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REVIEWING THE SBA'S OFFICE OF ADVOCACY REPORT ON THE REGULATORY FLEXIBILITY ACT

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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REVIEWING THE SBA'S OFFICE OF ADVOCACY REPORT ON THE REGULATORY FLEXIBILITY ACT

THURSDAY, JUNE 22, 2023

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:02 a.m., in Room 2360, Rayburn House Office Building, Hon. Blaine Luetkemeyer [vice chairman of the Committee] presiding.

Present: Representatives Williams, Luetkemeyer, Stauber, Meuser, Van Duyne, Salazar, Mann, Ellzey, Molinaro, Alford, Crane, Bean, Hunt, LaLota, Velázquez, Golden, Mfume, McGarvey, Scholten, Thanedar, Chu, Davids, and Pappas.

Mr. LUETKEMEYER. [Presiding] Okay. We will begin the hearing with our prayer and pledge. Today, the prayer is led by Mr. Crane from Arizona.

Mr. CRANE. All right. Dear Heavenly Father, thank you so much for giving us the opportunity to be here in the nation's capital. We ask that you continue to bless this nation. Guide us, direct us, give us wisdom. And we also ask for prosperity to continue to flow to the citizens of this country. In your son's name, Amen.

Mr. LUETKEMEYER. With that we will stand for the pledge.

Welcome to everyone this morning. Chairman Williams is out and in his vernacular the ace of the pitching staff is on leave today and we have reached the bullpen to get the relief pitcher coming in. So that is where I am at this morning. Glad to be with everybody. Glad we are able to do this.

So I now call the Committee on Small Business to order. And without objection the Chair is authorized to declare a recess of the Committee at any time.

I now recognize myself for my opening statement.

Welcome to today's hearing which will focus on reviewing the Small Business Administration's Office of Advocacy Report on the Regulatory Flexibility Act. First, I want to thank our witness, Mr. Major L. Clark, who serves as the deputy chief counsel for Advocacy at the SBA. Hope this is the first of several productive hearings we will have with you this Congress, and I appreciate you speaking with us today, sir.

This hearing could not be coming at a more important time. The Office of Advocacy is intended to be a crucial tool, serving as a watch dog and advocating for small businesses within the federal rulemaking process. This Committee has drawn great attention to

our concerns with the federal government regarding the Regulatory Flexibility Act.

The Biden Administration's actions with rulemaking have proven the need to strengthen the RFA in order to be an effective check for small businesses. We have seen the insufficiencies through numerous examples of federal agencies failing to consider the impact of their rulemaking on small businesses.

Although the Office of Advocacy is doing more work with the RFA than it has in the last 10 years, excessive regulations are continuing to hurt small businesses. It is clear we must conduct this necessary oversight to ensure the Biden administration is properly amending the laws designed to safeguard small businesses and the regulatory process, not create a further burden.

Creating this change starts with the Office of Advocacy. Over the years, your office has faced several challenges in its duty to advocate for small businesses. While you are recognized as being independent of the SBA, it is clear there is often association that makes it difficult for your office to have a final say throughout the regulatory development process.

Another concern previously addressed by this Committee is the Office's Chief Counsel of Advocacy position sitting vacant since 2017. We have sent letters to President Biden calling for him to fill this position. It is clear to this Committee that President Biden does not see this position as a priority. Perhaps this administration would like to leave this position vacant so they can continue with their reckless rulemaking agenda.

To date, the federal government has done a shameful job of meeting their responsibility to consider the impact that proposed regulations will have on small businesses. The Democrat standard of ramming through crushing regulations, reckless spending, and driving up costs on small businesses must stop. Burdensome regulations and government red tape create a headache for all Americans but they are especially harmful for main street.

Today, examining a report on the Regulatory Flexibility Act is an important step to continuing exposing the federal government's failures and abuses to provide protections for main street. As a Member of the House Committee on Small Business, we will continue to fight for these crucial revisions in the RFA and rulemaking process to support Main Street America and President Biden clearly is not.

With that, Mr. Clark, thank you again for joining us today. We look forward to the conversation ahead.

Before I yield I would ask for unanimous consent to enter into the record a statement from the NFIB. And without objection, so ordered.

I now recognize our Ranking Member from New York, Ms. Velázquez, for her opening remarks.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Mr. Clark, welcome back to the committee.

I want to take a moment to thank you for your service. I know that you have been the Acting Chief Counsel of Advocacy for more than 6 years and your dedication is commendable. The position of chief counsel is an important role.

The Office of Advocacy serves as the independent voice of small businesses within the federal government. It is their job to promote the concerns of small firms before all three branches of the federal government and state policymakers. A central component of that role is to monitor and report on agencies' compliance with the Regulatory Flexibility Act, or RFA.

Today, I hope to have a productive discussion on Advocacy's RFA work in fiscal year 2022.

As you know, 99.9 percent of all U.S. businesses are considered small. Some of these small firms can have 1,500 employees and up to $47 million in receipts, depending on the industry.

While they may be considered small in their sector, many of the larger firms have lawyers, accountants, and other experts who understand the rules, submit comments on rules to the agency, and help the business comply with regulations.

It is important to make this distinction during our discussion today and take the time to learn more about how the Office of Advocacy conducts outreach to ensure the views of the smallest of the small businesses are being conveyed to the agencies, and in turn, level the playing field for small businesses.

We must also discuss comment letters Advocacy files with federal agencies, which are not violation letters, but efforts to alert agencies to their rules' impact on small businesses.

In many areas these letters are effective, leading to a number of modifications to the rules that have benefitted small businesses and still achieved the mission of the regulations.

Contrary to what we will hear today, federal regulations can and do benefit our economy, like regulations that protect our air and waters, boosting small businesses that comprise the outdoor recreational industry, which accounted for $454 billion of our GDP in 2021.

The key is not to roll back all regulations that protect our health, safety, and environment but to allow Advocacy to work with agencies to recognize the impact regulations have on small businesses, and work to find ways to balance the shared goal of minimizing the burdens and achieving the goal of the regulation.

Smart, well-crafted, common-sense regulations have the potential to unleash innovation and provide critical health, safety, and environmental protections.

With that, thank you again for testifying today, and I look forward to hearing more about the regulatory work you have performed and how we can strengthen the Office of Advocacy and ensure that small businesses have a voice at all levels of government.

Thank you, Mr. Chairman, I yield back.

Mr. LUETKEMEYER. The gentlelady yields back.

With that we will now introduce our witness, Mr. Major L. Clark. Mr. Clark is the deputy chief counsel for Advocacy for the Small Business Administration's Office of Advocacy. Currently, he leads the office and is responsible for the day-to-day operations. Prior to his time at the SBA, Mr. Clark was a senior corporate officer for the Maxima Corporation managing several multimillion dollar federal contracts. Earlier in his career in public service, Mr. Clark worked on this very committee as the chief administrative officer. Mr. Clark earned his Juris Doctorate and Masters of Urban Plan-

ning from the University of Iowa and a Bachelor of Science in Political Science from North Carolina Agricultural and Technical University. He also served as a professor in the Graduate Urban Planning program at Morgan State University.

Mr. Clark, thank you for being here today. We look forward to the conversation ahead.

Before recognizing the witness I would like to remind him that his oral testimony is restricted to 5 minutes. If you see the red light come on in front of you, sir, that indicates that it is time to wrap up your testimony and your questioning. I would ask you to make these microphones pull forward. The whole box can be pulled forward. Make sure that you speak into it clearly not only for the benefit for us but I know we are taking notes. The stenographer is here and they need to be able to hear your words distinctly.

So with that, you are recognized for 5 minutes, Mr. Clark.

STATEMENT OF MAJOR L. CLARK, DEPUTY CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION-OFFICE OF ADVOCACY

Mr. CLARK. Good morning, Chairman Luetkemeyer, and Ranking Member Velázquez, and Members of the Committee. I am honored to be here today on behalf of the Office of Advocacy to present testimony to you on federal agency compliance with the Regulatory Flexibility Act.

Advocacy is an independent office that is required by statute to speak on behalf of the small business community before federal agencies, Congress, and the White House. This testimony does not reflect the views of the administration and has not been circulated to the Office of Management and Budget for clearance. In fact, none of our products are cleared by the administration because of our independence.

As deputy chief counsel, and on behalf of the entire Advocacy family, I would like to thank the Committee for your continued support over the years. Congress recognized the importance of small businesses 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.

Our legal team works to ensure agencies' regulations do not unduly burden small businesses. Our Economic Research team conducts important research on small businesses and their role in the economy. And our regional advocates provide outreach to small business stakeholders across the country.

I will also note that 4 years after the passage of the RFA, and I must have been 10 years old, I was the staff director of this Committee, so I understand firsthand the work that goes into important legislation such as this and how important small businesses are to the economy and to Congress.

The Regulatory Flexibility Act requires federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analysis available for public comment. As the watchdog for small businesses, Congress charged Advocacy with

ensuring agency compliance with this law. The specific requirements of the RFA are discussed in my written testimony.

Advocacy reports to Congress every year on agency compliance with the RFA. Our report for fiscal year 2022 was submitted to this Committee last month. Advocacy continued to remain active during fiscal year 2022 on behalf of our nation's small businesses. In fact, our output increased compared to previous years. We submitted a record 37 comment letters to federal agencies and hosted a record 30 roundtables on regulatory concerns facing small businesses.

We also provided training to 257 officials at 10 agencies. We conducted four SBREFA panels with the CFPB and the EPA. We also achieved numerous victories for small businesses because of working with agencies on RFA compliance. These numbers were due in large part to new methods of communication and outreach Advocacy has adopted since the COVID-19 pandemic to reach more small businesses, including holding virtual meetings and roundtables.

Regarding agency compliance with the RFA, in recent years the most frequent concerns Advocacy has cited in public comment letters to agencies were deficiencies in the RFA analysis. These include but are not limited to inadequate analysis of small entity impacts, and lack of consideration of significant alternatives. Advocacy has also increasingly argued that agencies need to conduct more outreach to small entities during the rulemaking process.

Mr. Chairman, Advocacy is aware of H.R. 399, the Small Business Advocacy Improvements Act, which recently passed the House of Representatives. This bill would amend Advocacy's charter to clarify our authority to research and represent small interests on international issues. Because Advocacy already does these activities, this is a commonsense change to our charter.

Mr. Chairman, this concludes my oral testimony and I request that Advocacy's RFA report 2022 be included in the record, in the hearing record.

Mr. LUETKEMEYER. Without objection.

Mr. CLARK. Thank you for the opportunity to testify today and I am happy to answer any questions that you may have.

Mr. LUETKEMEYER. Thank you, Mr. Clark.

With that we will move to the Member questions under the 5-minute rule and I will recognize myself for 5 minutes.

The Office of Advocacy's most recent report that we just entered into the record stated that your office, and you stated this in your testimony, submitted 37 comment letters, held over 30 roundtables, and trained 257 federal agency staff on the RFA. This is some of the highest volume work that has come out of this office in decades. However, much of it seems to have been in vain if we are looking at the mountains of regulations that have been placed on small businesses in the past few years. The American Action Forum estimates there have been over $318 billion in total costs and 218 million additional paperwork hours associated with President Biden's regulatory actions from just his first 2 years in office.

