defense	Cybersecurity Maturity Model Certification[1]	62.7	62.7
Environmental Protection Agency	Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act[2]	7.9	7.9
	Unregulated Contaminant Monitoring Rule 5 (UCMR 5)[3]	2.9	2.9
Total Foregone Regulatory Cost Savings, FY 2022		73.5	73.5

Note: Advocacy generally bases its cost savings estimates on agency estimates. Cost savings estimates are derived independently for each rule from the agency's analysis, and accounting methods and analytical assumptions for calculating costs may vary by agency. Cost savings for a given rule are captured in the fiscal year in which the agency finalizes changes in the rule because of Advocacy's intervention. These are best estimates to illustrate reductions in regulatory costs to small businesses. Initial cost savings consist of capital or recurring costs foregone that may have been incurred in the rule's first year of implementation by small businesses. Recurring cost savings are listed where applicable as annual or annualized values as presented by the agency. The actions listed in this table include deregulatory actions such as delays and rule withdrawals.
Sources:
1. 87 Fed. Reg. 16590 (March 23, 2022).
2. 86 Fed. Reg. 27150 (May 19, 2021).
3. 86 Fed. Reg. 13846 (March 11, 2021).

Descriptions of Cost Savings

Department of Defense

Issue: Cybersecurity Maturity Model Certification

In September 2019, the Department of Defense (DOD) released its new Cybersecurity Maturity Model Certification, designed to bring its entire industrial base up to date with the latest cybersecurity protections. Advocacy responded to the DOD on September 25, 2019 with concerns about the draft model. Following the completion of an internal assessment, the DOD announced in November 2021 that the original CMMC framework would not be implemented.

Based on DOD's analysis of the Cybersecurity Maturity Model Certification program, Advocacy's actions contributed to annual cost savings of $62.7 million annualized over 10 years at a 7 percent discount rate through the removal of the final rule.

Environmental Protection Agency

Issue: Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act

On October 5, 2021, EPA published a final rule entitled "Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act." The rule implemented the Hydrofluorocarbon (HFC) phase-down required by the American Innovations and Manufacturing Act. On July 6, 2021, Advocacy wrote a comment letter raising concerns about the cost and feasibility of the proposed ban on disposable HFC cylinders and a new HFC reporting and tracking system. In the final rule, EPA delayed implementation of these provisions by around two years.

The delay of the disposable cylinder ban will save small businesses $4.9 million in annualized costs, and the delay of the HFC reporting and tracking system will save small businesses $3.0 million in annualized costs, totaling $7.9 million in cost savings over 10 years at a 7 percent discount rate.

Issue: Unregulated Contaminant Monitoring Rule 5 (UCMR 5)

On December 27, 2021, the Environmental Protection Agency (EPA) published its final Fifth Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems (PWS) under the Safe Drinking Water Act. Under this law, no more than 30 qualifying unregulated contaminants can be selected by EPA for inclusion in the UCMR program. The unregulated contaminants listed in a UCMR are to be monitored by large public water systems and a representative sample of small public water systems, which serves between 25 and 10,000 people.

The America's Water Infrastructure Act of 2018 (AWIA) amended the Safe Drinking Water Act by requiring that EPA pay for all non-labor costs for all small PWS serving between 3,300 and 10,000 people to monitor for the unregulated contaminants in UCMR 5. In addition, AWIA requires that, subject to the availability of appropriations, EPA pay for all non-labor costs for a representative sample of small PWS serving between 25 and 3,300 people to monitor for the unregulated contaminants in UMCR 5.

EPA selected lithium as well as 29 per- and polyfluoroalkyl substances to be included in UCMR 5. In its proposed UCMR 5, EPA proposed regulatory language that would have required all small PWS to participate in UCMR 5 regardless of whether appropriations were available for EPA to pay for the non-labor costs of small PWS. Advocacy encouraged the agency to modify the regulatory text to clearly comply with the AWIA's appropriations limitation. In its final UCMR 5, EPA modified the rule such that the regulatory text comported with the AWIA's appropriations limitation for small PWS participation.

As a result, EPA's revisions to the final UCMR 5 have potentially saved small public water systems an estimated $2.9 million annualized over ten years at a discount rate of 7%.

Table 5.2 Summary of Small Business Regulatory Success Stories, FY 2022

Agency	Rule
Department of Commerce	Atlantic Large Whale Take Reduction[1]
Department of the Interior	Equity Action Plan[2]
Department of the Treasury, Financial Crimes Enforcement Network	Beneficial Ownership[3]
Environmental Protection Agency	EPA's Proposed TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances[4]
Federal Communications Commission	Supply Chain Security—Equipment Authorization Rule[5]
	Small Provider Exception for STIR/SHAKEN[6]
	Broadband Competition in Multi-tenant Environments[7]
Internal Revenue Service	Required Minimum Distributions[8]

Sources:
1. 86 Fed. Reg. 51970 (September 17, 2021).
2. 86 Fed. Reg. 57848 (October 19, 2021).
3. 87 Fed. Reg. 59498 (September 30, 2022).
4. 86 Fed. Reg. 33926 (June 28, 2021).
5. 86 Fed. Reg. 46644 (September 19, 2021).
6. 87 Fed Reg. 3684 (January 25, 2022).
7. 87 Fed Reg. 17181 (March 28, 2022).
8. 87 Fed Reg. 10504 (February 24, 2022).

Success Story Descriptions

Department of Commerce

Issue: Atlantic Large Whale Take Reduction

On September 17, 2021, the U.S. Department of Commerce's National Marine Fisheries Service (NMFS) published a final rule implementing the Atlantic Large Whale Take reduction plan. The plan aims to reduce incidental mortality and serious injury to three species of whales in the northeast United States. On March 3, 2022, Advocacy submitted comments to NMFS regarding the rule. Advocacy asked the agency to delay implementation of the final rule by 60 days to allow small businesses time to comply. In its letter, Advocacy cited challenges with receiving manufactured gear in a timely manner due to shipping delays and a lack of available manufacturers of the equipment. Advocacy estimated that if fishermen were forced to cease operations due to gear shortages, they would lose approximately $7.3 million per month in revenue during their busy seasons. In response to letters from Advocacy and other small business representatives, NMFS announced a graduated enforcement policy for the rulemaking to allow fishermen with good-faith efforts to receive additional time to secure necessary gear.

While NMFS did not provide specific details regarding how long it would provide enforcement leniency, this flexibility ensured that fishermen would not have to cease operations during the busy summer months.

Department of the Interior

Issue: Equity Action Plan

On January 25, 2021, President Joe Biden issued Executive Order 13985, which directs the heads of federal agencies to evaluate whether existing agency practices create barriers for public participation, specifically underserved populations. On November 18, 2021, Advocacy submitted a public comment letter to the Department of the Interior (DOI), encouraging DOI and its subagencies to review and revise certain policies and procedures to ensure greater equity for small businesses, small governmental jurisdictions, and small organizations. Advocacy also asked DOI to adopt permanent strategies by which the agency would measure and increase equity within its policies and rulemakings.

On April 14, 2022, DOI published an Equity Action Plan, which outlines its efforts to remove barriers to access in agency programs. DOI announced the following changes:

In response to concerns about comment opportunities, DOI changed its policies to ensure enough time for comments for all business types.

In response to requests for agency guidance and training by small businesses, DOI developed a counseling and education toolkit for small businesses. Additionally, they published a data acquisition tool to provide information about purchase history and a networking tool for new entrants into DOI contractor markets.

In response to requests for entry-level programs for new small businesses, DOI offered technical assistance and clear instructions for funding requests.

Department of the Treasury, Financial Crimes Enforcement Network

Issue: Beneficial Ownership

On December 8, 2021, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) published a notice of proposed rulemaking on Beneficial Ownership Information Reporting Requirements in the Federal Register. The proposed regulations would implement Section 6403 of the Corporate Transparency Act, which was enacted into law as part of the National Defense Authorization Act. The proposed rule prescribed who must file, when they must file, and what information must be provided. The purpose of the rulemaking was to help prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity.

Advocacy submitted a comment letter on February 4, 2022. In the letter, Advocacy encouraged FinCEN to allow for the flexibility that Congress provided in the statute. Advocacy also encouraged FinCEN to provide a compliance guide as required by SBREFA.

FinCEN finalized the rule on September 30, 2022. FinCEN retained the reporting timelines. However, because of corrected reports, FinCEN extended the filing deadline from 14 to 30 days to provide reporting companies with adequate time to obtain and report the correct information. FinCEN also agreed to publish a compliance guide as required by the statute.

Environmental Protection Agency

Issue: Proposed TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances

On June 28, 2021, EPA proposed a rule to require all manufacturers of per- and polyfluoroalkyl substances, including article manufacturers and importers, to report certain information to EPA related to chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure,

and disposal. Based on information available to EPA at the time, the agency certified that the proposed rule did not have a significant economic impact on a substantial number of small entities under the RFA.

On September 27, 2021, Advocacy submitted public comments urging the agency to conduct a small business advocacy review panel to remedy its improper certification under the RFA to accurately assess the impact of the proposed rule on small entities, and to consider less burdensome alternatives. Subsequently, the agency convened a SBREFA panel to solicit feedback from impacted small businesses. The panel was completed on August 2, 2022. The agency plans to issue an initial regulatory flexibility analysis for public comment.

Federal Communications Commission

Issue: Supply Chain Security—Equipment Authorization Rule

In August 2021, the Federal Communications Commission (FCC) proposed to revise rules related to its equipment authorization processes to prohibit authorization of any "covered" equipment on the recently established Covered List. Advocacy conducted outreach with small carriers and forwarded concerns about the impact of various alternatives to the FCC, asking the agency to clarify the scope of the rule to reduce impacts to small entities. Ultimately, Congress passed legislation limiting the scope and applicability of the FCC's proposals and minimizing small business impacts.

Issue: Small Provider Exception for STIR/SHAKEN (Procedures for Addressing Caller ID Spoofing)

In June 2021, the FCC sought comment on a proposal to shorten the STIR/SHAKEN implementation extension for small voice service providers. Advocacy conducted outreach with small carriers and forwarded concerns to the FCC about the compliance difficulties facilities-based carriers continued to face. This outreach resulted in final FCC action that only required immediate compliance for non-facilities-based carriers.

Issue: Broadband Competition in Multi-tenant Environments

On September 7, 2021, the FCC opened a comment period seeking to refresh the record on its 2019 proceeding regarding improving broadband competition in multi-tenant environments. Advocacy conducted significant interagency discussions regarding proposed FCC policies and submitted a letter to the FCC recommending specific policies to reduce barriers to entry for broadband providers and increase choice for small business consumers in multi-tenant environments. In the letter, Advocacy shared the importance of a competitive broadband market to small businesses. In addition, Advocacy highlighted the comments of competitive broadband providers regarding possible barriers to competition in multi-tenant environments. The FCC ultimately adopted Advocacy's recommendations, specifically referencing Advocacy's comments in the final proceeding.

Internal Revenue Service

Issue: Required Minimum Distributions

On December 20, 2019, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) was signed into law. The SECURE Act included a new 10-year rule for required minimum distributions (RMDs) for the non-eligible designated beneficiaries of defined contribution plans and IRAs whose owners die after December 31, 2019. The new rule requires that balances inherited by those beneficiaries be distributed by the end of the 10th year after the original account owner or plan participant dies, regardless of whether the deceased retirement saver had begun required distributions.

Unfortunately, the Internal Revenue Service (IRS) did not release a notice of proposed rulemaking on RMDs until February 24, 2022. In the interim, many tax and retirement planning practitioners assumed

that the 10-year rule would work similarly to another provision in the Code that allows taxpayers to take distributions as a lump sum in the last year after the death of the original owner. Instead, IRS took a different position in its proposed RMD rules. IRS argued that beneficiaries subject to the new law and not otherwise excluded would have been required to take RMDs in the year after the death of the original account owner occurring after December 31, 2019.

In a comment letter, Advocacy recommended that IRS revise its proposal to simplify the application of the 10-year rule to match the plain language of the SECURE Act and the good-faith interpretation of practitioners. Advocacy recommended that the final regulations delay the regulatory effective date until 12 months following the date of publication in the Federal Register. Advocacy also requested IRS specify that there will be no penalties for good-faith interpretations of the SECURE Act until that date.

Taxpayers, practitioners, and Advocacy received a partial win related to the RMD rules in October 2022 with the release of IRS Notice 2022-53. That notice announced that IRS intends to issue final regulations related to RMDs that will apply no earlier than the 2023 distribution calendar year. The notice also provides that, to the extent a taxpayer did not take a RMD related to the rule in 2021 and 2022, the IRS will not impose a Section 4974 excise tax. If a taxpayer has already paid an excise tax for a missed RMD in 2021, the taxpayer may request a refund.

Appendix A
The Regulatory Flexibility Act

The following text of the Regulatory Flexibility Act of 1980, as amended, is taken from Title 5 of the United States Code, sections 601–612. The Regulatory Flexibility Act was originally passed in 1980 (P.L. 96-354). The Act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121), the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), and the Small Business JOBS Act of 2010 (P.L. 111-240).

Congressional Findings and Declaration of Purpose

(a) The Congress finds and declares that —

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act [enacting this chapter and provisions set out as notes under this section] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the

objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

Regulatory Flexibility Act

§ 601 Definitions
§ 602 Regulatory agenda
§ 603 Initial regulatory flexibility analysis
§ 604 Final regulatory flexibility analysis
§ 605 Avoidance of duplicative or unnecessary analyses
§ 606 Effect on other law
§ 607 Preparation of analyses
§ 608 Procedure for waiver or delay of completion
§ 609 Procedures for gathering comments
§ 610 Periodic review of rules
§ 611 Judicial review
§ 612 Reports and intervention rights

§ 601. Definitions

For purposes of this chapter—

(1) the term "agency" means an agency as defined in section 551(1) of this title;

(2) the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(4) the term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

(6) the term "small entity" shall have the same meaning as the terms "small business," "small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section; and

(7) the term "collection of information" —

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either —

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies,

instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) Recordkeeping requirement — The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.

§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain —

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain —

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as —

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(d)
(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

(A) any projected increase in the cost of credit for small entities;

(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain —

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected;

(6)[1] for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

§ 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

§ 606. Effect on other law

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

§ 607. Preparation of analyses

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

§ 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the

1. So in original. Two paragraphs (6) were enacted.

completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

§ 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—

(1) the inclusion in an advance notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term "covered agency" means

(1) the Environmental Protection Agency,

(2) the Consumer Financial Protection Bureau of the Federal Reserve System, and

(3) the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

(2) Special circumstances requiring prompt issuance of the rule.

(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

§ 611. Judicial review

(a)

(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3)
(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to —

(A) remanding the rule to the agency, and

(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

§ 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

Appendix B
Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

Executive Order of August 13, 2002

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:[2]

Section 1. General Requirements. Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.) (the "Act"). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

Sec. 2. Responsibilities of Advocacy. Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended, Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;

(b) shall provide training to agencies on compliance with the Act; and

(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

Sec. 3. Responsibilities of Federal Agencies. Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies' procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate

2. Executive Order 13272 (August 13, 2002), 67 Fed. Reg. 53461.

protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby.

Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

Sec. 4. Definitions. Terms defined in section 601 of title 5, United States Code, including the term "agency," shall have the same meaning in this order.

Sec. 5. Preservation of Authority. Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Public Law 85-536 (15 U.S.C. 633(b)(1)).

Sec. 6. Reporting. For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

Sec. 7. Confidentiality. Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

Sec. 8. Judicial Review. This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

George W. Bush

THE WHITE HOUSE,

August 13, 2002.

Filed 08-15-02; 8:45 am]

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Appendix C

Executive Order 13992, Revocation of Certain Executive Orders Concerning Federal Regulation

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that:

Section 1. Policy. It is the policy of my Administration to use available tools to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID-19) pandemic, economic recovery, racial justice, and climate change. To tackle these challenges effectively, executive departments and agencies (agencies) must be equipped with the flexibility to use robust regulatory action to address national priorities. This order revokes harmful policies and directives that threaten to frustrate the Federal Government's ability to confront these problems, and empowers agencies to use appropriate regulatory tools to achieve these goals.

Sec. 2. Revocation of Orders. Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 13777 of February 24, 2017 (Enforcing the Regulatory Reform Agenda), Executive Order 13875 of June 14, 2019 (Evaluating and Improving the Utility of Federal Advisory Committees), Executive Order 13891 of October 9, 2019 (Promoting the Rule of Law Through Improved Agency Guidance Documents), Executive Order 13892 of October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication), and Executive Order 13893 of October 10, 2019 (Increasing Government Accountability for Administrative Actions by Reinvigorating Administrative PAYGO), are hereby revoked.