So Mr. Clark, do you feel that your guidance is taken seriously by the administration, the various agencies? I mean, I realize that you are writing letters and you are having roundtables, trying to train people, and yet we wind up with $318 billion worth of costs

in new rules and regulations, and some of them do not follow up with small business costs.

Can you comment on that?

Mr. CLARK. Thank you, Mr. Chairman, for your question.

Yes, I do think that the Office of Advocacy has its work in terms of representing small businesses, continues to make improvements for our small businesses, and specifically, in our small business economy. I go back in time as I said in my report to the period of time in which there was not a Regulatory Flexibility Act, and moving forward there has been tremendous changes, some changes to the Regulatory Flexibility Act, improving the process. But the overall thrust of that has been to give more support to our small businesses as they continue to be the economic backbone of this country.

Mr. LUETKEMEYER. Well, I guess the question is do you think the agencies are living up to their requirements to file reports with regard to the impact on small businesses? And it does not appear to be that way to me whenever, if you look at the lack of reports that come out of some of the agencies when it comes to some of these rulings. There is no report with regards to the impact on small businesses, and if it is, it is just sort of lip service. There is no real true analysis there. Would you agree with that?

Mr. CLARK. Yes. I would agree that in some of the regulatory actions that the analysis has not been true. And that has been one of the elements that we have pointed out in our comment letters to the agencies. But it is also one of the elements in which we have been working diligent with agencies to improve their analysis of small businesses.

Mr. LUETKEMEYER. Well, so that begs the question that if they are not doing the job then how can we get them to do the job? What kind of enforcement mechanism do we need in place? And so I just want to throw something out here for you to consider and we can discuss further. But it seems to me that if they are not going to follow this, and they have been given the charge to do their own analysis, if they are not doing it, maybe we need the CBO or maybe we need your office to do the analysis of all these rules to find out what the real cost of them is as well as the impact on small businesses, because they are not submitting reports now, and the ones they do submit are not quite frankly worthwhile. So we need to have an independent third party coming in and doing their work if they are not going to do it.

Would you agree with that or have you got a better idea? I have got a minute and a half to discuss this.

Mr. CLARK. Well, I do not know if we need a third party to come in. I think one of the areas that we have looked at over the period of time since I have been in Advocacy has been the shortage or the lack of data that is available on small businesses. And we have worked very diligently with the Census office to develop much better data on small business and small business impact. So I think part of what we see developing over a period of time has been this lack of data. And we see in those agencies where data has been much better in terms of analysis, that the analysis has been much more beneficial to small businesses.

Mr. LUETKEMEYER. Well, I know as the Ranking Member in the last term we worked with a number of different groups, whether it was the Chamber of Commerce, the NFIB, Job Creators Network. There are a lot of different entities out there that have lots of information on small businesses and the effect that these rules have. As I indicated in my question earlier, the American Action Forum did an estimate of $318 billion on the cost of these rules. So I think there is probably enough data available. We just have to find a way to get it accumulated.

With that, my time is expired. Thank you for your testimony this morning, Mr. Clark.

And with that we recognize the lady from New York, the Ranking Member, Ms. Velázquez, for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Clark, the size standard for some industries allows small firms to have 1,500 employees, and an average receipt up to $47 million. Your office advocates on behalf of these larger companies in the name of small businesses. Can you address this concern?

Mr. CLARK. Thank you for your question, Ranking Member Velázquez.

One of the things that we have been pushing agencies to do in their analysis is to recognize that the regulation one size does not fit all. And in that regard what we have been working very diligently trying to get them to do is analyze the impact of the regulation on different levels of small business. So, yes, the larger businesses as you said in your opening statement do have more resources, but we also are very concerned with that one, two, three, four-man person shop that are without those resources. And those are the ones that we want the agencies to work on.

Ms. VELAZQUEZ. I hear you.

Trade associations and law firms which represent both big and small businesses participate in your events and are sharing the views of big businesses. What steps do you take to ensure that the feedback that you are soliciting is truly that of small businesses and not just those that have the resources to hire attorneys and consultants?

Mr. CLARK. Our roundtables are open to the public. But as we engage individuals who are talking, doing those roundtables and so forth, we engage them to inform us of who they are and what type of business they have, the size of their business. So we are very conscious of the fact that because our roundtables are open to the public others can come in. But we try to streamline that process when it comes to receiving the information from those who are testifying or providing information to us.

Ms. VELAZQUEZ. How do you do that? Do you have the staff?

Mr. CLARK. Our staff, during our roundtables, whatever lawyer is in charge of that roundtable is asking that question. So a person presents, we ask that person exactly tell us about your business.

Ms. VELAZQUEZ. The RFA requires agencies to consider the regulatory impacts on small entities, but when Advocacy submits comment letters to agencies, it focuses on the potential costs of regulations. This is only half of the equation. Why does Advocacy not report on the benefits of regulation to small businesses?

Mr. CLARK. In part because our statutory mandate requires us to focus on cost.

Ms. VELAZQUEZ. I know that. That is what the law says.

Mr. CLARK. Yeah. Yeah.

Ms. VELAZQUEZ. What needs to be done to get a complete analysis of the impacts on small businesses?

Mr. CLARK. Well, one of the things we do and we recognize, that small businesses are not monolithic, and that small businesses have different interests. So in our analysis, in our discussions on compliance, one of the things we are doing is trying to bring all viewpoints of small businesses to that process. And in that regard, there are small businesses that will share with us that a proposed regulation may very well be beneficial to them as opposed to overly burdensome in terms of costs. So we try to put all of that into the discussions that we have with the agencies regarding that regulation.

Ms. VELÁZQUEZ. I think that going forward it is very important so that everyone could have a whole picture of the impact or benefits of such regulations.

I am pleased that Advocacy has adopted new ways to reach more businesses. Have the online roundtables and events led to more outreach to small businesses that historically have not attended?

Mr. CLARK. We think so. We think because the technology has been drastically improved, which allows for virtual roundtables, we think we are able to reach a much larger segment of the small business community. We are able to reach many small businesses who simply can't take time from their work to attend a very formal process but can, in fact, go online on their computer or their cell phone and participate.

Ms. VELAZQUEZ. I yield back. Thank you.

Mr. LUETKEMEYER. Time has expired.

With that I recognize Mr. Crane from Arizona for 5 minutes.

Mr. CRANE. Thank you, Mr. Chairman.

First I want to start by saying thank you, Mr. Clark, for appearing before the Committee today.

Sir, would you say that you believe in environmental justice?

Mr. CLARK. How would you define environmental justice, sir? I mean, I do believe in environmental justice across the board. Yes.

Mr. CRANE. Can you go into that a little and why you believe in that?

Mr. CLARK. Well, environmental justice for me personally is a process of keeping in balance the structure that has been placed before us. You know, that God has placed before us. And I believe that there needs to be that balance in terms of how we interact with the environment.

Mr. CRANE. Thank you.

Would you say that your office is an advocate of the Justice 40 Initiative?

Mr. CLARK. Our office has presented information on the Justice-40 Initiative in the sense of getting a much more robust involvement with the broader community, yes.

Mr. CRANE. Do you think the EPA could apply these regulations inconsistently or in a way that prevents small businesses from developing?

Mr. CLARK. Our intent in the Office of Advocacy is to continue to work with EPA so that that does not happen.

Mr. CRANE. Sir, are you aware that the Environmental Justice Small Grans program has funded projects completely unrelated to environmental justice?

Mr. CLARK. I am aware of some of those through our attorneys, yes.

Mr. CRANE. What would you say, sir, is the most effective thing that your office has done to advocate for small business?

Mr. CLARK. I am sorry, can you repeat your question?

Mr. CRANE. What would you say is the most effective thing that your office has done to advocate for small business?

Mr. CLARK. Our office has over the years presented itself to all of the federal agencies as representing small business. We continue to promote the statutory mandate that we are the watchdog of small business. And in that regard, we have been I think very successful in getting agencies to understand the role that we play and that we are there to represent the interests of small business.

Mr. CRANE. Okay.

Mr. CLARK. I can give you examples of some of the things we that we have done.

Mr. CRANE. Yesterday, sir, I had the Arizona Restaurant Association in my office. We had about a dozen small business owner-operators in my office. One of the things that they were, you know, very concerned about is, you know, the raising of minimum wage. They talked about how it was affecting them. Has your office done any advocacy whatsoever to push back on these types of mandatory raises that are crushing small businesses?

Mr. CLARK. Our office has been aggressively involved with the——

Mr. LUETKEMEYER. Mr. Clark, Mr. Clark, can you pull the microphone closer to you, please?

Mr. CLARK. Yes, sir. Can you hear me now?

Mr. LUETKEMEYER. Yeah, that is fine. Thank you.

Mr. CLARK. I am sorry. Our office has been aggressively involved with the Department of Labor on that particular issue from the outset, and we have had roundtables across the country. We have submitted comment letters. We have presented various viewpoints on the impact of the minimum wage on small businesses. And we have had——

Mr. CRANE. So real quick, sorry to interrupt you, sir, but you would say that your office has actually pushed back on making a set minimum wage mandatory for small businesses; is that what you are saying?

Mr. CLARK. Our office has responded to the proposed regulations from the Department of Labor carrying forward the comments from small businesses in terms of the impact of those regulations on their businesses, yes.

Mr. CRANE. Thank you.

What about this administration's seeming war on gas and oil as soon as they took office. Have you guys advocated at all about that and just the crushing impact that that has had on not only transportation but delivery of all small goods that these small businesses use?

Mr. LUETKEMEYER. We are out of time. 35:35xxx

Can he answer that really quickly, Mr. Chairman?

Mr. CLARK. Our office—I am sorry. Excuse me.

Mr. LUETKEMEYER. We are out of time.

Mr. CLARK. We will be happy to answer that question in writing, Mr. Chairman.

Mr. LUETKEMEYER. We are out of time.

With that we go to the gentleman, Mr. McGarvey, from Kentucky for 5 minutes.

Mr. MCGARVEY. Thank you, Mr. Chairman.

Mr. Clark, thank you for being here today. At least in my time on this Committee you have the distinction of having one of the coolest names so I can see why they made you the third. That is a name you hold on to and pass down.

As you know, the Office of Advocacy was created by Congress in 1976 to be the independent voice for the small business community within the federal government. That is a major, major responsibility and one that we think is very important. Small businesses are the backbone of our economy and they need to have a voice, an advocate in the federal government that is looking out for them.

Part of today's focus is the Regulatory Flexibility Act. This requires federal agencies to work with the Office of Advocacy to gather input from small businesses during the rulemaking process so that our agencies can actually understand how the rules and regulations we are promulgating will impact small businesses. We need federal agencies to be able to create strong rules and regulations, but we need those rules and regulations to work. We have to make sure that the small businesses have their voice heard in the rulemaking process and that the proposed rules do not unduly burden our small businesses.

So Mr. Clark, what steps has the Office of Advocacy taken with federal agencies and small businesses to ensure that the rules and regulations achieve their policy goals without hurting small businesses?

Mr. CLARK. Thank you for your question.

The Office of Advocacy works with agencies in the development, as they develop the proposed regulations that they want to implement. We have over the years been able to work much more closely with the agency as they develop their regulation. Agencies have asked us for input really on their regulations as it impacts small businesses. So we have become very aggressive but not overbearing in terms of our ability to work with the drafters of regulations, giving them suggestions and input in terms of how that proposed regulations will impact small business.

Mr. MCGARVEY. Thank you. And again, that is important because sometimes something looks good on paper in the legislative body. Then all of a sudden it gets out there in the wild and where the rubber meets the road it does not work as well. So I appreciate you taking an advocacy stance.

It is important, too, I think when looking at the advocacy how you balance things. It is a balancing act; right? So how do you balance the competing interests of wanting to create rules that are as effective as possible, for instance, strong environmental regulations, without harming small businesses and their competitiveness?

Mr. CLARK. Well, part of what we do in that regard is to try to provide the agency with a balanced analysis of how their proposed rule may be impacting small business. And that takes into consideration those small businesses that are supporting the regulation and those small businesses that are not. So, we try to give the agency that type of assessment but also giving them or trying to provide them with data from time to time that we have on the various small businesses that will be impacted. And that was the question earlier to Ranking Member Velázquez was that we recognize that small businesses, one size does not fit all in terms of small businesses. So we try to give the agency that viewpoint as they look at the regulatory processes.

Mr. MCGARVEY. Thank you. I think very important. And in my small remaining time I just want to point out in my state of Kentucky we make a little product called bourbon. And 95 percent of the country's bourbon is made in my state. One hundred percent of the good stuff. And a lot of those are made by small distilleries in the state. Small businesses.

So my colleagues on this Committee knows it takes four things to make bourbon. You have got to have corn, yeast, a new charred white oak barrel, and of course, water. So water regulations are very important for us in the state of Kentucky. We have been watching the WOTUS rulemaking closely.

How does your office work with the EPA? And have you urged the EPA to consider small distillers when the agency considers rules to protect our nation's water?

Mr. CLARK. Well, we have, as you may know, we did comment on the WOTUS regulation. But more specifically, we have actually been to your state, the state of Kentucky, 3 years ago and toured many of the small business distilleries. So we have firsthand information, firsthand look-see as to how small businesses are making product and trying to remain economically viable.

Mr. MCGARVEY. Thank you, Mr. Chairman. I yield back.

Ms. SALAZAR. And now I recognize Mr. Meuser from Pennsylvania for 5 minutes.

Mr. MEUSER. Thank you, Madam Chairwoman. Appreciate it.

Mr. Clark, thank you very much for being with us. I am enjoying your testimony.

So picking up on a few subjects that we started with regarding regulatory flexibility and such and your ability to have oversight and weigh in. This WOTUS ruling, for instance, that my colleague brought up.

Now, I am not going to contend that Pennsylvania potatoes are more important than Kentucky bourbon but we are farmers too and deal with the WOTUS issue. I mean, 100 percent of them. So and not in a favorable manner. Now, if they were talked with and it was inclusionary how it was discussed and how we come up with the right plan for the environment and for farms and businesses that would make sense. Is that something that you take a role in, bringing people together so we get the right answers?

Mr. CLARK. Yes. Again, our responsibility as statute is to be the voice for small business. And one of the ways we do that is to try to bring all small businesses together to give us their input, their assessment. Because we don't have all of the answers. We need our

small businesses to tell us very specifically how various proposed regulations may impact them. And not only how they may impact them but what they consider to be alternative and viable solutions to the problems.

Mr. MEUSER. You have seen some of the reports, like the NFIB, for instance. I don't know if you work with them and gain information from them but, I mean, the attorney general of Iowa said that 97 percent of the land in Iowa would not be subject to federal regulation. I mean, that sounds pretty excessive. And from what I know from on-the-ground information, that is something that needs to be looked at.

As well as the discussion on energy. I mean, there is a right way to do things. There is a responsible way. There is an irresponsible way. I think our regulatory nature in our country at this point, and I know the Marselles-Shale region, for instance, where we have natural gas, there are many regulations that come out that hinder and suppress the ability to grow natural gas, which by the way is half the carbon emissions of oil and other fossil fuels. And yet, these regulations just seem to keep coming. So are fossil fuels in general, I mean, energy costs, is that something that your agency works on for the benefit of small business?

Mr. CLARK. Yes. We have three attorneys that are involved in that area. I will say, however, Congressman, that one of the things that has to be considered in the discussion of the regulation is that there are some regulations that do come out which are beyond the control of Advocacy to deal with and that is because of the way the statutes have been designed for those regulations. For example, an interim final regulation is really beyond our ability even though we have more recently been involved in trying to work with agencies on interim final regulations as they impact small businesses.

Mr. MEUSER. Good to hear, sir.

What about Scope 3 with manufacturers and any company that has to deal with Scope 3? And many, as you know, small businesses are preparing for Scope 3. It is just on public companies now but they are getting ready for it.

Mr. CLARK. Yes. We have actually submitted a comment letter to the SEC as well as to the FAR counsel on this whole Scope 3 issue, as well as, I believe, some Members of Congress have also submitted letters on the impact of Scope 3 on small business. So we are aware of that. We are following that. We are wanting to make sure that our small businesses are not unduly impacted by this process.

Mr. MEUSER. Good. Well, I look forward to working with you on that because our focus is to advocate, as well, for small businesses.

Do you think that some federal agencies overly certify their proposed regulations as stating that they will not substantially impact small businesses? Do you battle with some agencies on occasion, on their over certifying?

Mr. CLARK. Our concern when an agency does, in fact, attempt to certify a regulation that that certification has a factual basis. And the factual basis should set forth the reasons why they feel that the impact is minimum or to no extent on small business. And

when agencies fail to give us that factual basis we do bring it to their attention.

Mr. MEUSER. Thank you. I have run out of time. Thanks for your service. Thanks for your work.

I yield back, Madam Chair.

Ms. SALAZAR. Thank you.

And now we recognize Ms. Scholten from the state of Michigan for 5 minutes.

Ms. SCHOLTEN. Thank you so much. Thank you, Madam Chair, and thank you, Mr. Clark for being here today.

I am happy that we are focusing on this critically important issue and the SBA's Office of Advocacy. I think it is so important that the Committee highlight the oversight work and the work that your office does to streamline and make small businesses as efficient as possible. I could not agree more with what has been said today about how excessive regulation far too often hamstrings businesses.

Mr. Clark, an important responsibility of your office is to submit public comment letters to regulatory agencies during the rulemaking process. Can you walk us through how Advocacy determines when to comment on a proposed rule? What are instances where the office has been successful in influencing agencies through submitting public comment letters?

Mr. CLARK. Thank you. Yes.

The Office of Advocacy, as I said, the regulatory part is made up of attorneys and we are involved across the board with the agencies in our specific areas. We work internally with the agency where possible to deal with the issues that they are trying to deal with and with the impact of the proposed regulation on small business. When we reach a point that we cannot agree on what the changes should be and the agency goes forward with its proposed regulation, at that point in time we do write a public comment letter highlighting the concerns that have been shared with us by small businesses and asking the agency to take action to modify its regulation as it impacts small business.

I mean, an example of that if you like is with the Department of Defense which is part of my area with what is called the CMMC, the Cybersecurity Maturity Model for cybersecurity where we work with the agency on what they were proposing. It was going to have a tremendous impact on our small businesses in the defense industry. They tried to make some changes. Did not make sufficient changes. We wrote a comment letter and I think Members of Congress took action and that particular regulation was pulled. They are now back with a modified regulation and hopefully we are examining it. Hopefully it will be much better than what it was in terms of the negative impact that it was having on small businesses in our defense industry.

Ms. SCHOLTEN. And you and your office will continue to follow through on that presumably to ensure that it is actually implemented in a more efficient and streamlined——

Mr. CLARK. Yes. Yes. As a result of our involvement with the particular unit, they have actually reached out to me wanting input and so forth before they go forward. And that is one of the things that we tried to develop that relationship with the agencies

so that we can give them firsthand information, firsthand input in the process.

Ms. SCHOLTEN. Thank you. I think that smart, well-crafted regulations is what we are all after here. I know that I hear consistently from small business owners in my district that one of the most time-consuming things that they have to spend their time on is trying to discern overly complex regulations. In West Michigan and across the country, small businesses do not have access to attorneys, accountant, or other resources that they can lean on to help make sure that they are in compliance.

Quickly, if you can, how do small businesses become aware of changes to federal rules? And what does your office do to make sure that businesses get that information and can work as much as they can without the resources of an attorney or an accountant to make sure they are in compliance?

Mr. CLARK. We do several things in that regard. One, we publish on a weekly, daily basis really, what is called a regulatory alert. And as the regulations come out, as our attorneys have looked at the regulations to make some determinations, they publish on our website this regulatory alert to alert the small business community of the proposed regulation. We also, as I mentioned earlier, have regional advocates. And one of the things that we encourage our regional advocates to do is to push that proposed regulation to their stakeholders in the various states that they operate in. But we also reach out to other trade groups that we know have an interest in that. So we are trying as much as possible to spread the knowledge of the proposed regulation——

Ms. SALAZAR. Your time is up.

Mr. CLARK.—trying to get as much impact and input from our stakeholders. And depending——

Ms. SALAZAR. Thank you. Your time is up. 52:18xxx few more minutes. So thank you.

Ms. SCHOLTEN. Thank you, Madam.

Ms. SALAZAR. So now I will recognize myself for 5 minutes.

I am Maria Salazar. I represent the City of Miami and I thank you very much, Mr. Clark, for being here today. We, as a Committee, we appreciate the work you do as an independent voice.

I was thinking when I was listening to your words that you have a very big job. You have a very big job. You are like the David against the Goliath. And all this overburdening of regulations coming from the federal government. And when I say that I come from the City of Miami, I represent 75 percent of my constituents are first generation Americans. Most of them do not speak English very well but they love the American system. And they are escaping countries where the government is all over them. So they are coming to the United States asking or yearning to be able to have their small shop, like you said, two or three employees. We are not talking about 500 employees. We are talking about three people or four people. But that is their American dream. And now that I am hearing is that the feds are not listening to you and they are crushing our people, our small business community.

So my first question is, sir, how can we help you so we can help the people that I just described as soon as possible? What is it that

we need to do, one step that we need to do right now in order to help you do a better job?

Mr. CLARK. Well, one of the things that we have done over the period of time and as we have held what we call regional regulatory roundtables, and we have been very successful in getting our small businesses—one, two people shops, larger shops to come out.

Ms. SALAZAR. What happens with that info?

Mr. CLARK. Much more information, much more outreach in that regard where it is not an adversarial situation. It is us sharing information and helping to educate and helping the folks understand it is something that we would love to work with the Committee on in terms of the Members in your various districts to ensure that——

Ms. SALAZAR. I get it. But you are telling me there is info. You are doing focus groups like we would say on television and that you are bringing all that info back to the mothership. And from what I am hearing, the feds are just not listening to you. And that is the main problem. You are an advocate for the small business group.