Sec. 3. Implementation. The Director of the Office of Management and Budget and the heads of agencies shall promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the Executive Orders identified in section 2 of this order, as appropriate and consistent with applicable law, including the Administrative Procedure Act, 5 U.S.C. 551 et seq. If in any case such rescission cannot be finalized immediately, the Director and the heads of agencies shall promptly take steps to provide all available exemptions authorized by any such orders, rules, regulations, guidelines, or policies, as appropriate and consistent with applicable law. In addition, any personnel positions, committees, task forces, or other entities established pursuant to the Executive Orders identified in section 2 of this order, including the regulatory reform officer positions and regulatory reform task forces established by sections 2 and 3 of Executive Order 13777, shall be abolished, as appropriate and consistent with applicable law.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,

January 20, 2021.

Memorandum for the Heads of Executive Departments and Agencies on Modernizing Regulatory Review

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Modernizing Regulatory Review

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Background. For nearly four decades, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has been charged by Presidents of both parties with reviewing significant executive branch regulatory actions. This process is largely governed by Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended. This memorandum reaffirms the basic principles set forth in that order and in Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), which took important steps towards modernizing the regulatory review process. When carried out properly, that process can help to advance regulatory policies that improve the lives of the American people.

Our Nation today faces serious challenges, including a massive global pandemic; a major economic downturn; systemic racial inequality; and the undeniable reality and accelerating threat of climate change. It is the policy of my Administration to mobilize the power of the Federal Government to rebuild our Nation and address these and other challenges. As we do so, it is important that we evaluate the processes and principles that govern regulatory review to ensure swift and effective Federal action. Regulations that promote the public interest are vital for tackling national priorities.

Sec. 2. Implementation. (a) I therefore direct the Director of OMB, in consultation with representatives of executive departments and agencies (agencies), as appropriate and as soon as practicable, to begin a process with the goal of producing a set of recommendations for improving and modernizing regulatory review. These recommendations should provide concrete suggestions on how the regulatory review process can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations. The recommendations should also include proposals that would ensure that regulatory review serves as a tool to affirmatively promote regulations that advance these values. These recommendations should be informed by public engagement with relevant stakeholders.

(b) In particular, the recommendations should:

(i) identify ways to modernize and improve the regulatory review process, including through revisions to OMB's Circular A-4, Regulatory Analysis, 68 Fed. Reg. 58,366 (Oct. 9, 2003), to ensure that the review process promotes policies that reflect new developments in scientific and economic understanding, fully accounts for regulatory benefits that are difficult or impossible to quantify, and does not have harmful anti-regulatory or deregulatory effects;

(ii) propose procedures that take into account the distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit and do not

inappropriately burden disadvantaged, vulnerable, or marginalized communities;

(iii) consider ways that OIRA can play a more proactive role in partnering with agencies to explore, promote, and undertake regulatory initiatives that are likely to yield significant benefits; and

(iv) identify reforms that will promote the efficiency, transparency, and inclusiveness of the interagency review process, and determine an appropriate approach with respect to the review of guidance documents.

Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director of OMB is authorized and directed to publish this memorandum in the Federal Register.

JOSEPH R. BIDEN JR.

January 20, 2021

Appendix D
RFA Training, Case Law, and SBREFA Panels

Federal Agencies Trained in RFA Compliance, 2003–2020

Executive Order 13272 directed the Office of Advocacy to provide training to federal agencies in RFA compliance. RFA training began in 2003, and since that time Advocacy has conducted training for every cabinet level agency, 84 separate component agencies and offices within these departments, 24 independent agencies, and various special groups including congressional staff, business organizations, and trade associations. The following agencies have participated in RFA training since its inception in 2003.

Cabinet Agencies

- Department of Agriculture
  - Animal and Plant Health Inspection Service
  - Agricultural Marketing Service
  - Food Safety and Inspection Service
  - Forest Service
  - Grain Inspection, Packers, and Stockyards Administration
  - Livestock, Poultry, and Seed Program
  - National Organic Program
  - Rural Utilities Service
  - Office of Budget and Program Analysis
  - Office of the General Counsel
- Department of Commerce
  - Bureau of Industry and Security
  - National Oceanic and Atmospheric Administration
  - National Telecommunications and Information Administration
  - Office of Manufacturing Services
  - Patent and Trademark Office
- Department of Defense
  - Defense Acquisition Regulations System
  - Defense Logistics Agency
  - Department of the Air Force
  - Department of the Army, Training and Doctrine Command
  - U.S. Strategic Command
- Department of Education
  - Office of Elementary and Secondary Education
  - Office of Post-Secondary Education
  - Office of Special Education and Rehabilitative Services
  - Office of the General Counsel
- Department of Energy
- Department of Health and Human Services
  - Centers for Disease Control and Prevention
  - Centers for Medicare and Medicaid Services
  - Center for Tobacco Products
  - Food and Drug Administration
  - Indian Health Service
  - Office of Policy
  - Office of Regulations
- Department of Homeland Security
  - Federal Emergency Management Agency
  - National Protection and Programs Directorate
  - Office of the Chief Procurement Officer
  - Office of the General Counsel
  - Office of Small and Disadvantaged Business Utilization
  - Transportation Security Administration
  - U.S. Citizenship and Immigration Service
  - U.S. Coast Guard
  - U.S. Customs and Border Protection
  - U.S. Immigration and Customs Enforcement
- Department of Housing and Urban Development
  - Office of Community Planning and Development
  - Office of Fair Housing and Equal Opportunity
  - Office of Manufactured Housing
  - Office of Public and Indian Housing
- Department of the Interior
  - Bureau of Indian Affairs

- Bureau of Land Management
- Bureau of Ocean Energy Management, Regulation and Enforcement
- Fish and Wildlife Service
- National Park Service
- Office of Surface Mining Reclamation and Enforcement

Department of Justice
- Bureau of Alcohol, Tobacco, and Firearms
- Civil Rights Division
- Drug Enforcement Administration
- Federal Bureau of Prisons

Department of Labor
- Employee Benefits Security Administration
- Employment and Training Administration
- Employment Standards Administration
- Mine Safety and Health Administration
- Occupational Safety and Health Administration
- Office of Federal Contract Compliance Programs
- Wage and Hour Division

Department of State

Department of Transportation
- Federal Aviation Administration
- Federal Highway Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- Federal Transit Administration
- Maritime Administration
- National Highway Traffic Safety Administration
- Pipeline and Hazardous Materials Safety Administration
- Research and Special Programs Administration

Department of the Treasury
- Alcohol, Tobacco, Tax, and Trade Bureau
- Bureau of Fiscal Services
- Financial Crimes Enforcement Network
- Financial Management Service
- Internal Revenue Service
- Office of the Comptroller of the Currency
- Office of the General Counsel
- Surface Transportation Board

Department of Veterans Affairs
- National Cemetery Administration
- Office of the Director of National Intelligence
- Office of Management and Budget
- Office of Federal Procurement Policy

Environmental Protection Agency

Small Business Administration
- Office of the General Counsel

Independent Federal Agencies

Access Board
Chemical Safety and Hazard Investigation Board
Consumer Financial Protection Bureau
Consumer Product Safety Commission
Commodity Futures Trading Commission
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Energy Regulatory Commission
Federal Housing Finance Agency
Federal Maritime Commission
Federal Reserve System
Federal Trade Commission
General Services Administration / FAR Council
National Aeronautics and Space Administration
National Credit Union Administration
National Endowment for the Arts
National Endowment for the Humanities
Nuclear Regulatory Commission
Pension Benefit Guaranty Corporation
Securities and Exchange Commission
Trade and Development Agency

RFA Case Law, FY 2022

Courts across the country have decided various issues regarding the Regulatory Flexibility Act through litigation. This section notes pertinent cases in which the courts discussed the RFA. This section does not reflect the Office of Advocacy's opinion of the cases and is intended to provide the reader with information on what the courts have held regarding agency compliance with the RFA in FY 2022.

Northport Health Services of Arkansas v. Health & Human Services[5]

Northport Health Services appealed the District Court's grant of summary judgment in favor of the U.S. Department of Health and Human Services. Northport claimed that a regulation promulgated by the Centers for Medicare and Medicaid Services (CMS) and the government collectively violated the APA, FAA, and the procedural requirements of the RFA. The court found that CMS failed to comply with the procedural requirements of the RFA. However, the Court found this lack of compliance was harmless, citing precedent demonstrating that failure to comply with the RFA may be, but does not have to be, grounds for overturning a rule. Furthermore, the Court argued that relief for a violation of RFA may be overturning a rule or taking corrective actions, including remanding the rule to the agency to conduct a RFA analysis. The court found these corrective measures to be unnecessary because the revised rule had a smaller economic impact than the original. The court affirmed the district court's grant of summary judgement in favor of HHS and CMS.