Mr. CLARK. Yes. But it depends on the situation. When we were holding, and when we held our regional roundtables across the country about 2 years ago, we actually had agencies in attendance at those roundtables. And they heard firsthand from stakeholders, from small business stakeholders as to the issues that were impacting them. And they went back to their agencies——

Ms. SALAZAR. With all due respect, sir, because of my time, give me just one way or one step that we could take as a Committee to help you stop this trend in the last 2 years when the Biden administration has been in power, there are the figures, $300 billion costing business and 200 million hours of additional paperwork. That is not the American dream.

Mr. CLARK. Well, one way you can do it, again, as I said earlier, is to work with us in terms of outreach to our small businesses because small businesses represent 99 percent of all businesses in the country and our ability to reach all of them with the small staff that we have is impossible but——

Ms. SALAZAR. In order to reach them for what reason you need to reach them? I am talking about reaching the federal agencies with respect to what you are saying.

Mr. CLARK. Yeah. We need to reach them in order to understand how the regulations are impacting them.

Ms. SALAZAR. But don't we know that already?

Mr. CLARK. Sometimes——

Ms. SALAZAR. We know that more regulation impacts them more adversely.

Mr. CLARK. Sometimes we don't. For example, we talked about the minimum wage. Well, that minimum wage regulation has a different impact on different types of businesses. And that is the type of information that we need to be able to present back to the agency.

Ms. SALAZAR. I have 30 more seconds.

How is your relationship with Administrator Guzman? Your office is very close to the main office for the SBA. Is that good? Does that help you do your job better or it does not?

Mr. CLARK. Our job is independent of SBA. That is what we do. We are independent of SBA even though physically we are very close to that office.

Ms. SALAZAR. Right.

Mr. CLARK. We carry out our responsibility as the statute requires us to do.

Ms. SALAZAR. Okay. Thank you, sir. My time is up.

I now recognize Mr. Golden from the state of Maine for 5 minutes.

Mr. GOLDEN. Thank you.

Mr. Clark, the lobster fishery in Maine has a lot of federal regulations coming at it. I know we have worked with your office on a few relevant to 57:41xx whales, which by the way just recently a federal Appeals Court ruled that those regulations were based on flawed data and could lead to hundreds of thousands of jobs being lost in Maine. And so that was good news for the Main lobster fishery.

I wanted to talk a little bit about offshore wind. So BOEM has published guidance on mitigating the impacts of offshore wind energy on fisheries, yet the Bureau is not required to do an RFA analysis. That being said, you filed public policy on BOEM's guidance and in the comments you said that BOEM must conduct an RFA analysis in its draft environmental assessments and environmental impact statements to ensure the agency, as well as developers, properly consider the impacts offshore wind development projects on small businesses. Can you talk a little bit about why you feel strongly that that is very important?

Mr. CLARK. Yes. We have, over the short period of time, had conversations with small businesses regarding this offshore situation. And there are businesses that are concerned that their businesses are going to be adversely harmed by the process. And there are other businesses that clearly see some opportunity for benefit from the process. So we think that the most efficient way for the agency to do this analysis is to do an RFA analysis to determine what the impacts may be. We have a lot of businesses that are adjacent to the shore and to the shoreline and so forth that feel they are going to be adversely harmed by the development of the offshore wind, while others feel that it may be an opportunity for them to develop a business but——

Mr. GOLDEN. Do you know, sir, if BOEM has started to perform an RFA analysis or have they committed to you to do one in the future?

Mr. CLARK. They have not yet committed to us but I think we submitted a letter last week to them requesting that this be done.

Mr. GOLDEN. Good. Thank you.

In your comment to BOEM you said that small businesses can be significantly impacted by offshore development projects. Why is it that BOEM is going forward with leases right now prior to finalizing the rule on mitigating these impacts?

Mr. CLARK. I cannot address why they are going forward with it right at this moment.

Mr. GOLDEN. Do you have concerns that they are?

Mr. CLARK. Yes. I mean, again, the concern is that we have small businesses that are what I would characterize as caught in

the crosswinds of this whole process. And those small businesses need to better understand exactly what the parameters are for this process so that they can adjust, if necessary, their business model and so forth to better participate. These businesses, many of them, all of them, really, are the economic backbone of that whole process. So we need to make sure that they are adequately protected as much as possible.

Mr. GOLDEN. Does your office pretty much exclusively just comment on concerns being raised by small businesses or do you ever propose steps that could be taken by federal agencies to mitigate their impacts of their regulations?

Mr. CLARK. Our office, we will comment on the proposed regulation and we will give the agency the assessments that we have received from our stakeholders as we have held roundtables and other types of listening sessions. And where appropriate, we will try to work with the agency in terms of analyzing data that may be available to give a different or better impact assessment.

Mr. GOLDEN. Well, I know one thing, that the lobster fishery, and these are all small businesses as you know, is seeking in Maine exclusion zones which would ensure that their fishing grounds are not impacted by offshore wind. I do not know if you have seen any of those proposals yet but I am sure you will be hearing more about it in the weeks and months ahead and it is something we would love to be in a conversation with your office about.

Mr. CLARK. Yeah. I have not seen a proposal but I am sure the attorney that is working on those areas is very much involved in that process.

Ms. SALAZAR. Thank you.

Now I recognize Mr. Stauber from Minnesota, for 5 minutes.

Mr. STAUBER. Thank you, Madam Chair.

On April 27, 2022, Small Business Administrator Guzman testified in front of this House Small Business Committee that she was "not familiar" with the Small Business Regulatory Enforcement Fairness Act, also known as SBREFA. I am ever wary of the regulatory burden imposed upon small businesses. As part of the Committee's ongoing work to conduct oversight of small business concerns, it is important that we ensure this gap of knowledge on the federal regulatory process does not extend beyond the administrator and that our small businesses are being duly considered by other federal agencies. However, what I fear is that it is not a lack of knowledge that is keeping the concerns of small businesses out of consideration and federal agency rulemakings but rather an honest contempt held for main street by this administration. As an example, almost $300 billion, that is with a B, $300 billion of additional regulations on our small businesses and farmers by this administration in just 2-1/2 years.

Now to my question. EPA recently proposed greenhouse gas regulations that would require existing coal and natural gas power plants and new natural gas power plants to install carbon capture or coal fire hydrogen. Many small entity electric utilities, notably electric cooperatives and public power utilities, which are prevalent in the district that I represent, will continue to rely upon coal and

natural gas, including new construction of natural gas units to maintain reliability and affordability.

Major Clark, has the SBA Office of Advocacy been asked to weigh in on the estimated impact of EPA's proposed greenhouse regulations on these small utilities?

Mr. CLARK. I think the attorney that represents that area has been working with EPA in that area. I do believe that we actually have been following that. I do not have all of the specific details. I would be happy to provide those to you. But we are very much aware of the impact greenhouse gas is having and will have in terms of those regulations.

Mr. STAUBER. Would you agree that those regulations, the additional regulations applied would cost the citizens who consume that energy more money?

Mr. CLARK. Without having the data available in front of me that is one of the areas that we would have to look at in terms of what the additional cost, if any, would be in that process. And that is part of what we do in the Office of Advocacy is to try to weigh the costs of these proposed regulations.

Mr. STAUBER. Does the Office of Advocacy plan to engage on this rulemaking particularly during the current open comment period?

Mr. CLARK. Yes.

Mr. STAUBER. Okay. Would you be able to give this Committee the results of that when it is completed?

Mr. CLARK. I would be happy to. All of our public comment letters are filed and I do think we submit our public comment letters to this Committee but we would be happy to do that.

Mr. STAUBER. Thank you.

Unfortunately, I believe the EPA has come to the inaccurate conclusion and improperly certified this rulemaking by determining it would not have a "significant economic impact on a substantial number of small entities." I have heard from electric coops and public power utilities that this proposed rule will, in fact, have a significant impact on their operations and on the communities they serve. I encourage the Office of Advocacy to officially weigh in on these proposals. And I will work with you and my colleagues to hold the agencies accountable and ensure their compliance with RFA and SBREFA.

And with that I appreciate your time here, Major Clark. And thank you for your service.

And Madam Chair, I yield back.

Mr. CLARK. And we look forward to working with you on that. Thank you.

Ms. SALAZAR. Thank you.

And now I recognize Mr. Mfume from Maryland for 5 minutes.

Mr. MFUME. Thank you very much, Madam Chair.

Mr. Clark, good to see you.

Allow me a point of personal privilege, Madam Chair, and to be a little bit redundant. You heard earlier in Mr. Clark's introduction by the Chair that he was the staff director to this Committee back in the 1980s. Chaired, the Committee was, by my predecessor, whose portrait is on the wall down there, Congressman Perrin Mitchell of Maryland. And although Mr. Clark is being a little

modest right now, the truth of the matter is he was one of the most respected Members of any staff on the Hill in those days, almost, and I do not want you to blush, but almost legendary. And for those of us who had a chance to know him and to watch the level and the quality of his work for this Committee, it just stays with us.

I got on the Committee when I got here in 1987. Mr. Clark was serving, as I said, for my predecessor. Ronald Reagan was president. We were all younger men then, including Ronald Reagan. And I have had an opportunity over the years to kind of hear about him and hear about him. But it is an opportunity today for me to see you and to say thank you, again, for all of your work. We do not want things like that to sort of fade away, and I say that primarily for the staff that works this Committee today. It is a good opportunity to do good things and to go a long, long way.

One of the things, Mr. Clark, I would like to do quickly is to get our opinion on antitrust regulations and how they are impacting businesses. We know that the Sherman Antitrust Act, the Federal Trade Communications Antitrust Act and Clayton Antitrust Act are the three real pillars that were put in place legislatively to help protect small businesses from the sort of antitrust things that we have seen. We all on this Committee know that small businesses are challenged with a lot of different things, not the least of which is the lack of access to capital, the lack of access to credit. That was the case 40 years ago. It is still, unfortunately, the case today. And those businesses today, like then, need every tool possible I think to be able to fight back.

Now, one of the biggest threats is market consolidation. So give lack of access to capital, lack of access to credit, antitrust needs and protections, market consolidation is really, in my opinion, something that we have got to make sure that we do not take our eye off of. And so whether it is controlling trusts that exist out here, and there are a number of controlling trusts, monopolies, price fixing, things of that nature make it very, very difficult. And then over all of that we have the notion of mergers and acquisitions that consolidate power in the hands of a few big corporate companies that are swallowing up market share repeatedly and almost out of control.

So if you could take a few moments, and we do have a few moments, for you to sort of give us your thoughts on all of this and tell us how Advocacy is working with the FTC on antitrust issues and on the other issues that I have talked about. That would be very sufficient and I would appreciate your thoughts.

Mr. CLARK. Thank you for your question.

The merger and acquisition and consolidation of all of these things impact small businesses in many ways that you talked about. But one of the most specific impacts is with the supply chain. Small businesses rely very much on the ability to get their products from manufacturers, from wholesalers, and others and put them into the supply chain. And when we have these mergers and acquisitions, many times those supply chains are directly impacted and the relationships that many small businesses may have with those supply chains are directly impacted.

If I may share with you an example. When I was out in the private sector we were involved in IT service and there were a couple of mergers and acquisitions that directly impacted our ability to get product that we were getting before to our customers. Some at point in time were the federal government. So when we look at this whole issue, one of the things that we have to be concerned with is what does this actually do to the 99 percent small businesses that we have in the United States. And the more they are squeezed in terms of their ability to provide product to the consumer, provide product to their customers, the worse off the economy is in terms of that whole process.

Mr. MEUSER. And speaking of being a squeeze, do you have any idea conceptually of to what extent the percentage of small businesses are being squeezed and ultimately put out of business because of these larger controlling interests that take over as a result of an acquisition or merger?

Mr. CLARK. I do not have firsthand data at my fingertips on that. That is something that we would be happy to look at to see what the impact is as it relates to small business. But it is the mergers. It is the cost of money that many of these small businesses have to incur. And the increase in cost of money that occurs as a result of the acquisitions and mergers. So we will be happy to look at that and get back to the Committee on that.

Mr. MEUSER. And if you could provide that. And if I may ask unanimous, Madam Chair, just for 10 other seconds, if you could also, as a subgrouping or title of that, let us know what that effect is on minority business enterprise also that would be good.

Mr. CLARK. Yes, I will.

Mr. MEUSER. Thank you.

Ms. SALAZAR. Now I recognize Mr. Landsman from Ohio for 5 minutes.

Mr. LANDSMAN. Thank you, Madam Chair. Mr. Clark, thank you for being here. I appreciate all the work that you have done. Incredible career. I am sure you have done this so many times that this is easy but I suspect that testifying in front of a Congressional Committee is not always the most fun, so we do appreciate you coming today and being part of this conversation.

My questions are really around what outreach looks like. For context, I think we oftentimes offer incredible services or we have really important information where we trip up. And this is government, business, elected officials. We get tripped up on the outreach piece. I think we are struggling, even with social media, to figure out exactly how best to reach people. And so I am really curious about how you approach that generally.

But in particular, and this is my second question is around childcare. I am a huge, huge believer in the role that childcare plays in our economy. They are almost all small businesses. Most of the time, at least in my city, these are black-owned businesses and they get left out of the conversation in terms of small businesses even though they are a small business providing incredible support to small businesses. So I am curious about the outreach to childcare providers.

And then you all do economic reports, and I may be describing that wrong, but economic research report. And I am wondering if

you have one or would be willing to do one on childcare as we try to learn more about how to best engage them generally as it relates to rulemaking, how these rules affect them but bigger picture, just how we engage them so that they are part of that small business ecosystem.

Mr. CLARK. Congressman, thank you for your question. And yes, we would be happy to look at the possibility of doing an economic report, research report on child care. I do not know what the data field looks like that is out there but we would look at the data field and try to put together this type of report.

But we have over the period of time been involved with childcare facilities and working with childcare companies in terms of the excellent job that they do in terms of protecting our children, working and caring for our children while we are out trying to make a living for the family.

Three years ago when we were in Atlanta for a regional roundtable we attended or participated and we had a childcare facility participate in two roundtables that we had during that period of time showing us exactly what they do, how they do it, and sharing with us some of the issues that they were experiencing in child care. So we are aware of some of those issues. We will continue to look at the issue of childcare research report and see exactly what's there that we can provide that makes good sense in terms of an economic research report.

Mr. LANDSMAN. Thank you. And again, I appreciate your service. Everything you do. Being here today.

Madam Chair, I yield back.

Ms. SALAZAR. Thank you.

Now we recognize Mr. Thanedar from Michigan for 5 minutes.

Mr. THANEDAR. Thank you, Madam Chair. And Mr. Clark, thank you for all your good service.

As a small business owner and entrepreneur, I personally wrote a grant for small business innovation research. I know you worked with SBIR in the past. And I won an award that helped me with my small business.

I do recognize, you know, the small businesses in my district, I represent Detroit and the downriver communities and the small businesses are struggling with inflation, trying to acquire enough customer base, keep the revenues up so they can keep the payroll and hopefully have a little bit of money left over for their own personal use or investing in their small businesses.

I want smart regulation. I want regulations that help in safety and help in health and safety issues. I want regulations that help protect workers and protect workers' rights. So there is good rulemaking and there is bad rulemaking. Sometimes the rules are so complex that the little shops, mom and pop shops do not have the time to go through all this maze of requirements and the time commitment that they have to put.

My question to you is how can we ensure that there is less paperwork, less work on the part of the business owner to deal with this? How do we communicate these changes in rules? People are so busy running their small businesses and do not have the time to find out all about it. How do we train them? How do we communicate with them? How do we help them to deal with these

changes? And how does that affect also many of the Black and Brown business owners in my district?

Mr. CLARK. Well, again, one of the things that we attempt to do is to do outreach. And in doing outreach, what we are trying to do is to, and what we do, we are not just trying, but what we do is to try to convey to the small businesses what the proposed regulation is designed to do. And in that regard what we then seek from that small business is some input as to how that will impact them. So if we look at, for example, things like the amount of time that it takes to perform a particular task that the regulation is calling for. And if the agency has underestimated that time and the small business tells us, well, it takes 2 hours longer than what the agency has proposed, then we share that with that agency and we put a cost factor to that particular situation. So what we attempt to do, again, is to bring that information to the agency because, again, a regulation, the agency will sometimes look at a regulation as one size fitting all. But regulations have a different impact on the different size of businesses and therefore, we are very concerned with that one, two, three, four-person shop where that regulation of compliance may cost a larger business only $5 to comply but that small business has to pay $100 just to be in compliance. So those are some of the things that we look at in terms of the cost of regulation and what's necessary for compliance.

Mr. THANEDAR. You know, thank you so much for that.

Recently, I have been starting AI, the artificial intelligence technology and I have seen some really interesting applications of that. Can such technology or similar technology can be used to make it easier, quicker for small businesses to be able to respond to these regulations?

Mr. CLARK. Well, I, too, have looked at AI, and I think the answer probably to your question is yes. But I think we have to be very, very careful with AI, as we have to be careful with any technology because the misapplication of that technology can have a worse impact on that small business than what we are looking at. So we have to look at the aspects of that and what is really required and so forth and that is something that we are just doing now.

Mr. THANEDAR. I yield back, Madam Chair.

Ms. SALAZAR. Thank you.

And now I recognize Ms. Chu from California for 5 minutes.

Ms. CHU. Thank you.

Mr. Clark, I want to commend you and the SBA Office of Advocacy for your important work ensuring federal agencies hear and consider the needs of small businesses when developing federal regulations.

However, we know that the smallest and most underserved businesses such as sole proprietors, minority, or women-owned businesses and firms in low-income areas are often hard to reach and less likely to have the resources to advocate for themselves the way larger businesses do. That is why I am so glad to hear that Advocacy is continuing post-pandemic to do your roundtables online which you note has led to greater participation by businesses than in the past would have gone unnoticed or would have been unable to travel to D.C. to participate.

So I would like to hear more about specifically what your office is doing to ensure that you are finding and hearing the voices of the most underserved businesses. When Advocacy plans these virtual roundtables and engages in other forms of outreach to small businesses, how are you ensuring that the smallest and most underserved small businesses are being reached like what I said—sole proprietors, minority- or women-owned businesses, firms in low income areas, or limited English-proficient businesses?

Mr. CLARK. Thank you very much.

One of the things we do, we utilize very extensively our regional advocates that are assigned to each region and to the various states that they operate within. But in addition to the regional advocates, we actually attempt to go to the local community and try to engage the local leadership in our attempt to reach out to the businesses within their jurisdiction. So we clearly are aware that different groups have different levels of activity and different interests, so we try to reach out to those local organizations that are there to ensure that they can get their membership to participate in the hearings, in the roundtables, and so forth.

Ms. CHU. How about on the limited proficient English front?

Mr. CLARK. I'm sorry?

Ms. CHU. Limited English proficient, like those who are monolingual in other languages?

Mr. CLARK. We utilize multiple languages to reach out to the various communities that we are trying to reach out to. And we are not specific to any one specific language. We recognize that there are multiple groups out here with different languages and so forth. We have gone to Alaska reaching out to the different groups there and other places.

Ms. CHU. Okay. Mr. Clark, I understand that only a few federal agencies are required to conduct Small Business Regulatory Enforcement Fairness Act panels (SBREFA) which convene agency officials, the SBA Office of Advocacy and Small Businesses together to discuss the impact of a proposed rulemaking on small businesses and to make recommendations. Can you discuss the process by which small businesses are identified for participation in these SBREFA panels? Specifically, are there mechanisms that you use to ensure the participation of underserved firms like what I have talked about—sole proprietors, minority- and women-owned, those in low-income areas, limited English-proficient businesses?

Mr. CLARK. Yes. Each of the agencies that are required to do a SBREFA panel has a different type of process of reaching out to the various communities. But one of the things that we are required to do with the agency and with OIRA is to ensure that the representation on the panels is adequate representation. And we will provide the agency in many of those situations with names of potential small businesses to participate on those panels.

Ms. CHU. Do you track the participation of those that are in these underrepresented categories?

Mr. CLARK. We track in terms of the types of issues that the agency is looking at in terms of those categories. Yes. We try to get a balanced participation of individuals from the small business community on the panels.

Ms. CHU. Thank you. I yield back.

Ms. SALAZAR. Mr. Clark, thank you for your presence here today and we, as the Committee, we appreciate the work that you do as an independent voice and advocate for small businesses across the country. You have an impressive resume as other Members have explained that highlight a long career both in the public sector and the private sector working with small businesses and the issues that affect them. So again, thank you for your time and for your service to the country.

So I would like to thank once again the witness.

And without objection, Members have 5 legislative days to submit additional materials and written questions for the witness to the Chair which will be forwarded to the witness. I will ask the witness to please respond promptly.

If there is no further business, without objection the Committee is adjourned. Thanks again.

Mr. CLARK. Thank you.

[Whereupon, at 11:27 a.m., the committee was adjourned.]

APPENDIX

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 House of Representatives
Committee on Small Business

Date: June 22, 2023
Time: 10:00 am
Location: 2360 Rayburn House Office Building, Washington, DC
Topic: Reviewing the SBA's Office of Advocacy Report on the Regulatory Flexibility Act

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 Williams, Ranking Member Velázquez, and Members of the Committee on Small Business: I am honored to be here today on behalf of the Office of Advocacy (Advocacy) to present testimony about federal agencies' 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.

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 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.

Advocacy established new channels of communication during the pandemic to better track small business needs and expanded our advocacy to incorporate small business considerations into new policies related to equity and fairness. For example, Advocacy commented on the Council on Environmental Quality's beta version of its Climate and Economic Justice Screening Tool, which identified disadvantaged communities under the Justice40 initiative.

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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 this and our mandate under the RFA, Advocacy continues to monitor new rules and regulations for impacts on small business.

I. The Independent Office of Advocacy

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 Regulatory Flexibility Act confer responsibilities and authorities on Advocacy. Both laws are standing, non-expiring legislation and have been amended since passage.