Mexican Gulf Fishing Co. v. Department of Commerce[6]

Plaintiffs included charter boat captains and owners that took clients fishing in the Gulf of Mexico. The defendants were federal government agencies and employees, including the United States Department of Commerce, the National Oceanic Atmospheric Administration, and the National Marine Fisheries Service (NMFS). The government published a final rule that required Gulf for-hire owners and operators to submit electronic fishing reports before taking any fish off the boat, or if fish were not caught, to submit a fishing report upon completion of the trip to NMFS. The report was to contain all fish harvested or discarded, and any other information request by the agency. The rule also required vessels to have NMFS approved hardware capable of archiving GPS locations. Plaintiffs challenged the inclusion of unspecified "other requirements" to be reported and mandatory tracking.

Plaintiffs argued that the final rule's FRFA was unreasonable and not in good faith because it did not consider alternatives to the tracking requirement that would not require the purchase of tracking equipment. Additionally, plaintiffs argued that the cost analysis was flawed because it was based on quotes from vendors of equipment that NMFS was testing for eventual approval.

The court found that the FRFA was reasonable and in good faith. NMFS did consider an alternative that would not have required the purchasing of tracking equipment but rejected it because it would not provide the same information as would equipment fixed to the vessel. The court found that the RFA only required NMFS to consider the no-action alternative, which it did. Regarding the cost analysis, the court found that the reliance on the quotes were not unreasonable or in bad faith.

The court granted the defendants' motion for summary judgment.

5. Northport Health Servs. of Ark. v. Health & Human Servs., 14 F.4th 856 (8th Cir. Oct. 1, 2021).
6. Mexican Gulf Fishing Co. v. Dept. of Commerce, 587 F.Supp.3d 428 (E.D. La. Feb. 28, 2022).

Texas General Land Office v. Biden[7]

This case challenged the Biden administration's southwest border policies. The court dismissed the plaintiffs' RFA claim that DHS failed to publish an IRFA following DHS publication of the polices as nonreviewable under the RFA. The court found that none of the plaintiffs were small entities and thus lacked standing to bring any claims under the RFA and dismissed the claim that the defendants failed to publish a final regulatory flexibility analysis.

Cigar Association of America v. Food and Drug Administration[8]

As part of a rulemaking referred to as the "Final Deeming Rule," the FDA "deemed" premium cigars subject to the Family Smoking Prevention and Tobacco Control Act of 2009. The Cigar Manufacturers Association of America contested the FDA's deeming rule, asserting that the FDA's decision not to exempt premium cigars altogether from regulation under the Final Deeming Rule was arbitrary and capricious. Plaintiffs also maintained that the FDA failed to reasonably consider the costs and benefits of subjecting small businesses within the premium cigar industry to regulation, as required by the RFA. D.C. Circuit Court precedent confirmed that the FDA was not required to perform a separate RFA analysis. The court also said that the FDA's analysis was not required to "take a particular form." There is no legal support for the proposition that every product or industry affected by a rulemaking is entitled to a separate cost-benefit analysis, according to the court. As a result, the D.C. Circuit's ruling forecloses the Cigar Manufactures Association of America's contention that the agency was required to conduct a separate RFA analysis with respect to the deeming of premium cigars.

7. Tex. Gen. Land Office v. Biden, 2022 U.S. Dist. LEXIS 145737 (S.D. Tex. Aug. 3, 2022).
8. Cigar Ass'n of Am. v. Food & Drug Admin., 2022 U.S. Dist. LEXIS 117364 (July 5, 2022).

Table D.1 SBREFA Panels Convened Through FY 2022

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Consumer Financial Protection Bureau				
Automated Valuation Model (AVM)	03/14/22	05/13/22		
Small Business Lending Data Collection	10/15/20	12/14/20	10/08/21	
Debt Collection	08/25/16	10/19/16	05/21/19. Supplemental rule published 03/03/20.	11/30/20
Arbitration Clauses	10/20/15	12/11/15	05/24/16	Rule published 07/19/17. Repealed via Congr. Review Act, 10/24/17.
Limit Certain Practices for Payday, Vehicle Title, and Similar Loans	04/27/15	06/25/15	07/22/16	11/17/17
Home Mortgage Disclosure Act	02/27/14	04/24/14	08/29/14	10/15/15
Loan Originator Compensation Requirements under Regulation Z	05/09/12	07/12/12	09/07/12	02/15/13
Mortgage Servicing under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	04/09/12	06/11/12	09/17/12	02/14/13
Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	02/21/12	04/23/12	08/23/12	12/31/13
Department of Labor, Occupational Safety and Health Administration				
Emergency Response	10/04/21	12/02/21		
Tree Care Operations	03/23/20	05/22/20		
Telecommunications Towers	08/15/18	10/11/18		
Process Safety Management Standard	06/02/16	08/01/16		

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Occupational Exposure to Infectious Diseases in Healthcare and Other Related Work Settings	10/14/14	12/22/14		
Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl	05/05/09	07/02/09		
Occupational Exposure to Beryllium	09/17/07	01/15/08	08/07/15	
Cranes and Derricks in Construction	08/18/06	10/17/06	10/09/08	08/09/10
Occupational Exposure to Hexavalent Chromium	01/30/04	04/20/04	10/04/04	02/28/06
Occupational Exposure to Crystalline Silica	10/20/03	12/19/03	09/12/13	03/25/16
Confined Spaces in Construction	09/26/03	11/24/03	11/28/07	
Electric Power Generation, Transmission, and Distribution	04/01/03	06/30/03	06/15/05	04/11/14
Ergonomics Program Standard	03/02/99	04/30/99	11/23/99	11/14/00
Safety and Health Program Rule	10/20/98	12/19/98		
Tuberculosis	09/10/96	11/12/96	10/17/97	Withdrawn 12/31/03
Environmental Protection Agency				
TSCA Section 8(a)(7) Rule: Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances	04/06/22	08/02/22		
Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation (NPDWR)	05/24/22	08/01/22		
Cyclic Aliphatic Bromide Cluster (HBCD) Risk Management Rulemaking Under the Toxic Substances Control Act	01/06/22	09/09/22		
Standards of Performance for New, Reconstituted, and Modified Sources: Oil and Natural Gas Sector Review	07/15/21	09/20/21	11/15/21	
1-Bromopropane; Rulemaking under TSCA §6(a)	04/27/21	12/16/21		

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Methylene Chloride; Rulemaking under TSCA §6(a)	01/07/21	10/28/21		
National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations	11/25/20	04/26/21		
Financial Responsibility Requirements for Hard Rock Mining	08/24/16	12/01/16	12/01/16	Withdrawn 02/21/18
Regulation of Trichloroethylene for Vapor Degreasers under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	
Regulation of N-Methylpyrrolidone and Methylene Chloride in Paint and Coating Removal under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	03/27/19
Risk Management Program Modernization	11/04/15	02/19/16	03/14/16	01/13/17
Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector	06/16/15	08/13/15	09/18/15	06/3/16
Federal Plan for Regulating Greenhouse Gas Emissions from Electric Generating Units	04/30/15	07/28/15	10/23/15	Withdrawn 04/03/17
Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Vehicles	10/22/14	01/15/15	07/13/15	10/25/2016
PCB (Polychlorinated Biphenyls) Use Authorizations Update Rule	02/07/14	04/07/14		
Review of New Source Performance Standards and Amendments to Emission Guidelines for Municipal Solid Waste Landfills	12/05/13	07/21/15	07/17/14 08/27/15	08/29/16
National Emissions Standards for Hazardous Air Pollutants (NESHAP): Brick and Structural Clay Products and Clay Products	06/12/13	01/16/14	12/18/14	10/26/15
Long Term Revisions to the Lead and Copper Rule	08/14/12	08/16/13	-	-

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards	08/04/11	Rule proposed rule w/o completion of SBREFA panel report	06/30/14	12/01/15
Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards	08/04/11	10/14/11	05/21/13	04/28/14
Greenhouse Gas Emissions from Electric Utility Steam Generating Units	06/09/11	Rule proposed rule w/o completion of SBREFA panel report	04/14/13	04/13/12 01/08/14 06/02/14
National Emission Standards for Hazardous Air Pollutants (NESHAP) Risk and Technology Review for the Mineral Wool and Wool Fiberglass Industries	06/02/11	10/26/11	11/12/11	07/29/15
Formaldehyde Emissions from Pressed Wood Products	02/03/11	04/04/11	06/10/13	12/16/16
Stormwater Regulations Revision to Address Discharges from Developed Sites	12/06/10	10/04/11	-	Withdrawn 06/06/17
National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units	10/27/10	03/02/11	05/03/11	02/16/12
Revision of New Source Performance Standards for New Residential Wood Heaters	08/04/10	10/26/11	02/03/14	03/16/15
Pesticides; Reconsideration of Exemptions for Insect Repellents	11/16/09	01/15/10		
National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers: Major and Area Sources	01/22/09	03/23/09	06/04/10	03/21/11
Pesticides; Certification of Pesticide Applicators (Revisions)	09/04/08	11/03/08	08/24/15	01/04/17
Pesticides; Agricultural Worker Protection Standard Revisions	09/04/08	11/03/08	03/19/14	11/02/15