An important theme leading to Public Law 94-305 was the need for an advocate within the federal government to represent the interests of small business. The law provides that the Chief Counsel is to be appointed from civilian life by the President with the advice and consent of the Senate,[3] and Advocacy employees serve at the pleasure of the Chief Counsel. Further, the law authorized the Chief Counsel to prepare and publish reports as deemed appropriate. The reports "shall not be submitted to the Office of Management and Budget (OMB) or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President."[4] For this reason, Advocacy does not circulate its work for clearance with the SBA Administrator, OMB, or any other federal agency prior to publication. Since 2010, Advocacy has also had independent budget authority, further strengthening our independence.[5]

Despite this progress, Advocacy still encounters challenges with maintaining its independence from SBA. The fact that "Small Business Administration" remains a part of Advocacy's name continues to confuse the public and even some federal agencies. To avoid this confusion, the committee might consider changing Advocacy's name to clarify that Advocacy is not a program within the Small Business Administration, but rather a separate, independent office representing the nation's small businesses.

That said, Advocacy is a relatively small office and continues to rely on SBA for a variety of administrative support services, including office space, equipment, IT, communications support, human resources support, and acquisitions, which are outlined in a Memorandum of Understanding between SBA and Advocacy. Advocacy's administrative support staff utilize SBA's administrative and computer systems to keep Advocacy functioning at a high level of productivity.

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[3] As of this hearing, President Biden has not named a nominee for the Chief Counsel for Advocacy.
[4] § 206, Public L. No. 94-305, 15 U.S.C. § 634f.
[5] The Small Business Jobs Act of 2010 established a separate appropriations account for Advocacy, in addition to a requirement that SBA provide operating support for Advocacy. Advocacy's funds are to remain available until expended. Pub. L. No. 111-240, title I, § 1601(b) (Sept. 27, 2010), 124 Stat. 2551, 15 U.S.C. § 634g. These provisions became operational with Advocacy's budget request for Fiscal Year 2012. Since then, Advocacy's annual Congressional Budget Justification and its accompanying Annual Performance Report have appeared in a separate budget appendix following the main SBA budget request.

It is also important to note the other ways in which Advocacy and SBA interact. Advocacy's economic research team's work is widely used by SBA offices. For example, the number of small businesses in the United States is a common statistic used by SBA and other agencies but is calculated by Advocacy's research team.[6] Additionally, Advocacy's press team works with SBA's Office of Communications and Public Liaison to field media requests regarding small business data. Advocacy also works closely with the SBA Ombudsman and prides itself on the level of cooperation and assistance that its professionals provide to all SBA program and policy staff.

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.[7] 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."[8]

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.[9] When the final rule is published, it must be accompanied by a final regulatory flexibility analysis (FRFA).[10] 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.
3) The projected reporting, recordkeeping, and other compliance requirements.

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[6] There are 33.2 million small businesses in the United States. U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, 2022 SMALL BUSINESS PROFILE: UNITED STATES, 1 (2022), https://advocacy.sba.gov/wp-content/uploads/2022/08/Small-Business-Economic-Profile-US.pdf. Advocacy calculates small business statistics using the most recent data available from government sources.

[7] 5 U.S.C. § 601, et seq. 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).

[8] 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 [hereinafter RFA COMPLIANCE GUIDE].

[9] 5 U.S.C. § 603.

[10] *Id.* § 604.

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.[11] 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.[12] 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.[13] 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.[14]

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.[15] 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.

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

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[11] *Id.* § 605(b).
[12] A list of all SBREFA panels that have been convened can be found in our annual report to Congress and in Appendix B of this testimony. It can also be viewed on Advocacy's website at https://advocacy.sba.gov/resources/reference-library/sbrefa/.
[13] 5 U.S.C. § 609(b)(3).
[14] *Id.* § 609.
[15] *Id.* § 610.

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.[16]

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.[17]

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.[18]

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.

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[16] Exec. Order No. 13,272, 67 Fed. Reg. 53,461 (Aug. 13, 2002).
[17] Small Business Jobs Act, Pub. L. No. 111-240, 124 Stat. 2504 (2010).
[18] 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.

- *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. For example, 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.

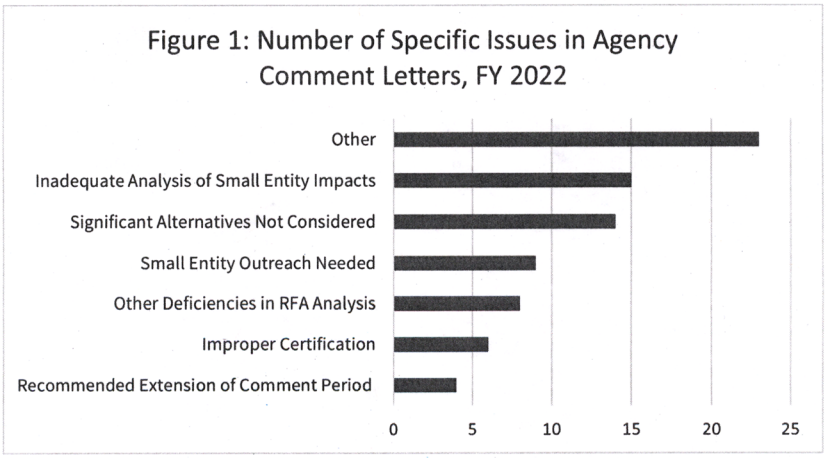
In addition to confidential interagency communications, SBREFA panels are another useful tool for Advocacy to express small business concerns in the regulatory process. As previously stated, three agencies (CFPB, OSHA, and EPA) are required to convene SBREFA panels whenever they are developing a rule 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.

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 D 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.

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 E 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 F 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.

E. Legislative Proposals to Amend the Regulatory Flexibility Act

Advocacy's broad experience with the RFA since its original enactment in 1980, together with a growing body of case law, give Advocacy a unique perspective on the RFA's implementation. In the past, previous Chief Counsels have identified areas they believed needed legislative attention if the RFA is to provide small entities with the full consideration that Congress originally intended. Despite not having a confirmed Chief Counsel, Advocacy is able to highlight areas of concern and suggestions for improvement in the regulatory process.

1. Updating Advocacy's Charter

Public Law 94–305 established the Office of Advocacy and its statutory authority. Section 202 of the law sets forth the primary functions of the Office of Advocacy relating to the study of small business. Currently, it directs Advocacy to "examine the role of small business in the American economy and the contribution which small business can make in improving competition…(and) promoting exports…" Advocacy is also charged with producing reports concerning international trade agreements under the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), but this work is not explicitly reflected in Advocacy's charter. Congress should amend Advocacy's charter to include issues small businesses face in international economies as part of its research functions.

Similarly, Section 203 of Advocacy's charter sets forth the duties of the Office of Advocacy that are performed on a continuing basis. One of these duties is to "represent the views and interests of small

businesses before other Federal agencies whose policies and activities may affect small business." It is not explicit regarding Advocacy's authority to represent small business views and interests before foreign governments and international entities. Under TFTEA, Advocacy is already frequently involved in international trade discussions on behalf of America's small businesses, an authority not reflected in Advocacy's charter. Additionally, Advocacy has been involved in international trade issues outside of TFTEA for many years and has been asked to participate.[19] Congress should amend Advocacy's charter in Section 203 to clarify Advocacy's ability to represent small business views and interests before foreign governments and other international entities for the purpose of contributing to regulatory and trade initiatives.

Advocacy is aware of H.R. 399, the Small Business Advocacy Improvements Act, which recently passed the House of Representatives. The bill would accomplish the changes discussed above to clarify Advocacy's authority to research and represent small businesses on international issues. Because Advocacy already does these activities, we support this change to our charter and support the bill.

2. Legislative Priorities

Because Advocacy currently does not have a Senate-confirmed Chief Counsel that can lobby before Congress for legislative solutions, the office has not updated its legislative priorities since 2016. Advocacy acknowledges that these proposals will require more carefully crafted legislative language and analysis to ensure they are appropriately implemented, and our staff is happy to provide technical assistance on legislative proposals concerning the RFA. The 2016 legislative priorities can be found in Appendix H of this testimony, and are briefly explained below:

i. Indirect Effects

Under the RFA, agencies are not currently required to consider the impact of a proposed rule on small businesses that are not directly regulated by the rule, even when the impacts are foreseeable and often significant. Advocacy believes that indirect effects should be part of the RFA analysis, but that the definition of indirect effects should be specific and limited so that the analytical requirements of the RFA remain reasonable.[20]

ii. Scope of the RFA

Currently, the requirements of the RFA are limited to those rulemakings that are subject to notice and comment. Section 553 of the Administrative Procedure Act, which sets out the general requirements

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[19] For example, as part of the U.S.-Canada Regulatory Cooperation Council, Advocacy served as the U.S. government co-lead for developing the Regulatory Cooperation Council's Small Business Lens, one of the 29 action plans developed by the U.S. and Canadian governments to help better align regulations and regulatory actions. Additionally, Advocacy's role includes promotion of good regulatory practices in other countries for U.S. small businesses, especially exporters. In substantive discussion of regulations and small businesses, Advocacy has offered a unique view on regulatory impacts on small businesses. Advocacy's contribution was important to furthering the discussion of reducing barriers for U.S. companies to trade with the European Union, particularly to better understand how regulations impact small businesses.

[20] Advocacy's RFA Compliance Guide states that agencies "should examine the reasonably foreseeable effects on small entities that purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule." RFA COMPLIANCE GUIDE, *supra* note 8, at 23.

for rulemaking, does not require notice and comment for interim final rulemakings, so agencies may impose a significant economic burden on small entities through these rulemakings without even conducting an IRFA or FRFA. Advocacy believes the definition of a rule under the RFA needs to be expanded to include interim final rulemakings that have the potential to impose economic burden on small entities.

Until recently, for example, the IRS promulgated its rules, many of which were costly and complicated for small businesses, without complying with the RFA's analytical requirements. Generally, the IRS contended that it had no discretion under the implementing legislation and that the agency had little authority to consider less costly alternatives under the RFA. However, since 2016, progress has been made on this issue to ensure small business impacts are considered. [21]

Finally, the RFA has its own definition of information collection. However, this definition is identical to the Paperwork Reduction Act. A cross-reference to the Paperwork Reduction Act would allow Advocacy to rely on OMB's existing implementing regulations and guidance.

iii. Quality of Analysis

The Office of Advocacy has been concerned that some agencies are not providing the information required in the IRFA and FRFA in a transparent and easy-to-access manner.[22] This hinders the ability of small entities and the public to comment meaningfully on the impacts on small entities and possible regulatory alternatives. Agencies should be required to include an estimate of the cost savings to small entities in the FRFA. In addition, agencies should have a single specific section in the preamble of the notice of proposed rulemaking and notice of final rulemaking that lays out clearly the substantive contents of the IRFA or FRFA, including a specific narrative for each of the required elements.

iv. Quality of Certification

Some agencies' improper certifications under the RFA have been based on a lack of information in the record about small entities, rather than data showing that there would not be a significant impact on a substantial number of small entities. A clear requirement for threshold analysis would be a stronger guarantee of the quality of the certifications.[23]

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[21] On April 11, 2018, the Department of the Treasury and OMB signed a Memorandum of Agreement outlining the general terms for OIRA within OMB to review tax regulatory actions under Executive Order 12866 (2018 MOA). The 2018 MOA went into immediate effect except for the additional information required under section 6(a)(3)(C) of E.O. 12866 pertaining to tax regulatory actions that would have an annual non-revenue effect on the economy of $100 million or more, measured against a no-action baseline, which went into effect in April 2019. On June 9, 2023, the Department of the Treasury and OMB entered into a new Memorandum of Agreement that supersedes the 2018 MOA (2023 MOA). Pursuant to the 2023 MOA, tax regulatory actions issued by the IRS will no longer be subject to the OIRA review process. Advocacy anticipates that exempting tax regulations from the OIRA review process may result in fewer tax regulations adequately analyzing small business impacts.

[22] Advocacy believes the information should be at the level of detail necessary to understand the rule's impact on all affected entities, such as identifying all the different types of affected small businesses by industry and accessing the rule's impact on each type of affected small business.

[23] Advocacy's RFA Compliance Guide walks through the certification in detail and the items that should be included in any certification, including the requirements of a factual basis for the certification. RFA COMPLIANCE GUIDE, *supra* note 8, at 11-30.

v. SBREFA Panels

Currently, Advocacy does not see a need to include all regulatory agencies in the SBREFA panel process, as some have proposed. However, the Department of Interior's Fish and Wildlife Service consistently promulgates regulations without proper economic analyses. Advocacy believes the rules promulgated by this agency would benefit from being added as a covered agency subject to Small Business Advocacy Review Panels.

Advocacy also believes that some recent SBREFA panels have been convened prematurely. SBREFA panels work best when small entity representatives have sufficient information to understand the purpose of the potential rule, likely impacts, and preliminary assessments of the costs and benefits of various alternatives. With this information, small entities are better able to provide meaningful input on the ways in which an agency can minimize impacts on small entities consistent with the agency mission. Therefore, the RFA should be amended to require that prior to convening a panel, agencies should be required to provide, at a minimum, a clear description of the goals of the rulemaking, the type and number of affected small entities, a preferred alternative, a series of viable alternatives, and projected costs and benefits of compliance for each alternative.

vi. Retrospective Review

In addition to the existing required periodic review, agencies should accept and prioritize petitions for review of final rules. They should be required to provide a timely and effective response in which they demonstrate that they have considered alternative means of achieving the regulatory objective while reducing the regulatory impact on small entities. This demonstration should take the form of an analysis similar to a FRFA.

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
04/18/22	CPSC	Safety Standard for Clothing Storage Units	87 Fed. Reg. 6246

Date Filed	Agency*	Topic	Citation to Rule
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).

Appendix H
Office of Advocacy Legislative Priorities for Chief Counsel Darryl L. DePriest, 2016



Office of Advocacy
Legislative Priorities for Chief Counsel Darryl L. DePriest

Indirect Effects

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

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

Scope of the RFA

Currently, the requirements of the RFA are limited to those rulemakings that are subject to notice and comment. Section 553 of the Administrative Procedure Act (APA), which sets out the general requirements for rulemaking, does not require notice and comment for interim final rulemakings, so agencies may impose a significant economic burden on small entities through these rulemakings without conducting an Initial Regulatory Flexibility Analysis (IRFA) or Final Regulatory Flexibility Analysis (FRFA). Advocacy believes the definition of a rule needs to be expanded to include interim final rulemakings that have the potential to impose economic burden on small entities.

Further, the IRS regularly promulgates rules that are costly and complicated for small businesses. However, the IRS contends that it has no discretion in implementing legislation and that the agency has little authority to consider less costly alternatives under the RFA. Therefore, the IRS often does not analyze the cost of its rules to small business under the RFA. In the absence of the IRS considering the impact of its rules under the RFA, Congress should require the Congressional Budget Office (CBO) to provide small business cost and paperwork burden estimates for pending tax legislation. This would help ensure that tax writers and the public are aware of the compliance burden in addition to the fiscal consequences.

Finally, the RFA has its own definition of information collection. However, this definition is identical to the Paperwork Reduction Act (PRA) (35 USC 3501, et. seq.). A cross-reference to the PRA would allow Advocacy to rely on OMB's existing implementing regulations (5 CFR 1320) and guidance.

- Require RFA analysis for all interim final rulemakings with a significant economic impact on a substantial number of small entities.
- Require CBO to score proposed tax legislation for the estimated costs and paperwork burden to small business.
- Amend the conditions for IRS rulemakings to require an IRFA/FRFA to reference the PRA.

Quality of Analysis

The Office of Advocacy is concerned that some agencies are not providing the information required in the IRFA and FRFA in a transparent and easy-to-access manner. This hinders the ability of small entities and the public to comment meaningfully on the impacts on small entities and possible regulatory alternatives. Agencies should be required to include an estimate of the cost savings to small entities in the FRFA. In addition, agencies should have a single section in the preamble of the notice of proposed rulemaking and notice of final rulemaking that lays out clearly the substantive contents of the IRFA or FRFA, including a specific narrative for each of the required elements.

- Require agencies to develop cost savings estimates.
- Require a clearly delineated statement of the contents of the IRFA and FRFA in the preamble of the proposed and final rule.

Quality of Certification

Some agencies' improper certifications under the RFA have been based on a lack of information in the record about small entities, rather than data showing that there would not be a significant impact on a substantial number of small entities. A clear requirement for threshold analysis would be a stronger guarantee of the quality of certifications.

- Require agencies to publish a threshold analysis, supported by data in the record, as part of the factual basis for the certification.

SBREFA Panels

The Department of Interior's Fish and Wildlife Service consistently promulgates regulations without proper economic analyses. Advocacy believes the rules promulgated by this agency would benefit from being added as a covered agency subject to Small Business Advocacy Review Panels.

Advocacy also believes that some recent SBREFA panels have been convened prematurely. SBREFA panels work best when small entity representatives have sufficient information to understand the purpose of the potential rule, likely impacts, and preliminary assessments of the costs and benefits of various alternatives. With this information small entities are better able to provide meaningful input on the ways in which an agency can minimize impacts on small entities consistent with the agency mission. Therefore the RFA should be amended to require that prior to convening a panel, agencies should be required to provide, at a minimum, a clear description of the goals of the rulemaking, the type and number of affected small entities, a preferred alternative, a series of viable alternatives, and projected costs and benefits of compliance for each alternative.

- Require SBREFA panels under RFA Section 609(b) for the Department of the Interior's Fish and Wildlife Service.

- Require better disclosure of information including at a minimum, a clear description of the goals of the rulemaking, the type and number of affected small entities, a preferred alternative, a series of viable alternatives, and projected costs and benefits of compliance for each alternative to the small entity representatives.

Retrospective Review

In addition to the existing required periodic review, agencies should accept and prioritize petitions for review of final rules. They should be required to provide a timely and effective response in which they demonstrate that they have considered alternative means of achieving the regulatory objective while reducing the regulatory impact on small businesses. This demonstration should take the form of an analysis similar to a FRFA.

- Strengthen section 610 retrospective review to prioritize petitions for review that seek to reduce the regulatory burden on small business and provide for more thorough consideration of alternatives.

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

House Committee on Small Business
Questions for the Record
"Reviewing the SBA's Office of Advocacy Report on the Regulatory Flexibility Act"
Hearing held on June 22, 2023
Witness: Mr. Major L. Clark, III

Questions from Chairman Williams:

1. Do you believe the Office of Advocacy (Advocacy) can be a completely independent voice for small business within the Small Business Administration (SBA) without being influenced by the positions of the Administration?

Yes.

   a. During the Hearing you said that Advocacy does not run its work by the SBA. Does this include responses to Questions for the Record or other Congressional inquiries?

Yes.

   b. How often do you meet with Administrator Guzman?

We strive to meet at least once a month. Due to conflicting schedules, sometimes our meetings are less frequent.

2. What legislative reform to the Regulatory Flexibility Act (RFA) (other than H.R. 399) do you feel would have the most positive impact on small businesses?

Advocacy believes that the 2016 legislative priorities outlined in my written testimony are the most important changes to the RFA that would benefit small businesses. These include:

- *Amending section 601 of the RFA to define "impact" as including the reasonably foreseeable effects on small entities that purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule; are directly regulated by other governmental entities as a result of the rule; or are not directly regulated by the agency as a result of the rule but are otherwise subject to other agency regulations as a result of the rule.*
- *Requiring RFA analysis for all interim final rulemakings with a significant economic impact on a substantial number of small entities.*
- *Requiring the Congressional Budget Office to score proposed tax legislation for the estimated costs and paperwork burden to small businesses.*
- *Amending the conditions for IRS rulemakings to require an initial regulatory flexibility analysis (IRFA) or final regulatory flexibility analysis (FRFA) to reference the Paperwork Reduction Act.*
- *Requiring agencies to develop cost savings estimates.*
- *Requiring a clearly delineated statement of the contents of the IRFA and FRFA in the preamble of the proposed and final rule.*

- *Requiring agencies to publish a threshold analysis, supported by data in the record, as part of the factual basis for the certification.*
- *Requiring SBREFA panels under RFA Section 609(b) for the Department of the Interior's Fish and Wildlife Service.*
- *Requiring better disclosure of information including at a minimum, a clear description of the goals of the rulemaking, the type and number of affected small entities, a preferred alternative, a series of viable alternatives, and projected costs and benefits of compliance for each alternative to the small entity representative.*
- *Strengthening section 610 retrospective review to prioritize petitions for review that seek to reduce the regulatory burden on small businesses and provide for more thorough consideration of alternatives.*

3. If the requirement to hold Small Business Regulatory Enforcement Fairness Act (SBREFA) review panels was expanded beyond the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration, and the Consumer Financial Protection Bureau, which agencies should hold them and why (other than the Department of Interior's Fish and Wildlife Service as mentioned in your written testimony)?

Other than the Fish and Wildlife Service, Advocacy does not believe that other agencies should be subject to SBREFA panels at this time.

   a. Of the current agencies required to hold a SBREFA review panel, for which agency have the panels been most helpful?

SBREFA panels have been helpful for all three agencies.

   b. Why do you think that is?

While our recent testimony noted that Advocacy does not believe that the panel process is appropriate for every agency, the current agencies required to convene panels have proven somewhat successful because of their unique regulatory mandates. For example, since OSHA has the potential to regulate a wide range of industries in a regulation, the agency often incorporates additional preparation time into its panel process to ensure proper representation of small entity representatives. CFPB is unique because it is the only agency that is required to consider the impact of its rules on the cost of credit for small entities. Given the high number of regulations that EPA proposes, the agency has established clear procedures for its panels to ensure that small entity representatives' voices are heard and can provide helpful information to the panel.

The SBREFA panel process has helped the covered agencies improve their draft proposals before they entered the notice-and-comment process. In some cases, a proposal has even been withdrawn after the impacts, costs, and benefits were better understood because of the panel process. In other cases, revisions have been made to draft rules that mitigated potentially adverse effects on small entities without compromising the rule's objectives.

Advocacy has also found that the panel process enhances the notice-and-comment process. The detailed information generated during the panel process not only helps agencies improve their proposals early in the regulatory process, but also informs the public's response to the proposal since the panel report is made part of the proposed rule's record. Early intervention and constructive engagement with agencies has resulted in better rulemakings and more productive conversations between agencies, small businesses, and Advocacy.