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Renewable Fuel Standards 2	07/09/08	09/05/08	05/26/09	03/26/10
Total Coliform Monitoring	01/31/08	01/31/08	07/14/10	
Non-Road Spark-Ignition Engines/ Equipment	08/17/06	10/17/06	05/18/07	10/08/08
Mobile Source Air Toxics	09/07/05	11/08/05	03/29/06	02/26/07
Federal Action Plan for Regional Nitrogen Oxide/Sulfur Dioxide (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Section 126 Petition (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Cooling Water Intake Structures Phase III Facilities	02/27/04	04/27/04	11/24/04	06/16/06
Nonroad Diesel Engines – Tier IV	10/24/02	12/23/02	05/23/03	06/29/04
Lime Industry – Air Pollution	01/22/02	03/25/02	12/20/02	01/05/04
Aquatic Animal Production Industry	01/22/02	06/19/02	09/12/02	08/23/04
Construction and Development Effluent Limitations Guidelines	07/16/01	10/12/01	06/24/02	Withdrawn 04/26/04
Nonroad Large Spark Ignition Engines, Recreation Land Engines, Recreation Marine Gas Tanks and Highway Motorcycles	05/03/01	07/17/01	10/05/01 08/14/02	11/08/02
Stage 2 Disinfectant Byproducts; Long Term 2 Enhanced Surface Water Treatment	04/25/00	06/23/00	08/18/03	01/04/06
Reinforced Plastics Composites	04/06/00	06/02/00	08/02/01	04/21/03
Concentrated Animal Feedlots	12/16/99	04/07/00	01/12/01	02/12/03
Metals Products and Machinery	12/09/99	03/03/00	01/03/01	05/13/03
Lead Renovation and Remodeling Rule	11/23/99	03/03/00	01/10/06	04/22/08
Diesel Fuel Sulfur Control Requirements	11/12/99	03/24/00	06/02/00	01/18/01
Recreational Marine Engines	06/07/99	08/25/99	10/05/01 08/14/02	11/08/02
Arsenic in Drinking Water	03/30/99	06/04/99	06/22/00	01/22/01

SBREFA Panel Rule	Date Convened	Date Completed	Notice of Proposed Rulemaking	Final Rule Published
Light Duty Vehicles/Light Duty Trucks Emissions and Sulfur in Gas	08/27/98	10/26/98	05/13/99	02/10/00
Filter Backwash Recycling	08/21/98	10/19/98	04/10/00	06/08/01
Long Term 1 Enhanced Surface Water Treatment	08/21/98	10/19/98	04/10/00	01/14/02
Radon in Drinking Water	07/09/98	09/18/98	11/02/99	
Section 126 Petitions	06/23/98	08/21/98	09/30/98	05/25/99
Phase I (FIP) To Reduce the Regional Transport of Ozone in the Eastern United States	06/23/98	08/21/98	10/21/98	05/06/05
Ground Water	04/10/98	06/09/98	05/10/00	11/08/06
Underground Injection Control (UIC) Class V Wells	02/17/98	04/17/98	07/29/98	12/07/99
Centralized Waste Treatment Effluent Guideline	11/06/97	01/23/98	09/10/03 01/13/99	12/22/00
Transportation Equipment Cleaning Effluent Guidelines	07/16/97	09/23/97	06/25/98	08/14/00
Stormwater Phase II	06/19/97	08/07/97	01/09/98	12/08/99
Industrial Laundries Effluent Guidelines	06/06/97	08/08/97	12/17/97	Withdrawn 08/18/99
Nonroad Diesel Engines	03/25/97	05/23/97	09/24/97	10/23/98
See Appendix F for abbreviations.				

Appendix E
History of the Regulatory Flexibility Act

Shortly after the Office of Advocacy was founded in 1976, the first White House Conference on Small Business engaged small business representatives from across the United States in national brainstorming sessions. One recurring concern was the difficulty that "one-size-fits-all" regulations created for small businesses trying to compete in U.S. markets. President Jimmy Carter, a one-time small business owner himself, understood the necessity for greater protections for small businesses in the regulatory process and helped facilitate administrative and legislative changes. In 1979, President Carter issued a memorandum to the heads of all executive agencies, instructing them to "make sure that federal regulations [would] not place unnecessary burdens on small businesses and organizations," and more specifically, to apply regulations "in a flexible manner, taking into account the size and nature of the regulated businesses."[12] He asked Advocacy to ensure that the agencies' implementation would be consistent with government-wide regulatory reform.

In 1980, Congress enacted the Regulatory Flexibility Act (RFA), which elevated aspects of this memorandum to the level of federal statute.[13] The new law mandated that agencies consider the impact of their regulatory proposals on small businesses, analyze proposed regulations for equally effective alternatives, and make their analyses of equally effective alternatives available for public comment. This new approach to federal rulemaking was viewed as a remedy for the disproportionate burden placed on small businesses by one-size-fits-all regulation, "without undermining the goals of our social and economic programs."[14]

12. Jimmy Carter, Memorandum on Regulation of Small Businesses and Organizations, II Pub. Papers 2142 (Nov. 16, 1979), available at https://www.presidency.ucsb.edu/documents/memorandum-from-the-president-regulation-small-businesses-and-organizations
13. 5 U.S.C. § 601 et seq.

RFA Requirements

Under the RFA, when an agency proposes a rule that would have a "significant economic impact on a substantial number of small entities," the rule must be accompanied by an impact analysis (an initial regulatory flexibility analysis, or IRFA) when it is published for public comment.[15] Following that, should the agency publish a final rule, that agency must publish a final regulatory flexibility analysis (FRFA) as well.[16] If a federal agency determines that a proposed rule would not have a "significant economic impact on a substantial number of small entities," the head of that agency may "certify" the rule and bypass the IRFA and FRFA requirements.[17]

During a November 2015 interview, Frank Swain, chief counsel for advocacy from 1981 to 1989, noted that "the RFA is the only regulatory reform that is statutorily required. Most of the regulatory reforms are largely executive orders." Executive orders frequently expire at the end of a president's term. "The RFA, because of its statutory basis, is going to be around indefinitely," Swain said. As such, the RFA continues to be an important check on burdensome regulation.

Interpreting and Strengthening the RFA

During the first half of the 1980s, the federal courts were influential in developing the RFA's role in the

14. Carter, supra note 12..
15. 5 U.S.C. § 603.
16. 5 U.S.C. § 604.
17. 5 U.S.C. § 605(b).

regulatory process. One question that required the courts' intervention was whether a federal agency had to consider a proposed rule's indirect effects on small businesses, in addition to its direct effects. In Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission (FERC), the D.C. Circuit found that "Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy."[18] This interpretation—that federal agencies must only consider the direct effects on small businesses within the jurisdiction of the rule—has continued to be the judicial interpretation of the RFA, even after subsequent amendments.[19]

The following year, in the run-up to the second White House Conference on Small Business in 1986, conference planners noted that "the effectiveness of the RFA largely depends on small business' awareness of proposed regulations and [their] ability to effectively voice [their] concerns to regulatory agencies."[20] They also voiced concern that at the time "the courts' ability to review agency compliance with the law is limited." Eight years later, the Government Accounting Office reported that agency compliance with the RFA varied widely across the federal government, a condition that likely impaired efforts to address the disproportionate effect of federal regulation on small business.

Advocacy was statutorily required to report annually on federal agency compliance, but given that compliance with the RFA was not itself reviewable by the courts at the time, the effectiveness of such reporting was limited. The RFA did allow the chief counsel for advocacy to appear as amicus curiae (friend of the court) in any action to review a rule, expanding the chief counsel's role in representing small business interests in policy development. However, given that courts did not review compliance with the RFA, any challenge to regulation would need to be primarily under the Administrative Procedure Act.

After the third White House Conference on Small Business in 1995 renewed the call for strengthening the RFA, Congress and President Bill Clinton did so by enacting the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). SBREFA provided new checks on federal agency compliance with the RFA's requirements, as well as additional procedures specifically addressing small business concerns regarding environmental and occupational safety and health regulations. The SBREFA amendments also made a federal agency's compliance with certain sections of the RFA judicially reviewable, allowing challenges to regulations based on the agency's failure to supply a FRFA or sufficient reason for certification.

After amending the RFA to allow for judicial review of agency compliance, the courts again provided guidance regarding the RFA's requirements for federal agencies. In Southern Offshore Fishing Associations v. Daley, the court held that the National Marine Fisheries Service failed to make a "reasonable, good-faith effort" to inform the public about the potential impacts of a proposed rule imposing fishing quotas and to consider less harmful alternatives.[21] The agency had published a FRFA with its final rule, but had not published an IRFA when the rule was proposed. The court's holding established that an IRFA must precede a FRFA for an agency to have "undertak[en] a rational consideration of the economic effects and potential [regulatory] alternatives."[22]

SBREFA Panels

The SBREFA amendments also required the Environmental Protection Agency and the Occupational Safety and Health Administration to convene small business advocacy review panels

18. Mid-Tex Elec. Coop. v. FERC, 773 F.2d 327, 341 (D.C. Cir. 1985).
19. See American Trucking Ass'ns v. EPA, 175 F.3d 1027 (D.C. Cir. 1999).
20. The Small Business Advocate newsletter, U.S. Small Business Administration, Office of Advocacy, September 2005.
21. Southern Offshore Fishing Ass'ns v. Daley, 995 F.Supp 1411, 1437 (M.D. Fla. 1998).
22. Id.

whenever the agency proposes a rule that may have a significant impact on a substantial number of small entities. These panels consist of officials from the promulgating agency, the Office of Information and Regulatory Affairs, and the Office of Advocacy. Their task is to consult with small business representatives on the agency's regulatory proposals to ensure that the agency has identified and considered regulatory alternatives that could attain the policy objectives while minimizing the impacts on small businesses. After each collaborative panel has concluded, the panel issues a report of its findings and any recommendations for providing flexibility for small entities.

The innovation of SBREFA panels has allowed for greater consideration of small business alternatives for federal rules. Jere W. Glover, chief counsel for advocacy during the passage of SBREFA, made two key observations about the rulemaking process. First, "if you get to the agency early in the process, they are more likely to change their mind." And second, the mission of these efforts is to "make the regulation work for the industry," not to "kill the regulation." Glover's perspective comes not only from his tenure as chief counsel from 1994 to 2001; he was also present at the creation of the RFA as deputy to Milton Stewart, the first chief counsel for advocacy.

Executive Order 13272

As President George W. Bush's administration began to consider small business priorities, improved RFA compliance was one key goal. To this end, President Bush issued Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" in 2002.[23] This order tasked Advocacy with training federal agencies and other stakeholders on the RFA. The training sessions helped apprise agencies of their responsibilities under the RFA and educated agency officials on the best RFA compliance practices. In addition, E.O. 13272 required Advocacy to track agency compliance with these education requirements and report on them annually to the White House Office of Management and Budget.

E.O. 13272 also instituted new procedures to help facilitate a collaborative relationship between agencies and the Office of Advocacy. First, it required agencies to notify Advocacy of any draft proposed rule that would impose a significant impact on a substantial number of small entities. Second, it required agencies to provide a response in the Federal Register to any written comment on the proposed rule from the Office of Advocacy when the final rule was published.

Thomas M. Sullivan, chief counsel for advocacy during the Bush administration, discussed E.O. 13272's pivotal role in furthering RFA compliance. He noted that, because of the executive order, "Advocacy became a part of the fabric of federal rulemaking." The aspect most responsible for this evolution in Sullivan's view was federal agency training. "Training really helped accomplish this," he said. "The goal is to create regulations that meet the regulatory purpose and are sensitive to small business requirements." Sullivan added that "The biggest misperception is how hard it is to work with an agency for a win-win solution as opposed to just being critical of regulation."

Eight years and one presidential administration later, Congress and President Barack Obama enacted the Small Business Jobs Act of 2010,[24] which codified some of the procedures introduced in E.O. 13272. That same year, the Dodd-Frank Wall Street Reform and Consumer Protection Act became law.[25] The new law created the Consumer Financial Protection Bureau and required that the new agency's major rules come under the SBREFA panel provisions of the RFA.

23. Executive Order 13272 (August 13, 2002), 67 Fed. Reg. 53461.

24. Small Business Jobs Act, Pub. L. 111–240 (2010).

25. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (2010).

The Obama administration looked to Advocacy for ways of encouraging economic activity. Again, the RFA was an important part of the answer. Executive Order 13563, "Improving Regulation and Regulatory Review,"[26] signed in 2011, directed agencies to heighten public participation in rulemaking, consider overlapping regulatory requirements and flexible approaches, and conduct ongoing regulatory review. President Obama concurrently issued a memorandum to all federal agencies, reminding them of the importance of the RFA and of reducing the regulatory burden on small businesses through regulatory flexibility. In this memorandum, President Obama directed agencies to increase transparency by providing written explanations of any decision not to adopt flexible approaches in their regulations. The following year, President Obama further attempted to reduce regulatory burdens with Executive Order 13610, "Identifying and Reducing Regulatory Burdens,"[27] which placed greater focus on initiatives aimed at reducing unnecessary regulatory burdens, simplifying regulations, and harmonizing regulatory requirements imposed on small businesses.

Executive Orders 13563 and 13610 bolstered the retrospective review requirements of the RFA by requiring all executive agencies to conduct periodic retrospective review of existing rules. President Obama also issued an administrative action, Executive Order 13579, which recommended that all independent agencies do the same.[28] This emphasis on the principles of regulatory review and the sensitivity to small business concerns in the federal rulemaking process further increased federal agency compliance.

Dr. Winslow Sargeant, chief counsel for advocacy from 2010 to 2015, stressed that these executive orders sought to "make federal regulation more clear, predictable, and transparent." Sargeant identified two key areas, "retrospective review of existing regulation and deregulation when rules are no longer needed," as important future challenges for regulatory improvement.

New Horizons: Small Business and International Trade

With the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, Advocacy's duties to small business expanded beyond our borders. Under the Act, the chief counsel for advocacy must convene an interagency working group whenever the president notifies Congress that the administration intends to enter into trade negotiations with another country. The working group conducts small business outreach in manufacturing, services, and agriculture sectors and gathers input on the trade agreement's potential economic effects. Informed by these efforts, the working group is charged with identifying the most important priorities, opportunities, and challenges affecting these industry sectors in a report to Congress. In December of 2018, pursuant to section 502 of the Trade Faciliation and Trade Enforcement Act (TFTEA), Advocacy released the Section 502 Small Business Report on the Modernization of the North American Free Trade Agreement (NAFTA): Prepared for the Consideration of the United States-Mexico-Canada Agreement (USMCA).[29]

Deregulation and Executive Orders 13771 and 13777

Shortly after the beginning of his administration, President Trump issued two executive orders aimed at substantially ameliorating the regulatory burden faced by the private sector. The first, E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," commonly known as "one-in, two-out," required that any new regulations be balanced by the reduction of at least two other regulations—and that the incremental cost of new regulations be

26. Executive Order 13563 (January 18, 2011), 76 Fed. Reg. 3821.
27. Executive Order 13610 (May 10, 2012), 77 Fed. Reg. 28467.
28. Executive Order 13579 (July 11, 2011), 76 Fed. Reg. 41585.
29. U.S. Small Business Administration, Office of Advocacy, Section 503 Small Business Report on the Modernization of the North American Free Trade Agreement (NAFTA): Prepared for Consideration of the United States-Mexico-Canada Agreement (USMCA) (Dec. 2018), available at https://advocacy.sba.gov/2018/12/21/advocacy-releases-trade-report/.

entirely offset by elimination of existing costs of other regulations. The second, E.O. 13777, "Enforcing the Regulatory Reform Agenda," set a framework for implementing this vision of regulatory reform, requiring inter alia each agency appoint a Regulatory Reform Officer to supervise the process of regulatory reform. These measures were another opportunity for small business regulatory reform. Agency implementation of these executive orders offered significant opportunities for regulatory relief targeted to small businesses. Both executive orders were repelaled by President Joe Biden in 2021.