4. How is it determined which agencies, at which time, receive RFA training?

Advocacy is always conducting outreach to agencies to offer RFA training. Advocacy also monitors staffing changes at agencies and will offer training to new staff. We also periodically return to agencies to provide refresher training to agency staff.

5. Given the amount of RFA work Advocacy carried out with the EPA in FY2022, why was there no training held for EPA employees that year?

Advocacy has three attorneys covering EPA regulations, and they are in constant contact with EPA staff regarding RFA compliance. Since EPA is a covered agency that is required to convene SBREFA panels for rules that may have a significant economic impact on a substantial number of small entities, Advocacy also has close relationships with EPA staff during the SBREFA panel process. EPA also has one of the most extensive agency guidance on its procedures for complying with the RFA in the federal government, which is publicly available on EPA's website.[1] Because of these close relationships and EPA's extensive RFA procedures, Advocacy did not believe that RFA training was needed for EPA during FY 2022.

6. What has Advocacy done during this Administration to be the voice for small oil and gas companies?
    a. What has Advocacy done to address the crushing impact this Administration's regulations on the oil and gas industry have had, not only transportation, but delivery on all goods that these small businesses use?

Advocacy has been engaged on EPA's proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (also known as the oil and gas methane rule) since early in 2021 when EPA notified Advocacy and OMB of the intent to convene a SBREFA panel. This panel met between July 2021 and September 2021 and issued a report with recommendations for minimizing burdens on small entities consistent with EPA's statutory mission.[2] Advocacy participated in the E.O. 12866 interagency review of the proposed rule, and in response to EPA's November 2021 proposed rule, Advocacy submitted public comments on January 31,

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[1] U.S. ENV'T PROT. AGENCY, EPA'S ACTION DEVELOPMENT PROCESS: FINAL GUIDANCE FOR EPA RULEWRITERS: REGULATORY FLEXIBILITY ACT AS AMENDED BY THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT (Nov. 2006), https://www.epa.gov/sites/default/files/2015-06/documents/guidance-regflexact.pdf.

[2] U.S. ENV'T PROT. AGENCY, *SBAR Panel: Review of the Oil and Natural Gas New Source Performance Standards*, https://www.epa.gov/reg-flex/sbar-panel-review-oil-and-natural-gas-new-source-performance-standards (last updated Dec. 20, 2022).

2022.[3] Similarly, Advocacy participated in the E.O. 12866 interagency review of the supplemental proposed rule, and in response to EPA's December 2022 notice, Advocacy submitted public comments on February 13, 2023.[4] These letters are available on Advocacy's website and are part of EPA's rulemaking record. Advocacy has continued consulting with small entity representatives and EPA as the rulemaking proceeds.

Although not specific to oil and gas production, Advocacy filed public comments on the Department of the Interior (DOI), Bureau of Land Management's (BLM) public land conservation rule after holding a small business roundtable in May.[5] Advocacy has also conducted outreach on other DOI actions affecting oil and gas production such as proposed rules on venting and flaring on BLM lands, financial assurance for offshore oil and gas operations, and the oil and gas leasing provisions of the Inflation Reduction Act.

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[3] U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., *Advocacy Comments on EPA's Proposed Oil and Gas Production Methane Rule* (Feb. 1, 2022), https://advocacy.sba.gov/2022/02/01/advocacy-comments-on-epas-proposed-oil-and-gas-production-methane-rule/.

[4] U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., *Advocacy Comments on EPA's Supplemental Proposal for the Oil and Natural Gas Methane Rule* (Feb. 13, 2023), https://advocacy.sba.gov/2023/02/13/advocacy-comments-on-epas-supplemental-proposal-for-the-oil-and-natural-gas-methane-rule/.

[5] U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., *Advocacy Comments on BLM Proposed Public Lands Conservation Rule* June 13, 2023), https://advocacy.sba.gov/2023/06/13/advocacy-comments-on-blm-proposed-public-lands-conservation-rule/.



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June 22, 2023

The Honorable Roger Williams
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nydia Velazquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Williams and Ranking Member Velazquez,

On behalf of NFIB, the nation's leading small business advocacy organization, I write regarding the hearing entitled, "Reviewing the SBA's Office of Advocacy Report on the Regulatory Flexibility Act." 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.

In 1980, the Democratic-led Congress unanimously approved the Regulatory Flexibility Act (RFA), legislation to reduce the impact of regulations on small businesses. Upon signing the RFA into law, President Carter stated "[t]his bill adds another piece to the far-reaching regulatory reform record that we and the Congress are building."[1] 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."[2]

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. In fact, NFIB's recent white paper analyzed the Small Business Administration (SBA) Office of Advocacy's (Advocacy) comment letters to federal agencies from January 2021 to January 2023 and found significant noncompliance with the

[1] 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.
[2] *Id.*

RFA.[3] In these letters, Advocacy highlighted 28 instances where agencies failed to adequately examine the economic costs of regulations.[4] Advocacy noted that agencies often improperly certify that rules will not have a significant economic impact on a substantial number of small entities.[5] By doing so, agencies essentially disregard the intent of the law, leaving small businesses subject to the very 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 businesses."[6]

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 Biden Administration's final rule.[7] 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.

Small businesses believe this conclusion makes little sense. However, it highlights the major flaws with the current regulatory environment. Unfortunately, WOTUS is just one example where federal agencies disregard the clear Congressional intent of laws like the RFA. The result is a massive expansion of regulatory costs and burdens. In fact, since January 2021, the Biden Administration has imposed more than $367 billion in regulatory costs and added more than 228 million hours of paperwork burdens on businesses.[8]

Small businesses remain concerned by the expanding regulatory authority of federal agencies, and the corresponding increasing costs and red tape. NFIB members are alarmed by a proposed rule on climate disclosures by the Securities and Exchange Commission (SEC). The SEC's Scope 3 proposed rule would require public companies to report the greenhouse gas emissions of the private companies with which they do business. This massive reporting expansion would ensnarl millions of private, small businesses under the SEC's regulatory

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[3] 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.

[4] *Id.*

[5] *Id.*

[6] 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.

[7] 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.

[8] Dan Goldbeck, *Energy Rules and Massive New Paperwork Highlight Busy Week*, American Action Forum, June 5, 2023, https://www.americanactionforum.org/week-in-regulation/energy-rules-and-massive-new-paperwork-highlight-busy-week/.

authority. And yet, the SEC estimated that only 1,004 small entities would be affected by the proposed rules.[9]

These 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 must strengthen the RFA to ensure the intent of the law is fulfilled. Congress should consider increasing Advocacy's role in the certification of an agency's economic impact analyses. Congress should also require agencies to publicly disclose the less burdensome alternative rules they examined. Additionally, the RFA requires federal agencies to review existing regulations to ensure new regulations are not duplicative of existing ones or burdensome on small businesses. However, agencies often take a minimalist approach to these retrospective reviews. NFIB's white paper and Advocacy's warnings are a clear signal to Congress to stand up for overburdened small businesses. At a minimum, Congress must enforce the existing RFA requirements or increase the consequences for agencies that fail to comply with the RFA.

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."[10] NFIB agrees with President Biden—small businesses are the engines of economic progress, and they are getting crushed. However, the President's expansive regulatory agenda is contributing to the crushing of small businesses with red tape and paperwork. Congress must come together to provide relief for small businesses across the country.

NFIB appreciates your leadership to create 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

Kevin Kuhlman
Vice President, Federal Government Relations
NFIB

[9] 87 *Fed. Reg.* 21462, col. 3, https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf.
[10] *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/.

U.S. Chamber of Commerce

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June 22, 2023

The Honorable Roger Williams
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

The Honorable Nydia Velázquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Williams and Ranking Member Velázquez:

Thank you for holding the hearing, "Reviewing the SBA's Office of Advocacy Report on the Regulatory Flexibility Act." The Chamber appreciates the opportunity to provide our feedback on this important office within SBA.

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 calculate the costs of federal rules last year at $10,000 per household,[1] the critical role that SBA's Office of Advocacy plays in protecting small businesses from costly federal red tape is especially important.

We hope that today's hearing will lead the way for Congress to bolster the ability of the Office of Advocacy to independently represent the views and interests of small business in federal rulemakings, as well as end the ability of enforcement 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 32.5 million small businesses make up over 99% of all U.S. businesses, represent 43.5% of America's GDP, innovate at more than 12 times the rate of larger competitors, and account for 62% of net job creation since 1995.[2] Despite small businesses' strength in economic

[1] Testimony of Casey B. Mulligan, Professor of Economics at the University of Chicago, before the Committee on Oversight and Accountability hearing on "Death by a Thousand Regulations: The Biden Administration's Campaign to Bury America in Red Tape," U.S. House of Representatives, (June 14, 2023).
[2] U.S. Small Business Administration, Office of Advocacy, Frequently Asked Questions About Small Business, (December 2021).

contributions, they are at a disadvantage when it comes to dealing with regulations. 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.

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.[4] The 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. The most egregious multi-year / multi-administration failure to consider small business is the Waters of the United States (WOTUS) rulemaking promulgated by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers. Rather than seek 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 faulted EPA and the Corps for "certifying" that their rulemaking would not harm small businesses. On each occasion, SBA's Office of Advocacy faulted the agencies for not convening a panel of small businesses that is required under SBREFA to ensure that the agencies consider small business recommendations for less burdensome alternatives[5]. In this regard, it is worth noting that the Chamber's lawsuit

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[3] U.S. Chamber of Commerce Foundation, The Regulatory Impact on Small Business: Complex.Cumbersome.Costly., (March 2017).

[4] Regulatory Flexibility Act, 501 U.S.C. Sec. 601 et seq (1980).

[5] 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 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).

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 since 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 truly 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 hide 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 resiliency by preventing wildlife caused power outages. 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.

Legislative Recommendations

The Chamber applauds the Small Business Committee's letter to President Biden calling for a nominee who can effectively oversee the RFA as Chief Counsel for Advocacy and in addition to a strong and effective Chief Counsel who can be confirmed by the Senate, the Chamber requests that you consider the following updates to improve the RFA:

I. The "certification" under Regulatory Flexibility Act needs to be amended for agencies to take it seriously. The Chamber urges the Committee to consider approaches that will

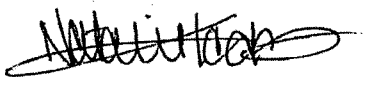
close the RFA loophole that has allowed such flagrant disregard for small business input when agencies craft rulemakings.

II. Agencies need to be transparent about costs on small businesses. The RFA must be amended to include cost estimates for reasonably foreseeable indirect 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.[6]

III. There is a question whether all provisions of the RFA should be made expressly subject to judicial review. Modernizing the RFA should avail small businesses with a 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 is the ultimate arbiter of 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 the Office of Advocacy's RFA Report. The U.S. Chamber welcomes the opportunity to help the Committee highlight the Office of Advocacy's good work and to bolster the Office's ability to defend small business from overly burdensome federal mandates. Please do not hesitate to contact Tom Sullivan, the Chamber's Vice President for Small Business Policy, 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 House Committee on Small Business

[6] 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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