Appendix F

Abbreviations

RFA	Regulatory Flexibility Act
SBREFA	Small Business Regulatory Enforcement Fairness Act
SBAR	small business advocacy review
IRFA	initial regulatory flexibility analysis
FRFA	final regulatory flexibility analysis
AJD	Approved Jurisdictional Determination
APHIS	Animal Plant and Health Inspection Service
Army	Department of the Army
AWIA	America's Water Infrastructure Act of 2018
BOEM	Bureau of Ocean Energy Management
CEQ	Council on Environmental Quality
CEJS tool	Climate and Economic Justice Screening Tool
CFPB	Consumer Financial Protection Bureau
CMMC	Cybersecurity Maturity Model Certification
CMS	Centers for Medicare and Medicaid Services
Corps	Army Corps of Engineers
COVID-19	coronavirus disease 2019
CPSC	Consumer Product Safety Commission
CSUs	Clothing Storage Units
CTRTs	Creosote-treated Railroad Ties
DBRA	Davis-Bacon Act and Related Acts
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOL	Department of Labor
ED	Department of Education
ETS	Emergency Temporary Standard
E.U.	European Union
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
FinCEN	Financial Crimes Enforcement Network
FRA	Federal Railroad Administration
FTC	Federal Trade Commission
FWS	Fishing and Wildlife Service
GHG	Greenhouse Gas
HFC	Hydrofluorocarbons
HHCB	hexamethylcyclopenta[g]-2-benzopyran
IRS	Internal Revenue Service
MSHA	Mine Safety and Health Administration
MTEs	Multi-tenant Environments
NHSM	Non-Hazardous Secondary Material
NMFM	National Marine Fisheries Service
NOx	Nitrogen Oxides
NPDWR	National Primary Drinking Water Regulation
NPRM	Notice of Proposed Rulemaking
OGI	Optical Gas Imaging
OIRA	Office of Information and Regulatory Affairs
OSHA	Occupational Safety and Health Administration
OSHRC	Occupational Safety and Health Review Commission
OSTP	Office of Science and Technology Policy
PBM	Pharmacy Benefit Manager
PWS	Public Water Systems
RMDs	Required Minimum Distributions
SEC	Securities and Exchange Commission
Secure Act	Setting Every Community Up for Retirement Enhancement Act of 2019
SME	Small and Medium Sized Enterprises
TSCA	Toxic Substances Control Act
TTC	Trade and Technology Council
UCMR	Unregulated Contaminant Monitoring Rule
UCMR 5	Fifth Revisions to the Unregulated Contaminant Monitoring Rule



August 31, 2023

The Honorable Joni Ernst
Ranking Member
Committee on Small Business & Entrepreneurship
United States Senate
Washington, D.C. 20510

Dear Senator Ernst:

The Prove It Act, legislation you recently introduced, could not come at a more important time for our nation's small businesses. Federal regulatory agencies are working at full-speed generating new rules, compliance regimes and costly mandates, and there is little to no accountability in assessing or taking steps to determine or minimize the burden of these regulations on small businesses. The Small Business & Entrepreneurship Council (SBE Council) strongly supports the Prove It Act, as it will enforce accountability during the regulatory process, and by extension provide a protective shield for small businesses against unwarranted and excessive regulation, along with the high costs that accompany these rules.

As you well know, inflationary pressures and economic uncertainty continue to batter our nation's small businesses. In SBE Council's latest "Small Business Check Up Survey Q3 2023," small business owners continue to cite inflation, economic uncertainty/a slowdown, and high interest rates as their top issues of concern. Inflation is having a negative impact on 82% of the small businesses we surveyed, 52% say revenues have not kept pace with inflation, and 63% believe economic conditions will deteriorate for the remainder of 2023. Small business owners need relief, and policies that enable growth and address their pain points. The cost of new Biden-era regulations – pegged at $400 billion – on top of costly and long-standing regulations add to their financial pain, uncertainty, and ability to invest and compete. This regulatory blitz must end.

The Prove It Act forces federal agencies to show that they are complying with existing laws meant to protect small businesses, and requires an analysis of both the direct and indirect costs of these rules. Moreover, small business would be provided meaningful input regarding the effect of proposed rules. The voice and views of entrepreneurs are critical when it comes to regulatory

policy, which is another key reason why SBE Council strongly supports this vital legislative initiative.

Please let SBE Council know how we can be helpful in advancing this common-sense bill. The Prove It Act needs to be supported by every member of Congress. Proof of their support for America's small businesses will be made crystal clear through their support of the Prove It Act.

Thank you for your strong and steady leadership in promoting entrepreneurship and protecting small businesses.

Sincerely,



Karen Kerrigan
President & CEO

800 Connecticut Ave. NW ● Suite 300
Washington, D.C. 20006
(703)-242-5840
www.sbecouncil.org
@SBECouncil

Protecting Small Business, Promoting Entrepreneurship

U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

August 23, 2023

The Honorable Ben Cardin
Chairman
Committee on Small Business
& Entrepreneurship
United States Senate
Washington, DC 20510

The Honorable Joni Ernst
Ranking Member
Committee on Small Business
& Entrepreneurship
United States Senate
Washington, DC 20510

Dear Chairman Cardin and Ranking Member Ernst:

Thank you for holding the field hearing today in Des Moines, Iowa, entitled, "One Size Does Not Fit All: Understanding the Importance of Rightsizing Regulations for Small Businesses."

I am Natalie Kaddas, CEO of Kaddas Enterprises in Salt Lake City, Utah. My manufacturing company specializes in manufacturing thermoform plastic products for the energy, transportation, and aerospace industries. I serve as the Chair of the Small Business Council at the U.S. Chamber of Commerce. 96% of Chamber member companies have fewer than 100 employees and 75% have fewer than 10. The Small Business Council works to ensure the views of small businesses are integrated into the Chamber's policy-making process.

At a time when regulatory experts estimate a sharp increase in federal regulation[1], the scheduling of this hearing is appropriate to ensure that small businesses have a legitimate voice in federal rulemakings. The hearing today will feature testimony from the Acting Chief Counsel for Advocacy, whose office plays a critical role in protecting small businesses from costly federal red tape. The U.S. Chamber of Commerce believes that the Office of Advocacy's legal authority, which helps ensure that small business has a legitimate voice in the development of federal rules and regulations, should be strengthened. We are hopeful that this hearing and the consideration of legislation like the PROVE It Act will bolster the ability of the Office of Advocacy to independently represent the views and interests of small business in federal rulemakings, and will also end the ability of agencies to ignore small business input prior to imposing new mandates.

Small Business and the Regulatory Flexibility Act

Small businesses have long been understood as America's economic engine. The roughly 33.1 million small businesses make up over 99% of all U.S. businesses, represent 43.5% of America's GDP, and account for 62% of net job creation since 1995.[2] Despite small businesses' strength in economic contributions, they are at a disadvantage when it comes to dealing with regulations.

[1] Wall Street Journal Editorial, *Regulators Gone Wild,* print edition (August 15, 2023).
[2] U.S. Small Business Administration, Office of Advocacy, *Frequently Asked Questions About Small Business*, (March, 2023).

The Chamber's work with the Bradley Foundation showed that U.S. businesses shoulder $1.9 trillion in annual regulatory compliance costs.[3] For small businesses with 50 or fewer employees, the costs are nearly 20% higher than the average for all businesses. Small manufacturers incur costs of $34,671 per employee per year. This is more than three times the cost shouldered by average U.S. companies.[4]

The Regulatory Flexibility Act (RFA), amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), was intended to rectify the disproportionate regulatory burden faced by small business by incorporating their concerns into the regulatory process and by insisting that federal agencies find ways to meet their regulatory objectives while at the same time minimizing costs on small businesses.[5] The Small Business Administration's (SBA) Office of Advocacy is responsible for overseeing agency compliance with the RFA and acts as an independent voice within the Administration to ensure that agencies are sensitive to how their regulations impact small businesses.

Abuse of "Certification" under the RFA

Unfortunately, one way for federal agencies to avoid small business input is to incorrectly certify that a rulemaking will not have a significant economic impact on a substantial number of small entities. This year's RFA report, as well as RFA reports over the past 41-years, cites numerous examples of how agencies do not properly "certify" whether their proposals will impact small businesses. One of the most egregious multi-year / multi-Administration failures to consider small business is the series of Waters of the United States (WOTUS) rulemakings promulgated by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers. Rather than seek appropriate input from small businesses on how to manage wetlands permitting in a way that would be both environmentally protective and sensitive to impacts on small businesses, EPA and the Corps repeatedly insisted - in 2014, 2019, and in 2023 – that their proposed WOTUS rules did not impose additional costs on small businesses.

When each of these proposals was issued, SBA's Office of Advocacy correctly faulted EPA and the Corps for improperly "certifying" that their rulemaking would not harm small businesses. On each occasion, the Office of Advocacy faulted the agencies for not convening a panel of small businesses that is required under SBREFA to ensure that EPA, the Consumer Financial Protection Bureau, and the Occupational Safety and Health Administration specially consider small business recommendations for less burdensome alternatives in their rulemakings.[6] In this

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[3] U.S. Chamber of Commerce Foundation, *The Regulatory Impact on Small Business: Complex.Cumbersome.Costly,* (March 2017).

[4] W. Mark Crain and Nicole V. Crain, A Report for the National Association of Manufacturers, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business,* (September 10, 2014).

[5] Regulatory Flexibility Act, 501 U.S.C. Sec. 601 et seq (1980).

[6] See SBA Office of Advocacy letter to Administrator Gina McCarthy and Maj. Gen. John Peabody re: Definition of "Waters of the United States" Under the Clean Water Act, (October 1, 2014) and SBA Office of Advocacy letter to Administrator Andrew Wheeler and Lieutenant General Todd T. Semonite re: Revised Definition of "Waters of the United States" (Docket No. EPA-HQ-OW-2018-0149), (April 11, 2019) and SBA Office of

regard, it is worth noting that the Chamber's lawsuit challenging the 2023 WOTUS rule, which is now pending in the U.S. Court of Appeals for the Sixth Circuit, specifically challenges EPA's and the Corp's "certification" that the rule "will not have a significant economic impact on a substantial number of small entities under the RFA." As the Chamber's complaint in that case notes, this certification "is based on a description of the Final Rule that does not reflect reality," as "the Final Rule will impose significant costs on small businesses." The Sixth Circuit has issued a temporary injunction against enforcement of the 2023 rule, as have two other courts.

Even more recently, the Supreme Court's decision in *Sackett v. EPA* rejected the broad theory of regulatory jurisdiction that was central to the 2023 WOTUS rule. In its decision, the Supreme Court observed that "because the [Clean Water Act] can sweep broadly enough to criminalize mundane activities like moving dirt," "a *staggering* array of landowners" were "at risk of criminal prosecution or onerous civil penalties" under that broad theory of jurisdiction. (Emphasis added.)

It is unfortunate that EPA and the Corps went to such great lengths to avoid ensuring appropriate small business input. The purpose of the RFA and SBREFA is to ensure that agencies receive constructive small business input that can help regulators meet their regulatory objectives while at the same time minimizing the burden on small businesses like mine. The trend is only expected to get worse as recent changes to the government's centralized regulatory review process and proposed concepts for cost-benefit analysis would further obscure the true costs of regulations.

The concept of regulating while being sensitive to small business compliance costs makes sense and it is something I am personally passionate about. I am an advocate for protecting birds of prey and their environment. Our largest source of revenue at Kaddas Enterprises is our patented designs of BirdguarD™ products. They are designed to protect birds and other animals from electrocution. I take pride in the fact that our manufacturing contributes to energy resilience by preventing wildlife-caused power outages. The Chamber has long made building smart, modern, resilient infrastructure among our top priorities. A commonsense WOTUS definition is foundational to achieving America's ambitious climate and infrastructure goals. My company is a good example of how industry, environmental protection, and small business growth can work together to provide economic growth and conservation. These ideals are not exclusive.

Support for the PROVE It Act and Legislative Recommendations

The Chamber applauds Senator Ernst's introduction of the PROVE It Act, which would advance the following small business priorities:

Advocacy Letter to Administrator Michael S. Regan and Michael L. Connor re: Comments on EPA and Army's proposed rule defining "Waters of the United States" under the Clean Water Act (EPA Docket EPA-HQ-OW-2021-0602 and Army Docket COE-2021-0001-0016), (February 7, 2022).

I. Amending the "certification" requirements under Regulatory Flexibility Act in order to ensure that agencies take small business input seriously.

II. Requiring agencies to be transparent about costs on small businesses by including all reasonably foreseeable impacts. For example, a recent proposal by the Securities and Exchange Commission (SEC) may require small private companies to report their greenhouse gas emissions if they are part of the value chain of a publicly traded company under the SEC's jurisdiction. As the Office of Advocacy pointed out, the SEC did not disclose those costs and did not consider less burdensome alternatives for small businesses.[7]

III. Bolstering the effectiveness of the RFA by making its provisions expressly subject to judicial review. Modernizing the RFA should provide small businesses with timely court review of whether agencies are meeting their legal obligations to adequately consider small business in the development of federal rulemaking. Making it clear that the judicial branch can enforce the legal requirements governing how agencies treat small business will help convince regulators to seek out, receive, and follow the recommendations of the small business community when there is constructive input on how to meet regulatory objectives while at the same time minimizing the negative impact on small businesses.

Thank you again for holding this important hearing on how regulations impact small business and for working to take effective legislative action to ensure that federal regulators listen to the small business community prior to imposing costly red tape on America's innovators, community leaders, and job creators.

Please do not hesitate to contact Tom Sullivan, the Chamber's Vice President for Small Business Policy, who is with you for today's hearing, if you have questions or comments regarding the content of this statement for the record.

Sincerely,



Natalie Kaddas
CEO, Kaddas Enterprises, Inc. Chair
Small Business Council
U.S. Chamber of Commerce

cc: Members of the Senate Committee on Small Business & Entrepreneurship

[7] See SBA Office of Advocacy letter to Secretary Vanessa A. Countryman re: The Enhancement and Standardization of Climate-Related Disclosures for Investors – File Number S7-10-22 (June 17, 2022).

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OPINION | REVIEW & OUTLOOK Follow

Regulators Gone Wild

The White House is rewriting the rules for cost-benefit analysis to unleash its regulators.

By The Editorial Board Follow

Aug. 14, 2023 6:46 pm ET



President Joe Biden PHOTO: NICHOLAS KAMM/AGENCE FRANCE-PRESSE/GETTY IMAGES

The Supreme Court has reined in some of the Biden Administration's regulatory excesses, but the federal bureaucracy is relentless. And now the White House is quietly changing its analytical methods to make it easier to impose new rules while disguising their cost. If you think regulation has been running amok in the last two years, buckle up.

That's the meaning of the update to what Beltway wonks call the "circular," which is guidance from the White House Office of Management and Budget (OMB) that tells federal agencies how to calculate regulatory costs. The guidance is meant to protect taxpayers by requiring that any proposed regulation justify its cost, based on standard criteria. OMB's regulatory shop was established to be a check on agencies that want to extend their power willy-nilly regardless of cost.

Now even that guardrail is coming off. In April President Biden issued an executive order instructing OMB to "modernize the regulatory process." By "modernize" he means remove restraints.

Under Mr. Biden's order, a "significant regulatory action" is redefined as one expected to have a $200 million annual economic cost, up from $100 million currently. The cost side is then subjected to accounting gimmickry that reduces the apparent impact on the U.S. economy and society.

OMB also tips the benefit side of the cost-benefit ledger by allowing consideration of the "global effects of the regulation," not merely how new rules affect Americans. That's right. A perceived benefit for the world can figure into the analysis of a new rule as much as the cost to the people of, say, East Palestine, Ohio. This is intended to be a particular green light for new climate regulation.

All of this doesn't make headlines but it will have a bigger impact than nearly everything Congress does. One of the casualties will be the states that are the subject of rules, and the guidance rewrite is drawing fire from 26 state Attorneys General who say the revision "turns federalism on its head." In a letter to OMB, the AGs write that the new rule will "decrease the utility of cost-benefit analysis while increasing the power and flexibility of federal regulators."

The letter says the revisions will also "encroach on traditional areas of State concern" by claiming that State governments are not "effectively addressing the issues at hand." The Administration is "attempting to manipulate the regulatory process," the AGs add, by "adjusting the discount rate and adjusting the time horizon of regulatory analysis" so the presumed benefits of progressive regulations seem to trump costs.

By lowering the discount rate, the Administration can make hoped-for benefits that might occur years in the future weigh more heavily against the present regulatory costs. The new draft would also grant the executive branch wider authority for regulations "promoting distributional fairness and advancing equity."

***

The Biden Administration has already unleashed more regulatory costs on the economy than any in recent memory—even the Obama Administration. Mr. Biden first repealed the Trump Administration rule that for every new regulation, two had to be repealed.

Then his regulators went wild. Casey Mulligan, a University of Chicago economist, recently looked at the Biden rules through 2022 and said the overall cost is $5,019 per household. That's 15% more than the $4,353 cost per household during a comparable period in the Obama Administration. The Trump Administration had reduced regulatory costs by $2,636.

According to the Competitive Enterprise Institute's Clyde Wayne Crews, the Biden Administration has 297 "economically significant" regulations in the pipeline, and his average has been 97 per year compared to an average of 69 a year for Mr. Obama and 49 for George W. Bush. That number will appear to fall if Mr. Biden raises the bar for economically significant regulations to $200 million, which is part of the point.

But don't be fooled. Mr. Biden is setting new records as the super regulator in chief, and all of us will pay for it.

Appeared in the August 15, 2023, print edition as 'Regulators Gone Wild'.